

Quarterly Update: 1 October–31 December 2019

Executive Summary

In its Overseas Students Ombudsman role, the Office of the Commonwealth Ombudsman (the Office) can investigate actions taken by private registered education providers in connection to intending, current or former student visa holders. The Office also gives private registered providers advice and training about best practice complaint handling, and reports on trends and systemic issues arising from complaints.

In the October–December 2019 quarter, the Office saw a decline in the number of complaints received from international students, compared to the previous quarter. However, the number of complaints we received was similar to the same quarter last year.¹

Overall, since the Overseas Students Ombudsman role was created, our complaint assessments have found that generally the decisions and actions of education providers were reasonable in the circumstances. However, since early 2019 this balance has shifted and more frequently our assessments have found that providers did not meet their responsibilities to students. This is primarily due to an increase in complaints from international students who pre-paid tuition fees to their Australian education provider, but whose student visa applications were later refused. These students had difficulty obtaining a refund of their pre-paid fees from the education providers. There is clear legislation supporting the right of students in this situation to have their pre-paid tuition fees refunded, so our assessments generally supported students in these circumstances².

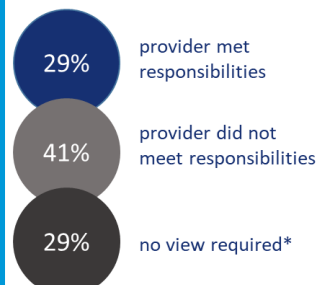
Quarterly update at a glance

Less than 1% increase in complaints received this quarter compared with same time last year



Fee and refund disputes continue as the most significant complaint issues

Our view on complaint issues investigated and finalised:



This quarter we finalised
347
complaints including
101
investigations

¹ Official statistics relating to the 2019–20 reporting year will be published in the 2019–20 Commonwealth Ombudsman Annual Report.

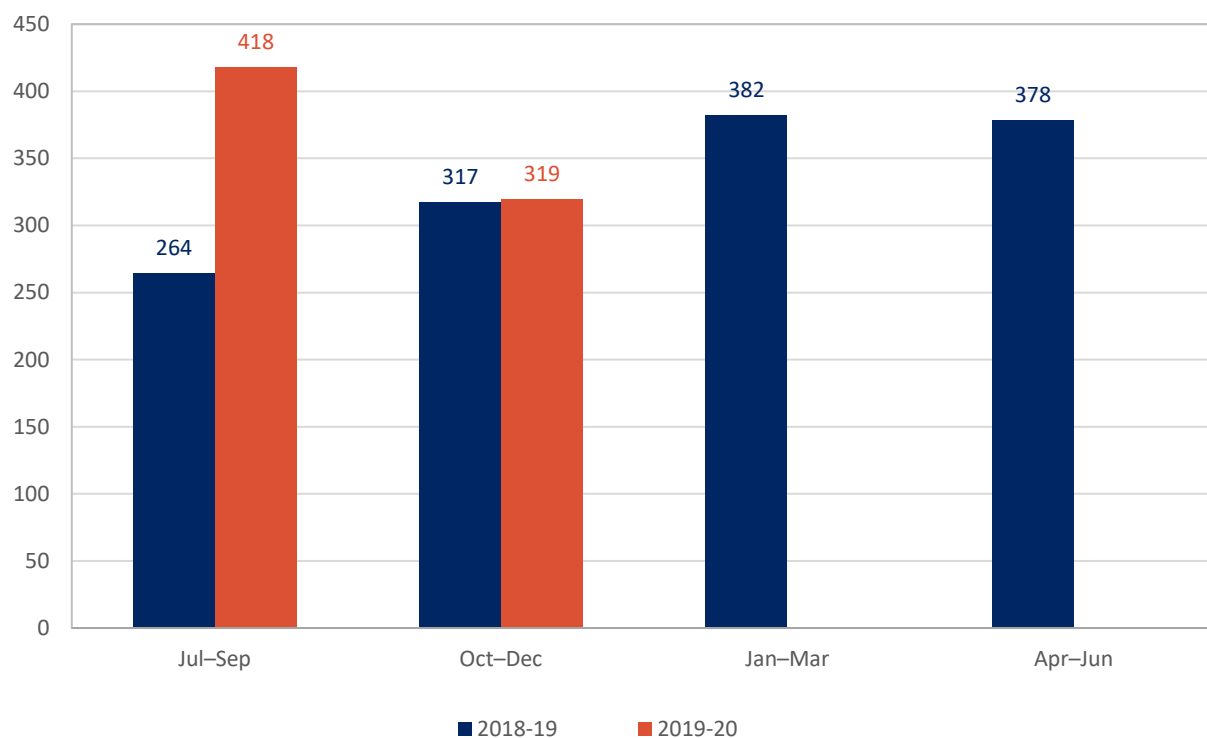
* Does not total 100% due to rounding.

