

## Quarterly Update 1 October–31 December 2017

### Executive Summary

This is the second quarterly update on the VET Student Loans Ombudsman function (the function) of the Office of the Commonwealth Ombudsman (the Office), for the period 1 October to 31 December 2017. 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, and
- comments on the Office's expectations for future quarters.

In quarter two, the Office moved from initial screening and preliminary assessment of complaints to in-depth assessment and investigation. During quarter two, the Office received 1,224 complaints, closed 1,275 complaints, and progressed 581 complaints to investigation.

There is increased complexity of the function's complaints due to:

- the challenges of working with providers that no longer offer VET FEE-HELP or VET Student Loans
- the challenges of working with administrators and liquidators of closed providers
- establishing strong documentary evidence of unconscionable provider conduct or attempts to withdraw before census date, and
- establishing complainants' vulnerabilities and circumstances at the time of the alleged conduct.

The Office anticipates increased numbers of complaints in future quarters when providers close, at the end of the financial year when personal tax returns are due and as awareness of the function grows.

## Approaches received and approaches closed from 1 October to 31 December 2017 (quarter two)

During quarter two, the Office streamlined how complaint issues are captured and the breadth of issues recorded. As a result, some of the data reporting in the quarter one update is not comparable with the data in this update.

### Data presented in this update

In this update 'validated data' means data that has undergone more in-depth assessment by an investigation officer. When the general term 'data' is used, this will typically include data that may have only undergone preliminary assessment.

While this update presents data for complaints received in quarter two, it also presents data for complaints received in quarter one, which were still open by 1 January 2018, as well as complaints received in quarter one that were closed in quarter two.

### Total number of complaints received and closed

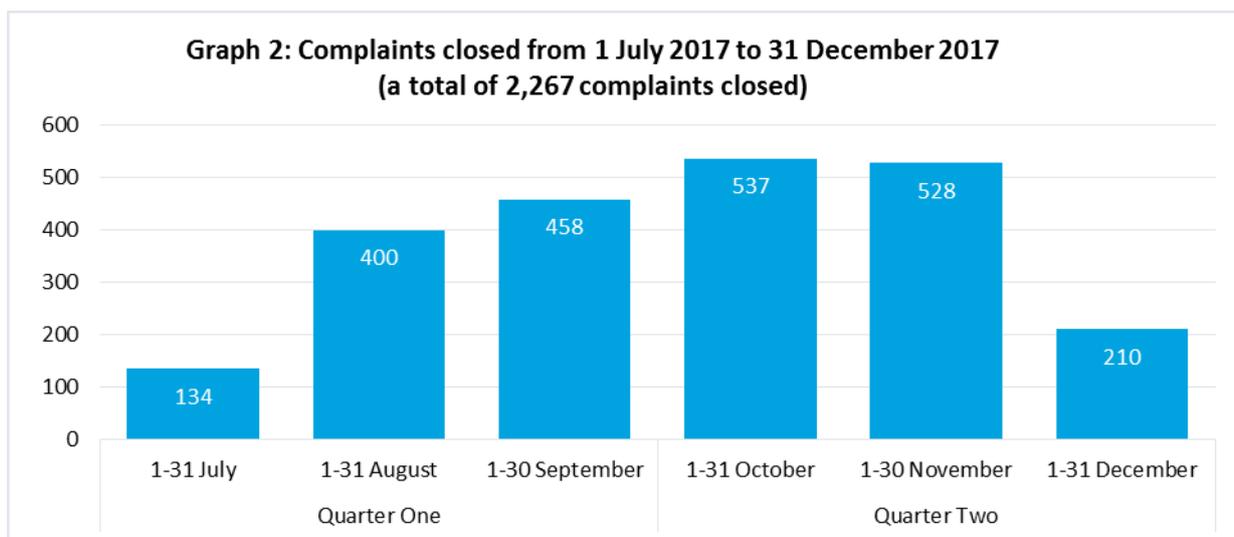
The Office received 1,224 VET loan assistance related complaints during quarter two. This is a 58 per cent reduction compared with the 2,929 complaints received in quarter one.



Quarter one had larger complaint numbers due to:

- a large provider closing in June 2017, immediately prior to the function's establishment
- most of the 2016–17 personal tax returns being lodged during quarter one, leading to an increase in complainants becoming aware of their student loan debt
- the build-up of demand prior to the commencement of the function on 1 July 2017, and
- the 261 legacy complaints transferred from the Department of Education and Training (DET).

