

Quarterly Update 1 April–30 June 2018

About the Commonwealth Ombudsman

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

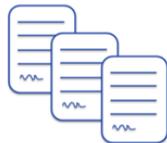
1. investigate complaints about actions taken by private registered education providers in connection with intending, current or former student visa holders
2. give private registered providers advice and training about best practice complaint-handling for overseas student complaints
3. report on trends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

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

Significant points in this update

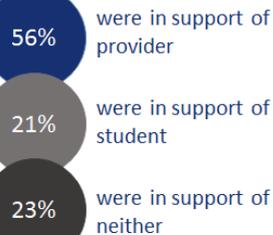
Quarterly update at a glance

4.6% increase in complaints received this quarter on same time last year



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

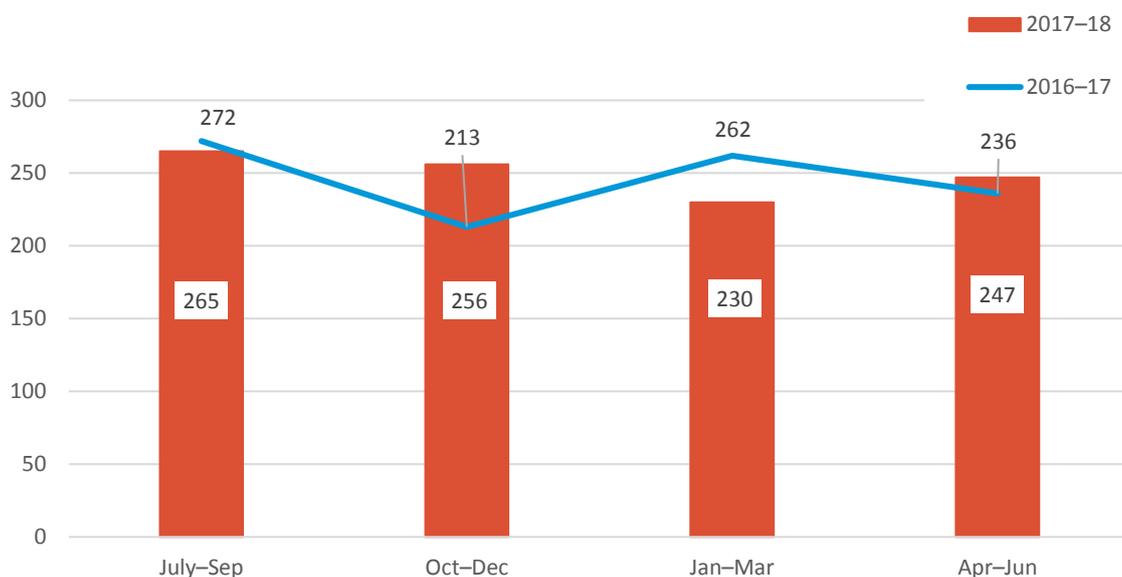
Of the complaint issues investigated and finalised:



We finalised
75
complaint investigations this quarter

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

Complaints received



Complaints finalised

Finalised	Not investigated	Investigated	Outcome found in support of:		
			Provider	Student	Neither
235	160	75	42	16	17
	68%	32%	56%	21%	23%

We finalised 235² complaints during the quarter which contained 285 issues³. Of those 235 complaints we:

- Investigated 75 complaints which included 104 issues. Complaints about provider refund refusals and fee disputes (written agreements) remain the most significant issues.
- Declined to investigate 160 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 dispute did not require investigation.

Investigations finalised in support of neither party are usually resolved between the student and provider during the course of the investigation.

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

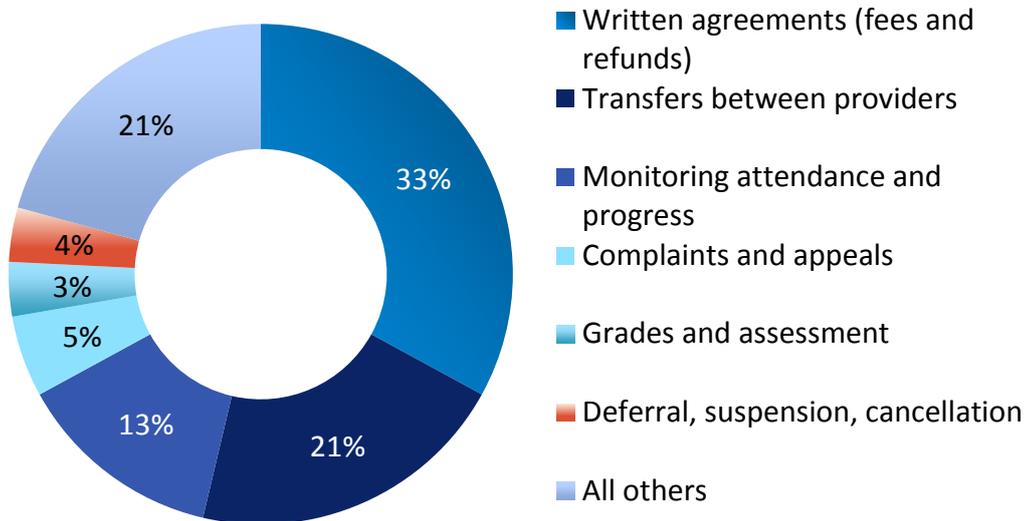
² Some complaints closed in this quarter were received in previous quarters.

