

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Social Services

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

Family Assistance (Public Interest Certificate Guidelines) Determination 2025

Purpose

The *Family Assistance (Public Interest Certificate Guidelines) Determination 2025* ('Determination') is made under paragraph 169(a) of the *A New Tax System (Family Assistance) (Administration) Act 1999* ('FAA Act'). It establishes guidelines that the Secretary of the Department of Social Services ('DSS') (or a delegate) must follow when considering whether to disclose information pursuant to a public interest certificate under paragraph 168(1)(a) of the FAA Act.

Background

Paragraph 168(1)(a) of the FAA Act allows the Secretary to disclose information acquired by an officer in the performance of functions or duties or exercise of powers under the family assistance law, where the Secretary certifies that it is necessary in the public interest.

Paragraph 169(a) of the FAA Act provides that the Minister for Social Services may make guidelines for the exercise of the power for the Secretary to give public interest certificates under paragraph 168(1)(a). Subsection 168(2) of the FAA Act provides that, in giving certificates for these purposes, the Secretary must act in accordance with guidelines (if any) from time to time in force under section 169.

Personal information handled under the FAA Act is also protected by the *Privacy Act 1988*.

This Determination replaces the *Family Assistance (Public Interest Certificate Guidelines) Determination 2015* ('2015 Determination'), which will sunset on 1 October 2025 pursuant to section 50 of the *Legislation Act 2003*. The Determination substantively replicates the 2015 Determination, but includes the following adjustments:

- Inclusion of a new safeguard, namely a requirement that the Secretary consider whether the purpose for disclosing information could not be achieved by disclosing that information in a de-identified form. There is currently an equivalent provision in Part 9 of the *Paid Parental Leave Rules 2021*;
- Addition of new provisions that would allow for the disclosure of information in the public interest where reasonably necessary to:
 - investigate, or make a decision on, whether the APS Code of Conduct has been breached; and
 - assist a government agency to manage a work health and safety risk to that agency;

- Minor changes to promote consistency with equivalent guidelines made by the Minister for Social Services for the purposes of the *Paid Parental Leave Act 2010*, the *Student Assistance Act 1973* and the *Social Security (Administration) Act 1999*;
- Not including provisions in the 2015 Determination that were spent or redundant; and
- Updates to drafting style and structure to aid use and interpretation of the Determination.

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

Commencement

The Determination will commence on 1 October 2025.

Consultation

DSS consulted with the Department of Education and Services Australia in the course of preparing the Determination.

Explanation of the provisions

Family Assistance (Public Interest Certificate Guidelines) Determination 2025

PART 1 - PRELIMINARY

Section 1 – Name

Section 1 states how the Determination is to be cited, that is, as the *Family Assistance (Public Interest Certificate Guidelines) Determination 2025*.

Section 2 – Commencement

Section 2 sets out a table providing for the commencement of the Determination on 1 October 2025, being the date that the 2015 Determination will sunset.

Section 3 – Authority

Section 3 provides that the Determination is made under paragraph 169(a) of the FAA Act.

Section 4 – Definitions

Section 4 provides a list of definitions used in the Determination.

Section 5 – Savings provision

Section 5 provides that the 2015 Determination continues in force in relation to public interest certificates made under and in accordance with that instrument.

Section 6 – Matters to which the Secretary must have regard

This provision requires the Secretary to have regard to certain matters in giving 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. The Secretary must also have regard to whether the person in such a situation may be unable to give notice of their situation or circumstances because of age or disability, or social, cultural, family or other circumstances.

The provision is intended to emphasise the consideration of factors that may weigh for or against the release of protected information where an individual to whom the information concerned relates is not in a position to release that information themselves.

Where a person is identified as having a particular vulnerability, the Secretary should adopt a cautious approach in considering the giving of a public interest certificate. While a person's vulnerabilities may impair their ability to seek assistance to leave an abusive situation or otherwise manage their affairs, the Secretary should consider whether the purpose for disclosing the person's information outweighs the person's right to privacy. It would be relevant to consider, for example, the person's capacity to consent to the disclosure of the information and the impact of the disclosure on the person. These considerations may result in the Secretary narrowing the terms of a public interest certificate, such as limiting the recipients of the information, in order to protect the person's rights.

