

## SOCIAL SECURITY

## Including Student Assistance Decisions

## Opinion

**AUSTUDY: effect of statutory rule 393**

Statutory Rule 393 of 1995 introduced a number of amendments to the AUSTUDY Regulations with effect from the beginning of 1996. The most significant of these included:

- setting the maximum rates for AUSTUDY in 1996;
- setting the thresholds for the parental and spousal income tests in 1996;
- setting the threshold for the assets test in 1996; and
- abolishing dependent spouse allowance in 1996.

There were a number of other amendments, which would be relevant in a smaller range of cases. These included amendments:

- clarifying aspects of the definitions of 'parent' and 'spouse';
- clarifying how long receipt of drought relief payment would exempt a student from the parental or spousal income test, or the assets test;
- setting a reduced rate of independent AUSTUDY for students still living with their parents;
- changing the provisions relating to permanent residence and refugee status, in response to changes in migration legislation; and

- increasing the rate of fares allowance and amending the valuation of a loan benefit (fringe benefit relating to a loan).

Also, the amendment of the maximum rates and thresholds for the parental and spousal income tests affected the level of the benchmark (the 'after tax income of the notional parent') above which family expenditure would prevent payment of AUSTUDY under the Actual Means Test.

Most of these amendments took effect from the beginning of 1996. However, Statutory Rule 393 of 1995 was disallowed by the Senate on 10 September 1996. By virtue of s.48 of the *Acts Interpretation Act 1901*, this means that from that date, the AUSTUDY Regulations have effect in the form they would have had if the Statutory Rule had never been made.

In other words, from 10 September 1996, the rate at which AUSTUDY should be paid will drop (both because of the drop in the maximum rate of AUSTUDY and the drop in the thresholds at which the parental and spousal income tests and assets test cut in). Similarly, the threshold at which the Actual Means Test will prevent payment of AUSTUDY will drop.

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Students who meet the relevant criteria will be able to receive dependent spouse allowance from 10 September 1996. As this allowance, under Regulation 64, is an addition to the normal living allowance (AUSTUDY) rather than a separate payment, no new application will need to be lodged (although students may need to alert the DEETYA to their entitlement).

The motion of disallowance was rescinded on 9 October 1996. However, that does not revive Statutory Rule 393; it merely allows a regulation containing similar content to be made. Until this happens (and unless the Regulations have retrospective

effect), entitlement to AUSTUDY in 1996 will be governed by two sets of rules: the Regulations as amended by Statutory Rule 393 of 1995 from 1 January to 9 September 1996, and the Regulations as if that Statutory rule had not been made from 10 September 1996.

[M.D'A.]

[**Editors note:** The Senate has rescinded its motion of disallowance allowing a new similar regulation to be passed. Statutory rule 246 of 1996 reinstates all the amendments of 393 except that relating to the dependent spouse allowance which has been simplified and the rate increased.]