

EXPLANATORY STATEMENT

Social Security (Public Interest Certificate Guidelines) (DEEWR) Determination 2010

Summary

The *Social Security (Public Interest Certificate Guidelines) (DEEWR) Determination 2010* (the Guidelines) are made under subparagraph 209 (a) (i) and paragraph 209 (b) of the *Social Security (Administration) Act 1999* (the Act).

The purpose of the Guidelines is to assist the Secretary (or her delegate) in the exercise of her power under paragraph 208 (1) (a) of the Act to disclose, in the public interest, information acquired by an officer in the performance of his or her duties under the social security law (relevant information).

The Guidelines revoke and replace the *Social Security (Public Interest Certificate Guidelines) (DEEWR) Determination 2008* (previous Guidelines), although in large measure duplicate the content of the previous Guidelines.

The disclosure of information to a person under paragraph 208 (1) (a) of the Act does not give that person the authority to disclose that information to further parties, unless this disclosure is for the purpose for which the information was disclosed to the person, as permitted by paragraph 202 (2) (e) of the Act, or the disclosure is otherwise authorised under law.

Changes to the previous Guidelines

The principal purpose of the Guidelines is to expand the circumstances in which the Secretary can certify that it is in the public interest to disclose relevant information. The Guidelines revoke the previous Guidelines, but in large measure replicate the previous Guidelines except as noted below.

The provision relating to disclosure for law enforcement purposes (section 9) is amended to allow the issue of a public interest certificate in circumstances where an offence has been committed or threatened against an “officer” or in premises occupied by a “service organisation”, as those terms are defined in the social security law. This will enable information to be disclosed to the police where it relates to an offence against staff of an employment services provider, or in premises occupied by an employment services provider. The previous Guidelines only dealt with disclosure of information where the offence or threatened offence was against an employee of the Department or Centrelink, or in Departmental or Centrelink premises. Employment services providers are on the “front line” dealing with recipients of income support payments, and unfortunately are occasionally subject to threats of violence or property damage. While information in relation to offences against employment services providers has been provided to police under authority of sections 8 or 9 of the previous Guidelines, it is not always clear whether a given offence or threat falls within the scope of those previous sections. The amendment to section 9 makes it clear that relevant information can be disclosed to police for investigation of offences against employment services providers.

Paragraph 11 (c) is amended to remove the words ‘or an incorrectly held opinion’. This is in response to an undertaking that the Minister made to the Senate Standing Committee on

Regulations and Ordinances. An incorrectly held opinion is an opinion formed on the basis of incorrect information. However, the words ‘correcting a mistake of fact, a misleading perception or impression, [or] a misleading statement’ will cover the circumstance that an opinion is held on the basis of incorrect information. The words ‘or an incorrectly held opinion’ are therefore redundant.

Paragraph 11 (d) is amended to enable briefing of a Minister in relation to an error or delay on the part of a “service organisation” (including the Department, Centrelink or an employment services provider). Previously, this paragraph only referred to Centrelink.

New section 12 combines and replaces sections 12 and 13 of the previous Guidelines. The only substantive change is to allow relevant information about a missing or deceased person to be disclosed to a social security authority in another country. Under section 13 of the previous Guidelines, the only information that could be disclosed was information in relation to an aged pensioner, and then only to the authority responsible for administering the social security system in the United Kingdom. The amendment is intended to expand the category of information Centrelink can disclose to an authority responsible for administering the social security system in another country. The changes now permit information regarding deceased persons who were qualified for, or in receipt of, any social security payment, or were holding a Commonwealth Seniors Health Card, to be disclosed to an authority responsible for the social security system in any relevant country.

A new section 15 allows for the disclosure of information about a public housing resident or tenant where the disclosure is necessary to facilitate rent calculation and rent deduction in relation to public housing; or the disclosure is necessary to facilitate the administration of an income confirmation service in relation to public housing. The purpose of this provision is to facilitate provision of relevant information to State and Territory public housing authorities. The rationale for this new provision is further explained under the notes on clauses, below.

