



Quarterly Update 1 January–31 March 2018

Executive Summary

This is the third quarterly update on the VET Student Loans Ombudsman function (the function) of the Office of the Commonwealth Ombudsman (the Office). This update covers the period from 1 January–31 March 2018. The function was established on 1 July 2017 to investigate complaints about the former VET FEE-HELP scheme and the current VET Student Loans program.

This update:

- provides statistical data on complaints received, complaints closed and open complaints
- describes progress made to date in progressing complaints, and
- comments on the Office's expectations for quarter four 2017–18 and quarter one 2018–19.

In quarter three, the Office continued its shift from initial screening and preliminary assessment of complaints to in-depth assessment and investigation. During this quarter, the Office received 1,034 complaints, closed 614 complaints, commenced 30 investigations and finalised 22 investigations.

Approaches received and approaches closed

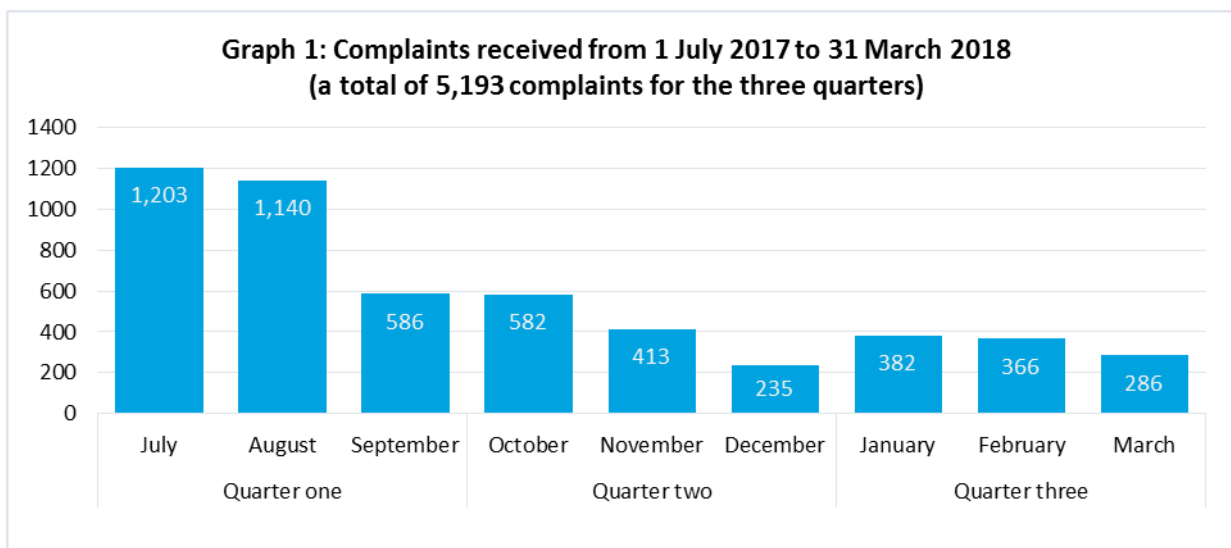
Data presented in the update

In this update ‘validated data’ means data that has undergone in-depth assessment by an investigation officer. When the general term ‘data’ is used, this will typically include data that has undergone a preliminary assessment.

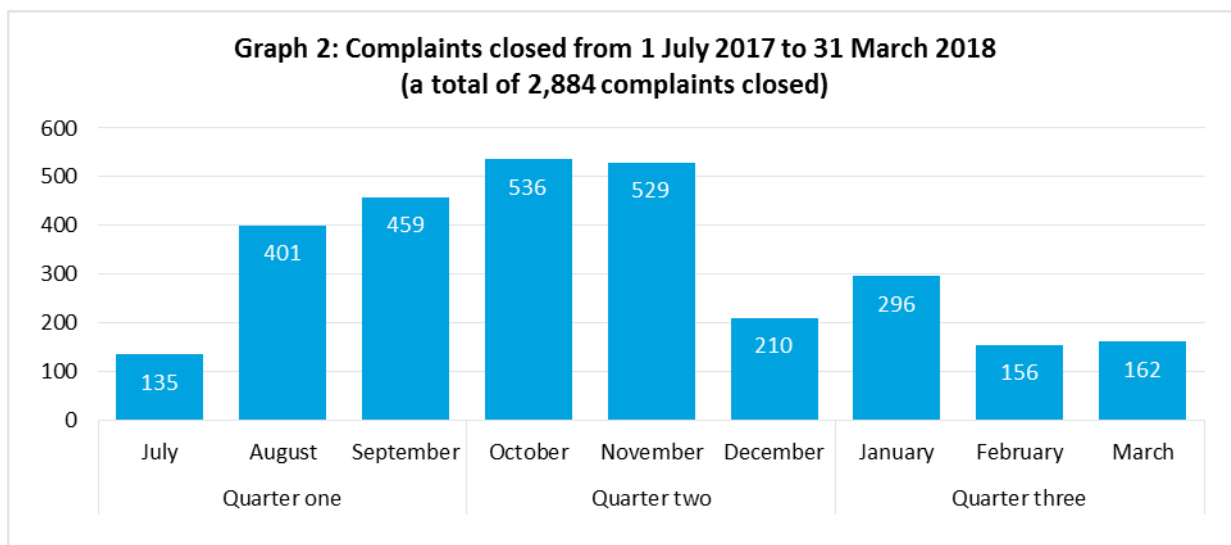
This update presents data for complaints received in quarters one, two and three, that were still open as at 1 April 2018. It also presents complaints closed in quarter three that the Office received in quarters one and two. Graph 3 shows complaints open and closed by the quarter received.

