



## Purpose

The purpose of the policy is to ensure that ALACC have processes and procedures for explaining the review of re-crediting of students' FEE-HELP balances under Part 6 of the VET Student Loan Act 2016.

## Scope

This policy applies for students receiving VET FEE-HELP after meeting the eligibility criteria to support the course the Diploma chose to undertake. ALACC provides further detail regarding the rights of students in respect to the re-crediting of their FEE-HELP balances; and

## Policy and Procedure

### Re-crediting of FEE-HELP balances (Section 89 VSL Rules) policy.

- a) that a student's FEE-HELP balance can be re-credited under Division 2 and 3 of Part 6 of the Act;
- b) Subsection 54(4) provides that the tuition assurance arrangement must require the operator to repay the student's tuition fees for a replacement component of a replacement course if the student's FEE-HELP balance is re-credited under section 68 of the Act due to special circumstances that prevented the student from completing that replacement component. In the absence of this provision, the replacement provider may have to repay the student's tuition fees which is not a reasonable outcome given it did not receive payment for the fees in the first instance.
- b) that a student may apply to the provider for the student's FEEHELP balance to be re-credited under section 68 of the Act because of special circumstances;
- c) that a student may apply to the Secretary for the student's FEEHELP balance to be re-credited under section 71 of the Act because:
  - i. the provider, or a person acting on the provider's behalf, engaged in unacceptable conduct in relation to the student's application for the VET student loan; or
  - ii. the provider has failed to comply with the Act or an instrument under the Act and the failure has adversely affected the student;
- d) that special circumstances are circumstances that:
  - i. are beyond the student's control; and
  - ii. do not make their full impact on the student until on or after the census day for a course, or the part of a course; and
  - iii. make it impracticable for the student to complete the requirements for the course, or the part of the course, during the student's enrolment in the course, or the part of the course;
- e) that applications for re-crediting under section 68 of the Act must be made within 12 months after the census day for the course, or the part of the course, concerned, or within that period as extended by the provider;
- f) that applications for re-crediting under section 71 of the Act must be made within 5 years after the census day for the course, or the part of the course, concerned, or within that period as extended by the Secretary;
- g) the processes available to students in relation to reconsideration and review of decisions whether or not to recredit FEE-HELP balances;



- h) that there is no charge for reconsideration or review of decisions, other than review by the Administrative Appeals Tribunal;
- i) that the Secretary may re-credit a student's FEE-HELP balance in relation to special circumstances if a course provider:
  - i. is unable to act or is being wound up or has been dissolved; or
  - ii. has failed to act and the Secretary is satisfied that the failure is unreasonable.

## **Part 8—Re-crediting FEE-HELP balances**

Part 6 of the Act provides for the re-crediting of students' FEE-HELP balances in certain circumstances. When a student's FEE-HELP balance is re-credited under Part 6, their VET student loan debt is remitted by the amount re-credited (see subsection 137-19(4) of the *Higher Education Support Act 2003*).

### **Division 1—Re-crediting by course provider**

#### **Section 144 – Purpose of this Division**

This section provides that Division 1 of Part 8 has effect for the purposes of section 68 of the Act.

Section 68 of the Act provides that an approved course provider must (on behalf of the Secretary) re-credit a student's FEE-HELP balance if it is satisfied that special circumstances prevent the student from completing the course requirements. Division 1 of Part 8 of the Rules sets out matters that the provider must and may take into account in deciding whether or not circumstances are special circumstances for this purpose.

#### **Section 145 – Circumstances to which the provider must have regard**

Section 145 specifies the matters to which an approved course provider must have regard when deciding whether circumstances are special circumstances because they make it impracticable for the student to complete course requirements (see paragraph 68(3)(c) of the Act). The matters include whether the student could:

- do enough private study, attend training sessions or engage online to meet the course requirements;
- complete any assessments or demonstrate any competencies required; or
- complete any other requirements arising because of the student's inability to do the things described above.

#### **Section 146 – Circumstances to which the provider may have regard**

Section 146 specifies the matters to which an approved course provider may have regard when deciding whether circumstances are special circumstances because they make it impracticable for the student to complete course requirements (see paragraph 68(3)(c) of the Act). The matters include (noting this section does not limit providers considering other matters):

- medical circumstances of the student;
- circumstances that relate to the student personally or to the student's family;
- circumstances relating to the student's employment.

For example, the provider may have regard to if the student's employer requires the student to work in a different location for 6 months which may prevent the student from attending the course.



### Section 147 – Special circumstances application in relation to replacement component of replacement course

Under subsection 68(4) of the Act, when an approved course provider re-credits a student's FEE-HELP balance, the amount of the re-credit equals the amount of the VET student loan that has been used to pay tuition fees for the course or relevant part of the course.

When a student is undertaking a replacement component of a replacement course provided to that student under tuition assurance arrangements, the provider actually providing that course will not have charged the student any tuition fees for the replacement component of the replacement course, and no VET student loan will have been used to pay tuition fees for that replacement component.

Section 147 of the Rules is intended to ensure subsection 68(4) of the Act operates as intended in those circumstances, by providing that the VET student loan amount is taken to have been paid for the replacement component of the replacement course – meaning that when the provider of the replacement component re-credits the student's FEE-HELP balance, the amount re-credited is equal to the amount of VET student loan used to pay for the tuition fees for the original course.

