

Quarterly Update: 1 October–31 December 2020

Executive Summary

This is the second quarterly update for the 2020–21 financial year for the Office of the Commonwealth Ombudsman’s (the Office’s) Overseas Students Ombudsman function.

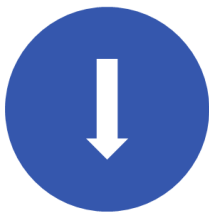
In its Overseas Students Ombudsman role, the Office can investigate actions taken by education providers in connection to intending, current or former student visa holders. The Office also provides education providers with advice and training about best practice complaint handling and reports on trends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

The 1 October–31 December 2020 quarterly update:

- provides statistical data on complaints we received and finalised, and key issues raised by international students
- compares complaint data against previous quarters
- outlines the action we took to finalise complaints that we received.

Quarterly update at a glance

21% decrease in complaints received this quarter compared with same time last year



Fee and refund disputes continue as the most significant complaint issues (**43%**)

Our view on complaint issues investigated and finalised:

41%

provider met responsibilities

43%

provider did not meet responsibilities

17%

no view required

This quarter we finalised
314
 complaints including
108
 investigations

Complaints arising from COVID-19 pandemic

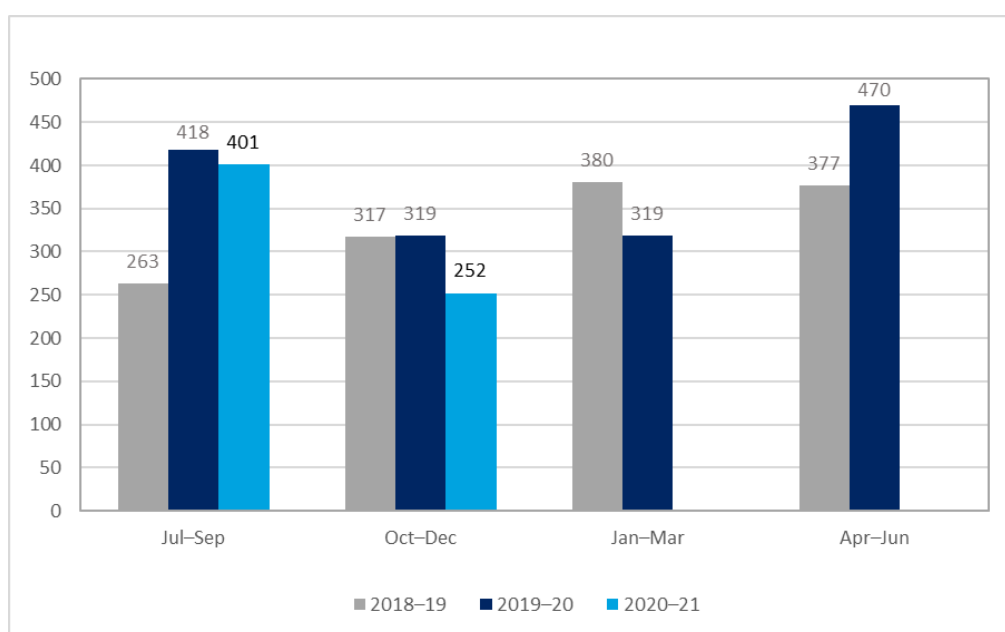
The Office continues to receive complaints from international students about actions or decisions of their providers in response to the COVID-19 pandemic. During the 1 October–31 December 2020 quarter, we received 51 complaints from students impacted by mode of study changes, financial hardship, or border closures as a result of the pandemic.

Most commonly, students sought refunds for pre-paid course fees (54 per cent), financial accommodations such as payment plans (14 per cent), and transfers to other providers (eight per cent).

Complaints and enquiries received

During the 1 October–31 December 2020 quarter, we received 252 complaints and enquiries from international students enrolled with private registered education providers (see **Figure 1**). This represented a 21 per cent decrease when compared to the same period last year. This downward trend was not unexpected given the decreased number of international students currently in Australia due to the pandemic.

