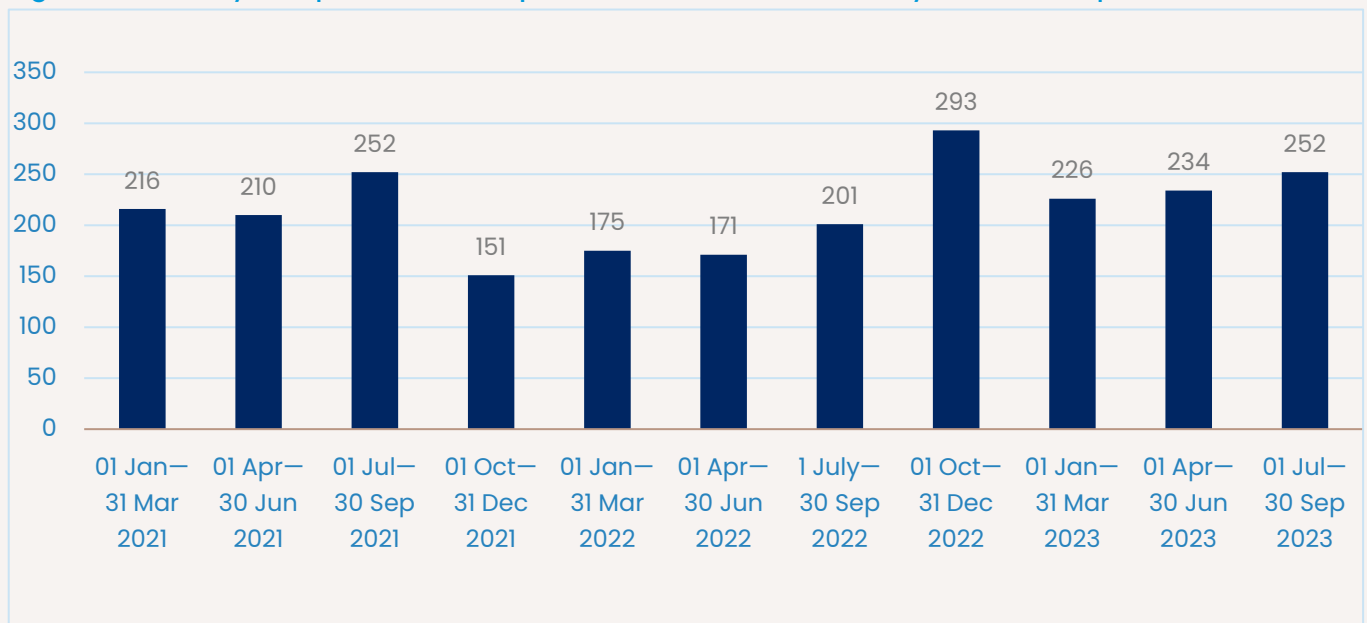


Quarterly update: 1 July to 30 September 2023

In its role as Overseas Students Ombudsman, the Office of the Commonwealth Ombudsman (the Office) assists international students through independent complaint handling. We can investigate private registered education providers' actions in connection with intending, current or former student visa holders. The Office also gives providers advice and training about complaint handling, and reports on trends and systemic issues arising from its activities.

i Between 1 July and 30 September 2023, the Office received **252** complaints and enquiries from international students enrolled with private registered education providers (see Figure 1), a 25 per cent increase on the same period last year.

