

# STUDENT ASSISTANCE AMENDMENT (2022 MEASURES NO. 1) REGULATIONS 2022

## EXPLANATORY STATEMENT

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

under the *Student Assistance Act 1973*

### **Purpose**

The Student Assistance Amendment (2022 Measures No. 1) Regulations 2022 (the regulations) amend the Student Assistance Regulations 2021 (the primary regulations), which are made under the *Student Assistance Act 1973* (the Act). The primary regulations relate to the ABSTUDY and Assistance for Isolated Children (AIC) schemes.

The regulations address matters raised by the Senate Scrutiny of Delegated Legislation Committee (the committee) about aspects of the primary regulations.

The regulations improve clarity and legal certainty by replacing most references to policy documents (notably the ABSTUDY Policy Manual and AIC Scheme Guidelines) with self-contained definitions. The regulations also address the subjective nature of some prescribed events to make them more certain. Some prescribed events are repealed because there is no longer a requirement to report these.

Finally, the regulations repeal Part 2 of the primary regulations dealing with tax file numbers, as these are now contained in the Act and are therefore redundant in the primary regulations.

The primary regulations will not change significantly in effect as a result of the amendments made by the regulations other than to clarify and reduce reporting requirements, including by the repeal of redundant provisions.

### **Background**

#### ABSTUDY and AIC schemes

The main objective of the ABSTUDY scheme is to provide student benefits and other assistance to, and address some barriers faced by, Aboriginal and Torres Strait Islander people who wish to access education and apprenticeships and who face 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 who have 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.

## Primary regulations

The primary regulations deal with the circumstances in which tax file numbers do not need to be provided (Part 2) and the reporting of prescribed events for the purpose of ensuring that a person's entitlements are properly assessed (Part 3).

Part 2 of the primary regulations contains tax file number provisions affecting ABSTUDY and AIC applicants for the purposes of section 44A of the Act. Part 2 sets out prescribed circumstances in which a person may be paid ABSTUDY or AIC benefits even though they have not provided the tax file number of a person whose income and assets are relevant to the assessment of those benefits.

Part 3 of the primary regulations prescribes events that happen in relation to a person who is receiving or entitled to receive an amount under the ABSTUDY or AIC schemes and which must be reported within 14 days of the happening of the event. This prescription is made for the purpose of subsection 48(1) of the Act. Subsection 49(1) of the Act provides that a person must not contravene subsection 48(1) and sets a maximum penalty for a contravention of the provision as imprisonment for 12 months. Subsection 49(1A) of the Act creates an exception to the offence where the person has a reasonable excuse for contravening the reporting requirements.

Notably, subsection 48(2) of the Act expressly provides that despite section 14 of the *Legislation Act 2003*, regulations for the purposes of subsection 48(1) relating to notifying the department may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time.

## Amendments

The regulations are made to address issues raised by the committee about aspects of the primary regulations.

The regulations replace most references to policy documents with substantive definitions, to improve clarity and legal certainty. The regulations also improve the clarity of prescribed events with a subjective character in more certain terms so that persons subject to the requirements can more clearly understand when they are required to report an event. Some prescribed events are repealed because they are no longer required.

Part 2 of the primary regulations is repealed because it is no longer necessary to prescribe exempting circumstances for the purposes of the tax file number requirements. This is due to amendments made by the *Social Services and Other Legislation Amendment (Student Assistance and Other Measures) Act 2021*, with effect from 28 May 2021.

## **Authority**

The regulations are 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. The regulations are made for the purposes of subsection 48(1) of the Act.

Subsection 48(1) 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.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), 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. In making the regulations, the Governor-General relies on this subsection in conjunction with the regulation-making power in section 56 of the Act.

### **Information sharing**

Information about a person that is collected by an officer in relation to the ABSTUDY and AIC schemes will have the character of 'protected information' where information about a person is being obtained for the purposes of the Act, including the purposes of administering the ABSTUDY and AIC schemes. This includes information about ABSTUDY and AIC recipients and students.

Division 3 of Part 10 of the Act includes provisions that limit the way in which protected information is handled. A person will be authorised to record, use or disclose protected information, for example, where this is for the purposes of administering the ABSTUDY or AIC schemes, with the person's consent or in accordance with a public interest certificate. If the recording, use or disclosure of protected information is not authorised under the Act and the person knows or ought reasonably to know that the information is protected information, the person may commit an offence which is punishable on conviction by imprisonment for a term not exceeding two years (see section 353 of the Act).

The collection, use, recording, disclosure and security of information about ABSTUDY and AIC students, recipients and other individuals is also subject to the Australian Privacy Principles in the *Privacy Act 1988*.

### **Availability of independent review**

The regulations relate to reporting only, and do not affect the existing ability of ABSTUDY and AIC scheme recipients to access internal or external review of decisions made in accordance with the ABSTUDY Policy Manual and the AIC Scheme Guidelines.

### **Commencement**

The regulations commence on the day after they are registered on the Federal Register of Legislation.

## **Consultation**

The department has consulted with Services Australia and the Office of Parliamentary Counsel.

External consultation was not undertaken as the effect of the regulations is largely the same as under the primary regulations, and will not adversely affect ABSTUDY and AIC scheme recipients, students or other parties.

## **Regulation Impact Statement**

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required for the regulations, as the regulations are unlikely to have more than a minor regulatory impact (OBPR ID: 26104).

## **Explanation of the provisions**

### Section 1

This section provides that the name of the regulations is the *Student Assistance Amendment (2022 Measures No. 1) Regulations 2022*.

### Section 2

This section provides that the whole of the regulations commence on the day after the regulations are registered on the Federal Register of Legislation.

