



Social Security (Public Interest Certificate Guidelines) (DSS) Determination 2015

Social Security (Administration) Act 1999

I, Scott Morrison, Minister for Social Services, make this Determination under paragraph 209(a) of the *Social Security (Administration) Act 1999*.

Dated: 6 August 2015

Scott Morrison

Minister for Social Services

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Part 1 Preliminary

1 Name of Determination

This Determination is the *Social Security (Public Interest Certificate Guidelines) (DSS) Determination 2015*.

2 Commencement

This Determination commences on the day after it is registered.

3 Revocation

The *Social Security (Public Interest Certificate Guidelines) (DSS) Determination 2014* is revoked.

3A Savings provision

Despite the revocation in section 3, the *Social Security (Public Interest Certificate Guidelines) (DSS) Determination 2014* continues in force in relation to public interest certificates made under and in accordance with that instrument.

4 Purpose

The purpose of this Determination is to set out guidelines for the exercise of the Secretary's power to give certificates under paragraph 208(1)(a) of the Act.

5 Definitions

In this Determination:

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

APS Code of Conduct has the same meaning as in the *Public Service Act 1999*.

Department means the Department of Social Services.

Human Services Department means the Department of Human Services.

Minister means, as the context permits:

- (a) a Minister of State administering any part of:
 - (i) the social security law; or
 - (ii) the family assistance law; or
 - (iii) the *Human Services (Centrelink) Act 1997*; or
 - (iv) the *Human Services (Medicare) Act 1973*; and
- (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 2014*.

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 the Human Services Department; 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 sections 8, 9, 9A, 10, 11, 12, 13, 14, 15, 16, 16A, 17, 17A, 17B, 17C, 18, 18A, or 18B 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 the premises of the Human Services Department.

(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 \$170.’

9A Proceeds of crime order

(1) Relevant information may be disclosed to a Commonwealth, State or Territory law enforcement agency for the purpose of this section if the disclosure is necessary for:

- (a) the making, or proposed or possible making, of a proceeds of crime order; or
- (b) supporting or enforcing a proceeds of crime order.

(2) In this section **proceeds of crime** order means:

- (a) an order under:
 - (i) Chapter 2 (the confiscation scheme) or Division 1, Part 3-1 of Chapter 3 (examination orders) of the *Proceeds of Crime Act 2002*; or
 - (ii) Part II (confiscation) or III (control of property liable to confiscation) of the *Proceeds of Crime Act 1987*; or
 - (iii) a State law or Territory law corresponding to a law referred to in subparagraph (i) or (ii); or
 - (iv) Division 3 of Part XIII (recovery of pecuniary penalties for dealings in narcotic goods) of the *Customs Act 1901*; or
- (b) an unexplained wealth order (within the meaning of the *Proceeds of Crime Act 2002*); or
- (c) a court order (including a declaration or direction):
 - (i) under a State law or Territory law; and
 - (ii) relating to unexplained wealth.

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 on the part of the Human Services Department; 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 inquiry, 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 inquiry, 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 inquiry, 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 the Human Services Department 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

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 or an agent or contracted service provider of a department or authority for the purpose of this section if:

- (a) the information is about a resident, an applicant to become a tenant, or a 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; or

- (d) the disclosure is necessary to investigate or take enforcement action in relation to public housing or State or Territory managed housing including to assist with an investigation into either:
 - (i) the misreporting of income by tenants of public housing or State or Territory managed housing; or
 - (ii) the unauthorised occupation of public housing or State or Territory managed housing by any person.

16A Vulnerable Welfare Payment Income Management measure

Relevant information may be disclosed to:

- (a) a department or any other authority of a State or Territory; or
- (b) an agent or contracted service provider of such a department or any other authority of a State or Territory;

for the purpose of this section if:

- (c) the information is about a resident, an applicant to become a tenant, or a tenant of public housing or other State or Territory managed housing; and
- (d) the disclosure is necessary to facilitate the administration of the vulnerable welfare payment recipient income management measure, including through the provision of information:
 - (i) about a person's social security payment arrangements (including any nominee arrangement and usual place of residence) to assist one of the bodies referred to in paragraphs (a) or (b) in deciding about whether to refer a person to the Secretary for possible subsection to income management; or
 - (ii) about whether the person is subject to the vulnerable welfare payment recipient income management measure and details of this arrangement (including details about a person's payment rate, qualification, any nominee arrangement, usual place of residence and any subsequent cessation of income management); or
 - (iii) about whether a referral referred to in subparagraph (i) has not led to a person being made subject to income management and the reasons for this; or
 - (iv) to assist in minimising the risk or effect of eviction or homelessness in relation to a person.

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 Commission 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.

17C Public utilities

- (1) Where:
 - (a) a customer of a public utility (the first public utility) has provided consent to that public utility to enable it to confirm the entitlement of the customer to a social security related concession; and
 - (b) responsibility for the provision of services to the customer by the first public utility has been transferred, in whole or in part, to another public utility (the second public utility); and
 - (c) as a result of the transfer of responsibility for the provision of services, the customer of the first public utility became a customer of the second public utility; and
 - (d) where necessary, the second public utility advises the Commonwealth of the contact details of the customer;
relevant information may be disclosed to the second public utility for the purpose of this section if the disclosure is necessary to enable the second public utility to confirm the entitlement of the customer to a social security related concession.
- (2) In this section, public utility means a legal entity that provides, or is related to a legal entity that provides, any of the following services to the public:
 - (a) water;
 - (b) sewerage;
 - (c) gas;
 - (d) electricity; or
 - (e) telecommunications.

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 includes a programme or activity 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 the family assistance law.

18A Research and statistical analysis

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

- (a) research into (including evaluation or monitoring of, or reporting on) matters of relevance to a department that is administering any part of the family assistance law or the social security law; or
- (b) statistical analysis of those matters.

18B APS Code of Conduct investigations

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

- (a) investigating suspected breaches of the APS Code of Conduct; and
- (b) making a decision on whether the APS Code of Conduct has been breached.

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.

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 the Human Services Department; 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 the Human Services Department.