It is likely that there will be future peaks in complaint numbers, as outlined in the commentary section below. As such, the Office does not consider that the reduction in complaints from quarter one to quarter two demonstrates an ongoing downward trend in complaint numbers.



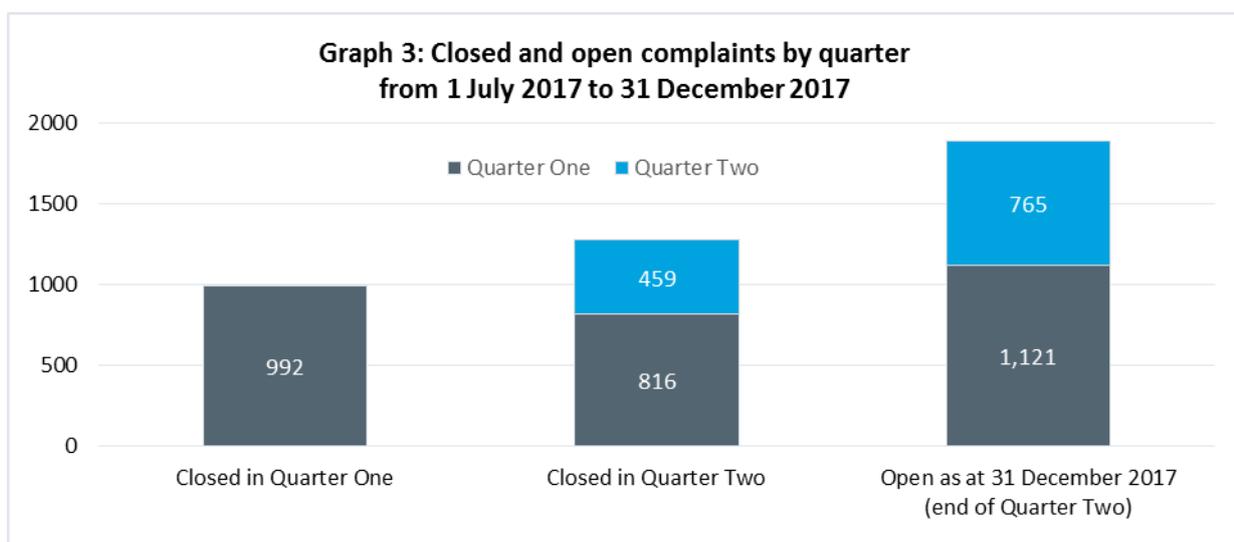
The Office closed 1,275 VET loan assistance related complaints during quarter two. This compares with 992 closed in quarter one, an increase of 29 per cent. The lower number of closed complaints in December was due to the Christmas shutdown period and the Office focusing on validating data.

Closed complaint outcomes (Graph 7 below) give an indication of the proportion of complaints that may be able to be dealt with through other mechanisms. Complaints are closed if:

- the complainant can be directed elsewhere (either to 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 Australian Competition and 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, and
- the complaint is withdrawn or the Office does not have jurisdiction to consider the complaint.

As complaints progress through the ‘further assessment and investigation’ stage, closed complaints will also show the proportion of complaints where the Office made a preliminary view or recommendation that a remedy be applied. The outcome of closed complaints is further discussed in Graph 7 below.

### Closed and open complaints by the quarter received and quarter closed



Graph 3 shows that the majority of complaints were not finalised in the quarter in which they are received. Of the 2,929 complaints received in quarter one, 992 or 34 per cent were closed in quarter one, 816 or 28 per cent were closed in quarter two and 1,121 or 38 per cent remained open at the beginning of quarter three.

Of complaints received in quarter two, 38 per cent were closed in quarter two and 62 per cent remained open at 31 December 2017. Challenges associated with closing complaints are discussed in the commentary section below.

### Complaints closed and open by category

The Office uses a five-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 but which can be resolved without contacting the provider in relation to the specific complaint. This includes when complainants are advised to lodge their complaint with the provider in the first instance.

