

Quarterly Update 5: 1 July–30 September 2018

Executive Summary

This is the fifth quarterly update for the Office of the Commonwealth Ombudsman’s (the Office) VET Student Loans Ombudsman function (the function). This update covers the period 1 July–30 September 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
- compares complaint data from 1 July–30 September 2018 and previous periods
- describes progress made to date in resolving complaints
- provides an outlook for the remainder of 2018–19.

During 1 July–30 September 2018, we received 3,339 complaints, closed 1,670 complaints, commenced 21 preliminary inquiries and commenced 10 investigations. This period coincided with most people completing their tax returns between July and October, which explains the large number of incoming complaints.

On 29 November 2018, the Australian Parliament passed legislation¹ that allows the Secretary of the Department of Education and Training (DET) to cancel VET FEE-HELP debts that were incurred inappropriately. We are working with DET on which complaints made to us will be eligible for consideration by the Secretary under the legislation and how the process will operate. More information about the legislation is detailed on [page 10](#) of the update.

¹ [Higher Education Support Amendment \(VET FEE-HELP Student Protection\) Bill 2018](#)

Data presented in this update

In this update ‘validated data’ means data that has undergone more in-depth assessment by a dispute resolution officer. When the general term ‘data’ is used, this will typically include data that may have only undergone preliminary assessment.

Out of jurisdiction complaints

In previous quarterly updates, we provided data that included complaints about bodies that were not within the function’s jurisdiction, such as complaints about higher education providers. In these cases, we referred complainants to the provider or other relevant oversight agency as appropriate.

In this quarterly update, we have removed complaints about out of jurisdiction bodies from our data. This means that some of the data reported in this update will not be comparable to previous quarterly updates. Future quarterly updates will not contain out of jurisdiction complaints.

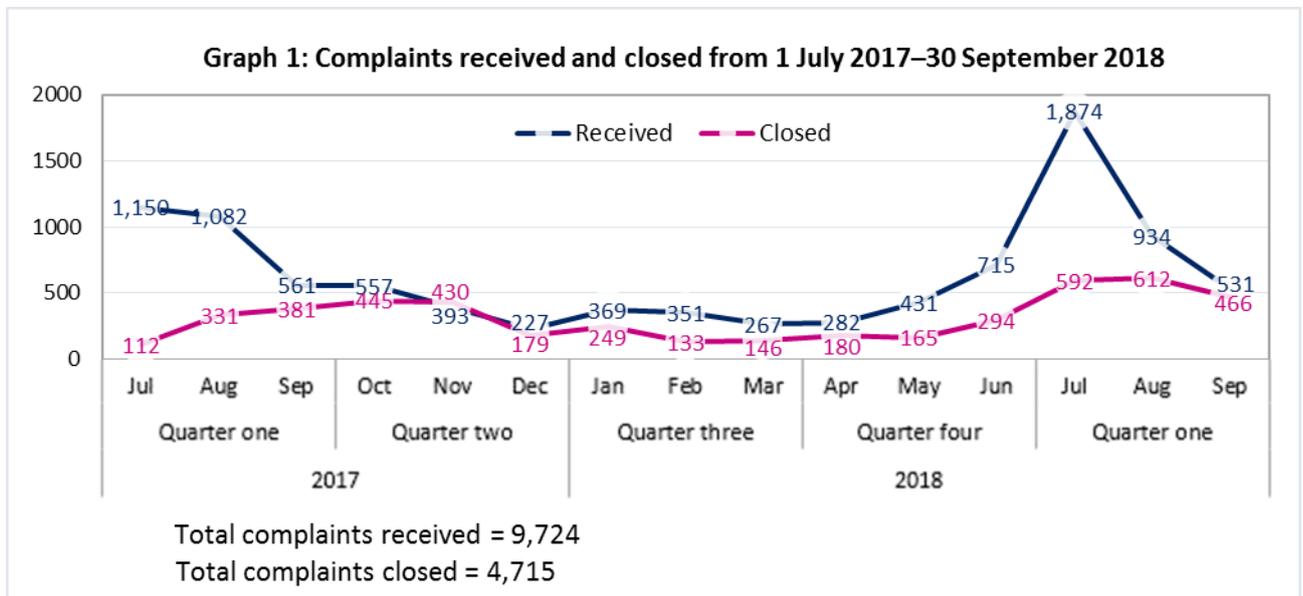
As at 30 September 2018, we received 368 complaints about providers or bodies that were not within our jurisdiction to investigate. Of these complaints, 74 were received during July–September 2018.

