

Attachment A

- copy of matters raised by _

in March 2016

PETERSON, Brett

From: PETERSON, Brett
Sent: Monday, 21 March 2016 1:06 PM
To:
Subject: HPRM: Bruce Hartwig Flying School Pty Ltd - VET FEE HELP - Complaint [SEC=UNCLASSIFIED]

De

Your recent emails dated 22 February and 2 March 2016 refer.

As next steps in this matter we would suggest you submit a request to the provider, Bruce Hartwig Flying School Pty Ltd, for a review of the original decision. Once you have the outcome, or after the expiry of 45 days from the provider receiving your request, you may apply to the Administrative Appeals Tribunal (AAT) for a review of your application. This process must be followed in order for the AAT to have jurisdiction.

Further explanation of special circumstances requests is at <http://studyassist.gov.au/sites/studyassist/payingbackmyloan/re-crediting-a-help-debt/pages/remitting-a-help-debt#Specialcircumstances> and is set out below for your information.

The department is not able to assist further at this time.

Review processes – clause 46

You asked about review processes in relation to clause 46 of Schedule 1A of the *Higher Education Support Act 2003*, and sought some clarification.

Original decision making

Subclause 46(2) provides that:

- (2) A VET provider must, on the Secretary's behalf, re-credit a person's FEE-HELP balance with an amount equal to the amounts of VET FEE-HELP assistance that the person received for a VET unit of study if:
- (a) the person has been enrolled in the unit with the provider; and
 - (b) the person has not completed the requirements for the unit during the period during which the person undertook, or was to undertake, the unit; and
 - (c) the provider is satisfied that special circumstances apply to the person (see clause 48); and
 - (d) the person applies in writing to the provider for re-crediting of the FEE-HELP balance; and
 - (e) either:
 - (i) the application is made before the end of the application period under clause 49; or
 - (ii) the provider waives the requirement that the application be made before the end of that period, on the ground that it would not be, or was not, possible for the application to be made before the end of that period.

A provider's decision under clause 46 would be an original decision.

Subclause 46(3) provides that '[i]f the provider is unable to act for one or more of the purposes of subclause (2), or clause 48, 49 or 50, the Secretary may act as if one or more of the references in those provisions to the provider were a reference to the Secretary'. In this context, our view is that unable to act means a provider cannot take the action - an example might be where a provider perhaps ceased to exist. A refusal to re-credit does not equate to a provider being unable to act.

An original decision is reviewable in accordance with clause 91. It is a reviewable VET decision.

The decision maker on a reviewable VET decision is defined as follows (per clause 91):

- the VET provider with whom the student is enrolled in the unit; or
- if the Secretary made the decision to refuse the re-crediting—the Secretary.

In this case, the decision maker for the reviewable decision is the VET provider.

Review/reconsideration

A reviewable decision is then itself subject to reconsideration in accordance with clauses 94, 95 and 96.

Clause 94 provides that:

- (1) The reviewer of a reviewable VET decision is:
 - (a) if the decision maker was a VET provider acting on behalf of the Secretary—the Secretary; or
 - (b) in any other case—the decision maker, but see subclause (2).
- (2) If:
 - (a) a reviewable VET decision was made by a delegate of a decision maker; and
 - (b) the decision is to be reconsidered by a delegate of the decision maker;then the delegate who reconsiders the decision must be a person who:
 - (c) was not involved in making the decision; and
 - (d) occupies a position that is senior to that occupied by any person involved in making the decision.

The Act places the power to make the review decision with the Secretary. However, clause 98 allows the Secretary to make certain delegations. Specifically, subclause 98(2) provides that '[t]he Secretary may, in writing, delegate to a review officer of a VET provider the Secretary's powers under Subdivision 16-C to reconsider reviewable VET decisions made by the provider'. The Secretary has, by instrument dated 4 January 2016, made such a delegation.

In this case therefore, the decision maker for the review decision is the review officer in the VET provider.

Subclause 96(2) provides a timeliness limitation on this decision, in that the reviewer is taken to have confirmed the decision if they do not give notice of a decision to the person within 45 days after receiving the person's request.

Administrative Appeals Tribunal

Clause 97 in turn provides that '[a]n application may be made to the Administrative Appeals Tribunal for the review of a reviewable VET decision that has been confirmed, varied or set aside under clause 95 or 96'. That is, an application may be made to the AAT in relation to a reconsideration decision with which a person is dissatisfied. The AAT has no jurisdiction until a reconsideration decision is made. Under ordinary circumstances the AAT would advise the department of an application, and this is the point where the department would typically become involved.

As I understand it, this is covered in a recent AAT decision involving Mr Nigel Coombs, with which I assume you are familiar.

I would be grateful if you would please consider sending me a copy the AAT application should you ultimately choose to make such an application. This would help us ensure we get involved at the earliest stage. In any event, the Secretary of the Department of Education and Training should be named as the respondent in the papers you lodge with the AAT.

I do not believe the department is able to help further with this aspect of the matter.

Special circumstances

Subclause 46(2) depends upon the existence of 'special circumstances', as defined by clause 48, which states that:

For the purposes of paragraph 46(2)(c), special circumstances apply to the person if and only if the * VET provider receiving the application is satisfied that circumstances apply 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.

Further information on special circumstances is available on the Study Assist website at www.studyassist.gov.au/sites/studyassist/payingbackmyloan/re-crediting-a-help-debt/pages/remitting-a-help-debt

I would recommend you pay particular attention to this definition in progressing the matter.

Review processes – clause 51

You also asked about review processes in relation to clause 51 of Schedule 1A of the *Higher Education Support Act 2003*, and sought some clarification.

Subclause 51(1) provides that:

- (1) A VET provider must, on the Secretary's behalf, re-credit a person's FEE-HELP balance with an amount equal to the amounts of VET FEE-HELP assistance that the person received for a VET unit of study if:
 - (a) the person has been enrolled in the unit with the provider; and
 - (b) the person has not completed the requirements for the unit during the period during which the person undertook, or was to undertake, the unit because the provider ceased to provide the unit as a result of ceasing to provide the course of which the unit formed part; and
 - (c) the VET tuition assurance requirements applied to the provider at the time the provider ceased to provide the unit; and
 - (d) the person chose the option designated under the VET tuition assurance requirements as VET tuition fee repayment in relation to the unit.

A provider's decision under clause 51 would be an original decision.

Subclause 51(2) provides that '[t]he Secretary may re-credit the person's FEE-HELP balance under subclause (1) if the provider is unable to do so'. In this context also, our view is that unable to act means a provider cannot take the action - an example might be where a provider perhaps ceased to exist. A refusal to re-credit does not equate to a provider being unable to act.

An original decision made in relation to clause 51 is not a reviewable VET decision. The operation of the provision is however based on four objective findings of fact (as per paragraphs 51(1)(a) – (d)).

Review of an original decision therefore would need to proceed through the courts, and I would recommend you seek legal advice should you wish to pursue that course.

However, before you take that step, I will agree to review the matter informally, subject to you providing sufficient reason, evidence and other material indicating it would be appropriate to do so. Any such informal review would be confined only to the terms of the provision.

Inaccurate records, etc.

Thank you for bringing to our attention the issues about inaccurate student records and quality of training.

We manage VET FEE-HELP providers on a risk basis, and will of course take your input into account.

The department's focus is VET FEE-HELP, and its administration as an income contingent student loan. The issues you raise about quality are matters for the Australian Skills Quality Authority, and I note you have been in contact with them.

I do not believe the department is able to help further with this aspect of the matter at this time.

Freedom of information

I note that you have mentioned freedom of information, and may be interested in making a request under the *Freedom of Information Act 1982* (FOI Act). To assist you to make a valid request, I would note that the FOI Act sets out the requirements that a request must:

- be in writing;
- state that it is an application for the purposes of the FOI Act;
- provide information concerning the document as is reasonably necessary to identify the document; and
- provide an address (e.g. an email address) for the purposes of correspondence.

In addition, requests must be sent to the address specified by the agency. Noting the above, if you wish to proceed to make a request, please send your request by email to foi@education.gov.au, or if you prefer, by post to:

FOI Team Leader
Legal and Investigations Group
C50MA10
GPO Box 9880
CANBERRA ACT 2601

Further information about FOI is available on www.education.gov.au/freedom-information-0.

Brett Peterson
VET FEE-HELP Branch | Skills Programmes Group
Australian Government Department of Education and Training

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From:
Sent: Wednesday, 2 March 2016 9:08 AM
To: Education - USI Admin
Cc: Education - TQSS - Tertiary Study Enquiries
Subject: URGENT - USI transcripts and apparent misuse of VFH Funding

Dear

I cannot thank you all enough for assisting us to date to address these matters regarding not only the issuance of incomplete and inaccurate academic transcripts by the BHFS, but the apparent misuse of my VFH tuition funding for apparent remedial flights, etc. Thanks Ellie - see your email below. (Ellie, my daughter's new and accurate CPL and MECIR transcripts from the NEW Flying School, FTA here in Adelaide, have been forwarded to you/USI last week so please disregard all prior inaccurate records from the Bruce Hartwig Flying School for Fanaafi Sopaemalelagi as mentioned to you in August 2015.

I am still in the lengthy process of a repeated Stage 2 Appeals Process with BHFS (see confidential copy included here for your perusal and background information - please do let me know if I need to elaborate on any point or whether any corrections/clarifications are needed as I am not a lawyer).

I would, however, like clarification from your Department Tony and Mary-Anne as to who (your Department or the AAT or ASQA) has/have the jurisdiction over hearing my case based on Section 46 and/or Section 51 of the HESA Act 2003. The AAT is equally confused and is requesting students seek this clarification from your yourself Tony as the Secretary. Mary-Anne has been very helpful by phone, but we will need a written response from you clarifying this matter of jurisdiction, or whether further investigation from ASQA is first required to substantiate non-compliance of the RTO and/or HESA/ASQA Regulations.

As we need to submit this material to the AAT by 8-3-2016, can I kindly ask for an immediate URGENT response so that the Deputy President Bean of the AAT here in Adelaide can formulate an opinion as to the best process to order a re-credit if sufficient grounds for a re-credit are demonstrated by each student pilot.

DP Bean claims that she as the AAT does have jurisdiction over Section 46 but that we need to clarify from the DET as to whether it has the power to make such a re-order or whether this power should be given to an independent external reviewer such as the AAT? We are about to appear before the AAT for the 5th time on March 22 and kindly seek your utmost support.

Finally, can we use the Freedom Of Information Application process to seek copies of your Department's written instructions from Chris James to advise the RTO that use of VFH Funds for students' apparent unsubstantiated remedial flights is both improper and against your Department's intended use of these VFH Funds as the practice is apparently continuing today and is the matter of apparent further complaints from student pilots with respect to this misuse of VFH Funds?

We are using our FOI rights to help us clarify the usage of our training funding by the RTO, BHFS.

Thank you for following up on this protracted request to your Department of Education and Training to seek closure of the request for a VFH Re-credit.

Yours sincerely,

PS: STAGE 2 APPEAL PROCESS FOR A FULL VET Fee-Help RE-CREDIT

Bruce Hartwig Flying School Pty Ltd
9 Dakota Drive, Parafield Airport 5106.
Tuesday, March 1, 2016

Dear

I refer to your School's response to my Stage 1 Application for a course refund under S. 51 of the Higher Education Support Act 2003. The review to my Stage 1 Application was dated and received on 29/02/2016 and signed by Mr. Johnston.

I request a review of _____, _____, based upon the fact that he has neither addressed my complaint in full nor the new requirements of the NCVET.