Total number of complaints received and closed

The Office received 1,034 VET loan assistance related complaints during quarter three. This is a 15 per cent reduction from the 1,230 complaints received in quarter two.



It is likely that there will be future peaks in complaint numbers. The Office anticipates an increased volume of complaints from July to October each year, due to people lodging their tax returns. The Office has found that many complainants first discover they have a student loan or discover that the loan amount is larger than they expected, when they submit their tax return.



The Office closed 614 VET loan assistance related complaints during quarter three. This compares with 1,275 closed in quarter two—a 52 per cent reduction.

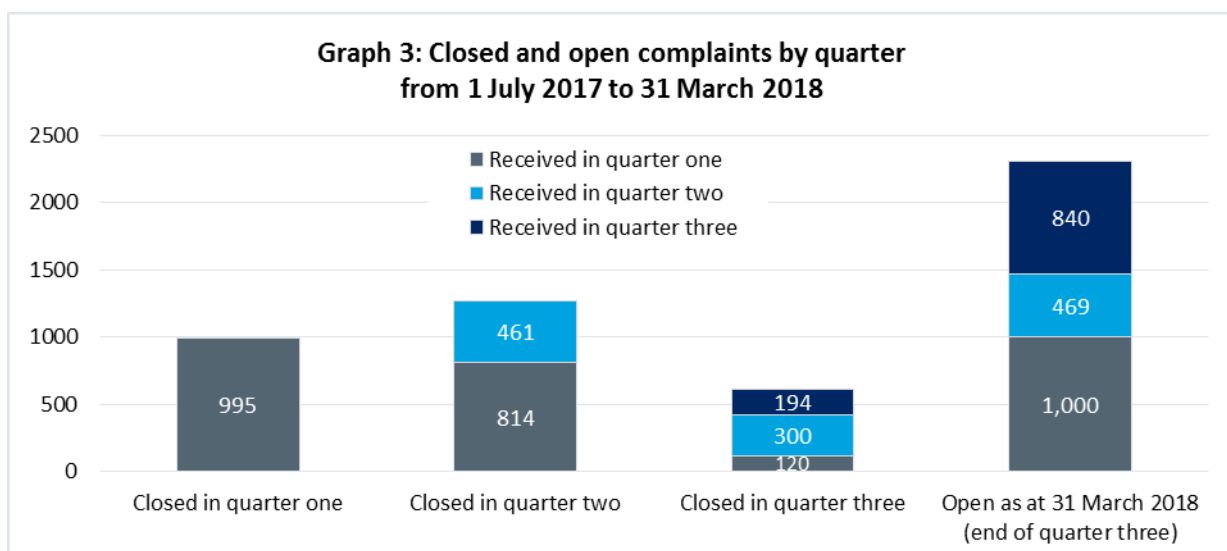
In quarters one and two, the Office focussed on processing complaints where an external remedy pathway was available to the complainant, such as when a person could complain to their provider or if the complaint was currently part of legal action taken by the Australian Competition and Consumer Commission (ACCC) and the Department of Education and Training (DET). The Office typically closes these complaints at the assessment category. Descriptions of the complaint categories used by the Office are on [page four](#).

With fewer incoming complaints in quarter three, the Office was able to dedicate more resources to commencing investigations into complaints about available providers where the complainant had attempted to resolve the complaint in the first instance. Investigations undertaken by the Office are discussed on [page nine](#).