Figure 1—Complaints and enquiries received 2018–19, 2019–20 and 2020–21

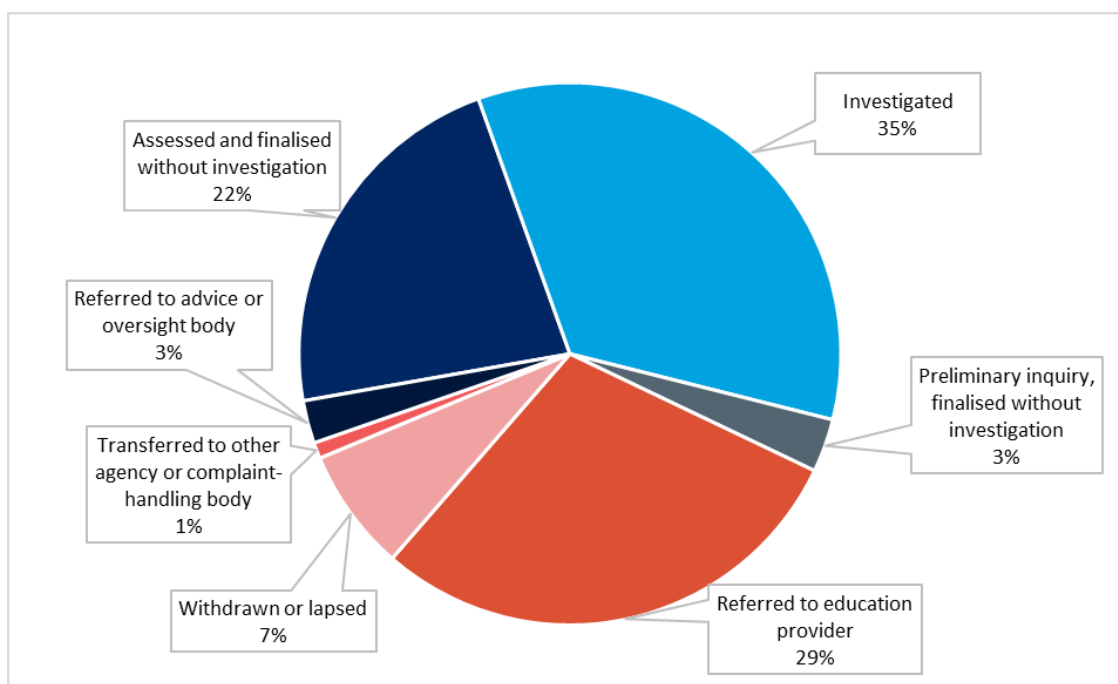


Action taken to finalise complaints

During 1 October–31 December 2020 we finalised 314 complaints, which included 368 issues. Some complaints finalised during this period were received during previous quarters.

Figure 2 provides a summary of the actions we took to finalise complaints in the quarter. More information on how we finalise complaints can be found in an earlier quarterly update [here](#).

Figure 2—How we finalised complaints in the quarter



Did providers meet their responsibilities?

During 1 October–31 December 2020, we finalised 108 complaint investigations which included 125 issues. **Table 1** details our views as to whether providers met their responsibilities for investigations finalised during the period.

Table 1—Views on finalised investigations: 1 October–31 December 2020

View	Total issues	%
Provider substantially met responsibilities	51	41
Provider did not substantially meet responsibilities	54	43
No view (see below)	21	17

We do not always form a view about whether the provider substantially met their responsibilities. This is usually because the issue was resolved between the student and provider during the course of the investigation, or the investigation was otherwise discontinued. For example, because the provider ceased operating, the student withdrew their complaint, or we decided that further investigation of that issue was unlikely to lead to a different outcome for the student.

Our investigations tend to find that providers do substantially meet their responsibilities. For context, in the 2020 calendar year, this was our view in 57 per cent of investigations. In the 1 October–31 December 2020 quarter, we finalised a number of complaints from students who had objected early to their provider's shift to online learning, however the providers had refused to refund unspent tuition fees. In line with the information in our [fact sheet](#) on COVID-19 related disputes, we found that the providers did not have a basis to retain the unspent fees. This impacted on the statistics for this quarter.

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 that could be made to the provider's policies or processes.

During 1 October–31 December 2020, we made 39 suggestions to providers, covering issues such as accessibility of complaints and appeals processes, improved wording of clauses in written agreements, and improvements to policies and procedures to ensure compliance with relevant legislation.