### Section 3

This section provides that the authority for making the regulations is the *Student Assistance Act 1973*.

### Section 4

This section provides that each instrument that is specified in a Schedule to the regulations is amended or repealed as set out in the applicable items in the relevant Schedule, and any other item in a Schedule to the regulations has effect according to its terms.

### Schedule 1—Amendments

This Schedule contains amendments to the primary regulations, that is, to the *Student Assistance Regulations 2021*.

### Schedule 1, item 1

Item 1 inserts new definitions of '25% concessional study-load student' and '66% concessional study-load student' into the definition section in section 5. These terms are relevant to some of the prescribed events in section 13 of the primary regulations, relating to courses undertaken by ABSTUDY students (see item 23). The new definitions direct readers to relevant parts of this section.

The new definition of '25% concessional study-load student' directs readers to see new subsection 13(2) (inserted by item 24). The new definition of '66% concessional study-load student' directs readers to see new subsection 13(3) (inserted by item 24).

### Schedule 1, item 2

This item repeals the definition of 'ABSTUDY Policy Manual' from section 5 of the primary regulations. This definition is no longer required as the regulations remove most references to the ABSTUDY Policy Manual from the primary regulations. Instead, definitions and provisions that referred to the ABSTUDY Policy Manual are generally replaced with express, self-contained wording in the primary regulations.

In limited circumstances, notes are included at some appropriate places to point the reader to the ABSTUDY Policy Manual (see items 12 and 35). The notes identify how the reader can readily access current and historic versions of the ABSTUDY Policy Manual for relevant information, including providing the department's website address where this document can be located.

### Schedule 1, item 3

This item repeals the definition of 'actual boarding charges' from section 5 of the primary regulations and replaces it with a new definition. The new definition specifies that 'actual boarding charges' are the boarding fees charged by the provider with whom the student boards during the school year relevant to AIC. These fees are for boarding only, and may include accommodation-related costs such as laundry expenses. However, other costs such as tuition fees or other associated education costs (such as books, uniforms or stationary) are not 'actual boarding charges'.

The term 'actual boarding charges' expressly includes amounts for Goods and Services Tax, but any other reduction, subsidy, scholarship or refund amount is excluded. For example, where a student is granted a scholarship or bursary for their full boarding costs, there are no 'actual boarding charges' for the student.

### Schedule 1, item 4

Item 4 repeals and inserts a new definition of 'approved course' into section 5 of the primary regulations. The new definition provides that, in relation to a student, an 'approved course' means the course for which an amount under the AIC scheme is receivable in respect of the student. The term 'receivable' is defined in section 5 of the primary regulations by reference to a person receiving or entitled to receive an amount, relevantly an amount under the AIC scheme. This amendment is made to remove the reference to the AIC Scheme Guidelines.

### Schedule 1, item 5

Item 5 repeals the definition of ‘approved institution’. A definition for ‘approved institution’ is not required as AIC payments are only made in relation to approved courses, which are implicitly offered by approved institutions. Further, the focus of relevant prescribed events, in section 23 of the primary regulations, is the approved course. The term ‘approved institution’ is used in paragraph 22(b) of the primary regulations, but is removed by item 36 as it is not needed.

### Schedule 1, item 6

This item repeals the definition of ‘Assistance for Isolated Children Scheme Guidelines’ from section 5. This definition is no longer required as the regulations remove all references to the AIC Scheme Guidelines from the primary regulations. Instead, definitions and provisions that refer to the AIC Scheme Guidelines are replaced with express, self-contained wording in the primary regulations.

### Schedule 1, item 7

This item inserts new definitions for ‘base tax year’ and ‘current tax year’ into section 5 of the primary regulations. The new definitions relate to amounts under the ABSTUDY and AIC schemes, and are relevant to the prescribed events in sections 19 and 27 of the primary regulations.

The new definition of ‘base tax year’ provides that in relation to an amount, the ‘base tax year’ is the financial year, which ends on 30 June, in the calendar year before the year for which the amount is received or claimed. For example, if an amount of ABSTUDY is claimed any time in 2022, the ‘base tax year’ will be 2020-21. This is because this financial year ends on 30 June 2021, which is the calendar year prior to 2022.

The new definition of ‘current tax year’ specifies that in relation to an amount, the ‘current tax year’ is the financial year, which ends on 30 June, in the calendar year for which the amount is received or claimed. For example, if an amount of AIC is claimed any time in 2022, the ‘current tax year’ will be 2021-22. This is because this financial year ends on 30 June 2022, which is the calendar year relating to the AIC claim.

### Schedule 1, item 8

Item 8 repeals the definition of ‘dependent child’ and inserts a new definition for this term into section 5 of the primary regulations. The new definition will point the reader to section 15 for the substantive definition of this term with respect to the ABSTUDY scheme and, for the AIC scheme, to new section 24A (inserted by item 38).

### Schedule 1, item 9

This item repeals the definition of ‘dependent status’ and inserts a new definition of this term into section 5 for ABSTUDY purposes. The new definition of ‘dependent status’ no longer defines the term by reference to the concept as outlined

in the ABSTUDY Policy Manual, but instead provides an express meaning in the primary regulations.

The new definition provides that a person has ‘dependent status’ if the person satisfies all of the requirements specified in the definition. These are that the person:

- (a) does not have ‘independent status’ as defined in section 5 (see item 12);
- (b) does not receive a pension under the *Social Security Act 1991* (for example, disability support pension or carer payment) or the *Veterans’ Entitlements Act 1986* (for example, disability pension or service pension);
- (c) is not in ‘State care’ as defined in new subsection 16(3) (inserted by item 30);  
and
- (d) is not in lawful custody within the ordinary meaning of this phrase (for example, the person is in prison or being held at a remand centre).

