EXPLANATORY STATEMENT

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

Summary

This Determination is made under subparagraph 209(1)(a)(i) of the Social Security (Administration) Act 1999 (the Administration Act).

The purpose of this Determination is to create guidelines to facilitate the disclosure of information under subparagraph 208(1)(a) of the Administration Act. This allows for the disclosure of information where it is in the public interest.

Part 1—Preliminary

Part 1 sets out the preliminary information about the Determination, namely, the name of the determination (section 1), commencement (section 2), purpose (section 3), definitions (section 4) and matters to which the Secretary of the Department of Employment and Workplace Relations is to have regard (section 5).

Section 5 of Part 1 provides that in giving a public interest certificate, the Secretary must have regard to any situation in which a person to whom the information relates is, or may be, subject to physical, psychological or emotional abuse. In such a situation, the Secretary must also have regard to whether the person may be unable to give notice of his or her circumstances because of age, disability or social, cultural, family or other reasons. Section 5 is intended to emphasise the importance of the release of protected information where individuals are not in a position to seek assistance or intervention themselves.

Part 2—Guidelines—public interest certificate (general)

Part 2 sets out how the release of protected information can occur under paragraph 208(1)(a) of the Social Security (Administration) Act 1999 in general terms for the purposes of the social security law.

Subsection 6(1) provides that for the purposes of Part 2, a public interest certificate may be given by the Secretary if:

(i) the information cannot be obtained from another source;

(ii) the disclosure is to a person who has sufficient interest in the information; and

(iii) that disclosure is for the purpose of section 7, 8, 9 or 10 or subsections 11(1) or (2).
Subsection 6(2) specifies that sufficient interest is a genuine and legitimate interest in the information.

Section 7 permits disclosure of protected information to prevent, or lessen, a threat to the life, health or welfare of a person. This reflects Information Privacy Principle (IPP) 11(1)(c).

Subsection 8(1) permits disclosure of protected information for the enforcement of laws, whether that be the criminal law in relation to an indictable offence punishable by imprisonment of 2 years or more, or a law imposing a pecuniary penalty equivalent of at least 40 penalty units, or to prevent an act that may have a significant adverse effect on the public revenue. This reflects IPP 11(1)(e). The disclosure must relate to an offence or a threatened offence against a Commonwealth employee, Commonwealth property or Department or Centrelink premises.

Criminal law and penalty units are defined at subsection 8(2).

Section 9 permits disclosure of protected information to correct a mistake of fact in relation to the administration of a program of the Department of Employment and Workplace Relations where either the integrity of the program is at risk if the mistake of fact is not corrected or the mistake of fact has been, or will be, published.

Disclosure of protected information to assist a court, coronial enquiry, Royal Commission, department or any other authority of a State or Territory in relation to the whereabouts of a missing person or to locate a missing person is provided by section 10. Disclosure will not occur if there are reasonable grounds to believe that the missing person would not want the information disclosed.

Disclosure of protected information to assist a court, coronial enquiry, Royal Commission, department or any other authority of a State or Territory in relation to a deceased person, to locate a relative or beneficiary of the deceased person, or in relation to the administration of the estate of the deceased person is provided by subsection 11(1). Disclosure will not occur if there are reasonable grounds to believe that the deceased person would not have wanted the information disclosed. Subsection 11(2) provides that the only relevant information that is able to be disclosed is to establish the death of the person or that place where the death of the person is registered.

**Part 3—Guidelines—public interest certificate (homeless young person)**

Part 3 sets out how the release of protected information can occur under paragraph 208(1)(a) of the *Social Security (Administration) Act 1999* in relation to homeless young people for the purposes of the social security law.

Section 12 is an application provision. Subsection 12(1) provides that disclosure of information under Part 3 only applies to a homeless young person. Subsection 12(2) provides a definition of homeless young person and also of parent.
Subsection 13(1) provides that for the purposes of Part 3, a public interest certificate may be given by the Secretary if:

(i) the information cannot be obtained from another source;
(ii) no harm will result to the homeless young person if information is disclosed; and
(iii) that disclosure is for the purpose of section 14, 15, 16 or 17.

Subsection 13(2) provides that for the purposes of Part 3, a public interest certificate may be given by the Secretary if:

(i) the information cannot be obtained from another source;
(ii) the disclosure is to a welfare authority of a State or Territory;
(iii) the homeless young person is either in the care of a welfare authority of a State or Territory or is under 15 years of age; and
(iv) no harm will result to the homeless young person if information is disclosed.

Section 14 permits disclosure of protected information to an appropriate authority if the information is about a family member of a homeless young person and the homeless young person or a family member of the homeless young person has been subjected to abuse or violence.

Disclosure of information to verify a circumstance by which a homeless young person under the age of 15 years may qualify for a social security payment is sanctioned by section 15.

In the cases of a reconciliation between the homeless young person and his or her parent or parents, disclosure of information to facilitate the reconciliation may be made under section 16.

Section 17 allows for disclosure of information about a homeless young person to a parent, or parents of the homeless young person but only to assure the parent, or parents, that the homeless young person has been in contact with Centrelink.

Consultation

To ensure consistency across departments responsible for the social security law, the substantive parts of this determination are the same as the Social Security (Public Interest Certificate Guidelines) Determination 2002, which were made by the Minister for Family and Community Services. Consultation with external organisations was not undertaken as this determination replicates another instrument already in force.
The Department of Family and Community Services, Department of Human Services and Department of Education, Science and Training are all aware that the Minister for Employment and Workplace Relations intended to make these guidelines.