

5 Student Status

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5.1 Student Status

Overview

In this chapter This chapter comprises the following topic.

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5.1.1 Introduction to Student Status

5.1.1.1 Five categories

The student is categorised as being a:

- dependent student;
- independent student;
- pensioner student;
- student in State care; or
- student in lawful custody.

Note: Students can belong to only one category at any one time.

5.1.1.2 What can student status determine?

The status of a student is a factor which determines:

- the benefits to which a student is entitled;
 - the income tests to be applied; and/or
 - the rate of entitlement for certain allowances.
-

5.1.1.3 Awards for which student status is not relevant

Status is not relevant for students applying for:

- Part-time Award;
 - Testing and Assessment Award; or
 - Students In Lawful Custody Award.
-

5.1.1.4 Evidence

The evidence required to support a claim is detailed in the following chapters. However, additional evidence may be required where this is necessary to support a claim.

5.2 Dependent Status

Overview

Introduction This chapter covers the details of the criteria to be met for a student to qualify for Living Allowance (Basic Payment) as a dependent student.

In this chapter This chapter contains the following topics.

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5.2.1 Introduction to Dependent Status

Introduction This topic covers the more general information about dependent status, requirements for support evidence and the benefits available to dependent students.

In this topic This topic is divided into the following sections.

Section	See Page
5.2.1.1 Definition of Dependent Status	5-6
5.2.1.2 Benefits	5-7

5.2.1.1 Definition of Dependent Status

5.2.1.1.1 Dependent status students

Students are considered to be of dependent status for the purposes of ABSTUDY if they:

- do not meet any of the conditions for independent status;
 - do not receive a pension under the *Social Security Law* or the *Veterans' Entitlement Act 1991*; and
 - are not in lawful custody.
-

5.2.1.1.2 Two types

There are two types of dependent students:

- those students who live at home to study (see 5.2.2.1.1); and
- those students who are eligible for assistance to live away from the permanent home to study (see 5.2.3.1.1).

Note: These two categories are covered in detail later in this chapter.

5.2.1.2 Benefits

5.2.1.2.1 Benefits

The type of entitlements listed below may be available for dependent students if they meet the relevant criteria:

- School Term Allowance;
 - Living Allowance at the standard and away rates;
 - Incidentals Allowance;
 - School Fees Allowance;
 - ABSTUDY Student Financial Supplement loan;
 - Fares Allowance;
 - Away-from-base assistance;
 - Rent Assistance;
 - Remote Area Allowance; and
 - Pharmaceutical Allowance.
-

5.2.1.2.2 Income test

Living Allowance for dependent students is subject to an income test on parental income and student (16 years or older) income.

5.2.2. Living at Home

5.2.2.1.1 Living at home

The standard rate of living allowance is available to students who do not meet the provisions of the independent or away from home rates. These students are subject to the student and parental means tests.

For the purposes of assessing ABSTUDY benefits the following are regarded as students living at home:

- students who live at the permanent home;
- students who live away from the permanent home to study but do not meet the criteria for the away rate;
- students who are eligible for the away rate but who choose not to live away from home to study; and
- students in State care whose foster parents are receiving a foster care allowance (see 5.4).

Note 1: The conditions under which a student may be approved to live away from home to study are given in detail (see 5.2.3.1.1).

Note 2: Applicants for students living at home can elect for the payment of school fees to be made to the school or reimbursed to the applicant on evidence of expenditure.

5.2.2.1.2 Permanent home

The permanent home for dependent students is the place where they normally reside during the period when they are not studying in school or in a secondary or tertiary institution. This is usually with parent(s) or guardian(s).

For dependent Schooling students, the home of the eligible applicant will be considered as the permanent home of the student.

If a dependent student lives on a permanent basis with a person who assumes the role of a guardian, even where the parent(s) provide some degree of financial support, the permanent home is considered to be that of the guardian for the purposes of determining whether the student should be approved as living at home or away from home.

See 1.2.1.84 for the definition of permanent home for dependent and independent students.

Continued on next page

5.2.2. Living at Home, Continued

Students in
State Care

Students in State Care arrangements, whose foster parents receive a foster care allowance are not subject to the student and parental income tests. They receive the maximum applicable standard rate.

5.2.3 Living Away from Home

Introduction This topic covers the provisions for the approval of Living Allowance at the living away from home rate for dependent students.

The away from home rate is available to students who must live away from their parental home to study but do not meet one of the provisions for independent status. The rate is not available simply because a student chooses to live away from home.

Students eligible for the 'away' rate are subject to the student and parental income, assets tests and family actual means tests.

Students under State care arrangements, whose foster parents do not receive a foster care allowance, can receive the maximum applicable away rate. The student and parental income tests are not applied.

In this topic This topic is divided into the following sections.

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5.2.3.1 Introduction to Living Away From Home

5.2.3.1.1 Provisions for approval

A student may be approved for away from home entitlements where s/he meets one of the following provisions:

Secondary and Tertiary Students

- travelling time and access between the permanent home and the education institution make daily travel impossible or unreasonable;
- home conditions are a serious impediment to educational progress;
- s/he is in State care and a foster parent is not receiving a foster care allowance.

Secondary School Students Only

- s/he is studying an approved special secondary course at a government school;
- her/his academic needs are not met by local secondary facilities;
- s/he has disabilities;
- s/he is from an itinerant family;
- s/he has been excluded from attending local schools;
- s/he has been subjected to racial discrimination of a serious and continuing nature at the local school(s);
- s/he has previously been approved to live away from home and it would be unreasonable for the student to break continuity of study;
- s/he is receiving an independent school scholarship under the provisions detailed in 5.2.3.12.

Note 1: Fares allowance for secondary students who choose to study interstate will not be approved, except where:

- the student lives near a State/Territory border and will attend a school at a nearby interstate location; or
- where interstate travel is more cost effective than intrastate; or
- there are no available boarding places at boarding schools in the student's State/Territory.

Note 2: A student must undertake a majority of mainstream subjects at the boarding location to be approved for away from home entitlements except for students from remote areas (see 5.2.3.1.2).

Continued on next page

5.2.3.1 Introduction to Living Away From Home, Continued

5.2.3.1.1 Provisions for approval (continued)

Tertiary Students Only

- it is a compulsory requirement of the course to reside at the education institution while studying.

Each of these conditions is explained in detail in the following sections.

5.2.3.1.2 Initial boarding approval

Where students are taking up a new boarding placement, boarding schools must confirm students will be undertaking a majority of mainstream secondary subjects. Students from remote areas who would initially be unable to undertake the majority of mainstream subjects may be approved for board on the condition that the school provides a remedial programme which would enable the student to undertake a majority of mainstream secondary subjects in later years.

Schools must have assessed that first year secondary students are capable of undertaking mainstream secondary studies or, in the case of students from remote communities, approved secondary studies, before approval for away from home entitlements can be given.

5.2.3.1.3 Non approval of the away rate - living with either parent

A student cannot be considered to be living away from the permanent home when s/he is living with either parent, such as when s/he moves on a permanent basis from the home of one parent to the home of the other parent. In such cases, the student will be deemed to be in the care and custody of the parent with whom s/he is living at the time on a permanent basis, and assessed on the income of that parent.

5.2.3.1.4 Non approval of the away rate - other parental circumstances

A student cannot be considered to be living away from the permanent home when:

- a student's parents maintain two homes and the student lives with one of the parents in the second home while studying;
 - a student is temporarily not living with her/his parent(s)/guardian(s) eg, because they have taken an extended trip or vacation; or
 - a student is studying by distance education/correspondence, **except** if s/he meets the home conditions, disability or itinerancy provisions and is not living at the parental home.
-

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5.2.3.1 Introduction to Living Away From Home, Continued

5.2.3.1.5 Group 2 School Fees Allowance

In some circumstances, students who are not eligible for the away rate may be eligible for Group 2 School Fees Allowance. This may be approved where there is no local government school (or the local government school does not provide the appropriate level of schooling) but the student lives at home and attends a local non-government school (see 7.8.2.1 dot point 2).

Mission Schools located in the Northern Territory are considered to be government schools.

5.2.3.1.6 Evidence

Evidence will generally be required to support claims for the living away rate. The types of evidence required are outlined in the following pages.

There is no need for additional supporting information other than the information contained in the claim form for some living away from home situations. This may occur:

- for some claims based on geographic isolation; or
 - where the student has been approved for the living away rate in the previous year and her/his situation has not changed.
-

5.2.3.2 Travel Time and Access

5.2.3.2.1 Approval criteria

Secondary Students

Students may be approved for the away from home rate if their permanent home is not within a reasonable travelling time of:

- government schools which provides tuition in the year of schooling in which the student is qualified to enrol; or
- TAFE colleges or senior matriculation colleges for students who are 18 or older at 1 January in the year of claim.

Tertiary Students

Students may be approved for the away from home rate if their permanent home is not within a reasonable travelling time of the approved education institution offering the approved course.

Dependent schooling and tertiary students studying by distance education/correspondence are not eligible for the away from home rate under the Travel Time and Access provision.

5.2.3.2.2 What constitutes reasonable travelling time

For the purposes of ABSTUDY, a student's permanent home would not be within a reasonable travelling time of a suitable education institution if:

- travelling time taken for a single journey by the most convenient transport service available, including reasonable walking and waiting time, would, on average, exceed one and a half hours; or
 - there are special circumstances which periodically affect access between the permanent home and the local school or education institution for a significant portion of the school or academic year eg, impassable roads, flooding or unreliable transport.
-

5.2.3.2.3 Significant portion of the year

A significant portion of the year would comprise at least 20 school days, not necessarily consecutive, during which the student would not have access, either at all or within reasonable travelling time to the school or education institution. A case for the use of the provision would be made with reference to applicable conditions in previous years.

Continued on next page

5.2.3.2 Travel Time and Access, Continued

5.2.3.2.4 Change of permanent home

Living away from home approval should be revoked if students reduce their daily travelling time by moving to live in a permanent home closer to the education institution (see 5.2.3.11.5 regarding continuation of School Fees Allowance).

However, where the new permanent home is close to the school but the student continues to board, continuity of study rules may apply to the end of the year (see 5.2.3.11.4).

5.2.3.3 Special Courses

5.2.3.3.1 Approval criteria

The away from home rate may be approved if government schools within reasonable travelling time are unable to cater for a secondary student's educational needs because of her/his special course requirements and the student needs to attend a school away from home.

Students may **not** be approved for away from home entitlements where an applicable special course is available within reasonable travelling time (see 5.2.3.2.2).

Dependent schooling students studying by distance education/ correspondence are not eligible for the away from home rate under the Special Course provision.

5.2.3.3.2 Definition of a special course

To qualify as a special course, the course must be one of the following:

- a full-time secondary course where the student receives a formal specialising qualification on completion;
- a secondary course which is a prerequisite for entry to a specific post-secondary course;
- a secondary course containing agricultural subjects;
- specialist secondary studies in drama, music, art, ballet, sport or technology; or
- a secondary course containing Indigenous Australian studies.

Each of these is explained in detail below.

5.2.3.3.3 Formal specialising qualification

A special course can be a full-time secondary course on completion of which students receive a formal specialising qualification such as a Certificate of Business Studies or the International Baccalaureate Diploma.

State or Territory education authorities must recognise:

- the course as a specialisation not generally available at secondary schools; and
 - the completion certificate as a formal qualification.
-

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5.2.3.3 Special Courses, Continued

5.2.3.3.4 Formal specialising qualification for mature age students

Approval may also be given to a student who will be undertaking secondary studies at a post-secondary Indigenous controlled specialist institution which caters specifically for Indigenous students, where the student:

- is 18 years or older; and
 - is studying a course resulting in a completion certificate which is recognised as a formal qualification by the State/Territory education authority.
-

5.2.3.3.5 Prerequisite to post-secondary

A special course can be a secondary course which is a prerequisite for entry to a specific post-secondary course.

The student should be in one of the final two years of secondary school and have clearly decided to enter the chosen tertiary course if accepted. There must be no similar tertiary course which could be regarded as an available alternative and there must be satisfactory evidence from the school which the student has been attending that the student has the potential to gain admission to the nominated course.

5.2.3.3.6 Agricultural subjects

A special course can be a secondary course which contains two agricultural subjects (see 5.2.3.3.8) or, under special conditions, one agricultural subject (see 5.2.3.3.9).