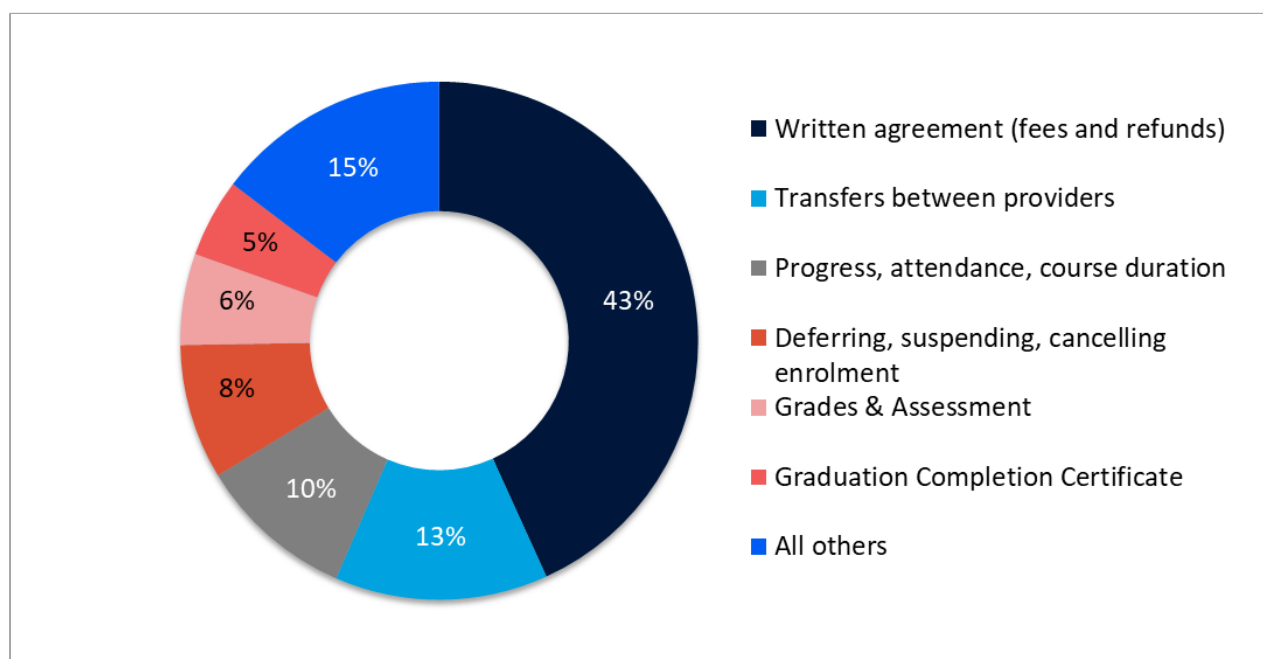
Complaint issues

Written agreements (fees and refunds) continue to be the most common complaint issue (43 per cent). They are generally due to students seeking a refund of pre-paid tuition fees when they ceased their study before finishing their course. The student's ability to seek a refund should be stated in their written agreement with their provider¹.

Transfers between providers (13 per cent) and progress, attendance and course duration (10 per cent) were the next most common issues raised in complaints to our Office.

Figure 3 below shows common complaint issues raised in complaints during the quarter. Detailed data about complaint issues finalised during 1 October–31 December 2020, including comparisons with the previous quarter, can be found in **Table 3** on page eight.