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 progress monitoring.

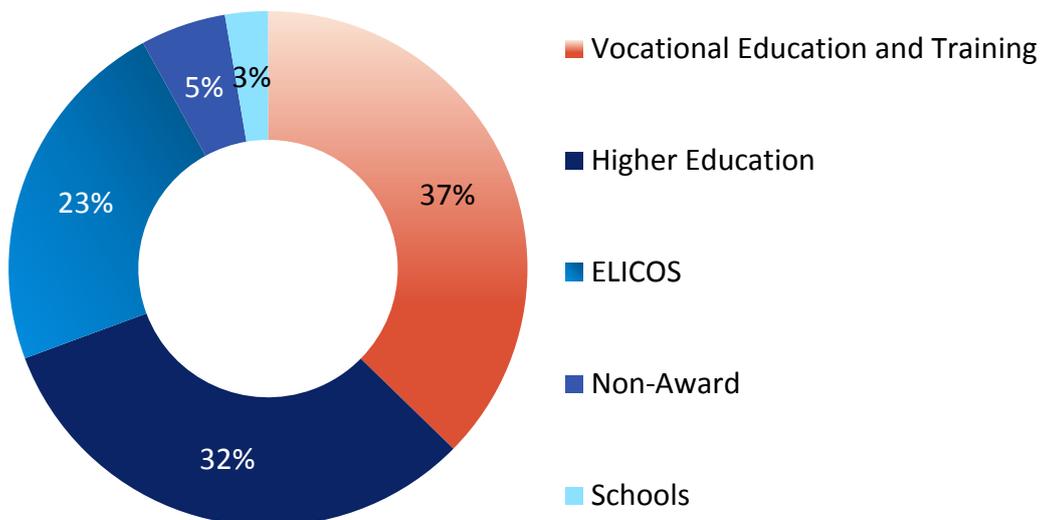
Main complaint issues: 1 April–30 June 2018



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.

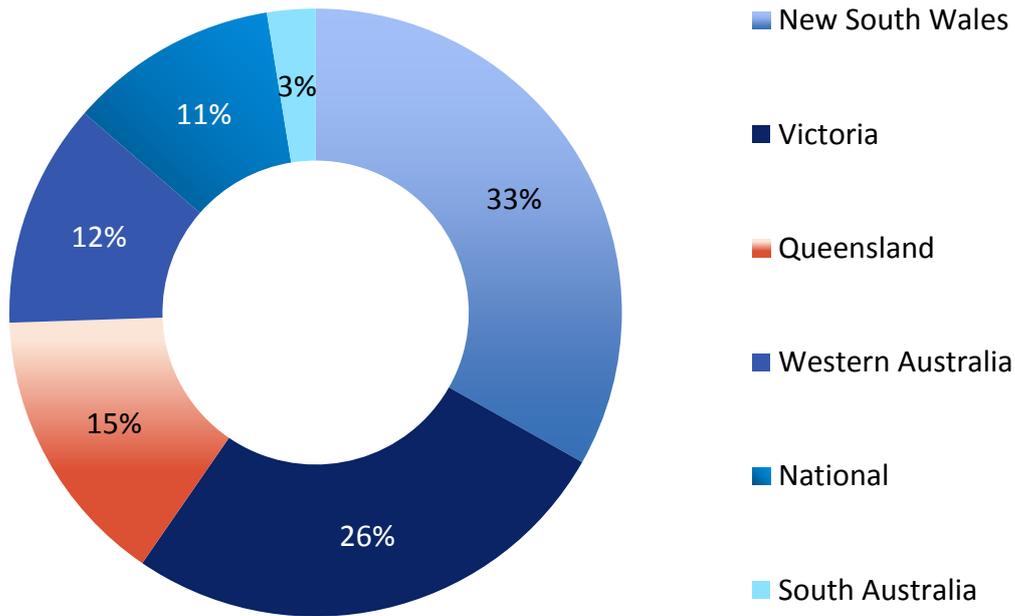
Complaints investigated by sector: 1 April–30 June 2018



