

EXPLANATORY STATEMENT

A New Tax System (Family Assistance) (Administration) (Public Interest Certificate Guidelines) (DEEWR) Determination 2009 (No. 1)

Summary

The *A New Tax System (Family Assistance) (Administration) (Public Interest Certificate Guidelines) (DEEWR) Determination 2009 (No. 1)* (the Guidelines) are made under subparagraph 169 (1) (a) (i) of the *A New Tax System (Family Assistance) (Administration) Act 1999* (the Act).

The purpose of the Guidelines is to specify guidelines for the exercise of the power of the Secretary of the Department of Education, Employment and Workplace Relations (DEEWR), or the Secretary's delegate, to disclose information acquired by an officer under the family assistance law if it is in the public interest to do so.

Part 1 of the Guidelines sets out the preliminary information about the Determination.

Part 2 sets out guidelines on the release of information generally under paragraph 168 (1) (a) of the Act.

Part 3 sets out guidelines on the release of information about homeless young people under paragraph 168 (1) (a) of the Act.

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 purpose for which the information is given requires further disclosure and that further disclosure is permitted by another law.

Subsection 169 (2) of the Act provides that the Guidelines are a legislative instrument. This means that the Guidelines are subject to the *Legislative Instruments Act 2003*.

These guidelines largely replicate the *Family Assistance (Public Interest Certificate Guidelines) Determination 2006* signed by the Minister for Families, Community Services and Indigenous Affairs. The family assistance law public interest certificate guidelines have been adapted for DEEWR purposes.

There have been a number of amendments made to the guidelines. The term *family assistance payment* in the Definitions section has been removed. Reference to an *incorrectly held opinion* has been deleted in paragraph 11 (c) as a result of comment by the Senate Standing Committee on Regulations and Ordinances (SSCRO) on similar guidelines made under the social security law¹ and the *Student Assistance Act 1973*². The term *homeless young person* in Part 3 has been amended for the purposes of child care benefit (CCB).

¹ The *Social Security (Public Interest Certificate Guidelines) (DEEWR) Determination 2008* and the *Social Security (Public Interest Certificate Guidelines) (FaHCSIA) Determination 2008*.

² The *Student Assistance (Public Interest Certificate Guidelines) Determination 2008*.

Three new sections have also been added to the Guidelines. Section 16 provides for the release of information for the purposes of the Family Responsibilities Commission of Queensland, and sections 17 and 18 provide for the release of information in relation to school enrolment and attendance and school infrastructure.

Section 18 of the *Family Assistance (Public Interest Certificate Guidelines) Determination 2006* has been deleted to eliminate repetition as section 8 of the Guidelines already provides for the disclosure of relevant information where the disclosure is necessary to prevent, or lessen, a threat to the life, health or welfare of a person. Section 19 of the *Family Assistance (Public Interest Certificate Guidelines) Determination 2006* has also been removed, as verification of claims is dealt with in the Act and the provision in the Guidelines is therefore redundant.

Part 1 — Preliminary

Part 1 sets out preliminary information about the Guidelines.

Section 1 states the name of the Guidelines is the *A New Tax System (Family Assistance) (Administration) (Public Interest Certificate Guidelines) (DEEWR) Determination 2009 (No. 1)*.

Section 2 states that the Guidelines commence on the day after they are registered.

Section 3 revokes the *Family Assistance (Public Interest Certificate Guidelines) Determination 2006*.

Section 4 states the purpose of the Guidelines.

