



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

A New Tax System (Family Assistance) (Administration) Act 1999

I, JULIA EILEEN GILLARD, Minister for Education, Minister for Employment and Workplace Relations, make this Determination under subparagraph 169 (1) (a) (i) and paragraph 169 (1) (b) of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

Dated 24 February 2009

JULIA GILLARD
Minister for Education
Minister for Employment and Workplace Relations

Part 1 Preliminary

1 Name of Determination

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

2 Commencement

This Determination commences on the day after it is registered.

Section 3

3 Revocation

The *Family Assistance (Public Interest Certificate Guidelines) Determination 2006* is revoked.

4 Purpose

The purpose of this Determination 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.

5 Definitions

In this Determination:

Act means the *A New Tax System (Family Assistance) (Administration) Act 1999*.

Centrelink means the Agency established under section 6 of the *Commonwealth Services Delivery Agency Act 1997*.

Department means a Department administered by a Minister.

Family Assistance Office means:

- (a) the Australian Taxation Office; or
- (b) Centrelink; or
- (c) Medicare Australia.

family member has the same meaning as in the *Social Security Act 1991*.

Minister means:

- (a) a Minister of State administering any part of:
 - (i) the family assistance law; or
 - (ii) the social security law; or
 - (iii) the *Commonwealth Services Delivery Agency Act 1997*; or
- (b) the Prime Minister.

public interest certificate means a certificate, under paragraph 168 (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 family assistance law.

social security law means the *Social Security Act 1991* and the *Social Security (Administration) Act 1999*.

social security payment has the same meaning as in the *Social Security Act 1991*.

Note The following expressions are defined in the Act:

- Family Assistance Act;
- family assistance law;
- officer;

- protected information;
- Secretary.

6 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)

7 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 a Department or Centrelink; 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 8, 10, 11, 12, 14, 15, 17 or 18, or subsection 9 (1), 13 (1) or (2), or 16 (1).
- (2) A person has *sufficient interest* in the relevant information if:
 - (a) the Secretary is satisfied that, in relation to the purpose of the disclosure, the person has a genuine and legitimate interest in the information; or
 - (b) the person is a Minister.

8 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.

Section 9

9 Enforcement of laws

- (1) Relevant information may be disclosed for the purpose of this subsection 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 Family Assistance Office 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.’.

10 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 a 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).

11 Ministerial briefing

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

- (a) to brief a Minister so that the Minister can consider complaints or issues raised by or on behalf of a person with the Minister (in writing or orally), and respond to that person in relation to the complaints or issues; or
- (b) to brief a Minister for a meeting or forum that the Minister is to attend; or
- (c) to brief a Minister in relation to issues raised or proposed to be raised publicly by or on behalf of the person to whom the relevant information relates so that the Minister can respond by correcting a mistake of fact, a misleading perception or impression or a misleading statement; or
- (d) to brief a Minister about an error or delay on the part of the Family Assistance Office; or
- (e) to brief a Minister about an instance of an anomalous or unusual operation of the family assistance law.

12 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.

13 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.

Section 14

- (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.

14 Research and statistical analysis

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

- (a) research into (including evaluation or monitoring of, or reporting on) matters of relevance to a Department; or
- (b) statistical analysis of those matters.

15 Policy development and other matters of relevance

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

- (a) policy development; or
- (b) facilitating the progress or resolution of matters of relevance to a Department.

16 Establishment and operation of the Family Responsibilities Commission

- (1) Relevant information may be disclosed for the purpose of this subsection if the disclosure is necessary:
- (a) for the establishment of the Family Responsibilities Commission; or
 - (b) to assist in the performance of the functions, or the exercise of the powers, of the Family Responsibilities Commission.

- (2) In subsection (1):

Family Responsibilities Commission means the Commission established by section 9 of the *Family Responsibilities Act 2008* (Qld).

17 School enrolment and attendance

Relevant information may be disclosed for the purpose of this section if the disclosure is necessary to ensure that:

- (a) a child who is required to be enrolled in a school under a law of a State or Territory is enrolled; or
- (b) a child who is required to be attending a school under a law of a State or Territory is attending.

18 School infrastructure

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

19 Application

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

20 Definitions

In this Part:

homeless young person means a person who:

- (a) is under 18 years; and
- (b) is homeless; and
- (c) has sought or is in receipt of a payment under the family assistance law.

parent of 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.

21 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 a Department or Centrelink; 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 22 or 23.
- (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 a Department or Centrelink; and

Section 22

- (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.

22 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.

23 Assurance

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

- (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.