Complaints by state/territory

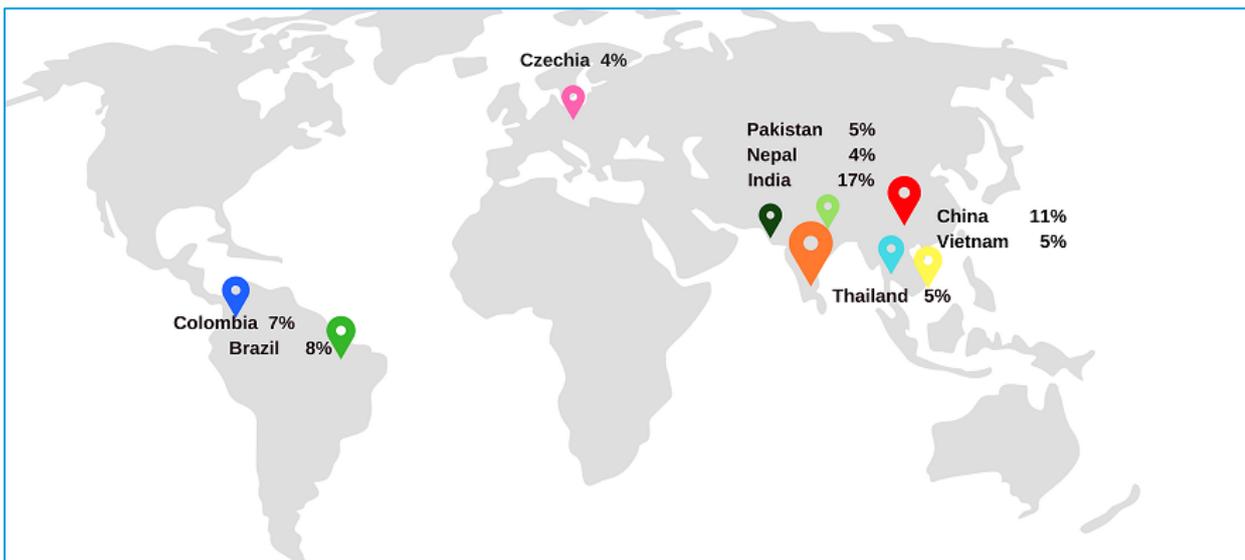
The two largest groups of complaints were made by students registered with providers in New South Wales and Victoria, which is consistent with the higher number of students studying in these states.

**Complaints by provider’s registered state/territory:
1 April–30 June 2018**



Complaints investigated by origin of complainant

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



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.

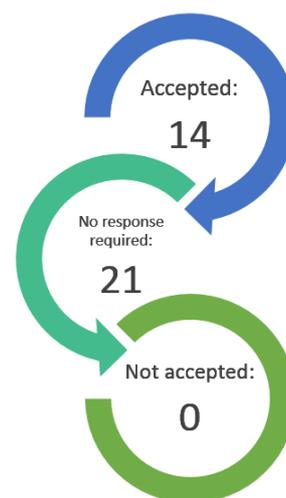
In the 1 April–30 June 2018 period, the average completion time for all complaints was 37 days. Sixty three per cent of all complaints were closed within 30 days, 20 per cent from 31–60 days and the remainder closed in 61 days or more.

Recommendations

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

In the 1 April–30 June 2018 period, we made 35 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.



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 seven s 35A disclosures during the 1 April–30 June 2018 quarter. Six cases related to one provider who did not cooperate with our investigation. The remaining disclosure related to a provider whose written agreements were not compliant with the requirements of the *National Code of Practice for Providers of Education and Training to Overseas Students 2018* (the National Code).

Submissions

On 10 May 2018, the Ombudsman provided a submission to the Joint Standing Committee on Migration’s inquiry into the regulation of Australian Migration Agents.

This submission 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 here](#)

Making a difference⁴

Case study 1

Jacob was studying a three-semester Advanced Diploma course with a private education provider in Australia. After failing his second semester, the provider reported Jacob for unsatisfactory course progress and cancelled his enrolment. At this stage, Jacob had already commenced his third and final semester.

⁴ Names have been changed to protect privacy.

Jacob applied for a refund of his pre-paid fees for his third semester. The provider refused his application, as according to his written agreement, no refund was payable if a student defaulted after the commencement of the semester. Jacob appealed this decision, but it was upheld, so Jacob complained to our Office.

