

Quarterly Update 1 July–30 September 2018

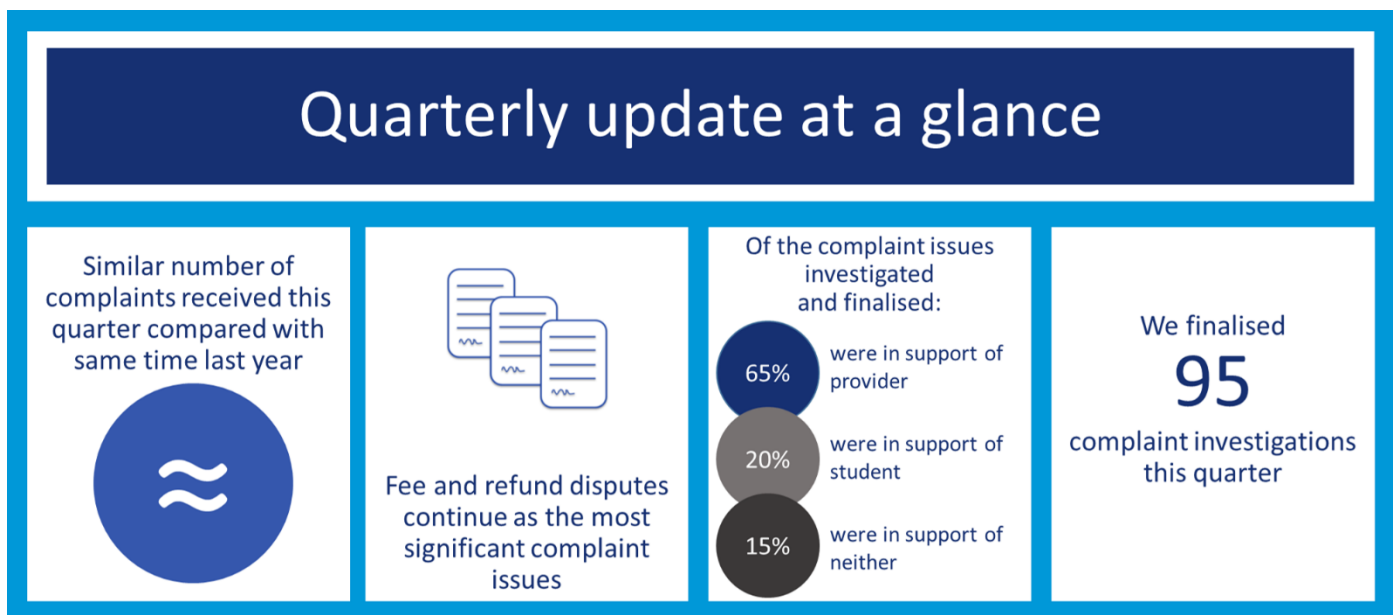
About the Commonwealth Ombudsman

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

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

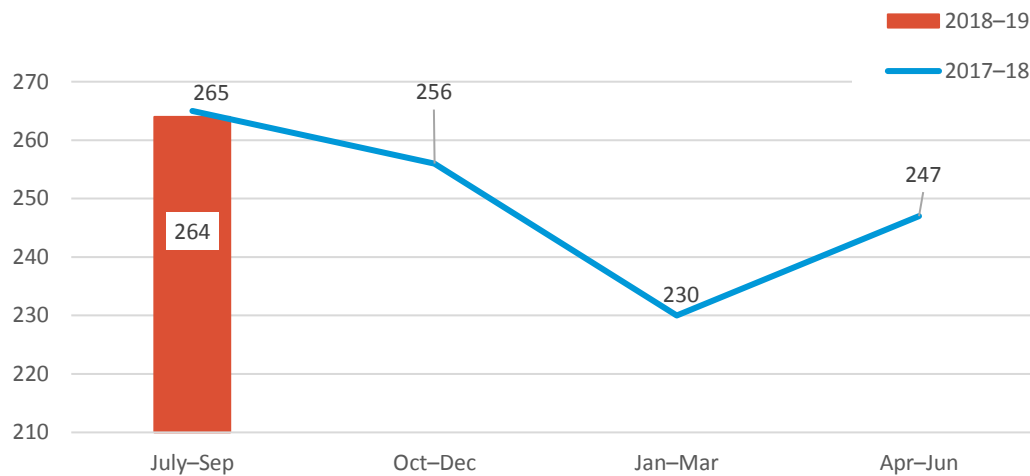
This update sets out our activities for the 1 July–30 September 2018 quarter in relation to each of these functions¹.

