Social Security (Public Interest Certificate Guidelines) Determination 2005 (DEWR)

I, KEVIN ANDREWS, Minister for Employment and Workplace Relations, make this Determination under subparagraph 209 (1) (a) (i) of the Social Security (Administration) Act 1999.

Dated 8th November 2005.

KEVIN ANDREWS
Minister for Employment and Workplace Relations
## Social Security (Public Interest Certificate Guidelines) Determination 2005 (DEWR)

made under the

*Social Security (Administration) Act 1999*

### Contents

<table>
<thead>
<tr>
<th>Part 1 Preliminary</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Determination</td>
<td>4</td>
</tr>
<tr>
<td>Commencement</td>
<td>4</td>
</tr>
<tr>
<td>Purpose</td>
<td>4</td>
</tr>
<tr>
<td>Definitions</td>
<td>4</td>
</tr>
<tr>
<td>Matters to which Secretary must have regard</td>
<td>5</td>
</tr>
</tbody>
</table>

### Part 2 Guidelines — public interest certificate (general) | Page |
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>When public interest certificate may be given</td>
<td>6</td>
</tr>
<tr>
<td>Threat to life, health or welfare</td>
<td>6</td>
</tr>
<tr>
<td>Enforcement of laws</td>
<td>6</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>--------------------------------------</td>
</tr>
<tr>
<td>9</td>
<td>Mistake of fact</td>
</tr>
<tr>
<td>10</td>
<td>Missing person</td>
</tr>
<tr>
<td>11</td>
<td>Deceased person</td>
</tr>
</tbody>
</table>

**Part 3**

**Guidelines — public interest certificate (homeless young person)**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>Application</td>
<td>9</td>
</tr>
<tr>
<td>13</td>
<td>When public interest certificate may be given</td>
<td>9</td>
</tr>
<tr>
<td>14</td>
<td>Abuse or violence</td>
<td>10</td>
</tr>
<tr>
<td>15</td>
<td>Verification for payment</td>
<td>10</td>
</tr>
<tr>
<td>16</td>
<td>Reconciliation</td>
<td>11</td>
</tr>
<tr>
<td>17</td>
<td>Assurance</td>
<td>11</td>
</tr>
</tbody>
</table>
Part 1    Preliminary

1 Name of Determination
This Determination is the Social Security (Public Interest Certificate Guidelines) Determination 2005.

2 Commencement
This Determination commences on gazettal.

3 Purpose
This Determination sets guidelines for the exercise of the Secretary’s power to give certificates for the purposes of paragraph 208 (1) (a) of the Act.

4 Definitions
In this Determination:

Centrelink means the Agency established under section 6 of the Commonwealth Services Delivery Agency Act 1997.
Department means the Department of Employment and Workplace Relations.
public interest certificate means a certificate, under paragraph 208 (1) (a) of the Act, for the disclosure of relevant information.
relevant information means information about a person (including protected information) acquired by an officer in the performance of his or her functions or duties, or in the exercise of his or her powers, under the social security law or the Farm Household Support Act 1992.

Note 1 The following expressions are defined in the Act:
☐ 1991 Act
☐ social security law.

Note 2 The following expressions are defined in the 1991 Act and have the same meaning in the Act (see subsection 3 (2) of the Act):
5 Matters to which Secretary must have regard

In giving a public interest certificate, the Secretary must have regard to:

(a) any situation in which the person to whom the information relates is, or may be, subject to physical, psychological or emotional abuse; and

(b) whether the person in such a situation may be unable to give notice of his or her circumstances because of:
   (i) age; or
   (ii) disability; or
   (iii) social, cultural, family or other reasons.
Part 2 Guidelines — public interest certificate (general)

6 When public interest certificate may be given

(1) The Secretary may give a public interest certificate for the disclosure of relevant information under this Part if:
   (a) the information cannot reasonably be obtained from a source other than the Department; and
   (b) the person to whom the information will be disclosed has sufficient interest in the information; and
   (c) the Secretary is satisfied that the disclosure is for the purpose of section 7, 8, 9, 10 or subsection 11 (1) or (2).

(2) A person has sufficient interest in the relevant information if the Secretary is satisfied that, in relation to the purpose of the disclosure, the person has a genuine and legitimate interest in the information.

7 Threat to life, health or welfare

Relevant information may be disclosed for the purpose of this section if the disclosure is necessary to prevent, or lessen, a threat to the life, health or welfare of a person.

8 Enforcement of laws

(1) Relevant information may be disclosed for the purpose of this section if:
   (a) the disclosure is necessary:
      (i) for the enforcement of a criminal law that relates to an indictable offence punishable by imprisonment of 2 years or more; or
      (ii) for the enforcement of a law imposing a pecuniary penalty equivalent to 40 penalty units or more; or
      (iii) to prevent an act that may have a significant adverse effect on the public revenue; or
(b) the disclosure relates to an offence or threatened offence:
(i) against a Commonwealth employee; or
(ii) against Commonwealth property; or
(iii) in Department premises; or
(iv) in Centrelink premises.