² *Education Services for Overseas Students Act 2000*, s 47E and *Education Services for Overseas Students (Calculation of Refund) Specification 2014* s 9.

Complaints received

During 1 October–31 December 2019, we received 319 complaints from international students studying with privately registered education providers (see Figure 1). This represents a small increase compared to the same time last year.

Figure 1—Complaints received 2018–19 and 2019–20 YTD

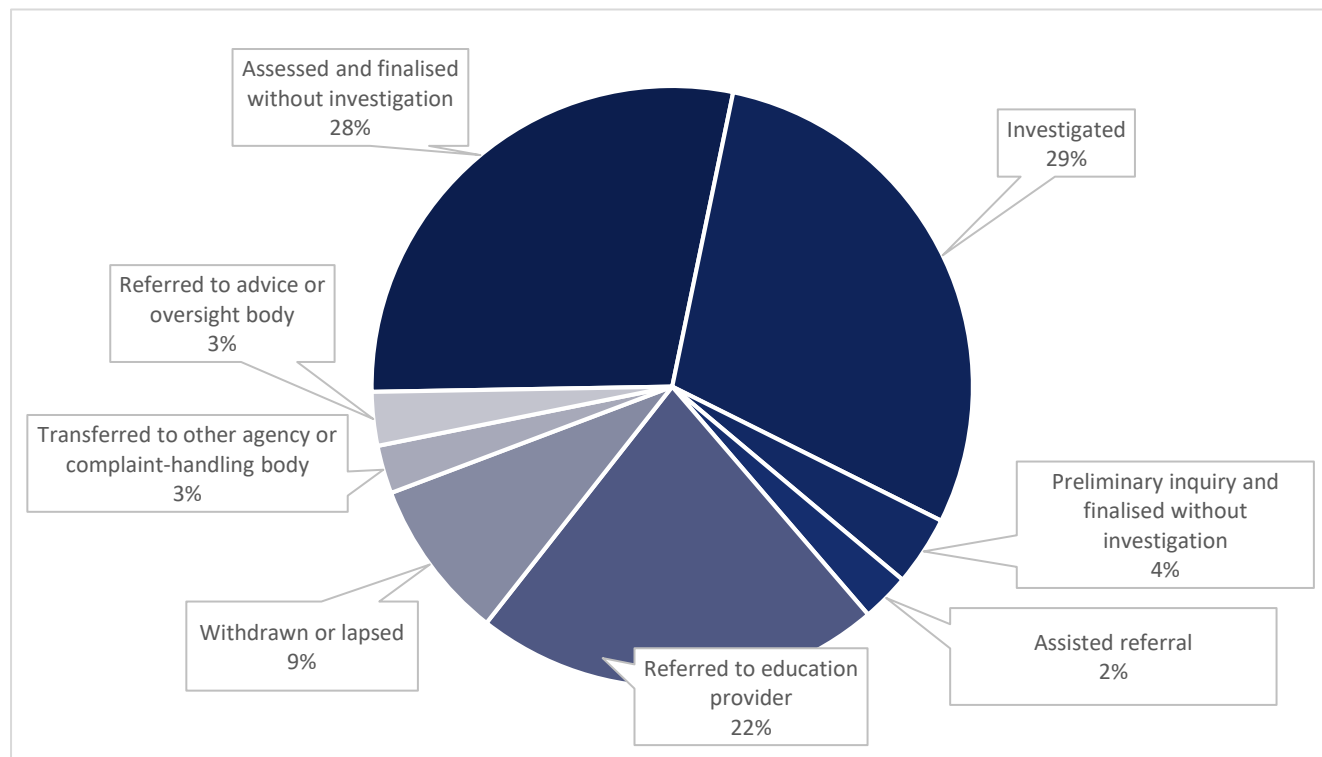


Action taken to Finalise Complaints

During 1 October–31 December 2019 we finalised 347 complaints, which included 370 issues (more than one issue may be recorded for each complaint). Some complaints finalised during this period were received during previous quarters.

Figure 2 below provides a summary of the actions we took to finalise complaints in the quarter.

Figure 2—How we finalised complaints in the quarter



Investigated

If a student has contacted their education provider to try to resolve their complaint, but has not agreed on a resolution, we may decide to investigate. We send a request for information to the student's education provider, request further information from the student, if necessary, and assess the information to determine whether the education provider complied with all requirements of the *Education Services for Overseas Students Act 2000*, the *National Code of Practice for Providers of Education and Training to Overseas Students 2018*, and the education provider's own policies and procedures.

Preliminary inquiry and finalised without investigation

We may contact a student's education provider to ask for information that can assist us in deciding whether the complaint should be investigated. In some cases this leads to an investigation, these cases were finalised without investigation following our preliminary inquiry.

Assisted referral

If a student has not yet contacted their education provider to try to resolve their complaint, and we have concerns that the student may experience difficulty contacting their education provider directly, we may refer the complaint directly to the education provider and ask the provider to consider the referral as lodgement of the student's internal complaint.

Referred to education provider