#### Schedule 1, item 10

This item repeals the definition of ‘entitlement period’ from section 5. This term is used in section 18 of the primary regulations. However, section 18 is amended by item 31, and the term ‘entitlement period’ is no longer used. Instead, section 18 will use the term ‘reporting period’. Accordingly, the definition of ‘entitlement period’ in section 5 is no longer required.

#### Schedule 1, item 11

Item 11 inserts a new definition of ‘full-time student load’ into section 5. This term is relevant to some of the prescribed events in section 13 of the primary regulations, relating to courses undertaken by ABSTUDY students (see item 23). The new definition of ‘full-time student load’ direct readers to see new subsection 13(5) (inserted by item 24).

#### Schedule 1, item 12

This item repeals the definition of ‘independent status’ from section 5 and inserts a new definition for ABSTUDY purposes. The new definition specifies that, in relation to a person, ‘independent status’ means having independent status under the ABSTUDY scheme.

The note following the new definition provides that to determine whether a person has independent status under the ABSTUDY scheme, readers can refer to the ABSTUDY Policy Manual. The note provides the department’s website address, where this document can be located.

The new definition references the ABSTUDY scheme in the same way as occurs under the Act, and the note identifies how the reader can readily access the ABSTUDY Policy Manual for relevant information. This change is intended to give vulnerable Aboriginal and Torres Strait Islander people greater clarity as to their reporting obligations.



### Schedule 1, item 13

This item repeals the definition of ‘nearest appropriate state school’ from section 5 of the primary regulations. This definition is no longer required because paragraph 28(1)(b) is being repealed by item 46. Paragraph 28(1)(b) contains two prescribed events relating to the AIC scheme’s geographical isolation rules, and is the only provision in the primary regulations that uses the defined term ‘nearest appropriate state school’. The events in paragraph 28(1)(b) are not required due to the AIC scheme’s continuity of schooling rules, which operate to continue AIC payments during the relevant school year regardless of whether there are changes in the relevant distances to the nearest appropriate state school in that year.

### Schedule 1, item 14

Item 14 inserts a new definition of ‘normal amount of full-time study’ into section 5. This term is relevant to some of the prescribed events in section 13 of the primary regulations, relating to courses undertaken by ABSTUDY students (see item 23). The new definition of ‘normal amount of full-time study’ direct readers to see new subsection 13(4) (inserted by item 24).

### Schedule 1, item 15

This item repeals the definition of ‘personal assets test limit’ in section 5 of the primary regulations to remove the cross-reference to the ABSTUDY Policy Manual. A new definition is inserted by item 15. This is relevant to the prescribed events relating to assets in section 20 of the primary regulations.

The new definition provides that ‘personal assets test limit’ means a limit for the value of assets that applies to receiving ABSTUDY living allowance under the ABSTUDY scheme. Current assets limits are published in the *A guide to Australian Government payments* (the Guide) which, as stated in the note below the definition, is published on the Services Australia website. The Guide reference and note enable ABSTUDY students to readily access up to date assets test limit information at any given time.

The Guide that is current for the period 1 January 2022 to 19 March 2022 provides that the assets limits for ABSTUDY living allowance are set out in Module B. The applicable assets limit depends on the student’s circumstances, including whether or not the student is a homeowner or a member of a couple.

### Schedule 1, item 16

This item repeals the definition of ‘principal family home’ from section 5 of the primary regulations. This definition is no longer required due to the repeal of paragraphs 25(b) and 28(1)(b) by items 39 and 46 respectively. These are the only provisions in the primary regulations that use the term ‘principal family home’. Paragraphs 25(b) and 28(1)(b) are not required as the continuity of schooling rules under the AIC scheme ensure that an AIC payee will continue to be entitled to AIC, at least during the relevant school year, regardless of whether there are changes in the student’s principal family home, or relevant distances from their principal family home, in that year. Accordingly, the definition of ‘principal family home’ is redundant.

### Schedule 1, item 17

This item inserts a new definitions of ‘secondary non-school course’ into section 5. This term is relevant to some of the prescribed events in section 13 of the primary regulations, relating to courses undertaken by ABSTUDY students (see item 23).

The new definition of ‘secondary non-school course’ provides that this is a secondary course of study, that has been determined by the Minister under subsection 5D(1) of the Act as a ‘secondary course’, and that is offered by an educational institution that is not a secondary school. Such an institution may be, for example, a registered training organisation or higher education institution, such as a technical and further education (TAFE) institution. Secondary courses approved by the Minister are currently contained in the *Student Assistance (Education Institutions and Courses) Determination 2019*, which has been made under subsection 5D(1) of the Act.

### Schedule 1, item 18

This item repeals the definition of ‘second family home’ and inserts a new definition of this term into section 5 of the primary regulations. This is relevant to prescribed events in section 25 for AIC purposes, which relate to a person’s place of residence.

The term ‘second family home’ is defined, in relation to a student, as a home that satisfies all of the following requirements:

- (a) in Australia;
- (b) maintained by the AIC payee or the AIC payee’s partner; and
- (c) maintained for the purpose of providing the AIC student with daily access to appropriate education, in situations where the student would not usually have this access from the home where the AIC payee normally resides.