Section 16 of the previous Guidelines has been revoked as the section ceased to have effect following the Royal Assent of the *Dental Benefits Act 2008* and the *Dental Benefits (Consequential Amendments) Act 2008*. Relevant information can now be disclosed for the purposes of those Acts under section 202 of the Act.

New section 17 allows for the disclosure of the name and contact details of Centrelink customers, where these details would be used for the purpose of contacting the customer to offer compensation in various reparation processes, such as the ‘stolen wages’ reparations in Queensland.

New section 18 authorises the disclosure of information such as the address of a parent or relative of a child, to a State or Territory child protection agency, where the agency is seeking to contact a parent or relative of the child but there is no immediate threat to the life, health or welfare of the child (section 8 refers). This would enable the disclosure of information that was formerly undertaken by the In Touch Program.

Section 16B of the previous Guidelines is re-made as section 19, with amendments to clarify that information may be disclosed if the disclosure is necessary for the purpose of facilitating the progress, or resolution, of any matters of relevance of a department (as defined), so long as the matter falls within the portfolio responsibilities of that department.

The opportunity has also been taken to make minor textual changes to a number of provisions as an editorial exercise (for example, the remove the phrase “for the purposes of” where it has

been unnecessarily duplicated). These changes do not affect the scope or operation of the provisions.

Notes on Clauses

Part 1 – Preliminary

Part 1 sets out preliminary information about the Guidelines, namely, the name of the Guidelines (**section 1**), commencement (**section 2**), revocation of the previous Guidelines (**section 3**), purpose (**section 4**), definitions (**section 5**) and matters to which the Secretary is to have regard (section 6).

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. 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 6 is intended to emphasise the importance of the release of protected information where individuals are not in a position to seek assistance themselves.

Part 2 – Guidelines – public interest certificate (general)

Part 2 sets out the general circumstances in which the Secretary can certify that disclosure of relevant information is in the public interest, for the purposes of paragraph 208 (1) (a) of the Act.

Subsection 7 (1) provides that a public interest certificate may be given by the Secretary if:

- (a) the information cannot reasonably be obtained from another source other than a Department or Centrelink; and
- (b) the disclosure is to a person who has sufficient interest in the information; and
- (c) the Secretary is satisfied that disclosure is for the purpose mentioned in one of the provisions in Part 2.

This provision applies in all circumstances mentioned in Part 2.

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.

Section 8 permits disclosure of relevant information to prevent, or lessen, a threat to the life, health or welfare of a person. This reflects the terms of Information Privacy Principal (IPP) 11 (1) (c) in section 14 of the *Privacy Act 1988*.

This section is substantively the same as section 8 of the previous Guidelines.

Paragraph 9 (1) (a) permits disclosure of protected information if the disclosure is necessary:

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

In general terms this reflects the terms of IPP 11 (1) (e) in section 14 of the *Privacy Act 1988*.

Paragraph 9 (1) (b) allows for disclosure where it relates to an offence, or threatened offence, against an officer (including staff of the Department, Centrelink, or an employment services provider) or in premises occupied by a service organisation (including the Department, Centrelink or an employment services provider).

Subsection 9 (2) defines the terms “criminal law” and “penalty unit”.

Section 10 permits disclosure of protected 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.

This section is substantively the same as section 10 of the previous Guidelines.

Section 11 permits the disclosure of information if the disclosure is necessary to brief a Minister:

- (a) to enable the Minister to consider complaints or issues by, or on behalf of a person, and respond to that person accordingly;
- (b) for a meeting or forum that the Minister is to attend;
- (c) 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;
- (d) about an error or delay by a service organisation (including the Department, Centrelink or an employment services provider); or
- (e) about an anomalous or unusual operation of the social security law.

Section 12 permits disclosure of relevant information about a person who is, or has been reported to be, missing or dead, in certain circumstances. First, the Secretary needs to be satisfied that there is no reasonable ground to believe that the person (were they alive) would not want the information disclosed. Second the disclosure has to be for one of the following purposes:

- (a) to locate a person (for example, in the case of a missing person, that person him- or herself, or in the case of a dead person, that person’s relatives or beneficiaries);
- (b) to assist a court, coronial enquiry, Royal Commission, department or any other authority of a State or Territory, or authority responsible for administering the social security system in another country in relation to inquiries being undertaken by that organisation or authority; or
- (c) where the relevant information relates to a dead person – to assist the person responsible for the dead person’s estate in relation to the administration of that estate.