If a student has not yet contacted their education provider to try to resolve their complaint, we will normally ask the student to first try to resolve their issue with the education provider before we would consider investigating the student's complaint.

Withdrawn or lapsed

In some cases, students make complaints to our Office but later withdraw their complaint, or fail to respond to requests for further information.

Transfer to other agency or complaint handling body

If the student has raised issues in their complaint which fall outside of our Office's jurisdiction, we may transfer the student's complaint to another appropriate body, for example the Australian Skills Quality Authority, the Tuition Protection Service, or the Australian Human Rights Commission.

Referral to advice or oversight body

If the student has raised issues in their complaint which fall outside of our Office's jurisdiction, we may refer the student to an appropriate body to make their complaint directly, or to a body that may provide the student with advice about next steps. For example, we may refer the student to support services such as those provided by Study Melbourne, or for a privacy-related complaint we may refer the student to the Office of the Australian Information Commissioner.

Assessed and finalised without investigation

We may decline to investigate a student's complaint for a number of reasons, including where we have assessed that an investigation would not result in the outcome sought by the student.

Final views on complaint issues

During 1 October–31 December 2019, we finalised 101 complaint investigations which included 109 issues. Table 1 shows the view we formed on complaint issues in the investigations finalised during the period.

Table 1—Views on finalised investigations into issues: 1 October–31 December 2019

View	Total issues	% ³
Provider did not substantially meet responsibilities	45	41
Provider substantially met responsibilities	32	29
No view (see below)	32	29

Table 1 shows that for 29 per cent of complaint issues finalised in the quarter, we did not form a view whether the provider substantially met their responsibilities. This can be for the following reasons:

- the issue was not investigated, even though other issues complained about were investigated
- the issue was resolved between the student and provider during the course of the investigation, or
- the investigation of that issue ceased before a view could be formed.