Closed and open complaints by the quarter received and quarter closed

Closed complaint outcomes ([Graph 7, page 7](#)) give an indication of the proportion of complaints that may be able to be dealt with through other mechanisms. The Office closes complaints if:

- the complainant can be directed to an external remedy pathway either with the provider or another oversight agency, particularly where there is a reasonable prospect of the complainant securing a positive outcome
- the Office decides not to investigate further because:
 - the action was open to a provider
 - the complaint is currently part of legal action undertaken by the ACCC and DET
 - the complainant is referred to a tuition assurance operator to seek redress, or
 - the provider has agreed to re-credit the complainant’s student loan
- the complaint is withdrawn or the Office does not have jurisdiction to consider the complaint.



Graph 3 shows that the majority of complaints were not finalised in the quarter in which they were received.

Of complaints received in quarter three, the Office closed 19 per cent in quarter three and 81 per cent remained open as at 31 March 2018.

Complaints closed and open by category

The Office uses a category system for complaints. Below is an explanation of each category:

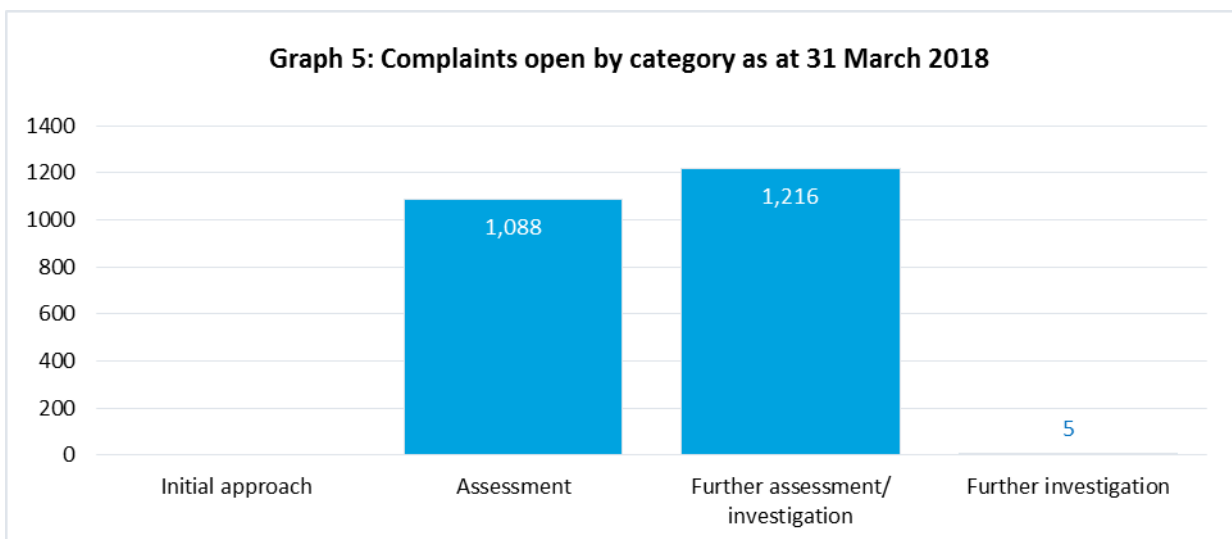
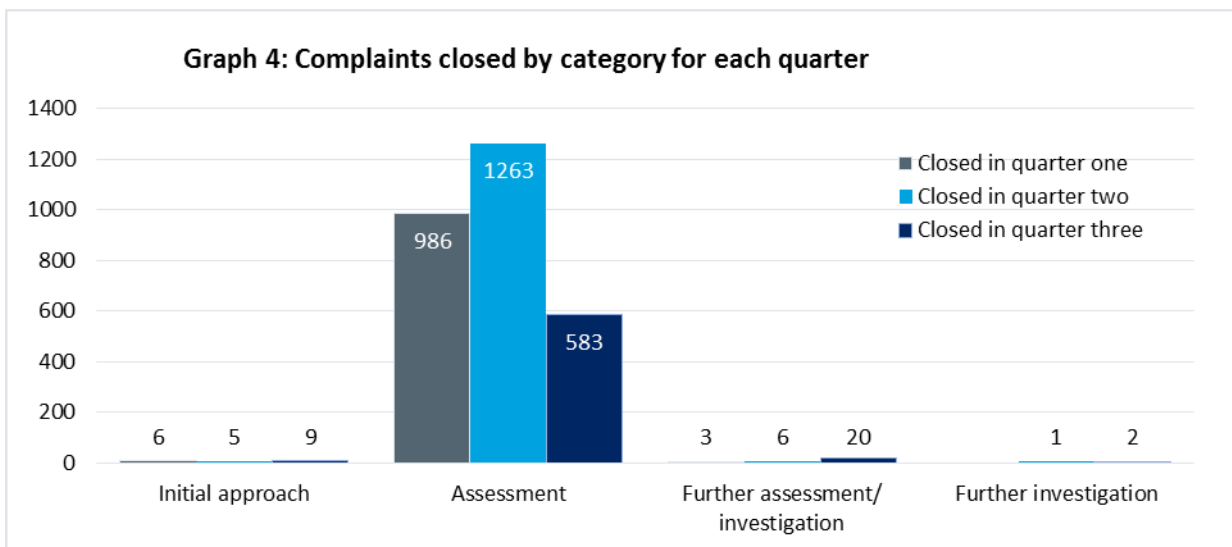
Initial approach: matters generally involving a single telephone call which can be resolved without lengthy assessment or investigation.