Section 13 permits disclosure of protected information where it is necessary to ensure a child who should be enrolled in, or attending, school, is enrolled or attending.

As part of provisions contained in Part 3C of the Act, 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 may not necessarily have certain information on their own records, for example they may not be aware of children who are not

enrolled. Section 13 facilitates exchange of information 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, 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/Territory authorities and schools. This is so action can be taken to facilitate enrolment and improve attendance in accordance with State/Territory laws.

This section is substantively the same as section 14 of the previous Guidelines.

Section 14 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. Currently State/Territory authorities and schools possess little or no information that particular schools have sufficient capacity to handle additional demand that would be placed on them when previously non-enrolled children are subsequently enrolled. The disclosure of protected information about non-enrolled children will assist in the identification of geographic areas of potential demand in relation to school infrastructure and teacher capacity. This is particularly important in the Northern Territory where the Territory government will need to ensure it can accommodate a potentially significant increase in student numbers in particular areas as a result of efforts to increase school enrolment and attendance by children.

Importantly, information can only be disclosed where a certificate has been issued setting out that it is necessary for the purposes as described in sections 13 and 14 for the disclosure to occur. Any certificate would also clearly set out 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, relevant information may be disclosed.

This section is substantively the same as section 15 of the previous Guidelines.

Of course, sections 13 and 14 are also subject to section 7 of the Guidelines, which requires that any disclosure to a person can only occur where that person has genuine and legitimate interest and the information cannot reasonably be obtained other than from Centrelink or the Department. A certificate would also specify who specifically disclosure can be made to in a given circumstance.

Section 15 allows for the disclosure of information about a public housing or other State- or Territory-managed housing resident or tenant to a department or any other authority of a State or Territory where it is necessary to facilitate:

- (a) rent calculation and rent deduction in relation to public housing or State- or Territory-managed housing; or
- (b) the administration of an income confirmation service in relation to public housing or State- or Territory-managed housing.

An example of the application of section 15 and the main impetus for introducing the section is the Automatic Income Confirmation Service (AICS). There is an existing voluntary Income Confirmation Service (ICS), under which all members of public housing households, who are also Centrelink clients, can authorise their relevant State or Territory public housing authority to automatically confirm details of their income directly from Centrelink. Those who do not participate in ICS must regularly verify their income to the public housing authority to allow for a reassessment of rent by authority staff. The manual process of income verification consumes considerable resources for both public housing authorities and Centrelink. It also requires Centrelink clients to regularly respond to correspondence seeking income confirmation. If the response is not timely, action may be taken to adjust the rent and there are regular occurrences of incorrect rent payments. These outcomes increase the risk of eviction and consequently homelessness.

Information from public housing authorities indicates that there are at least 700 public housing evictions a year due to non-payment of rent with many more tenants each year owing rent, many without notice. On 29 November 2008 the Council of Australian Governments agreed to the National Affordable Housing Agreement which included the introduction of improved information exchange between the Commonwealth and the States and Territories as well as automatic rent deductions for public housing tenants to reduce evictions from public housing, and to improve the operational efficiency of public housing and, as a priority area of reform.

Section 15 will authorise the transfer of income details for people in public housing from Centrelink to public housing authorities to allow for the accurate calculation of rents. In the context of AICS, section 15 will authorise the transfer of income details held by Centrelink to public housing authorities every six months and from time to time in response to authorities' requests, which will help prevent evictions from incorrectly calculated or unpaid rent. The disclosure of information will provide administrative efficiency for both government agencies and those in public housing who need to have their rents determined according to their household income. Additionally, this disclosure of information will reduce the risk of privacy breaches, as automation will reduce public housing authorities' staff access to the income information.