Significant points in this update



¹ Official statistics relating to the 2018–19 reporting year will be published in the 2018–19 Commonwealth Ombudsman Annual Report.

Complaints received



Complaints and issues finalised

Complaints ² finalised	Not investigated	Investigated	Issues ³ finalised	Not investigated	Investigated	Outcome found in support of (per issue):		
						Provider	Student	Neither
291	196	95	329	211	118	76	24	18
	67%	33%		64%	36%	65%	20%	15%

During the quarter we finalised 291 complaints which contained 329 issues. Of those 291 complaints we:

- Investigated 95 complaints which included 118 issues. Complaints about provider refund refusals and fee disputes (written agreements) remain the most significant issues.
- Declined to investigate 196 complaints and referred the student back to their education provider to complete the provider’s internal complaint-handling processes. In some cases, documents provided by the student at the time of the complaint allowed us to determine that the complaint did not require investigation.

Some issues considered as part of an investigated complaint are resolved in support of neither party. 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
- the investigation of that issue was ceased before a determination could be made.

Detailed data about complaint issues handled during the period, including comparisons with the previous quarter, can be found at [Appendix A](#).

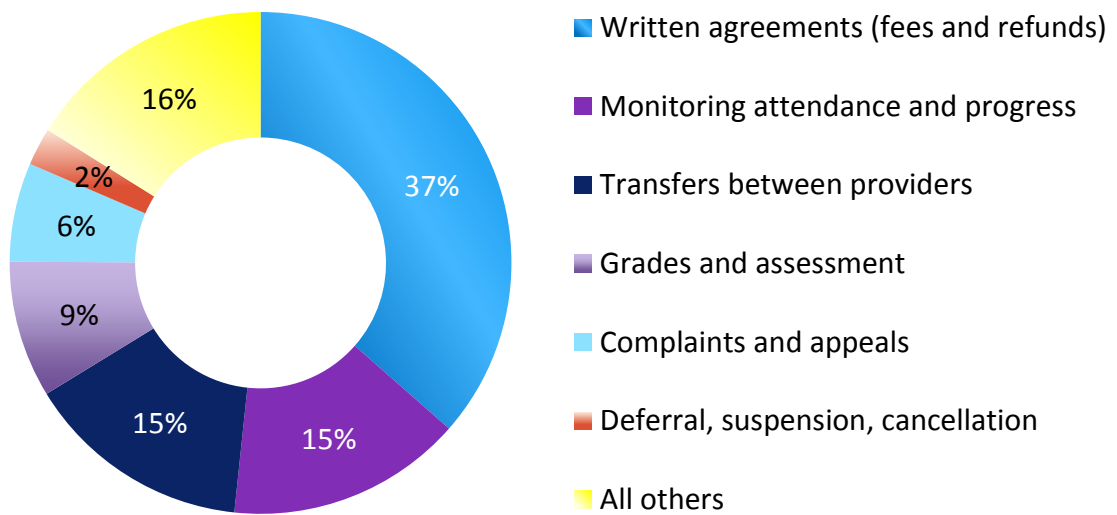
² Some complaints closed in this quarter were received in previous quarters.

³ Some complaints contain more than one issue.

Complaint issues

Written agreements (fees and refunds) continue as the number one complaint issue to the Office, followed by transfers between registered providers, and attendance and course progress monitoring.

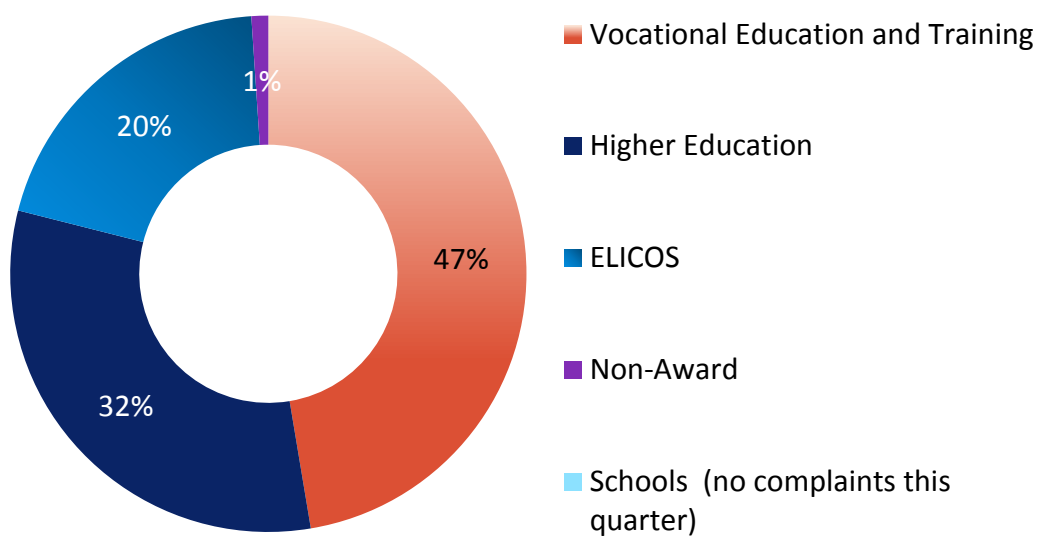
Main complaint issues: 1 July–30 September 2018