Continued on next page

5.2.3.3 Special Courses, Continued

5.2.3.3.7 Agricultural study requirements

The student must study an agricultural course:

- on a full-time basis at either a specialist agricultural school or at a normal secondary school; or
 - on a part-time basis at an education institution such as a technical college, in addition to attending a normal secondary school for most of the school week.
-

5.2.3.3.8 Agricultural course components

The agricultural course should:

- have a substantial weekly time allocation, which is directly related to the theory and practice of farming eg, equivalent to four periods of approximately 40 minutes each;
 - be recognised by the State/Territory education authority; and
 - be a subject which, if studied part-time, is assessed by the school to determine part of the student's overall performance.
-

5.2.3.3.9 One agricultural subject

A student in either of the final two years of secondary schooling who is studying only one agricultural subject, may be eligible for Living Allowance at the away rate if:

- the student has studied at least two agriculture subjects in each of the junior secondary years after the first;
 - the subject **agriculture** or its equivalent, which the student is at present studying, is not available at a school within reasonable distance from her/his home; and
 - the school which the student is attending offers at least one agricultural subject in each secondary year, except the first year in some States.
-

5.2.3.3.10 Specialist courses in the arts, sport, technology

A special course can be any specialist secondary course in drama, music, art, ballet, sport or technology at a government school which has been approved by the State/Territory education authority. Students should be selected by the appropriate education authority to enter **government** schools with specialist curricula.

Note: This provision is aimed at students who have an exceptional ability.

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5.2.3.3 Special Courses, Continued

5.2.3.3.11 Indigenous studies

A special course containing Indigenous Australian studies must have at least one secondary school subject in Indigenous Australian Studies, which:

- is formally accredited by the relevant State or Territory education authority for examination purposes;
- is endorsed by that State's or Territory's Indigenous Education Consultative Body as a course of study (subject) particularly valuable for Aboriginal and Torres Strait Islander students to study; and
- has the equivalent of a minimum weekly allocation of four hours for the specific Indigenous studies subject.

Students cannot be approved for away from home entitlements solely on the basis of the chosen school being an Indigenous school.

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5.2.3.3 Special Courses, Continued

5.2.3.3.12 Accreditation for Years 8-10 Queensland only

Note: the formal accreditation process for curriculum for Years 8-10 in non-government schools in Queensland is that the school principal must approve the curriculum for Indigenous studies. In lieu of dot point one at 5.2.3.3.11, approval for a special course of study (subject) containing Indigenous Australian Studies as a subject for Years 8-10 in non-government schools in Queensland must be undertaken in the following way:

- the school principal must approve the curriculum for this subject; and
- all curriculum documents for the Indigenous Australian studies subject, including assessment and endorsement documents from the Ministerial Council for Aboriginal and Torres Strait Islander Education, must be forwarded to:

Group Manager
Indigenous Group
DEST
Location 161
GPO Box 9880
CANBERRA ACT 2601

- A copy of the timetable must be included showing that the equivalent of a minimum of four hours has been allocated per week for the Indigenous Australian studies subject; and
- the curriculum for the course of study (subject) must meet The National Aboriginal and Torres Strait Islander Studies Curriculum Framework K-12.

5.2.3.3.13 Approval of Year 8-10 curriculum

DEST will advise Centrelink of any non-government schools that have had a specialist course of study (subject) for Years 8-10 Indigenous Australian Studies approved under 5.2.3.3.13.

5.2.3.4 Limited Local School Programme

5.2.3.4.1 Approval criteria

The away from home rate may be approved if government schools within reasonable travelling time are unable to provide appropriate schooling for a secondary student, due to limited local school programmes. Reasonable travelling time is defined at 5.2.3.2.2.

Dependent schooling students studying by distance education/ correspondence are not eligible for the away from home rate under the Limited Local School Facilities provision.

5.2.3.4.2 Limited programme schools

Each year Centrelink seeks from each State/Territory education authority lists of those secondary schools which:

- do not offer a full range of years or grades; or
- do not provide adequate facilities or programmes to enable a student to gain a Year 12 certificate or tertiary entrance score.

A secondary school which is listed as a limited programme school by the State/Territory education authority is not an appropriate school for a student who is able to enrol at a level which is not available at that school.

A secondary school which is not listed as a limited programme school by the State/Territory education authority will, subject to the provisions of 5.2.3.5, be regarded as an appropriate government school irrespective of any claims about the adequacy of that school.

5.2.3.4.3 Automatic approval of Living Allowance

The living away from home allowance will be automatically paid to enable students to bypass a South Australian Rural School or an Aboriginal/Anangu School in order to attend a larger secondary school.

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5.2.3.4 Limited Local School Programme, Continued

5.2.3.4.4 Living Allowance will not be paid

A Living Allowance at the away rate will not be paid:

- to assist the student to bypass the nearby school to attend another school of her/his choice;
- because particular subjects which the student wishes to study are unavailable at the nearby school (this does not include special courses of the types listed in 5.2.3.3.2 or courses to meet the special needs of students with disabilities defined in 5.2.3.5);
- where there is another government school within reasonable distance (see 5.2.3.2.2);
- specifically to enable a student to attend a non-government school;
- for a primary student who is otherwise eligible for ABSTUDY benefits;
- if the State or Territory education authority objects to the bypassing of the particular school or type of school involved; or
- where the student would undertake a similar course as is available in the home community.

Students cannot bypass a Catholic school in their remote area to attend a Catholic school in a metropolitan area.

5.2.3.4.5 Retaining eligibility

Students who are eligible for Living Allowance at the away from home rate will retain their eligibility for the whole year. They will also retain eligibility for subsequent years, unless there is a significant change in circumstances.

5.2.3.5 Disability

5.2.3.5.1 Approval criteria

The away from home rate may be approved if a government school within reasonable travelling time is unable to cater for a secondary student's educational needs because of her/his disability and the student needs to attend a school away from home.

Reasonable travelling time is defined at 5.2.3.2.2.

5.2.3.5.2 Definition of a disability

A disability is defined as:

- a physical or intellectual disability;
 - a psychological, emotional or behavioural problem; or
 - a medical condition.
-

5.2.3.5.3 Eligibility

A student with a disability may qualify for Living Allowance at the away rate for the following reasons:

- to board at a special education institution;
- to have access to special facilities;
- to avoid lengthy daily travel;
- to have access to regular medical treatment; or
- to have access to a different climate.

Each of these reasons is explained in detail below.

5.2.3.5.4 Boarding at a special education institution

A special education institution is one which is designed to meet the needs of students with a particular disability or disabilities and is recognised by State or Commonwealth authorities.

5.2.3.5.5 Access to special facilities

Special facilities include a special centre for disabilities or special educational or physical facilities for the disabled within normal schools.

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5.2.3.5 Disability, Continued

5.2.3.5.6 Documentation not required

If acceptance at the special education institution/facility indicates that a professional assessment has been made of the student's physical, emotional or psychological requirements, further documentation is not required.

5.2.3.5.7 Medical certificate

A medical certificate must be provided which specifies the nature of the disability and affirms that the student could not be expected to live at home and travel daily to the nearest suitable government school.

5.2.3.5.8 Access to regular medical treatment

If the disruption to the student's schooling because of her/his need to seek medical treatment amounts to the equivalent of at least 20 school days a year, not necessarily consecutive, the student is eligible for assistance at the away-from-home rate to board near the treatment centre.

However, the student's need to receive regular medical treatment should be supported by a:

- statement from an appropriate medical authority at the treatment centre; and
 - statement from the applicant giving full details of the travel required if the student were living at home.
-

5.2.3.5.9 Access to a different climate

A medical certificate is required specifying the student's condition and indicating that:

- the local climate or other circumstance, if the student were to live at home during the school terms, would be likely to cause the student severe illness for a total of at least four weeks during the school term;
 - it is essential for the student to attend school in another area; and
 - in the area chosen for the student to attend school, the effects described above would be less likely to arise.
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5.2.3.6 Itinerant Family

5.2.3.6.1 Itinerant because of occupation

Families whose lives and occupations demand constant relocation are described as itinerant families. Occupation groups which are often itinerant include:

- fencing contractors;
 - railway workers;
 - fruit pickers;
 - shearers; and
 - performers and show workers.
-

5.2.3.6.2 Eligibility

The away from home rate may be approved where:

- the parent/s' occupations require them to spend a **significant amount of time** travelling long distances, with the result that the children have no fixed residence; or
- the occupation of the parent/s involves frequent, lengthy travel and the student is denied access to appropriate schooling because the parent/s is/are not normally resident at a fixed location during the school week, eg, a sole parent is an interstate transport driver.

In a two parent family, both parents need to be itinerant for the student to be eligible. If one parent is stable in location, the family is not considered itinerant.

5.2.3.6.3 Significant amount of time

A significant amount of time would be 40 week-nights during the year.

5.2.3.6.4 Documentation

A statement of the family's projected itinerancy for the forthcoming year and itinerancy over the previous twelve months is required to accompany the claim.

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5.2.3.6 Itinerant Family, Continued

5.2.3.6.5 Demonstration of itinerancy

If an applicant can demonstrate having met and provided evidence of itinerancy conditions in the previous year, the away rate may be approved if conditions are continuing in the current year and the other allowance eligibility conditions are met.

5.2.3.6.6 Assessment of itinerancy for employment reasons

The guidelines below are for assessment of claims made before the beginning of the school year. Where a claim is made after that date, the same guidelines will be followed, but adapted to consider circumstances that have arisen between the beginning of the school year and the date of claim.

When a claim is received at the beginning of the school year, no payment will be made immediately. The applicant will be advised that:

- the claim will be examined in the light of moves actually made during the course of the school year, with the first review of the situation to take place at the end of Term 1;
 - they will need to notify Centrelink at the end of the term of moves actually made - this notification should be sent earlier if three moves occur before the end of term; and
 - they are not to assume that their claim will be accepted and that Living Allowance at the away rate will be payable.
-

5.2.3.6.7 Evidence that family has moved

Any claim that the student's family has moved to a new locality must be supported by some form of written evidence, such as a statement by a new employer or verified that parents have registered for employment/FaCS benefits at the new locality.

Continued on next page

5.2.3.6 Itinerant Family, Continued

5.2.3.6.8 Eligibility for assistance

Eligibility is determined in the light of family movements during the course of the school year, according to the guidelines set out in 5.2.3.6.9 following.

5.2.3.6.9 Two moves in first term

Where the family undertakes two moves of the type specified above during first term, the family may be accepted as itinerant for that period and the first term payment may be made once the second move is verified. The applicant should be advised that eligibility for the away rate in the remaining terms is still under review and that s/he should continue to notify the Centrelink Customer Service Centre of family movements.

5.2.3.6.10 Accepted as itinerant for the first term

Once a family has been accepted as itinerant for the first term on the basis of two moves during that period, assessment of eligibility for Living Allowance at the away rate in the remaining terms should be based on the following guidelines:

- if at least one move occurs during any of the remaining terms, the family should be accepted as itinerant for the full year and further payments made accordingly; or
 - if no move occurs during any of the remaining terms, the student remains ineligible for Living Allowance assistance at the away rate after first term.
-

5.2.3.6.11 Three or more moves in first term

Where the family undertakes three or more moves during the first term, each of which would require a change of school for the student, the family may be regarded as itinerant for the full year. The first term payment may be made immediately upon verification of at least the first three moves and arrangements for subsequent payments should be made in the usual way.

5.2.3.6.12 Four moves over two terms

Where the family undertakes four moves in the year spread over at least two terms, the family may be accepted as itinerant for the full year and Living Allowance at the away rate paid accordingly.

Continued on next page

5.2.3.6 Itinerant Family, Continued

5.2.3.6.13 Ineligibility

A student cannot be approved for the away from home rate if:

- her/his family could be reasonably expected to maintain a fixed address because the movement required by working is over a limited area eg, within the metropolitan area or at no time more than 56 km from one centre offering adequate schooling; or
 - the parent/s occupation requires a transfer every two or three years and the family could normally expect to spend at least one full year in a location but happens to be moved more than once in a school year.
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5.2.3.6.14 Constant movement

Where a parent's occupation necessitates constant movement and the family's home environment is in effect 'mobile' (eg, a railway construction camp) and is constantly changing, the away from home rate may be approved if:

- the student boards away from home; and
 - for at least half the year, on a monthly, weekly or daily basis, the location of the student's permanent home meets the travel time and access criteria set out in 5.2.3.2.
-

5.2.3.6.15 Temporary movement for employment

Families who are not normally itinerant but who are temporarily moved in their employment or must move several times in the course of a year to widely scattered localities in search of employment, may apply for the away from home rate to enable their children to avoid frequent changes of school.

Continued on next page

5.2.3.6 Itinerant Family, Continued

5.2.3.6.16 Temporary residence in locality

If a family temporarily resides in the locality in which any of its eligible students are boarding or spends some time in this locality as part of its regular movements, the following principles apply:

- where it would be reasonable to expect a student to cease boarding and rejoin her/his family, whether on an extended basis or for short periods on a regular basis, boarding benefits are not payable for those periods; or
- where the student cannot attend the school except as a boarder, or the school would charge full boarding fees anyway, the student remains eligible for the away from home rate.

Parents must advise the Centrelink if they temporarily reside in a student's locality.

5.2.3.6.17 Permanent residence during a school year

Where a family has been **accepted as itinerant for a year** (see 5.2.3.6.11 and 5.2.3.6.12) but takes up permanent residence during the course of that year at a fixed address which provides access to suitable schooling, any student in the family who has been eligible for the away from home rate up to that point, remains eligible for the remainder of the year providing continuity of study rules are met (see 5.2.3.11).