In this definition, the ‘second family home’ is distinguished from the home where the AIC payee normally resides. The term ‘normally resides’ is intended to mean the place where the AIC payee lives for the majority of the time at any given point in time having regard to their circumstances. It is intended that the student needs to live away from this home, and at the second family home instead, so they can physically regularly attend their educational institution. The second family home may be maintained by the AIC payee or their partner solely for the AIC student, or for the student as well as other family members (who may or may not be accessing education themselves).

### Schedule 1, item 19

This item inserts two new definitions into section 5 of the primary regulations.

A new definition of ‘State care’ is inserted into section 5 as a navigation aid to the reader. The definition provides a pointer to new subsection 16(3), inserted by item 30, which contains a substantive definition for this term.

This item also inserts a new definition of ‘tertiary course’. This is relevant to some of the prescribed events in section 13 of the primary regulations, relating to courses undertaken by ABSTUDY students (see item 23).

The new definition of ‘tertiary course’ provides that this is a course of study, that has been determined by the Minister under subsection 5D(1) of the Act as a tertiary course. Tertiary courses approved by the Minister are currently contained in the *Student Assistance (Education Institutions and Courses) Determination 2019*, which has been made under subsection 5D(1) of the Act.

#### Schedule 1, item 20

This item repeals paragraph 6(3)(d), which relates to the definition of ‘parent’, and inserts a replacement paragraph that does not refer to the ABSTUDY Policy Manual or the AIC Scheme Guidelines.

New paragraph 6(3)(d) contains a rule which applies where two or more relevant persons have primary care responsibility for the student and are not partners of each other. In these circumstances, paragraph 6(3)(d) provides that the ‘parent’ of the student is whichever of those persons to whom an amount of ABSTUDY or AIC is receivable in respect of the student under the ABSTUDY or AIC scheme (as the case requires). Accordingly, and having regard to the definition of ‘receivable’ in section 5, if one of the relevant persons is already receiving AIC payments for the student, for example, that person will be the student’s parent in accordance with new paragraph 6(3)(d).

#### Schedule 1, item 21

This item repeals Part 2 of the primary regulations relating to the provision of tax file numbers.

For the purposes of former section 44A of the Act, Part 2 of the primary regulations prescribe circumstances in which ABSTUDY or AIC may be paid in respect of a person even though the tax file number of one or more persons whose income and assets are relevant to the calculation of student benefits has not been given to the Secretary. Section 44A was repealed by the *Social Services and Other Legislation Amendment (Student Assistance and Other Measures) Act 2021* (Amending Act) with effect from 28 May 2021.

The Amending Act also inserted new tax file number provisions into the Act, including a discretion for the Secretary to exempt a person from the consequences of not complying with a request to give a statement of their tax file number (see subsection 47(3)). In addition, the Amending Act ensured that third party tax file numbers are no longer collected from ABSTUDY or AIC payees. As a result, Part 2 of the primary regulations has no continuing effect and is repealed in whole by this item.

## Schedule 1, item 22

Item 22 is a technical amendment to insert '(1)' at the beginning of section 13. This means that the existing section 13 becomes subsection 13(1). This reflects that new subsections are being inserted into section 13 (see item 24).

## Schedule 1, item 23

This item repeals paragraphs 13(e) and 13(f), which contain prescribed events relating to changes in an ABSTUDY student's study load. Item 23 inserts similar, more express prescribed events that do not refer to concepts by reference to the ABSTUDY Policy Manual.

New paragraph 13(1)(e) applies to ABSTUDY students undertaking a course offered by a school. This will apply to secondary school students. The prescribed event in new paragraph 13(1)(e) requires the ABSTUDY payee to notify Services Australia if they become aware that the student has ceased to be studying full-time in accordance with their course requirements as determined by their school. This may occur if, for example, the student fails to satisfy attendance requirements, the student's approval to study course work at home has been withdrawn, or the student's course is no longer accredited as a secondary course. A student's full-time requirements for the course as determined by the school may be different depending on the particular student, course requirements and school.

New paragraphs 13(1)(f), (g) and (h) apply to students enrolled in a tertiary course or a secondary non-school course. The terms 'secondary non-school course' and 'tertiary course' are defined in section 5, as inserted by items 17 and 19 respectively.

New paragraph 13(1)(f) applies to students who are 25% concessional study-load students in respect of the relevant tertiary course or secondary non-school course, for the particular study period. A '25% concessional study-load student' is defined in new subsection 13(2), as inserted by item 24. The prescribed event for these students requires notification if there is a change in the circumstances that were the basis for the student being a 25% concessional study-load student, for the course, for the relevant study period. These circumstances are set out in the new definition of '25% concessional study-load student' in new subsection 13(2) (see item 24).

For example, if the student's study-load reduces to below one-quarter of the normal amount of full-time study for the course for the study period as specified in new paragraph 13(2)(b), this event would be reportable under new paragraph 13(1)(f).

New paragraph 13(1)(g) is similar to new paragraph 13(1)(f), but applies to students who are 66% concessional study-load students in respect of the relevant tertiary course or secondary non-school course for the particular study period. A '66% concessional study-load student' is defined in new subsection 13(3), as inserted by item 24. The prescribed event for these students requires notification if there is a change in the circumstances that were the basis for the student being a 66% concessional study-load student, for the course, for the relevant study period. These circumstances are set out in the new definition of '66% concessional study-load student' in new subsection 13(3) (see item 24).

For example, if the relevant educational institution's usual requirements for the course change such that the student could undertake the normal amount of full-time study for the course for the study period as specified in new subparagraph 13(3)(c)(i), this event would be reportable under new paragraph 13(1)(g).

