

## Student Allowances Amendment Regulations (No 2) 2005

Pursuant to section 303 of the Education Act 1989, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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### 1 Title

- (1) These regulations are the Student Allowances Amendment Regulations (No 2) 2005.
- (2) In these regulations, the Student Allowances Regulations 1998<sup>1</sup> are called “the principal regulations”.

### 2 Commencement

These regulations come into force on the day after the date on which they are notified in the *Gazette*.

### 3 Application

- (1) Regulation 4(4) and (5) of the principal regulations (as inserted by regulation 4 of these regulations) applies to—

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<sup>1</sup> SR 1998/277

- (a) applications under regulation 4(2)(c)(i) of the principal regulations received on or after the commencement of these regulations; and
  - (b) reviews of a student's entitlement to an allowance under regulation 45 of the principal regulations commenced on or after the commencement of these regulations.
- (2) Subclause (1) is subject to Regulation 5.

#### **4 Assessment of parental income**

Regulation 4 of the principal regulations is amended by adding the following subclauses:

- “(4) A student must not be considered to have established independence from his or her other parent for the purposes of subclause (2)(c)(i) unless the chief executive is satisfied that—
- “(a) the student is estranged from that other parent to the extent that contact between them would have a detrimental psychological effect on the student or the parent; or
  - “(b) the student is or has been subject to severe mental cruelty by that other parent; or
  - “(c) the student is or has been subject to physical or sexual abuse by that other parent or that other parent's spouse; or
  - “(d) that other parent is unable to take responsibility for the student or contribute towards the student's support because that other parent is—
    - “(i) subject to a sentence of imprisonment; or
    - “(ii) otherwise remanded or detained in a prison; or
    - “(iii) under an inpatient order made under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
  - “(e) by reason of other special circumstances, the relationship between the student and that other parent has so broken down that the student should be considered independent of the other parent.
- “(5) To avoid doubt, a student is not independent from his or her other parent for the purposes of subclause (2)(c)(i) by reason only that he or she is financially independent from that other parent.”

**5 Savings**

Nothing in regulation 4(4) or (5) of the principal regulations (as inserted by regulation 4 of these regulations) affects any finding of the Student Allowance Appeal Authority in respect of any individual under regulation 4(2)(c)(i) of the principal regulations that was made before the commencement of these regulations.

Diane Morcom,  
Clerk of the Executive Council.

**Explanatory note**

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into on the day after the date on which they are notified in the *Gazette*, amend regulation 4 of the Student Allowances Regulations 1998 ( “the principal regulations”).

Regulation 4 of the principal regulations relates to the assessment of a student’s parental income when that student applies for an allowance. The amendments add new subclauses (4) and (5) to regulation 4 of the principal regulations.

Currently a student whose parents do not live together may apply to have their parental income assessment based on just 1 parent’s income, if the student can establish “independence” from the other parent. New subclause (4) sets out criteria for establishing independence from a parent. New subclause (5) provides that a student cannot establish independence from a parent by reason only that he or she is financially independent from that parent.

The new criteria for establishing independence will apply to new applications under regulation 4 of the principal regulations, and to reviews of entitlements. However, any findings of the Student Allowance Appeal Authority in respect of an individual made before these regulations commence will not be affected.