5.2.3.7 Exclusion from Local Schooling

5.2.3.7.1 Eligibility

A secondary student is eligible for Living Allowance at the away rate if:

- during a year s/he has been excluded by school authorities from all available local schooling;
- there are no other schools within reasonable travelling time (see 5.2.3.2.2);
- distance education/correspondence studies are not appropriate; and
- a satisfactory boarding placement is found.

Note 1: The student remains eligible in subsequent years if the student remains excluded from local schooling.

Note 2: Continuity of study rules (see 5.2.3.11) may apply where appropriate.

Note 3: Dependent schooling students studying by distance education/correspondence are not eligible for the away from home rate under the Exclusion from Local Schooling provision.

5.2.3.8 Home Conditions

5.2.3.8.1 Eligibility

A student may be approved for the away from home rate if the conditions at the permanent home constitute a serious impediment to the student's educational progress.

5.2.3.8.2 Serious impediment to educational progress

Home conditions which would constitute a serious impediment to the students' educational progress are those that:

- consistently deprive students of basic necessities;
- represent a serious threat to the student's health or well-being; or
- prevent, or excessively disrupt, the student's ability to study at home.

Note 1: The first two conditions may qualify students as independent on the grounds of being **homeless** if they are 15 years or older (see 5.5).

Note 2: Examples of each of these conditions are given below.

5.2.3.8.3 Deprived of basic necessities

Examples of basic necessities, the lack of which may make the student eligible for the away from home rate, include:

- food;
 - clothing;
 - power;
 - water;
 - shelter; and
 - sleep.
-

5.2.3.8.4 Threat to health

Examples of serious threats to a student's health or well-being include:

- alcohol or drug abuse;
 - criminal or illegal activities;
 - violence (actual or threatened) in the home; or
 - serious and continuing breakdown in family relationships.
-

Continued on next page

5.2.3.8 Home Conditions, Continued

5.2.3.8.5

Disruption to study

Examples of home conditions that prevent or seriously disrupt a student's ability to study include:

- excessive noise;
 - overcrowding;
 - lack of facilities for doing homework; or
 - chronic illness.
-

5.2.3.8.6

Not included as impediments to study

The following are not included in home conditions which constitute a serious impediment to a student's educational progress:

- influences to which s/he may be exposed outside the community which is the permanent home;
 - minor difficulties of a kind which can be commonly encountered in a family situation; or
 - not having a room to herself/himself for private study.
-

5.2.3.8.7

Factors to be considered

In assessing whether home conditions constitute a serious impediment to educational progress, consideration is to be given to:

- the amount of homework necessary for the course;
 - the accessibility of alternative places where the student may study such as homework centres or libraries; and
 - the size of the dwelling and the number and age of occupants.
-

Continued on next page

5.2.3.8 Home Conditions, Continued

5.2.3.8.9 Documentation and verification

A claim for the away from home rate on the grounds of home conditions must include:

- a written statement from the applicant outlining the home circumstances;
 - where necessary, describing the dwelling and providing details on the number and ages of occupants who normally live there; and
 - one or more supporting statement(s) from an independent authority as listed at 5.2.3.8.10.
-

5.2.3.8.10 Independent authorities

In most cases, it will be necessary for the claim to be verified by at least one independent authority with a first-hand knowledge of the circumstances. Examples of authorities from whom verification may be sought, as appropriate, are:

- a Commonwealth or State/Territory health, police or welfare authority;
 - a school or education institution authority, including a counsellor or Indigenous Education Assistant;
 - an Indigenous community official;
 - a medical practitioner or specialist; and/or
 - an officer of a private welfare agency, clinic, shelter or refuge.
-

5.2.3.9 Racial Discrimination

5.2.3.9.1 Eligibility

Secondary students may be approved for the away from home rate where there is evidence that they have been subjected to racial discrimination of a serious and continuing nature at the local government school(s).

Dependent schooling students studying by distance education/ correspondence are not eligible for the away from home rate under the racial discrimination provision.

5.2.3.9.2 Attempts to resolve problem

Approval on the basis of this condition would only be given if and when all possible attempts to resolve the problem at the local level have proved to be unsuccessful. These attempts should be conducted with the help of:

- school authorities;
 - local IECB members; and/or
 - local ASSPA Committee members.
-

5.2.3.9.3 Approval and evidence

Approval will require substantiation and may be given if:

- an officer interviews the student or applicant and assesses that, on the basis of the evidence available, the condition for approval for Living Allowance at the away rate due to racial discrimination has been met; or
- the documentation described in 5.2.3.9.4 is provided.

A student's eligibility on the basis of racial discrimination cannot be established from the claim form without supporting documentation from another source.

5.2.3.9.4 Documentation

Documentation should be in the form of a written statement from the applicant plus one or more supporting statements from:

- IECBs;
 - ASSPA Committee;
 - school authority; or
 - an incorporated Aboriginal and/or Torres Strait Islander organisation.
-

5.2.3.10 Compulsory Residence

5.2.3.10.1 Eligibility

Students may be approved for the away from home rate for the period that they must, as a compulsory requirement of the approved tertiary course, reside at the education institution while studying.

5.2.3.10.2 Approval and evidence

Approval may be given only if residence is compulsory for all students studying the course or stage of the course. It is expected that compulsory residence requirements are detailed in the course description of the education institution calendar, faculty handbook or similar publication.

Additional supporting documentation may be requested where required.

5.2.3.11 Continuity of Study

5.2.3.11.1 Eligibility - students previously eligible for AFH rate

Students may be eligible for the Living Allowance at the away rate if they:

- have been previously approved for this rate; **and**
- no longer meet a condition for approval for this rate due to a change in circumstances; **and**
- continue attending at the same education institution; **and**
- it would be unreasonable to break continuity of study.

Note: Students who were eligible for the away from home rate because they were receiving an independent school scholarship, cannot continue to receive this assistance under the continuity of study provisions should they cease to hold the scholarship.

5.2.3.11.2 Unreasonable to break continuity of study

In relation to students covered under the provision above, it is considered unreasonable to break continuity of study:

- at any time during a school or academic year; **or**
- if the State/Territory authorities regard continuity of schooling between Years 9 and 12 to be at least highly desirable.

Note: Students must be enrolled in accredited secondary school studies.

5.2.3.11.3 Special Concessions for Yr 12 Students

Special continuity of study concessions apply to Year 12 students who were receiving Living Allowance at the away rate until the end of the previous year. These concessions are intended to ensure that these students are not adversely affected by a change in parental income. The student may continue to receive Living Allowance at the away rate until the end of the year or until s/he discontinues study in that year, **if** the student:

- is undertaking Year 12; **and**
 - was **receiving** Living Allowance at the away rate until the end of the previous year; **and**
 - continues attending at the same school; **and**
 - the student would become ineligible for Living Allowance due to not passing the parental income test.
-

Continued on next page

5.2.3.11 Continuity of Study, Continued

5.2.3.11.4 Eligibility - students not previously eligible for AFH rate.

Students may also be eligible if:

- they have not previously been approved for the away from home rate; **and**
- they remain enrolled in the same course at the same institution and it would be unreasonable to break continuity of study; **and**
- as a result of a change in their circumstances or in policy, they will soon, ie, in less than 12 months, be eligible for the away from home rate.

Examples of situations where this provision may be used are:

- a family move to an isolated area, or
 - the discontinuation of a school bus service.
-

5.2.3.11.5 School fees allowance

Where the conditions of travelling time between the permanent home and the approved education institution are no longer met and the student becomes a day student at the same school, School Fees Allowance may continue to be paid up to the limit of the entitlement for a student approved for Living Allowance at the away rate.

5.2.3.11.6 Documentation

Where documentation is required to support a continuity of study claim, it should be in the form of a statement from the applicant and verified by an appropriate independent authority.

5.2.3.12 Independent School Scholarship

5.2.3.12.1 Eligibility

Different to Youth Allowance/Austudy Payment

A secondary student may be approved for the away-from-home rate on the basis of being offered a scholarship by an approved independent boarding school (see 4.2.1.1) offering an accredited course providing:

- the school has an SES funding score for Commonwealth General Recurrent Grants of 100 or greater (The *State Grants (Primary and Secondary) Assistance Act 2000*); and
 - the scholarship being offered by the school contributes a minimum of 15 per cent of the total tuition and boarding fees while ABSTUDY pays for the remainder up to the maximum level of entitlement; and
 - the local IECB is involved in determining the scholarship selection criteria, selecting the students and monitoring their progress.
-

5.2.3.12.2 Income testing

Scholarship awardees will automatically qualify for non-income tested living away from home benefits (fares allowance and non-income tested component of Group 2 school fees) but they will still need to pass the income, assets and family actual means tests to be eligible for the means-tested Living Allowance and income tested component of Group 2 school fees.

5.2.3.12.3 Documentation

The following documentation is required **in the first year** a student receives a scholarship.

The school must provide written evidence as listed at 5.2.3.12.1 and that the scholarship has been granted to the student.

The following documents are required **in the second and following years** a student receives a scholarship:

- the student is continuing in the scholarship; and
 - the local IECB is involved in determining and monitoring the progress.
-

5.2.3.13 Students in State Care

5.2.3.13.1 Criteria for students in State care

See 5.4 for the approval criteria for students in State care.

5.2.4 Change of Status

5.2.4.1 Cessation of dependent status

Students cease to be dependent students with effect from the first day on which they qualify for assessment as independent students, pensioner students or students in lawful custody.

5.2.4.2 Cessation of away rate

A student ceases to qualify for the Living Allowance at the away rate from the date that s/he permanently returns home to live during the academic or school year.

5.2.4.3 Temporary return home for study

If students who normally live away from home opt to return to the parental home on a temporary basis while studying an integral part of their course eg, for a period of practical training, they remain entitled to the away rate unless that period is equal to or greater than one term or semester in length, depending on the structure of the course.

If the period is longer, the student will be regarded as residing permanently at home from the start of the period, including any vacations.

5.2.4.4 Temporary return home for vacation

A visit or temporary return home during a vacation or at the beginning and end of the academic or school year does not constitute a change of status and the student remains entitled to away from home benefits.

5.3 Independent Status

Overview

Introduction

This chapter covers details of the criteria required for a student to qualify for Living Allowance as an independent student.

Students are considered to be independent for the purposes of ABSTUDY if they meet one or more of the provisions for independence detailed in this chapter.

For ABSTUDY purposes, the term 'independent' means that a student is independent of, or exempt from, the normal parental income, assets and family actual means tests. ABSTUDY independent Living Allowance provisions are not necessarily intended to reflect community expectations of what 'independence' means for other purposes. For example, they may not be a reflection of a student's personal maturity or lifestyle choice.

While independent students are not subject to the parental income, assets and family actual means tests, they must meet the student income test (see 6.2.1). If they have an assessable partner, the partner income, assets and family actual means tests are also applied (see 6.2.3).

In this chapter

This chapter contains the following topics.

Topic	See Page
5.3.1 Types of Independent Status	5-42
5.3.2 Benefits	5-44
5.3.3 Approval of Independent Status	5-45
5.3.4 Change of Status	5-63

5.3.1 Types of Independent Status

5.3.1.1 Two types

There are two types of independent status:

- permanent independent status, and
 - reviewable independent status
-

5.3.1.2 Permanent independent status

Permanent independent status is granted on the basis of a condition which cannot change in a way that will substantially affect the independence of the student.

To meet conditions for permanent independent status the student must:

- meet the age criteria;
 - be married or have been married;
 - have or have had a dependent child;
 - meet certain workforce criteria (see 5.3.3.4);
 - have been in lawful custody for a cumulative period of six months or more;
 - be an orphan; or
 - be 15 years of age or older and has undergone and completed a traditional initiation ceremony. The student must be living in the traditional community independently of family (see 5.3.3.5).
-

5.3.1.3 Retaining independent status

Students who are granted permanent independent status retain their status under ABSTUDY without reassessment, whether or not they continue in unbroken study.

An exception to this is the age provision where students will only be maintained under certain circumstances (see 5.3.3.1.).

Continued on next page

5.3.1 Types of Independent Status, Continued

5.3.1.4 Reviewable independent status

Reviewable independent status is granted on the basis of a condition which can change in a way that may substantially affect the independence of the student.

To meet the conditions of reviewable independent status the student must:

- be 16 years of age or older and living in a de facto relationship which is of at least six months in duration or there is a dependent child/student;
 - currently have the care or custody of another person's dependent child or student;
 - be 15 years of age or over and have parent(s) who cannot exercise parental responsibilities;
 - be 16 years of age or over and living in an Aboriginal community after previously being adopted or fostered by a non-Aboriginal family for more than two years; or
 - be of minimum school leaving age and a homeless student.
-

5.3.1.5 Re-application

Students granted reviewable independent status must re-apply for independent status each year or whenever their current circumstances change.