Assessment: complaints requiring further consideration that can be resolved without contacting the provider in relation to the specific complaint. This includes when the Office advises complainants to lodge their complaint with the provider in the first instance.

Investigation/further assessment: complaints are escalated to this category when more in-depth assessment is required for unavailable providers and for investigations where a provider is available.

Further investigation: complaints are escalated to this category when they require further investigation, involve sensitive or highly complex matters or involve multiple contacts with the provider.

Graph 4 shows complaints closed by category during each quarter and Graph 5 shows open complaints by category at the end of quarter three.

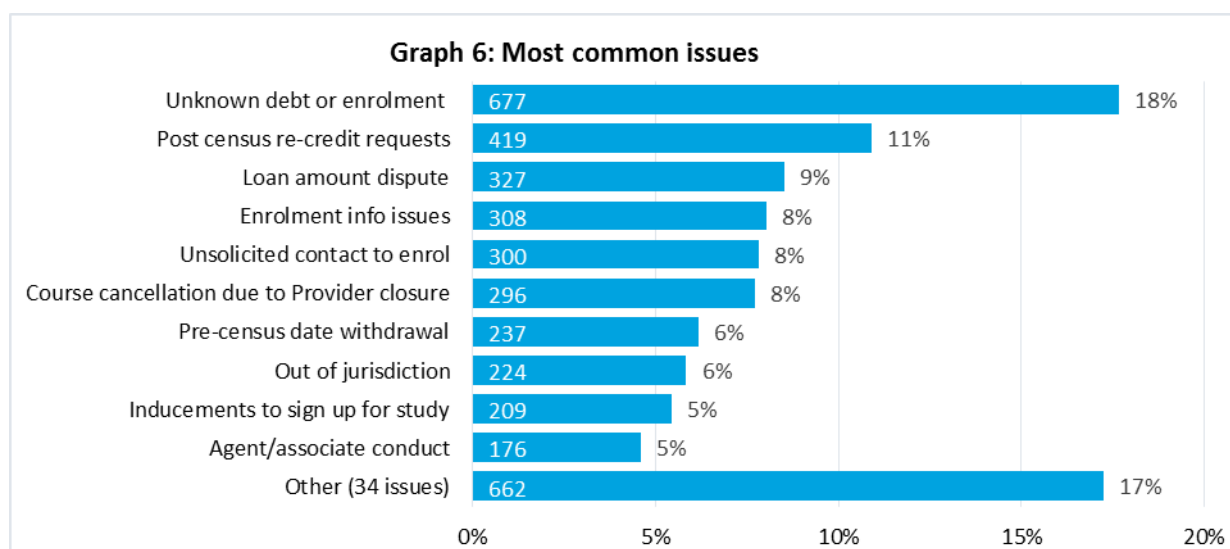


At the end of quarter three 1,098 complaints were open at the investigation/further assessment category. This compares with 719 complaints that were open at this category at the end of quarter two—a 53 per cent increase.

Issues identified for validated data

The Office records issues as complainants present them. As Graph 4 above shows, as at 31 March 2018, the Office had closed 2,852 complaints at the initial approach and assessment categories, without investigating these complaints. Where the Office does not investigate complaints, it records issues as reported by the complainants without the Office confirming that the issue occurred.

Graph 6 shows the most common issues for all validated complaints as at 31 March 2018. Complaints can include multiple issues, therefore there are more issues (3,835) than total complaints closed (2,884).