## Division 2—Re-crediting by Secretary

### Section 148 – Unacceptable conduct relating to an application for a VET student loan

This section provides for the definition of **unacceptable conduct** for the purposes of subsection 71(2) of the Act. Amongst other things, under subsection 71(1) of the Act, the Secretary may re-credit a student's FEE-HELP balance where the Secretary is satisfied the student's approved course provider engaged in unacceptable conduct in relation to the student's application for a VET student loan.

Subsection (1) provides that the following are unacceptable conduct by a provider in relation to a student's application for a VET student loan:

- unconscionable conduct (whether or not a particular individual is identified as having been disadvantaged by the conduct);
- misleading or deceptive conduct;
- the making of a representation with respect to any future matter, such as the doing of, or the refusing to do, any act, if the maker of the representation does not have reasonable grounds for making the representation;
- advertising tuition fees for the course where there are reasonable grounds for believing that the provider will not be able to provide the course for those fees;
- use of physical force, or harassment or coercion, in connection with the application or enrolment in the course.

These circumstances do not limit each other – particular behaviour can satisfy more than one criterion.

### Subsection 148(3) sets out matters that the Secretary may have regard to in deciding whether a provider has engaged in unconscionable conduct.

It should be noted that none of the circumstances set out in subsection (1) are defined by reference to other laws using the same or similar language (e.g. the *Competition and Consumer Act 2010*). They are intended to have broad meaning, particularly as subsection 71(1) of the Act provides for a subjective test – that is, that the Secretary must be satisfied that particular behaviour is unacceptable conduct, as opposed to an objective test of whether unacceptable conduct has occurred. Although the Secretary will take guidance from the interpretation given to phrases such as “unconscionable conduct” and “misleading and deceptive conduct” in other statutory contexts, the Secretary is not bound to apply such interpretations.



## Section 149 – Requirements for application to Secretary to re-credit student’s FEE-HELP balance

**Section 71 of the Act enables** the Secretary to re-credit a student’s FEE-HELP balance (if satisfied of certain matters) on the Secretary’s initiative and is not dependent on a student applying for the re-credit. Section 72 of the Act permits a student to apply to the Secretary for re-crediting of their FEE-HELP balance, in writing, and in accordance with the any requirements in the Rules. Section 149 of the Rules sets out the requirements for such applications; they must:

- be made within 5 years after the census day for the course (or such other longer period allowed by the Secretary);
- set out the grounds on which the student is asking for their FEE-HELP balance to be re-credited; and
- to the extent known to the applicant, contain information about the course to which the application relates; the course provider; the loan amount to be re-credited; the applicant’s unique student identifier; and any supporting documentation.

## DEFINITIONS

<i>The term:</i>	<i>means</i>
(a) Grievance Complaint and Appeal	Complaint regarding course progress, assessment outcomes, training delivery, course grades, training materials and placements including but not limited to decisions made about an assessment completion, failure to meet satisfactory academic progress, an academic result, the quality of the course delivery, failure to provide training services or materials.  Students reserve the right to appeal decisions if their grievance about complaints are not satisfactorily resolved.
(b) ALACC	Australasian Lawrence Aged Care College Pty Ltd.
(c) CEO	ALACC’s Chief Executive Officer and Director of Studies, Dr Janet Lawrence.
(d) Complainant	VSL Student, staff, international and local students, stakeholders, are persons making the Complaint or Appeal.
(e) Complaint	Any expression of dissatisfaction with any of ALACC operations as set out in the Scope including an appeal against the outcome of a Complaint processed under this Policy.
(f) Complaint Log	The register of all formal Complaints and Appeals which contains the records required by this Policy.
(g) External Arbiter	A person appointed by the CEO under clause <b>Error! Reference s</b> <b>ource not found.</b> who has the appropriate qualifications to consider an Appeal against a decision of the CEO and who must act independently of the CEO and ALACC when acting as the External Arbiter, e.g., ombudsman. There is no costs to the complainant.
(h) Non-Academic Complaint	Complaint that is not an Academic Complaint including but not limited to complaints about refunds, discrimination, bullying,

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|                             | privacy, sexual harassment, admission processes, non-payment of fees.   |
| (i) Respondent              | The person against whom a Complaint is made who may be any of the persons identified in the Scope.  |
| (j) Student Support Officer | A member of ALACC staff who is charged with providing support services and contact details are included in the Student Prospectus and the student handbook on Moodle. Student Support Officers are available to all Complainants, not only Complainants who are students. |

### ACTS/LEGISLATION/GUIDELINES

- VET Student Loans Act 2016
- VET Student Loans Rules 2016
- ASQA Standards 2015
- VET Student Loans Rules 2016 Subdivision F—Dealing with complaints

### SUPPORTING DOCUMENTS/RELATED POLICIES

- Withdrawal and cancellation Policy

### RECORD KEEPING/EVIDENCE

ALACC will record the details of Complaints and Appeals on the Complaints Log including

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| ▪ Complaints and Appeal Forms                    | ▪ All supporting documentation |
| ▪ Minutes of meetings with parties and witnesses |                                |
| ▪ Appeal (if any)                                |                                |

### Document Control:

Policy:	Re-crediting of FEE-HELP balances (Section 89 VSL Rules)
Policy owner:	CEO / Director of Studies
Reviewed by:	Compliance Team
Approval authority:	Dr Janet Lawrence, D.Ed., FACN CEO/Director of Studies
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Summary of changes:	Updated formatting and header and footer