5.3.2 Benefits

5.3.2.1 Entitlement

The entitlements listed below may be available to independent students if they meet the relevant award criteria:

- Living Allowance;
 - Incidentals Allowance;
 - School Fees Allowance (in limited circumstances);
 - Rent Assistance;
 - Fares Allowance;
 - Residential costs;
 - Remote Area Allowance;
 - Pharmaceuticals Allowance;
 - Away-from-base assistance; and
 - ABSTUDY Student Financial Supplement loan.
-

5.3.2.2 Income and assets tests

Living Allowance for independent students is subject to income tests on student income and, if applicable, partner income and assets.

5.3.2.3 Permanent Home

See 1.2.1.70 for definition of permanent home for independent students.

5.3.3 Approval of Independent Status

Introduction This topic covers the provisions for approval of Living Allowance at the independent rate.

In this topic This topic is divided into the following sections.

Section	See Page
5.3.3.1 Age	5-46
5.3.3.2 Current or Previous Marriage	5-47
5.3.3.3 Parenthood	5-48
5.3.3.4 Workforce Participation	5-50
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5.3.3.1 Age

5.3.4.1.1 Age of independence

Where a student does not already qualify for independent status under another provision, s/he can be granted permanent independent status once s/he turns 25 years of age.

5.3.3.2 Current or Previous Marriage

5.3.3.2.1 Eligibility

Students are independent if they are:

- legally married or recognised as married under Aboriginal/Torres Strait Islander law; or
 - divorced or separated from their partner.
-

5.3.3.3 Parenthood

5.3.3.3.1 Eligibility

Students qualify as independent if they have or previously had a dependent child or dependent student of their own. (See 5.3.3.9).

This includes situations where:

- a child is given up for adoption; or
 - a student shares custody and financial responsibility of a child and the child lives with the student for at least half the week.
-

5.3.3.3.2 Dependent child

A dependent child for the purposes of ABSTUDY is:

- under 16 years of age; and
 - not receiving benefits under ABSTUDY/Youth Allowance/Assistance for Isolated Children.
-

5.3.3.3.3 Dependent student

A dependent student for ABSTUDY purposes is:

- 16 years of age or older and:
 - in full-time studies approved for ABSTUDY/ Youth Allowance/Assistance for Isolated Children;
 - not eligible for the independent rate of ABSTUDY/Youth Allowance; and
 - not receiving assistance from a Commonwealth education allowance other than ABSTUDY/ Youth Allowance/Assistance for Isolated Children; or
 - under 16 years of age, and:
 - receiving ABSTUDY/ Youth Allowance/Assistance for Isolated Children; and
 - not eligible for the independent rate of ABSTUDY/Youth Allowance.
-

Continued on next page

5.3.3.3 Parenthood, Continued

5.3.3.3.4 Documentation Where documentation is necessary to support the claim for independence, the student must provide evidence that:

- s/he is the child's natural or legally adoptive parent; and
- at some time the child has been wholly or substantially dependent on either the student or the partner with whom the student is currently living.

Evidence that a student has a dependent child should include:

- the original birth certificate or certified extract of a birth certificate confirming that the student is the child's natural parent; or
 - legal documentation confirming that the student is the child's adoptive parent; or
 - other official documentation showing the date of birth.
-

5.3.3.4 Workforce Participation

5.3.3.4.1 Eligibility

Students are independent if they have been full-time members of the workforce for periods totalling at least three years (156 weeks) during the previous four years (208 weeks). See 5.3.3.4.4 for definition of full-time. Calculations to be done in actual weeks in borderline cases.

5.3.3.4.2 Definition of workforce participation

In general, the periods which come within the workforce participation provision are:

- those which involve a bona fide full time employer-employee relationship or self employment; and
 - those in which a person is unable to enter employment but receives income from a government authority (not including a prescribed educational payment) plus any statutory waiting time which the student is required to wait prior to receiving the support.
-

5.3.3.4.3 Periods included in workforce participation

Workforce participation includes periods where the student was:

- in full-time paid employment or self-employment;
 - under an apprenticeship or full-time training agreement;
 - unemployed and registered with Centrelink, but waiting to receive a FaCS benefit under the *Social Security Law*;
 - unemployed and getting Youth Allowance, Newstart, youth training or formal training allowance, special benefit or support under NEIS;
 - on sick, maternity or recreation leave (but not paid study leave);
 - receiving an income support pension under the Veterans' Entitlements Act or sickness allowance or carer payment or disability support or sole parent pension (parenting payment – single) or similar pension or benefit under Social Security Law;
 - available for full-time employment but supporting medical evidence indicates that illness or incapacity prevented employment;
 - a member of a religious order where it can be demonstrated that the student was supported by the order (eg, board and lodgings);
 - receiving assistance under the Commonwealth rehabilitation training scheme;
 - in lawful custody; or
 - receiving a CDEP scheme wage.
-

Continued on next page

5.3.3.4 Workforce Participation, Continued

5.3.3.4.4 Full-time employment

To be considered full-time in the workforce in any week, a student must have either:

- worked at least 35 hours a week in one or more jobs; or
- been considered full-time and entitled to benefits available only to full-time workers for the purposes of the award of industrial agreement under which s/he was employed.

Where an applicant who had been in full-time employment took accrued recreation leave on termination of her/his employment, the actual number of weeks of recreation leave to which s/he was entitled and/or had taken at the time should be taken into account when calculating periods in the workforce.

Note 1: Part-time work (ie where the student was not working at least 35 hours a week in one or more part-time jobs) cannot be taken into account unless the student remained registered for full-time work, in which case, that period is counted on a full-time basis.

Note 2: If a student worked more than 35 hours in a week, the excess hours are ignored in calculating the student's eligibility for independent status.

5.3.3.4.5 Periods excluded from workforce participation

Periods cannot be counted towards the required three years (156 weeks) if the student was:

- registered with Centrelink but not available for full-time employment in Australia;
 - undertaking full-time primary or secondary study, including vacations between study periods;
 - undertaking full-time post-secondary study, unless the student can demonstrate that while studying, s/he was also a full-time member of the workforce;
 - receiving education assistance (not wages) for a course approved for ABSTUDY; or
 - on paid study leave.
-

Continued on next page

5.3.3.4 Workforce Participation, Continued

**5.3.3.4.6
Registration
with Centrelink
while at school**

No account is to be taken of registration with Centrelink during periods in which the student undertook full-time primary or secondary study. Registration during school vacations is not to be taken into account.

Also, no account is taken of periods of registration between the end of the school year and 31 December, even in respect of the student's last year of schooling, if the student was entitled to receive ABSTUDY (or other education assistance) for that end-of-year period. Students who were not eligible to receive education assistance for the period from the end of schooling to 31 December can count periods of Centrelink registration during that time.

**5.3.3.4.7
Waiting period
for FaCS
benefit by
school leavers**

The waiting period for Youth Allowance as a school leaver may be included, if the school leaver was registered with Centrelink for this period. However, the period from the end of the school year to 31 December cannot be counted if the student was entitled to receive Youth Allowance/Austudy Payment for that time.

**5.3.3.4.8
Registration
with Centrelink
while qualified
to get
ABSTUDY**

No account is to be taken of periods that a student was registered for full time employment with Centrelink, if the student was also eligible and qualified to receive ABSTUDY.

A full-time student in a short or late-starting course only has an ABSTUDY entitlement during the actual period of the course. Such a student would be able to count periods of registration before the start or after the end of the course (but not for any vacations during the course).

**5.3.3.4.9
Example**

Mary undertakes a normal year of full-time study and commences getting ABSTUDY from 1 March. She cannot count, for independent status, any period of registration with Centrelink from 1 March onwards, as from that time she is regarded as a student.

Continued on next page

5.3.3.4 Workforce Participation, Continued

5.3.3.4.10 ABSTUDY starts or stops during the year

A student who was part-time in first semester but changed to full-time at the start of second semester and qualified for ABSTUDY could count any:

- period of registration to the commencement date of full time study; and/or
- period of payment including periods where students received Newstart Allowance or Youth Allowance up to three weeks into their course.

If a student ceased full-time study during the year and entitlement to ABSTUDY ceased, any periods of registration after the date entitlement ceased can be counted toward a future claim for independent status.

5.3.3.4.11 Periods of full time post secondary education

Periods during which a student was undertaking full-time post-secondary study are not generally counted towards the 3-year workforce requirement unless the student can demonstrate that while studying, s/he was also a full-time member of the workforce.

Periods of paid study leave or periods during which a student was under a training agreement or in receipt of educational assistance (such as teacher scholarships or ABSTUDY) will not usually be included in the three year period.

Periods during which a student undertook academic studies at the Australian Defence Force Academy (ADFA) in Canberra cannot be counted. However, periods of military training in the academic vacations may be counted.

Periods of industrial experience forming part of a student's course may be counted if normal wages are paid (but periods of industrial training for which ABSTUDY is paid are not).

Continued on next page

5.3.3.4 Workforce Participation, Continued

5.3.3.4.12 Sporting activities

Periods spent training for and playing sport are not counted, even though the person may have received some remuneration from a sporting club, unless:

- the student was a professional sportsperson; and
- the sporting activity was his/her occupation.

The sporting activity must be the person's primary occupation. Someone who plays for a local club, trains during the week and receives match fees for a game cannot be said to be a professional sportsperson.

5.3.3.4.13 Periods of unemployment while overseas

Periods while a student was overseas but not in full-time employment are not counted.

5.3.3.4.14 Periods in self- development and adventure programs

Periods that a student spent as a participant in a youth self-development program (such as the Duke of Edinburgh's Award Scheme or Operation Rally) are not counted for independent status purposes. This applies even if:

- all upkeep is provided by the program involved; and
 - some community services are performed.
-

5.3.4.4.15 Supporting evidence not normally required on initial claim

Students are initially required to only provide a schedule of their workforce participation history.

Where there is doubt about a student's claim, or a subsequent check of their eligibility is being carried out, students must provide suitable supporting documentation.

5.3.3.5 Special Adult Status

5.3.3.5.1 Eligibility

Students are independent if they are 15 years or older and have special adult status in an Aboriginal/Torres Strait Islander community which follows a lifestyle based on adherence to coming-of-age ceremonies.

Such ceremony is to have been sanctioned by recognised Aboriginal or Torres Strait Islander elders of that community.

To be eligible, the student's permanent home (see 1.2.170) must be in the traditional community, where the student lives independently of family when not studying, at the time of assessment. If the student subsequently moves to live in another location, the student does not lose his independent status, as Special Adult Status is regarded as a permanent independent status.

Note: Communities which follow this lifestyle will only be recognised for ABSTUDY purposes in the Northern Territory, Queensland, South Australia and Western Australia.

5.3.3.6 Previous Lawful Custody

5.3.3.6.1 Eligibility

Students are independent if they are secondary students aged 18 years or older or tertiary students, and were previously, for a six month cumulative period or more, in lawful custody at:

- a corrective institution;
 - a remand centre; and/or
 - a youth training centre.
-

5.3.3.7 Orphanhood

5.3.3.7.1 Eligibility

Students are independent if they are 15 years of age or older and are orphans.

5.3.3.7.2 Definition of an orphan

An orphan is a person whose natural or adoptive parents are:

- dead; or
- legally missing and presumed dead.

Note: A student cannot be regarded as an orphan while at least one natural or adoptive parent is known, or presumed, to be alive.

5.3.3.7.3 Living with other than natural parents

Students who meet the conditions for orphanhood qualify as independent even though they may be living with someone other than their natural or adoptive parents.

5.3.3.7.4 Parent missing and presumed dead

If a student's parent has been missing (whose whereabouts is unknown) for not less than seven years, under common law the parent may be presumed dead.

Note: State or Territory laws may vary the length of time and/or conditions under which a person may be presumed dead.

5.3.3.8 De facto Relationship

5.3.3.8.1 Eligibility

Students are independent if they are 16 years of age or older and are living in a de facto relationship (or 17 years of age or over in South Australia or Tasmania, due to Age of Consent Laws) and the de facto relationship is of at least six months' duration or there is a dependent child/student.

5.3.3.8.2 Change of status

Students who are no longer in a de facto relationship cease to be classed as independent on that basis but may be independent under other ABSTUDY criteria.

5.3.3.9 Child in Student's Care

5.3.3.9.1 Eligibility

Students are independent if they currently have the care or custody of another person's dependent child(ren) or dependent student(s).

5.3.3.10 Parents Cannot Exercise Parental Responsibilities

5.3.3.10.1 Eligibility

Students qualify for independent status where:

- they are 15 years of age or older; **and**
- both of their natural or adoptive parents are (or if the students have only one parent, that parent is):
 - serving a prison sentence;
 - likely to be mentally incapacitated for an indefinite period;
 - living in a nursing home or similar institution for an indefinite period; or
 - missing (and all reasonable attempts to locate or contact them have failed).

Appropriate written evidence must be provided to support the claim.

5.3.3.10.2 Parent(s) temporarily incapacitated

Students whose parent(s) is/are incapacitated temporarily and who cannot give the student a home should apply as a 'homeless' student (see 5.5).

5.3.3.10.3 Parents) missing

Parents are accepted as being missing if:

- their whereabouts are unknown; and
- all reasonable attempts to contact them have failed.

