



Quarterly Summary 1 October–31 December 2017

About the Commonwealth Ombudsman

The Commonwealth Ombudsman’s three main functions in its specialist Overseas Students role are to:

1. investigate complaints about actions taken by private registered education providers in connection with overseas students
2. give private registered providers advice and training about best practice complaint-handling for overseas student complaints, and
3. report on trends and systemic issues arising from our complaint investigations.

This summary sets out our activities from 1 October – 31 December 2017 in relation to each of these functions.¹

Significant points in this summary

- » The number of complaints received during the period 1 October – 31 December 2017 is 20 per cent higher than the same period in 2016.
- » Around 46 per cent of complaint issues investigated were decided in support of the provider.
- » Complainants hailed from 31 countries. China and India represented the most frequent origin for complaints investigated, at 12 per cent each.

Quarterly summary at a glance

20% increase in complaints received this quarter on same time last year



Disputes arising from written agreements continues as the most significant complaint issue

Of the complaint issues investigated and finalised:

46%

were in support of provider

38%

were in support of student

16%

were in support of neither



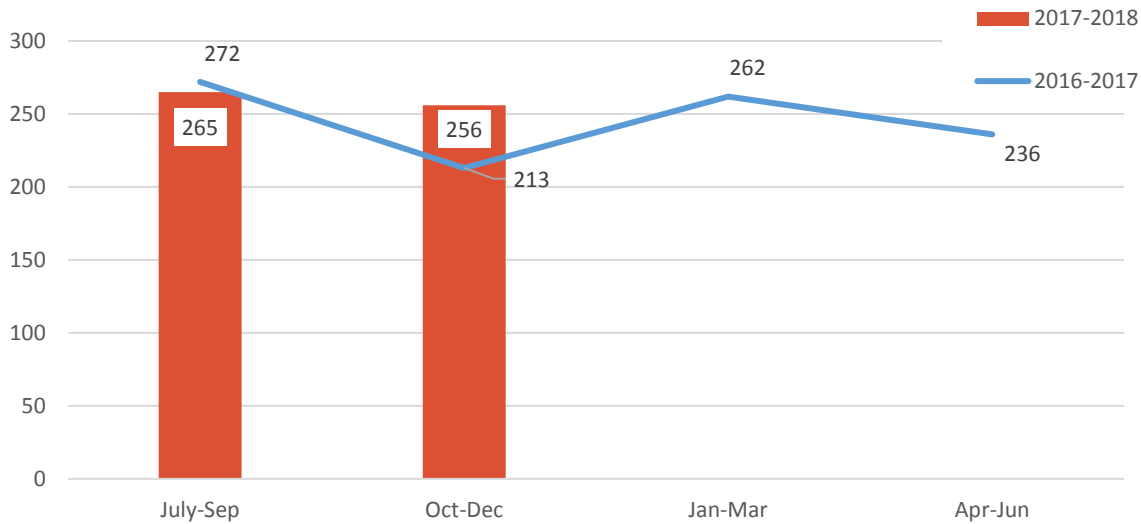
31 countries

Origin of students whose complaints were investigated by the Ombudsman this quarter

¹ Official statistics relating to the 2017–18 reporting year will be published in the Commonwealth Ombudsman’s annual report.



Complaints received



Complaints finalised

Finalised	Not investigated	Investigated	No. of issues investigated	Outcome found in support of:		
				Provider	Student	Neither
256	174	82	106	38	31	13
	68%	32%		46%	38%	16%