Complaint issues

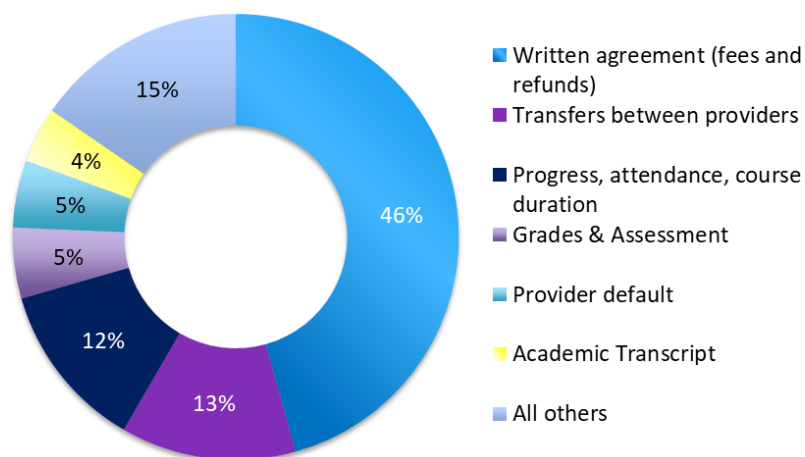
Written agreements (fees and refunds) continue to be the most common complaint issue. They are generally due to students seeking a refund of pre-paid tuition fees when they have ceased their study before finishing their course. The students' ability to seek a refund should be stated in their written agreement with the provider.⁴ Transfers between registered providers and student attendance and course progress monitoring, were the next most common issues raised in complaints to our Office.

³ Does not total 100 due to rounding.

⁴ *National Code of Practice for Providers of Education and Training to Overseas Students 2018* Standard 3.4

Figure 3 shows common complaint issues for complaints for the quarter. Detailed data about complaint issues finalised during 1 October–31 December 2019, including comparisons with the previous quarter, can be found in Table 3 on page 9.

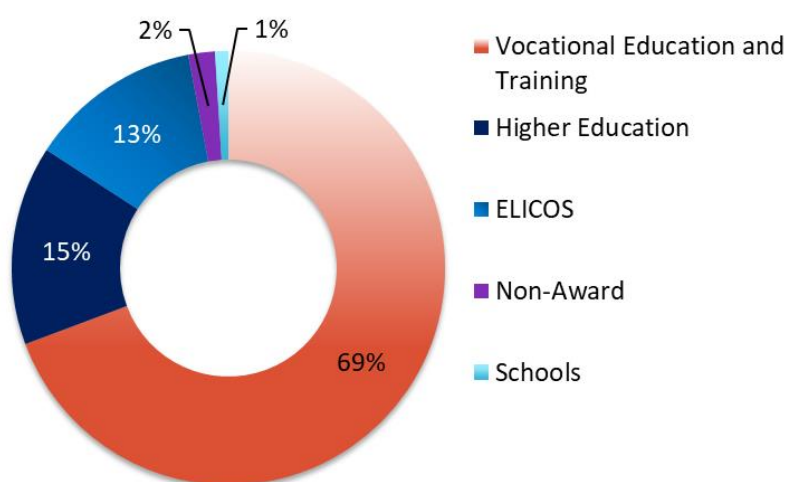
Figure 3—Common complaint issues: 1 October–31 December 2019



Complaints by education sector

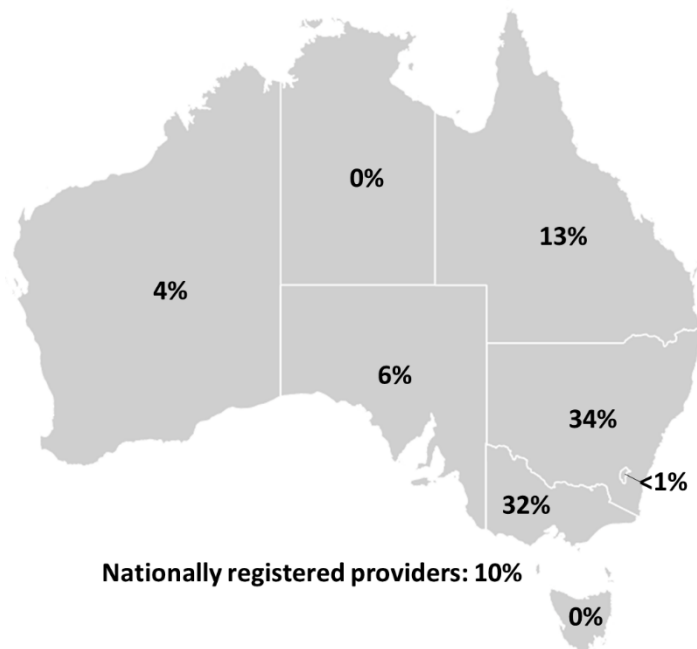
The Vocational Education and Training (VET) sector continues to be the most commonly complained about sector, with 69 per cent of investigated complaints from students studying VET courses (see Figure 4). However, the VET sector also has the highest number of international students enrolled with private registered providers (also 69 per cent).