Note: If a parent(s) is legally missing and presumed dead, independent status as an orphan should be considered (see 5.3.3.7).

5.3.3.10.4 Student dependent on another person

Students can still qualify as independent even though they are dependent, or were last dependent, on someone other than their natural or adoptive parents.

Continued on next page

5.3.3.11 Returning Home

5.3.3.11.1 Eligibility

Students are independent if they are 16 years of age or over and have returned to live in an Indigenous community after having been adopted or fostered by a non-Indigenous family for more than two years.

5.3.3.11.2 Review of independence

Independent status approved on the basis of returning to the home community may be withdrawn if the student reverts to adoptive, foster or another form of State care. Students who do not qualify for permanent independence by another condition should have their circumstances reviewed each year.

A significant change of circumstances, however, would be expected to involve a change of address to a location other than the home community. Hence, provided that the student continues to live in the home community, this will be sufficient basis to maintain independent status.

5.3.3.12 Homeless Students

5.3.3.12.1 Criteria for homeless students

See 5.5 for the approval criteria for homeless students.

5.3.4 Change of Status

5.3.4.1 Independent status commences

Students commence to be independent students with effect from the first day on which:

- they meet one of the conditions for independence when they apply;
 - they cease to be a pensioner and meet one of the conditions for independence; or
 - they have been in lawful custody for at least six months (cumulative) and are released.
-

5.3.4.2 Independent status ceases

Students cease to be independent students with effect from the first day on which:

- they cease to meet one of the conditions for reviewable independence; or
 - they commence to be a pensioner or in lawful custody.
-

5.4 Students in State Care

Overview

Introduction This chapter covers details of the criteria required for a student in State care.

In this chapter This chapter contains the following topics.

Topic	See Page
5.4.1 Introduction to State Care	5-65
5.4.2 Parental Income Concession	5-66
5.4.3 Evidence Required	5-69
5.4.4 Benefits	5-70
5.4.5 Payments	5-72

5.4.1 Introduction to State Care

5.4.1.1 Eligibility

Students in State care are eligible for:

- ABSTUDY Living Allowance either at the standard rate or the away rate and related entitlements (see 7.8.2.1, 5.4.1 and 7.9.3.1), if they have reached the minimum school leaving age; or
 - School Term Allowance and School Fees Allowance if they are under the minimum school leaving age.
-

5.4.1.2 Definition

Students are considered to be in State care if they have been placed in substitute care through a State or Territory Department of Welfare or through legal process.

5.4.2 Parental Income Concession

5.4.2.1 Parental income concession - State care

Students may be exempt from the ABSTUDY parental income test if they have been directed or authorised by a Court or government authority to live away from their natural or adoptive parents in substitute or foster care.

These students are paid Living Allowance at either the standard rate or the away rate depending on whether the carer receives a regular foster care allowance for the student's upkeep. Fifteen year old students are paid at the 16-17 year rate. (Students fourteen years old and under receive, School Term Allowance and School Fees Allowance).

5.4.2.2 Who can get the concession

Students qualify under this provision if:

- they have reached the minimum school leaving age in their State or Territory; **and**
- they are **not** living with either of their natural or adoptive parents; **and**
- they are in the guardianship, care or custody of a Court, Minister or Department; **or**
- there is a current direction or authorisation from a Court, Minister or Department placing the student in the guardianship, care or custody of someone who is not the student's natural or adoptive parent; **or**
- they stopped being subject to the direction only because of age (see 5.4.2.4).

Students qualifying under this provision are normally clients of a State or Territory government welfare authority. That is, the authority:

- has been involved to some extent in placing the student in substitute care; and
- demonstrates ongoing involvement in the student's welfare.

Note: Usually the authority would have accepted certain custodial and/or financial responsibilities for the child.

Continued on next page

5.4.2 Parental Income Concession, Continued

5.4.2.3 Who does not get the concession?

Students are not normally eligible for this concession, if they:

- have left home to live in a government funded or subsidised refuge or residential care facility; **and**
- the State/Territory welfare Department has not accepted ongoing responsibility for their welfare.

Note: These students may, however, meet the 'homeless' provisions (see 5.5).

5.4.2.4 Cessation of care order due to age

If the care order ceases only because the student reaches an age nominated by the authority (usually, but not always, this will be 18 years), **and** the student does not return to live with either natural or adoptive parents, the student may:

- continue to qualify (and receive the away rate because the carer is no longer receiving a payment for their upkeep); or
 - choose to apply for the Student Homeless Rate (the normal SHR documentation requirements apply).
-

5.4.2.5 Cessation of order for other reason

The parental means test will apply if the care order/authorisation ceases because students were placed in care:

- while their parents were incapacitated, and they are now in a position to resume caring for the student; or
 - for a specific period for a particular reason not especially linked to their age (eg, completion of a good behaviour bond).
-

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5.4.2 Parental Income Concession, Continued

5.4.2.6 Visits home

Students are eligible for the parental income concession only while they do **not** live with either or both of their natural or adoptive parents.

They are not normally eligible if they visit a parent's home regularly (at weekends, during the school holidays). In these cases, students are subject to the parental income test.

However, eligibility will probably not be affected if an occasional home visit is arranged or encouraged by the welfare authority for reconciliation purposes.

5.4.3 Evidence Required

5.4.3.1 Statement from relevant government agency

Students who are currently living in State care must provide a statement from the relevant government agency:

- confirming that a direction or authorisation by a Minister, Court or Department is currently in effect in relation to the student's care;
- advising of the care arrangements, including the name and address of the person(s), government agency or other organisation authorised to care for the student; and
- advising whether the person or organisation authorised to care for the student is receiving any continuous payment to assist directly with the student's upkeep.

Where a State/Territory Welfare Department contracts out to a private provider to coordinate placement of a student in care, the letter authorising the placement must be signed by an officer of the appropriate State/Territory authority.

5.4.3.2 What family details are required?

Apart from relevant payment details, students applying for the parental income concession do not need to give any other parent/guardian details.

5.4.4 Benefits

5.4.4.1 Living Allowance rate of payment

A student who is, or has been, living under an officially approved substitute care arrangement and has reached the minimum school leaving age for that State/Territory is entitled to receive Living Allowance at the rates specified below.

5.4.4.2 Standard rate

The maximum standard rate of Living Allowance, free of parental income test, may be paid if the carer receives from a government authority or other organisation:

- a regular foster care allowance; or
- other allowance which is intended directly for the student's upkeep or personal use (eg, regular Adolescent Community Placement or Placement Provider Reimbursement payments made directly or indirectly by the Victorian Government).

However, where the authority pays the carer directly to compensate for extra costs involved in caring for the student, eg, setting up a bedroom or repairing damage done by the student, the away from home rate may be paid.

5.4.4.3 Away from home rate

The maximum away from home rate of Living Allowance, free of parental income test, may be paid if the carer does not receive from a government authority or other organisation:

- a regular foster care allowance; or
 - other allowance which is intended directly for the student's upkeep or personal use (eg, regular Adolescent Community Placement or Placement Provider Reimbursement payments made directly or indirectly by the Victorian Government).
-

Continued on next page

5.4.4 Benefits, Continued

5.4.4.4 Independent rate

The independent (homeless) rate of Living Allowance may be paid if the student has reached the minimum school leaving age, has left the carer's home to live in a government funded or subsidised refuge or residential care facility and the State/Territory Welfare Department has not accepted ongoing responsibility for the student.

5.4.4.5 Other government payments

Commonwealth government payments for dependent children in general (eg, Family Tax Benefits) and payments made by any government authority or other organisation towards the upkeep of a residential care facility (for example, payments to help with general running costs of the institution), do **not** affect the students eligibility for either the standard or away from home rates..

5.4.4.6 Rent assistance, Remote area allowance and Pharmaceutical allowance

Students eligible for the away from home or independent rates may be eligible for Rent Assistance, Remote Area Allowance and Pharmaceuticals Allowance, if they don't live with their carer, or their natural or adoptive parents while studying and they are in private rental accommodation (see 7.12, 7.13 and 7.14).

5.4.5 Payments

5.4.5.1 Who is ABSTUDY paid to?

In general, students who qualify for ABSTUDY under this provision receive their allowances direct. The carer does not receive payments on the student's behalf.

However, the authority may request that payment be made direct to the care giver or a person nominated by the student, if:

- the relevant government authority or an organisation approved by that authority believes that payment of allowances direct to younger students could jeopardise the student-carer relationship; or
- it is determined that the student is unable to manage his/her own finances, eg, a student in a special school.

In these cases, the request should be included in the documentation from the welfare department. Payment directions (ie, name and bank account) must be included in the relevant section of the ABSTUDY claim form.

5.5 Homeless Students

Overview

Introduction This chapter covers details of the criteria required for a homeless student.

In this chapter This chapter contains the following topics.

Topic	See page
5.5.1 Introduction to Homeless Criteria	5-74
5.5.2 Transfer from Family and Community Services Homeless Rate	5-76
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5.5.1 Introduction to Homeless Criteria

5.5.1.1 Eligibility

Students who are granted reviewable independent status as a homeless student must reapply for independent status each year or whenever their circumstances change. See 5.3.1.1, 5.3.4 and 5.3.1.5 for reviewable independent status other than homelessness.

A person is independent under the homeless criteria if:

- (a) the person cannot live at the home of either or both of his or her parents;
 - (i) because of extreme family breakdown or other similar exceptional circumstances; or
 - (ii) because it would be unreasonable to expect the person to do so as there would be a serious risk to his or her physical or mental well-being due to violence, sexual abuse or other similar unreasonable circumstances; or
 - (iii) are unable to provide the person with a suitable home because they lack stable accommodation; and
- (b) the person is not receiving continuous support, whether directly or indirectly and whether financial or otherwise, from a parent of the person who is acting as the person's guardian on a long-term basis; and
- (c) the person is not receiving, on a continuous basis, any payments in the nature of income support (other than a social security benefit) from the Commonwealth, a State or a Territory.

5.5.1.2 Age

Students applying for ABSTUDY Student Homeless Rate (SHR) must have reached the minimum school leaving age for their State or Territory.

5.5.1.3 State wards

SHR does not apply to students who now are or previously were wards or in other state authorised care. Such students may, however, qualify for assistance under other ABSTUDY provisions.

5.5.1.4 Status assessed against natural or adoptive parents

Eligibility is determined in relation to the student's natural (ie, birth) parent(s) or legally/traditionally adoptive parents. Where the student's natural or legally/traditionally adoptive parent(s) live in separate households, the student must satisfy the SHR criteria in relation to each household.

Continued on next page

5.5.1 Introduction to Homeless Criteria, Continued

**5.5.1.5
Rent assistance** Students who meet the criteria for reviewable independent status as above and receive a Living Allowance, may be eligible for Rent Assistance, Remote Area Allowance and/or Pharmaceutical Allowance.

See 7.12 for details.

**5.5.1.6
Student
Homeless Rate
Centrelink
additional
information
form** All students applying for SHR must complete the appropriate Centrelink Form and provide documentation to support their claim. Continuing students need not provide full supporting documentation if their circumstances have not changed. However, each time they reapply for ABSTUDY, they must complete the appropriate Centrelink Form.

**5.5.1.7
Early
application for
SHR continuing
students** Special arrangements are in place to help avoid gaps in payment to SHR students who continue study between years. SHR recipients who are on pay until 31 December and genuinely intend to continue in full-time study may make early application for ABSTUDY prior to receiving a formal offer of a place. If the student subsequently ceases full-time study, no overpayment will be incurred if the student:

- genuinely intended to continue studying; and
 - fails to be offered a place in the proposed course; and
 - would have otherwise been eligible for a FaCS benefit; and
 - notifies ABSTUDY as soon as being advised that s/he has not gained a place.
-

**5.5.1.8
Commencement
of payments** Payment of SHR may be backdated to the date the student started living away from the parental home provided that the student had reached minimum school leaving age and was otherwise eligible for ABSTUDY.

5.5.2 Transfer from Family and Community Services Homeless Rate

5.5.2.1 Transferring to ABSTUDY from FaCS/UNLAH benefit as a homeless young person under 18 years of age

Direct transfer to SHR can occur if the student has been receiving the FaCS benefit, 'Unreasonable to live at home' payment of Youth Allowance or Special Benefit.

Jobseekers aged up to 21 years of age or students up to 25 wanting to transfer to SHR (as long as they are otherwise eligible for ABSTUDY) can do so without having to be re-assessed as a homeless young person if they are considered independent and receiving the 'Unreasonable to live at home' payment of Youth Allowance or Special Benefit.

5.5.2.2 Centrelink payment recipients transferring to SHR

If receiving Youth Allowance or Special Benefit as an independent young person on other grounds besides the 'Unreasonable to live at home' criteria, (eg, Parents cannot exercise responsibilities) attempts should be made to transfer the young person to ABSTUDY under an aligning independent criteria. If the similar independent criteria is not available under ABSTUDY guidelines, then the customer will need to apply for SHR in the usual way.