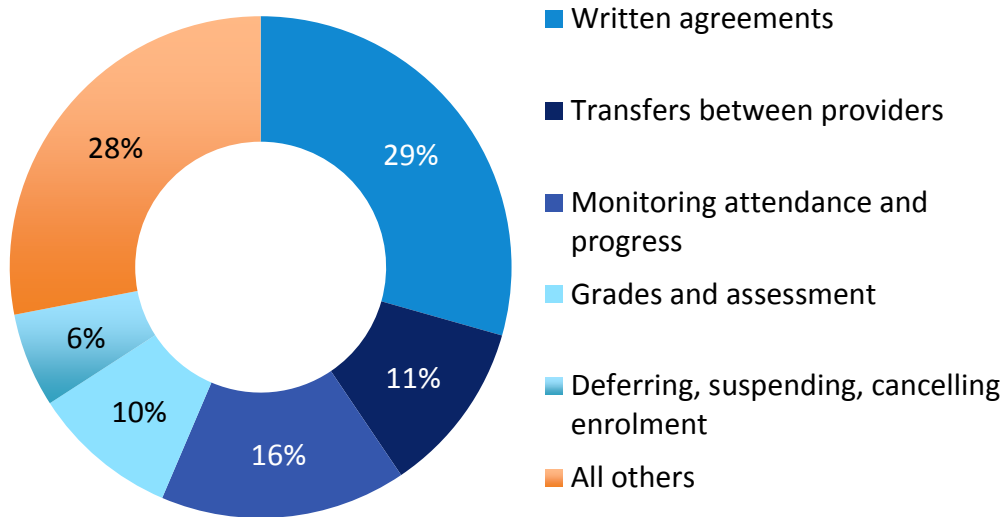
We finalised 256 complaints during the quarter which contained 296 issues, and:

- investigated 82 complaints which included 106 issues. Complaints about provider refund refusals and fee disputes remain the most significant issues. For detailed data about complaint issues handled during the period, please refer to the appendix to this report
- did not investigate 174 complaints. Documents provided by the student at the time of the complaint allowed us to form a view about the dispute to determine whether it required further investigation
- investigations finalised in support of neither party are usually resolved between the student and provider during the course of the investigation.

Complaint issues

The common areas of student complaints such as written agreements and transfers continue to make up the majority of issues reported to our Office.

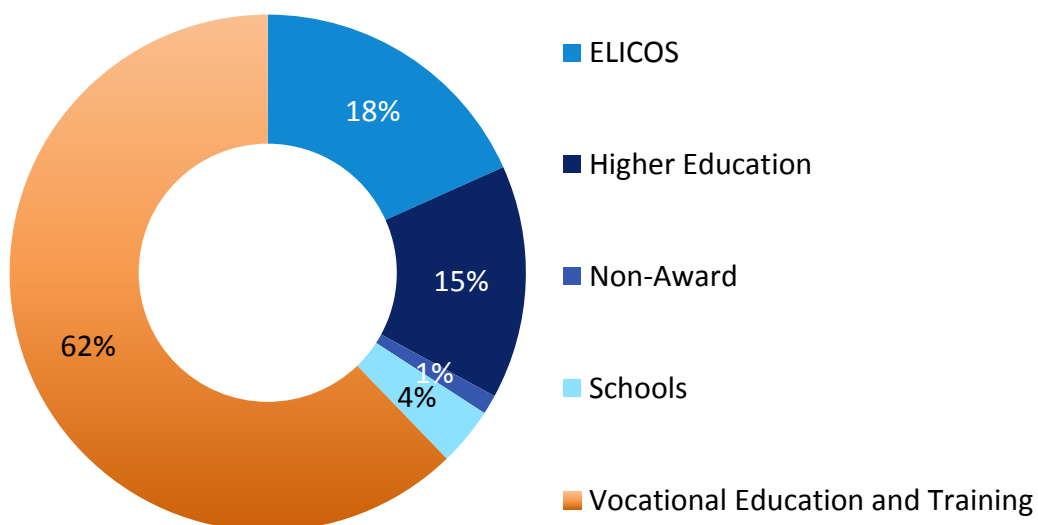
Main complaint issues: October–December 2017



Complaints by education sector

Most finalised investigated complaints related to Vocational Education and Training (VET). The VET sector continues to be the most commonly complained about sector, however it also has the highest number of registered private providers.