A description of the top ten issues for the function is detailed below:

Issue	Description
Unknown debt or enrolment	Complaints about VET loan assistance debts where the complainant does not recall signing up for a course or was not aware there was a student loan associated with the course.
Post-census re-credit requests	Complaints about withdrawal after the census date where a student has enquired about or applied for a re-credit of their VET student loan, including in special circumstances. (The census date is the last day a student can withdraw from a course without incurring a cost.)
Pre-census date withdrawal	Complaints about the provider's handling of a pre-census date withdrawal request.
Unsolicited contact to sign up	Complaints about cold-calling, approaching a person in a shopping centre or public space etc.
Enrolment information issues	Complaints about inaccurate, incomplete or unclear information a provider or broker gave a prospective student about eligibility for VET

	FEE-HELP or VET Student Loans, fees for the course or the amount of the loan prior to enrolment.
Out of jurisdiction	Complaints about issues that are outside the remit of the function, including complaints about higher education debts.
Debt refund not action by provider	Complaints about a provider’s delay or failure to action a re-credit. Including when a provider informed the complainant they were eligible for a re-credit of a VET debt but did not update DET’s system accordingly.
Loan amount dispute	Complaints about the provider’s calculation of the loan amount or advice from the provider relating to the loan amount.
Inducements to sign up for study	Complaints about providers or brokers offering a prospective student something of value such as a laptop, tablet or money in exchange for enrolling in a course and taking out a loan.
Course cancellation due to provider closure	Complaints about course cancellation due to the provider closing.

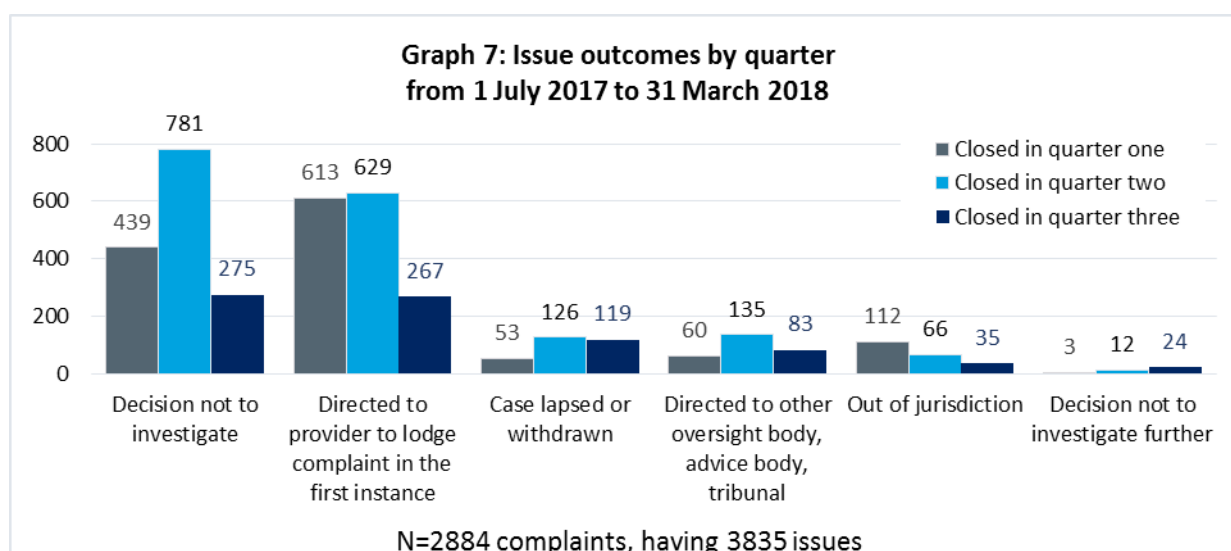
Outcomes for complaints closed

Graph 7 includes data from all closed complaints in quarters one, two and three and shows the top six complaint outcomes. This graph shows that the top two outcomes for each quarter were ‘directed to provider to lodge complaint in the first instance’ and ‘decision not to investigate’.

If a complainant has not used the provider’s internal grievance procedure before approaching the Office, the Office will refer the complainant back to the provider and close the complaint where there is a reasonable prospect of the complainant achieving an outcome. This allows providers to resolve complaints in the first instance. If a complainant comes back to the Office because they are dissatisfied with the outcome of the provider’s attempt to resolve their complaint, the Office will open a new complaint and assess whether the matter should be investigated.

The Office makes a decision not to investigate when:

- an action was open to a provider to take
- the complaint is currently part of legal action undertaken by ACCC and DET
- a provider has already actioned the request of the student, or
- a complainant is referred to a tuition assurance operator to seek redress.



A description of the top six complaint outcomes as shown in Graph 7 is detailed below:

Complaint outcome	Description
Directed to provider to lodge complaint in the first instance	The complainant has not yet followed the provider's complaint handling or grievance procedures.
Decision not to investigate	Investigation was not warranted in all the circumstances. Includes when <ul style="list-style-type: none"> an action was reasonably open to a provider to take the complaint is currently part of legal action undertaken by ACCC and DET a complainant is referred to a tuition assurance operator to seek redress, or a provider has agreed to re-credit a complainant's student loan.
Decision not to investigate further	After commencing an investigation, the Office decided that further investigation was not warranted for any reason, including if the provider had provided an appropriate remedy.
Out of jurisdiction	Complaints about issues that are outside the remit of the function, including complaints about higher education debts. The Office typically provides referrals to the relevant oversight body in these instances.
Case lapsed or withdrawn	The complainant cannot be contacted, does not respond to requests for information or does not wish to pursue their complaint.
Directed to other oversight body, advice body or tribunal	The complaint would be better dealt with through an external avenue such as the DET, the Administrative Appeals Tribunal or the complainant was referred to an advice or advocacy body.