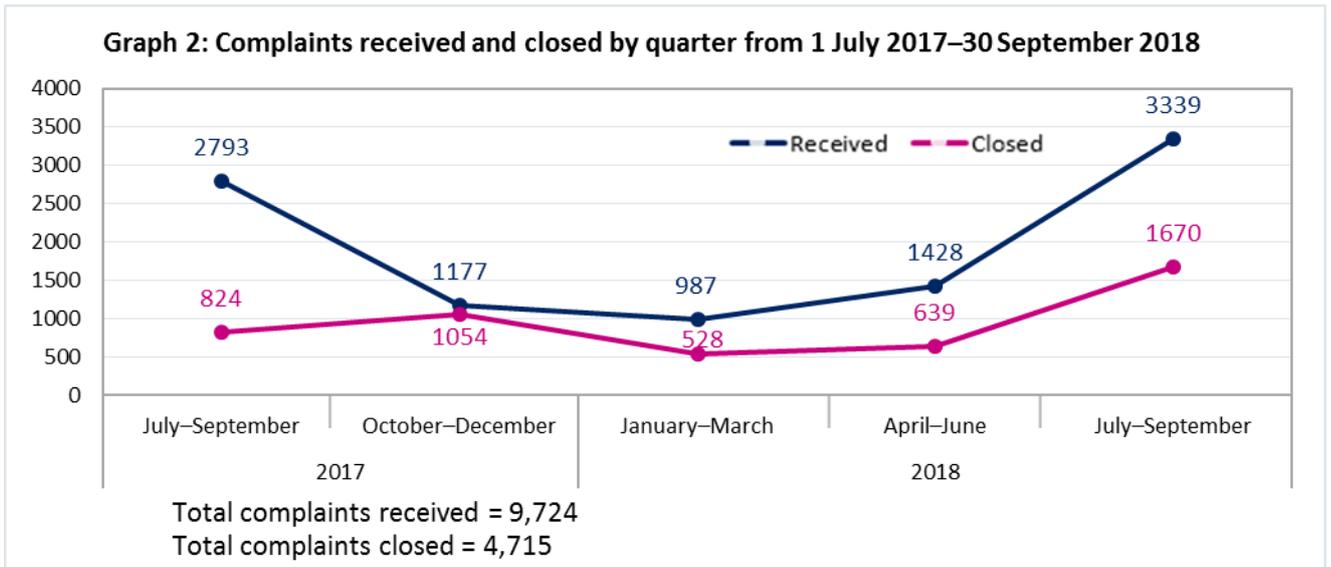
This update will include complaints relating to providers that are within our jurisdiction, but issues that are outside of our jurisdiction. For example, a complaint about a VET Student Loans provider which relates to the outcome of an assignment, rather than a complaint about a VET Student Loan. Recording this data helps us identify systemic issues with the VET Student Loans program and approved providers that are outside our jurisdiction to investigate.

Approaches received and approaches closed

Complaints received and closed

We received 3,339 VET loan assistance related complaints during 1 July–30 September 2018. This is 134 per cent more than the 1,428 complaints received during the previous quarter (April–June 2018).