_____ refers to a requirement for me to establish that I did not complete 16 Vet Fee Help Units.

1. To my knowledge, and as discussed during the AAT Conference of 19th January 2016 and confirmed by ASQA and also Mr. Chris James (the then Assistant Director of VET), the 15725SA Advanced Diploma of Aviation (ADA) Course I enrolled in was a single unit course. This fact alone makes _____ response nonsensical. All 58 modules formed the single Unit ADA Course.
2. My Stage 1 Complaint was clear. Your School did not provide/deliver to me at least 28 of the 58 Modules for this single unit ADA Course. It is not for me to prove that what I claimed you didn't deliver was not delivered. It is for your School to prove that it did deliver the 28 disputed Modules of the ADA Course. This ought to be a simple process for your School as it is now a regulatory requirement of all RTOs (see details of the National Centre for Vocational Education and Training Research (NCVER) below);

1. provide attendance records of the disputed Modules
2. provide dates of the program on which you delivered the Modules
3. provide my academic achievement records for the Modules
4. provide the name(s) of the lecturer who delivered the Modules on the School's behalf and
5. provide sample notes and lesson plans from each Module.

_____ 's claim in Para 2 of his "Discussion", commencing; "Even if the Units were not provided to you....." also has no logical basis. The 15725SA Advanced Diploma Course was a tertiary course of study. Your School would have had a program to deliver all 58 Modules which made up the Unit and it is now a regulatory requirement of all RTOs (see details of the National Centre for Vocational Education and Training Research (NCVER) below).

_____ claim that I did not progress sufficiently in my studies to be able to begin/complete those Modules cannot be supported.

Your School did not provide me with any accurate academic achievement record for the academic study modules during the period of the ADA Course or within the designated 30 days after the Course Completion Date (23-6-2015). The only record, which refers to my academic achievement for the whole 58 Module ADSA Course, was the result sheet which referred to 16 module course codes, which are subject to my claim that they were also not delivered. Most importantly, as the ADA Course was a single Unit course, the Modules which formed the course were not integrated (i.e. no academic module was reliant upon another).

I believe I can prove that your School made a conscious decision to cease delivery of my course in or around February 2015. Following your School Directors' decision to cease delivery of my ADA Course, I was subjected to coercion and offered a bribe (in the form of financial credits worth tens of thousands of dollars), in a futile attempt to force me to withdraw from my ADA Course like many other student pilots did.

When your initial attempts of persuasion failed;

1. Your School made unjustifiable financial claims against me (i.e. an apparent Student Gap Payment based on apparent Skills For All State Funding received by the School for apparently all 16 and/or 58 Modules apparently delivered to me by the School – still under dispute).

2. Your firm, via your Lawyer's office, threatened legal action against my father and fellow students, who reasonably wished to discuss the matter your firm had put before them as a matter of truth and public interest.
3. You misused my VET Fee-Help Funds by utilizing them for other than my ADA Course tuition fees, making further financial demands on me to pay for two extra flights and this unsubstantiated Student Gap Payment, and
4. Refused to make appropriate tuition resources available to me that were required for myself and fellow student pilots to complete our ADA Course in a timely manner before the contracted end date of 23-6-2015.

As evidence to my claims above, I have a plethora of emails, diary notes and letters written by the School's Directors and/or I suggest you utilize your resources to find this correspondence within your records, and make available to the NCVER my accurate academic progress (including details of all my qualifications, all of the designated 58 modules attempted and/or undertaken, and the outcomes achieved for delivered/completed modules) and make yourself fully aware of the liabilities of the situation.

As an RTO, you are required to provide accurate and current information about the training your School delivered to me since Jan 1 2015 as a condition of your RTO registration, and as an RTO you are able to make corrections (where errors or omissions are identified) to the inaccurate training information that your School has provided to me and may have submitted to the DET and/or the NCVER, from which my USI Transcripts will be generated.

Thank you in advance,

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PS - The National Centre for Vocational Education and Training Research (NCVER)

Later this year students with a USI account will be able to access records of the training they have undertaken since 1 January 2015 via the Transcript Service. As a condition of their registration, Registered Training Organisations (RTOs) are now required to submit information about the training undertaken by their students to the National Centre for Vocational Education and Training Research (NCVER). It is this information, which is kept in NCVER's national data collections and which includes details of qualifications, units or modules undertaken and the outcomes achieved, that students will be able to view using the USI and from which they will be able to develop a transcript of their training achievements since 1 January 2015. Students will control access to this information and will be able to provide it to third parties if and as they wish.

Where students consider that the information held or issued by an RTO regarding their training is incorrect or incomplete, they will need to raise the issue with their RTO. Where a student cannot resolve the issue to their satisfaction, they can escalate the matter to the appropriate authority. In your case I understand that you have approached the South Australian Office of the Training Advocate, which is currently investigating your complaint.

As RTOs are required to provide accurate and current information about the training they deliver as a condition of their registration, they will be able to make corrections to the training information they have submitted to the NCVER, from which USI Transcripts are generated, where errors or omissions are identified.

From: Education - USI Admin

Sent: Tuesday, 1 March 2016 4:10 PM

To: _____

Dear _____

I refer to your queries about the Unique Student Identifier (USI) Transcript Service in connection with the training undertaken by your daughter

Later this year students with a USI account will be able to access records of the training they have undertaken since 1 January 2015 via the Transcript Service. As a condition of their registration, Registered Training Organisations (RTOs) are now required to submit information about the training undertaken by their students to the National Centre for Vocational Education and Training Research (NCVER). It is this information, which is kept in NCVER's national data collections and which includes details of qualifications, units or modules undertaken and the outcomes achieved, that students will be able to view using the USI and from which they will be able to develop a transcript of their training achievements since 1 January 2015. Students will control access to this information and will be able to provide it to third parties if and as they wish.

Where students consider that the information held or issued by an RTO regarding their training is incorrect or incomplete, they will need to raise the issue with their RTO. Where a student cannot resolve the issue to their satisfaction, they can escalate the matter to the appropriate authority. In your case I understand that you have approached the South Australian Office of the Training Advocate, which is currently investigating your complaint.

As RTOs are required to provide accurate and current information about the training they deliver as a condition of their registration, they will be able to make corrections to the training information they have submitted to the NCVER, from which USI Transcripts are generated, where errors or omissions are identified.

However, I must stress that the USI Office has no authority to intervene or adjudicate in disputes between students and their RTOs in respect of training or assessment or certification matters. The authority of the USI Office extends solely to the issuing of USIs and, when the Transcript Service becomes available, to enabling USI holders to view their training records as submitted to the NCVER and generate a transcript from these.

I should also explain that the USI Transcript Service will be a secondary source of training information for individuals, over and above that which RTOs will have already provided to their students. The USI Transcript Service will not in any way supersede or lessen RTOs' primary obligation to issue and maintain documentation about qualifications and training assessment. The USI Transcript Service will be valuable in providing individuals with consolidated information about their training drawn from the data held by NCVER, but will not replace the actual qualifications and training documentation issued by RTOs.

I trust that this information is helpful and I hope that the matter relating to your daughter's training records will find a satisfactory resolution. (IF NEEDED - Should you wish to clarify aspects of the USI Transcript Service further, you could contact Ms Saloni Sharan on _____)

Your sincerely

Ellie

Unique Student Identifier Office

Skills Policy Division

17 Moore Street, Canberra City ACT 2601

PH: 1300 857 536

www.usi.gov.au

PETERSON,Brett

From: PETERSON,Brett
Sent: Tuesday, 29 March 2016 12:26 PM
To:
Subject: FW: Delegation from the Secretary [SEC=UNCLASSIFIED]
Attachments: 2013 Instrument of delegation.pdf; 2016 Instrument of delegation.pdf

Thank you for your email below.

I hadn't forgotten about you. I did however want to check with our FOI team to be sure they had no concerns.

Attached for your information is a copy of the relevant pages from the instrument of delegation made by the Secretary on 4 December 2013. I believe this is the instrument that would have been in force at the relevant time.

Also attached for your information is a copy of the relevant pages from the current instrument of delegation made by the Secretary on 4 January 2016. This will of course apply to decision made on or after that date.

In both cases, paragraph (c) in the instrument is the relevant part.

Brett Peterson
VET FEE-HELP Branch | Skills Programmes Group
Australian Government Department of Education and Training

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From
Sent: Monday, 28 March 2016 4:44 PM
To: PETERSON,Brett
Subject: RE: Delegation from the Secretary

Hello Brett,

Thank you for your patience in clarifying the issue of delegation for me in our telephone conversation last Thursday.

I hope you had a restful Easter break.

I have had over 23 years experience in RTOs.

I appreciate the time and effort you have offered in attempting to resolve this issue.

In your email to [redacted] stated that "The Secretary has, by instrument dated 4 January 2016, made such a delegation."

After speaking to you, I requested that you email me a copy of the prior delegation. As I haven't as yet received it, I assumed you may have misplaced my email address.

I would appreciate if you could send me a copy of the prior delegation, as the Director of Bruce Hartwig Flying School is adamant that the school did not have such a delegation prior to him receiving it via your email in March of this year.

The Administrative Appeals Tribunal, Convenor, Deputy President Katherine Bean, has also requested that she be provided with such documentation.

I would be happy to answer any further questions you may have regarding this matter.

kind regards

Attachment B

copy of matters raised by

May 2016

PETERSON, Brett

From: PETERSON, Brett
Sent: Wednesday, 18 May 2016 5:54 PM
To:
Subject: FW: Inquiry re the process to be followed should a VFH Re-credit be possible [SEC=UNCLASSIFIED]

I am writing in response to your email below.

As you probably know, students organise their own training, and the department has no role in deciding what VET training anyone can or must do.

The department's role is in administering the VET FEE-HELP scheme, which is an income contingent loan that students may choose to use to help pay for the training they choose.

The issue as between a student and the department therefore relates to the department's records being updated to reflect a re-credit, allowing a balance against the maximum amount available, so that a student may pursue training with another provider. There are some consequent tax issues too.

When a HELP provider re-credits a student's VET FEE-HELP or FEE-HELP balance and remits the debt, the provider must report data through a 'revisions file' to the department. Providers submit a revisions report in relation to each quarter, although they can, if they choose, report data (both debts and remissions) more frequently.

Although HELP debts are collected through the tax system, providers do not report data to the Australian Taxation Office (ATO). All student data, including the revisions data, is reported on the same quarterly cycle to the ATO by the department.

Consequently there is typically a time lag between the student being told the debt has been remitted by the provider, and the data then being reported to the department by the provider, and then a further delay in the data being forwarded to the ATO by the department.

The timing of these processes is as follows:

Submission deadlines	New debts for census dates in the reporting period Revisions reported in the period	Reporting to ATO
31 May	1 January to 31 March	15 June - 31 July
31 August	1 April to 30 June	15 September - 31 October
31 October	1 July to 31 August	15 November - 30 December
31 March (the following year)	1 September to 31 December	15 April - 20 May (the following year)

Where a revision is reported to the department it is processed in the ordinary course, ready for transmission to the ATO at the next opportunity. At that time, a student will be able to see the outcome on their HELP debt by logging on to the myUniAssist portal at <https://app.heims.education.gov.au/myuniassist/Forms/Logon.aspx>. They will need their Commonwealth Higher Education Student Support Number (CHESSN) to login.

Once the data is transferred to the ATO it then falls under the ATO processes in administering and applying the revision (i.e. ATO processing). This adds more time to the student eventually seeing the remitted debt via MyGov or similar.

If students have concerns about their tax matters, and are able to confirm that the provider has submitted revised data, they may wish to contact the ATO and explain to them that a revision of their debt has been forwarded to the department, and discuss options available.