Figure 4—Complaints investigated by sector: 1 October–31 December 2019



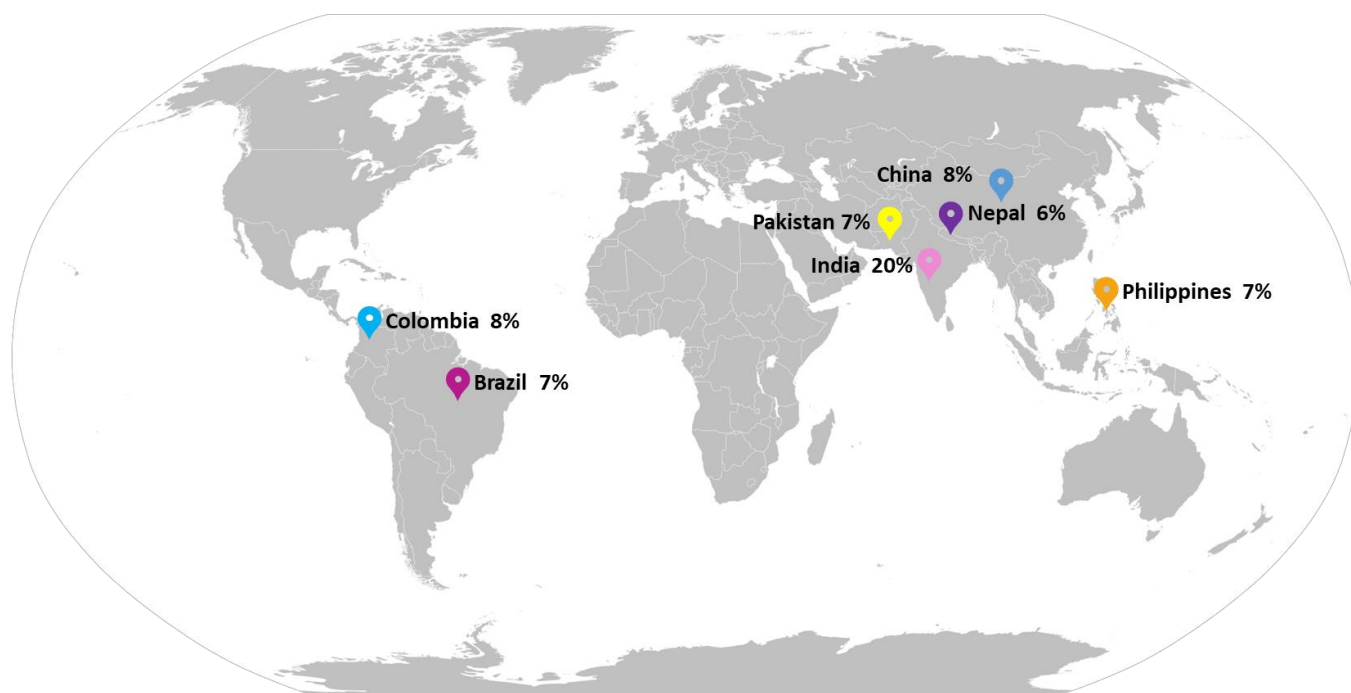
Complaints by registered state or territory of providers

Providers registered in New South Wales, Victoria and Queensland made up the three largest groups of complaints received by our Office. This is consistent with the higher number of students studying in these states (see Table 6 on page 11).



Complaints investigated by origin of complainant

We investigated and finalised complaints from students originating from 50 different countries and administrative regions during the quarter. The largest groups of complainants were from India, China and Colombia.



