

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

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

Family Assistance (Public Interest Certificate Guidelines) (Education) Amendment (Policy Development and Related Purposes) Determination 2025

AUTHORITY

The *Family Assistance (Public Interest Certificate Guidelines) (Education) Amendment (Policy Development and Related Purposes) Determination 2025* (Amendment Determination) is made under section 169 of the *A New Tax System (Family Assistance) (Administration) Act 1999* (Administration Act) as construed in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (Acts Interpretation Act).

Under subsection 33(3) of the Acts Interpretation Act, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

PURPOSE AND OPERATION

The *Family Assistance (Public Interest Certificate Guidelines) (Education) Determination 2018* (Principal Determination) assists the Secretary of the Department (or the Secretary's delegate) in the exercise of their power under paragraph 168(1)(a) of the Administration Act to disclose 'protected information' (as defined in section 3 of the Administration Act) where it is necessary in the public interest.

The purpose of the Amendment Determination is to amend the Principal Determination to introduce a new ground for the disclosure of protected information by the Secretary of the Department, as set out in new section 16A. Specifically, provided all other existing requirements in the Principal Determination are met, protected information may be disclosed if the disclosure is necessary to support: (a) research into; (b) statistical analysis of; (c) policy development in relation to; or (d) activities to facilitate the implementation of policies and programs in relation to, any matter connected to education, early childhood development, child care, or preschool. For example, it is envisaged that this would enable the disclosure of Early Childhood Education and Care (ECEC) data to a range of entities, including other Commonwealth agencies, State and Territory agencies and other entities, to support activities that are connected to education, early childhood development, child care, or preschool.

The Amendment Determination will strengthen the Department's data sharing activities, supporting the Intergovernmental Agreement on Data Sharing (IGA)¹, which commits all jurisdictions to share public sector data as a default position, where it can be done securely, safely, lawfully and ethically. The IGA recognises that data is a shared national asset and aims to maximise the value of data to deliver outstanding policies and services for Australians.

While the proposed amendment broadens the circumstances under which ECEC data can be shared, the Department maintains the responsibility to ensure that any data sharing activities are in the best interests of the Australian public and comply with all relevant legislation.

The Amendment Determination also makes other minor technical amendments to the Principal Determination.

IMPACT ANALYSIS

The Office of Impact Analysis has advised that no Impact Analysis is required for the amendments in the Amendment Determination, because while the amendments will allow data to be shared with States and Territories and other Commonwealth entities, there will be no regulatory or compliance impact on individuals, businesses or community organisations and data will only be shared in a responsible and legally robust manner (OIA25-09153, dated 6 February 2025).

COMMENCEMENT

The instrument will commence the day after it is registered on the Federal Register of Legislation.

CONSULTATION

Jurisdiction members of the Data Sharing Working Group (a sub-group of the Early Childhood Policy Group established to discuss matters of interest to the sharing of ECEC data between the Australian Government and State and Territory departments of education) were consulted regarding the Amendment Determination. All members consulted were supportive of the proposed amendments as they will allow the Department to fulfil a wider range of data sharing requests and support the operationalisation of the ECEC Data Sharing Strategy endorsed by the Australian Education Senior Officials Committee (AESOC). The Data Sharing Strategy was developed to improve jurisdictions' sharing and use of ECEC data where it can be done in a safe, legal, and ethical manner.

¹ Which can be accessed at <https://federation.gov.au/about/agreements/intergovernmental-agreement-data-sharing>.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Family Assistance (Public Interest Certificate Guidelines) (Education) Amendment (Policy Development and Related Purposes) Determination 2025

The *Family Assistance (Public Interest Certificate Guidelines) (Education) Amendment (Policy Development and Related Purposes) Determination 2025* (the 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* (Principal Determination) assists the Secretary of the Department (or the Secretary's delegate) in the exercise of their power under paragraph 168(1)(a) of the *A New Tax System (Family Assistance) (Administration) Act 1999* (Administration Act) to disclose 'protected information' (as defined in section 3 of the Administration Act) where it is necessary in the public interest.