This provision applies both to public interest certificates issued under Part 2 and those issued under Part 3 of the Determination.

PART 2 – GUIDELINES – GENERAL

Section 7 – When public interest certificate may be given

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

- the information to be disclosed cannot reasonably be obtained from a source other than the Department or Services Australia; and
- the disclosure is for the purpose of a section in Part 2 of the Determination; and
- the purpose for disclosing the information could not be achieved by disclosing de-identified information; and
- the disclosure will be to a person who either has a genuine and legitimate interest in the information, or is a Minister specified by subsection 7(2).

Subsection 7(2) specifies which Ministers are relevant for the purposes of subparagraph 7(1)(d)(ii), namely the Prime Minister and various Ministers administering the legislation specified in subparagraph 7(2)(b). The Determination (in section 13) covers disclosures to these Ministers for certain purposes that support them to carry out their ministerial duties.

Although this provision largely replicates an equivalent provision in the 2015 Determination, it includes an additional safeguard, namely requiring that the Secretary be satisfied that the relevant purpose for disclosing the information concerned could not be served by disclosing that information in a de-identified form. This could include urgent disclosures (for example to lessen a threat to someone's life, health or safety) where there is insufficient time to de-identify any irrelevant personal information.

This additional safeguard helps to protect a person's information by ensuring that only the minimum amount of identifiable information necessary for the disclosure can be released. The addition is consistent with corresponding public interest certificate provisions in Part 9 of the *Paid Parental Leave Rules 2021*.

Section 8 – Threat to life, health or safety

This provision covers a disclosure that is necessary to prevent, or lessen, a threat to the life, health or safety of a person.

Section 9 – Enforcement of laws

This provision covers a disclosure that is necessary for:

- investigating, prosecuting or preventing a breach of the criminal law that relates to an indictable offence punishable by imprisonment of 2 years or more;
- investigating, prosecuting, or preventing a breach of a law that imposes a pecuniary penalty equivalent to 40 penalty units or more;
- preventing an act that may have a significant adverse effect on the public revenue;
- the extradition of a person or persons to or from Australia, including making, or considering whether to make or accept, a request for extradition; or

- obtaining or providing, or the proposed obtaining or providing, of international assistance in criminal matters by the Attorney-General's Department, to or from a foreign country.

This is intended to allow for the timely disclosure of information to enable law enforcement agencies and other relevant entities to monitor and conduct monitoring activities related to serious criminal and civil matters, as well as to investigate, prevent and prosecute criminal activity.

A 'penalty unit' is defined in section 2B of the *Acts Interpretation Act 1901*, which applies to the Determination by virtue of section 13 of the *Legislation Act 2003*. At the date of the commencement of the Determination, a penalty unit is \$330.

Section 10 – Protecting the Commonwealth

This provision covers a disclosure that is necessary for the purposes of investigating, prosecuting or preventing an offence or threatened offence:

- against a Commonwealth official;
- against property of the Commonwealth; or
- on premises of DSS, Services Australia, or a service organisation.

A 'service organisation' is defined in the Determination to mean an agency (within the meaning of the *Public Service Act 1999*), another authority of the Commonwealth or an organisation that performs services for the Commonwealth.

This provision helps to ensure that persons involved, and property used, in providing services to recipients of family assistance payments, are appropriately protected.

Section 11 – Proceeds of crime order

This provision covers a disclosure to a Commonwealth, State or Territory law enforcement officer where this is necessary for:

- the making, or proposed or possible making, of an order covered by subsection 11(2); or
- supporting or enforcing such an order.

Subsection 11(2) sets out what constitutes an 'order' for the purposes of subsection 11(1) with reference to Commonwealth, State and Territory laws relating to proceeds of crime.