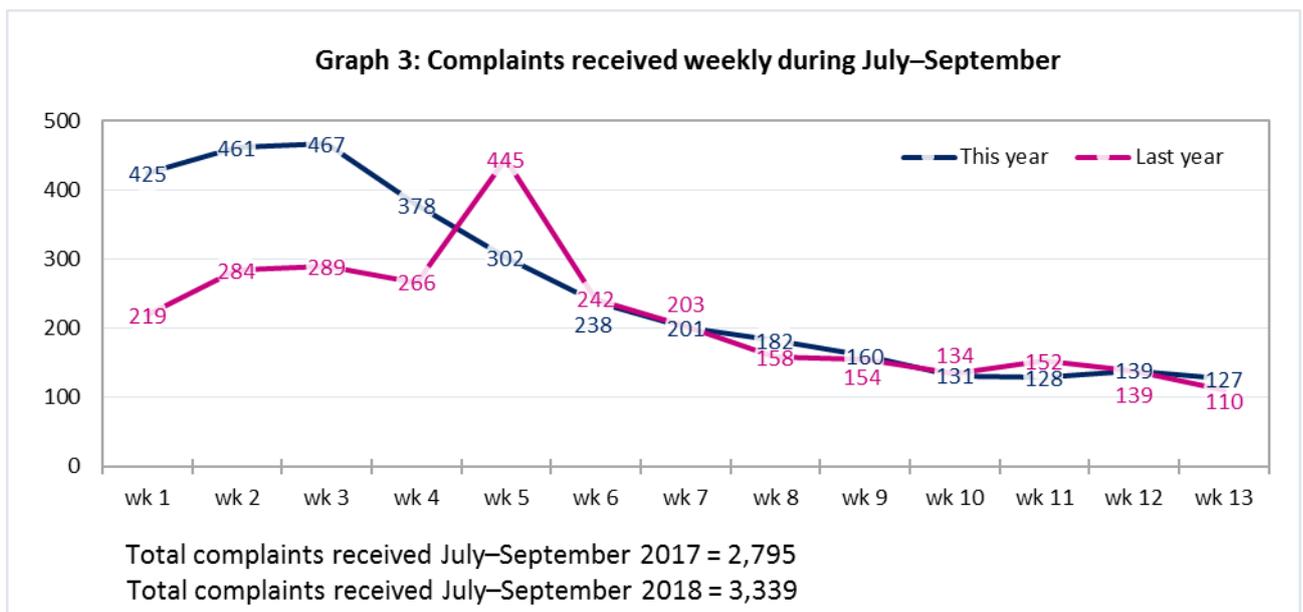


Graph 1 and 2 show that we received an influx of complaints during the 1 July–30 September 2018 period, including receiving 1,874 complaints in July 2018. This is mainly due to people completing their tax returns and discovering they had a debt. Due to this influx of complaints, we focussed on processing complaints where there is an external remedy pathway available to the complainant, such as where we could refer complainants to their provider to follow their complaints and appeals process to resolve their complaint. This is similar to the approach we took to process complaints during 1 July–31 December 2017.

We closed 1,670 complaints during 1 July–30 September 2018, which is a 162 per cent increase compared to the 639 complaints closed during 1 April–30 June 2018. Outcomes of closed complaints are discussed further on [page 6](#).

Complaints received by week

Graph 3 is a comparison of complaints received during 1 July–30 September 2018 and those received during the same period in 2017. We received 3,339 complaints during July–September 2018. This compares with 2,795 complaints received during July–September 2017—a 19 per cent increase. The 2017 data includes 261 legacy complaints transferred to our Office from DET.