Case study: Continuing a student's Confirmation of Enrolment (CoE) while they challenge a student visa refusal at the AAT

Preeti from India* had finished her VET studies in Australia and decided to continue studying in Australia with a private higher education provider. She obtained her CoE to undertake Bachelor-level studies and applied for a new student visa. She commenced classes, and a few weeks later received advice from the Department of Home Affairs advising that her application for a student visa had been refused.

Preeti appealed this decision to the Administrative Appeals Tribunal (AAT). While Preeti awaited the decision of the AAT, she maintained her attendance and received good grades. Her education provider allowed her to remain enrolled, attend classes and exams and submit assessments. However, the provider cancelled her CoE, stating that as she was not on a student visa they were not required to maintain an active CoE for Preeti to continue her studies.

Preeti was concerned that without a valid CoE, her appeal to the AAT would be decided against her. She had been asked to provide information in support of her case by the AAT, so she knew that they would consider her appeal soon. Preeti appealed the provider's decision internally and then made a complaint to our Office.

Preeti's education provider explained that they would only reinstate Preeti's CoE if she responded to the concerns raised in her student visa refusal letter and she had failed to cooperate with this request. Her education provider further explained that they were reluctant to issue a CoE for her as this might impact on their Tuition Protection Service rating.

After considering the information provided by Preeti and her education provider, our Office formed a view that Preeti met the definition of an 'accepted student' in section 5 of the *Education Services for Overseas Students Act 2000* (ESOS Act), because Preeti had a significant portion of her studies remaining and would need a student visa to complete them.

Further, section 19 of the ESOS Act and section 9 of the *ESOS Regulations 2019* required Preeti's education provider to record a CoE for Preeti in the Provider Registration and International Student Management System, (PRISMS). The PRISMS Provider User Guide also supported this requirement, suggesting that an international student on a bridging visa with study rights cannot study without a current CoE.

The provider accepted our view and issued a CoE for Preeti.

*Identifying details have been changed for privacy reasons.

Timeframes to finalise complaints

Some investigations take longer than others. This can be due to the complexity of the issues involved, or the response time of the complainant or provider to our requests for information. We continue to look for ways to more quickly finalise complaints, while maintaining best practice complaint handling processes.

On average we finalised complaints within 31 days, during 1 October–31 December 2019, we finalised complaints within the following timeframes:

Table 2—Complaints handling service standards: 1 October–31 December 2019

Complaints finalised	Timeframe	Service standard
74%	Within 30 days	75%
84%	Within 60 days	85%
88%	Within 90 days	90%
100%	Within 12 months	99%

Disclosures to regulatory bodies

Under section 35A of the *Ombudsman Act 1976* (Ombudsman Act), the Ombudsman may make disclosures to any person, including a regulatory body in respect of the performance of its functions or in relation to an investigation, if it is considered in the public interest to do so. We made one disclosure to a regulator under s 35A of the Ombudsman Act during the 1 October–31 December 2019 period.

Submissions

Occasionally the Ombudsman may make submissions to government departments or parliamentary inquiries to inform development of new legislation and policy. We did not make any submissions in this quarter. Previous submissions can be found on our [website](#).

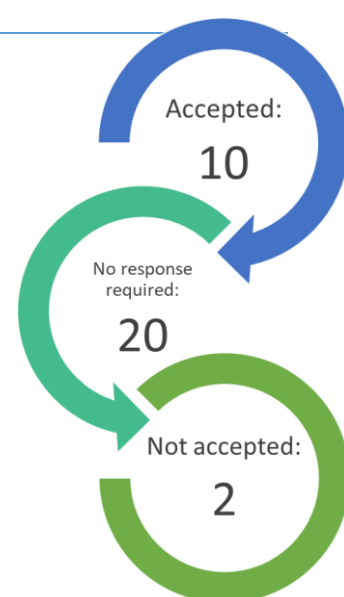
Keep up to date with the latest news from the Ombudsman by signing up to our [Provider e-newsletter](#)

Comments and suggestions

At the conclusion of a complaint investigation, we can make comments and suggestions to providers in relation to the specific remedies or improvements to the provider's policies or processes.