The contact details for the area that takes care of HELP debt discussions of this nature is at www.ato.gov.au/individuals/study-and-training-support-loans/deferring-repayments/

Should the AAT decide to remit a student's debt, the department liaises with the affected provider to have the necessary revisions file submitted.

Brett Peterson
VET FEE-HELP Branch | Skills Programmes Group
Australian Government Department of Education and Training
Ph [REDACTED]
Email [REDACTED]

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From:
Sent: Friday, 13 May 2016 7:28 AM
To: PETERSON, Brett;
Subject: Inquiry re the process to be followed should a VFH Re-credit be possible

Morning Brett,

Can you please advise us who within your DET is best for us to liaise with to discuss the process to be followed by affected student pilots should a VFH Re-credit be awarded to them in our case with BHFS P/L?

There is just an urgency for some to re-commence their training ASAP.

[REDACTED], my daughter, would like to

1. Re-establish a VFH Loan for her ongoing training costs incurred at FTA over the past 12 months
2. Continue her flying training at FTA and complete her ATPL (Advanced Diploma of Aviation) for about a further \$10,000 - this she should have completed under her original VFH Loan 12 months prior
3. Explore an issue that may have arisen at FTA where FTA is on a quota for VFH funding and it may have all been allocated - any student pilots coming across from BHFS to FTA to continue their flying training under a potentially new VFH Loan structure (re-credited possibly) may need some guidance from DET as to what rules are being applied. And
4. Discuss with someone how a CPL and MECIR at FTA (costing \$94,746 at present under a VFH Loan) could also include an ATPL Course for approx \$10,000, but this may exceed your DET VFH maximum of \$99,200? These student pilots have already been compromised enough, but I am sure that many will at least appreciate the opportunity to at least further their flight training even if they no longer can attract full VFH Assistance let alone the DSD Funding that was also once available to them but is no longer available apparently (we are also trying to establish this with DSD/Work Ready, but are only at the Freedom Of Information Stages at present (See below for further explanation).

I am asking, purely theoretically, if the DET would even approve of such an option to have these 20 student pilots re-trained at FTA (or a school of their choice) once they receive their VFH re-credits. These are certainly exceptional circumstances and your theoretical guidance at this stage would be gratefully appreciated as so many student pilots are anxious to recommence their flight trainings again.

We don't wish to pre-empt any decision from the AAT or even the DET, so may be I am out-of-order even asking of you to guide us in a suitable direction in order to attain such information for our own preliminary professional planning purposes.

~~These students remain dismayed as they learnt last week of new falsified academic records for the ADA Course being generated by BHFS P/L in Fanaafi's name and submitted to the SA Department of State Development unbeknownst to the student.~~

Your ongoing assistance Brett is so much appreciated.

Sorry if this appears too presumptive, but we are endeavouring with our pre-planning to somehow continue this ADA Course (or its equivalent) for all affected student pilots who were once enrolled at BHFS P/L but lost this unique opportunity to train through no fault of their own.

Yours sincerely

Attachment C

– copy of advice to ... , and the provider seeking to clarify review arrangements

PETERSON, Brett

From: PETERSON, Brett
Sent: Wednesday, 30 March 2016 9:13 AM
To: KO, Maple
Subject: FW: Bruce Hartwig Flying School Pty Ltd - Nigel Coombs and Fanaafi Sooaemalelagi - VET FEE-HELP re-credit [SEC=UNCLASSIFIED]

Maple,

For consideration please, Note the advice below from [redacted] at the Bruce Hartwig Flying School Pty Ltd that the Department will be invited by the AAT to become involved in a case regarding [redacted] scheduled for 26 April 2016.

Brett Peterson
VET FEE-HELP Branch | Skills Programmes Group
Australian Government Department of Education and Training
Ph: [redacted]
Email: [redacted]

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www.education.gov.au

From: PETERSON, Brett
Sent: Wednesday, 30 March 2016 9:07 AM
To: [redacted]
Subject: FW: Bruce Hartwig Flying School Pty Ltd - Nigel Coombs and Fanaafi Sooaemalelagi - VET FEE-HELP re-credit [SEC=UNCLASSIFIED]

Thank you for your email below.

I recently wrote to [redacted], outlining review processes.

I don't know whether he has shared that with you, so I am writing to be sure you have the same information.

Review processes – clause 46

It appears there may be a need to clarify review processes in relation to clause 46 of Schedule 1A to the *Higher Education Support Act 2003*.

Original decision making

Subclause 46(2) provides that:

- (2) A VET provider must, on the Secretary's behalf, re-credit a person's FEE-HELP balance with an amount equal to the amounts of VET FEE-HELP assistance that the person received for a VET unit of study if:
 - (a) the person has been enrolled in the unit with the provider; and
 - (b) the person has not completed the requirements for the unit during the period during which the person undertook, or was to undertake, the unit; and
 - (c) the provider is satisfied that special circumstances apply to the person (see clause 48); and
 - (d) the person applies in writing to the provider for re-crediting of the FEE-HELP balance; and
 - (e) either:

- (i) the application is made before the end of the application period under clause 49; or
- (ii) the provider waives the requirement that the application be made before the end of that period, on the ground that it would not be, or was not, possible for the application to be made before the end of that period.

A provider's decision under clause 46 would be an original decision.

Subclause 46(3) provides that '[i]f the provider is unable to act for one or more of the purposes of subclause (2), or clause 48, 49 or 50, the Secretary may act as if one or more of the references in those provisions to the provider were a reference to the Secretary'. In this context, our view is that unable to act means a provider cannot take the action - an example might be where a provider perhaps ceased to exist. A refusal to re-credit does not equate to a provider being unable to act.

An original decision is reviewable in accordance with clause 91. It is a reviewable VET decision.

The decision maker on a reviewable VET decision is defined as follows (per clause 91):

- the VET provider with whom the student is enrolled in the unit; or
- if the Secretary made the decision to refuse the re-crediting—the Secretary.

The decision maker for the original/reviewable decision is the VET provider.

Review/reconsideration

A reviewable decision is then itself subject to reconsideration in accordance with clauses 94, 95 and 96.

Clause 94 provides that:

- (1) The reviewer of a reviewable VET decision is:
 - (a) if the decision maker was a VET provider acting on behalf of the Secretary—the Secretary; or
 - (b) in any other case—the decision maker, but see subclause (2).
- (2) If:
 - (a) a reviewable VET decision was made by a delegate of a decision maker; and
 - (b) the decision is to be reconsidered by a delegate of the decision maker;
 then the delegate who reconsiders the decision must be a person who:
 - (c) was not involved in making the decision; and
 - (d) occupies a position that is senior to that occupied by any person involved in making the decision.

The Act places the power to make the review decision with the Secretary. However, clause 98 allows the Secretary to make certain delegations. Specifically, subclause 98(2) provides that '[t]he Secretary may, in writing, delegate to a review officer of a VET provider the Secretary's powers under Subdivision 16-C to reconsider reviewable VET decisions made by the provider'. The Secretary has, by instrument dated 4 January 2016, made such a delegation. Similar delegations covering earlier periods were also made.

In a case such as we now have therefore, the decision maker for the review decision is the review officer in the VET provider.

Subclause 96(2) provides a timeliness limitation on this decision, in that the reviewer is taken to have confirmed the decision if they do not give notice of a decision to the person within 45 days after receiving the person's request.

Administrative Appeals Tribunal

Clause 97 in turn provides that '[a]n application may be made to the Administrative Appeals Tribunal for the review of a reviewable VET decision that has been confirmed, varied or set aside under clause 95 or 96'. That is, an application may be made to the AAT in relation to a reconsideration decision with which a person is dissatisfied. The

AAT has no jurisdiction until a reconsideration decision is made. Under ordinary circumstances the AAT would advise the department of an application, and this is the point where the department would typically become involved.

It would be usual for the Secretary of the Department of Education and Training to be named as the respondent in the AAT (the original decision is made by a VET provider, under the terms of the law, 'on the Secretary's behalf', a reconsideration of the original/reviewable decision is undertaken by the VET provider as a delegate of the Secretary, and the debt for which remission is sought is to the Australian Government).

Special circumstances

Subclause 46(2) depends upon the existence of 'special circumstances', as defined by clause 48, which states that:

For the purposes of paragraph 46(2)(c), special circumstances apply to the person if and only if the VET provider receiving the application is satisfied that circumstances apply 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.

Further information on special circumstances is available on the Study Assist website at www.studyassist.gov.au/sites/studyassist/payingbackmyloan/re-crediting-a-help-debt/pages/remitting-a-help-debt

Review processes – clause 51

As I understand it, the potential application of clause 51 of Schedule 1A to the *Higher Education Support Act 2003* was also raised at the AAT.

Subclause 51(1) provides that:

- (1) A VET provider must, on the Secretary's behalf, re-credit a person's FEE-HELP balance with an amount equal to the amounts of VET FEE-HELP assistance that the person received for a VET unit of study if:
 - (a) the person has been enrolled in the unit with the provider; and
 - (b) the person has not completed the requirements for the unit during the period during which the person undertook, or was to undertake, the unit because the provider ceased to provide the unit as a result of ceasing to provide the course of which the unit formed part; and
 - (c) the VET tuition assurance requirements applied to the provider at the time the provider ceased to provide the unit; and
 - (d) the person chose the option designated under the VET tuition assurance requirements as VET tuition fee repayment in relation to the unit.

A provider's decision under clause 51 would be an original decision.

Subclause 51(2) provides that '[t]he Secretary may re-credit the person's FEE-HELP balance under subclause (1) if the provider is unable to do so'. In this context also, our view is that unable to do so means a provider cannot take the action - an example might be where a provider perhaps ceased to exist. A refusal to re-credit does not equate to a provider being unable to act.

An original decision made in relation to clause 51 is not a reviewable VET decision. The operation of the provision is however based on four objective findings of fact (as per paragraphs 51(1)(a) – (d)).

Review of an original decision therefore would need to proceed through the courts.

Brett Peterson
VET FEE-HELP Branch | Skills Programmes Group
Australian Government Department of Education and Training
F... ..

u

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From:
Sent: Tuesday, 29 March 2016 6:19 PM
To: PETERSON.Brett
Cc: ..
Subject: Re: Bruce Hartwig Flying School Pty Ltd - - VET FEE-HELP re-credit [SEC=UNCLASSIFIED]

Brett

Many thanks for sending through the Instrument of Delegation. We can now proceed as per instructions from Deputy-President Bean at the AAT.

Also, the Department will be invited by the AAT to become involved in a case regarding .., scheduled for 10am (ACST) on 26 April 2016. My understanding is that the involvement or otherwise is at the discretion of the Department, as the representative capacity has already been delegated to the School.

Regards

.....
, Bruce Hartwig Flying School

On 29 Mar 2016, at 12:09 PM, PETERSON,Brett wrote:

u>

Attached for your information is a copy of the relevant pages from the instrument of delegation made by the Secretary on 4 December 2013. I believe this is the instrument that would have been in force at the relevant time for this particular case.

Also attached for your information is a copy of the relevant pages from the current instrument of delegation made by the Secretary on 4 January 2016. This will of course apply to decisions made on or after that date.

In both cases, paragraph (c) in the instrument is the relevant part.