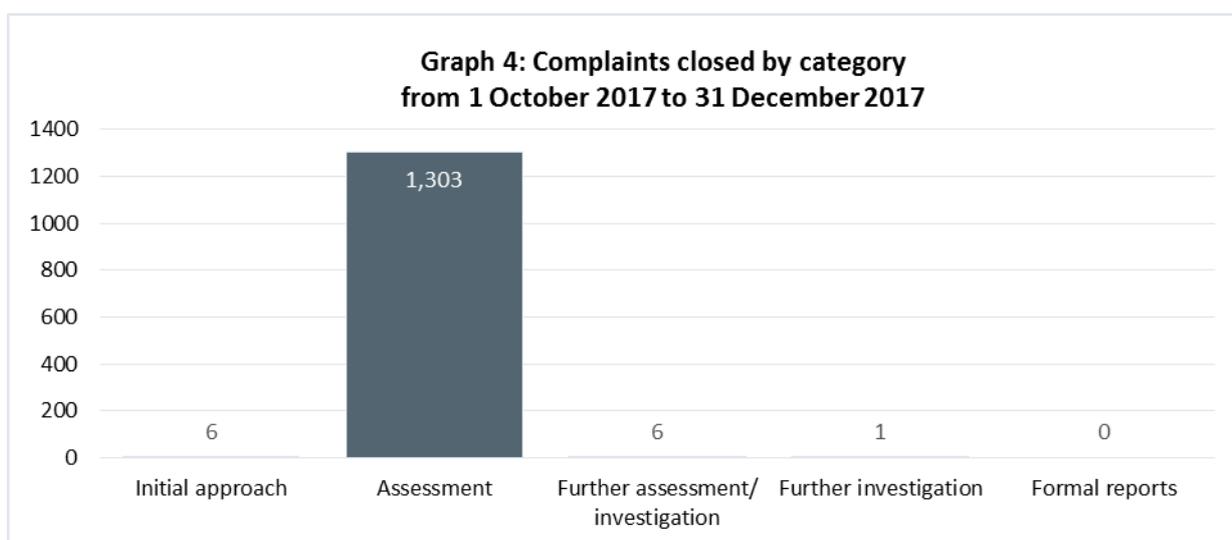
**Further assessment/investigation:** complaints are escalated to this category where more in-depth assessment is required for unavailable providers, and for formal investigations when a provider is available.

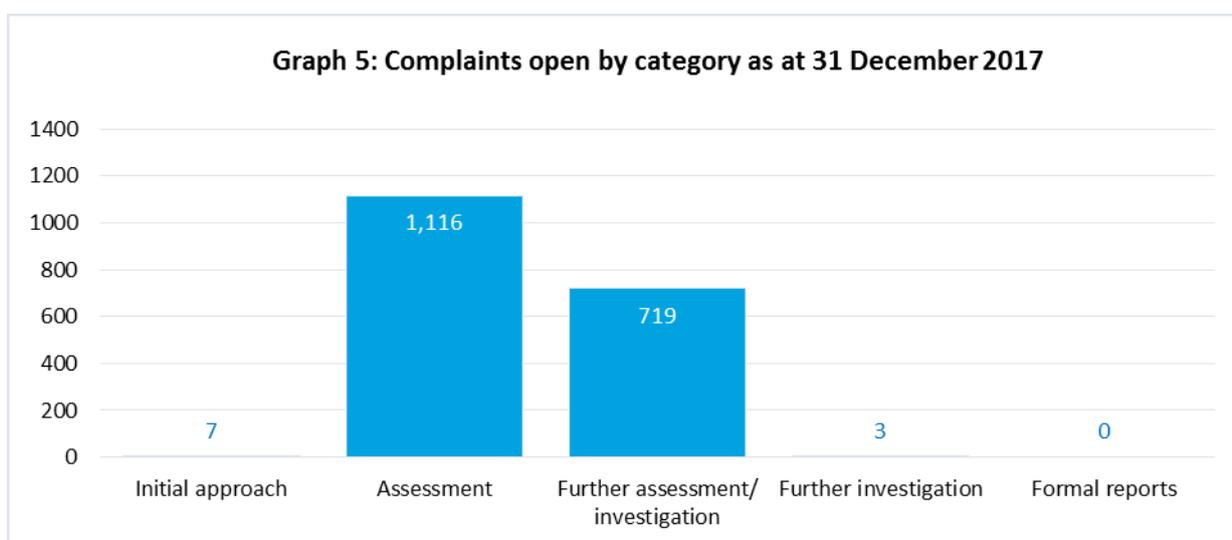
**Further investigation:** complaints are escalated to this category when they require further investigation, involve sensitive or highly complex matters, or involve multiple contacts with the provider.

