

## Explanatory Statement

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### *Family Assistance (Public Interest Certificate Guidelines) (Education) Determination 2018*

#### Summary

The *Family Assistance (Public Interest Certificate Guidelines) (Education) Determination 2018* (the Guidelines) are made under paragraph 169(a) of the *A New Tax System (Family Assistance) (Administration) Act 1999* (the Administration Act).

The purpose of the Guidelines is to assist the Secretary (or the delegate) of the Department of Education and Training (the Department) in the exercise of their power under paragraph 168(1)(a) of the Administration Act to disclose protected information where it is necessary in the public interest.

The Guidelines replace the *Family Assistance (Public Interest Certificate Guidelines) Determination 2015* (previous Guidelines) in so far as it falls under the Department's portfolio responsibilities in relation to child care payment matters under the Family Assistance Law. The Guidelines largely replicate the content of the previous Guidelines, however they expand the circumstances in which protected information may be disclosed to an enforcement body for the purposes of the investigation and enforcement of Commonwealth, State and Territory laws.

As for the previous Guidelines, there remain safeguards built into the legislative scheme to ensure that any protected information disclosed in the public interest is only used for the public interest purpose. In particular, the disclosure of protected information to a person, under paragraph 168(1)(a) of the Administration Act in accordance with the Guidelines, does not give that person the authority to disclose that information to further parties, unless the disclosure is for the purpose for which the information was disclosed to the person, as permitted by paragraph 162(2)(e) of the Administration Act, or the disclosure is otherwise authorised under law. Further, the protected information provisions in the Family Assistance Law will remain operating in concert with relevant requirements of the *Privacy Act 1988*. While a public interest certificate will provide authority under law for the purposes of use and disclosure, key requirements in the *Privacy Act 1988* will still apply to the Department and the Department of Human Services as APP entities, such as requirements relating to collection notices.

#### Background

Division 2 of Part 6 of the Administration Act provides for the confidentiality of 'protected information' obtained under the Family Assistance Law and sets out when protected information may be obtained or disclosed.

Paragraph 168(1)(a) of the Administration Act allows the Secretary of the Department (or the Secretary's delegate) to disclose protected information if the Secretary certifies that it is necessary in the public interest to do so. In giving certificates, the Secretary must act in accordance with the Guidelines from time to time in force under section 169 of the Administration Act.

The Guidelines specify circumstances in which the Secretary can certify that it is in the public interest to disclose protected information. In particular, the Guidelines provide a new ground of disclosure of protected information for enforcement related activities in the public interest (section 9).

The narrow construct of the previous Guidelines has hampered the Department's ability to share information with other agencies and departments for enforcement related activities.

This severely reduced the Department's capacity to effectively manage complex risks faced by the Department and other regulators, as well as the public.

The benefit of remaking the previous Guidelines, in particular the changes in section 9 (regarding enforcement related activities), will mean that communication and information exchange between bodies with enforcement powers and the Department will be greatly improved and this will lead to greater compliance collaboration and effectiveness across government. The Guidelines will not depart from the ongoing requirements that ensure that disclosures can only occur where they are necessary and in the public interest.

## **Consultation**

On 15 December 2017, these proposed changes were discussed with the Department's Transition Reference Group, which consists of members from child care peak bodies and services. Members were supportive of the changes.

## **Regulatory Impact Statement**

The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required for this Determination, as the amendments do not introduce any new compliance costs for providers or families. (OBPR ID 23225, dated 3 January 2018).

## **Authority**

The *Family Assistance (Public Interest Certificate Guidelines) (Education) Determination 2018* is made under paragraph 169(a) of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

## **Explanation of Provisions**

### **Part 1 Preliminary**

**Section 1** sets out that the name of the instrument is the *Family Assistance (Public Interest Certificate Guidelines) (Education) Determination 2018*.

**Section 2** provides that the instrument commences on the day after it is registered.

**Section 3** is an application provision that clarifies that the instrument applies on and from commencement with respect to disclosure of protected information in relation to child care payments under the Family Assistance Law.

**Section 4** provides that the purpose of this instrument is to set out guidelines for the exercise of the Secretary's power to give certificates for the purposes of paragraph 168(1)(a) of the Act.