Figure 3—Common complaint issues: 1 October–31 December 2020

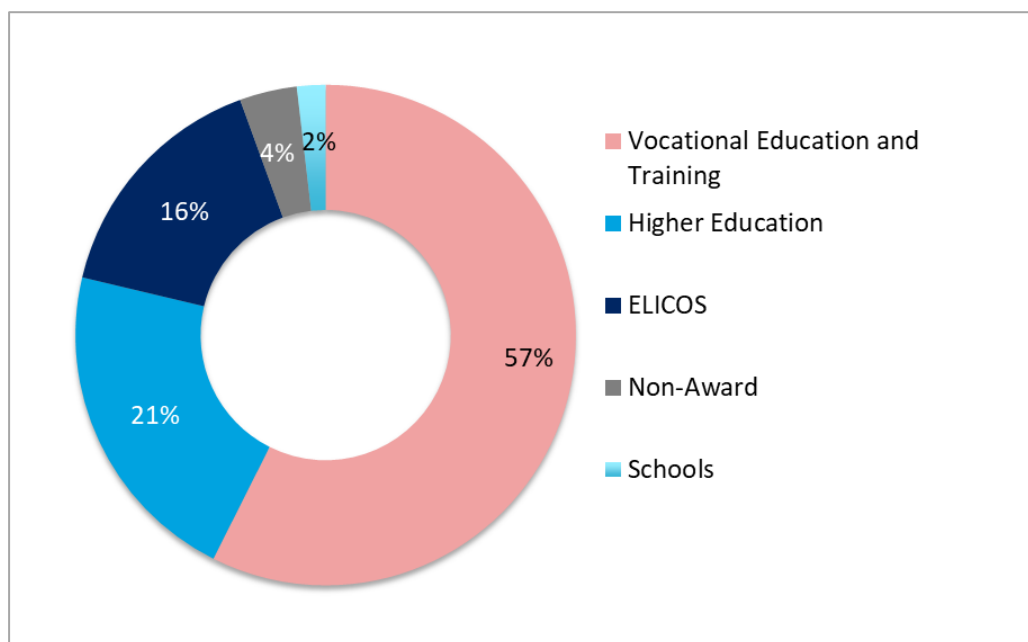


¹ National Code of Practice for Providers of Education and Training to Overseas Students 2018 Standard 3.4

Complaints investigated by education sector

The Vocational Education and Training (VET) sector continues to be the sector we investigate most, with 57 per cent of investigated complaints coming from students studying VET courses. However, the VET sector also has the highest proportion of international students in the Office’s jurisdiction (74 per cent), followed by the Higher Education sector (19.5 per cent) (see **Table 4** on page nine).

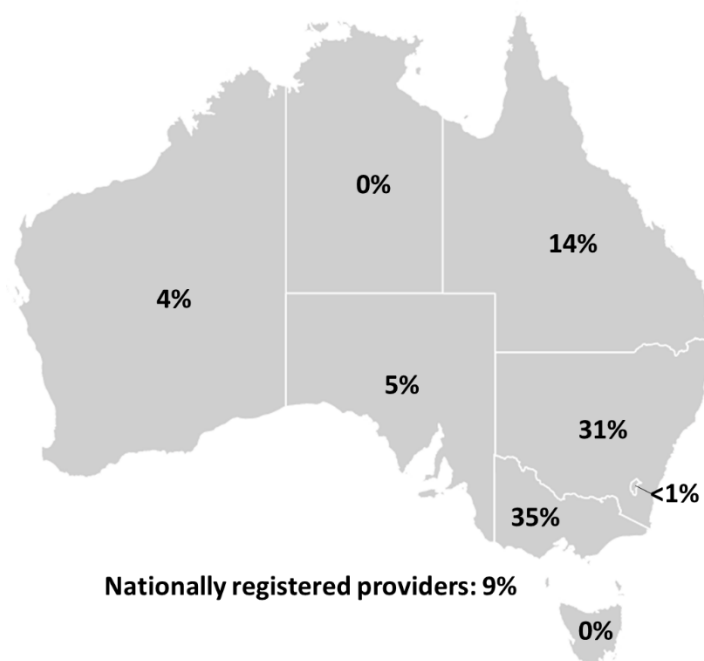
Figure 4—Complaints investigated by sector: 1 October–31 December 2020²



Complaints by registered state or territory

Providers registered in Victoria, New South Wales and Queensland made up the three largest groups of complaints received by our Office³.

This is consistent with the higher number of students studying in these states (see **Table 6** on page 10).

