

Senate Committee: Education and Employment

QUESTION ON NOTICE

Supplementary Budget Estimates 2016 - 2017

Outcome: Skills and Training

Department of Education and Training Question No. SQ16-001099

Senator Xenophon, Nick asked on 20 October 2016, Proof Hansard page 111

Investigation into the Bruce Hardwig Flying School

Question

Senator XENOPHON: Yes. My understanding is that—is there a 45-day time limit in order to deal with and respond to these matters?

Ms Quagliata: Not that I know of, no.

Senator XENOPHON: Sorry, the complaint was to the provider. Are providers meant to respond to complaints within a certain time frame?

Ms Quagliata: The providers are meant to have a grievance procedure. I cannot recall offhand exactly whether there are KPIs imposed on what the grievance procedure is.

Senator XENOPHON: Sure. Could you take that on notice, because the concern that I have had is that this has taken 15 months for one particular student, who has had to go to the AAT. There were time limits that were meant to have been enforced. My understanding is that they complained to the department that they were not getting responses, but nothing happened. Can you take it on notice and provide me with the details of how many interactions and complaints and from what period, and provide me with copies of that material as to the way these complaints were dealt with? I think Mr Peterson of the VET FEE-HELP branch was primarily the person who dealt with a number of these complaints. My understanding is that the students in particular, those in the ATF, had nothing but hurdles put in their way if they sought to have their HECS debt waived. It has been the case that it has been a very expensive process for them. Some have taken it on on principle, but I think others just could not afford the time or the money to be involved in the process.

Answer

Timing of decisions on remission requests

Under clause 46 of Schedule 1A of the *Higher Education Support Act 2003* (HESA) a provider must remit a student's VET FEE-HELP debt if the provider is satisfied that 'special circumstances' apply to the student. Special circumstances are defined at clause 48 as circumstances applying to the person that:

- a) are beyond the person's control; and
- b) do not make their full impact on the person until on or after the census date for the VET unit of study in question; and
- c) make it impracticable for the person to complete the requirements for the unit in the period during which the person undertook, or was to undertake, the unit.

The application period for a request for debt remission is the period of 12 months after the day on which the person's withdrawal from the unit of study has taken effect, or if they have not withdrawn, 12 months after the period during which the person undertook, or was to undertake, the unit (clause 49 of Schedule 1A of HESA refers).

The VET provider must consider the person's application 'as soon as practicable' and must notify the person of its decision and the reasons for making the decision (clause 50 of Schedule 1A of HESA refers).

A person's request for review of the original decision must be made by written notice given to the reviewer within 28 days, or such longer period as the reviewer allows, after the day on which the person first received notice of the decision (clause 96 of Schedule 1A of HESA refers).

The reviewer is taken to have confirmed the original decision if the reviewer does not give notice of a decision to the person within 45 days after receiving the person's request for review (subclause 96(8) of Schedule 1A of HESA refers).

Complainant 1

Complainant 1A was advised as early as June 2015 about the process for seeking remission of her VET FEE-HELP debt (copy attached to response to Question on Notice number SQ16-001096). Her application to the Administrative Appeals Tribunal (AAT) (lodged in November 2015) was dismissed in June 2016 for want of jurisdiction, in light of the AAT's finding that she had not in fact made a request for remission to the provider¹.

In March and May 2016, complainant 1B (and a person assisting him) raised some issues with the Department of Education and Training. Information about the review process was provided. Copies of the material are at Attachment A (March 2016) and Attachment B (May 2016).

In August 2016, the department became aware that Complainant 1A had – in April 2016 – made an application for a remission of her VET FEE-HELP debt in relation to the Bruce Hartwig Flying School, and that the provider had not made a decision with regards to her application. The department considered the delay (of some four months in this case) in making a decision to be contrary to the requirement that a decision be made 'as soon as practicable'.

Accordingly, on 22 September 2016, the department issued a compliance notice pursuant to clause 26A of HESA, which directed the provider to make a prompt decision in respect of Complainant 1A's application. On 26 September 2016, as a result of the compliance notice, the provider promptly made a decision to deny Complainant 1A's application for a remission. Complainant 1A has sought a review of this decision with the provider. As per subclause 96(8) of Schedule 1A to HESA, the provider has 45 days in which to make a decision on review. If the provider does not make a decision within 45 days, the original decision is taken to have been confirmed.