**Section 5** provides definitions of certain terms used in the Guidelines.

**Section 6** provides matters to which the Secretary must have regard in giving a public interest certificate on the basis of any ground set out in Part 2 or 3 of these Guidelines, except for the ground set out in section 9 which relates to enforcement related activities.

### **Part 2 Guidelines—public interest certificate (general)**

Part 2 sets out guidelines on the release of information generally.

**Section 7** provides a set of preconditions before a public interest certificate may be given.

Subsection 7(1) provides that, for the purposes of Part 2, a public interest certificate may only be given by the Secretary if:

- the information cannot reasonably be obtained from another source; and
- the disclosure is to a person who has sufficient interest in the information; and

- the Secretary is satisfied that disclosure is for the purpose of sections 8, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 or subsections 14(1) or (2) of these Guidelines.

This subsection has not included section 9 as a purpose for which the Secretary must be satisfied before a public interest certificate can be given under that section. Subsection (3) clarifies that a public interest certificate can be given on the basis of the ground in section 9, for purposes of enforcement related activities, where the Secretary considers that doing so is in the public interest.

This means that the Secretary is able to rely on section 9 of the Guidelines to disclose protected information through a public interest certificate, so long as the Secretary considers that it is in the public interest to do so (and where it is ‘necessary’ as outlined in paragraph 168(1)(a) of the Administration Act). This includes circumstances where a disclosure may assist an investigation or other enforcement related activities such as monitoring compliance with Commonwealth, State or Territory laws. This amendment aligns the Guidelines more closely with privacy legislative framework which allows disclosure to an enforcement body for such purposes.

Subsection (2) specifies that a person will have sufficient interest in the information if the person either has a genuine and legitimate interest in the information or the person is a Minister (as defined in section 5).

**Section 8** permits disclosure of information to prevent, or lessen, a threat to the life, health or welfare of a person.

**Section 9** permits disclosure of information for purposes of facilitating an enforcement related activity (within the meaning of the *Privacy Act 1988*).

‘Enforcement related activity’ is defined in subsection 6(1) of the *Privacy Act 1988* and is discussed in Chapter B (Key concepts) of the Australian Privacy Principles Guidelines. Enforcement related activities include the prevention, detection, investigation and prosecution or punishment of criminal offences. It also includes the surveillance, intelligence gathering or monitoring activities where there may not be an existing investigation.

Disclosures under this section may be made to either a department, agency or authority of the Commonwealth, a State or a Territory; or an enforcement body (within the meaning of the *Privacy Act 1988*).

‘Enforcement body’ is defined in subsection 6(1) of the *Privacy Act 1988* as a list of specific bodies. The list includes Commonwealth, State and Territory bodies that are responsible for policing, criminal investigations, and administering laws to protect the public revenue or to impose penalties or sanctions. Examples of enforcement bodies are the Australian Federal Police, a police force or service of a State or Territory, the Australian Crime Commission, the Australian Securities and Investments Commission and AUSTRAC.

**Section 10** relates to disclosures for purposes of making or supporting a proceeds of crime order.

Subsection 10(1) permits disclosure of relevant information to a Commonwealth, State or Territory law enforcement agency where this is necessary for:

- the making, or proposed or possible making, of a proceeds of crime order; or
- supporting or enforcing a proceeds of crime order.

Subsection 10(2) contains the definition of ‘proceeds of crime order’ for the purposes of subsection 10(1).

Section 10 of the Guidelines is aimed at disrupting and combating serious and organised crime, by assisting law enforcement agencies in their efforts to deprive individuals of the proceeds, instruments and benefits derived from unlawful activity.

Where a proceeds of crime order has been made or is being sought against an individual under a Commonwealth, State or Territory law, section 10 will ensure that law enforcement bodies and other relevant entities have access to the information they need to make, support or enforce the order.

Section 10 has been drafted based on section 355-70 in Schedule 1 to the *Taxation Administration Act 1953*. Section 10 has been drafted consistently with the provisions in that Act relating to the disclosure of protected tax information for proceeds of crime purposes.

**Section 11** permits disclosure of protected information to correct a mistake of fact in relation to the administration of a program of the relevant department where either the integrity of the program is at risk if the mistake of fact is not corrected, or the mistake of fact relates to a matter that has been, or will be, published.