The purpose of the Instrument is to amend the Principal Determination to introduce a new ground for the disclosure of protected information by the Secretary of the Department, as set out in new section 16A. Specifically, provided all other existing requirements in the Principal Determination are met, protected information may be disclosed if the disclosure is necessary to support: (a) research into; (b) statistical analysis of; (c) policy development in relation to; or (d) activities to facilitate the implementation of policies and programs in relation to, any matter connected to education, early childhood development, child care, or preschool. For example, it is envisaged that this would enable the disclosure of Early Childhood Education and Care (ECEC) data to a range of entities, including other Commonwealth agencies, State and Territory agencies and other entities, to support activities that are connected to education, early childhood development, child care, or preschool.

The Instrument will strengthen the Department's data sharing activities, supporting the Intergovernmental Agreement on Data Sharing (IGA),² which commits all jurisdictions to share public sector data as a default position, where it can be done securely, safely, lawfully and ethically. The IGA recognises that data is a shared national asset and aims to maximise the value of data to deliver outstanding policies and services for Australians.

While the proposed amendment broadens the circumstances under which ECEC data can be shared, the Department maintains the responsibility to ensure that any data sharing

² Which can be accessed at <https://federation.gov.au/about/agreements/intergovernmental-agreement-data-sharing>.

activities are in the best interests of the Australian public, and comply with all relevant legislation.

The Instrument also makes other minor technical amendments to the Principal Determination.

Human rights implications

The Instrument engages the following rights:

- the rights of parents and children – Articles 3 and 18 of the Convention of the Rights of the Child (CRC);and
- the right to privacy – 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, including those undertaken by administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. Article 18 of the CRC requires States Parties to take all appropriate measures to ensure that children of working parents have the right to benefit from child care services and facilities for which they are eligible.

The new ground for disclosure of protected information in the Instrument promotes the rights of parents and children by ensuring that research, statistical analysis, policy development and the implementation of policies and programs in relation to matters connected to education, early childhood development, child care and preschool is informed and supported by meaningful and relevant ECEC data that is held by the Department. In turn, this will support improved, evidence-based findings for parents in raising children as well as support the development of policies, programs and institutions for the education and care of children.

The right to privacy

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

Protected information held by the Department is subject to the *Privacy Act 1988* as well as the stringent secrecy provisions in Division 2 of Part 6 of the Administration Act. The disclosure of information under paragraph 169(1)(a) of the Administration Act requires the Secretary to act in accordance with the Principal Determination and the Secretary may only give a public interest certificate for the disclosure of information on most grounds, including new section 16A, if:

- the Secretary is satisfied that the disclosure is necessary in the public interest; and
- 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 one of the purposes specified in the Principal Determination (including new section 16A).

Protected information may include personal information. However, the Department will only disclose direct identifiers (such as names, addresses or Centrelink customer reference numbers) on rare occasions where this is necessary in the public interest. In most instances it is anticipated that the information disclosed for the purpose in new section 16A will be de-identified. The Department also has strong data security mechanisms in place to ensure that personal information is protected from unauthorised access, modification and disclosure.

To the extent that the disclosure of personal information for the purpose of new section 16A may limit the right to privacy, such limitation is reasonable and proportionate to assist the Australian Government to meet its obligations with respect to the rights of parents and children by ensuring that research and other activities in relation to matters connected to education, early childhood development, child care and preschool are informed and supported by meaningful and relevant ECEC data that is held by the Department.

Conclusion

The Instrument is compatible with human rights because it promotes the protection of human rights.

Minister for Education, the Hon Jason Clare MP

Family Assistance (Public Interest Certificate Guidelines) (Education) Amendment (Policy Development and Related Purposes) Determination 2025

EXPLANATION OF PROVISIONS

Section 1: Name

1. This is a formal provision specifying that the name of the instrument is the *Family Assistance (Public Interest Certificate Guidelines) (Education) Amendment (Policy Development and Related Purposes) Determination 2025* (Amendment Determination).

Section 2: Commencement

2. This section provides that the Amendment Determination will commence the day after it is registered on the Federal Register of Legislation.