This provision is aimed at helping to disrupt and combat serious and organised crime. The measure does this by supporting the disclosure of information to assist law enforcement agencies in their efforts to deprive individuals of the proceeds, instruments and benefits derived from unlawful activity.

Where an order under subsection 11(2) has been made or is being sought against an individual under a Commonwealth, State or Territory law, this provision will help to ensure that law enforcement bodies and other relevant entities have access to the information, such as names and addresses, they need to make, support or enforce the order.

Section 12 – Mistake of fact

This provision covers a disclosure that is necessary to correct a mistake of fact in relation to the administration of a program of DSS 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. The provision supports DSS and Services Australia to maintain public confidence in the administration of DSS programs.

Section 13 – Ministerial Briefing

This provision covers a disclosure that is necessary to brief any of the Ministers specified in subsection 7(2):

- to enable the Minister to consider complaints or issues raised 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 a Services Australia error or delay; or
- about an anomalous or unusual operation of the family assistance law.

For example, information about a person's circumstances could be disclosed to the Minister to enable the Minister to respond to a complaint received from a member of the public about that person's ability to access government payments.

Section 14 – Missing person

This provision covers a disclosure of information to a court, coronial inquiry, Royal Commission, department or any other authority of the Commonwealth or a State or Territory if the information is about a reported missing person or another relevant person, and the disclosure is necessary either to assist such a body in relation to the whereabouts of the missing person or to locate a person (including the missing person). However, the provision only applies if there is no reasonable ground to believe that the missing person would not want the information disclosed. This provision enables the disclosure of information about a missing person in circumstances where it is unclear whether there is a serious threat to that person's life, health or safety.

A person who has had a missing person's report about them filed with the police would be a reported missing person for the purposes of this section.

Section 15 – Establishing death of person or place where death is registered

This provision covers a disclosure that is necessary to establish the death of a person or the place where the death of a person is registered.

Section 16 – Deceased person

This provision covers a disclosure of information about a deceased person or another relevant person where the disclosure is:

- necessary to assist a court, coronial inquiry, Royal Commission, department or any other authority of the Commonwealth, or a State or Territory in relation to the death of the person;
- 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, the provision applies only where there is no reasonable ground to believe that the deceased person would not have wanted the information disclosed.

Section 17 – School enrolment and attendance

This provision covers a disclosure of information that 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 on their own records. For example, they may not be aware of children who are not enrolled at school. This provision will facilitate the release of information to ensure children who should be enrolled in 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. This provision is intended to ensure that relevant information held by the Commonwealth is provided to relevant State or Territory authorities, schools, or other relevant entities, so that action can be taken to facilitate enrolment and improve attendance in accordance with State or Territory laws.

Section 18 – School infrastructure

This provision covers a disclosure of information that is necessary to plan for, meet or monitor infrastructure and resource needs in one or more schools.

Section 19 – Public housing administration

This provision covers a disclosure of information to a department or authority of a State or Territory, or an agent or contracted service provider of a department or authority of a State or Territory, if:

- the information relates to a person involved in public housing or other State or Territory managed housing; and
- subsection 19(2) applies.

Subsection 19(2) applies if the disclosure is necessary for one or more of the following purposes:

- facilitating rent calculation or deduction;
- facilitating the administration of an income confirmation service to avoid mistakes, underpayments and overpayments of rent, pensions, benefits and allowances; and
- investigating or taking enforcement action in relation to public housing or State or Territory managed housing, including assistance with investigations into misreporting of income by tenants, or unauthorised occupation of public housing by any person.

The disclosure of information under this provision facilitates administrative efficiency for government agencies and those in public housing who need to have their rents determined according to their household income. This provision further supports

existing income confirmation services and provides a clear basis to disclose information where it is necessary to investigate fraudulent activity and the misuse of public housing.

Section 20 – Family Responsibilities Commission

This provision covers a disclosure of information that is necessary to assist in the performance of the functions, or the exercise of the powers, of the Queensland Family Responsibilities Commission ('FRC').