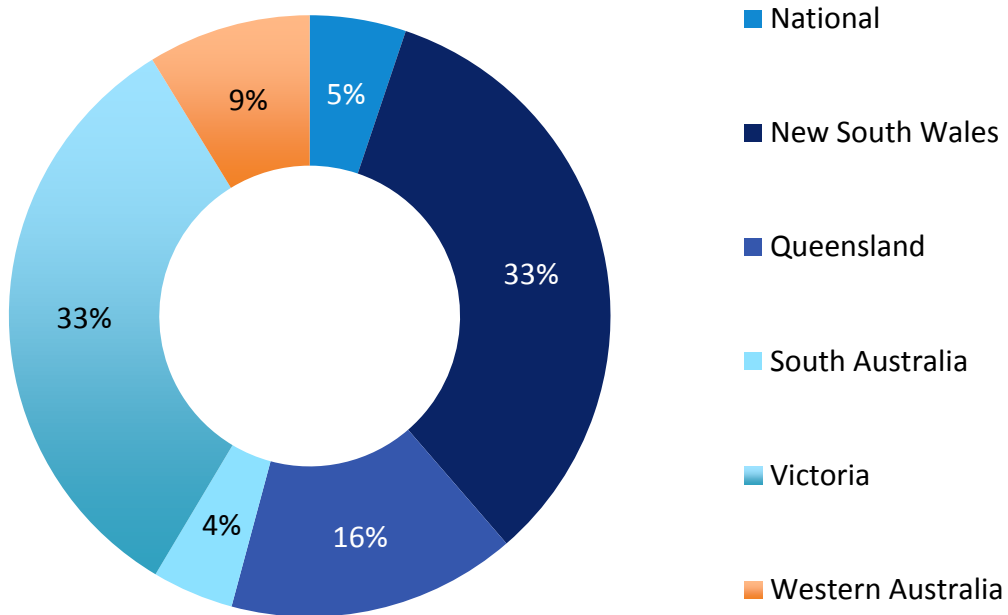
Complaints investigated by sector: October–December 2017



Complaints by state/territory

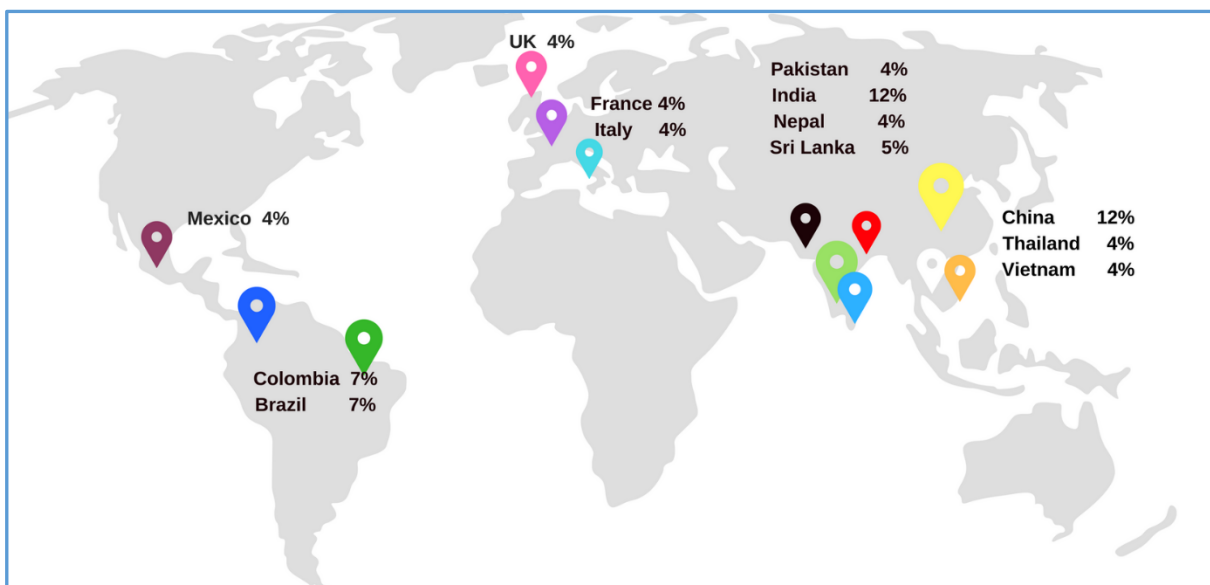
Most complaints were made by students registered with providers in New South Wales and Victoria, which is consistent with the higher number of students studying in these states.

Complaints by provider's registered state/territory: October–December 2017



Complaints investigated by origin of complainant

The complainants whose cases we investigated and closed in the October to December quarter originated from 31 different countries. The largest groups of complainants were from India and China.