Section 16 provides for relevant protected information to be disclosed where it is necessary for 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 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 by Centrelink to the FRC will facilitate 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.

Naturally, section 16 is also subject to section 7 of these Guidelines which requires that any disclosure to a person can only occur where that person has genuine and legitimate interest and the information cannot reasonably be obtained other than from Centrelink or the Department. A certificate issued under section 208 of the Act would also specify who disclosure can be made to in a given circumstance.

This section is substantively the same as section 16A of the previous Guidelines.

Section 17 allows for the disclosure of relevant 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 18 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 are not available because there is no identifiable threat to the life, health or welfare of the child. For example, section 18 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 19 provides that protected information can be disclosed to facilitate the progress or resolution of any matters that are relevant to a department, where the matter is within the portfolio responsibility of that department. The Department of Education, Employment and Workplace and other agencies that administer the social security law or family assistance law also administer programs and schemes that deliver additional support and assistance to people in receipt of social security and family assistance payments or entitlements. This additional support does not necessarily fall within the social security law or the family assistance law. Section 19 enables the disclosure of protected information in the public interest where it is necessary to facilitate or progress a departmental program or scheme 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 or scheme falls within the social security law or family assistance law.

This section enables a delegate to disclose information where the disclosure is not already authorised by section 202 of the Act, or by another section in these Guidelines. Section 19 is also subject to section 7 of this Determination 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 Centrelink or the Department. A certificate under section 208 of the Act would also specify who disclosure can be made to in any given circumstance. Section 19 mirrors an equivalent provision of the *Family Assistance (Public*

Interest Certificate) (DEEWR) Guidelines 2010 and provisions in similar instruments made by the Minister for Families, Housing, Community Services and Indigenous Affairs.

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 Act in relation to homeless young people for the purposes of a social security payment.

The whole of Part 3 is substantively the same as Part 3 of the previous Guidelines.

Section 20 provides that Part 3 applies in regard to a homeless young person and provides definitions for ‘homeless young person’ and ‘parent’ for the purposes of the Part.

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

- (a) the information cannot be obtained from another source other than a Department or Centrelink;
- (b) the Secretary is satisfied that no harm will result to the homeless young person if information is disclosed; and
- (c) the Secretary is satisfied that the disclosure is for at least one purpose mentioned in a provision in the Part.

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

- (a) the information cannot be obtained from another source other than a Department or Centrelink; and
- (b) the disclosure is to a welfare authority of a State or Territory; and
- (c) 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
- (d) the Secretary is satisfied that no harm will result to the homeless young person if information is disclosed.

Section 22 permits disclosure of relevant 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 23 permits disclosure of information if it is necessary to verify the circumstances by which a homeless young person under the age of 15 years may qualify for a social security payment, and to verify the circumstances of the young person, a parent or the parents of a homeless young person must be asked whether the homeless young person is able to live at the home of his or her parents.

Section 24 permits disclosure of information to facilitate reconciliation, or possible reconciliation, between a homeless young person and his or her parents.

Section 25 permits disclosure of information about a homeless young person to a parent, or parents, of a homeless young person if it is necessary to assure the parent or parents that the homeless young person has been in contact with the relevant department or with Centrelink. It is intended that this section will only be used where the parent or parents have sought such an assurance.

Consultation

The Department of Education, Employment and Workplace Relations consulted with the Department of Families, Housing, Community Services and Indigenous Affairs. Centrelink proposed the changes to the sections dealing with missing and deceased persons (section 12), reparations (section 17), and child protection agencies (section 18). The Office of the Privacy Commissioner was consulted by the Department of Families, Housing, Community Services and Indigenous Affairs in the making of this determination. No public consultation was considered necessary.

The Minister for Families, Housing, Community Services and Indigenous Affairs will be making similar Guidelines under section 209 of the Act, in relation to relevant information held by a Department or Centrelink in connection with her responsibilities under the social security law.

Regulatory Impact Analysis

These Guidelines do not require a Regulatory Impact Statement nor a Business Cost Calculator Figure. These Guidelines are not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact.

No special statutory conditions needed to be fulfilled prior to the making of these Guidelines.