I was a little surprised to get your email. I was not aware that you had made a request of the department to be provided with a copy of the instrument of delegation – perhaps it has been directed elsewhere in the department. I also note the requirement for VET providers to consider and review requests from students for re-crediting is set out in detail over several pages in the *VET Administrative Information for Providers* – see page 51 and after at [https://docs.education.gov.au/system/files/doc/other/vet_aip_september_2015-20150916 .pdf](https://docs.education.gov.au/system/files/doc/other/vet_aip_september_2015-20150916.pdf)

Brett Peterson
VET FEE-HELP Branch | Skills Programmes Group
Australian Government Department of Education and Training

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From: [REDACTED]
Sent: Monday, 29 March 2016 5:20 PM
To: [REDACTED]; PETERSON, Brett; Nigel Coombs
Cc: [REDACTED]
Subject: Re: Bruce Hartwig Flying School Pty Ltd - VET FEE-HELP re-credit [SEC=UNCLASSIFIED]

Dear

The Department has not yet furnished the School with a formal signed legal Instrument of Delegation. Until this occurs, we are unable to further consider your request.

Regards,

Sent from Outlook Mobile

On Sun, Mar 27, 2016 at 11:23 PM -0700 wrote:

Dear [REDACTED]

As requested by the Department of Education, as to an answer from yourself & requesting a Full Vet Fee Help Re-Credit, has not been given to myself nor to the Department of Education in response to a formal request by email from Mr Brett Peterson, of the Department of Education, as outlined in his email below. I would formally like to ascertain an answer from yourself regarding this overdue and prolonged request for a Full Vet Fee Help Re-Credit concerning all parties involved please.

Kind Regards,

From: PETERSON, Brett
Sent: Tuesday, 15 March 2016 10:01 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Bruce Hartwig Flying School Pty Ltd - VET FEE-HELP re-credit [SEC=UNCLASSIFIED]

To:

Cc:

De

A former student of Bruce Hartwig Flying School Pty Ltd (BHFS) has written to the Department of Education and Training seeking review of the decision by BHFS not to re-credit under clause 46 of the Higher Education Support Act 2003 (HESA).

We understand there has been consideration of the matter by the Administrative Appeals Tribunal (AAT), and that BHFS agreed to review the matter in accordance with clause 51 of HESA.

If BHFS conclude that re-credit is not appropriate under clause 51, then we would be grateful if they would please conduct a reconsideration of the request made in accordance with clause 46. That reconsideration (which would be under the terms of clause 95) should, as the AAT has indicated, specifically address the terms of clause 46, including a consideration of whether there are special circumstances as defined by clause 48.

The AAT was of course correct to conclude that under the terms of clause 94 the power of reconsideration has been given to the Secretary of the Department of Education and Training. However, the AAT will not have been specifically aware that the Secretary has delegated power to conduct a reconsideration under clause 95 to a review officer of a VET FEE-HELP provider (who is appropriately independent and senior).

If BHFS is unable to conduct a reconsideration for some reason, would you please let me know.

I would be grateful if you would let me know the outcome of your consideration of these matters please.

Further information regarding formal complaints and special circumstances is below:

If a student has a complaint they are able to raise it with their provider through the provider's formal grievance process. This includes requests for HELP debts to be remitted. A provider has the discretion to remit or cancel a student's HELP debt dependent on the nature of the complaint. If the matter cannot be satisfactorily resolved following your complaint, 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. This information will be outlined in the provider's policy documents.

Students may also request debt remission in cases where certain defined special circumstances apply, and reviews of unsuccessful applications can be referred to the Administrative Appeals Tribunal (AAT). All providers should have their special circumstances policy available on their website.

Further information on special circumstances is available on the Study Assist website at www.studyassist.gov.au/sites/studyassist/payingbackmyloan/re-crediting-a-help-debt/pages/remitting-a-help-debt, and additional information on applications to the AAT is available at www.aat.gov.au/applying-for-a-review. Please note, there are no provisions under the *Higher Education Support Act 2003* to have a debt remitted if the student has successfully completed their unit of study.

I also refer you to Chapter 10 (Re-crediting and remission) of the Higher Education Providers: VET Administrative Information for Providers (AIP), available at: <http://www.education.gov.au/help-resources-providers>.

Regards,

Brett Peterson
VET FEE-HELP Branch | Skills Programmes Group
Australian Government Department of Education and Training

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Regards

Brett Peterson, Hartwig Air Group

Parafield Airport | South Australia | 5106
Office: +61 (0) 8 8258 4244 |

www.hartwigair.com.au
www.hartwigaircharter.com.au
www.hartwigairinternational.com



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PETERSON, Brett

From: PETERSON, Brett
Sent: Tuesday, 15 March 2016 2:06 PM
To:
Subject: - Vet Fee Help Re-credit - Bruce Hartwig [SEC=UNCLASSIFIED]
Attachments: q0ttar615c15tz1-2016_Coombs and Hartwig Air - written reasons.pdf; q136d6ufw0i5tz1-2015_6212-20160308-bzelea.pdf; N gel

Thank you for your email below. I am writing to follow up our telephone conversation as promised.

You should also have seen the email I have sent separately to the Bruce Hartwig Flying School.

As I understand it, a commitment was given by the school to consider whether a re-credit should be made because your course has ceased to be provided. I assume they will formally advise you of the outcome of this shortly.

A claim for re-credit based on special circumstances goes through a few steps.

This is what is known as a reviewable VET decision, and is subject to a right of review. A person who is dissatisfied with a review decision may request a reconsideration. A person who is dissatisfied with a reconsideration decision may request review by the AAT. The matter can then flow on to the courts.

I understand you may see it otherwise, however my understanding is that the AAT has reached the conclusion that a reconsideration has not happened. The finding was 'the Tribunal does not have jurisdiction until a clause 46 decision has been made by the provider and also reconsidered by the Secretary of the Department or his or her delegate'.

The Secretary has delegated the power relating to reconsideration to review officers in VET providers. This is the step I have asked the school to take formally.

Brett Peterson
VET FEE-HELP Branch I Skills Programmes Group
Australian Government Department of Education and Training

Email: brett.peterson@education.gov.au

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From: ilto
Sent: Wednesday, 9 March 2016 12:39 PM
To: COOK, Tony
Cc:
Subject: RE: VET FEE HELP RE-CREDIT

Good Morning,

To the Secretary of the Department of Education and Training.

My name _____ and I would like to add the following attachments addressing all matters
concerned

The following attachments are for your reference.

Kind Regards,

_____↑

Attachment D

- copy of request for reconsideration of the provider's decision

PETERSON, Brett

From: [REDACTED]
Sent: Tuesday, 19 April 2016 3:28 PM
To: [REDACTED]
Cc: [REDACTED], PETERSON, Brett;
Subject: Re: Bruce Hartwig Flying School Pty Ltd - Nigel Coombs - VET FEE-HELP re-credit [SEC=UNCLASSIFIED]

Our formal Review Officer is [REDACTED], who fills the role [REDACTED] played no part in either your training or prior assessments of your S.46 claim.

As previously stated in my 8 April 2016 email to you (below), please provide an application to the School for [REDACTED] to review on behalf of the Department of Education & Training.

If you wish to use your email below as that application, please indicate this is the case.

Alternatively, you may wish to prepare a new summary if you wish to add any more information. Mr. Daw (copied on this email) will be given access to all correspondence sent to you, and received from you. A decision will then be made within 45 days from receipt of your application.

On 19 Apr 2016, at 2:32 PM, [REDACTED]

wrote:

Dear [REDACTED]

(1) Who is your liaison officer, with regards to making a formal decision of a Full Vet Fee Help Re-credit, is it yourself [REDACTED] as a Director of BHFS (Bruce Hartwig Flying School PTY LTD), or is it [REDACTED], also a Director of BHFS.

Under Section (96) Schedule 1A, Reconsideration of reviewable VET decisions on request.

As I have clearly submitted my complaints to yourself in writing both Stage 1 in July 2015, and on the 29th October 2015 "Stage 2 (appeal)" clause 51 Re-crediting a person's FEE-HELP balance if the provider ceases to provide course of which units forms part of the Act Sub-clause (1)A (1)B. I also seemed a review of this decision dated 17th of November I was also rejected by yourself, on the 26th of November, and of which has been received by yourself and rejected by you. Following this I lodged an application with the Tribunal seeking a review of my numerous Stage 1 and stage 2 appeals, as outlined by the AAT's (Administrative Appeals Tribunal) findings, by Deputy President K Beam.

As outlined in the Legislation, Higher Education Support Act 2003, Schedule 1A, Clauses 46, 51, 94, 96, 97.

(2) I once again applied to you [redacted] on the grounds of (Special Circumstances), seeking a Full Vet Fee Help Re-credit under sub-clause 46(2), and again was accessed and rejected by you.

(3) 94 Reviewer of decisions:

Stating the relevant pages from within the instrument of delegation made by the Secretary on 4 December 2013, and the relevant pages from the current instrument of delegation made by the Secretary on 4 January 2016. This will of course apply to decisions made on or after that date, as mentioned within the instrument. The provider Bruce Hartwig Flying School PTY LTD, ceased to continue the course upon taking over the flying school, of aviation and non aviation modules, which made up the One Unit, Advance Diploma of Aviation 15725SA course. I have requested on numerous occasions by email, to offer a remission of a Full Vet Fee Help Re-credit & expenses between the full course cost, due to non-delivery of the Advance Diploma Course, under section 51,

After many face to face meeting with both yourself, and [redacted], regarding non-delivery of course, and the providers *Contractual Obligations*, as outlined in my original contract, with Bruce Hartwig Flying School. And under the HESA VET Guidelines 2015; Division 4-General Requirements, 13 Meaning of ceases to provide an eligible VET course of study, (*CEASED*). I have requested on many occasions but have not received, full academic transcripts for delivery of the 58 modules you have claimed to deliver three of which were electives, also noting the academic transcript of my academic records which have been forwarded to me, that you claim to have delivered (16) modules, which you have marked as failed, but were never delivered to me.

As a result of your claims of delivery, these records now appear on the STELA printout of Academic Transcript, I received from BHFS, as failed. As a result of all of BHFS, Directors under new ownership of unfulfilled promises to myself and other students on the Advance Diploma of Aviation 15725Sa of full delivery of our course, has neither delivery of the (ADA) or my numerous request for a "FULL VET FEE HELP RE-CREDIT".

And your repeated attempts claiming a funding gap for modules that were never delivered to me claiming \$27,840.00 and claiming remedial flights, again by ceasing delivery of my course (ADA-15725SA).

On your repeated attempts to force the Director of BHFS, PTY LTD to me, by your Legal lawyer, [redacted] [redacted] Dated 28th of June 2015 stating in his words "Malice and breached the Schools code of Conduct, stating I have consistently and deliberately breached". As well as the (*Trade Practices Act Section 18 of the Australian Consumer Law*). Because I did not sign your Schools new legal contract, forcing myself and others to "Withdraw From The Course". As I was concerned for my own wellbeing and well as my fellow students; Who were obliged by both Directors to withdraw from the course under Coercion, by yourself and [redacted]; the CFI, as in their best interest. Without proper legal advice, or proper informative and written information, as well as feeling under duress, by yourself & [redacted], as Directors of BHFS,

(4) Clause 46 Remission:

On the basis of section 51, sub-clause (1) A (1) B. The provider ceased to deliver (The Advance Diploma of Aviation 15725SA) set outlined under the Higher Education Support Act, as mentioned above. Of which was a one unit course, encompassing 58 Modules in total, 6 of the modules were to be electives. Only (3) of these modules needed to be undertaken to complete the Advance Diploma course. I therefore met repeatedly, with all

appropriate requests under these circumstances, Stage (1) and Stage (2) as well as Clause 51 (1) A (2) B.

These circumstances did not make their full impact on myself and other students I believe, until after the census date, and I believe that these circumstances were such that it was impracticable for myself to complete the requirements for the Unit. And as such has caused myself Severe Financial Hardship and emotional stress.

I do also believe this has caused other students, to be in the same impracticable position as myself.