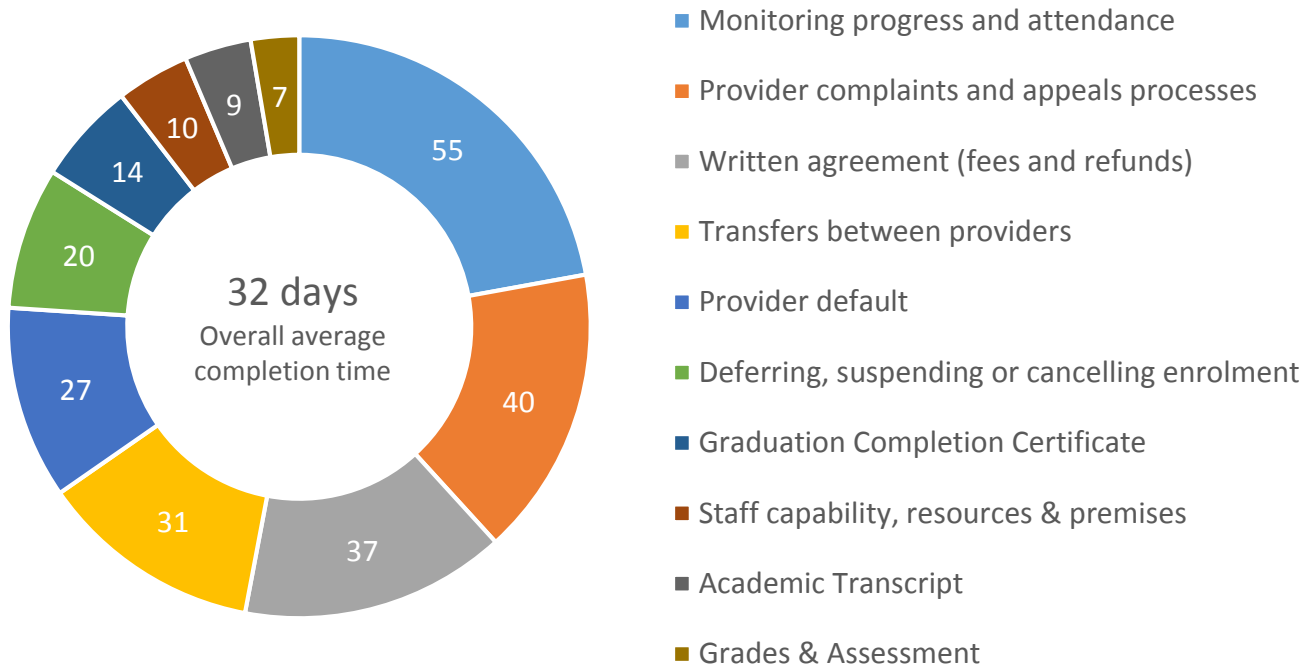


Complexity

Some investigations take longer than others. The length of the process may vary depending on the complexity of the case and the responsiveness of the student and education provider. We continue to look for ways to reduce finalisation times.

In the 1 October–31 December 2017 period, the average completion time for all complaints was 32 days.

10 issues with longest average completion time (days)



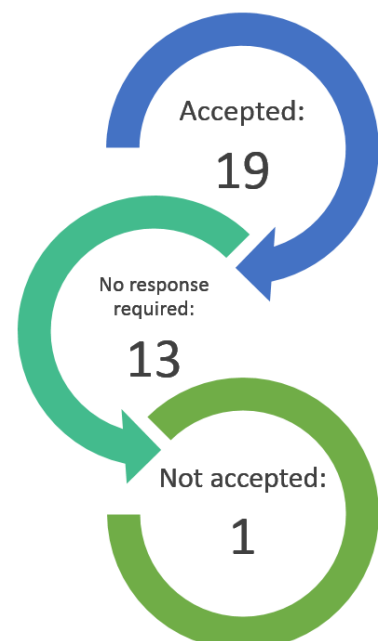
From 1 October–31 December 2017, 73 per cent of all complaints were closed within 30 days, 11 per cent from 31–60 days, and the remainder closed in 61 days or more.

