



Charging social security fraud: variable reporting

Instruction Number: 9

Last Update:

Variable reporting is where a benefit recipient is required to lodge reporting statements at intervals greater than fortnightly (4, 8 or 12 weekly) while still receiving benefit payments fortnightly. Recipients are required to report any changes which might affect their payment within 14 days, pursuant to section 66A of the *Social Security (Administration) Act 1999*.

If a recipient advises, for example of any employment, variable reporting must cease from the first entitlement period end date after the change occurred (the "entitlement period" is the period of 14 days at the end of which the benefit is paid). The new rate of payment will apply from the first day in the entitlement period following the date of notification. If the recipient does not report the change within 14 days, the new rate of payment will take effect from the day after the relevant change.

Recipients who are placed on variable reporting are required to lodge reporting statements at the end of each variable period. The reports relate to fortnights in which the recipients have already received their benefit and the last fortnight in the variable reporting period in relation to which they have not yet received their benefit. If the recipient reports that they have earned no income in the variable reporting period, this "triggers" their payment for the last fortnight and causes them to continue on variable reporting.

Where the recipient fails to report at the end of the variable reporting period, the last payment for the variable reporting period is not paid and the payments automatically issued within the period covered by the reporting statement are deemed to be unauthorised and, after 21 days, debt raising action can be undertaken.

Recipients who advise of income (or other relevant changes) as part of the variable reporting statement, but did not advise within 14 days of the change occurring, have their entitlement recalculated which may result in not being paid any benefit for the final fortnight in the variable reporting period (or being paid at a lower rate) and an overpayment being raised in relation to the earlier fortnights in the variable reporting period.

False statements

1. Offending in the variable reporting situation can involve for example in the 12 weekly situation, a person making a false statement in relation to the amount of income they earned and as a consequence being put on variable reporting and when reporting, repeating the false statement in relation to their income. By that time the recipient would have received 5 fortnightly payments and the false statement in the report, would trigger the payment for the last fortnight and the next 5 fortnightly payments.
2. In this situation, but for the false statement the recipient would not be receiving the benefit (or not receiving it at the level he/she is). This is an offence of commission. This false statement causes the recipient to be paid benefits for the next 5 fortnights. But for that false report those payments would not be made. He/she then repeats that false statement every reporting period. That false statement then triggers the payment for the last fortnight, causes them to continue on variable reporting and, in practical terms causes benefits to be paid for the next 5 fortnights.
3. Offending may also involve a person making a false statement that he/she is not working and as a result is taken off reporting entirely and continues to receive a benefit based on the premise that he/she is

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unemployed. Whilst section 66A imposes a duty on a recipient of a benefit, this is an offence of commission as the financial advantage is gained as a result of that false statement. If a person makes a false statement to obtain a benefit to which they are not entitled, the conduct is the false statement in relation to the benefit(s) obtained as a result.

Appropriate charges

4. There may be more than one way to charge a matter and what is appropriate will depend on the circumstances and facts involved in the particular case.
5. In the variable reporting situation in the summary jurisdiction, false statement charges are appropriate. These may be pursuant to section 136.1 or 137.1 of the *Criminal Code* or section 212 or section 213 of the *Social Security (Administration) Act*.
6. If the facts genuinely represent an ongoing single criminal enterprise to be paid a benefit the recipient is not entitled to, a single charge involving a course of conduct may be appropriate.¹
7. Whether a particular offence can be charged as a course of conduct depends on the construction of the offence provision.²
8. Where a course of conduct is involved based on the fact that false statements to the same effect allowed the recipient to obtain and retain a benefit to which they were not entitled, a single charge in the summary jurisdiction, being an offence of commission, pursuant to section 135.2 of the *Criminal Code* may be appropriate.³
9. On indictment, charges pursuant to section 134.2 or 135.1, also of commission, may be appropriate, on the basis outlined at paragraph 2 above, if the facts properly give rise to a course of conduct.
10. If it is permissible to characterise the offending as a continuing enterprise or course of conduct the count will be not be duplicitous.⁴
11. If an ongoing criminal enterprise is charged it is important for the conduct to be properly characterised and described as an ongoing enterprise and for it to be clear that evidence of separate dishonest acts is led in support of that single enterprise. This should be made clear in Statements of Facts and through the provision of particulars of the alleged criminal enterprise. This recognises the importance of enabling the defendant to be aware of the prosecution's case and of a fair trial.
12. A charge brought on the basis of an ongoing single criminal enterprise should not be described as a "rolled up" charge/count as usage of this term accepts that there are a number of individual offences involved in the one charge/count.



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¹ See *DPP v. Merriman* [1972] AC584, *R v Moussad* (1999) 152 FLR 373, *R v. Goodwin* (2009) 233 FLR 473 at [81], *Jovanovic v. The CDPP* (2012) 271 FLR 38 at [51]

² *Walsh v. Tattersall* (1996) 188 CLR 77

³ See *Huynh v Commonwealth Services Delivery Agency* [2014] SASC 143

⁴ *R v Moussad* (1999) 152 FLR 373