

Senate Committee: Education and Employment

QUESTION ON NOTICE Additional Estimates 2015 - 2016

Outcome: Skills and Training

Department of Education and Training Question No. SQ16-000755

Senator Carr, Kim asked on 10 February 2016, Proof Hansard page 81.

Also refer to previous hearing Question No. SQ15-000752

Student debts

Question

Senator Birmingham: There were limited rights under the legislation as it stood until it was changed last year. As you are aware, we did make changes which did provide further scope for students to be able to have their debts forgiven. When I was minister responsible in this space, that was a matter that concerned me greatly—that there were very limited opportunities. A number of students have had debts waived as a result of actions undertaken by providers themselves to initiate some of those waivers, and there are other processes that can be followed which can include, ultimately, a request to government for the debt to be waived. That is an unusual process and not one that we would wish to open the floodgates on. They are, I think, reasonable questions that I am happy to take on notice and get a correct legal assessment for you of what happens in the circumstances where the ACCC, for example, successfully prosecutes and seeks funds from a provider.

Senator KIM CARR: I would appreciate that. I am particularly interested to know if there is any general statement that you can provide me with as to what the process is for students in this situation—not necessarily this particular one, because you are providing me with additional information on that, but a more general statement about the appeal process that students can undertake if they feel that there is a case to have their debts forgiven.

Answer

Debt cancellation where there was no student entitlement to VET FEE-HELP

Depending on the circumstances of the case, inappropriate provider behaviour can result in student debts being cancelled because they were not properly raised in the first place. Student entitlement to VET FEE-HELP is conditional upon the student's enrolment in a relevant course (amongst other things) and therefore, if the enrolment itself is found to be flawed or illusory, the Department of Education and Training may take the view that there was no student entitlement to VET FEE-HELP and effectively undo the debt as a matter of ordinary administration. The Australian Competition and Consumer Commission (ACCC) taking action against a provider for misleading or deceptive conduct can also provide an example of such a situation; if the contract between the provider and the student ends up being rescinded due to the provider's misleading or deceptive conduct, the student may not have been effectively enrolled and the debt may be cancelled as having never properly arisen.

Student requests to providers for debt remission

All approved VET FEE-HELP providers must have in place policies and procedures that relate to student protections required under the *Higher Education Support Act 2003* (HESA) including several mechanisms by which a student can seek to have their VET FEE-HELP debt remitted and any amounts paid upfront refunded (detailed below). Students wishing to

have their debts remitted should contact their provider and follow the provider's complaints or debt remission request process. If a provider has closed the Secretary may re-credit the person's FEE-HELP balance if the provider is unable to do so.

Withdrawal on or before the census date

If a student correctly withdraws from a VET unit of study on or before the census date they will not incur a HELP debt. Each provider determines the steps a student must use to withdraw. Providers may not charge a withdrawal fee, or have any other barrier to withdrawal.

Commonwealth Assistance Notices

VET FEE-HELP providers are required to send the student a Commonwealth Assistance Notice (CAN) after each VET unit of study census date. The CAN includes information about the student's enrolment including any VET FEE-HELP debt and any loan fee they may have incurred. If a fee is identified as incorrect by the student they can contact the provider to have the error resolved.

Complaints and grievances

If students have a complaint or grievance, about any matter relating to their academic study (eg quality of training) or non-academic matters (fees, charges, etc), they are able to raise it with their provider through that provider's formal grievance process. This includes requests for VET FEE-HELP debts to be remitted. A provider has the discretion to remit or cancel a student's VET FEE-HELP debt following assessment of the complaint.

If the matter cannot be satisfactorily resolved by this process all providers have a review/appeal process. Thereafter, reviewed decisions may be referred to an independent external arbitrator, nominated by the provider, for further consideration.

Debt remission – special circumstances

Each VET FEE-HELP provider must also have in place a process for students to request their FEE-HELP balance to be re-credited (and VET FEE-HELP debt remitted) due to special circumstances, and to have the decision reviewed if the request is unsuccessful. If the student is unsatisfied with the review outcome they can apply to the Administrative Appeals Tribunal to have the matter decided by the Tribunal. This provision of HESA does not apply to any VET units of study that have been successfully completed.

Debt remission – unacceptable conduct from 1 January 2016

The *Higher Education Support Amendment (VET FEE-HELP Reform) Act 2015* broadened the circumstances in which a student can seek a re-credit of their FEE-HELP balance and remission of their VET FEE-HELP debt to include circumstances where a VET FEE-HELP provider has engaged in unacceptable conduct during the recruitment of a student and the student accessing VET FEE-HELP. These measures will not be implemented retrospectively; they will apply in respect of behaviour which occurs after 1 January 2016. To action these requests students must contact the department. The department will obtain relevant information from the student and the provider to make a decision. As of 18 March 2016 no applications have been received. The department is developing an online form for this purpose as part of a broader Feedback and Complaints System, expected to be rolled out during 2016

Debt waiver – Department of Finance

A person who has been unsuccessful in having their HELP debt remitted by their provider may apply to the Department of Finance for a waiver of their HELP debt. Each case is considered on its merits and takes into account a person's specific circumstances but cannot be considered until all other formal avenues under HESA have been exhausted.

Effect of debt remission on provider payments

Where a student's debt has been remitted, a reduction in the provider's reported student liabilities occurs in the department records. The department monitors student liability data against advance VET FEE-HELP payments made during the year and will adjust a provider's payments to ensure overpayment does not occur. Where reported student data by the provider is less than the payments made the department will initiate a debt recovery. This recovery may be effected either by offsetting the debt against future monthly payments, or by issuing a debt notice to the provider which is required to be paid within 30 days. The process has been used by the department since 2009.