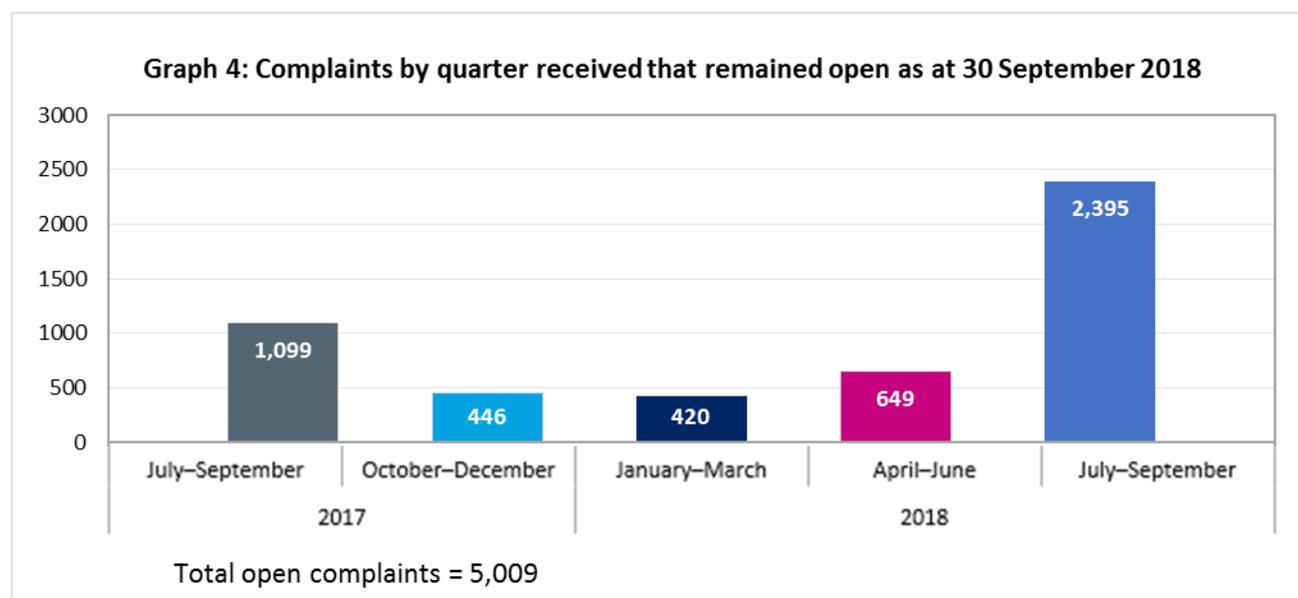
Complaints closed and open by quarter received

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 or investigate further because:
 - the action was open to a provider
 - the complaint is currently part of legal action undertaken by the Australian Competition Consumer Commission (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 is not within our jurisdiction.

Closed complaint outcomes, which are discussed on [page 6](#) give an indication of the proportion of complaints that may be dealt with through other mechanisms.

Graph 4 shows complaints that were open as at 30 September 2018 by the period in which they were received.



Graph 4 shows that 2,614 complaints received in the 2017–18 financial year remained open as at 30 September 2018. This is due to the complexity of handling complaints where the provider is unavailable. We plan to assess these complaints under the legislation, passed by the Australian Parliament on 29 November 2018. The work we are undertaking in relation to the legislation is discussed further on [page 10](#).

Complaints closed and open by category

We use 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 investigation. This includes when we advise 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.

Table 1 shows all complaints we have received from our commencement on 1 July 2017 to 30 September 2018 classified by the category they had progressed to at 30 September 2018 in the case of open complaints, and by the category they were closed at in the case of closed complaints.