Recommendations

At the conclusion of an investigation, we can make recommendations to providers, not only in relation to specific remedies, but also in relation to the provider's policies or processes.

In the 1 October to 31 December 2017 period, we made **33** recommendations to providers.

If we finalise our investigation in support of the student, and we recommend that a provider takes specific action to benefit the student, providers are obliged to implement our decision or recommendation immediately. If a provider does not agree to implement our decision, we may disclose this refusal to the appropriate regulator (see below).



Public disclosures

Under s 35A of the *Ombudsman Act 1976*, the Ombudsman may also make disclosures to regulatory bodies or public authorities where it is in the public interest to do so.

We made two s 35A disclosures during the October–December quarter.

Submissions

Our Office did not make any submissions in this quarter.

Previous submissions can be found on our [website](#), including our recent submission on proposed changes to the *National Code of Practice for Providers of Education and Training to Overseas Students 2018*.

Keep up to date with the latest news from the Ombudsman by signing up to our
provider e-newsletter [here](#)

Making a difference

Case study 1: Sun

Sun had to return home to South Korea part-way through her studies in Australia, to look after her mother who was ill. To get a refund of her pre-paid Overseas Student's Health Cover (OSHC) premium, her health insurer was asking for evidence that her Confirmation of Enrolment (CoE) had been cancelled by her provider.

Sun contacted our Office to ask for assistance, as she claimed that her provider was not responding to her requests to cancel the CoE.

Upon contacting her provider, the provider claimed that Sun had never filled out the correct application form to withdraw from her studies, and that they had been trying to recover unpaid tuition fees owed to them by Sun before they would release her from her course. The provider had issued Sun with a Notice of Intention to Report for non-payment of fees, and had received no response from Sun.

Our investigation officer looked closely at the provider's policies in relation to cancellation and withdrawal from a course. While the provider's policy did make reference to students needing to make an application for withdrawal, there was no mention of a specific procedure which needed to be followed, and there was no reference to outstanding fees preventing withdrawal from a course.

Our investigation officer therefore recommended that the provider cancel Sun's CoE, which would not affect the provider's right to pursue the unpaid tuition fees. The investigation officer also recommended changes to the provider's deferral, suspension and cancellation policy to reflect to requirements of the National Code 2017 – Standard 13. The provider accepted our recommendations, issued Sun with evidence her enrolment had been cancelled, and updated their policy.

Commentary:

This case was considered under the National Code for Providers of Education and Training to Overseas Students 2017, (National Code 2017) where standard 13 outlines provider obligations relating to deferring, suspending or cancelling an overseas student's enrolment.

The National Code has now been updated (National Code 2018), and standard 9 is now concerned with deferring, suspending or cancelling an overseas student's enrolment.

Standard 13 of National Code 2017, like standard 9 of National Code 2018, does not give guidance for how a cancellation should be put into effect when requested by the student. In cases like this, we look to the provider's own policies to determine the appropriate course of action. Here the provider's policies did not support their insistence on completing an application form or withholding Sun's release until her tuition fees had been settled. We also note that neither version of the National Code enable providers to delay cancellation where it is requested by the student.

Furthermore, as Sun was still enrolled but not attending classes, her provider was in breach of National Code 2017 standard 10 and 11 requirements to monitor, intervene and report her regarding attendance and course progress (standard 8 in National Code 2018). The provider also did not report Sun after the response period for their notice of intention to report for non-payment of fees had expired.

Case study 2: Joao

Joao was enrolled to study a diploma and advanced diploma of commercial cookery with an Australian provider. As he progressed in the first of two semesters in his diploma level studies, he was advised by his provider that they would cease offering the diploma and advanced diploma of commercial cookery to all students at the end of that semester.

Joao decided to withdraw from his studies with that provider before the semester was finished. He applied for release from his provider to study a diploma and advanced diploma of Nursing, but this was refused. Joao appealed the decision with his provider, but the provider declined his appeal, stating that the change of study pathway would be to his detriment.

Joao lodged a complaint with us. The investigation officer requested further information from his provider. In the interim, the provider had agreed to provide Joao with a release letter, but they also provided the requested information to our Office. Although Joao's immediate problem had been rectified, due to concerns about the process which had been followed and the likelihood of other students being affected, the investigation officer gave full consideration to all the documents provided and made some recommendations.