In quarter three, the Office closed 193 complaints (which included 275 issues) at the initial approach and assessment categories with an outcome of ‘decision not to investigate’.

The table below outlines the reasons the Office declined to investigate each issue:

Reason to close under ‘decision not to investigate’	Description	Number of issues
Action is being considered by Court	The Office decided not to investigate because the provider is subject to legal action, such as in instances where the complaint is currently part of legal action undertaken by ACCC and DET.	107
Complainant was referred to the tuition assurance operator	The Office declined to investigate as the complainant had an avenue of redress with a tuition assurance operator.	51
Action was reasonably open to the provider to take	The Office decided not to investigate because it determined, on the information available, that the provider acted in a way that was both reasonable and open to it.	39
Decision was reasonably open to the provider to make	The Office decided not to investigate after assessing the information available that the provider made a decision that was reasonable and open to it under the relevant legislation.	33
Provider provided an appropriate remedy	The provider gave a remedy for the complainant without the need for the Office to investigate.	28
Other	Instances where one of the above reasons do not apply, for example when the Office referred complainants to the DET to obtain details of their VET loan assistance debts.	11
Total		275

CASE STUDY 1—Investigation into information available at time of enrolment

In April 2016 Kylie* signed up to a Diploma of Retail Management after being approached by a broker. Kylie advised the Office that the broker informed her that the course was free.

Kylie informed the Office that in August 2016 she had attempted to begin studying the course. However, she found the course material too complex and she decided not to continue studying the course. She did not contact her provider to withdraw at this time.

Kylie informed the Office that she contacted her provider in February 2017 and requested to withdraw from her course. Kylie advised that it was during this contact that she was first informed of the course costs. The provider advised that she had incurred a VET FEE-HELP debt for two units and that, because the census dates (one in August and one in November 2016) had passed, she was not eligible for a refund of these fees.

Kylie contacted the Office seeking to have her VET FEE-HELP debt removed. After an investigation, the Office was satisfied that the provider had informed Kylie of the course cost on multiple occasions. The provider gave the Office copies of enrolment correspondence and Commonwealth Assistance Forms, which included details of the course cost. The provider also gave the Office copies of emails in which it had offered academic support to Kylie.

However, during the investigation, it became apparent that Kylie did not meet the entry requirements for this course. The training package stipulated that applicants were required to have experience in retail management. The broker was aware of Kylie's work experience at the time of enrolment. The Office considered that the provider did not follow the correct procedures in its assessment of Kylie's eligibility for the course.

While it appears to the Office that the provider did not follow the correct procedure in assessing Kylie's suitability for the course, the Office considered that Kylie had been given clear information about her suitability for the course, the course costs and that she could have withdrawn from the course before the second census date in November 2016.

Therefore, the Office concluded that both the provider and Kylie had contributed to the incurring of this VET FEE-HELP debt. On this basis, the Office formed a view that the provider should re-credit half of the VET FEE-HELP debt. The provider agreed to do this and Kylie was satisfied with this result.

**name has been changed*

Investigation process

Once a complaint has been allocated to a VET Student Loans team investigation officer, they assess the information provided by the complainant as well as the relevant legislation and guidelines that may apply.

The investigation officer has discretion under the *Ombudsman Act 1976* (the Act) to commence an investigation or close a complaint without investigation. If the investigation officer is satisfied that an investigation is warranted, the complaint is escalated to the investigation/further assessment stage.

The Office seeks to resolve complaints informally through its investigations. An investigation commences after the Office sends notice to a provider or liquidator under s 8 of the Act. The s 8 notice includes specific questions and requests for documents that the provider is asked to respond to within 28 days.

After receiving the response from the provider, the investigation officer assesses the provider’s response as well as information from the complainant and other sources.

At this point, the investigation officer makes a decision to either close the complaint or if additional information is required from the provider, progress the complaint to the further investigation stage. The provider may offer a remedy through this process and the investigation can be finalised and the complainant informed of the outcome.

If the Office forms a view that a re-credit or other remedial action such as an apology or a change in the provider’s processes is justified and has not been able to influence an appropriate outcome for the complainant through the investigation process, a ‘preliminary view’ notice is sent to the provider. The preliminary view notice outlines the Office’s view on the complaint and suggests remedial action. The provider typically has 28 days to respond to this notice.