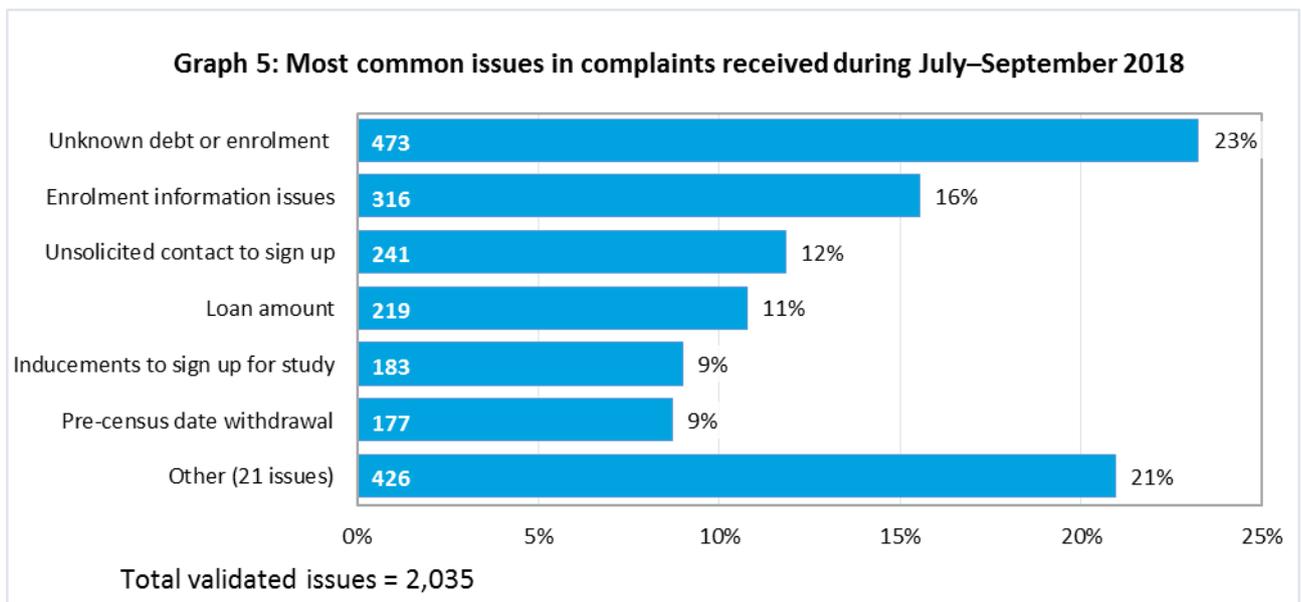
Table 1: Open and closed complaints by category as at 30 September 2018					
	Initial approach	Assessment	Further Assessment/ Investigation	Further investigation	Total
Open	79	2,757	2,139	34	5,009
Closed	43	4,618	42	12	4,715

As Table 1 shows, as at 30 September 2018, 2,139 complaints were open at the further assessment/investigation category and we closed 4,661 complaints at the initial approach and assessment categories, without investigating these complaints.

Issues identified by complainants

It is important to note that we record issues as complainants present them. When we do not investigate complaints, issues are recorded as complainants report them and we do not verify whether the reported conduct occurred.

Graph 5 shows the most common issues raised for validated complaints received during 1 July–30 September 2018.



Descriptions of the six most common issues are detailed on the next page.

Issue	Description
Unknown debt or enrolment	Complaints about VET loan assistance debts where a complainant does not recall signing up for a course or was not aware there was a student loan associated with the course.
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.
Unsolicited contact to sign up	Complaints about cold-calling, approaching a person in a shopping centre or public space.
Loan amount dispute	Complaints about a provider's calculation of the loan amount or advice from a 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.
Pre-census date withdrawal	Complaints about a provider's handling of a pre-census date withdrawal request.

Outcomes for closed complaints

Table 2 on page 7 includes data for complaints closed during 1 July–30 September 2018 and shows the complaint issue outcomes. Complaints can include multiple issues, therefore there are more issues (2,609), than total complaints closed (1,670).

This table shows that the top two outcomes for the quarter were 'directed to provider to lodge complaint in the first instance' and 'decision not to investigate'. We closed 1,444 issues because complainants had not exhausted their provider's internal grievance procedure or internal re-credit review steps. We consider that providers are best placed to handle complaints in the first instance for the following reasons:

- providers have access to student information which may result in a more timely outcome
- providers should be aware of students' academic progress and any specific student circumstances
- in order to be a registered training organisation, providers are required to have a complaints process and it is important that this process be exhausted before we investigate.

If a complainant comes back to us because they are dissatisfied with the outcome given by their provider, we will re-open their complaint and assess whether the matter should be investigated.