Figure 1: Quarterly complaints and enquiries received from 1 January 2021 – 30 September 2023



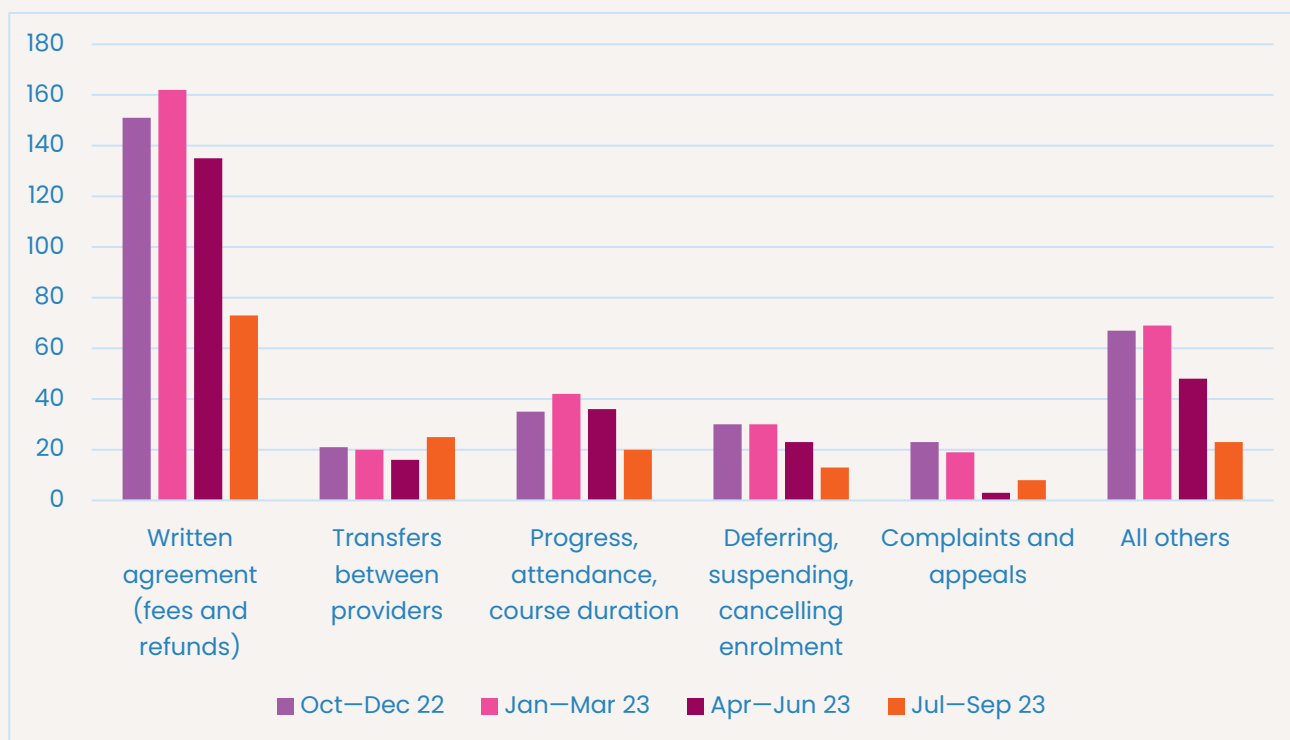
Issues raised in complaints

During this quarter, we finalised 137 complaints, comprising 162 issues. We received some of these complaints during previous quarters.

As in previous quarters, the most common issue in complaints to the Office between 1 July and 30 September 2023 was written agreements and students seeking refunds of pre-paid tuition fees because they ceased studying before they finished their course (45 per cent). Many of these complaints were from students whose visas were refused but who had not received a refund from their providers.

Transfers between providers (15 per cent), and progress, attendance and course duration (12 per cent) were the next most common issues in complaints to the Office. Figure 2 below shows common issues raised in complaints during the quarter.

Figure 2: Common complaint issues: 1 October 2022 – 30 September 2023



Complaints about transfers between education providers

The slight increase in complaints about transfers between providers may reflect the government's recent action to close the 'concurrent study loophole'.¹ All students wanting to transfer to a new education provider within their restricted period must now get permission from their existing education providers.

An international student who is unhappy with their provider's decision to refuse release can lodge an internal appeal with their provider. If a student is still unsatisfied after this, they can make an external complaint to the appropriate Ombudsman. For students enrolled with private education providers, that is this Office.

This Office closely monitors complaints from international students about education provider decisions not to release a student. If providers refuse a student's release request, the Office expects providers to follow the requirements in the National Code of Practice for Providers of Education and Training to Overseas Students 2018 (National Code).