(2) In this section:

criminal law means:
(a) for Australia — a criminal law of the Commonwealth or of a State or Territory; and
(b) for a place outside Australia — a criminal law that may be recognised under an extradition arrangement to which Australia is a party.

penalty unit has the same meaning as in section 4AA of the Crimes Act 1914.

Note Subsection 4AA (1) of the Crimes Act 1914 provides:
‘In a law of the Commonwealth or a Territory Ordinance, unless the contrary intention appears:

penalty unit means $110.’.

9 Mistake of fact

Relevant information may be disclosed for the purpose of this section if:

(a) the disclosure is necessary to correct a mistake of fact in relation to the administration of a program of the Department; and

(b) either:
(i) the integrity of the program will be at risk if the mistake of fact is not corrected; or
(ii) the mistake of fact relates to a matter that was, or will be, published (whether by, or with or without the consent of, the person to whom the information relates).
10 **Missing person**

Relevant information may be disclosed for the purpose of this section if:

(a) the information is about a missing person; and

(b) the disclosure is necessary:

(i) to assist a court, coronial enquiry, Royal Commission, department or any other authority of a State or Territory in relation to the whereabouts of the missing person; or

(ii) to locate a person (including the missing person); and

(c) there is no reasonable ground to believe that the missing person would not want the information disclosed.

11 **Deceased person**

(1) Relevant information may be disclosed for the purpose of this subsection if:

(a) the information is about a deceased person; and

(b) the disclosure:

(i) is necessary to assist a court, coronial enquiry, Royal Commission, department, or any other authority of a State or Territory in relation to the death of the person; or

(ii) is necessary to help a person locate a relative or beneficiary of the deceased person; or

(iii) is in relation to the administration of the estate of the deceased person; and

(c) there is no reasonable ground to believe that the deceased person would not have wanted the relevant information disclosed.

(2) Relevant information may be disclosed for the purpose of this subsection if the information is to establish:

(a) the death of a person; or

(b) the place where the death of a person is registered.
Part 3 Guidelines — public interest certificate (homeless young person)

12 Application

(1) This Part applies if the relevant information for disclosure relates to a homeless young person.

(2) In this Part:

homeless young person means a person:
(a) who is under 18 years; and
(b) who has sought a social security payment on the ground of being a homeless person.

parent, in relation to a homeless young person, means:
(a) a natural or adoptive parent of the homeless young person with whom the homeless young person normally lived before becoming a homeless young person; or
(b) if a parent referred to in paragraph (a) is a member of a couple and normally lives with the other member of the couple — the other member of the couple; or
(c) any other person (other than the homeless young person’s partner) on whom the homeless young person was wholly or substantially dependent before becoming a homeless young person.

13 When public interest certificate may be given

(1) The Secretary may give a public interest certificate for the disclosure of relevant information under this Part if:
(a) the information cannot reasonably be obtained from a source other than the Department; and
(b) the Secretary is satisfied that the disclosure will not result in harm to the homeless young person; and
(c) the Secretary is satisfied that the disclosure is for the purpose of section 14, 15, 16, or 17.
(2) The Secretary may also give a public interest certificate for the disclosure of relevant information under this Part if:

(a) the information cannot reasonably be obtained from a source other than the Department; and

(b) the disclosure will be made to a welfare authority of a State or Territory; and

(c) the homeless young person to whom the relevant information relates is:

(i) in the care of a welfare authority of a State or Territory in accordance with the law of the State or Territory; or

(ii) under 15 years; and

(d) the Secretary is satisfied that the disclosure will not result in harm to the homeless young person.

14 Abuse or violence

Relevant information may be disclosed to an appropriate authority for the purpose of this section if:

(a) the information is about a family member of a homeless young person; and

(b) the Secretary is satisfied that the homeless young person or a family member of the homeless young person has been subjected to abuse or violence.

15 Verification for payment

Relevant information may be disclosed for the purpose of this section if:

(a) the disclosure is necessary to verify a circumstance by which a homeless young person who is under 15 years may qualify for a social security payment on the ground of being a homeless person; and
(b) in order to verify the circumstance, a parent, or the parents, of the homeless young person must be asked whether the homeless young person is able to live at the home of his or her parent or parents.

Note Social security payments, appropriated for the purpose, are made by Centrelink on behalf of the Department under service arrangements entered into under section 7 of the Commonwealth Services Delivery Agency Act 1997.

16 Reconciliation

Relevant information may be disclosed for the purpose of this section if the disclosure will facilitate reconciliation, or possible reconciliation, between a homeless young person and his or her parent or parents.

17 Assurance

Relevant information may be disclosed for the purpose of this section if:

(a) a parent, or the parents, of a homeless young person has sought assurance that the homeless young person has been in contact with the Department or with Centrelink; and

(b) the disclosure is necessary to inform the parent or parents whether the homeless young person has been in contact with the Department or with Centrelink.