Commentary:

Under the *Education Services for Overseas Students (ESOS) Act*, a provider only officially defaults on the default day, which is defined as the agreed starting day or the day on which the course ceases to be provided. As the provider advised students that they would be discontinuing the course in advance of ceasing to provide the course, and this student withdrew before the default date, the ESOS provisions relating to provider default are not applicable to this case.

However, it is clear that the provider's decision to cease to provide the course made it impossible for the student to continue the desired study pathway. As such, we considered that this was a situation similar to provider default in terms of the practical consequences for Joao, and we do not consider it was reasonable for the provider to have required Joao to apply for release, or to imply that release was dependent on him providing specific evidence.

Instead, as Joao was leaving the course as the result of the provider's own decision, we consider it would have been appropriate for the provider to have assisted students in transitioning from the course should they have required it (as applicable to other cases of provider default).

Appendix – detailed data regarding finalised complaints

Complaint issues closed, compared to previous quarter

Issues	Jul–Sep 2017	Oct–Dec 2017
Standard 3 – provider refund/fee dispute/written agreement	91	87
Standard 7 – transfer between registered providers	28	33
Grades/assessment	17	28
Standard 10 – monitoring course progress	14	25
Standard 11 – monitoring attendance	21	22
Standard 13 – deferring, suspending or cancelling enrolment	25	18
Standard 8 – provider complaints and appeals processes	10	16
Standard 14 – staff capability, educational resources and premises	15	13
Out of jurisdiction to investigate ²	14	11
Graduation Completion Certificate	6	8
Provider default	6	6
Academic Transcript	4	6
Standard 1 – marketing information and practices	3	5
Bullying or harassment	2	5
Standard 9 – completion within the expected duration of study	2	3
Standard 12 – course credit	4	3
Standard 4 – education agents	3	2
Standard 6 – student support services	0	2
Standard 2 – student engagement before enrolment	2	1
Overseas Student Health Cover	1	1
Work placement/experience	1	1
Standard 5 – younger students	1	0
Discipline	0	0
TOTAL	270	296

² Out of jurisdiction means the provider was in jurisdiction but the student was out of jurisdiction because they were not a current, former or intending international student visa holder or the issue complained about was out of jurisdiction, for example discrimination, employment or privacy issues.

Complaints investigated and closed by education sector

Sector	No. of students ³	%	Jul–Sep 2017	%	Oct–Dec 2017	%
VET	117,234	63%	33	46%	51	62%
Schools	7,514	4%	1	1%	3	4%
ELICOS ⁴	23,154	13%	14	19%	15	18%
Higher Education	34,944	19%	22	31%	12	15%
Non-Award	2,028	1%	2	3%	1	1%
TOTAL	184,874		72		82	

Top three issues investigated and closed by sector

Sector	Issue 1	Issue 2	Issue 3
VET	Written agreements	Course progress monitoring	Transfers
Higher Education	Course progress monitoring	Suspending, deferring, cancelling	Certificates
ELICOS	Attendance monitoring	Written agreements	
Non-award	Attendance monitoring		
Schools	Written agreements	Attendance monitoring	

Complaints closed by State/Territory

State/Territory	July–Sep 2017	Number of registered providers ⁵	Oct–Dec 2017	Number of registered providers ⁶
Victoria	99	278	85	284
New South Wales	67	297	85	300
Queensland	30	270	40	275
Western Australia	19	86	22	85
National	18	29	13	29
Australian Capital Territory	0	12	0	13
South Australia	9	78	11	77
Northern Territory	0	5	0	5
Tasmania	0	10	0	10
Total	237	1057	256	1078

³ Number of 'studying CoEs' in Overseas Students jurisdiction by 'main course sector'. Excludes South Australian (SA) providers as, while they are in jurisdiction, we transfer complaints about SA providers to the SA Training Advocate. PRISMS report as at 1 November 2017.

⁴ English Language Intensive Courses for Overseas Students

⁵ Number of providers in jurisdiction, per PRISMS data. Includes SA providers, noting that we transfer complaints about SA providers to the SA Training Advocate, as at 1 November 2017.

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