[Comments from the Bruce Hartwig Flying School on this issue are as follows:

It is true that "[complainant 1A] had – in April 2016 – made an application for a remission of her VET FEE-HELP debt in relation to the Bruce Hartwig Flying School". This S.46 HESA application was made at the same time the AAT was considering an essentially identical application under S.51 of HESA. The School considered this tactic by the applicant to be an abuse of process, and refused to accept the S.46 application as valid until the matter before the AAT was resolved. It was expected that the applicant would wait until their existing application before the Tribunal was determined prior to submitting the same complaint again under a different section of the Act (see attached email dated 17 April 2016).

The AAT was advised on 17 April 2016 of this view, and subsequently provided the following comment on 22 June 2016 (attached): "25. I note further that on or about 15 April this year, [complainant 1A] also made a clause 46 request to the respondent and I expect that, **following the handing down of this Decision, the respondent will**

¹ [Complainant 1A] and Bruce Hartwig Flying School Pty Ltd [2016] AATA 412 (22 June 2016)
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proceed to consider and determine that request". At very least, the School regarded that the "complaint consideration clock" would commence on 22 June 2016, the day of the decision from the AAT - **not from the date that the complaint was lodged in mid-April 16.**

The Department however, regarded the April 2016 application as valid despite the concurrent consideration of the case before the AAT, and the comments made in the formal decision of the AAT by Deputy-President Bean.

Following the decision of the AAT, the School was directed by the Department to respond, citing a "four month" period as being excessive. Despite the School disagreeing with the Department's viewpoint as to the validity of the April 2016 duplicate application under a different section of HESA, it nevertheless complied with the Departmental directive within the stated time-frame as required by the Department. The validity of the compliance notice issued by the Department is still regarded by the School as highly questionable.

This issue clearly does not constitute an example of a "hurdle" to the applicant. It merely represents differing views of the parties concerning the validity of identical concurrent claims (**which could have initially been combined into a single claim by the applicant**), the validity of the process of submitting those concurrent claims, and the Department's apparent view that its own interpretation of HESA overrides that of the Administrative Appeals Tribunal.]

As stated above, the School complied with the department's directive, despite holding reservations about the legal validity of the directive in question.

At an interlocutory hearing in the AAT (on 7 October 2016) regarding whether it has jurisdiction to consider Complainant 1A's application pending a review decision being made by the provider, the AAT has decided that it will leave the application open until the point that it has jurisdiction – either by virtue of a review decision being made by the provider, or a deemed review decision resulting from the provider failing to make a review decision within 45 days.

Complainant 2

Complainant 2's application to the AAT (lodged in November 2015) was dismissed in March 2016 for want of jurisdiction, in light of the AAT's finding that he had not in fact requested a reconsideration of the decision to refuse his request for remission of his VET FEE-HELP debt.

In or around March 2016, the department became aware of difficulties in Bruce Hartwig Flying School's progress of the review process, when contacted by Complainant 2 about the AAT decision, which found that the Tribunal had no jurisdiction to hear the matter because the review processes had not been completed². Over the period from 15 to 30 March 2016 the department wrote to Complainant 2, his representative (Complainant 1B), and the provider seeking to clarify the review arrangements in place under the HESA. The department also wrote to the provider confirming the Secretary's delegation to approved VET providers (which includes the Bruce Hartwig Flying School) to make the review decisions required (copies of that material are at Attachment C).

Complainant 2's request for reconsideration of the provider's decision was lodged on or about 19 April 2016 (copy is at Attachment D).

² [Complainant 2] and Hartwig Air Group Pty Ltd [2016] AATA 137 (15 February 2016)
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On 21 April 2016, Complainant 2 indicated to the department an intention to make a further application to the AAT. He was advised orally against that on the basis that until there was a review decision made by the provider, the AAT would have no jurisdiction to review the matter (copy of that material is at Attachment E). Complainant 2 subsequently decided to wait for a review decision to be made by the provider (or for a decision to be deemed to be made).

On 30 May 2016 there was a discussion with the reviewer at the Bruce Hartwig Flying School and a copy of the review decision was provided to the department (copy of that material is at Attachment F). Complainant 2 was advised of the review decision on that day. The decision was made within the 45-day period.

Note – Personal information (e.g. person addresses, telephone numbers, email addresses, and similar) about people other than that relating to Complainant 1, Complainant 2 and Complainant 3 has been redacted. VET personal information about Complainant 1, Complainant 2 and Complainant 3 has been redacted in part to exclude information that those students may consider sensitive, for example, their names, medical information, date of birth and address.