**Formal reports/own motion investigations:** this category includes Ombudsman-initiated investigations and formal reports that address complaints that have not been resolved in the further investigation stage, or issues that are systemic in nature.

As complaints progress through the categories, they require additional resources and expertise and take longer to resolve.

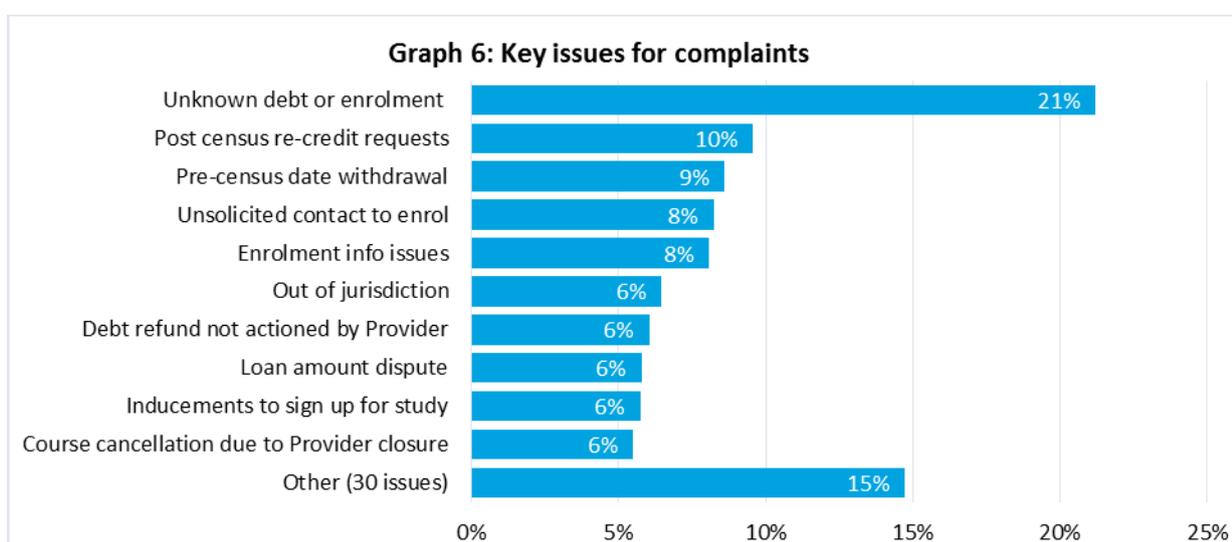
Graph 4 shows complaints closed by category during quarter two and Graph 5 shows open complaints by category as at the end of quarter two.





**Key issues identified by the Office for validated data**

Graph 6 shows the key issues for all validated complaints as at 31 December 2017.



A description of the top ten issues for the function follows:

Issue	Description
Unknown debt or enrolment	A person has a VET loan assistance debt for a course they do not recall signing up for or were not aware there was a student loan associated with the course.
Post-census re-credit requests	A person has withdrawn from a course of study or subject(s) after the census date and has enquired about or applied for a re-credit of their VET student loan based on special circumstances or otherwise. (The census date is the last day a student can withdraw from a course without incurring a cost.)
Pre-census date withdrawal	A person has requested withdrawal from the course before or on the census date and this has not been actioned by the provider.