**Section 12** permits the disclosure of information if the disclosure is necessary to brief a Minister:

- to enable the Minister to consider complaints or issues by, or on behalf of a person, and respond to that person accordingly;
- for a meeting or forum that the Minister is to attend;
- in relation to issues raised, or proposed to be raised by or on behalf of a person so that the Minister can respond by correcting a mistake of fact, a misleading perception or impression, or a misleading statement;
- about an error or delay by the Human Services Department; or
- about an anomalous or unusual operation of the Family Assistance Law.

**Section 13** permits disclosure of protected information which is necessary to assist a court, coronial inquiry, Royal Commission, department or any other authority of a State or Territory in relation to the whereabouts of a reported missing person or to locate a missing person. However, disclosure will only be possible if there is no reasonable ground to believe that the missing person would not want the information disclosed.

A reported missing person is a person who has a missing person's report filed with the police.

**Section 14** relates to disclosure of information about a deceased person.

Subsection 14(1) allows disclosure of protected information which is:

- necessary to assist a court, coronial inquiry, Royal Commission, department or any other authority of a State or Territory in relation to a deceased person; or
- necessary to locate a relative or beneficiary of the deceased person; or
- necessary to help an individual or authority responsible for the administration of the estate of the deceased person in relation to the administration of the estate of the deceased person.

However, disclosure will only be possible if there is no reasonable ground to believe that the deceased person would not have wanted the information disclosed.

Subsection 14(2) provides that the relevant information may also be disclosed if the information is to establish the death of the person or the place where the death of the person is registered.

**Section 15** provides that protected information can be released where this is done for policy development or research purposes, including evaluation, monitoring and reporting and/or statistical analysis in relation to any program or activity within the portfolio responsibilities of a department that is administering any part of the Family Assistance Law or the social security law.

**Section 16** provides that protected information can be released where this is done for policy development or research purposes, including evaluation, monitoring and reporting, and/or statistical analysis in relation to any program or activity within the portfolio responsibilities of a department which is responsible for administering early childhood development, or preschool education, policies and programs.

**Section 17** relates to disclosure on matters of relevance in a department administering any part of the Family Assistance Law or social security law.

Subsection 17(1) provides that relevant information can be disclosed to facilitate the progress or resolution of any matters of relevance within the portfolio responsibilities of a department administering the social security law or the Family Assistance Law.

Subsection 17(2) provides that a matter of relevance to a department includes a program or activity that provides assistance or services to a class of people that includes at least some persons receiving payments or entitlements under the social security law or the Family Assistance Law.

Departments administering the social security law and the Family Assistance Law also administer programs that deliver additional support and assistance to people in receipt of social security and family assistance payments or entitlements or otherwise provide other social policy or welfare initiatives and assistance. The Department also administers a range of policy initiatives and programs supporting education and training outcomes for Australians at all stages of life. These other measures and programs do not necessarily fall within the ambit of the social security law or the Family Assistance Law. Section 17 enables the disclosure of protected information in the public interest where it is necessary to facilitate or progress a departmental program that is designed to deliver services to support and assist a group of community members wholly or partly comprised of social security or family assistance recipients, whether or not that program falls within the ambit of the social security law or the Family Assistance Law.

This section enables a delegate to disclose information where the disclosure is not already authorised by section 162 of the Act, or by another section in these Guidelines. Section 17 is also subject to section 7 of these Guidelines which requires that any disclosure to a person can only occur where that person has a genuine and legitimate interest and the information cannot reasonably be obtained other than from the Department or the Department of Human Services. A certificate under section 168 of the Act would also specify to whom disclosures can be made in any given circumstance.

**Section 18** allows for disclosure of relevant information to a Regulatory Authority or ACECQA for the purposes of a Regulatory Authority or ACECQA where the disclosure is under or connected with the National Law.

The terms ‘National Law’ and ‘Regulatory Authority’ are defined in subsection 18(2) as having the same meaning as in the Act and the National Law respectively. ‘ACECQA’ is defined in subsection 18(2) as the Australian Children’s Education and Care Quality Authority established under the National Law. This supplements the broad power under section 161 of the Administration Act.

**Section 19** relates to disclosure for the establishment of the Family Responsibilities Commission.

Subsection 19(1) provides for relevant protected information to be disclosed where it is necessary for the purpose of the establishment of the Queensland Family Responsibilities Commission as well as in assisting in the performance of its functions and exercise of its powers.

