

Sending students a notice of intention to report for visa breaches

The purpose of this fact sheet is to clarify for providers the requirements of Standards 10.6 and 11.6 of the National Code 2007 in relation to the content and delivery of the written notice of intention to report.

To be compliant with the requirements under sub-section 19(2) of the *Education Services for Overseas Students Act 2000* (ESOS Act), providers must report students who have breached their visa conditions relating to course progress or attendance.

In accordance with Standards 10.6 and 11.6 of the National Code 2007, **before** a provider reports a student they must first notify the student of the breach via a written notice/letter. This is often referred to as giving the student a notice of intention to report.

Content and delivery of the notice of intention to report

The notice of intention to report should clearly identify whether the student has breached their visa condition in relation to course progress requirements under standard 10 or attendance requirements under standard 11.

Notices should refer to the student by name rather than a generic “Dear student” and should include the address to which the notice was sent. These details will ensure providers can track to whom and where the notice was sent.

Standards 10.6 and 11.6 state that when a provider informs a student of its intention to report the written notice must:

“... inform the student that he or she is able to access the registered provider’s complaints and appeals process as per Standard 8 (Complaints and appeals) and that the student has 20 working days in which to do so.”

The critical issue for providers when sending notices is to allow students the full 20 working days to access the complaints and appeals process if they choose to do so.

To avoid confusion, providers are advised to include in the notice the date on which the 20 working days commences. Suggested wording could be something along the lines of:

“...you have 20 working days beginning on <insert date> in which you may access <insert provider name>’s complaints and appeals process.”

For ESOS compliance purposes providers can rely on Australia Post advice as to usual delivery times to set the start date of the 20 working days.

Other methods of sending/delivering the notice

Hand Delivery: where a notice is hand delivered it is recommended that the commencement of the 20 working days start the day after delivery.

Registered Post: while registered mail is considered best practice it is not a requirement under the ESOS Act or National Code. Where a provider chooses to use this method the 20 working days should begin the day after the student signs the delivery slip.

Pigeon holes: providers who use pigeon holes to correspond with students are advised that students should be fully informed of such arrangements prior to any notices being delivered under Standard 10.6 or 11.6. For example, it could be noted in policies and orientation material. It is good practice for providers to only use this method where most other correspondence with the student is delivered in this manner.

Electronic communications: written notices under Standards 10.6 and 11.6 of the National Code may only be given by email, facsimile, web-based communication or any other form of electronic communications, if, prior to the dispatch of the electronic communication, the registered provider informs its students via a direct communication to students or via the registered provider's publications, that:

- written notices under Standards 10.6 and 11.6 would be given to the students by electronic communication;
- the students are given authority to use an information system for generating, sending, receiving, storing or otherwise processing the electronic communication; and
- the information system stores any notices given to the students under Standards 10.6 and 11.6 so that those notices are readily accessible by the students and can be made available for subsequent reference and printing by the students.

Students who use the information system provided by the registered provider in this way would be deemed to have consented to the provider giving them written notices under Standards 10.6 and 11.6 by way of electronic communication through that information system. Students who do not wish to receive such written notices electronically should inform the registered provider of this in writing.

All written notices that are given by a registered provider under Standards 10.6 and 11.6 by way of electronic communication must state the date on which the 20 working day period prescribed by Standards 10.6 and 11.6 would commence.

Tips Checklist

- If the student has told you their new address, is this reflected in your systems so that the notice of intention reaches the student?

- Does your letter refer to the National Code 2007 requirements for reporting the student for unsatisfactory attendance or course progress?

- Is the wording in the notice clear so that a student knows their visa is at risk?

- Does it clearly tell the student they can appeal through your appeals process and that they have 20 working days in which to do so?

- Does the notice state the start of the 20 working days and allow for reasonable delivery times?

- Does the notice explain the next step if the student wants to appeal?

- Have you arranged for an independent appeals body to hear complaints?

- After sending the notice/letter and not hearing from the student did you wait for the full 20 **working** days before reporting in PRISMS, not just 20 days?