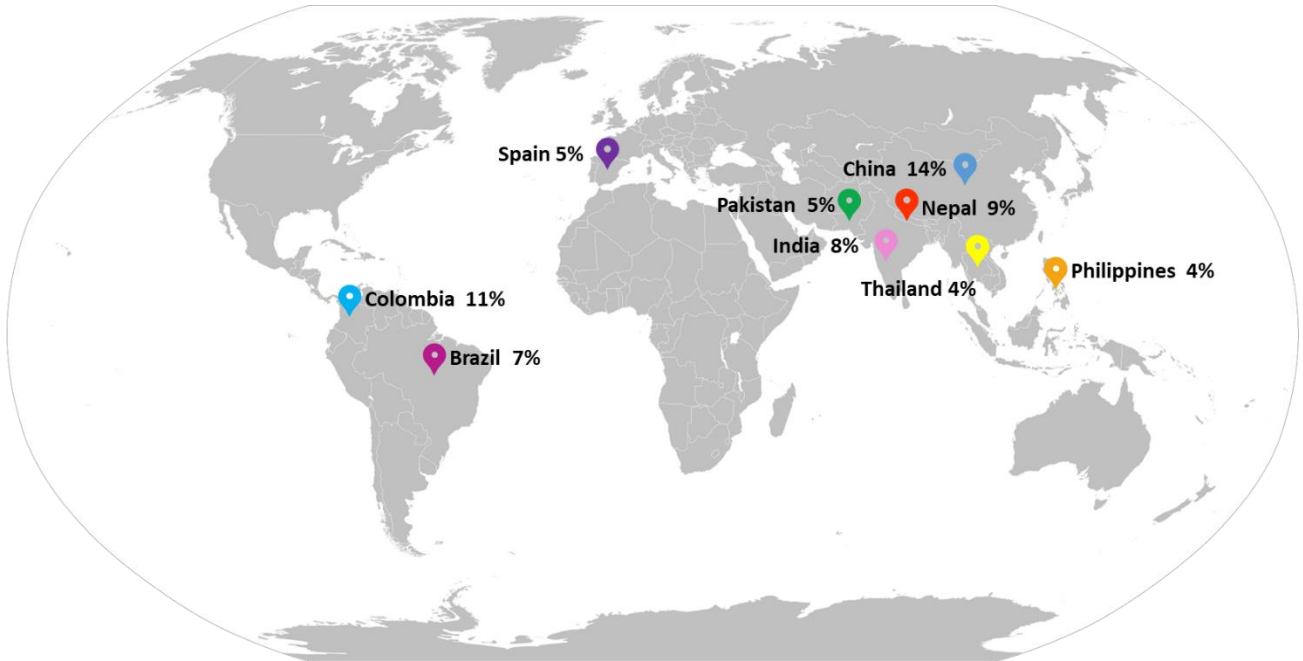


² English Language Intensive Courses for Overseas Students (ELICOS).

³ Figures in image of Australian States and Territories do not add up to 100% due to rounding.

Complaints investigated by complainant's home location

We investigated and finalised complaints from students originating from 30 different countries and administrative regions during the quarter. The largest groups of complainants were from China, Colombia and Nepal.



Case study

We received a complaint from a student who was not progressing with their study plan, and was not satisfied with the educational experience provided, so they had applied for release from the courses they had not yet commenced. The provider agreed to release the student if they paid a significant amount of fees for a future study period. The student paid these fees, but later requested a refund of those additional fees. The provider refused, citing clauses in its written agreement with the student. After unsuccessfully appealing through the provider's internal process, the student approached our Office.

As part of our investigation into the dispute, we examined the student's written agreement with the education provider. We identified a number of areas where the written agreement was not compliant with the requirements of the *Education Services for Overseas Students Act 2000* (ESOS Act), and the *National Code of Practice for Providers of Education and Training to Overseas Students 2018* (National Code).

In particular, the written agreement did not outline:

- prerequisites necessary to enter the student's courses, including English language requirements [National Code standard 3.3.2]
- the provider's internal and external complaints and appeals processes [3.3.7]
- a statement advising the student that they must keep a copy of their written agreement and receipts for fees paid to the provider [3.3.8]
- a statement outlining the student's right to take action under Australian Consumer Law [3.4.5]
- a requirement for the student to provide an emergency contact [3.5.2].

Furthermore, the written agreement attempted to limit the right of students to a refund of pre-paid fees if their visa was refused, by stating that no refund would be payable if the visa was refused due to provision of false or misleading information. Under sections 47D(5) and 47E of the ESOS Act there is no provision for providers to limit the circumstances in which such a refund will be payable.

Given the significant departure of the written agreement from the requirements of the ESOS Act and National Code, and in particular the lack of clarity about prerequisites to enter any of the courses, which the student apparently did not meet, it was our view that the written agreement had not met the requirement of s 47B of the ESOS Act, and the student therefore had a refund entitlement under s 47E of the ESOS Act. The provider accepted our view and paid the appropriate refund. We also suggested that the provider update its written agreement template to ensure compliance with the ESOS framework.