This is aimed at supporting the FRC, which was established by the *Family Responsibilities Commission Act 2008* (Qld). Among other things, the provision supports the disclosure of relevant information to support decision-making by the FRC. This would include enabling the FRC to correctly identify persons who are within its jurisdiction.

Section 21 – Reparations

This provision covers a disclosure of information where the information will be used by a State, Territory or Commonwealth department or authority for the purpose of contacting someone in respect of their possible entitlement to compensation or other forms of recompense in a reparation process.

Section 22 – Child protection agencies

This provision covers a disclosure to a State or Territory child protection agency if the disclosure is necessary for the purpose of contacting a child's parent or relative. For example, section 22 may apply when a child protection agency is seeking to contact a parent to assist in a court case relating to the child.

Section 23 – Administration and enforcement of the National Law

This provision covers a disclosure to a State or Territory Regulatory Authority or the Australian Children's Education and Care Quality Authority ('ACECQA') for the purposes of the Regulatory Authority or ACECQA where the disclosure is under or connected with the Education and Care Services National Law set out in the Schedule to the *Education and Care Services National Law Act 2010* (Vic).

Section 24 – Matters of relevance

This provision covers a disclosure of information that is necessary to facilitate the progress or resolution of any matters of relevance within the portfolio responsibilities of a department administering any part of the social security or family assistance law.

Subsection 24(2) provides that a matter of relevance to a department includes a program administered, or activity undertaken, by the department 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 family assistance law.

DSS and other departments that administer the social security law and family assistance law also administer programs and schemes that deliver additional support and assistance to people who may or may not be in receipt of social security or family assistance payments or entitlements. This additional support does not necessarily fall under the social security law and family assistance law. Section 24 enables the disclosure of relevant information where it is necessary to facilitate or

progress a departmental program or scheme that is designed to deliver services to support and assist a class of people wholly or partly comprised of social security or family assistance recipients, whether or not that program or scheme is provided under the social security law or family assistance law.

This section enables the disclosure of information where the disclosure is not already authorised by section 162 of the FAA Act, or by another section in the Determination.

Section 25 – Research, statistical analysis and policy development – family assistance law and related purposes

This provision covers a disclosure of information that is necessary for research, statistical analysis or policy development in relation to matters of relevance to a department administering any part of the social security law or family assistance law.

Section 26 – Research, statistical analysis and policy development – education and related purposes

This provision covers a disclosure of information that is necessary for research, statistical analysis or policy development in relation to matters of relevance to a department administering early childhood development or preschool education policies and programs (excluding a department administering any part of the social security law or family assistance law).

Section 27 – APS Code of Conduct investigations

This provision covers a disclosure of information that is necessary for investigating or making a decision regarding suspected breaches of the APS Code of Conduct.

This will, for example, assist investigation of circumstances where a person who has access to family assistance payment information is suspected of having inappropriately used that information for a financial benefit (for themselves or others) in breach of the *Public Service Act 1999*.

Section 28 – Work health and safety

This provision covers a disclosure of information that is reasonably necessary to assist a government agency to manage a work health and safety risk to that agency.

Agencies, such as Services Australia, have obligations including under the *Work Health and Safety Act 2011* to ensure that the health and safety of workers and other persons, are not put at risk by the conduct of the agency's operations. Information held by Services Australia about aggressive customers is often critical to identifying and assessing the risk posed to workers and others. The agency needs to be able to share this information across its master programs (Centrelink, Medicare and Child Support) and externally to individuals working within a co-located premises (such as security guards and other workers in shared office environments).

Among other things, section 28 is intended to improve the arrangements for ensuring worker safety for frontline staff at Services Australia, particularly where there have been instances of customer aggression.

This amendment will assist Services Australia to implement recommendation 35 of the Services Australia Security Risk Management Review by Graham Ashton AM APM from July 2023 (the Ashton Review) to integrate:

Customer aggression incident information... across systems that record customer interactions to provide an agency enterprise view of customer aggression information.

The principal service delivery model for dealing with customer aggression at Services Australia is known as the Managed Service Plan ('MSP'). A MSP may be put in place when a person poses a risk to staff safety. Currently, MSPs are generally confined to each master program.