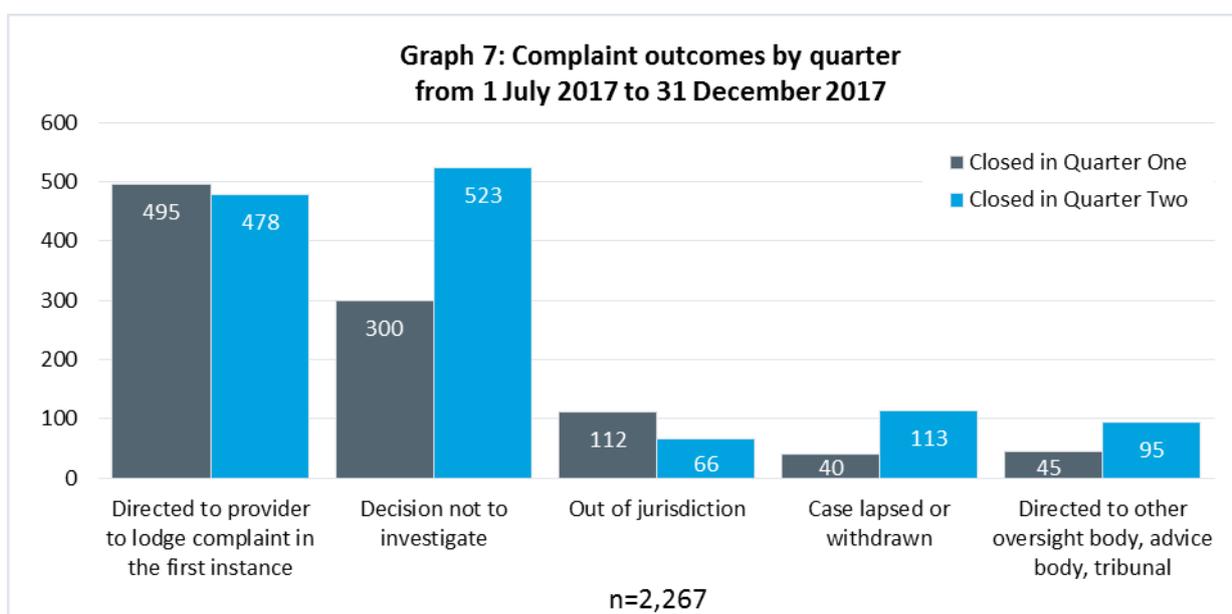
Unsolicited contact to enrol	A provider or broker acting for a provider enrolls a member of the public by means of unsolicited contact such as cold calling, door knocking or making an approach outside a Centrelink office or other public place.
Enrolment information issues	A provider or broker gave a prospective student inaccurate, incomplete or unclear information 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	For issues that fall outside the remit of the function, including higher education complaints.
Debt refund not action by provider	The complainant advises that their provider informed them they were eligible for a re-credit of a VET debt amount but did not update DET's system accordingly.
Loan amount dispute	There is a dispute 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	A provider or broker offered 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	Where either a course has been discontinued or a provider has closed.

### Outcomes for complaints closed

Graph 7 includes data from all closed complaints in quarters one and two, and shows the top five complaint outcomes. The graph shows that the top two outcomes for quarters one and two were 'directed to provider to lodge complaint in the first instance' and 'decision not to investigate'.

If a complainant has not engaged with the provider's internal grievance procedure before approaching the Ombudsman, the Office will refer the complainant back to the provider and close the complaint. 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 concern, the Office will open a new complaint and assess whether the matter should be investigated.

A decision not to investigate is made when an action was open to a provider to take, when the complaint is currently part of legal action undertaken by ACCC and DET, when a complainant is referred to a tuition assurance operator to seek redress or when a provider has agreed to re-credit a complainant's student loan.



A description of the top five complaint outcomes follows:

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 or not investigate further	Investigation was not warranted in all the circumstances. Includes when an action was reasonably open to a provider to take, when the complaint is currently part of legal action undertaken by ACCC and DET, when a complainant is referred to a tuition assurance operator to seek redress, or when a provider has agreed to re-credit a complainant's student loan.
Out of jurisdiction	Issues that fall outside the remit of the function.
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, tribunal	The complainant is referred to a more appropriate complaint or review pathway or needs specialist advice such as legal advice.

In quarters one and two, 99 per cent of complaints closed with the outcome 'decision not to investigate' were closed at the assessment stage, with the remainder closed at the further assessment or investigation stage.

### Investigations

The Office works with available providers in its investigations of complaints. These investigations may result in the provider giving a better explanation of its actions. In some investigations, the Office may be able to conclude that the provider acted in a reasonable way and then close the complaint. Other investigations may result in the provider accepting the Office's request that it re-credit a complainant's loan debt after concluding that the provider did not follow the correct policies or procedures.