Section 3: Authority

3. This section provides that the Amendment Determination is made under section 169 of the *A New Tax System (Family Assistance) (Administration) Act 1999* (Administration Act).
4. Division 2 of Part 6 of the Administration Act provides for the confidentiality of 'protected information' (as defined in section 3 of the Administration Act) and sets out when protected information may be obtained, disclosed or used.
5. Under paragraph 168(1)(a) of the Administration Act, the Secretary may disclose information acquired by an officer in the exercise of the officer's powers, or the performance of the officer's duties or functions, under the family assistance law (including protected information) to such persons and for such purposes as the Secretary determines, if the Secretary certifies that it is necessary in the public interest to do so in a particular case or class of cases. In giving certificates, the Secretary must act in accordance with guidelines from time to time in force under section 169 of the Administration Act.
6. Paragraph 169(a) of the Administration Act enables the Minister to make, by legislative instrument, guidelines for the exercise of the Secretary's power to give certificates for the purposes of paragraph 168(1)(a) of the Administration Act.
7. The *Family Assistance (Public Interest Certificate Guidelines) (Education) Determination 2018* (Principal Determination) specifies the circumstances in which the Secretary of the Department (or the Secretary's delegate) may give public interest certificates for the disclosure of information under the Principal Determination. The Principal Determination which includes a requirement for the

Secretary to be satisfied that the disclosure is for the purpose of various sections of the Principal Determination.

Section 4: Schedules

8. This section provides that the Principal Determination is amended as set out in items in the Schedule to the Amendment Rules.

SCHEDULE 1 – AMENDMENTS

Family Assistance (Public Interest Certificate Guidelines) (Education) Amendment (Policy Development and Related Purposes) Determination 2025

Item 1: Paragraph 7(1)(c)

9. Item 1 inserts a reference to new section 16A into existing paragraph 7(1)(c) of the Principal Determination. This amendment is consequential to the insertion of new section 16A in the Principal Determination by item 3 of Schedule 1 to the Amendment Determination.
10. Section 7 of the Principal Determination specifies the circumstances in which the Secretary of the Department (or the Secretary's delegate) may give public interest certificates for the disclosure of information under Part 2 of the Principal Determination, which include a requirement in paragraph 7(c) for the Secretary to be satisfied that the disclosure is for the purpose of various sections in Part 2 of the Principal Determination.
11. Provided all the other requirements in section 7 are met, the amendment in item 1 ensures that the Secretary (or the Secretary's delegate) will be able to give a public interest certificate for the disclosure of information under new section 16A.

Item 2: After section 16

12. Item 2 inserts a new section 16A after existing section 16 of the Principal Determination.
13. New section 16A provides that information may be disclosed for the purpose of the section if the disclosure is necessary to support: (a) research into (including evaluation or monitoring of, or reporting on); or (b) statistical analysis of; or (c) policy development in relation to; or (d) activities to facilitate the implementation of policies and programs in relation to, any matter connected to education, early childhood development, child care or preschool.
14. For example, it is envisaged that this would enable the disclosure of Early Childhood Education and Care (ECEC) data to a range of entities, including other Commonwealth agencies, State and Territory agencies and other entities, to support

activities that are connected to early childhood development, education, child care, or preschool.

15. While new section 16A is broad on its face, any information sharing is still subject to the requirement that information may only be shared if the Secretary considers it is necessary in the public interest. The requirement for a disclosure to be 'necessary in the public interest' is a high bar and means that section 16A will only apply to important projects that have the potential to benefit the public and improve the lives of Australians.

Item 3: Paragraph 26(1)(c)

16. Item 3 corrects the references to certain sections of the Principal Determination in paragraph 26(1)(c) of the Determination.
17. Section 26 of the Principal Determination operates in a similar way to section 7 of Principal Determination. It specifies the circumstances in which the Secretary of the Department (or the Secretary's delegate) may give public interest certificates for the disclosure of information under Part 3 of the Principal Determination, which include a requirement in paragraph 26(1)(c) for the Secretary to be satisfied that the disclosure is for the purpose of various sections of the Principal Determination.
18. Paragraph 26(1)(c) incorrectly refers to sections 18, 19, 20 and 21 of the Principal Determination (which are contained in Part 2 of the Principal Determination) and should instead refer to relevant provisions in Part 3 of the Principal Determination, specifically sections 27, 28, 29 and 30.