This section is aimed at supporting the Family Responsibilities Commission (FRC), which was established by the *Family Responsibilities Commission Act 2008 (Qld)* (FRC Act). This statutory body underpins the Cape York Welfare Reform Trials.

Under Part 4 of the FRC Act, a notice about a person, called an ‘agency notice’, will be given to the FRC in a wide range of circumstances. These circumstances include: where a child who is a dependant of the person is not enrolled in school, is not meeting school attendance requirements or is the subject of a child protection notification; where the person is convicted of an offence in the Magistrates Court; and where the person is in breach of certain tenancy obligations. However, the FRC can only hold a conference about a person for whom it has received an agency notice if the person is a ‘community member’ (see sections 7, 8 and 49 and the definition of ‘relevant person’ in the Schedule to the FRC Act).

Accordingly, for each agency notice that the FRC receives, the FRC must determine, before holding a conference: who is the ‘relevant person’ for the agency notice; whether the relevant person is a ‘welfare recipient’ within the meaning of section 8 of the FRC Act; and whether the person is a ‘community member’ within the meaning of section 7 of the FRC Act.

The provision of this information aims to facilitate the Cape York Welfare Reform Trials: it will support the FRC’s decision-making, enabling the FRC to correctly identify persons who are within the jurisdiction of the FRC and ensuring that conferences are held, and decisions are made, on a valid basis.

Subsection 19(1) is also subject to section 7 of these Guidelines which requires that any disclosure to a person can only occur where that person has a genuine and legitimate interest and the information cannot be obtained other than from the Department. A certificate issued under section 168 of the Act would also specify who disclosure can be made to in a given circumstance.

Subsection 19(2) provides that in this section, the Family Responsibilities Commission means the Commission established by section 9 of the *Family Responsibilities Commission Act 2008 (Qld)*.

**Section 20** allows for the disclosure of protected information where the information will be used by a State, Territory or the Commonwealth government for the purpose of contacting the customer in respect of compensation or other forms of recompense in various reparation processes, including the ‘stolen wages’ reparations in Queensland. This helps ensure that this assistance, formerly undertaken under the In Touch Program, can still be provided.

**Section 21** allows for the disclosure of information about a parent or relative of a child to State or Territory Child Protection agencies where the agency is seeking to contact the parent or relative when section 8 of these guidelines is not available because there is no identifiable threat to the life, health or welfare of the child. For example, this provision may apply when a child protection agency is seeking to contact a parent to assist in a court case. This section helps ensure that this assistance, formerly undertaken under the In Touch Program, can still be provided.

**Section 22** deals with disclosures that are permitted in relation to the administration of public housing. This section covers the disclosure of information regarding a resident, an applicant to become a tenant or a tenant of a public housing.

Paragraph 22(b) authorises the disclosure of income details about people in public housing to bodies such as State Housing Authorities (SHAs) to allow for the accurate calculation of rents. The provision also ensures that relevant information can be disclosed to agents or contracted service providers of State or Territory departments or authorities to deal with different organisational arrangements in States and Territories for the administration of public housing.

Paragraph 22(c) authorises the disclosure of information to bodies such as SHAs in the context of the administration of an income confirmation service (such as the Automatic Income Confirmation Service). The disclosure of information under this provision provides administrative efficiency for government agencies and those in public housing who need to have their rents determined according to their household income.

Paragraph 22(d) clarifies that information can be disclosed for the purposes of investigating or taking enforcement action in relation to public housing or State or Territory managed housing including to assist with an investigation into either:

- the misreporting of income by tenants of public housing or State or Territory managed housing; or
- the unauthorised occupation of public housing or State or Territory managed housing by any person.

This paragraph is to further support existing income confirmation services and provide a clear basis for the Department to disclose information where it is necessary to investigate fraudulent activity and the misuse of public housing.

The provision intends to expressly address situations in which public housing has been outsourced and is carried out by an agent or contracted service provider and protected information is to be disclosed to the agent or contracted service provider.

The drafting of section 22 is intended to align with equivalent provisions in the guidelines and rules dealing with the disclosure of protected information collected under the social security law, *Paid Parental Leave Act 2010* and *Student Assistance Act 1973*.

**Section 23** permits disclosure of relevant information where it is necessary to ensure a child who should be enrolled in, or attending, school, is enrolled or attending.