New paragraph 13(1)(h) applies to students where neither new paragraph 13(1)(f) nor 13(1)(g) apply, but they are enrolled in a tertiary course or a secondary non-school course. The prescribed event for these students requires notification if the student's study-load for the course falls below three-quarters of the normal amount of full-time study for the course for the relevant study period. The term 'normal amount of full-time study' is defined in new subsection 13(4), as inserted by item 24. If a student's study-load is less than three-quarters of the normal amount of full-time study, this may affect their ABSTUDY entitlement. It may also be appropriate to consider whether the student satisfies the requirements for a 25% concessional study-load student or a 66% concessional study-load student.

#### Schedule 1, item 24

Item 24 inserts new definitions into section 13 of the primary regulations, for the purposes of the prescribed events in new paragraphs 13(1)(f), (g) and (h) (inserted by item 23).

The new definition of '25% concessional study-load student' in new subsection 13(2) provides that a person is a 25% concessional study-load student in respect of a course if all of the following requirements are met:

- (a) the person is enrolled in the course for a particular study period. This period may be, for example, a semester or a year;
- (b) the person is undertaking between one-quarter and three-quarters of the normal amount of full-time study for the course in the study period (see the new definition of 'normal amount of full-time study' in new subsection 13(4)); and
- (c) the person cannot successfully undertake the normal amount of full-time study for the course for the study period because of their disability. This must be supported by a written statement from a relevant practitioner to this effect in one of the following circumstances:
  - (i) an appropriate medical practitioner, with detailed knowledge of the person's physical condition, has provided a written statement that the person has a substantial physical disability and cannot successfully undertake the normal amount of full-time study for the course because of the disability;
  - (ii) a medical practitioner specialising in psychiatry has provided a written statement that the person has a substantial psychiatric disability and cannot successfully undertake the normal amount of full-time study for the course because of the disability; or

- (iii) a psychologist, registered with the relevant State or Territory board that registers psychologists, has provided a written statement that the person is intellectually disabled and cannot successfully undertake the normal amount of full-time study for the course because of the disability.

The new definition of '66% concessional study-load student' in new subsection 13(3) provides that a person is a 66% concessional study-load student in respect of a course if all of the following requirements are met:

- (a) the person is enrolled in the course for a particular study period. This period may be, for example, a semester or a year;
- (b) the person is undertaking between two-thirds and three-quarters of the normal amount of full-time study for the course in the study period (see the new definition of 'normal amount of full-time study' in new subsection 13(4)); and
- (c) the person cannot successfully undertake the normal amount of full-time study for the course for the study period because of one of the following reasons:
  - (i) the relevant educational institution's usual requirement of the course;
  - (ii) a specific written direction has been given to the person from the academic registrar (or equivalent officer) of the relevant educational institution; or
  - (iii) the academic registrar (or equivalent officer) of the relevant educational institution has provided a written recommendation that the person undertake less than the normal amount of full-time study for the course for academic or vocational reasons. This must be for a period of no more than half of an academic year.

The term 'normal amount of full-time study' is defined in new subsection 13(4). In respect of a course, the 'normal amount of full-time study' is any of the following circumstances:

- (a) in relation to courses of study within the meaning of the *Higher Education Support Act 2003*, which have Commonwealth supported students enrolled in the course – the full-time student load for the course. The term 'full-time student load' is defined in new subsection 13(5). The term 'Commonwealth supported students' has the meaning in the *Higher Education Support Act 2003*;
- (b) in relation to courses that are not covered by new paragraph 13(4)(a) and the relevant educational institution specifies an amount of full-time study that a full-time student should typically undertake for the course – the amount specified by the institution; or
- (c) in any other case – the amount of full-time study that is equivalent to the average amount of full-time study that a person would have to undertake over

the duration of the course, to complete the course in the minimum amount of time needed to complete it.

New subsection 13(5) defines the term 'full-time student load' for the purposes of paragraph 13(4)(a). In respect of a course, the 'full-time student load' is the study load represented by units of study which make up the course, and that have a total EFTSL value of one EFTSL.

New subsection 13(6) explains that the terms specified in new subsection 13(5), that are defined in the *Higher Education Support Act 2003*, have the same meaning as in that Act. This includes the terms 'EFTSL' and 'EFTSL value'.

#### Schedule 1, item 25

This item amends paragraph 14(1)(c), which contains a prescribed event relating to a dependent child of an ABSTUDY student going overseas. The phrase 'is likely to' is removed and replaced with the word 'will'. That is, the student will be required to notify Services Australia when they become aware that their dependent child will be outside Australia for any period, rather than when they become aware that this is likely to be the case.

This amendment is intended to create greater certainty about the required state of mind of the student and when the relevant prescribed event has occurred and is required to be reported. It is intended that the ordinary meaning of 'becomes aware' should be used, and a student will become aware of the prescribed event in paragraph 14(1)(c) when they have realisation, perception or knowledge of that event.

#### Schedule 1, item 26

Item 26 amends the heading to section 15. The words 'dependent child' are removed and replaced with the words '*dependent child* in relation to the ABSTUDY Scheme'. This is intended to make it clear that section 15 only applies to the ABSTUDY scheme. This wording clearly distinguishes section 15 from the new definition of 'dependent child' that is inserted for AIC purposes (see new section 24A inserted by item 38).

#### Schedule 1, item 27

This item amends subsection 15(1), which sets out the basic rule for the definition of 'dependent child'. The words 'in relation to the ABSTUDY Scheme' are inserted. This amendment clarifies that subsection 15(1) applies to the ABSTUDY scheme and clearly distinguishes the definition in this section from the new definition of 'dependent child' for AIC purposes (see new section 24A inserted by item 38).