Complaints by education sector

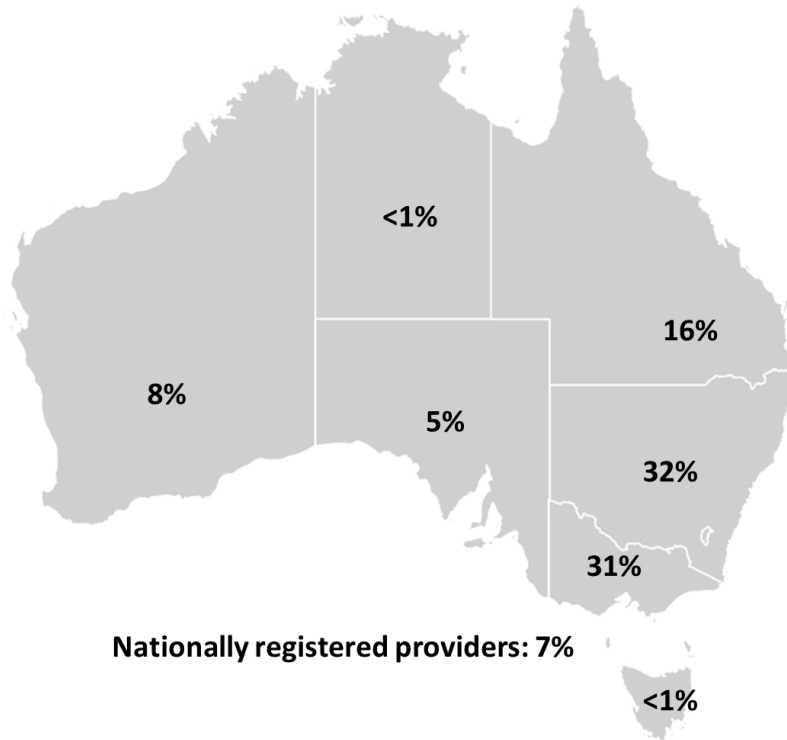
The Vocational Education and Training (VET) sector continues to be the most commonly complained about sector, however it also has the highest number of registered private providers.

Complaints investigated by sector: 1 July–30 September 2018



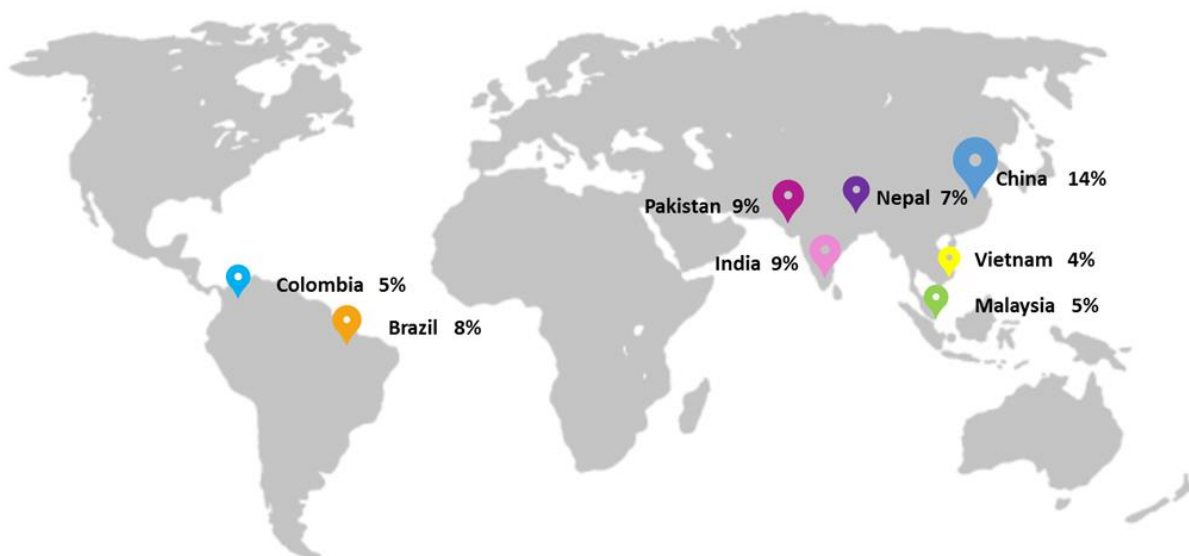
Complaints by registered State/Territory of provider