Table 2: Issue outcomes for complaints closed between 1 July–30 September 2018

Complaint outcome	Description	Total number	%
Directed to provider to lodge complaint in the first instance	The complainant has not yet followed the provider's complaint-handling or grievance procedures.	1,444	56
Decision not to investigate	Investigation was not warranted in all the circumstances and therefore no investigation was commenced. This 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 the 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. <p>This also includes when the complainant is not sufficiently connected to the complaint, such as when a person calls on behalf of another person without their knowledge or consent.</p>	858	33
Case lapsed or withdrawn	The complainant cannot be contacted, does not respond to requests for information or does not wish to pursue their complaint.	185	7
Directed to other oversight body, advice body or tribunal	The complaint would be better dealt with through an external avenue such as DET, the Administrative Appeals Tribunal (AAT) or the complainant was referred to an advice or advocacy body.	90	3
Decision not to investigate further	After commencing an investigation or further assessment of a complaint, we decided that further investigation was not warranted for any reason, including if the provider had provided an appropriate remedy.	32	1

Preliminary Inquiries

We included a description of our preliminary inquiry process in our [fourth quarterly update](#).

During 1 July–30 September 2018, we made 21 preliminary inquiries of providers. This compares to four preliminary inquiries made during 1 April–30 June 2018. Table 3 on page 8 provides the outcomes of our preliminary inquiries made of providers as at 30 September 2018.

Table 3: Preliminary inquiry outcomes as at 30 September 2018

Outcome of preliminary inquiry	Total
No investigation required following preliminary inquiry response	17
Investigation commenced following preliminary inquiry response	2
Still under assessment as at 30 September 2018	6

Investigations

We included a description of our investigation process in our [third quarterly update](#).

As at 30 September 2018, the Office had sent 200 notices under s 8 of the *Ombudsman Act 1976* to providers or liquidators/administrators. As at 30 September 2018, we had finalised 52 investigations.

Our investigations had the below outcomes.

Table 4: Investigation outcomes as at 30 September 2018

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, we have found that we are satisfied with the provider's explanation of its actions and decided not to investigate further.	24
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.	17
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 our investigation, the provider agreed to reconsider the decision and/or action, for example, to conduct a fresh review of the complaint.	4
Better explanation by provider	Through our investigation we secured a better explanation from a provider about its decisions or actions, through our investigation.	2
Action expedited	The investigation resulted in the provider expediting a delayed action, for example, the processing of an application.	1
Total		52

Australian Competition and Consumer Commission cases

In previous updates, we included commentary on the background to legal action taken by the ACCC and DET have taken again four providers: Unique International College Pty Ltd (Unique), Cornerstone Investment (Aust) Pty Ltd, the Australian Institute of Professional Education Pty Ltd and Phoenix Institute of Australia Pty Ltd. The legal actions relate to the enrolment practices of these providers during specified periods.

We decided not to investigate complaints about enrolment practices from students who were enrolled with these providers during the periods considered by the Court.

In June 2017, the Federal Court found Unique had engaged in systemic unconscionable conduct in New South Wales by targeting disadvantaged consumers by various means. Unique appealed this decision and on 19 September 2018 the Full Federal Court (FFC) set aside the 30 June 2017 decision. As a result of the FFC’s judgment (and subject to any appeal to the High Court), the Office will now consider what steps need to be taken in relation to complaints about Unique which were closed pending resolution of the court action.

As at 30 September 2018, the Office had received 918 complaints relating to the enrolment practices of the three providers currently subject to the ACCC and DET legal action and 149 complaints about Unique.

Process to defer debts with the Australian Taxation Office

We have an arrangement with the Australian Taxation Office (ATO) 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.

During 1 July–30 September 2018, the Office referred 1,089 new complainants to the ATO for deferment of their loan repayments for the 2017–18 financial year. We also contacted a further 1,463 complainants that were eligible for a rollover of existing deferments from the 2016–17 financial year. We provided instructions on how to reapply for a deferment of their loan repayments for the new financial year.