5.5.2.3 Parental contact

In some cases, where attempts to contact parents have failed, a student can be paid a FaCS benefit as a young homeless person based on other evidence without the parents' side of the story and then review the claim in four weeks.

5.5.3 Approval Factors

5.5.3.1 Overview

ABSTUDY assists students who may be at risk of giving up their studies because of traumatic family circumstances. This provision recognises that there are situations where students face serious physical or mental harm in the family home. It gives such students the opportunity to continue in their studies after they have moved to a safer, more stable environment. The provision is for students who cannot reasonably remain at home and therefore must live independently for the sake of their well-being.

The provision is not intended to encourage students to leave home nor to encourage parents to cease contributing towards their children's education. It is not a means for students to choose to leave home so that they can get a higher rate of ABSTUDY.

5.5.3.2 Definition

A student qualifies as independent through it being unreasonable that s/he live at home, if:

- s/he cannot live at the home of either or both of her/his natural or adoptive parents:
 - because of extreme family breakdown or other similar exceptional circumstances; or
 - because to do so would be at serious risk to her/his physical or mental well-being due to violence, sexual abuse or other similar unreasonable circumstance; and
 - s/he is not receiving continuous financial or other support, directly or indirectly, from a parent of the student; and
 - s/he is not wholly or substantially dependent on a person other than a parent of the student, on a long term basis; and
 - s/he is not receiving a regular payment of welfare or student assistance from the Commonwealth, a State or a Territory (except ABSTUDY); and
 - s/he does not have a partner who, being entitled to a regular payment from the Commonwealth, a State or a Territory, gets the payment at a higher rate because the student is his or her partner.
-

Continued on next page

5.5.3 Approval Factors, Continued

5.5.4.3

All available relevant information taken into account

All SHR decisions must be considered carefully for correctness and to be fair and accountable to:

- the student and his or her advocates;
 - the parents; and
 - other ABSTUDY applicants who must abide by the parental income tests requirements.
-

5.5.4.5

Do visits home affect SHR?

If the student visits home regularly, this may indicate that the student's home circumstances are not sufficiently severe to warrant SHR and that a reasonable degree of reconciliation has been achieved. Further investigation may be required to clarify the current situation. The student must be given the opportunity to provide further information regarding the home visits prior to the case being reviewed.

Brief and infrequent visits home need not disqualify the student for SHR provided that the visits are consistent with the student's reasons for leaving home (eg, the visits were made in an attempt to reconcile the family situation, or the visits were in the interests of maintaining contact with a family member who is at risk from another member of the household).

5.5.3.6

Possible change in circumstances

Students who qualify for SHR must have their circumstances reviewed in the context of their claim for continuing benefits.

5.5.4 Application Process

5.5.4.1 Documentation

All SHR claims (except claims from orphans) **must** be accompanied by:

- a completed and signed appropriate Centrelink form;
- a personal statement written by the student which describes why it is unreasonable for the student to live at home with their parents and giving details of any support received. If the student's natural or legally adoptive parents live in separate households, the student will need to provide details regarding both parental homes (unless the student has had no contact with a non-custodial parent for two years or longer);
- a statement from an appropriate health/welfare worker (eg, social worker, school counsellor, medical practitioner or other health professional, police officer, trained youth counsellors employed by a registered government agency, minister of (mainstream) religion, or a Centrelink Manager).

Statements from advocates must give an objective, **independently investigated account** of the family situation, including whether the student is receiving any support. Preferably, the statement will show that the advocate has spoken with at least one of the student's parents except if s/he believes that direct contact with either parent could place the student or another person at risk of harm.

Continued on next page

5.5.4 Application Process, Continued

5.5.4.1 Documentation (continued)

Medical statements provided in support of a claim should only be accepted if they address the connection between the home conditions and a threat to the student's physical or mental health.

As well, students **may** provide a statement from one or both parents, and/or statements from any other persons who have a first-hand knowledge of the situation.

Note 1: Statements which rely solely on information given by the student are not normally accepted.

Note 2: It is the quality of the supporting documentation that is important, not the quantity.

Note 3: Students who are clearly having difficulty in providing any statements, including their own, must be helped as described in 5.5.6.2.

Special arrangements apply for students transferring to ABSTUDY from a FaCS benefit as a homeless young person (see 5.5.2.1 and 5.5.2.2).

5.5.4.3 Inadequate supporting documentation

The following statements are not adequate for assessment purposes and further information should be sought:

- a statement that is based on the view that any young person who has left home is entitled to government assistance and does not provide facts relevant to determining whether SHR eligibility criteria are met; or
 - a statement based solely on information supplied by the student; or
 - a statement prepared for a different purpose (eg, State benefit purposes) that does not provide information relevant to SHR criteria.
-

5.5.5 Contacting Parents

5.5.5.1 Natural or adoptive parents

SHR is determined in relation to the student's natural and/or adoptive parent(s).

SHR cannot be granted for 'homelessness' from a person who is not the student's natural or adoptive parent.

5.5.5.2 Separated and non-custodial parents

If a student's natural or legally adoptive parents live in separate households, the views of both parents, and the situation in both households are normally taken into account. This is regardless of whether one or both parents have custody or guardianship.

However, SHR may be granted on the basis of homelessness from the custodial parent's home ONLY, providing that:

- the student has had no contact with a non-custodial parent for two years or longer (including that the non-custodial parent has not paid maintenance during that time); or
- if the student has had more recent contact, or maintenance has been paid, the frequency and nature of the contact should be considered before taking that parent into account.

Where a student satisfies the SHR criteria in respect of the custodial parent but a non-custodial parent has provided continuous support to the student over the previous two years, the student may be assessed as dependent against the income of the non-custodial parent. For a student to be assessed in this way, it would need to be established that the non-custodial parent has maintained regular and substantial contact or financial support to the student.

Continued on next page

5.5.5 Contacting Parents, Continued

5.5.5.3 Purpose of parental contact

SHR will not normally be approved until the student's parent(s) have been given the chance to comment.

The key reasons for this contact are:

- to ensure that decisions are made on the basis of full information;
- to demonstrate that SHR operates fairly, recognising community concerns that decision makers should give parents the opportunity to tell their point of view before taking action in matters which concern their family; and
- to explore the possibility and appropriateness of mediation, counselling or family therapy.

Note: Parents are not contacted to seek or give permission for SHR.

5.5.5.4 Permission to contact parents

Under Privacy requirements, the student **must** give permission before parents can be contacted.

Unless students withhold permission, parents **must** be given the opportunity to comment (either written or orally), except in the cases listed in 5.5.5.

5.5.5.5 Approval without contacting parents

SHR claims may only be approved without seeking a parent's view in the following circumstances:

- at least one parent's views are provided in writing with the claim and there is no doubt as to the authenticity of the statement (although note that where parents live in separate homes, the other parent's views may need to be sought);
 - there is sufficient evidence available to indicate that the student's or another person's safety could be at risk if the parent(s) were contacted;
 - there is independent evidence from a government welfare department, medical or police authority of domestic violence or sexual abuse; or
 - where the non-custodial parent has had no or insignificant contact with the student, including no payment of maintenance, for more than two years.
-

5.5.6 Criteria and Verification Procedures

In this topic This topic is divided into the following sections.

Section	See page
5.5.6.1 Violence	5-84
5.5.6.2 Sexual Abuse	5-86
5.5.6.3 Other Similar Unreasonable Circumstances	5-88
5.5.6.4 Extreme Family Breakdown	5-91
5.5.6.5 Circumstances Beyond the Family's Control	5-93

5.5.6.1 Violence

**5.5.6.1.1
Violence -
Definition** For the purposes of SHR, violence refers to physical abuse or attacks. Abuse of a covert or psychological nature is covered by 'other exceptional circumstances'.

**5.5.6.1.2
Perpetrator** For SHR to be granted on the grounds of violence, the violence must be the reason the student cannot live in the parent's home without serious risk to his or her health. Parents need not be the perpetrators of the violence. Other members of the household, or relatives who visit frequently, may be the perpetrators. In some cases, the student may be a perpetrator of the violence because it is symptomatic of the overall family situation.

**5.5.6.1.3
Victim** A student may be granted SHR on the grounds of violence irrespective of which member of the household is the perpetrator of the violence and who is the victim. The student need not be the direct recipient of violence. However, where the violence is not current or recent, closer investigation is required to establish the extent of the emotional or psychological effects on the student.

**5.5.6.1.4
Medical
attention** SHR may apply if violence has on any occasion caused injury requiring medical attention or hospitalisation. Conclusive proof of this is doctor's or hospital records where these can be attributed directly, or by supporting information, to violence.

**5.5.6.1.5
Lack of
supporting
evidence** If the student is unable to provide evidence of violence, the applicant should be referred to the Centrelink social worker for interview and if under the age of 18 years, possible referral to the appropriate State/Territory welfare authority.

Continued on next page

5.5.6.1 Violence, Continued

5.5.6.1.6 Unacceptable grounds

SHR cannot be granted on the grounds of violence where there is no satisfactory evidence that the student's health would be at serious risk if they were to live in the family home. For this reason, SHR cannot be granted if:

- a normally non-violent parent strikes the student on an isolated occasion without causing injury however, if such behaviour is a symptom of other ongoing conflict, SHR may be applicable on other grounds);
- the student or other family members initiate or provoke the violence primarily as a means of gaining SHR;
- the violence is perpetrated by a visitor to the household and reasonable action could be taken to remove the risk; or
- the student is claiming SHR because of violence outside the home itself, eg, violence from a neighbourhood gang or at school, but is living in accommodation in the same neighbourhood.

However, SHR may be granted if all attempts to avoid the violence have been made, without success, and the student has been forced to move to a distant location.

5.5.6.1.7 Temporary accommodation

A student may be eligible for SHR while one parent re-establishes a home due to violence. This can happen when:

- a student and that parent have fled the former home to escape violence; **and**
 - the parent is temporarily accommodated in a refuge; **and**
 - the student lives away from the parent; **and**
 - the student is not getting continuous support from the parent while s/he is re-establishing a home.
-

5.5.6.1.8 Homeless Youth Protocol requirement

A student who is within the age group covered by the operational guidelines in her/his State/Territory who applies for SHR on the grounds of violence abuse must be referred to that State's or Territory's welfare authority.

5.5.6.2 Sexual Abuse

5.5.6.2.1 Sexual abuse - Definition

Sexual abuse is any act of a sexual nature which is threatened or imposed on a young person by another person taking advantage of a position of authority or trust. Persons imposing or threatening sexual abuse or harassment may include natural, adoptive, step or foster parents, siblings, grandparents, and other relatives or persons who either live in or visit the home. The sexual abuse or harassment must be the reason why the student cannot live in a parent's home without serious risk to her/his health.

5.5.6.2.2 Required information

Verification of sexual abuse or harassment may be obtained from the following sources:

- a medical practitioner, therapist or counsellor who is treating the young person for sexual abuse;
 - police or court authorities;
 - the State/Territory welfare department; or
 - other individuals whom the young person nominates as having knowledge of the abuse.
-

5.5.6.2.3 Lack of supporting evidence

Normally SHR cannot be granted on the grounds of sexual abuse without independent supporting evidence. However, the Centrelink social worker will be able to determine whether the matter can be confirmed in any other way or whether SHR appears warranted on other grounds.

5.5.6.2.4 Sexual abuse of another person

Where a student has **not** been subjected to sexual abuse, but other members of the household are being abused by a member of, or frequent visitor, to the household, it may be accepted that it would be unreasonable to expect the young person to remain in the household. Where the abuse is not current or recent, closer investigation may be required to establish the extent of the emotional and psychological effects on the claimant. The likelihood of further sexual abuse occurring should also be looked at. However, in such cases the student should apply for SHR on the grounds of 'other exceptional circumstances' rather than 'sexual abuse'.

Continued on next page

5.5.6.2 Sexual Abuse, Continued

5.5.6.2.5 Sexual abuse by a frequent visitor

If the student is sexually abused by a visitor, SHR will normally only be approved where all reasonable action has been taken to remove or avoid the abuse or harassment (eg, banning the visitor). SHR may be granted where no 'reasonable' action is possible, for example, based on information from the student, his or her doctor or counsellor, or from the Centrelink social worker.

5.5.6.2.6 Homeless Youth Protocol requirement

A student who is within the age group covered by the operation guidelines in her/his State/Territory who applies for SHR on the grounds of sexual abuse must be referred to that State's or Territory's welfare authority.

5.5.6.3 Other Similar Unreasonable Circumstances

5.5.6.3.1 Other similar unreasonable circumstances - Definition

For the purposes of SHR, this refers to any cause of serious risk to the student's physical or mental health in the family home other than sexual abuse or violence. For SHR to be granted, the circumstance must be of comparable gravity and severity to sexual abuse or violence.

5.5.6.3.2 Criminal activity

Where parents or other family members are alleged to be engaged in criminal activities such as drug dealing, receiving or trading stolen goods, prostitution or robbery, the parental home could pose a serious threat to a young person's mental health and/or safety.