#### Schedule 1, item 28

This item amends paragraphs 16(1)(d) and 16(1)(e), which contain prescribed events relating to the location of an ABSTUDY student. The words 'is likely to' are removed and replaced with the word 'will'. That is, the ABSTUDY payee will be required to notify when they become aware that the student will be absent from their permanent home for more than eight weeks (paragraph 16(1)(d)) or outside Australia

for any period (paragraph 16(1)(e)), rather than when they become aware that either of these events is likely to be the case.

This amendment is intended to create greater certainty about the required state of mind of the ABSTUDY payee and when the relevant prescribed events have occurred and are required to be reported to Services Australia. It is intended that the ordinary meaning of 'becomes aware' should be used, and an ABSTUDY payee will become aware of the prescribed events in paragraphs 16(1)(d) and 16(1)(e) when they have realisation, perception or knowledge of the relevant event.

#### Schedule 1, item 29

Item 29 amends the table in subsection 16(2) which defines the 'permanent home' of a student for ABSTUDY purposes. Specifically, this item removes paragraph (a) in column 1 of table item 2 in subsection 16(2) and replaces it with the words 'the student is considered to be in State care'. This change is made to remove the reference to the ABSTUDY Policy Manual. Instead, the term 'State care' is expressly defined in new subsection 16(3) (inserted by item 30).

#### Schedule 1, item 30

Item 30 adds a new subsection 16(3) after subsection 16(2) to define 'State care'. New subsection 16(3) provides that a student is in 'State care' if the student is not living with a parent (as defined in section 6 of the primary regulations) and any one of the following circumstances applies:

- (a) the student is in the guardianship, care or custody of a court, a Minister, or a Department, of the Commonwealth, a State or a Territory. For example, a student may be subject to an order placing them in the custody of the relevant State or Territory department responsible for child protection;
- (b) there is a current direction from such a court, Minister or Department which places the student in the guardianship, care or custody of someone who is not the student's parent. For example, a student may be placed in the care of a foster carer for a certain period;
- (c) the student stopped being in a guardianship, care or custody situation (as specified in new paragraphs 16(3)(a) or (b)) only because of the student's age. For example, a guardianship order may cease when the student turns 18.

#### Schedule 1, item 31

Item 31 repeals all of section 18 of the primary regulations, and substitutes a new provision. This relates to the reporting of income by ABSTUDY students, which is essential for Services Australia to determine the correct ABSTUDY entitlement and rate for payees. The new section 18 does not change the prescribed event, but is intended to make the provision clearer.

Firstly, the new section 18 removes the term 'entitlement period' and replaces it with 'reporting period' (including in the heading to new section 18). The definition of



'entitlement period' is repealed by item 10 as it is no longer used. In new paragraph 18(1)(a), 'reporting period' is specified as a period of 14 days or less, in respect of which Services Australia has required a student to provide an estimate or statement of the amount of their income, and their partner's income, for ABSTUDY purposes. That is, the requirement by Services Australia must be for purposes relating to an amount mentioned in section 12, which is an amount under the ABSTUDY scheme.

The purpose of this amendment is to improve certainty by ensuring that the period for which income must be reported is defined by the requirement given to the student for this purpose. The term 'reporting period' is more consistent with current practices used by Services Australia, including in notices requiring ABSTUDY recipients (as well as social security recipients) to report income.

The prescribed event in section 18 will apply where the ABSTUDY student has been required to report income for a reporting period, and the student has given an estimate or statement of the amount of income relating to the reporting period to Services Australia, in accordance with that requirement (new paragraphs 18(1)(a) and (b) refer). This simplifies the current subsection 18(1) by specifying that the reporting requirement will be imposed on the student, and the student must report their and their partner's income.

However, new subsection 18(2) provides that where more than one estimate or statement of income for the reporting period has been given to Services Australia, the prescribed event only applies in relation to the latest (that is, the more recently provided) estimate or statement. New subsection 18(2) is in substantially the same terms as the current subsection 18(2) and is not intended to change in effect.

The prescribed event in subsection 18(3) is the end of the reporting period, if in that period, the income of the student or their partner is higher than the estimated or stated amount most recently given by the student to Services Australia. That is, it is only if the student's or their partner's income increases in a particular reporting period, compared to the amount last reported, that the student will be required to report to Services Australia for that period. New subsection 18(3) is in substantially the same terms as the current subsection 18(3) and is not intended to change the prescribed event for ABSTUDY students.

#### Schedule 1, item 32

This item amends subparagraphs 19(1)(b)(i) and 19(1)(b)(ii), which deal with income earned in an income year by parents of ABSTUDY students. This item removes the cross-references to the ABSTUDY Policy Manual from these provisions, by omitting the words '(within the meaning of the ABSTUDY Policy Manual)'. The references to the ABSTUDY Policy Manual are no longer required due to the insertion of new self-contained definitions for 'base tax year' and 'current tax year' into section 5 of the primary regulations (see item 7).

#### Schedule 1, item 33

This item amends subsections 19(3) and 19(4), which prescribe events relating to the income of parents of ABSTUDY students. This item removes the words 'it is

reasonably likely that' from these provisions. These amendments will create greater certainty for ABSTUDY payees who will only be required to notify when they become aware that the relevant parental income has exceeded, or will exceed, the last estimated or stated amount by at least 25 percent, and not when they become aware that this is reasonably likely to be the case. This is consistent with other prescribed events, such as the amendments made to the equivalent event for AIC by item 45.