State and Territory education departments and schools may not necessarily have certain information in their own records. For example, they may not be aware of children who are not enrolled at school. Section 23 will facilitate the release of information to ensure children who should be enrolled and attending school, under State and Territory laws, are enrolled and attending in accordance with those laws.

Attendance at school is one of the principal indicators for school achievement and students who are regularly absent from school are those at greatest risk of dropping out of school early, becoming long-term unemployed, dependent on welfare and being involved in the justice system. Section 23 is intended to ensure that relevant information held by the Commonwealth is shared so that action can be taken to facilitate enrolment and improve attendance in accordance with State or Territory laws.

**Section 24** permits the disclosure of relevant information where it is necessary to plan for, meet or monitor infrastructure and resource needs in one or more schools.

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

Part 3 sets out how the release of protected information can occur under paragraph 168(1)(a) of the Act in relation to homeless young people for the purposes of a payment under the Family Assistance Law.

**Section 25** provides that this Part applies in regard to a homeless young person and also provides relevant definitions in subsection 25(2) for the purposes of this Part.

**Section 26** provides for when public interest certificates may be given under this Part.

Subsection 26(1) provides that, for the purposes of Part 3, a public interest certificate may be given by the Secretary if:

- the information cannot be obtained from another source;
- the Secretary is satisfied that no harm will result to the homeless young person if information is disclosed; and
- the Secretary is satisfied that the disclosure is for the purpose of sections 18, 19, 20 or 21.

Subsection 26(2) provides that, for the purposes of Part 3, a public interest certificate may be given by the Secretary if:

- the information cannot be obtained from another source;
- the disclosure is to a welfare authority of a State or Territory;
- the homeless young person, to whom the information relates, is either in the care of a welfare authority of a State or Territory or is under 15 years of age; and
- the Secretary is satisfied that no harm will result to the homeless young person if information is disclosed.

**Section 27** permits disclosure of protected information to an appropriate authority if the information is about a family member of a homeless young person and 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.

**Section 28** permits 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 or family assistance payment.

**Section 29** permits disclosure of information if this would facilitate the reconciliation (or possible reconciliation) between a homeless young person and his or her parents.

**Section 30** 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 (but only where the parent or parents have sought such an assurance), that the homeless young person has been in contact with the Department or the Department of Human Services.



## Statement of Compatibility with Human Rights

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*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### ***Family Assistance (Public Interest Certificate Guidelines) (Education) Determination 2018***

This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The *Family Assistance (Public Interest Certificate Guidelines) (Education) Determination 2018* (the Guidelines) is made by the Minister for Education and Training under paragraph 169(a) of the *A New Tax System (Family Assistance) (Administration) Act 1999* (the Act).

Division 2 of Part 6 of the Act provides for the confidentiality of information obtained under the Family Assistance Law, which outlines circumstances where protected information may be disclosed. The failure to disclose protected information in accordance to this Division may lead to committing offences prescribed under the Division.

One of the grounds for disclosure is under paragraph 168(1)(a) of the Act, which enables the Secretary to disclose information if the Secretary certifies that it is necessary in the public interest to do so. In giving certificates, the Secretary (or the Secretary's delegate) is required under subsection 168(2) of the Act to act in accordance with the Guidelines made under section 169 of the Administration Act.

The purpose of the Guidelines is to assist the Secretary (or the Secretary's delegate) of the Department of Education and Training (the Department) in the exercise of their power under paragraph 168(1)(a) of the Act to disclose protected information where it is necessary in the public interest.

The Guidelines replace the *Family Assistance (Public Interest Certificate Guidelines) Determination 2015* (previous Guidelines) in so far as it falls under the Department's portfolio responsibility in relation to child care payment matters under the Family Assistance Law. The Guidelines largely replicate the content of the previous Guidelines, however, they expand the circumstances in which protected information may be disclosed to an enforcement body for the purposes of the investigation and enforcement of Commonwealth, State or Territory laws.

As for the previous Guidelines, there remain safeguards built into the legislative scheme to ensure that any protected information disclosed in the public interest is only used for the public interest purpose. In particular, the disclosure of protected information to a person, under paragraph 168(1)(a) of the Act in accordance with the Guidelines, does not give that person the authority to disclose that information to further parties, unless the disclosure is for the purpose for which the information was disclosed to the person, as permitted by paragraph 162(2)(e) of the Act, or the disclosure is otherwise authorised under law. Further, the protected information provisions in the Family Assistance Law will remain operating in concert with privacy legislation. While a public interest certificate will provide authority under law for the purposes of use and disclosure, key requirements in the *Privacy Act 1988* will still apply to APP entities, such as requirements relating to collection notices.