Commentary

In our investigations, we observe varying degrees of compliance in written agreements with the requirements of the ESOS framework. This does not always result in a view that the provider should give a remedy to the student. Where it does, providers sometimes argue that the student has signed a contract, and is bound by the terms of the contract, and questions of compliance are separate regulatory issues.

Although we recognise the written agreement as a contract, the requirements of the ESOS legislative framework go beyond this.

Our Office may also form a view that despite the validity of a written agreement, the outcome arising from following the terms would be unfair or unreasonable, and that the outcome should therefore be varied. In all such cases, we give reasons for our views and are open to receiving more information from providers to inform our assessment of fairness and reasonableness.

Timeframes to finalise complaints

During 1 October–31 December 2020, we did not meet our complaint handling service standards as displayed in **Table 2**. Within the quarter we finalised a number of long standing, complex complaints, which impacted the overall finalisation timeframes. We continue to look for ways to finalise complaints more quickly, while maintaining best practice complaint handling processes.

Table 2—Complaint handling service standards: 1 October–31 December 2020

Complaints finalised	Timeframe	Service standard
64%	Within 30 days	75%
75%	Within 60 days	85%
85%	Within 90 days	90%
99%	Within 12 months	99%

Detailed data regarding finalised complaints

Table 3—Complaint issues for complaints finalised 1 July–30 September 2020 and 1 October–31 December 2020

Issue	Complaints finalised in which issue was raised July September 2020	Complaints finalised in which issue was raised October December 2020
Formalisation of enrolment (written agreement)	201	159
Transfers between registered providers	61	49
Progress, attendance and course duration	32	36
Deferring, suspending or cancelling enrolment	31	31
Grades/assessment	20	21
Graduation Completion Certificate	13	18
Complaints and appeals	11	17
<i>Out of jurisdiction to investigate (OOI)</i>	<i>11</i>	<i>11</i>
Recruitment of overseas student	4	5
Provider default	10	4
Academic Transcript	8	3
Bullying or harassment	1	3
Marketing information and practices	1	3
Overseas Student Health Cover	2	3
Records management	2	3
Discipline	0	1
Student support services	0	1

Issue	Complaints finalised in which issue was raised July September 2020	Complaints finalised in which issue was raised October December 2020
Additional provider registration requirements	1	0
Education agents	5	0
TOTAL	414	368

Table 4—Complaints investigated and finalised: 1 July–30 September 2020 and 1 October–31 December 2020 by education sector

Sector	No. of students ⁴	% of total number of students	Complaints investigated and finalised July September 2020	% of complaints investigated and finalised	Complaints investigated and finalised October December 2020	% of complaints investigated and finalised
VET	153,348	74%	39	52%	62	57%
Schools	4,260	2%	1	1%	2	2%
ELICOS	8,567	4%	11	15%	17	16%
Higher Education	41,030	19.5%	12	16%	23	21%
Non-Award	543	0.5%	12	16%	4	4%
TOTAL	228,000	100%	75	100%	108	100%

Table 5—Most common issues for complaint investigations finalised: 1 October–31 December 2020 by education sector

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

⁴ Number 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 4 January 2021.

Table 6—Registered state or territory of providers for complaints finalised: 1 July–30 September 2020 and 1 October–31 December 2020

State/Territory	Complaints finalised July September 2020	Number of registered providers ⁵	Complaints finalised October December 2020	Number of registered providers ⁶
New South Wales	149	351	117	357
Victoria	106	306	125	313
Queensland	52	294	56	294
Western Australia	19	81	18	80
South Australia	16	75	14	74
Australian Capital Territory	1	18	1	21
Tasmania	1	10	2	10
Northern Territory	0	7	4	7
National (provider may operate nationally)	31	27	31	27
Total	375	1,169	368	1,183

Data

The data in this update is for the period 1 October–31 December 2020. Our data is dynamic and may be updated if 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>

⁵Number of education providers in Overseas Students Ombudsman jurisdiction by ‘main course sector’. PRISMS report, as at 10 October 2020.

⁶Number of education providers in Overseas Students Ombudsman jurisdiction by ‘main course sector’. PRISMS report, as at 4 January 2021.