If the provider is not receptive to the preliminary view or is otherwise non-cooperative to the Ombudsman’s requests, the Office may escalate the complaint to DET under s 35A of the Act or to the Secretary of DET under s 20ZV of the Act.

If the investigation officer decides not to investigate or decides to cease investigating a complaint, the decision is explained to the complainant and the complaint is closed. The Office has a reconsideration and review process available to complainants who disagree with a decision made by the Office. An outline of this process can be found on the Office’s website [here](#).

Investigations

As of 31 March 2018, the Office had sent 151 notices under s 8 of the Act to providers or liquidators/administrators. Of these, 30 notices were sent in quarter three.

In quarter three, the Office finalised 22 investigations (into 29 issues) with the following outcomes:

Investigation outcome	Description of outcome	Number of finalised complaint investigations
No remedy required	The investigation did not result in a re-credit or other remedy for the complainant. Typically, in these cases, the Office has found that it was satisfied with the provider’s explanation of its actions and decided not to investigate further.	10
Debt waived or reduced	The investigation resulted in a provider re-crediting a person’s VET loan assistance debt, either in part or in full.	5
Other non-financial remedy	There was no re-credit made as a result of the investigation, but another remedy was offered by the provider such as extending a student’s study period without charge or issuing a student’s completion certificate.	4
Provider undertook to reconsider matter	As a result of the Office’s investigation, the provider agreed to reconsider the decision	2

	and/or action, for example, to conduct a fresh review of the complaint.	
Action expedited	The investigation resulted in the provider expediting a delayed action, for example, the processing of an application.	1

While only a small number of complaints have been resolved following investigations by the Office, the rate of resolution is expected to increase in quarter four 2017–18 and quarter one 2018–19 as investigations are progressed.

CASE STUDY 2—Investigation into re-credit not actioned by provider

Joaquin* was enrolled into a Diploma of Business course with a provider along with his wife Sofia*. Their son, Sebastian* acted as the ‘on behalf of’ for Joaquin and Sofia due to their limited English language skills.

Sebastian advised the Office that his parents’ English skills are extremely limited and they were not aware they were signing up for a course with such significant fees attached. Sebastian further advised the Office that his parents were signed up at the local community centre and were offered a laptop at the time of enrolment.

In 2015, Joaquin and Sofia engaged Legal Aid to assist with seeking a re-credit of their debt from the provider. Legal Aid successfully negotiated the re-credit with the provider. Sebastian provided the Office with a document that demonstrated the provider agreed to re-credit in full the fees charged to Joaquin and Sofia. The debts were not re-credited and the provider has since ceased to operate, however the parent provider is still operating.

When Sebastian initially approached the Office on behalf of his parents, he was referred to the parent provider to lodge the complaint in the first instance. Sebastian received no response from the provider, and came back to the Office.

The Office issued a s 8 notice to the parent provider requesting they provide additional information and answer questions as to the circumstance of Joaquin’s and Sofia’s enrolments, including the steps they had taken to re-credit the debts.

In response the Office’s s 8 notice, the parent provider agreed to re-credit the debts to honour the original provider’s decision. The parent provider did not comment on the issues raised.

**names have been changed*

Australian Competition and Consumer Commission cases

ACCC and DET have taken legal action in the Federal Court of Australia (the Court) against four providers—Unique International College Pty Ltd, Cornerstone Investment (Aust) Pty Ltd, the Australian Institute of Professional Education Pty Ltd and Phoenix Institute of Australia Pty Ltd—in relation to the enrolment practices of those providers. Orders sought include for the providers to cancel the debts of students enrolled within specific periods and to repay the money to the Commonwealth.

The Office has decided not to investigate complaints about enrolment practices from students who were enrolled with these providers during the periods being considered by the Court. Subject to the decision of the Court, these actions may result in loans being re-credited, however complainants are invited to return to the Office if their complaint is not resolved through the Court action.

As at 31 March 2018 the Office had received 438 complaints about 851 issues relating to the enrolment practices of the four providers subject to ACCC and DET legal action.

Process to defer debts with the Australian Taxation Office

The Office and ATO have an arrangement where complainants' compulsory student repayments can be deferred if there is sufficient evidence of provider misconduct. The complainant is made aware that the deferment is temporary, the debt remains and indexation continues to accrue unless the debt is re-credited or otherwise cancelled. As at 31 March 2018 the Office had referred 1,379 complainants to the ATO for deferment of their loan repayments.

The Office will work with the ATO to rollover existing deferments for the 2018–19 financial year.

