



# **Social Security (Public Interest Certificate Guidelines) (FaHCSIA) Determination 2010**

*Social Security (Administration) Act 1999*

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I, JENNY MACKLIN, Minister for Families, Housing, Community Services and Indigenous Affairs, make this Determination under subparagraph 209(a)(i) and paragraph 209(b) of the *Social Security (Administration) Act 1999*.

Dated            25<sup>th</sup> June            2010

J Macklin

Minister for Families, Housing, Community Services and Indigenous Affairs

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## Part 1 Preliminary

### 1 Name of Determination

This Determination is the *Social Security (Public Interest Certificate Guidelines) (FaHCSIA) Determination 2010*.

### 2 Commencement

This Determination commences on the day after it is registered.

### 3 Revocation

The *Social Security (Public Interest Certificate Guidelines) (FaHCSIA) Determination 2008* 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 208(1)(a) of the Act.

### 5 Definitions

In this Determination:

**Act** means the *Social Security (Administration) Act 1999*.

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

**Chief Executive Officer of Medicare Australia** means the Chief Executive Officer appointed under section 8AG of the *Medicare Australia Act 1973*.

**Department** means the Department of Families, Housing, Community Services and Indigenous Affairs.

**Minister** means:

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

**public interest certificate** means a certificate, under paragraph 208(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 social security law or the *Farm Household Support Act 1992*.

*Note 1* The following expressions are defined in the Act:

1991 Act  
social security law.

*Note 2* The following expressions are defined in the 1991 Act and have the same meaning in the Act (see subsection 3(2) of the Act):

family member  
officer  
protected information  
Secretary  
social security payment.

## **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 the 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, 9, 10, 11, 12, 14, 15, 16, 17, 17A, 17B, 18 or subsection 13(1) or (2) of this Determination.
- (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.

### 9 Enforcement of laws

- (1) Relevant information may be disclosed for the purpose of this section 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 Centrelink 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 the 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 in the part of Centrelink; or
- (e) to brief a Minister about an instance of an anomalous or unusual operation of the social security law.

## 12 Missing person

Relevant information may be disclosed to a court, coronial enquiry, Royal Commission, department or any other authority of a State or Territory for the purpose of this section if:

- (a) the information is about a reported 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 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; or
    - (iv) is in relation to Centrelink transferring information to the relevant authority responsible for administering the social security system in another country regarding the deceased person who, prior to their death, was qualified for or in receipt of an Australian social security payment or held a Commonwealth Seniors Health Card; and
  - (c) there is no reasonable ground to believe that the deceased person would not have wanted the relevant information disclosed.
- (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 School enrolment and attendance**

- (1) Relevant information may be disclosed for the purpose of this section if the disclosure is necessary to ensure a child who:
  - (a) is required to be enrolled in a school under a law of a State or Territory is enrolled; or
  - (b) is required to be attending a school under a law of a State or Territory is attending.

## **15 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.

## **16 Public Housing Administration**

Relevant information may be disclosed to a department or any other authority of a State or Territory for the purpose of this section if:

- (a) the information is about a resident or tenant of public housing or other State or Territory managed housing; and
- (b) the disclosure is necessary to facilitate rent calculation or rent deduction in relation to public housing, or State or Territory managed housing; or
- (c) the disclosure is necessary to facilitate the administration of an income confirmation service in relation to public housing or State or Territory managed housing to avoid mistakes, underpayments and overpayments of rent, pensions, benefits and allowances.

## **17 Establishment and operation of the Family Responsibilities Commission**

- (1) Relevant information may be disclosed for the purpose of this section 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 this section, Family Responsibilities Commission means the Commission established by section 9 of the *Family Responsibilities Act 2008 (Qld)*.

## **17A Reparations**

Relevant information may be disclosed to a department or any other authority of a State or Territory for the purpose of this section if the disclosure is necessary for the purpose of contacting the person in respect of their possible entitlement to compensation or other form of recompense in a reparation process.



## **17B Child protection agencies**

- (1) Relevant information may be disclosed to a Child Protection agency of a State or Territory for the purpose of this section if the disclosure is necessary for the purpose of contacting the parent or relative in relation to the child.
- (2) In this section, Child Protection agency means a government agency that carries out child protection functions.

## **18 Matters of relevance**

- (1) Subject to subsection (2), relevant information may be disclosed for the purpose of this section if the disclosure is necessary for the purpose of facilitating the progress or resolution of matters of relevance within the portfolio responsibilities of a department that is administering any part of the family assistance law or the social security law.
- (2) In this section, a matter of relevance to a department is a matter that falls within the portfolio responsibilities of that department and which provides assistance or services to a class of people which is wholly or partly comprised of people receiving payments or entitlements under the social security law or the family assistance law.

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

### 19 Application

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

(2) In this Part:

*homeless young person* means a person:

- (a) who is under 18 years; and
- (b) who has sought a social security payment on the ground of being a homeless person.

*parent*, in relation to a homeless young person, means:

- (a) a natural parent, adoptive parent or relationship 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.

### 20 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 the Department; 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 21, 22, 23 or 24.

- (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 the Department; and
  - (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.

## **21 Abuse or violence**

Relevant information may be disclosed to an appropriate authority for the purpose of this section if:

- (a) the information is about a family member of a homeless young person; and
- (b) 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.

## **22 Verification for payment**

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

- (a) the disclosure is necessary to verify a circumstance by which a homeless young person who is under 15 years may qualify for a social security payment on the ground of being a homeless person; and
- (b) in order to verify the circumstance, a parent, or the parents, of the homeless young person must be asked whether the homeless young person is able to live at the home of his or her parent or parents.

*Note* Social security payments, appropriated for the purpose, are made by Centrelink on behalf of the Department under service arrangements entered into under section 7 of the *Commonwealth Services Delivery Agency Act 1997*.

## **23 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.

## 24 Assurance

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

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