During 1 October–31 December 2019, we made 32 comments to providers for improvements or reconsideration of an earlier decision.

This quarter, two of our suggestions were not accepted by an education provider. These were related to the same education provider, which had not issued refunds to students who had their visa application refused. These complaints were transferred to the Tuition Protection Service.



Detailed data regarding finalised complaints

Table 3—Complaint issues for complaints finalised 1 July–30 September 2019 and 1 October–31 December 2019.

Issues	Complaint issues finalised July September 2019	Complaint issues finalised October December 2019
Formalisation of enrolment (written agreement)	206	169
Transfers between registered providers	76	47
Progress, attendance and course duration	60	45
Deferring, suspending or cancelling enrolment	25	13
Grades/assessment	20	19
Provider default	19	18
Out of jurisdiction to investigate (OOJ)	16	9
Graduation Completion Certificate	15	7
Recruitment of overseas student	14	2
Student support services	14	2
Academic Transcript	11	15
Education agents	6	2
Bullying or harassment	4	2
Complaints and appeals	3	12
Younger students	2	-
Marketing information and practices	2	1
Overseas Student Health Cover	1	2
Records management	1	5
Discipline	-	-
TOTAL	495	370

Table 4—Complaints investigated and finalised: 1 July–30 September 2019 and 1 October–31 December 2019 by education sector

Sector	No. of students ⁵	% of total number of students	Complaints investigated and finalised July September 2019	% of complaints investigated and finalised	Complaints investigated and finalised October December 2019	% of complaints investigated and finalised
VET	155,377	69%	91	76%	70	69%
Schools	6,926	2%	2	2%	1	1%
ELICOS ⁶	25,576	11%	12	10%	13	13%
Higher Education	33,587	17%	9	8%	15	15%
Non-Award	1,620	1%	5	4%	2	2%
TOTAL	232,306		119		101	

Table 5—Most common issues for complaint investigations finalised: 1 October–31 December 2019 by education sector

Sector	Issue 1	Issue 2	Issue 3
VET	Written agreements	Transfers	Progress, attendance and duration
Schools	Written agreements	Transfers	Progress, attendance and duration
ELICOS	Written agreements	Progress, attendance and duration	
Higher Education	Written agreements	Progress, attendance and duration	Transfers
Non-award	Progress, attendance and duration		

⁵ Provider Registration and International Student Management System (PRISMS) report as at 1 October 2019. From 1 November 2019, the Office began taking complaints from students studying with South Australian private education providers, so these students have been included in the reported figures. Complaints from students in South Australia were previously handled by the Office of the Training Advocate.

⁶ English Language Intensive Courses for Overseas Students.

Table 6—Registered state or territory of providers for complaints finalised: 1 July–30 September 2019 and 1 October–31 December 2019

State/Territory	Complaints finalised July September 2019	Number of registered providers ⁷	Complaints finalised October December 2019	Number of registered providers ⁸
Victoria	127	302	118	304
New South Wales	137	336	115	333
Queensland	83	292	46	293
National	32	28	32	28
South Australia	21	77	16	78
Western Australia	40	80	15	81
Australian Capital Territory	2	15	5	15
Tasmania	1	9	0	9
Northern Territory	0	7	0	7
Not recorded (provider or issue out of jurisdiction)	0	0	0	0
Total	443	1,146	347	1,148

Data

The data in this update is for the period 1 October–31 December 2019. Our data is dynamic and regularly updated as new information comes to light. For this reason, there may be minor differences in data when compared to what was reported in the last quarterly update. Previous quarterly updates are available on the Ombudsman's [website](#).

More information is available at <https://www.ombudsman.gov.au/How-we-can-help/overseas-students>

⁷As above, as at 1 October 2019.

⁸Number of 'studying Confirmations of Enrolment' (CoEs) in Overseas Students Ombudsman jurisdiction by 'main course sector'. Provider Registration and International Student Management System (PRISMS) report, as at 6 January 2020.