#### Schedule 1, item 34

This item repeals subsection 19(5) from the primary regulations. This is a deeming provision which provides that an ABSTUDY payee is to be taken to be aware of something if he or she ought reasonably to know of that fact. Instead, the standard of the payee 'becoming aware' will apply to the prescribed events in subsections 19(3) and 19(4). This is intended to have its ordinary meaning, such that an ABSTUDY payee will become aware of a fact when they have realisation, perception or knowledge of that event. It is intended that this will provide greater certainty for ABSTUDY payees regarding when they need to report the occurrence of the events in subsections 19(3) and 19(4).

#### Schedule 1, item 35

This item repeals subsection 20(3) from the primary regulations relating to assets. A new definition of 'assets' is inserted as a new subsection 20(3) for the purposes of the prescribed events relating to the personal assets test applying to ABSTUDY students in section 20.

The new definition no longer defines 'assets' directly by reference to the ABSTUDY Policy Manual. Instead, this term is defined as things that are assets under the ABSTUDY scheme, for the purposes of applying the personal assets test.

The note following the new definition provides that for things that are assets under the ABSTUDY scheme, readers can refer to the ABSTUDY Policy Manual. The note provides the department's website address, where this document can be located.

The new definition references the ABSTUDY scheme in the same way as occurs under the Act, and the note identifies how the reader can readily access the ABSTUDY Policy Manual for relevant information. This change is intended to give vulnerable Aboriginal and Torres Strait Islander people greater clarity as to their reporting obligations.

#### Schedule 1, item 36

Item 36 amends paragraph 22(b), which is an introductory provision for AIC. This item removes the words 'offered by an approved institution'. The omitted words are not necessary as amounts paid under the AIC scheme are receivable only in relation to an approved course, which is implicitly a course that is offered by an approved institution. In addition, the term 'approved institution' is not used in relation to any prescribed events relating to the AIC scheme, which instead relate to the approved course (see section 23 of the primary regulations).

The definition of 'approved institution' in section 5 is also repealed by item 5 as it is not required.

#### Schedule 1, item 37

This item repeals paragraph 24(c) which deals with the event of a person (other than the AIC student) ceasing to be a 'dependent child' of an AIC payee. This item inserts a new paragraph which does not refer to the AIC Scheme Guidelines. It is no longer necessary to refer to the Guidelines as the term 'dependent child' is expressly defined in new section 24A (inserted by item 38).

Further, the event in paragraph 24(c) is amended to specify that it only applies if an amount under the AIC scheme mentioned in section 22 of the primary regulations includes an additional boarding allowance. This allowance is the only means-tested component of AIC, and an AIC payee's dependent child or children are only relevant for AIC purposes in this context. Accordingly, this amendment narrows the prescribed event to ensure that AIC payees are only required to report this event where it is relevant to their AIC entitlements.

#### Schedule 1, item 38

This item inserts a new section 24A into the primary regulations, which defines the term 'dependent child' for the purposes of the AIC scheme. This is relevant to the prescribed event in paragraph 24(c) (as inserted by item 37). This new definition is similar to the existing definition of 'dependent child' for ABSTUDY purposes in subsection 15(1) of the primary regulations.

New section 24A provides that a person (referred to in this section as the 'first person') is a 'dependent child' of another person (referred to in this section as the 'second person') under the AIC scheme if all of the specified requirements are satisfied. These are that the first person:

- (a) is wholly or substantially in the care of the second person;
- (b) is less than 22 years of age;
- (c) is not independent for youth allowance purposes. Whether a person is independent is determined in accordance with section 1067A of the *Social Security Act 1991*;
- (d) does not have independent status for ABSTUDY purposes. The term 'independent status' is defined in section 5 of the primary regulations (as inserted by item 12); and
- (e) one or more of the following circumstances apply:
  - (i) the first person has one or more of the following payments receivable in respect of them:
    - (A) additional boarding allowance under the AIC scheme;
    - (B) living allowance under the ABSTUDY scheme;

- (C) the means-tested component of the Group 2 school fees allowance under the ABSTUDY scheme;
  - (D) youth allowance under the *Social Security Act 1991*; or
- (ii) the first person is an FTB child of the second person; or
  - (iii) the first person is a regular care child of the second person.

In relation to the term 'FTB child' in new subparagraph 24A(e)(v), this has the meaning provided in Subdivision A of Division 1 of Part 3 of the *A New Tax System (Family Assistance) Act 1999*, for family tax benefit purposes. For example, section 22 in that Subdivision currently provides a number of circumstances in which an individual will be an FTB child of another individual.

In relation to the term 'regular care child' in new subparagraph 24A(e)(vi), this has the meaning in the *A New Tax System (Family Assistance) Act 1999*. Subsection 3(1) of that Act currently contains a definition of the term 'regular care child'.

#### Schedule 1, item 39

This item repeals paragraph 25(b), which provides a prescribed event relating to an AIC student changing his or her principal family home. This is no longer required as the continuity of schooling rules under the AIC scheme ensure that an AIC payee will continue to be entitled to AIC, at least during the relevant school year, regardless of whether the student changes their principal family home in that year. Any changes to a student's principal family home will be considered by Services Australia at the time that AIC annual reviews are undertaken.

The definition of 'principal family home' in section 5 is also repealed by item 16, as it is no longer required.

#### Schedule 1, item 40

Item 40 is a consequential technical amendment to paragraph 25(g) to address the repeal of paragraph 25(h) by item 41. This item ensures the punctuation at the end of paragraph 25(g) reflects that it is the last paragraph in section 25.

#### Schedule 1, item 41

Item 41 repeals paragraph 25(h) from the primary regulations as this prescribed event is no longer required. This event relates to a student ceasing to meet a geographical isolation rule under the AIC scheme. However, the continuity of schooling rules under the scheme ensure that an AIC payee will continue to be entitled to AIC, at least during the relevant school year, regardless of whether the student ceases to meet a geographical isolation rule. Therefore, it is not necessary to notify of any such changes at the time they occur.