In particular, the Office considers:

- whether providers have a transfer policy that complies with the requirements of the National Code,
- whether providers have considered the best interests of the international student when applying their transfer policy,
- whether providers have given the student valid reasons for refusing their transfer request, including detailed reasons at internal appeal stage, and
- whether the provider's decision appears fair and reasonable in the circumstances.

Further information on assessment of transfer requests can be found in the Department of Education's factsheet:

[Standard 7: Overseas Student Transfers \(internationaleducation.gov.au\)](https://internationaleducation.gov.au)

¹ [Action to end rorts in international education | Ministers' Media Centre](#) accessed 18 December 2023



Did providers meet their responsibilities?

When delivering education products and services for overseas students, education providers must treat students fairly and reasonably and act consistently with relevant legislation and national standards.

Between 1 July and 30 September 2023, the Office finalised 43 investigations, comprising 51 issues. Table 1 summarises our view on whether providers met their responsibilities to their students for each issue in the complaints we investigated during this period.

Table 1: Views on finalised investigations: 1 July to 30 September 2023

View	Total issues
Provider substantially met responsibilities to student	19
Provider did not substantially meet responsibilities to student	26
No view – provider and student resolved the matter, or we discontinued the investigation for another reason	6

When we consider that a provider has not substantially met their responsibilities, we work with both parties to find a suitable remedy for the student. If we observe that a provider's non-compliance is serious or repeated, we may disclose the matter to regulators and other bodies such as the Tuition Protection Service and the Department of Education.



Unreasonable deadlines

Reilly* paid a private education provider \$13,000 in December 2022 to secure a place in a Diploma course commencing in March 2023. In January, they had an accident and were admitted to hospital for 10 days, where they didn't have access to email. After Reilly was discharged, they noticed an email advising their student visa application had been refused.

Reilly immediately notified their provider and requested deferment to reapply for the visa. The provider refused as they did not accept students with a visa refusal history. Reilly decided not to reapply for their student visa and requested a refund.

The provider advised that according to its refund policy, students must apply for a refund within 14 days of their visa refusal, making Reilly ineligible. Reilly appealed, providing evidence of their hospitalisation, however the provider upheld their decision.

Reilly complained to our Office.

Our assessment

We considered information provided by Reilly, their education provider, and the requirements of:

- the *Education Services for Overseas Students Act 2000* (the ESOS Act)
- the *Education Services for Overseas Students (Calculation of Refund) Specification 2014* (ESOS Refund Specification), and
- the provider's documented policies and procedures, including the refund policy in Reilly's written agreement.

Our view

We viewed it was unreasonable and unlawful for the provider to decline Reilly's refund request. When an applicant's student visa is refused, providers are obliged to pay a refund under s 47E of the ESOS Act within 28 days. The amount of refund must be calculated according to section 9 of the Refund Specification.

The ESOS Act places the onus on providers to make refunds to international students. It does not permit providers to limit a student's access to a refund in cases of visa refusal based on any additional criteria, like placing time limits on a student's eligibility.

Outcome

As a result of our investigation, we advised the provider to:

1. refund Reilly in accordance with Section 9 of the ESOS Refund Specification
2. revise its refund rules to ensure that all refunds are processed in accordance with the ESOS Act
3. ensure that the amounts refunded to international students in similar situations comply with the ESOS Refund Specification.

The provider accepted our views and made changes to their refund policy. The provider also paid Reilly their refund in accordance with the ESOS Refund Specification.

**An alias has been used for privacy reasons.*

Please note: This document is intended as a guide only. For this reason, the information should not be relied on as legal advice or regarded as a substitute for legal advice in individual cases. To the maximum extent permitted by the law, the Commonwealth Ombudsman is not liable to you for any loss or damage suffered as a result of reliance on this document. For the most up-to-date versions of cited Acts, please refer to the [Federal Register of Legislation](#).

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