Sincerely,

From: [\[redacted\]](#)

Sent: Friday, 8 April 2016 1:42 PM

Subject: Re: Bruce Hartwig Flying School Pty Ltd - [redacted] is - VET FEE-HELP re-credit
[SEC=UNCLASSIFIED]

Nigel

Mr. Peterson sent the School the relevant Instruments of Delegation on 29 March 2016, and we have subsequently appointed a suitably qualified Review Officer in anticipation of receiving a submission from yourself. No such document has arrived as yet, which would presumably be similar (if not the same) as the one sent to the Secretary of the Department of Education & Training. The relevant legislative requirements are as follows:

96 Reconsideration of reviewable VET decisions on request

- (1) A person whose interests are affected by a *reviewable VET decision may request the *reviewer to reconsider the decision.
- (2) The person's request 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.
- (3) The notice must set out the reasons for making the request.
- (4) After receiving the request, the *reviewer must reconsider the decision and:

- (a) confirm the decision; or
- (b) vary the decision; or
- (c) set the decision aside and substitute a new decision.
- (5) The *reviewer's decision (the decision on review) to confirm, vary or set aside the decision takes effect:
- (a) on the day specified in the decision on review; or
- ComLaw Authoritative Act C2013C00029
Schedule 1A VET FEE-HELP Assistance Scheme
Part 3 Administration
Division 16 Review of decisions
Clause 97

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.300 Higher Education Support Act 2003

- (b) if a day is not specified—on the day on which the decision on review was made.
- (6) The *reviewer must give the person written notice of the decision on review.
- (7) The notice:
- (a) must be given within a reasonable period after the decision on review is made; and
- (b) must contain a statement of the reasons for the decision on review.
- (8) The *reviewer is taken, for the purposes of this Division, to have confirmed the decision if the reviewer does not give notice of a decision to the person within 45 days after receiving the person's request.

Upon receipt of your formal written notice, you will be advised of the decision within 45 days after receipt of same.

Director,

On 5 Apr 2016, at 4:23 PM, I wrote:

Dea

Following Mr Peterson recent email & attachments, dated on the 29th of March 2016.

Stating the relevant pages from within the instrument of delegation made by the Secretary on 4 December 2013, and the relevant pages from the current instrument of delegation made by the Secretary on 4 January 2016. This will of course apply to decisions made on or after that date, as mentioned below.

I would like to know as to whether both yourself and [redacted], Directors of BHFS, have made a final decision of a full Vet Fee Help re-credit for myself regarding the current outlined instruments of delegation.

I would also like an answer by the close of business on or before Monday the 18th of April 2016, which is 14 business days from Mr Peterson's recent email below.

Sincerely,

From: PETERSON, Brett
Sent: Tuesday, 29 March 2016 11:39 AM
To: [redacted] <[redacted]@[redacted].gov.au>
Cc: [redacted]
Subject: RE: Bruce Hartwig Flying School Pty Ltd - VET FEE-HELP re-credit [SEC=UNCLASSIFIED]

Mr

Attached for your information is a copy of the relevant pages from the instrument of delegation made by the Secretary on 4 December 2013. I believe this is the instrument that would have been in force at the relevant time for this particular case.

Also attached for your information is a copy of the relevant pages from the current instrument of delegation made by the Secretary on 4 January 2016. This will of course apply to decisions made on or after that date.

In both cases, paragraph (c) in the instrument is the relevant part.

I was a little surprised to get your email. I was not aware that you had made a request of the department to be provided with a copy of the instrument of delegation – perhaps it has been directed elsewhere in the department. I also note the requirement for VET providers to consider and review requests from students for re-crediting is set out in detail over several pages in the *VET Administrative Information for Providers* – see page 51 and after at https://docs.education.gov.au/system/files/doc/other/vet_aip_september_2015-20150916.pdf

VET Administrative Information for Providers - About this site

docs.education.gov.au

1 General information The July 2014 VET Administrative Information for Providers (VET AIP) was updated

Brett Peterson
VET FEE-HELP Branch I Skills Programmes Group
Australian Government Department of Education and Training

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From: [REDACTED]
Sent: Monday, 28 March 2016 5:39 PM
To: [REDACTED]
Subject: Re: Bruce Hartwig Flying School Pty Ltd - VET FEE-HELP re-credit [SEC=UNCLASSIFIED]

Dear [REDACTED]

The Department has not yet furnished the School with a formal signed legal Instrument of Delegation. Until this occurs, we are unable to further consider your request.

Regards,
Sent from [Outlook Mobile](#)

On Sun, Mar 27, 2016 at 11:23 PM -0700,
[REDACTED] wrote:

Dear [REDACTED]

As requested by the Department of Education, as to an answer from yourself & [REDACTED] requesting a Full Vet Fee Help Re-Credit, has not been given to myself nor to the Department of Education in response to a formal request by email from Mr Brett Peterson, of the Department of Education, as outlined in his email below.

I would formally like to ascertain an answer from yourself regarding this overdue and prolonged request for a Full Vet Fee Help Re-Credit concerning all parties involved please.

Kind Regards,

From: PETERSON, Brett
Sent: Tuesday, 15 March 2016 1:05:31 PM
To: c
Cc: 1
Subject: Bruce Hartwig Flying School Pty Ltd - VET FEE-HELP re-credit
[SEC=UNCLASSIFIED]

To: Mr David [redacted] (Primary VET contact in HITS)
Cc: "

Dear Mr

A former student of Bruce Hartwig Flying School Pty Ltd (BHFS), has written to the Department of Education and Training seeking review of the decision by BHFS not to re-credit under clause 46 of the Higher Education Support Act 2003 (HESA).

We understand there has been consideration of the matter by the Administrative Appeals Tribunal (AAT), and that BHFS agreed to review the matter in accordance with clause 51 of HESA.

If BHFS conclude that re-credit is not appropriate under clause 51, then we would be grateful if they would please conduct a reconsideration of the request made in accordance with clause 46. That reconsideration (which would be under the terms of clause 95) should, as the AAT has indicated, specifically address the terms of clause 46, including a consideration of whether there are special circumstances as defined by clause 48.

The AAT was of course correct to conclude that under the terms of clause 94 the power of reconsideration has been given to the Secretary of the Department of Education and Training. However, the AAT will not have been specifically aware that the Secretary has delegated power to conduct a reconsideration under clause 95 to a review officer of a VET FEE-HELP provider (who is appropriately independent and senior).

If BHFS is unable to conduct a reconsideration for some reason, would you please let me know.

I would be grateful if you would let me know the outcome of your consideration of these matters please.

Further information regarding formal complaints and special circumstances is below:

If a student has a complaint they are able to raise it with their provider through the provider's formal grievance process. This includes requests for HELP debts to be remitted. A provider has the discretion to remit or cancel a student's HELP debt

dependent on the nature of the complaint. If the matter cannot be satisfactorily resolved following your complaint, 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. This information will be outlined in the provider's policy documents.

Students may also request debt remission in cases where certain defined special circumstances apply, and reviews of unsuccessful applications can be referred to the Administrative Appeals Tribunal (AAT). All providers should have their special circumstances policy available on their website.

Further information on special circumstances is available on the Study Assist website at www.studyassist.gov.au/sites/studyassist/payingbackmyloan/re-crediting-a-help-debt/pages/remitting-a-help-debt, and additional information on applications to the AAT is available at www.aat.gov.au/applying-for-a-review. Please note, there are no provisions under the *Higher Education Support Act 2003* to have a debt remitted if the student has successfully completed their unit of study.

I also refer you to Chapter 10 (Re-crediting and remission) of the Higher Education Providers: VET Administrative Information for Providers (AIP), available at: <http://www.education.gov.au/help-resources-providers>.

Regards,

Brett Peterson
VET FEE-HELP Branch | Skills Programmes Group
Australian Government Department of Education and Training
Ph
Email:

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Regards

Hartwig Air Group

Parafield Airport | South Australia | 5106
Office: +61 (0) 8 8258 4244 | Mobile: +61 (0)

www.hartwigair.com.au
www.hartwigaircharter.com.au
www.hartwigairinternational.com

e:

<HA animated-lense-flare.gif>

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Regards

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under the HESA VET Guidelines 2015; Devision 4-General Requirements, 13 Meaning of ceases to provide an eligible VET course of study, (CEASED).

I have requested on many occasions, but have not received, full academic transcripts for delivery of the 58 modules you have claimed to deliver three of which were electives, also noting the academic transcript of my academic records which have been forwarded to me, that you claim to have delivered (16) modules, which you have marked as failed; but were never delivered to me.

As a result of your claims of delivery, these records now appear on the STELA printout of Academic Transcript, I received from BHFS, as failed. As a result of all of BHFS, Directors under new ownership of unfulfilled promises to myself and other students, on the Advance Diploma of Aviation 15725SA of full delivery of our course, has neither been delivered the (ADA course) or my numerous request for a "FULL VET FEE HELP RE-CREDIT".

And your repeated attempts claiming a funding gap for modules that were never delivered to me, claiming \$27,840.00 in funding gap and claiming remedial flights, by ceasing delivery of my course, (ADA-15725SA).

Or your repeated attempts as a Director of BHFS, PTY LTD to me, by your Legal lawyer,

..... Dated 28th of June 2015 stating in his words "Malice and breached the Schools code of Conduct, stating I have consistently and deliberately breached". As well as the (*Trade Practices Act Section 18 of the Australian Consumer Law*). Because I did not sign your Schools new legal contract, forcing myself and others to "Withdraw From The Course".

As I was concerned for my own wellbeing and as well as my fellow students; Who were obliged by both Directors to withdraw from the course under Coercion, by yourself and & the CFI, as in their best interest. Without proper legal advice, or proper informative and written information, as well as feeling under duress, by yourself & as Directors of BHFS.

(4) Clause 46 Remission:

On the basis of section 51, sub-clause (1) A (1) B. The provider ceased to deliver (The Advance Diploma of Aviation 15725SA) set outlined under the Higher Education Support Act, as mentioned above. Of which was a one unit course, encompassing 58 Modules in total, 6 of the modules were to be electives. Only (3) of these modules needed to be undertaken to complete the Advance Diploma course. I therefore met repeatedly, with all appropriate requests under these circumstances, Stage (1) and Stage (2) as well as Clause 51 (1) A (2) B.

These circumstances did not make their full impact on myself and other students I believe, until after the census date, and I believe that these circumstances were such that it was impracticable for myself to complete the requirements for the Unit. And as such has caused myself Severe Financial Hardship and emotional stress.

I do also believe this has caused other students, to be in the same impracticable position as myself.

Sincerely,

From: ...

Sent: Friday, 8 April 2016 1:42 PM

To: ...

Cc: L ...

Subject: Re: Bruce Hartwig Flying School Pty Ltd - VET FEE-HELP re-credit [SEC=UNCLASSIFIED]

Nigel

Mr. Peterson sent the School the relevant Instruments of Delegation on 29 March 2016, and we have subsequently appointed a suitably qualified Review Officer in anticipation of receiving a submission from yourself. No such document has arrived as yet, which would presumably be similar (if not the same) as the one sent to the Secretary of the Department of Education & Training. The relevant legislative requirements are as follows:

96 Reconsideration of reviewable VET decisions on request

- (1) A person whose interests are affected by a *reviewable VET decision may request the *reviewer to reconsider the decision.
- (2) The person's request 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.
- (3) The notice must set out the reasons for making the request.
- (4) After receiving the request, the *reviewer must reconsider the decision and:
 - (a) confirm the decision; or
 - (b) vary the decision; or
 - (c) set the decision aside and substitute a new decision.
- (5) The *reviewer's decision (the decision on review) to confirm, vary or set aside the decision takes effect:
 - (a) on the day specified in the decision on review; or

ComLaw Authoritative Act C2013C00029
Schedule 1A VET FEE-HELP Assistance Scheme
Part 3 Administration
Division 16 Review of decisions
Clause 97

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

300 Higher Education Support Act 2003.

(b) if a day is not specified—on the day on which the decision on review was made.