For example, a person might be placed on a MSP for the Centrelink program because they have used violence or threatened to physically harm staff or others when visiting a service centre. Information about the Centrelink MSP is unlikely to be available to Medicare and Child Support staff. This is because the details of the aggressive behaviour would be considered protected information under Centrelink program legislation, such as the FAA Act. Such information can only be disclosed with an individual's consent, or where there is an authority or requirement under law.

Services Australia currently discloses information relating to customer aggression incidents under section 8 of the 2015 Determination, where the disclosure is necessary for the purposes of preventing or lessening a serious threat to the life, health or welfare of a person. However, under this provision a disclosure can generally only be made if there is a threat against a specific individual. As the individual in this example has not made a threat against a particular person, safety-related information is not able to be shared with Medicare and Child Support programs before the person might interact with staff in a different service centre.

Section 28 could facilitate routine disclosures of protected information where there is an identified risk of generalised harm, meaning that the Services Australia can develop an ICT solution that enables an enterprise-wide view of customer aggression information and is able to respond consistently across the master programs when interacting with individuals.

PART 3 – GUIDELINES – HOMELESS YOUNG PERSONS

Section 29 – Definition

This provision defines the term ‘parent’ for the purposes of this Part.

Section 30 – When a public interest certificate may be given

This provision states that a public interest certificate may be given by the Secretary if:

- the information cannot be obtained from a source other than DSS or Services Australia;
- the Secretary is satisfied that the disclosure will not result in harm to the homeless young person if information is disclosed;
- the Secretary is satisfied that the disclosure is for the purpose of a section in Part 3; and
- the purpose of the relevant section in Part 3 can only be achieved by disclosing identifiable information about a person.

The provision is broadly similar to section 7 of the Determination, but includes an extra condition, namely that the Secretary be satisfied that the disclosure will not result in harm to the homeless young person if the information is disclosed.

This provision is not intended to limit the operation of section 7 in its application to a disclosure of information that relates to a homeless young person under Part 2 of the Determination.

Section 31 – State or Territory welfare authority

This provision covers a disclosure of information to a welfare authority of a State or Territory where the homeless young person to whom the information relates is either in the care of a welfare authority of a State or Territory (in accordance with the law of that State or Territory) or is under 15 years of age.

Section 32 – Abuse or violence

This provision covers a disclosure of information where 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 33 – Reconciliation

This provision covers a disclosure of information that is necessary to facilitate reconciliation, or possible reconciliation, between a homeless young person and their parent or parents.

Section 34 – Assurance

This provision covers a disclosure of information that is necessary to inform the parent or parents of a homeless young person whether that person has been in contact with DSS or Services Australia. This section will only apply where the parent or parents have sought an assurance that there has been such contact.

Statement of Compatibility with Human Rights

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

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

Family Assistance (Public Interest Certificate Guidelines) Determination 2025

The *Family Assistance (Public Interest Certificate Guidelines) Determination 2025* ('Determination') is made for the purposes of paragraph 169(a) of the *A New Tax System (Family Assistance) (Administration) Act 1999* ('FAA Act'). The Determination establishes guidelines the Secretary of the Department of Social Services ('DSS') (or a delegate) must follow when exercising power under section 168(1)(a) of the FAA Act to disclose information in the public interest.

The Determination 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 Determination is made by the Minister for Social Services under paragraph 169(a) of the FAA Act. Division 2 of Part 6 of the FAA Act provides for the confidentiality of information obtained by an officer under the family assistance law. It specifies circumstances where protected information may be disclosed. Disclosing protected information contrary to this Division is a criminal offence. Personal information handled under the family assistance law is also protected by the *Privacy Act 1988*.

The purpose of the Determination is to impose guidelines that the DSS Secretary, or their delegate, must follow when exercising power under paragraph 168(1)(a) of the FAA Act to disclose information acquired by an officer in the performance of functions or duties, or exercise of powers, under the family assistance law where it is necessary in the public interest.