## CASE STUDY 1 – Loan eligibility

Jennifer\* is living in Australia on a temporary working visa. In 2014, she signed up for a Diploma of Business and VET FEE-HELP assistance through a broker. VET FEE-HELP is available to Australian citizens, some New Zealand citizens and Permanent Humanitarian Visa holders. She advised that she informed the broker of her visa type during her enrolment and the broker told her that she was considered a Permanent Humanitarian Visa holder for VET FEE-HELP purposes.

Shortly after starting the course, her provider informed her that due to her citizenship, she was not eligible to continue the course. She assumed that she had not incurred a VET FEE-HELP debt for the course. However, she complained to the Office after the Australian Taxation Office (ATO) informed her that she has a VET FEE-HELP debt of \$16,788.

The Office conducted an investigation into the complaint and as a result of this investigation, the provider agreed to remit the debt in full (on a without prejudice basis).

*\*name has been changed*

### Complaints relating to the VET Student Loans program

As of 31 December 2017, the Office had received 19 complaints relating to the VET Student Loans program. The major issues identified through these complaints are the loan amount, complainants' applications for VET loan assistance, and course quality and progression.

While the number of VET Student Loans program complaints is small, the Office considers it too early to reach a definitive conclusion on the effectiveness of the new program. The number of complaints received may be due to:

- stronger regulatory and policy settings
- the delay in most students reaching the income contingent repayment threshold following entry into the workforce, resulting in some people not being aware they have a student loan debt
- the smaller number of students using the VET Student Loans program compared to the number who used the VET FEE-HELP scheme
- the length of time the VET Student Loans program has operated for (one year) compared to that of the VET FEE-HELP program (ten years including grandfathering arrangements)
- the reduction in the number of providers accessing the VET Student Loans program compared to those accessing the VET FEE-HELP scheme (a drop from over 300 to less than 150), and
- a general lack of awareness of the VET Student Loans Ombudsman function amongst VSL students, due to the recent creation of the function.

### Complaints received by state and territory

During quarter two, the Office received complaints from people in each state and territory in Australia as outlined in Table 1.

Table 1: Complaints received from 1 October 2017 to 31 December 2017 by State / Territory

<b>NSW</b>	<b>QLD</b>	<b>VIC</b>	<b>SA</b>
382	368	216	74
33%	32%	19%	6%
<b>WA</b>	<b>ACT</b>	<b>TAS</b>	<b>NT</b>
74	15	13	9
6%	1%	1%	1%

## Commentary

### Managing likely increases in complaint volume

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 ATO refers students to the Office if they complain about the presence or size of their loan. It is likely that the proposal to reduce the compulsory repayment threshold for student loans from July 2018 would lead to a further increase in complaints.

While the peak period for tax lodgement can be planned for, the Office has experienced peaks in complaint volumes that are more difficult to predict, such as those arising from provider closures, resulting in a fluctuating workflow. It is anticipated these will continue in future quarters.

Increased awareness of the function, through stakeholder engagement activities or word of mouth will likely lead to a further increase in complaints.

### Tuition Assurance

Tuition assurance events take place when a VET FEE-HELP or VET Student Loans provider closes or ceases to offer courses. Eligible students can apply to a tuition assurance operator to complete their course at a second provider or to receive a re-credit of their tuition fees.

The Office continues to assess complaints that may intersect with tuition assurance when the complainant states they have experienced unconscionable conduct from a provider or their agent. Where a complainant has raised an issue relating to tuition assurance and the Office has not identified any issues of concern, the Office refers these complainants to the relevant tuition assurance operator in the first instance.

Under interim arrangements effective from 1 January 2018, DET has assumed responsibility for coverage of tuition assurance events in 2018. Students who were impacted by a tuition assurance event in 2017 or earlier remain the responsibility of the previous tuition assurance operators, the Australian Council for Private Education and Training (ACPET) and TAFE Directors Australia (TDA).

The Office has worked with ACPET, TDA and DET to ensure complaints that may involve tuition assurance are dealt with by the most appropriate body. In quarter three, the Office will work with TDA and ACPET for tuition assurance events in 2017 or earlier and DET for tuition assurance events in 2018.

## CASE STUDY 2 – Tuition Assurance Operator

In 2015, Lisa\* enrolled in a Diploma of Business Administration with a provider. Shortly after the course commenced, she became sick and applied for a deferment of her studies. Her provider agreed to an extension of her studies until December 2017. In January 2017, Lisa began studying again. In May 2017, DET advised Lisa that her provider had entered administration and that tuition assurance scheme had been activated.