(6) The *reviewer must give the person written notice of the decision on review.

(7) The notice:

(a) must be given within a reasonable period after the decision on review is made; and

(b) must contain a statement of the reasons for the decision on review.

(8) The *reviewer is taken, for the purposes of this Division, to have confirmed the decision if the reviewer does not give notice of a decision to the person within 45 days after receiving the person's request.

Upon receipt of your formal written notice, you will be advised of the decision within 45 days after receipt of same.

Bruce Hartwig Flying School

On 5 Apr 2016, at 4:23 PM, I

wrote:

Dear I

Following Mr Peterson recent email & attachments, dated on the 29th of March 2016.

Stating the relevant pages from **within the instrument of delegation made by the Secretary on 4 December 2013, and the relevant pages from the current instrument of delegation made by the Secretary on 4 January 2016.** This will of course apply to decisions made on or after that date, as mentioned below.

I would like to know as to whether both yourself and _____, Directors of BHFS, have made a final decision of a full Vet Fee Help re-credit for myself regarding the current outlined instruments of delegation.

I would also like an answer by the close of business on or before Monday the 18th of April 2016, which is 14 business days from Mr Peterson's recent email below.

Sincerely,

From: PETERSON, Brett <>
Sent: Tuesday, 29 March 2016 11:20 AM
To: David Johnston; <>

Cc: 1;
Subject: RE: Bruce Hartwig Flying School Pty Ltd - VET FEE-HELP re-credit
[SEC=UNCLASSIFIED]

Mr.

Attached for your information is a copy of the relevant pages from the instrument of delegation made by the Secretary on 4 December 2013. I believe this is the instrument that would have been in force at the relevant time for this particular case.

Also attached for your information is a copy of the relevant pages from the current instrument of delegation made by the Secretary on 4 January 2016. This will of course apply to decisions made on or after that date.

In both cases, paragraph (c) in the instrument is the relevant part.

I was a little surprised to get your email. I was not aware that you had made a request of the department to be provided with a copy of the instrument of delegation – perhaps it has been directed elsewhere in the department. I also note the requirement for VET providers to consider and review requests from students for re-crediting is set out in detail over several pages in the *VET Administrative Information for Providers* – see page 51 and after at [https://docs.education.gov.au/system/files/doc/other/vet_aip_september_2015-20150916 .pdf](https://docs.education.gov.au/system/files/doc/other/vet_aip_september_2015-20150916.pdf)

VET Administrative Information for Providers – About this site

docs.education.gov.au

1 General information The July 2014 VET Administrative Information for Providers (VET AIP) was updated by th

Brett Peterson
VET FEE-HELP Branch | Skills Programmes Group
Australian Government Department of Education and Training
Ph: _____
Email: b.peter@education.gov.au

Opportunity through learning

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From: David Johnston
Sent: Monday, 28 March 2016 5:39 PM

Cc: _____
Subject: Re: Bruce Hartwig Flying School Pty Ltd - s - VET FEE-HELP re-credit
[SEC=UNCLASSIFIED]

Dear

The Department has not yet furnished the School with a formal signed legal Instrument of Delegation. Until this occurs, we are unable to further consider your request.

Regards, I
Sent from Outlook Mobile

On Sun, Mar 27, 2016 at 11:23 PM -0700, "Nigel Coombs" <
wrote:

Dear Mr. J

As requested by the Department of Education, as to an answer from yourself & I (C), requesting a Full Vet Fee Help Re-Credit, has not been given to myself nor to the Department of Education in response to a formal request by email from Mr Brett Peterson, of the Department of Education, as outlined in his email below. I would formally like to ascertain an answer from yourself regarding this overdue and prolonged request for a Full Vet Fee Help Re-Credit concerning all parties involved please.

Kind Regards,

From: P...
Sent: Tuesday, 15 March 2016 1:05:31 PM
To:
Cc:
Subject: Bruce Hartwig Flying School Pty Ltd - VET FEE-HELP re-credit
[SEC=UNCLASSIFIED]

To: Mr (Primary VET contact in HITS) U
Cc: Mr Nigel Coombs 1

Dear Mr

A former student of Bruce Hartwig Flying School Pty Ltd (BHFS), has written to the Department of Education and Training seeking review of the decision by BHFS not to re-credit under clause 46 of the Higher Education Support Act 2003 (HESA).

We understand there has been consideration of the matter by the Administrative Appeals Tribunal (AAT), and that BHFS agreed to review the matter in accordance with clause 51 of HESA.

If BHFS conclude that re-credit is not appropriate under clause 51, then we would be grateful if they would please conduct a reconsideration of the request made in accordance with clause 46. That reconsideration (which would be under the terms of clause 95) should, as the AAT has indicated, specifically address the terms of clause 46, including a consideration of whether there are special circumstances as defined by clause 48.

The AAT was of course correct to conclude that under the terms of clause 94 the power of reconsideration has been given to the Secretary of the Department of Education and Training. However, the AAT will not have been specifically aware that the Secretary has delegated power to

conduct a reconsideration under clause 95 to a review officer of a VET FEE-HELP provider (who is appropriately independent and senior).

If BHFS is unable to conduct a reconsideration for some reason, would you please let me know.

I would be grateful if you would let me know the outcome of your consideration of these matters please.

Further information regarding formal complaints and special circumstances is below:

If a student has a complaint they are able to raise it with their provider through the provider's formal grievance process. This includes requests for HELP debts to be remitted. A provider has the discretion to remit or cancel a student's HELP debt dependent on the nature of the complaint. If the matter cannot be satisfactorily resolved following your complaint, 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. This information will be outlined in the provider's policy documents.

Students may also request debt remission in cases where certain defined special circumstances apply; and reviews of unsuccessful applications can be referred to the Administrative Appeals Tribunal (AAT). All providers should have their special circumstances policy available on their website.

Further information on special circumstances is available on the Study Assist website at www.studyassist.gov.au/sites/studyassist/payingbackmyloan/re-crediting-a-help-debt/pages/remitting-a-help-debt, and additional information on applications to the AAT is available at www.aat.gov.au/applying-for-a-review. Please note, there are no provisions under the *Higher Education Support Act 2003* to have a debt remitted if the student has successfully completed their unit of study.

I also refer you to Chapter 10 (Re-crediting and remission) of the Higher Education Providers: VET Administrative Information for Providers (AIP), available at: <http://www.education.gov.au/help-resources-providers>.

Regards,

Brett Peterson
VET FEE-HELP Branch | Skills Programmes Group
Australian Government Department of Education and Training
Ph
Email:

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www.education.gov.au

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Regards,

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www.hartwigaircharter.com.au

www.hartwigairinternational.com



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Attachment E

**- copy of material relating to indicated intention to
make a further application to the AAT**

PETERSON, Brett

From: [Redacted]
Sent: Thursday, 21 April 2016 2:59 PM
To: PETERSON, Brett
Gc: [Redacted]
Subject: HPKM: Re: Bruce Hartwig Flying School Pty Ltd - bs - VET FEE-HELP re-credit [SEC=UNCLASSIFIED]

[Note - [Redacted] called me about this. He was keen to go back to the AAT straight away. I told him I would advise against that, and he should work to get a response on review from Hartwig. I indicated I believe that if he were to go back to the AAT now he would get the same result as last time - that is, the AAT will not hear the substantive matter, because in the absence of a review decision it has no jurisdiction. Brett Peterson]

=====

It would appear that [Redacted] (See Below) is not following the proper process, that my previous attempts have outlined.

I would like to therefore advocate a new AAT (*Administrative Appeals Tribunal*) application as the Department of Education as the respondent. As these Directors are continuously, delaying and denying their duties as Directors of BHFS (*Bruce Hartwig Flying School*).

Sincerely,

From: [Redacted]
Sent: Thursday, 21 April 2016 1:11 PM
To: [Redacted]
Cc: Brett Peterson; je [Redacted]
Subject: Re: Bruce Hartwig Flying School Pty Ltd - bs - VET FEE-HELP re-credit [SEC=UNCLASSIFIED]

Nigel

I'm pleased to confirm that I have indeed read the Act.

The original formal decision was made by our Quality Committee, chaired by [Redacted]. It was communicated to you from myself, as I was the minute-taker for the committee meeting.

We offer a second round "appeal", which is NOT required under the Act, but do so as a courtesy only. This is to provide a stop-gap measure in the event of a major mistake/omission having been made when the formal decision was taken. This was communicated to you by [Redacted]

I repeat, the latter process is not required by the Act.

The matter can then be referred to the department (or Delegate), which is in this case [redacted] is senior to the Chief Flying Instructor and was not involved in the original Quality Committee decision.

I trust this satisfies your latest concerns. If not, I can only suggest you re-approach the Department of Education & Training and request that the matter is referred back for their Review Officer to consider. The School has no preference as to whether the Department or the School fulfils this role. I will leave this matter with you to pursue.

Additionally, I look forward to your reply regarding my original request as to whether you wish to have your case reviewed based on your latest email, or wish to submit a more comprehensive response.

Bruce Hartwig Flying School

On 21 Apr 2016, at 12:22 PM, [redacted] wrote:

Mr

As you may not have read the act, it clearly states the following.

See section below from the Higher Education Support Act 22 (b)

22 Review officers not to review own decisions

A VET provider must ensure that a review officer of the provider:

- (a) does not review a decision that the review officer was involved in making; and
- (b) in reviewing a decision of the provider, occupies a position that is senior to that occupied by any person involved in making the original decision.

Sincerely,

From: Davii
 Sent: Tuesday, 19 April 2016 3:28 PM
 To:
 Cc:
 Subject: Re: BRUCE HARTWIG FLYING SCHOOL Pty Ltd [SEC=UNCLASSIFIED]

Our formal Review Officer is N [redacted] played
no part in either your training or prior assessments of your S.46 claim.

As, previously stated in my 8 April 2016 email to you (below), please provide an application to the School for [redacted] to review on behalf of the Department of Education & Training.

If you wish to use your email below as that application, please indicate this is the case.

Alternatively, you may wish to prepare a new summary if you wish to add any more information: [redacted] copied on this email) will be given access to all correspondence sent to you, and received from you. A decision will then be made within 45 days from receipt of your application.

Bruce Hartwig Flying School

On 19 Apr 2016, at 2:32 PM, [redacted] >
wrote:

Dear

(1) Who is your liaison officer, with regards to making a formal decision of a Full Vet Fee Help Re-credit, is it yourself [redacted] n) as a Director of BHFS (Bruce Hartwig Flying School PTY LTD), or is it [redacted] also a Director of BHFS.

Under Section (96) Schedule, 1A, Reconsideration of reviewable VET decisions on request.

As I have clearly submitted my complaints to yourself in writing both Stage 1 in July 2015, and on the 29TH October 2015 "Stage 2 (appeal)" clause 51. Re-crediting a person's FEE-HELP balance if the provider ceases to provide course of which units forms part of the Act Sub-clause (1)A (1)B. I also seemed a review of this decision dated 17TH of November I was also rejected by yourself, on the 26TH of November, and of which has been received by yourself and rejected by you. Following this I loved an application with the Tribunal seeking a review of my numerous Stage 1 and stage 2 appeals, as outlined by the AAT's (Administrative Appeals Tribunal) findings, by Deputy President K. Beam.