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

Department means a Department administered by a Minister – meaning a Minister responsible for administering any part of the family assistance law, the social security law, the *Commonwealth Services Delivery Agency Act 1997*, or the Prime Minister. These departments are currently the Department of Education, Employment and Workplace Relations (DEEWR), the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), The Department of Human Services (DHS), and the Department of Prime Minister and Cabinet (PM&C).

family member has the same meaning as the *Social Security Act 1991*. Subsection 23 (14) of that Act defines the following as a family member of a person:

- (a) the partner, father or mother of the person
- (b) a sister, brother or child of the person
- (c) any other person who, in the opinion of the Secretary, should be treated for the purposes of this definition as one of the person's relatives as described in paragraphs (a) and (b).

public interest certificate means a certificate, under paragraph 168 (1) (a) of the Act for the disclosure of relevant information. A public interest certificate made under paragraph 168 (1) (a) must also be made in accordance with the Guidelines.

social security payment has the same meaning as in the *Social Security Act 1991*. Subsection 23 (1) of that Act defines *social security payment* as meaning:

- (a) a social security pension; or
- (b) a social security benefit; or
- (c) an allowance under this Act; or
- (d) any other kind of payment under Chapter 2 of this Act; or
- (e) a pension, benefit or allowance under the 1947 Act.

Other terms used in the Guidelines are defined in section 3 of the Act.

Section 6 provides for matters to which the Secretary must have regard, in the giving of 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; and
- 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 6 is intended to emphasise the importance of the release of information where individuals are not in a position to seek assistance themselves.

Part 2 — Guidelines — public interest certificate (general)

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

Subsection 7(1) provides that, for the purposes of Part 2, a public interest certificate may 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
- that disclosure is for the purpose of section 8, 10, 11, 12, 14, 15, 17 or 18 or subsection 9 (1), 13 (1) or (2) or 16 (1) of the Guidelines.

Subsection 7(2) specifies that a person will have a *sufficient interest* in the relevant 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 relevant information to prevent, or lessen, a threat to the life, health or welfare of a person.

Subsection 9(1) permits disclosure of relevant information if the disclosure is necessary:

- for the enforcement of a criminal law in relation to an indictable offence punishable by imprisonment of 2 years or more, or
- for the enforcement of a law imposing a pecuniary penalty equivalent to at least 40 penalty units, or
- to prevent an act that may have a significant adverse effect on the public revenue.

In general terms, this reflects the terms of Information Privacy Principles 11 (1) (d) in section 14 of the *Privacy Act 1988*. Alternatively, the disclosure must relate to an offence or a threatened offence against a Commonwealth employee or Commonwealth property, or in departmental or Family Assistance Office premises.

The terms “criminal law” and “penalty units” are defined at **subsection 9 (2)**.

Section 10 permits disclosure of relevant information to correct a mistake of fact in relation to the administration of a program of a 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 11 permits the disclosure of information if the disclosure is necessary:

- to enable a Minister to consider complaints or issues by, or on behalf of a person, and respond to that person accordingly;
- to brief a Minister for a meeting or forum that he or she is to attend;

- to brief a Minister 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. The term an *incorrectly held opinion* has been deleted as a result of the Senate Standing Committee on Regulations and Ordinances' (SSCRO) response to the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and the Department's Social Security and Student Assistance Public Interest Certificate Guidelines Determinations. Section 11 was originally drafted at the request and in consultation with the Department of Human Services.
- to brief a Minister about a Family Assistance Office error or delay; or
- to brief a Minister about an anomalous or unusual operation of the family assistance law.

Section 12 allows disclosure of relevant information which is necessary 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 person (including 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.

Subsection 13 (1) allows disclosure of relevant information which is necessary 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. 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 13 (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 14 provides that relevant information can be disclosed where this is done for research purposes, including evaluation, monitoring and reporting, or statistical analysis in relation to any matter that is relevant to a Department (as defined in section 5).

Section 15 provides that relevant information can be disclosed where this is done for policy development generally, or for facilitating the progress or resolution of a matter, that is relevant to a Department (as defined in section 5).

Subsection 16 (1) provides for relevant information to be disclosed where it is necessary for the purpose of the establishment of the Queensland Family Responsibilities Commission (FRC) as well as in assisting in the performance of its functions and exercise of its powers.

This section is aimed at supporting the FRC which has been established by the *Family Responsibilities Commission Act 2008 (Qld)* (FRC Act). This newly created statutory body performs a critical function of the Cape York Welfare Reform Trials that are funded by the Commonwealth Government with in-kind support by the Queensland Government.