The existence of criminal activity alone is not sufficient to warrant SHR - a judgement must be made about the risk to the young person if s/he returned home. Where a crime is already known to authorities, ie a family member has been charged or convicted, verification can be sought from police or court records, parole officers, community corrections agencies, or the State/Territory welfare department.

Where the alleged criminal activity is not known to authorities, it is unlikely that verification could be sensitively sought. The overall family relationship and the risk to the young person returning home should be explored instead.

5.5.6.3.3 Serious neglect

Serious neglect can include failure to provide adequate food, clothing, shelter, hygiene, medical attention or supervision. Neglect need not necessarily be of the student, but may involve the neglect of siblings. Parents may have difficulty in providing basic needs because of a physical or mental illness, invalidity or drug or alcohol addiction.

The State/Territory welfare authority should be contacted for information relating to any allegations of serious neglect. If the State/Territory welfare authority is not already aware of the family situation they will conduct an investigation and advise.

Continued on next page

5.5.6.3 Other Similar Unreasonable Circumstances, Continued

5.5.6.3.4 Substance abuse

Where a family member has a drug or alcohol addiction or other substance abuse problem, the student's physical or mental health must be adversely affected in order to qualify for SHR (that is, the existence of the problem does not necessarily make it unreasonable for the student to live at home).

Verification of substance abuse may be obtained from medical records, or police records, drug and alcohol rehabilitation services, or counselling services. These sources may also confirm the harmful effects on the student.

5.5.6.3.5 Psychiatric illness

SHR may be granted where a family member suffers from a psychiatric illness and the student's physical or mental health would be at risk if s/he were to live at home; or where the student suffers from such an illness and the family is unable to cope with her/his continual presence in the home. Verification should be sought from medical and/or counselling sources.

5.5.6.3.6 Psychological abuse

SHR may be granted if the student's physical or mental health is at serious risk because of psychological intimidation, emotional abuse or manipulative family relationships. Applications on these grounds must be referred to and investigated by the Centrelink social worker.

5.5.6.3.7 Abnormal demands of a cultural nature

SHR may be granted if the student's physical or mental health is at serious risk because of extreme parental demands such as:

- insistence upon an unwanted marriage;
 - abnormal and unreasonable demands on the student's labour;
 - insistence on leaving school prior to the completion of Year 12; or
 - forced participation in extreme religious rites which are against the student's sincerely held beliefs.
-

5.5.6.3.8 Nature and severity of situation

The nature and severity of the overall family situation determines if the student is at serious risk in the home. While poverty, overcrowding, poor accommodation or study conditions are not in themselves enough to justify independent status, these conditions could be symptomatic of deeper family problems.

Continued on next page

5.5.6.3 Other Similar Unreasonable Circumstances, Continued

5.5.6.3.9 Unacceptable grounds for "other unreasonable circumstances"

As a guide, SHR will NOT normally be approved solely or principally on the grounds that:

- parents choose not to assist or support the student in education;
- parents state that they cannot afford to keep the student in education;
- parents do not approve of a particular course of study;
- the student wishes to live independently of her/his parents;
- the student leaves home rather than live with parental expectations which are not unreasonable given the student's age and family lifestyle;
- a student's parents have separated, and acquired new partners and step-children, and the student does not wish to live with either family;
- additional relatives or boarders are invited to live in the home, resulting in less room for the student;
- the parent's home is geographically distant from the student's chosen course of study;
- parents move house before the student has completed a course of study at a particular institution;
- parents are absent from the principal family home (eg, overseas) and choose to rent it out rather than allow the student to live there; or
- parents do not approve of a particular relationship (see 5.5.6.3.10).

5.5.6.3.10 Parents disapprove of a student's relationship

SHR cannot be granted solely or primarily on the grounds that the student lives in a relationship of which the parents do not approve. This could be for example, if the student has a relationship or lives with:

- a person whose lifestyle or religion are unacceptable to parents;
- a person whom parents know or believe to use drugs; or
- a homosexual partner.

The fact that parents choose to withhold financial assistance from a student on the grounds of an unwelcome relationship is not in itself sufficient grounds for SHR. All cases of this nature should be assessed against normal 'extreme family breakdown' criteria (see 5.5.6.4.1 and 5.5.6.4.2).

5.5.6.4 Extreme Family Breakdown

5.5.6.4.1 Eligibility on grounds of extreme family breakdown

Students may be eligible for SHR if they cannot live at home because of extreme family breakdown. Both conditions of cannot and extreme must be met.

5.5.6.4.2 Definition of 'extreme family breakdown'

Family breakdown will be considered to be extreme, rather than mild, serious or severe, where:

- there is a history of on-going conflict (existing for 6 months or more) between the student and his or her parent(s) and/or other family members; and
- the social worker confirms that the conflict is extreme and is currently irreconcilable.

The existence of ongoing conflict alone is insufficient grounds for SHR to be granted. Indications that the family breakdown is extreme may include:

- unsuccessful attempts having been made to resolve the issue(s), for example through counselling or mediation;
- trial period(s) of the student living away from home and then returning, but without success;
- the student and/or an immediate family member is suffering medically documented physical or psychological illness as a result of the conflict; and/or
- evidence that the emotional or physical well-being of the student or another family member would be jeopardised if the student were to live at home.

Where students do not satisfy the criteria under extreme family breakdown, assessment should be considered under one of the other SHR categories.

Continued on next page

5.5.6.4 Extreme Family Breakdown, Continued

5.5.6.4.3 Cannot live at home

It will be accepted that the student cannot live at home because of extreme family breakdown if the conditions in 5.5.6.4.2 above and 5.5.6.1.2 are met, **and**:

- the student has been banned or barred from entering the home; and/or
 - s/he would suffer extreme emotional distress if s/he had no option but to live there; and/or
 - s/he (or another family member) could face physical harm if s/he were to return.
-

5.5.6.4.4 Not accepted that the student cannot live at home

It will not be accepted that the student cannot live at home for SHR purposes if the conditions in 5.5.6.4.2 and 5.5.6.4.3 on the previous page and 5.5.6.2.2 and 5.5.6.2.3 are not met and s/he:

- chooses not to live at home; or
 - is a secondary student whose parents have moved to a new location; or
 - is a tertiary student committed to living away to study.
-

5.5.6.4.5 Social worker to advise on nature of breakdown

Given the difficulty in determining whether the conditions described in 5.5.6.4.2 and 5.5.6.4.3 on the previous page and 5.5.6.2.2 and 5.5.6.2.3 are met, and because the criterion of extreme family breakdown is the provision most open to exploitation by students or families otherwise bound by ABSTUDY parental income testing, all claims under extreme family breakdown must be referred to the Centrelink social worker for:

- a full assessment of the situation;
 - possible family mediation referral;
 - Youth Protocol commitments required for SHR applicants; and/or
 - the possibility of mandatory reporting.
-

5.5.6.4.6 Family breakdown not considered extreme

The following situations of family discord do not, in themselves, qualify as 'extreme':

- divorce or separation of the student's parents;
 - situations more akin to the 'home conditions' situations covered in 5.2.3.8; or
 - situations covered in 5.5.6.3.9 or in 5.5.6.1.6.
-

5.5.6.5 Circumstances Beyond the Family's Control

5.5.6.5.1 Other circumstances similar to extreme family breakdown

This criterion covers situations of family dysfunction related primarily to circumstance beyond the family's control. They do not necessarily involve irreconcilable breakdowns in relationships (see 5.3.3.10).

5.5.6.5.2 Parents unable to provide a home, care and support

In all cases covered by this criterion, parents (or a single parent) will be unable to provide a home, care or continuous financial support for the student, normally for reasons beyond their control (see 5.3.3.10).

Note: This criterion differs from other provisions in that the situations covered here are of a more temporary nature.

Situations include where a parent or parents are:

- in prison for periods of less than 10 years;
 - living away from home to undergo drug or alcohol rehabilitation;
 - incapacitated in a medical (including psychiatric) institution for a known period (except for hospitalisation for relatively short periods, eg, up to a month); or
 - living in a refuge which does not permit the student to live there.
-

Continued on next page

5.5.6.5 Circumstances Beyond the Family's Control, Continued

5.5.6.5.3 Support provisions

Approvals under this criterion are subject to normal 'continuous support from a parent' conditions (see 5.5.7.2).

Students are not normally eligible for SHR if they are living in accommodation owned or rented by their parents. However, where a student whose parents are in prison or a medical institution takes over all financial responsibility for the family home (including mortgage payments, rates, electricity bills etc), s/he may be eligible for SHR. In such cases, the parent(s) must not be contributing to the upkeep or maintenance of the house, nor to the student's support, for example, following receipt of an insurance settlement for injuries which led to the parent's incapacitation.

Where the student is accepted as being the de facto owner of the family home, s/he will cease to be eligible under this criterion if either or both of the parents return to live in the house after being released from prison or discharged from a medical institution.

Note: Students who might otherwise qualify under this provision may already be clients of a State/Territory welfare authority and may be assessed quickly under the provisions for Students in State Care (see 5.4).

5.5.6.5.4 Verification

Evidence of a parent's residence in prison, medical institution, etc must be provided by the relevant State/Territory government department or, in the case of private rehabilitation, by the centre's administrator. Evidence of support arrangements must also be obtained.

5.5.6.5.5 Parent(s) overseas

Students are not eligible for SHR solely on the basis that their parent(s) is/are living overseas. In particular, students are not eligible for SHR where parents choose to return overseas leaving the student to live with relatives or friends. In such cases, the student must be assessed under normal dependent rate criteria.

Claims that the student has been abandoned by parents who have returned overseas should be checked to see if Family Payments are being made in respect of the student.

5.5.7 Receiving Support

5.5.7.1 Support provisions must be satisfied

Although a student may be faced by one or more traumatic home situations, SHR is not payable if s/he is receiving certain forms of support.

5.5.7.2 Continuous support from a parent

Students are not eligible if they are receiving continuous support from a parent. 'Parent' refers to the student's natural or adoptive parents.

'Continuous' is not tied to any specific period of time, nor to a specified amount or type of support. Continuous support must have a regularity or stability which enables the student to have a reasonable expectation that it will be received. Consideration should be given to the nature and intention of the support, that is, whether it is continuous rather than emergency in nature and intent, and whether it shows on-going concern for the student.

5.5.7.3 Examples of continuous support

These include:

- regular payments (eg, weekly, fortnightly, monthly, annually), regardless of the amount, however also see 5.5.7.8 and 5.5.7.9;
 - payments made in advance for, eg, school fees, HECS or rent;
Note: However, a particular payment could have been made prior to the reasons for claiming SHR becoming apparent. In this case, the payment need not, in itself, preclude eligibility;
 - regular payments for certain items, eg, car registration/maintenance, mobile phone upkeep, text books, student and sporting fees;
 - regular provision of food, meals, services such as laundry, use of a family car; and/or
 - use of accommodation owned, leased or rented by a parent, or where a parent holds the lease and/or has paid the bond for the student's accommodation.
-

5.5.7.4 Financial or other support

Support is not confined to monetary payments. It can take the form of goods or services, eg, food, meals, laundry, use of a family car, or beneficial arrangements, eg, part-time employment in a family or associated company.

Continued on next page

5.5.7 Receiving Support, Continued

5.5.7.5 Direct or indirect support

SHR is not payable if the student is supported indirectly by a parent. This includes where parents arrange for assistance to be provided through a third party or organisation. Examples of such support could include:

- employing the student in a family business;
 - leasing or subsidising accommodation for the student's use; and/or
 - accepting education or other subsidies from the parent's employer on behalf of the student.
-

5.5.7.6 At boarding school when applying for SHR

Students who are at boarding school at the time of applying for SHR will not normally be eligible for SHR. This is regardless of which person or organisation is paying or subsidising the fees, as the student must be regarded as currently receiving support (including accommodation and care) on a regular or long term basis.

However, where there is evidence that the student has been placed in the boarding school as an emergency measure to remove him/her from harmful home circumstances and fees have been waived or subsidised by the school on an emergency basis, SHR may be applicable.

Note: Possible alternative of assisting students under the Assistance for Isolated Children Scheme or ABSTUDY on grounds of emotional/behavioural problems requiring boarding school supervision should be looked at.

5.5.7.7 Parents offer to provide support

Subject to 5.5.7.8, students will not be eligible for SHR if their parents wish to support them and pay money directly to them, or their carers, or into their bank accounts. This is the case even if the student refuses to accept the money.

A student will not normally be eligible for SHR where the parents are prepared to support the student away from home, eg, at boarding school or with friends, and have taken steps to confirm these arrangements at the time the SHR claim is lodged.