As outlined in the Legislation, Higher Education Support Act 2003, Schedule 1A, Clauses 46, 51, 94, 96, 97.

(2) I once again applied to you N [redacted], on the grounds of (Special Circumstances), seeking a Full Vet Fee Help Re-credit under sub-clause 46(2), and again was accessed and rejected by you.

(3) 94 Reviewer of decisions:

Stating the relevant pages from within the instrument of delegation made by the Secretary on 4 December 2013, and the relevant pages from the current instrument of delegation made by the Secretary on 4 January 2016. This will of course apply to decisions made on or after that date, as mentioned within the instrument. The provider Bruce Hartwig Flying School PTY LTD, ceased to continue the course upon taking over the flying school, of aviation and non aviation modules, which made up the One Unit, Advance Diploma of Aviation 15725SA course.

I have requested on numerous occasions by email, to offer a remission of a Full Vet. Fee Help Re-credit & expenses between the full course cost, due to non-delivery of the Advance Diploma Course, under section 51.

After many face to face meeting with both yourself, and I regarding non-delivery of course, and the providers *Contractual Obligations*, as outlined in my original contract, with Bruce Hartwig Flying School. And under the HESA VET Guidelines 2015; Division 4-General Requirements, 13 Meaning of ceases to provide an eligible VET course of study, (*CEASED*).

I have requested on many occasions but have not received, full academic transcripts for delivery of the 58 modules you have claimed to deliver three of which were electives, also noting the academic transcript of my academic records which have been forwarded to me, that you claim to have delivered (16) modules, which you have marked as failed, but were never delivered to me.

As a result of your claims of delivery, these records now appear on the STELA printout of Academic Transcript, I received from BHFS, as failed. As a result of all of BHFS, Directors under new ownership of unfulfilled promises to myself and other students on the Advance Diploma of Aviation 15725Sa of full delivery of our course, has neither delivery of the (ADA) or my numerous request for a "FULL VET FEE HELP RE-CREDIT".

And your repeated attempts claiming a funding gap for modules that were never delivered to me claiming \$27,840.00 and claiming remedial flights, again by ceasing delivery of my course (ADA-15725SA).

Or your repeated attempts as a Director of BHFS PTY LTD to me, by your Legal lawyer, _____, dated 28th of June 2015 stating in his words "Malice and breached the Schools code of Conduct, stating I have consistently and deliberately breached". As well as the (*Trade Practices Act Section 18 of the Australian Consumer Law*). Because I did not sign your Schools new legal contract, forcing myself and others to "Withdraw From The Course".

As I was concerned for my own wellbeing and well as my fellow students; Who were obliged by both Directors to withdraw from the course under Coercion, by yourself and Mr _____, as in their best interest. Without proper legal advice, or proper informative and written information, as well as feeling under duress, by yourself & _____ as Directors of BHFS.

(4) Clause 46 Remission:

On the basis of section 51, sub-clause (1) A (1) B. The provider ceased to deliver (The Advance Diploma of Aviation 15725SA) set outlined under the Higher Education Support Act, as mentioned above. Of which was a one unit

course, encompassing 58 Modules in total, 6 of the modules were to be electives. Only (3) of these modules needed to be undertaken to complete the Advance Diploma course. I therefore met repeatedly, with all appropriate requests under these circumstances, Stage (1) and Stage (2) as well as Clause 51 (1) A (2) B.

These circumstances did not make their full impact on myself and other students I believe, until after the census date, and I believe that these circumstances were such that it was impracticable for myself to complete the requirements for the Unit. And as such has caused myself Severe Financial Hardship and emotional stress.

I do also believe this has caused other students, to be in the same impracticable position as myself.

Sincerely,

From: ...

Sent: Friday, 8 April 2016 1:42 PM

To:

Cc:

Subject: Re: Bruce Hartwig Flying School Pty Ltd
credit [SEC=UNCLASSIFIED]

- VET FEE-HELP re-

Nigel

Mr. Peterson sent the School the relevant Instruments of Delegation on 29 March 2016, and we have subsequently appointed a suitably qualified Review Officer in anticipation of receiving a submission from yourself. No

such document has arrived as yet, which would presumably be similar (if not the same) as the one sent to the Secretary of the Department of Education & Training. The relevant legislative requirements are as follows:

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- (1) A person whose interests are affected by a *reviewable VET decision may request the *reviewer to reconsider the decision.
- (2) The person's request 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.
- (3) The notice must set out the reasons for making the request.
- (4) After receiving the request, the *reviewer must reconsider the decision and:
 - (a) confirm the decision; or
 - (b) vary the decision; or
 - (c) set the decision aside and substitute a new decision.
- (5) The *reviewer's decision (the decision on review) to confirm, vary or set aside the decision takes effect:

(a) on the day specified in the decision on review; or
ComLaw Authoritative Act C2013C00029
Schedule 1A VET FEE-HELP Assistance Scheme
Part 3 Administration
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*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

300 Higher Education Support Act 2003

(b) if a day is not specified—on the day on which the decision on review was made.

(6) The *reviewer must give the person written notice of the decision on review.

(7) The notice:

(a) must be given within a reasonable period after the decision on review is made; and

(b) must contain a statement of the reasons for the decision on review.

(8) The *reviewer is taken, for the purposes of this Division, to have confirmed the decision if the reviewer does not give notice of a decision to the person within 45 days after receiving the person's request.

Upon receipt of your formal written notice, you will be advised of the decision within 45 days after receipt of same.

r, Bruce Hartwig Flying School

On 5 Apr 2016, at 4:23 PM,

< > wrote:

De:

Following Mr Peterson recent email & attachments, dated on the 29th of March 2016.

Stating the relevant pages from within the instrument of delegation made by the Secretary on 4 December 2013, and the relevant pages from the current instrument of delegation made by the Secretary on 4 January 2016. This will of course apply to decisions made on or after that date, as mentioned below.

I would like to know as to whether both yourself and Directors of BHFS, have made a final decision of a full Vet Fee Help re-credit for myself regarding the current outlined instruments of delegation.

I would also like an answer by the close of business on or before Monday the 18th of April 2016, which is 14 business days from Mr Peterson's recent email below.

Sincerely,

From: PETERSON, Brett < >
Sent: Tuesday, 29 March 2016
To: Partridge;
Cc: ;
Subject: RE: Bruce Hartwig Flying School Pty Ltd - VET FEE-HELP re-credit [SEC=UNCLASSIFIED]

N

Attached for your information is a copy of the relevant pages from the instrument of delegation made by the Secretary on 4 December 2013. I believe this is the instrument that would have been in force at the relevant time for this particular case.

Also attached for your information is a copy of the relevant pages from the current instrument of delegation made by the Secretary on 4 January 2016. This will of course apply to decisions made on or after that date.

In both cases, paragraph (c) in the instrument is the relevant part.

I was a little surprised to get your email. I was not aware that you had made a request of the department to be provided with a copy of the instrument of delegation – perhaps it has been directed elsewhere in the department. I also note the requirement for VET providers to consider and review requests from students for re-crediting is set out in detail over several pages in the *VET Administrative Information for Providers* – see page 51 and after at https://docs.education.gov.au/system/files/doc/other/vet_aip_september_2015-20150916.pdf

VET Administrative Information for Providers – About this site

docs.education.gov.au

1 General information The July 2014 VET Administrative Information for Providers (VET AIP) wa

Brett Peterson
VET FEE-HELP Branch | Skills Programmes Group
Australian Government Department of Education and Training
Ph:
Email

Opportunity through learning

www.education.gov.au

From:
Sent: Monday, 28 March 2016 5:39 PM
To: bruce@flying-school.com.au
PEPETERSON, B
Cc:
Subject: Re: Bruce Hartwig Flying School Pty Ltd - VET FEE-HELP re-credit [SEC=UNCLASSIFIED]

Dear

The Department has not yet furnished the School with a formal signed legal Instrument of Delegation. Until this occurs, we are unable to further consider your request.

Regards,
Sent from [Outlook Mobile](#)

On Sun, Mar 27, 2016 at 11:23 PM -0700, [Brett Peterson](#) wrote:

Dear Mr. Hartwig,

As requested by the Department of Education, as to an answer from yourself & ... requesting a Full Vet Fee Help Re-Credit, has not been given to myself nor to the Department of Education in response to a formal request by email from

Mr Brett Peterson, of the Department of Education, as outlined in his email below.

I would formally like to ascertain an answer from yourself regarding this overdue and prolonged request for a Full Vet Fee Help Re-Credit concerning all parties involved please.

Kind Regards,

From: PETERSON, Brett
Sent: Tuesday, 15 March 2016 1:05:31 PM
To: [u](#)
Cc: [1](#)
Subject: Bruce Hartwig Flying School Pty Ltd ... bs - VET FEE-HELP re-credit [SEC=UNCLASSIFIED]

To: [n.au](#)
HITS)
Cc: [1](#)

Dea

A former student of Bruce Hartwig Flying School Pty Ltd (BHFS) as has written to the Department of Education and Training seeking review of the decision by BHFS not to re-credit under clause 46 of the Higher Education Support Act 2003 (HESA).

We understand there has been consideration of the matter by the Administrative Appeals Tribunal (AAT), and that BHFS agreed to review the matter in accordance with clause 51 of HESA.

If BHFS conclude that re-credit is not appropriate under clause 51, then we would be grateful if they would please conduct a reconsideration of the request made in accordance with clause 46. That reconsideration (which would be under the terms of clause 95) should, as the AAT has indicated, specifically address the terms of clause 46, including a consideration of whether there are special circumstances as defined by clause 48.

The AAT was of course correct to conclude that under the terms of clause 94 the power of reconsideration has been given to the Secretary of the Department of Education and Training. However, the AAT will not have been specifically aware that the Secretary has delegated power to conduct a reconsideration under clause 95 to a review officer of a VET FEE-HELP provider (who is appropriately independent and senior).

If BHFS is unable to conduct a reconsideration for some reason, would you please let me know.

I would be grateful if you would let me know the outcome of your consideration of these matters please.

Further information regarding formal complaints and special circumstances is below:

If a student has a complaint they are able to raise it with their provider through the provider's formal grievance process. This includes requests for HELP debts to be remitted. A provider has the discretion to remit or cancel a student's HELP debt dependent on the nature of the complaint. If the matter cannot be satisfactorily resolved following your complaint, 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. This information will be outlined in the provider's policy documents.

Students may also request debt remission in cases where certain defined special circumstances apply, and reviews of unsuccessful applications can be referred to the Administrative Appeals Tribunal (AAT). All providers should have their special circumstances policy available on their website.

Further information on special circumstances is available on the Study Assist website

at www.studyassist.gov.au/sites/studyassist/payingbackmyloan/re-crediting-a-help-debt/pages/remitting-a-help-debt, and additional information on applications to the AAT is available at www.aat.gov.au/applying-for-a-review. Please note, there are no provisions under the *Higher Education Support Act 2003* to have a debt remitted if the student has successfully completed their unit of study.

I also refer you to Chapter 10 (Re-crediting and remission) of the Higher Education Providers: VET Administrative Information for Providers (AIP), available at: <http://www.education.gov.au/help-resources-providers>.

Regards,

Brett Peterson
VET FEE-HELP Branch | Skills Programs Group
Australian Government Department of Education and Training

Email

Opportunity through learning

www.education.gov.au

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Regards

, Hartwig Air Group

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Attachment F

- copy of material relating to review decision

PETERSON,Brett

From: PETERSON,Brett
Sent: Thursday, 24 May 2016 9:34 AM
To: [redacted]
Subject: FW: Attn Mr Brett Peterson [SEC=UNCLASSIFIED]
Attachments: Review of Decision - [redacted].docx If

Paul,

Thank you for your email.

