

# Reporter

UNIVERSITY OF N.S.W.

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## Opinion

### Overpayments and recipient notification notices

Overpayment and recipient notification notices are generally printed on the backs of letters sent to recipients of social security payments, and require the recipient to notify the Department of Social Security if certain defined events occur. On 13 December 1991 the *Social Security Act 1991* was amended so that a notice issued under the Act was defined as a *Recipient Notification Notice*. *Recipient Notification Notices* are defined in s.23(1) of the *Social Security Act 1991* as being notices given under specified sections of the Act, depending on the type of social security payment. For example, *Recipient Notification Notices* sent to age pensioners are sent under s.68. Sub-section 68(3) sets out the formal requirements that each notice must satisfy. These are that the notice:

- must be in writing;
- may be given personally or by post;
- must specify how the person is to give the information to DSS;
- must specify the period within which the information must be given; and
- must specify that the notice is a '*Recipient Notification Notice*'.

All these requirements must be met for the notice to be valid (see *Doravelu* (1992) 67 SSR 961 and *Wan* at p.1035 in this issue).

Two problems have arisen for the DSS as a result of this amendment to the Act. First, letters with notices are rarely labelled '*Recipient Notification Notice*'. The DSS did not arrange for notices to be labelled until approximately August 1992. Second, the notices usually require a person to notify the DSS within 14 days, whereas the Act states that the period of notification ends at least 14 days after the event etc. Recent SSAT decisions have found notices to be invalid because there was no time limit set out in the notice, the notice did not state how the person was to notify the DSS, the notice referred to the wrong section and the wording of the notice was vague.

The effect of an invalid notice is that the DSS cannot rely on a person's failure to comply with a notice to backdate the cancellation of a pension or benefit and therefore raise a debt (s.1223), or raise a debt because a person failed to comply with a provision of the Act (s.1224). It is important to remember, however, that the relevant notice is the last notice issued before the event, etc. occurred.

[C.H.]

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