Continued on next page

5.5.7 Receiving Support, Continued

5.5.7.8 Disregarded parental support

Students may be eligible for SHR if support from a parent or another person is:

- promised or provided in a manipulative or vindictive way; or
 - conditions are placed on the support such that the students' physical or emotional health is compromised; or
 - where one parent is the perpetrator of violence or abuse and the remaining parent who continues to share the home gives the student irregular and insignificant amounts of money or gifts.
-

5.5.7.9 Court ordered maintenance

In some cases, a Court may order parents to pay maintenance direct to the student (eg, under the *Family Law Act*). Such payments constitute "continuous support" and will normally preclude eligibility. However, as a parent may not comply with such an order, a student should not be ruled ineligible for SHR simply because a maintenance order has been made. Instead, evidence should be provided that the payments are actually being made.

Where Court-ordered payments are being made regularly but do not amount to more than \$50 a week, they may be counted as personal income and need not in themselves, preclude eligibility for SHR.

Note: This concession applies only to Court-ordered maintenance.

5.5.7.10 Accommodation owned or leased by a parent

SHR is not applicable where the parents own or rent accommodation (including holiday houses, caravans, etc) in which the student is living. If the student is paying:

- little or no rent for the accommodation, s/he is receiving continuous parental support; or
- full market rental, the fact that the parents are allowing the student rental accommodation is inconsistent with a claim of extreme family breakdown. (If genuinely renting on a purely commercial basis, the student may choose to rent elsewhere).

For the same reasons, SHR is also not applicable where a student is living on the same property as a parent, whether or not there are separate rental agreements, eg, a caravan in the back yard or an adjacent flat.

Continued on next page

5.5.7 Receiving Support, Continued

5.5.7.11 Wholly or substantially dependent

SHR is not payable if the student is wholly or substantially dependent on another person, including a de facto partner (see 5.5.7.13), or organisation, on a long term basis.

The student need not be dependent solely in a financial sense, for example, s/he may contribute towards her/his upkeep from dependent rate of ABSTUDY, FaCS benefits or part-time employment. Nonetheless, in the overall context of the relationship, the student may be considered to be substantially dependent on the other person or organisation for eg, accommodation and care.

Care must be taken, however, to ensure that students are not denied SHR when the support is being provided genuinely on an emergency or 'good samaritan' basis (see 5.5.7.12 example (a)).

Continued on next page

5.5.7 Receiving Support, Continued

5.5.7.12 Long-term basis

SHR is not payable if a student is dependent on another person or organisation on a long-term basis.

'Long-term' is not necessarily tied to any particular length of time. The nature and intention of the arrangement and relationship need to be taken into account. For example:

- a) Emergency or short-term help from friends, strangers, relatives or an organisation (eg, youth refuge) will not normally preclude eligibility for SHR. Where such help genuinely began as emergency support, and the student has continued to live with the person or organisation in safe and stable accommodation, s/he can continue to get SHR if it is clear that s/he is contributing towards her/his support and is not substantially dependent on the carer.
- b) Where it is evident that a student, although in a 'long term' relationship is not also 'wholly or substantially dependent' on the partner, the relationship does not of itself preclude eligibility for SHR.
- c) Where the student was not facing harm or extreme conflict at home, and is now living with another family because the student's parents are living overseas or are on an extended holiday, the support provided should normally be considered long-term in intention.

In the latter case, if the student is under 18 years and/or there are siblings aged under 16 years living in the same household, enquiries should be made about guardianship, and Family Tax Benefit directions.

Continued on next page

5.5.7 Receiving Support, Continued

5.5.7.13 Support from a de facto partner

A student who is living with a de facto partner is not necessarily ineligible for SHR. There should be no presumption that the student is being wholly or substantially supported by the partner. The only automatic exclusion from SHR of a partnered student is where an allowance in respect of the student has been granted because the student's partner is receiving a FaCS benefit.

The length of the relationship does not necessarily indicate that the student is being wholly or substantially supported by the partner. Very often the partner of the student is also a young person and in similar economic circumstances. The nature of support given to the student by the partner should be tested in the same way as support given by any other person (other than the parent).

If it is decided that the student is 'wholly or substantially dependent' on the partner, then the length of the de facto relationship may be further relevant in determining whether that dependency is on a 'long term' basis (see 5.5.7.12).

Where the student is 'wholly or substantially dependent' on the partner, s/he is not eligible for SHR. In these cases the student may be subject to the parental income test if not eligible for independent status due to being in a de facto relationship (see 5.3.3.8).

5.5.7.14 Ineligible on grounds of long-term support

Where students are considered ineligible for SHR on the grounds of long-term support from another person (including a de facto partner), there is currently no option but to assess them for ABSTUDY against parental income, unless they are eligible for independent status due to being in a de facto relationship (see 5.3.3.8).

Continued on next page

5.5.7 Receiving Support, Continued

5.5.7.15 Other support arrangements

Where a person, including a relative, commenced caring for the student in an emergency capacity or on a short-term basis (without assuming full financial and/or custodial responsibilities), and the relationship has continued for longer than expected (eg, because no alternative could be found, or out of kindness of the carer), the student should not be precluded from being granted SHR.

This is not withstanding that Family Tax Benefit, additional pension or benefit or Parenting Allowance may have been claimed or received for the student prior to her/his claim for SHR.

5.5.7.16 Income support from the Commonwealth, State or Territory

Continuing income support received by the student from a Commonwealth Department or an instrumentality of a State or Territory Government will preclude eligibility for SHR. Income support is defined as payments received directly or indirectly by the student which are intended to meet, or to assist in meeting, his or her general living costs regardless of whether they are adequate for this purpose. Such payments can be considered to be continuing where they are received on a regular basis and the student has a reasonable expectation that they will be available for a reasonable period of time.

5.5.7.17 Ineligible Commonwealth support

Commonwealth payments which will preclude eligibility for SHR include:

- Youth Allowance, Newstart allowance, sickness allowance, partner allowance or special benefit;
- payments made by the Department of Veterans' Affairs through the Veterans' Children Education Scheme; and
- training allowances or similar benefits.

Where it appears that a student has received or may have been receiving welfare or student assistance payments such as those listed above, a check with the relevant Department should be made to ensure that there is no continuing payment after the commencement of SHR.

Continued on next page

5.5.7 Receiving Support, Continued

5.5.7.18 Disregarded Commonwealth /State/Territory support

The following support will not preclude eligibility for SHR:

- a series of separate or unrelated payments made for specific purposes or in emergency situations; and/or
- assistance provided under rent relief schemes operated by some State housing authorities (such payments do not constitute income under the income test).

Note: Such payments preclude eligibility for ABSTUDY rent assistance;

- payments provided by welfare authorities to a person who, or an institution which, provides accommodation or other assistance to homeless persons.

Note: A death benefit or superannuation payment or annuity to which a parent was entitled as a government employee, and which is paid direct to the student (and not to the surviving parent if there is one) following the parent's death, is not government assistance and will not preclude eligibility for SHR. (However, any income generated from a lump sum inheritance may be taken into account under the student income test.)

5.5.8 Release of Information

5.5.8 Release under the Student Assistance Act

The *Student Assistance Act 1973* allows for the release of student information in certain circumstances. The most relevant of these to SHR are that information may be released:

- if authorised by the student (paragraph 355(1)(d)); or
 - in the public interest and certified by a delegate that the release is in accordance with Ministerial Guidelines (paragraph 355(1)(a); or
 - where the Secretary has authorised the release to other Commonwealth Government departments for their administrative purposes (paragraph 355(1)(b)).
-

5.5.9 Mandatory Reporting

5.5.9.1 Mandatory reporting of child abuse

Some States/Territories have statutory laws requiring actual or suspected incidents of child abuse (sexual or other) to be reported to a nominated authority.

5.6 Pensioner Students

Overview

Introduction This chapter covers details of the criteria required for a student to qualify for the Pensioner Education Supplement

In this chapter This chapter contains the following topics.

Topic	See Page
5.6.1 Definition of Pensioner Students	5-106
5.6.2 Types of Pension	5-107
5.6.3 Benefits	5-108
5.6.4 Change of Status	5-109

5.6.1 Definition of Pensioner Students

**5.6.1.1
Definition** A pensioner student is a student receiving a social security pension or an income support pension from the DVA.

Note: A list of pensions is provided in 5.6.2.

**5.6.1.2
Orphan's
pension** Students receiving orphan pensions are not regarded as pensioner students for the purposes of ABSTUDY. They are eligible to apply as independent students (see 5.3.3.7).

**5.6.1.3
FaCS benefits** FaCS benefits or allowances, eg, Newstart Allowance, Sickness Allowance, Family Payment and Parenting Allowance, are not pensions.

**5.6.1.4
Allowances
included as
pensions** Some allowances are also considered pensions for the purpose of ABSTUDY Pensioner Education Supplement entitlements (see 5.6.2).

5.6.2 Types of Pension

5.6.2.1 Acceptable income support for PES

For the purposes of ABSTUDY Pensioner Education Supplement, the entitlement is available to customers receiving the following income support payments:

- FaCS disability support pension;
 - DVA invalidity service pension;
 - DVA carer service pension;
 - in the case of a person whose partner is receiving a FaCS disability support pension – a wife pension;
 - a carer payment;
 - a parenting payment (single);
 - a widow B pension;
 - a widow allowance;
 - in the case of a person who is a sole parent – a special benefit;
 - defence/war widow pension;
 - in the case of a person whose partner is receiving an DVA invalidity service pension – a partner service pension.
-

5.6.3 Benefits

5.6.3.1 Entitlement

The types of entitlements listed below may be available to pensioner students if they meet the relevant criteria:

- Pensioner Education Supplement;
 - Incidentals Allowance;
 - Fares Allowance;
 - Away-from-base assistance; and
 - ABSTUDY Student Financial Supplement loan.
-

5.6.3.2 Pensioner education supplement

A pensioner student studying full-time may be entitled to receive a Pensioner Education Supplement (no Living Allowance), including the concession which permits part-time study to be treated as full-time study for ABSTUDY purposes.

Note:: From 1 March 2000 the workload concession was changed:

- students who are eligible for PES undertaking a study load of between 25% to 49% will be eligible for a PES payment of \$30 per fortnight; and
- students who are eligible for PES undertaking a study load of 50% or more will be eligible for a PES payment of \$60 per fortnight.

Students receiving a DVA invalidity service pension, a FaCS disability support pension or a war widow pension (where the widow has a dependent child under 16) and receives an income support supplement (incapacity for work) will be exempt from this legislation.

PES does not affect the rate of the pension.

5.6.3.3 PES/CDEP

Parenting payment (single) recipients on CDEP (and other pensioners joining CDEP) will lose \$1 of parenting payment for every dollar that they earn on CDEP.

5.6.3.4 Part-time pensioner student

A pensioner student studying part-time may be entitled to receive the same benefits as other students on the Part-time Award (see 3.2.1.4) if s/he is not eligible for the pensioner workload concession (see 4.4.2.4).

5.6.4 Change of Status

5.6.4.1 Change of status

If students cease or commence to be a pensioner, their student status will vary with effect from the date on which they cease to be or become entitled to receive the pension.

5.7 Students in Lawful Custody

Overview

Introduction This chapter covers details of the criteria required for a student to qualify for benefits as a student in lawful custody.

In this chapter This chapter contains the following topics.

Topic	See Page
5.7.1 Definition of Lawful Custody	5-111
5.7.2 Change of Status	5-112

5.7.1 Definition of Lawful Custody

5.7.1.1 Definition

Lawful custody is a period of more than two weeks of:

- imprisonment in a correctional institution;
 - detention on remand eg, while awaiting trial; or
 - detention in a youth training centre because of a criminal conviction.
-

5.7.1.2 Not in lawful custody

A person on parole, home detention programme or work release or transfer release while living in the community is not regarded as being in lawful custody and has entitlement under the general ABSTUDY Awards.

5.7.1.3 Availability of ABSTUDY assistance

ABSTUDY assistance is available for a student in lawful custody where either:

- the general eligibility criteria set out in 3.1.1 are met; **or**
- for non-accredited courses:
 - the student is Aboriginal or Torres Strait Islander (see 3.1.1.2),
 - the delegate is satisfied that the proposed course of study cannot be provided through educational programs operated by the correctional institution in which the student is detained, and
 - the correctional institution authorities agree to the student receiving the assistance.

See 7.5.2.3.

5.7.2 Change of Status

5.7.2.1
Study ceases on commencement of period of lawful custody
(See 7.3.7.2)

If a student received ABSTUDY benefits prior to discontinuing study on being admitted to lawful custody, eligibility for these entitlements ceases from the last day of attendance at classes.

5.7.2.2
Continues with approved study in custody

If the student continues with her/his approved course while in lawful custody, he/she will need to notify Centrelink.

Entitlements under the Students in Lawful Custody Award may be paid in accordance with the entitlement and payment procedure for that semester, provided that another entitlement for the same purpose has not already been paid for that semester.

5.7.2.3
Continue study after custody

For Lawful Custody Allowance, a continuing student is one who was studying an approved course before imprisonment, continues the same study in gaol, and then continues the same course when released from prison. In this circumstance, the student needs to notify Centrelink to begin receiving normal ABSTUDY entitlements if all other ABSTUDY criteria are met. However, deductions should be made for any benefit, besides course costs, already paid for while in custody that semester.