## **Human Rights Implications**

The Guidelines engages the following rights:

*The rights of parents and children* – Articles 3, 18 and 19 of the Convention of the Rights of the Child (CRC) and Article 17 of the International Covenant on Civil and Political Rights (ICCPR).

### ***The rights of parents and children***

Article 3 of the CRC recognises that in all actions concerning children, the best interests of the child shall be a primary consideration. Article 19 of the CRC requires that appropriate measures are taken to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation.

The Guidelines provide grounds for disclosure of protected information in the public interest. This includes where the disclosure is necessary to prevent or lessen a threat to the life, health or welfare of a person (section 8 of the Guidelines), and disclosure to Child Protection agencies for the purpose of contacting the parent or relative in relation to the child (section 21 of the Guidelines).

The Guidelines also further Article 3(3) of the CRC, relating to the requirement of State Parties to ensure child care providers conform to standards relating to the suitability of staff and competent supervision, by providing a ground allowing for the sharing of information for enforcement related activities with States and Territories' authorities and enforcement bodies. Disclosures under sections 9 and 18 of the Guidelines not only facilitate the monitoring of the quality of care and safety of children in care, but also enable other types of compliance work to be done to ensure that particular services or individuals are complying with laws of the Commonwealth and States or Territories. The purpose of these sections is to facilitate investigation and enforcement related activities to ensure that service operators or associated individuals who engage in non-compliance can be dealt with appropriately by the relevant body. This measure is aimed at protecting children, parents who use child care, and public expenditure.

Further, sections 15 and 16 of the Guidelines allow the Department to disclose information or meaningful data for the purposes of research, statistical analysis and policy development in relation to the Family Assistance Law, social security law, or early childhood. In doing so, the Guidelines engage with Article 18(2) of the CRC by facilitating improved, evidence based findings to parents in raising children, and supporting the development of institutions, facilities and services for the care of children. Such measures would be directed to monitoring and improving all child care in Australia, and not just child care subsidised by the Commonwealth.

### ***The right to privacy***

Article 17 of the ICCPR and Article 16 of the CRC requires that no one shall be subject to arbitrary or unlawful interference with privacy.

The information obtained under the Family Assistance Law will be subject to the *Privacy Act 1988* as well as the stringent secrecy provisions in the Family Assistance Law. The disclosure of information under paragraph 169(1)(a) of the Administration Act requires the Secretary to act in accordance with the Guidelines and may only give a public interest certificate for the disclosure of information on most grounds if:

- the information cannot reasonably be obtained from a source other than the Department; and
- the person to whom the information will be disclosed has sufficient interest in the information; and
- the Secretary is satisfied that the disclosure is for the purpose of each ground of disclosure (except for section 9 in relation to enforcement related activities).

Subsection 7(3) of the Guidelines provides that a public interest certificate can be given for purposes of enforcement related activities described in section 9 where the Secretary (or delegate) of the Department considers that doing so is necessary in the public interest. This is intended to allow for the monitoring or intelligence gathering activities before deciding to undertake an enforcement activity. This subsection further aligns the Family Assistance Law secrecy provisions with the ‘enforcement body’ exception that applies under the *Privacy Act 1988* in relation to personal information. In all cases, the Secretary (or delegate) of the Department must be satisfied that the disclosure is necessary in the public interest and information can only be disclosed where a certificate is made to that effect.

The Guidelines ensure that protected information may only be disclosed for specified grounds and purposes that are recognised as necessary in the public interest. To the extent that these measures may limit the right to privacy, they are reasonable and proportionate to assist the Australian Government to meet its requirements under the CRC and other treaties that deal with the rights of parents and children by ensuring that appropriate compliance action can be taken to deal with genuine cases where the disclosure of protected information would assist an enforcement body exercising its powers under law, including to protect parents and children.

### **Conclusion**

The Guidelines are compatible with human rights because they promote the protection of human rights.

**Simon Birmingham**

**Minister for Education and Training**