The disclosure of information to a person, under paragraph 168(1)(a) of the FAA Act in accordance with the Determination, 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 162(2)(e) of the FAA Act, or the disclosure is otherwise authorised under law.

Further, the protected information provisions in the family assistance law will remain operating together with relevant requirements of the *Privacy Act 1988*. While a public interest certificate will provide legal authorisation for the use and disclosure of protected information, where the protected information is personal information key requirements in the *Privacy Act 1988* will still apply to DSS as an APP entity. For example, if the information is personal information DSS must take reasonable steps to protect the information from misuse, interference and loss, as well as unauthorised access, modification or disclosure (APP 11.1).

The Determination replaces the sunseting *Family Assistance (Public Interest Certificate Guidelines) Determination 2015* ('2015 Determination').

The Determination substantively reproduces much of the content of the 2015 Determination with the following exceptions:

- Inclusion of a new safeguard, namely a requirement that the Secretary consider whether the purpose for disclosing information could not be achieved by disclosing that information in a de-identified form. There is currently an equivalent provision in Part 9 of the *Paid Parental Leave Rules 2021*;
- Addition of new provisions that would allow for the disclosure of information in the public interest where reasonably necessary to:
 - investigate, or make a decision on, whether the APS Code of Conduct has been breached; and
 - assist a government agency to manage a work health and safety risk to that agency.
- Minor changes to promote consistency with equivalent guidelines made for the purposes of the *Paid Parental Leave Act 2010*, the *Student Assistance Act 1973* and the *Social Security (Administration) Act 1999*;
- Not including provisions in the 2015 Determination that were spent or redundant; and
- Updates to drafting style and structure to aid use and interpretation of the Determination.

Human rights implications

The Guidelines engage the following rights:

- Right to privacy – Article 17 of the International Covenant on Civil and Political Rights ('ICCPR') and Article 16 of the Convention of the Rights of the Child ('CRC')
- Right to liberty and security of person – Article 9 of the ICCPR
- Right to protection from exploitation, violence and abuse – Article 20(2) of the ICCPR, Article 19(1) of the CRC and Article 16(1) of the Convention on the Rights of People with Disabilities (CRPD)
- Right to social security – Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).
- Right to an adequate standard of living – Article 11 of the ICESCR
- Right to safe and healthy working conditions – Article 7(b) of the ICESCR
- Right of a child to such protection and care as is necessary for their well-being – Article 3.2 of the CRC;
- Right of a child to, as far as possible, be cared for by their parents – Article 7 of the CRC;
- Right of a child to be protected from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation – Article 19 of the CRC; and
- Right of a child who is temporarily or permanently deprived of their family environment to special protection and assistance – Article 20.1 of the CRC

Right to privacy

Article 17 of the ICCPR relevantly provides that no one shall be subject to arbitrary or unlawful interference with their privacy and that everyone has the right to the protection of law against such interference or attacks. The right to privacy encompasses respect for information privacy, including the right to respect for private and confidential information, particularly the use and sharing of such information and the right to control dissemination of such information.

The use of the term “arbitrary” in Article 17 means that any interference with privacy must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in all the circumstances. It recognises that limitations may be imposed on the general prohibition on interference with privacy, provided that such limitations are reasonable, necessary and proportionate.

Article 16 of the CRC recognises an equivalent right to privacy for children.

Safeguards to ensure limitations are proportionate and necessary

The Determination and its legislative context contain safeguards to ensure any interference with a person’s privacy is reasonable, necessary and proportionate. These are:

- The FAA Act imposes a higher level of protection to family assistance law information than is imposed on personal information under the *Privacy Act 1988*. For example, criminal sanctions apply for the unauthorised use or disclosure of information (see section 164 of the FAA Act);
- Paragraph 168(1)(a) of the FAA Act only enables the disclosure of information where a decision-maker certifies that the disclosure is necessary in the public interest;
- A decision to disclose information under paragraph 168(1)(a) of the FAA Act can only be made by the Secretary or a delegate. The delegates are Commonwealth officers (predominantly in Services Australia) that are required to undertake relevant training;
- Recipients of information disclosed on the basis of a public interest certificate cannot disclose the information to other parties unless the disclosure is for the same purpose or the disclosure is otherwise authorised by law; and
- The Determination contains the following safeguards to ensure that any disclosure of information is reasonable and necessary:
 - Paragraph 7(1)(a), which requires the decision-maker to be satisfied that the information cannot reasonably be obtained from a source other than DSS or Services Australia, helps to stop them being regarded as an automatic or even ready source of the information and to ensure the decision-maker considers whether there are other avenues for the recipient to obtain information about a person.
 - The new requirement in paragraphs 7(1)(c) and 30(d), requiring that the decision-maker disclose de-identified information about a person unless doing so would not achieve the purpose for which the information is

being disclosed, helps to safeguard against unnecessary disclosures of personal information.

- Paragraph 30(b), which provides that information about a homeless young person can only be disclosed if that the disclosure will not cause them any harm, helps to ensure that the right to privacy is only limited to circumstances where the homeless young person will not be adversely affected.
- Paragraphs 7(1)(b) and 30(c) require the Secretary to be satisfied that the disclosure is necessary for a particular purpose covered by the Determination. These purposes, and relevant human rights engaged by those purposes, are discussed further below.
- Section 6 of the Determination also confers an overarching requirement for the Secretary to weigh disclosures of information in circumstances where there is information to suggest a person whose information is being released is or may be subject to physical psychological or emotional abuse and may not be able to report information about the abuse of their circumstances because of their age or disability, or social, cultural, family or other circumstances.

This provision does not expressly provide for the provision of information if these circumstances exist but is intended to prompt the Secretary to weigh whether the disclosure is in the best interests of the person, in view of their vulnerabilities. A person's individual autonomy and freedom to make decisions (noting for example, Article 3 of the CRPD which promotes these principles for rights of people with disability) should be balanced with the right of that person to protection from exploitation, violence and abuse (as provided in Article 16(1) of the CRPD).

Disclosure purposes are a proportionate limit on the right to privacy

To the extent that the Determination limits a person's right to privacy, the limitations pursue a legitimate objective and are a reasonable and proportionate means of achieving that objective, as follows:

- Sections 8, 14, 15 and 16 of the Determination assist with ensuring or reporting on the welfare of individuals, including preventing serious threats to their life, health and safety, as well as assisting government bodies to carry out their functions with respect to missing and deceased persons. These purposes are consistent with Article 9 of the ICCPR, which provides for the right to a person's physical security as well as the right to protection from exploitation, violence and abuse provided by Article 20(2) of the ICCPR, Article 19(1) of the CRC and Article 16(1) of the CRPD.

Paragraphs 14(c) and 16(c) of the Determination also provide a safeguard that requires a decision-maker that is disclosing information about a missing or deceased person to be satisfied that there is no reasonable ground to believe that a missing or deceased person would not have wanted the information disclosed.

- Sections 9 and 11 of the Determination are designed to assist in preventing and responding to serious offences or threatened offences as well as disrupting criminal activity through international co-operation and depriving offenders from the proceeds of their crimes. These provisions promote the right to security in Article 9 of the ICCPR, which requires States to provide measures to protect a person's physical security, particularly in circumstances public authorities know or ought to know of the existence of a real and imminent risk to the physical security of an individual or group of individuals from the criminal acts of another party.
- Sections 10, 12, 13, 27 and 28 of the Determination are designed to assist in ensuring the integrity, security and effective administration of government programs and resources. The provisions permit disclosures of information that are necessary to correct critical mistakes of fact, consider suspected breaches of the APS Code of Conduct, brief Ministers about relevant matters affecting their portfolio, safeguard Commonwealth property and personnel, and manage work health and safety risks. Safeguarding against these risks helps to ensure efficient delivery of services to the public and potentially helps to minimise disruptions to service delivery. Section 28, which assists government agencies to manage work health and safety risks, including those arising from customer aggression incidents in service delivery settings, promotes the right to safe and healthy working conditions, as provided by Article 7(b) of the ICESCR.
- Sections 19, 20, and 21 of the Determination are designed to provide a benefit to individuals by supporting government agencies to administer public housing schemes, undertake statutory functions to support particular communities and contact individuals in relation to their possible entitlement to compensation or reparations. These purposes, which connect people to services or programs they need or are eligible for, promote the right to an adequate standard of living, as provided under Article 11 of the ICESCR.