You asked about the content of a record of review such as this. As we discussed, the content of the record of your review is entirely a matter for you – ultimately it simply needs to be fit for purpose.

Broadly put, I would typically recommend that a review decision cover:

- the evidence and other material considered, including reference to the relevant legislation (or at least that such material is retained with the record of review)
- the relevant facts that have been determined to exist (which might relevantly mean, in some cases, indicating that certain facts have been found to be irrelevant or not to exist)
- a finding about whether the ultimate conclusion of fact is made out – that is, here, a finding about whether there are special circumstances, with reference to the statutory definition
- a decision in terms of the law – that is:
 - confirm the original decision; or
 - vary the original decision; or
 - set the original decision aside and substitute a new decision
- given the matter raised by [redacted], perhaps directly address the issue of authority to make the review decision – if you haven't already done so, I would recommend you have a quick look at the material headed 'Reviewable VET decisions' at page 55 of the document available at <https://docs.education.gov.au/node/33971>

Brett Peterson
VET FEE-HELP Branch | Skills Programmes Group
Australian Government Department of Education and Training
Ph. [redacted]
Email: [redacted]

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www.education.gov.au

From: Education - TQSS - Tertiary Study Enquiries
Sent: Monday, 30 May 2016 2:26 PM
To: PETERSON,Brett
Subject: FW: Attn Mr Brett Peterson [SEC=UNCLASSIFIED]

Hi Brett

Please see below and attached regarding [redacted] and Bruce Hartwig Flying School.

Thanks

BK

From: [REDACTED]
Sent: Monday, 5u. may 2016 1:56 PM
To: Education - TQSS - Tertiary Study Enquiries
Subject: Attn Mr Brett Peterson

Good afternoon Brett,
Attached is my Review of Decision in the matter of [REDACTED] mbs complaint with Bruce Hartwig Flying School.
I have emailed this Review to [REDACTED] and will provide him with a written copy by post.
Please contact me if you require further information.

Regards

Hartwig Air | Bruce Hartwig Flying School
Parafield Airport | South Australia | 5106
Phone: (08) 8350 0566 | Mobile:



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REVIEW OF DECISION

BRUCE HARTWIG FLYING SCHOOL – COMPLAINT BY

REVIEW OFFICER: _____, _____
Delegate under the Higher Education Support Act 2003

EXECUTIVE SUMMARY

_____ commenced the Advanced Diploma of Aviation course at the Bruce Hartwig Flying School (BHFS) in November 2013. He failed to complete the course within the scheduled time. In October 2015 _____ is filed a complaint with BHFS management and requested a full refund of course costs. It is noted _____ has received training against his VET FEE-HELP subsidy advanced to BHFS.

In November 2015 _____ of BHFS advised that the company had rejected _____'s complaint and request for a full refund.

_____ has since requested a review of this decision under provisions in the Higher Education Support Act 2003.

In reviewing the facts and related information, I, _____, make the following findings:-

1. BHFS and _____ acted appropriately under the requirements of the Higher Education Support Act 2003.
2. Notwithstanding weather and aircraft availability delays, it appears to me that BHFS fulfilled its obligations by operating training programs as far as was possible.
3. _____ had problems achieving the required academic standards and he did not make himself available full time. I find that these two factors are the main reasons _____ failed to complete the course within the time specified.
4. Noting the learning delays experienced by _____ BHFS extended the Course Completion date by 113 days to 23 June 2015. Even with this extension _____ is was unable to complete the base level Private Pilot Licence qualification (PPL). In my experience (which includes time as a Chief Flying Instructor in the 1980s), a full time student can achieve the PPL in 113 days let alone more than a calendar year available to _____.
5. _____ is requested a review of BHFS' decision under Clause 96 of Schedule 1A of the Act and provided written notice setting out reasons for his request. Those reasons have been considered at some length but do not satisfy me under Clause 48 that the reasons sufficiently demonstrate special circumstances. Under part (a) of Clause 48 a number of the reasons submitted were under _____'s control. In addition under part (c) of Clause 48, BHFS did nothing to make it impractical for _____ to complete the training within the specified period. The fact that BHFS provided additional theory training to help _____ achieve the required standard and the Course Completion date was extended from 2 March 2015 to 23 June 2015; (an additional period of 113 days), demonstrate BHFS made practical efforts to assist _____ try and achieve success with the course.

Determination: Under Clause 96(4) and in consideration of the facts before me, I confirm the decision made by BHFS in November 2015.

Signed:

28 May 2016.

BACKGROUND

1. [redacted] is enrolled in the Advanced Diploma of Aviation course (15725SA) at Bruce Hartwig Flying School on 26 August 2013. [redacted] initialled the enrolment application acknowledging he had read and understood the conditions of Enrolment and External Tuition offer. This included his acknowledgement that he had read and understood the information in the VET FEE-HELP information booklet.
2. The Bruce Hartwig Flying School accepted [redacted] enrolment with a Course Commencement Date of 25 November 2013. Further the Course Census Date was stated as 10 February 2014 and the stated Course Completion date was 2 March 2015.
3. For various reasons [redacted] did not complete the course within the assigned period. From records provided to the Review Officer, there were periods when [redacted] did not attend full time, he had learning difficulties and he did not respond to the (June 2015) BHFS Credit offer that was designed to help achieve the Commercial Pilot licence outcome.
4. Concerning [redacted]'s attendance during the course schedule, two staff members and three former students at BHFS recalled periods when [redacted] was absent. It has been alleged that [redacted] was employed part-time as a long haul truck driver. Further it is alleged he was not only absent for several days at a time but needed at least one day rest on arrival back in Adelaide. During the review it was not established exactly how many days [redacted] was absent but the five witnesses all gave similar accounts leading to the conclusion that the absences were not rare events.
5. Allegations have been made that BHFS was understaffed during the course. Staff records show an under-utilisation of instructors contrary to the allegations.
6. On 28 October 2015 [redacted] wrote to BHFS with a formal complaint in relation to his training and requested a refund of \$87,060 course costs on the grounds of 'special circumstances'.
7. On 26 November 2015 BHFS Director [redacted] replied with an extensive response to [redacted] complaint. This reply included a rejection of [redacted] request for a refund.

8. Review Officer comment based on the information provided,

(a) It appears [redacted] complained about a lack of bookings for flight training during part of the PPL stage but failed to understand that he could not undertake further flight training at that point until achieving a pass in the theory training. This limitation is a CASA requirement and had to be adhered to by BHFS, which it did.

(b) [redacted] complained that in September 2014 during a flight "the instructor told me, in flight, that he was unable to help me with the entire flight". Under normal flight training conditions, this is a correct scenario. During navigation exercises, the student pilot is given credit for previous flying training achievements and is expected to be able to fly the aircraft under normal conditions. In addition, following extensive pre-flight briefing, the student is expected (at a basic level of competence) to fly a heading, hold an altitude, manage the engine power setting and attempt basic map reading with guidance from the instructor. That is what navigation exercises are, a learning experience about navigation but not training in basic flying. Therefore it is inappropriate for an instructor to be expected to assist with the entire flight.

(c) When the truck driving allegation and non attendance to theory classes was put to [redacted], he denied this occurred. The recollections of five others to a contrary view have been assessed as likely to be valid but it is pointed out factual information was not available from [redacted] employer at the time of this review. It is noted that [redacted] did attend theory tutorials each Tuesday from January to the end of June 2014 but no explanation for [redacted] lack of progress could be positively identified except [redacted] had learning difficulties.

(d) There is evidence that a number of students including [redacted] failed to appreciate the attendance hours required. A Commercial Pilot Course conducted over 12-15 months is an intensive period of theory and flight training. It requires at least five days per week at the school plus many hours of private study after hours. Without this level of dedication, a student will fall behind the schedule with little chance of catching up any lost time.

(e) In relation to (d) above, it is the opinion of the Review Officer that the original course content was an intensive course for the time allocated and was unlikely to be achieved except by total dedication and with no operational delays. In addition only students with above average academic skills and study habits would be likely to achieve the required standard within the original planned time period. During [redacted] course, the BHFS was sold. To the credit of the new owners, they recognised the problems being experienced by a number of students and responded by extending the course completion date by 113 days, provided additional theory coaching and offered credits for flight training to continue (after the course completion date) in order for students to reach their goal of a CPL.

DESIGNATED VET FEE-HELP REVIEW OFFICER – REGULATORY REFERENCES

1. Relevant Act

Higher Education Support Act 2003, Compilation No.59 Registered 10 February 2016.

2. Review Officer is empowered under:-

Schedule 1A Part 2 VET FEE-HELP Assistance / Division 7 / Sub-division 7b / Clause 46.

Subdivision 7-B—FEE-HELP balances

46 Main case of re-crediting a person's FEE-HELP balance

(1) If clause 46A or 51 applies to re-credit a person's FEE-HELP balance with an amount equal to the amounts of VET FEE-HELP assistance that the person has received for a VET unit of study, then this clause does not apply in relation to that unit.

Note: For FEE-HELP balance, see section 104-15, and for FEE-HELP limit, see section 104-20.

(2) A VET provider must, on the Secretary's behalf, re-credit a person's FEE-HELP balance with an amount equal to the amounts of VET FEE-HELP assistance that the person received for a VET unit of study if:

- (a) the person has been enrolled in the unit with the provider; and
- (b) the person has not completed the requirements for the unit during the period during which the person undertook, or was to undertake, the unit; and
- (c) the provider is satisfied that special circumstances apply to the person (see clause 48); and
- (d) the person applies in writing to the provider for re-crediting of the FEE-HELP balance; and
- (e) either:

(i) the application is made before the end of the application period under clause 49; or

(ii) the provider waives the requirement that the application be made before the end of that period, on the ground that it would not be, or was not, possible for the application to be made before the end of that period.

Note: A VET FEE-HELP debt relating to a VET unit of study will be remitted if the FEE-HELP balance in relation to the unit is re-credited; see section 137-18.
(3) If the provider is unable to act for one or more of the purposes of subclause (2), or clause 48, 49, or 50, the Secretary may act as if one or more of the references in those provisions to the provider were a reference to the Secretary.

48 Special circumstances

For the purposes of paragraph 46(2)(c), special circumstances apply to the person if and only if the VET provider receiving the application is satisfied that circumstances apply 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.

Schedule 1A Part 1: Division 4: Clause 21

21 VET providers to appoint review officers

(1) A VET provider must appoint a review officer to undertake reviews of decisions made by the provider relating to assistance under Part 2.

Note: The Secretary may delegate to a review officer of a VET provider the power to reconsider decisions of the provider under Subdivision 16-C; see subclause 98(2).

(2) A review officer of a VET provider is a person, or a person included in a class of persons, whom:

- (a) the chief executive officer of the provider; or
- (b) a delegate of the chief executive officer of the provider, has appointed to be a review officer of the provider for the purposes of reviewing decisions made by the provider relating to assistance under Part 2.

96 Reconsideration of reviewable VET decisions on request

(1) After receiving the request, the reviewer must reconsider the decision and:

- (a) confirm the decision; or
- (b) vary the decision; or
- (c) set the decision aside and substitute a new decision.

Schedule 1 Dictionary

review officer

- (a) of a higher education provider—has the meaning given by subsection 19-50(2); and
- (b) of Open Universities Australia—has the meaning given by subsection 238-1(2B); and
- (c) of a VET provider—has the meaning given by subclause 21(2) of Schedule 1A.

reviewer has the meanings given by section 209-1 and clause 94 of Schedule 1A.

reviewable decision means a decision listed in the table in section 206-1.