Complaints relating to the VET Student Loans program

As of 31 March 2018, the Office had received 48 complaints which included 57 issues relating to the VET Student Loans program. The most common issues identified through these complaints are the loan amount including loan caps, complainants' applications for VET loan assistance and course quality and progression.

Of these complaints, only one has been escalated to the investigation/further assessment category.

CASE STUDY 3—Investigation into VET Student Loans eligibility

In 2017, Hamish* signed up to an Advanced Diploma of Interior Design and a VET Student Loan. As part of the entry process, the provider asked Hamish to complete literacy and numeracy assessments. Hamish's numeracy results were lower than required for entry to the course. Hamish had completed a Diploma level course in 1988 and requested that the provider consider this when assessing his academic eligibility for the course.

The provider ultimately decided that Hamish was ineligible to receive a VET Student Loan for this course due to the age of his Diploma and his numeracy test results. Hamish contacted our Office after receiving this decision from the provider.

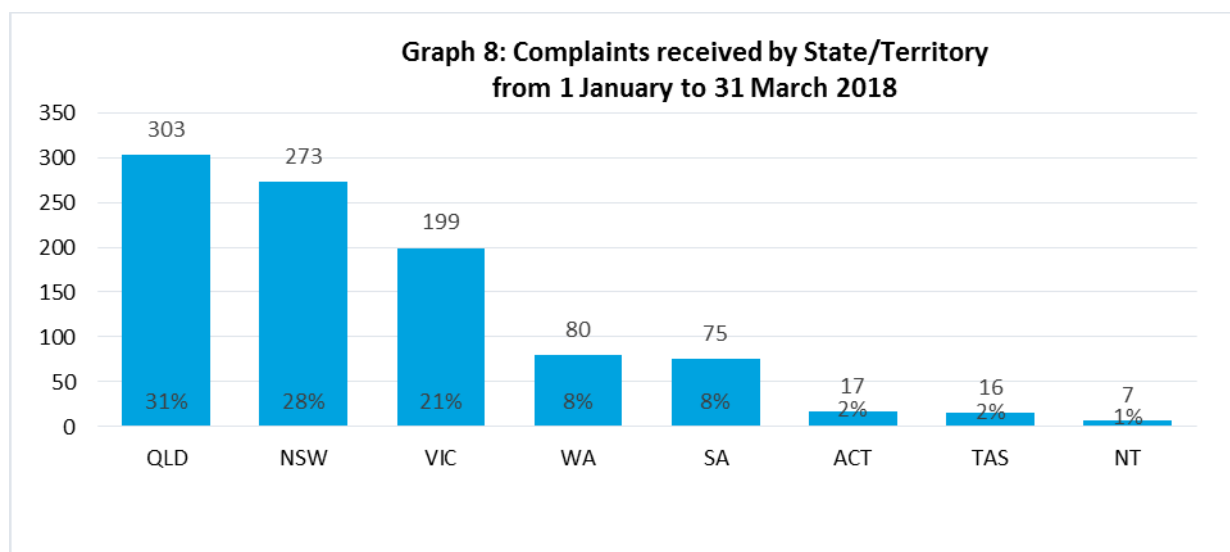
The Office assessed Hamish's information, the provider's decision letter and the relevant legislation. The Office concluded that the provider followed its processes and legislation when it refused Hamish's application for a VET Student Loan.

The Office contacted Hamish and explained that the Office would not investigate his complaint. The Office explained that Hamish had a review pathway available to him and that his next step would be to lodge a review request with the provider. If he was not satisfied with the provider's review decision, he could then appeal to the Administrative Appeals Tribunal. The Office was also able to provide a referral to an advocacy service that assists students in complaining to providers.

**name has been changed*

Complaints received by state and territory

During quarter three, the Office received complaints from people in each state and territory in Australia as outlined in Graph 8.



Outlook for Quarter Four (1 April–30 June 2018)

The lack of evidence for complaints with unavailable providers has been challenging for the Office in quarters one, two and three. In quarter three, the Office established a process to obtain data from other government agencies to assist in the Office's investigations of complaints. It is expected that with access to alternative data sources the Office will be able to progress more investigations in quarter four than in quarter three.

The Office anticipates to receive complaints at a steady rate in quarter four 2017–18 and an increased number of complaints in quarter one 2018–19 when personal tax returns are due. It is likely that the proposal to reduce the compulsory repayment threshold for income contingent student loans from 1 July 2018 will lead to a further increase in complaints if enacted, as more students with debts they are unaware of will be captured in compulsory repayments.¹

¹ [Higher Education Support Legislation Amendment \(Student Loan Sustainability\) Bill 2018](#)