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 by FaHCSIA, through Centrelink, is considered an essential element of the operation of 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 16 (2) provides that in section 16, the Family Responsibilities Commission means the Commission established by section 9 of the FRC Act.

Section 17 permits disclosure of relevant information where it is necessary to ensure a child who should be enrolled or attending school is enrolled or attending. As part of provisions contained in Part 3B of the *Social Security (Administration) Act 1999*, Centrelink may collect information from parents or schools regarding the enrolment or attendance of children at school. However, State and Territory education departments and schools will not necessarily have certain information collected by Centrelink on their own records, for example they may not be aware of children who are not enrolled. Section 17 will facilitate such information to be disclosed to ensure children who should be enrolled and attending school under State and Territory laws are so 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 and dependent on welfare and being involved in the justice system. It is therefore in the public interest for information held by the Commonwealth about children of compulsory school age who are not enrolled or attending regularly to be provided to relevant State and Territory child welfare and education authorities and schools. This is so action can be taken to facilitate enrolment and improve attendance in accordance with State and Territory laws.

Section 18 permits the disclosure of information where it is necessary to plan for, meet or monitor infrastructure and resource needs in one or more schools.

It is estimated that approximately 20,000 children of compulsory school age are not currently enrolled in school in Australia. State and Territory authorities and schools possess little to no information in order to ensure relevant schools have sufficient capacity to handle additional demand should these children be enrolled. The disclosure for example of protected information about non-enrolled children will assist in the identification of geographical areas of potential demand in relation to teachers and school infrastructure. This is particularly important in the Northern Territory context where the Northern Territory Government will need to ensure it can accommodate a potentially significant increase in student numbers in certain areas as a result of efforts to increase enrolment and attendance of school-aged children.

Importantly, information can only be disclosed where a public interest certificate has been issued setting out that it is necessary for the purposes as described in new sections 17 and 18 for the disclosure to occur. Any certificate would also clearly set the specific information that can be disclosed. In respect of any disclosures for determining infrastructure requirements, a decision would be made as to whether de-identified statistical data would suffice. In instances where this would not assist in infrastructure planning, protected information may be disclosed.

Sections 17 and 18 are also subject to section 6 of the 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 Centrelink or a Department. A certificate would also specify who disclosure can be made to in a particular circumstance.

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

Part 3 sets out guidelines on the release of information in relation to homeless young persons.

Section 19 provides that Part 3 applies if the information to be disclosed relates to a homeless young person (as defined in section 20).

Section 20 defines terms for the purpose of Part 3.

homeless young person means a person who is under 18 years, is homeless and who has applied for or is in receipt of a payment under the family assistance law. The term *homeless young person* in Part 3 has been amended for the purposes of child care benefit (CCB). This term previously referred to a person under 18 years who sought eligibility for a payment under family assistance law on the grounds of homelessness. Nevertheless, a person's eligibility for CCB is not dependent on homelessness; a person's entitlement (rate) to CCB may be affected by homelessness, however. Strictly, a person could not seek "eligibility" for CCB on the grounds of homelessness, and so the definition has been amended simply to provide that the person must have sought or be in receipt of a family assistance payment (including a CCB payment).

Subsection 21 (1) provides that a public interest certificate may be given by the Secretary if:

- the information cannot be obtained from a source other than a Department or Centrelink; and
- the Secretary is satisfied that no harm will result to the homeless young person if the information is disclosed; and
- the Secretary is satisfied that the disclosure is for the purpose of section 22 or 23.

Subsection 21 (2) provides that a public interest certificate may be given by the Secretary if:

- the information cannot be obtained from a source other than a Department or Centrelink; and
- the disclosure is to a welfare authority of a State or Territory; and
- 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 22 permits disclosure of information where the disclosure will facilitate reconciliation, or possible reconciliation, between the homeless young person and his or her parent or parents.

Section 23 permits disclosure where:

- (a) a parent, or the parents, of a homeless young person have sought assurance that the homeless young person has been in contact with a Department or with the Family Assistance Office; and
- (b) the disclosure is necessary to inform the parent or parents whether the homeless young person has been in contact with a Department or with the Family Assistance Office.