After requesting documentation from Jacob and his education provider, our investigation officer determined that the provider's written agreement was clear that no refund was payable for tuition fees relating to a semester after the commencement of that semester. Our investigation officer therefore supported the conclusion of the education provider.

Jacob had not made a complaint about his provider's process in reporting him for unsatisfactory course progress, so this issue was not considered in our investigation.

Commentary:

Where a written agreement is compliant with the requirements of the *Education Services for Overseas Students Act 2000* (the ESOS Act), our conclusions will generally uphold the agreement.

Case study 2:

Zara approached our Office with a complaint about an English language private education provider. She had enrolled in a General English course, followed by an International English Language Testing System (IELTS) course. After completing some of her General English course, Zara withdrew from her IELTS course before it commenced. She applied for a refund of the tuition fees she had paid for the IELTS course.

The provider agreed to provide Zara with a refund for the IELTS course, but withheld a portion equating to two weeks tuition. The provider claimed that they had given Zara some free tuition, but that this was contingent on Zara studying for a minimum number of weeks. After withdrawing from her IELTS course, Zara no longer met the minimum requirements.

When contacting our Office, Zara provided a schedule of fees she had received from the provider prior to enrolment. This did not include reference to free periods of tuition. The education provider responded to our request for information with the text of an online form which Zara had agreed to, but which did not outline terms relating to the application of the free weeks of tuition. The provider stated that all students accepting the free weeks had been counselled clearly that if they cancelled their enrolment in any of their courses, the 'discount' would no longer apply.

Our investigation determined that:

- 1) The provider and the student had not entered into a valid written agreement. A student's completion of an online form, even when they are asked to agree to conditions, is not sufficient to constitute acceptance under Standard 3 of the National Code⁵.
- 2) In the absence of a valid written agreement, an instrument under s 47E of the ESOS Act outlines how a refund should be determined in the case of student default.
- 3) According to evidence provided, Zara had paid a certain sum for the General English course, and another sum for the IELTS course.
- 4) As Zara had withdrawn from the IELTS course before commencement, the legislative instrument set out at s 47E specified that she was entitled to a full refund of fees paid for the IELTS course.

Commentary

It is a requirement of the ESOS Act and National Code for providers to enter into valid written agreements with students. This assists in providing certainty for both parties.

Providers who offer discounts to students dependent on completion of a number of weeks of study should carefully consider the impact of a student who withdraws from their course before the requisite number of weeks are completed and set this out clearly in any documents which form part of the written agreement.

⁵ NB: Under s 47F of the ESOS act, failure to enter into a compliant written agreement is an offence.

Appendix A—detailed data regarding finalised complaints

Complaint issues closed, compared to previous quarter

Issues	Jan–Mar 2018	Apr–Jun 2018
Formalisation of enrolment (written agreement)	90	94
Transfers between registered providers	39	59
Progress, attendance, course duration	48	38
Out of jurisdiction to investigate (OOJ)	9	20
Complaints and appeals	15	15
Grades/assessment	26	10
Deferring, suspending, cancelling enrolment	14	10
Academic Transcript	2	8
Graduation Completion Certificate	7	7
Education agents	2	7
Provider default	1	6
Marketing information and practices	0	3
Bullying or harassment	5	2
Younger students	1	2
Recruitment of overseas student	3	1
Staff capability, educational resources and premises	2	1
Student support services	1	1
Discipline	0	1
Overseas Student Health Cover	1	0
Additional registration requirements	1	0
TOTAL	267	285

Complaints investigated and closed by education sector

Sector	No. of students ⁶	%	Jan–Mar 2018	%	Apr–Jun 2018	%
VET	126,328	66%	29	42%	28	37%
Schools	6,922	4%	2	3%	2	3%
ELICOS ⁷	22,232	12%	16	23%	17	23%
Higher Education	35,221	18%	19	28%	24	32%
Non-Award	1,470	1%	3	4%	4	5%
TOTAL	192,173		69		75	

Top three issues investigated and closed by sector

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

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 17 May 2018.

⁷ English Language Intensive Courses for Overseas Students

Complaints closed by State/Territory

State/Territory	Jan–Mar 2018	Number of registered providers ⁸	Apr–Jun 2018	Number of registered providers ⁹
New South Wales	73	300	78	320
Victoria	74	284	62	288
Queensland	29	275	35	278
Western Australia	30	85	28	81
National	20	29	26	28
Australian Capital Territory	0	13	0	14
South Australia	8	77	6	75
Northern Territory	0	5	0	6
Tasmania	0	10	0	11
Total	234	1,078	235	1,101

More information is available at ombudsman.gov.au.

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 11 April 2018.

⁹ As above as at 17 May 2018.