The two largest groups of 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 investigated by origin of complainant

The complainants whose cases we investigated and closed in the July to September 2018 quarter originated from 30 different countries and administrative regions. The largest groups of complainants were from China, India and Pakistan.



Complexity

Some investigations take longer than others. The length of the investigation varies 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.

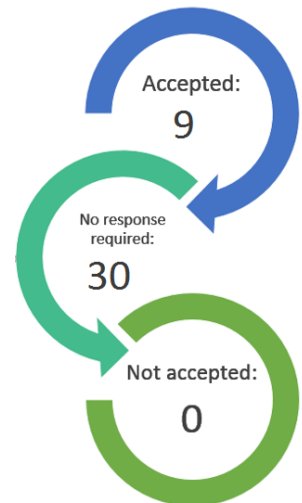
In the 1 July–30 September 2018 period, the average completion time for all complaints was 37 days. Sixty seven per cent of all complaints were closed within 30 days, 14 per cent from 31–60 days and the remainder closed in 61 days or more.

Comments and suggestions

At the conclusion of an investigation, we can make comments and suggestions to providers in relation to specific remedies and also in relation to the provider’s policies or processes.

In the 1 July–30 September 2018 period, we made 39 comments to providers for improvements or reconsideration of an earlier decision.

If we finalise our investigation in support of the student and we suggest that a provider takes specific action to benefit the student, providers are obliged by the *National Code of Practice for Providers of Education and Training to Overseas Students 2018* (National Code)⁴ to implement our decision or recommendation immediately. If a provider does not agree to implement our suggestion, we may disclose this refusal to the appropriate regulator.



Disclosures to regulatory bodies

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 no disclosures under s 35A during the 1 July–30 September 2018 quarter.

Submissions

From time to time, the Ombudsman makes submissions to government inquiries, reviews and consultation processes based on insights gained from handling complaints from international students. We made no submissions during this quarter.

Previous submissions can be found on our [website](#).

⁴ Standard 10

Recent complaints⁵

Case study 1: Attendance monitoring

Nathan was studying a foundation program with a private education provider in Australia. He completed his first trimester successfully, but during his second trimester, his attendance started slipping and his provider began its preparations to report Nathan to the Department of Home Affairs for unsatisfactory attendance.

Nathan attended some meetings with the provider about his attendance, but continued to miss classes and eventually his provider issued him with a 'Notice of Intention to Report (NOIR)', outlining a timeframe for reporting and Nathan's appeal rights.

Nathan appealed his provider's decision, but was unsuccessful.

Nathan then lodged a complaint to our Office, seeking to have his provider's decision to report him overturned.

Our investigation officer sent a request to the education provider for a number of documents to allow us to investigate Nathan's complaint. The provider promptly returned all relevant documents.

The documents supplied demonstrated that the provider had intervened when Nathan was deemed 'at risk' of not meeting attendance requirements, offered Nathan support and acted in accordance with the requirements of Standard 8 (Overseas student visa requirements) and Standard 10 (Complaints and appeals) of the National Code.

Our investigation officer supported the decision of the education provider to report Nathan to the Department of Home Affairs for unsatisfactory attendance.

Commentary:

Nathan's complaint was resolved in under three weeks, due in large part to the education provider's:

- clear and complete responses to our questions
- compliant policies and procedures for monitoring attendance and intervention strategy
- excellent record-keeping

The National Code guarantees a student's right to complain to an external complaint-handling body. By their nature, external investigations can be time consuming and resource intensive for education providers, who must compile and send the requested evidence.