Complaints relating to the VET Student Loans program

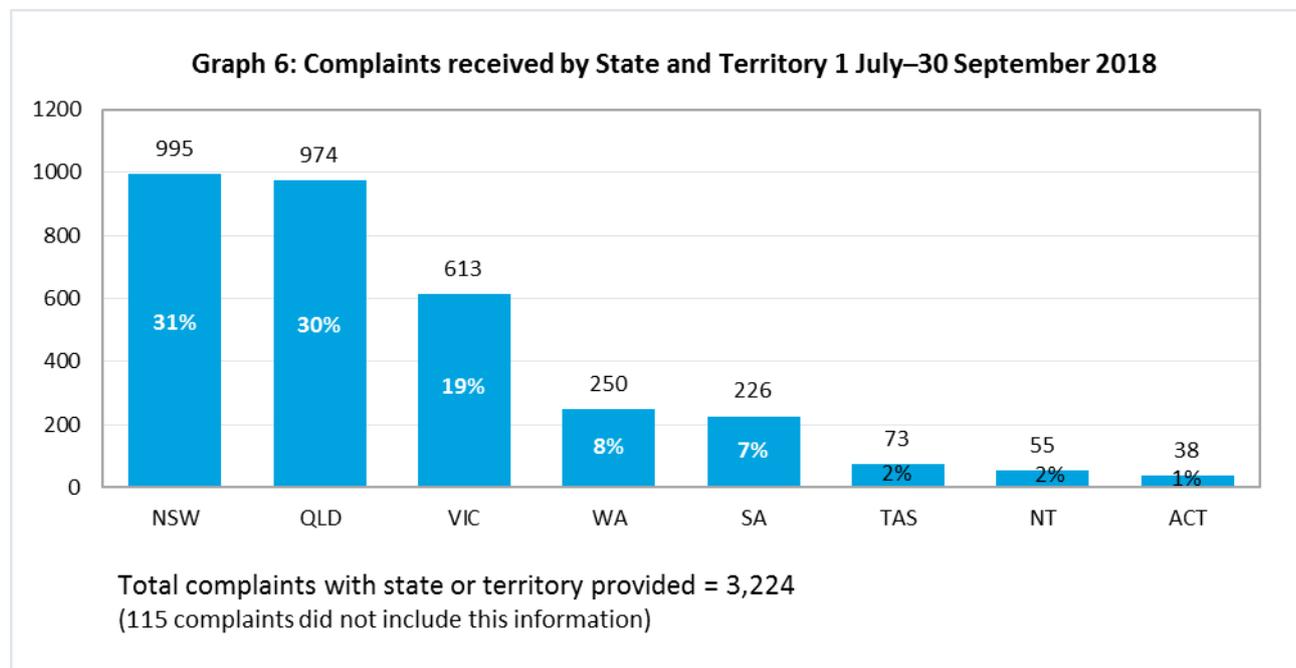
During 1 July– 30 September 2018, we received 45 complaints relating to the VET Student Loans program. This compares with 17 complaints received for this program during the same time last year.

Category	Initial approach	Assessment	Further Assessment/ Investigation	Further investigation	Total
Open	0	35	7	0	42
Closed	1	87	0	0	88

Six of the open VET Student Loans program complaints at further assessment/investigation relate to the conduct of unavailable providers. We will seek alternative sources of information with a view to resolve these complaints. We provide regular updates to these complainants and do not consider that any delay in obtaining information will pose further risk to them or other students as the providers no longer operate. The seventh open complaint relates to an available provider, but as at 30 September 2018, this complaint was being assessed and had not progressed to investigation.

Complaints received by state and territory

During 1 July–30 September 2018, we received complaints from people in each state and territory in Australia as outlined in Graph 6.



Stakeholder Engagement

As advised in previous updates, we will commence delivery of a program of training sessions to VET Student Loans program providers in the first half of 2019.

Government announcement of remedies for cases where VET FEE-HELP debts were incurred as a result of inappropriate conduct by training providers and brokers

On 29 November 2018, the Australian Parliament passed legislation that allows the Secretary of DET to cancel VET FEE-HELP debts that were incurred as a result of inappropriate conduct by training providers and their brokers. DET will be able to re-credit these debts in early 2019. We are working with DET and other government agencies to implement the required process to enable the Secretary to make decisions under the legislation. This will involve our Office investigating complaints and, when satisfied that inappropriate conduct occurred, making a recommendation to DET to re-credit individual debts.