The enforcement related purpose in section 19(2)(c), which provides for disclosures to assist State and Territory housing authorities to investigate the misreporting of income by tenants of public housing or unauthorised occupation of public housing by any person, engages the right to social security in Article 9 of the ICESCR by enabling public housing authorities to fairly and equitably distribute public housing assistance.

- Sections 24 and 25 of the Determination are designed to facilitate public policy development through research and statistical analysis on matters relevant to the portfolio responsibilities of a Commonwealth government department administering part of the social security or family assistance law. This is intended to benefit or assist people who receive social security or family assistance payments, including contributing to research that examines whether the policy settings for the social security system adequately and sustainably provides for cohorts of the population that require access to entitlements, benefits and payments. These objectives are consistent with the right to social security provided under Article 9 of the ICESCR, which requires

the establishment of a social security system and the effective administration of that system by public authorities.

- Sections 17, 18, 22, 23, 26, 31, 32, 33 and 34 of the Determination engage various rights of children provided under the CRC and ICESCR. For example:

- Article 28 of the CRC and Article 13 of the ICESCR recognise the right of the child to education. Sections 17 and 18 of the Determination promote this right by permitting disclosures to help ensure children are enrolled or attending school and that the infrastructure needs of schools are met.

Article 3.2 of the CRC provides that a child is entitled to such protection and care as is necessary for their well-being. Sections 22 and 31 of the Determination promote this right by permitting disclosures of information about a child from a child protection agency to the child's parents as well as information about a homeless young person under 15 years old to a government welfare authority with legal responsibility to care for the homeless young person.

- Article 3.3 of the CRC requires that institutions, services and facilities responsible for the care or protection of children conform with standards established by competent authorities, particularly in the areas of safety and health. Section 26 of the Determination promotes these rights by permitting disclosures to government authorities with responsibilities for regulating compliance with the Education and Care Services National Law which establishes a nationally consistent framework to regulate education and care services for children.
- Article 19 of the CRC provides for the right of a child to be protected from all forms of physical or mental violence. Article 20.1 of the CRC provides for the right of a child who is temporarily or permanently deprived of their family environment to special protection and assistance. Section 32 of the Determination promotes these rights by permitting disclosures of information about abuse or violence to which a homeless young person or their family member has been subjected or exposed.
- Article 7 of the CRC includes provision for the right of a child to, as far as possible, be cared for by their parents. Sections 33 and 34 of the Determination promote this right by permitting the disclosure of information to facilitate continuing connection between a homeless young person and their parents, whilst not forcing the homeless young person to communicate with their parents if it is against their wishes. To the extent that these provisions limit a person's privacy by circumventing their ability to consent to such a disclosure, the safeguard in paragraph 30(b) operates to help ensure that the person will not be adversely impacted by the disclosure of that information.

- Article 4 of the CRC requires appropriate legislative, administrative and other measures be undertaken in order to implement the rights of the child recognised by the CRC. Section 26 of the Determination is designed to support public policy development through research and statistical analysis on matters relevant to the portfolio responsibilities of government authorities that administer early childhood development or preschool education policies. This ground promotes various rights of the child provided by the CRC, including the right of the child to education (Article 28), the enjoyment of the highest attainable standard of health (Article 24) and to a standard of living adequate for the child's physical, mental, spiritual and moral development (Article 27).

Conclusion

The Guidelines are compatible with human rights. To the extent that the right to privacy is limited, those limitations are reasonable, necessary and proportionate, and appropriate safeguards are in place.

The Hon Tanya Plibersek MP, Minister for Social Services