In many cases, providers respond to requests for information with incomplete information or missing important evidence, which does not allow our investigation officers to determine whether the provider's decision was reasonable in the circumstances. In such cases, investigation officers need to send additional requests for information, which can contribute to prolonged assessment timeframes, impacting on the workload of the provider, the investigation officer and increasing uncertainty for the student.

This provider's response was exemplary and shows that good administrative practice can lead to the best possible outcome for all parties. Even though the student did not succeed in having his provider's decisions overturned, he received his response without delay, including an explanation of how our investigation officer had examined his education provider's policies and practices, and why the provider was required to report him.

⁵ Names have been changed to protect privacy.

Case study 2: Refund of course fees

Celina approached our Office with a complaint about her private education provider's decision to refuse her a refund for course money she had paid prior to being diagnosed with a serious illness. Due to receiving medical treatment, Celina had deferred her course commencement date. Celina then decided to return to her home country to focus on her recovery, so she withdrew from her studies before the deferred course was due to commence.

Celina complained to our Office that her provider had billed her for additional fees for the studies she had enrolled in but had not commenced. Celina had lodged an official complaint with her provider but had not received a response after some time.

Because a complaint had already been lodged with the provider, our investigation officer decided to consider Celina's case and requested documents from the provider. The provider gave our Office documents which showed that Celina had not formally applied for a refund. She had been advised by the provider's accounts department that a refund would not be payable. She proceeded to lodge a complaint and, due to administrative issues, the complaint was not considered in a timely manner.

After considering Celina's case in the context of our investigation, the provider decided that Celina met its compassionate and compelling refund criteria, and used its discretion to provide Celina with a refund of pre-paid fees and to waive the outstanding further course fees.

Commentary

Education providers need to ensure that all of their staff are aware of the provider's internal complaints and appeals process. It is important that the provider's staff direct students to this process when a student expresses dissatisfaction with a decision made by the provider, regardless of which area has given them this advice. Once a complaint is made, it should be acted on in a timely manner and a written response with reasons provided to the student.

If a provider requires students to fill in a specific form to make a complaint or lodge an internal appeal, staff should refer students to this form to help them access the provider's internal complaints and appeals process. This way, the student can provide all the information the education provider needs when considering their specific case. If the provider's decision is to refuse the complaint or appeal, the provider must provide the student with clear reasons why (National Code standard 10.2.6)

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Provider e-newsletter [here](#)

More information is available at ombudsman.gov.au

Appendix A—detailed data regarding finalised complaints

Complaint issues closed, compared to previous quarter

Issues	Apr–Jun 2018	Jul–Sep 2018
Formalisation of enrolment (written agreement)	94	120
Progress, attendance and course duration	38	50
Transfers between registered providers	59	48
Grades/assessment	10	29
Complaints and appeals	15	21
Out of jurisdiction to investigate (OOJ)	20	13
Deferring, suspending or cancelling enrolment	10	11
Academic Transcript	8	8
Graduation Completion Certificate	7	7
Provider default	6	7
Recruitment of overseas student	1	6
Education agents	7	5
Bullying or harassment	2	2
Staff capability, educational resources and premises	1	2
Marketing information and practices	3	0
Younger students	2	0
Student support services	1	0
Discipline	1	0
TOTAL	285	329

Complaints investigated and closed by education sector

Sector	No. of students ⁶	%	Apr–Jun 2018		Jul–Sep 2018	
				%		%
VET	129,210	69%	28	37%	45	47%
Schools	7,398	4%	2	3%	0	0%
ELICOS ⁷	17,914	9.5%	17	23%	19	20%
Higher Education	31,759	17%	24	32%	30	32%
Non-Award	1,076	0.5%	4	5%	1	1%
TOTAL	187,357		75		95	

Top three issues investigated and closed by sector

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

⁶ Number of 'studying Confirmation of Enrolment' (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. Provider Registration and International Student Management System (PRISMS) report as at 24 July 2018.

⁷ English Language Intensive Courses for Overseas Students.

Complaints closed by State/Territory

State/Territory	Apr–Jun 2018	Number of registered providers ⁸	Jul–Sep 2018	Number of registered providers ⁹
New South Wales	78	320	92	319
Victoria	62	288	90	287
Queensland	35	278	47	278
Western Australia	28	81	23	82
National	26	28	24	28
Australian Capital Territory	0	14	1	15
South Australia	6	75	13	74
Northern Territory	0	6	1	6
Tasmania	0	11	0	11
Total	235	1,101	291	1,100

⁸ 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 17 May 2018.

⁹ As above as at 27 July 2018.