In August 2017, Lisa contacted the Office and a decision was taken not to investigate her complaint as she could seek redress through tuition assurance. Lisa contacted the responsible tuition assurance operator, she was told that she was not eligible for tuition assurance because her census date was in 2015 and she had a reasonable amount of time to complete her study before the provider's closure in May 2017. The tuition assurance operator referred Lisa back to the Office to seek a re-credit for her course fees.

The Office wrote to the tuition assurance operator explaining the function's role and that Lisa is seeking to continue studying at a second provider. The Office requested that the tuition assurance operator consider Lisa's medical deferment of studies in its assessment of her eligibility for tuition assurance and is awaiting a response.

*\*name has been changed*

### Remedies available to complainants

During investigations and where appropriate, the Office works with available providers to achieve the following remedies for complainants:

- change a decision
- expedite an action
- give a better explanation regarding providers' decisions and actions
- change providers' policies or practices, and/or
- re-credit all or part of a complainant's debt.

There are options available to some cohorts of students through DET to have debts re-credited in specific circumstances, including:

- The DET Secretary re-crediting debts under unacceptable conduct provisions of the *Higher Education Support Act 2003* (HESA), for conduct by providers or their brokers after 1 January 2016. Unacceptable conduct includes cold-calling, the offering of incentives or being provided incorrect information about a course and its fees.
- DET re-crediting a student's loan debt if the student can demonstrate they withdrew from their course prior to a census date, but the provider did not action this within DET's system. (The census date is the last day a student can withdraw from a course without incurring a debt, if they signed up for a VET loan).
- DET remitting debts where it is determined the student was not entitled to the loan assistance, such as if the student was not an Australian citizen.

### CASE STUDY 3 – Evidence of withdrawal before census date

Claire\* enrolled in a Diploma of Community Service with a provider in October 2016. A week after enrolment, she wrote to the provider requesting to withdraw from the course. On 26 October 2016, the provider wrote to Claire confirming her withdrawal from the course. Claire was aware that the census date (the last day she could withdraw from the course without incurring a cost) was 5 December 2016.

In mid-2017, Claire contacted the Office after being informed by ATO that she had a VET FEE-HELP debt of \$27,410. She tried to contact the provider, but it has since gone into liquidation.

The Office contacted the liquidator, explained the details of the complaint and provided evidence to the liquidator of the withdrawal. In light of the evidence of Claire's withdrawal before the census date, the Office requested that the liquidator agree to re-credit her VET FEE-HELP debt. However, the liquidator did not agree to re-credit the debt.

The VET Student Loans Ombudsman cannot direct or compel the liquidator to take action to re-credit this debt. Looking forward, the Office will work with DET to assist Claire in requesting a re-credit of her debt on unacceptable provider conduct grounds under the HESA.

*\*name has 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, if there is limited evidence available. 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. The Office will investigate complaints if strong evidence is available, as potential remedies may be more timely than those provided by the Court action.

### Publications and submissions

The Office made a submission to the National Centre for Vocational Education and Research's VET Data Streamlining review in November 2017. The submission outlined shortcomings with the current data infrastructure and suggested:

- comprehensive capture of data in a centralised system
- rigorous validation of data at time of input
- ready access to data for legitimate purposes with appropriate safeguards.

The Office's submission highlighted the impacts on data reliability and usefulness, including issues of data quality, completeness, and the lack of standardisation around data sets in the VET sector.

The Office notes that timely and reliable sector-level data is required to inform decision making by stakeholders including providers, agencies and policy makers. It is also required for regulators to quickly identify potential issues of concern and take action if required. The harmonisation of data sets, enhanced validation and other improvements to VET data-handling and systems are needed to achieve this goal.

## Outlook for Quarter Three (1 January to 31 March 2018)

The Office is working with government agencies and bodies to access alternative data sources in quarter three. These sources will be used for investigations with unavailable providers.

Once the Office has access to additional evidence, it is expected that the Office will re-open some complaints previously closed at the level of 'Assessment' due to lack of evidence at the time they were closed. The re-opening of complaints will be undertaken in quarters three and four, and may impact on the data reported in those quarters.