However, AIC entitlement is reviewed annually by Services Australia, and updated information is sought from AIC payees at that time. It may be that the AIC payee is no longer entitled to AIC in the following school year, if they do not meet any of the geographical isolation rules.

### Schedule 1, items 42 and 43

These items amend paragraphs 26(a) and 26(b), relating to certain payments receivable in respect of an AIC student. These items insert the words ‘the AIC payee becomes aware that’. The purpose of these amendments is to ensure that the relevant prescribed events only arise, and are therefore only required to be reported, once the AIC payee becomes aware that a relevant payment becomes receivable, and not when a payment actually becomes receivable. This takes into account that an AIC payee may not necessarily have realisation, perception or knowledge of a payment at the time it becomes receivable. This may particularly be the case where the AIC payee and the student are different people, the reporting obligation in section 26 is placed on the AIC payee, and the student is the recipient of the relevant payment.

The amendments also ensure the prescribed events in section 26 are consistent with the wording of other prescribed events relating to ABSTUDY in the primary regulations (for example, the events relating to personal relationships in subsection 14(2)).

### Schedule 1, item 44

This item amends subparagraphs 27(1)(b)(i) and 27(1)(b)(ii), both of which relate to the income of the AIC payee and their partner. This item removes the cross-references to the AIC Scheme Guidelines from these provisions, by omitting the words ‘(within the meaning of the Assistance for Isolated Children Scheme Guidelines)’. The references to the Guidelines are no longer required due to the insertion of new self-contained definitions for ‘base tax year’ and ‘current tax year’ into section 5 of the primary regulations (see item 7).

### Schedule 1, item 45

This item amends subsection 27(3) to remove the words ‘it is reasonably likely that’. The prescribed event in this provision relates to the income of the AIC payee or their partner. The AIC payee will be required to notify when they become aware that the relevant income exceeded, or will exceed, the estimated or stated amount by at least 25 percent, and not when they become aware that this is reasonably likely to be the case. This is intended to introduce greater certainty for AIC payees about when the prescribed event has occurred, and therefore when they are required to report the event to Services Australia.

It is intended that the ordinary meaning of ‘becoming aware’ should be used, and an AIC payee will become aware of the prescribed event in subsection 27(3) when they have realisation, perception or knowledge of that event.

This amendment is consistent with other prescribed events, such as the amendments to the equivalent event for ABSTUDY (made by item 33).

### Schedule 1, item 46

Item 46 repeals paragraph 28(1)(b) from the primary regulations. This paragraph contains two prescribed events which relate to the AIC scheme’s geographical

isolation rules, specifically, changes in distances between the student's principal family home and another location. These prescribed events are not required due to the AIC scheme's continuity of schooling rules, which operate to continue AIC payments during the relevant school year. Accordingly, it does not matter whether the distance changes occur, and these are not required to be notified, during the year.

Instead, AIC eligibility and entitlements are reviewed annually by Services Australia such that updated information is sought from individual AIC payees towards the end of each school year. An assessment is then made about whether the student satisfies the geographical isolation rules for the following year or is otherwise entitled to a further continuity of schooling exemption.

The definitions of 'nearest appropriate state school' and 'principal family home' in section 5, which are terms used in paragraph 28(1)(b), are also repealed by items 13 and 16 respectively, as they are no longer required.

## Statement of Compatibility with Human Rights

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

### Student Assistance Amendment (2022 Measures No. 1) Regulations 2022

The 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 legislative instrument

The Student Assistance Amendment (2022 Measures No. 1) Regulations 2022 (the regulations) amend the Student Assistance Regulations 2021 (the primary regulations), which are made under the *Student Assistance Act 1973* (the Act). The primary regulations relate to the ABSTUDY and Assistance for Isolated Children (AIC) schemes.

The regulations address matters raised by the Senate Scrutiny of Delegated Legislation Committee (the committee) about aspects of the primary regulations.

The regulations improve clarity and legal certainty by updating references to policy documents (notably the ABSTUDY Policy Manual and AIC Scheme Guidelines) and including self-contained definitions. The regulations also address the subjective nature of some prescribed events to make them more certain. Some prescribed events have been repealed because there is no longer a requirement to report these.

Finally, the regulations repeal Part 2 of the primary regulations dealing with tax file numbers, as these are now contained in the Act and are therefore redundant in the primary regulations.

The primary regulations will not change significantly in effect as a result of the amendments made by the regulations other than to clarify and reduce reporting requirements, including by the repeal of redundant provisions.

#### Human rights implications

This legislative instrument engages the following 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 the ABSTUDY and AIC schemes increase access to social security for students through equity measures that provide financial assistance to help meet the costs associated with study.

- 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 the ABSTUDY and AIC schemes engage the right to education as they provide financial assistance to students and families to assist with meeting educational expenses.

### Regulations

The regulations are made under section 56 of the Act and are necessary for prescribing matters that give effect to the Act.

To qualify for payment under either the ABSTUDY or AIC scheme, a student must meet specified eligibility criteria and where their circumstances change, must advise the administrator of the schemes of these changes. The primary regulations set 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 events in the primary regulations.

The regulations do not significantly change the primary regulations in effect other than to clarify and reduce reporting requirements. The regulations are beneficial in that they increase access to social security and ultimately enable more students to access education, by providing financial assistance to students with meeting educational expenses.

### **Conclusion**

The regulations are compatible with human rights because they promote 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]**