

EXPLANATORY STATEMENT

Family Assistance (Public Interest Certificate Guidelines) Determination 2015

Summary

The *Family Assistance (Public Interest Certificate Guidelines) Determination 2015* (the Guidelines) are made under paragraph 169(a) of the *A New Tax System (Family Assistance) (Administration) Act 1999* ('the Act').

The purpose of the Guidelines is to assist the Secretary (or the delegate) of the Department of Social Services in the exercise of their power under paragraph 168(1)(a) of the Act to disclose protected information where it is necessary in the public interest.

The disclosure of protected information to a person, under paragraph 168(1)(a) of the Act in accordance with the Guidelines, 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 Act, or the disclosure is otherwise authorised under law.

Changes to the 2014 Guidelines

The Guidelines largely replicate the *Family Assistance (Public Interest Certificate Guidelines) (DSS) Determination 2014* (the 2014 Guidelines), subject to the changes below.

The Guidelines revoke the 2014 Guidelines.

Despite this revocation, there is a savings provision (section 3A), to put beyond doubt that public interest certificates made under and in accordance with the 2014 Guidelines continue in force.

The Guidelines add section 9A. The purpose of this new section is to allow for protected information to be disclosed to assist Commonwealth, State and Territory law enforcement agencies with:

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

Subsection 9A(2) defines 'proceeds of crime order' for the purposes of section 9A.

The Guidelines also add section 14AA. The purpose of this new section is to allow information to be disclosed to a department responsible for child care policy and programmes; and co-ordination of early childhood development policy; and pre-school education policies and programmes.

The Guidelines also provide further clarity (in section 14A) on what is meant by a 'matter of relevance' for the purposes of the Guidelines. Subsection 14A(2) provides that 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.

The Guidelines also insert a new section 15 to facilitate the disclosure of protected information to State and Territory Regulatory Authorities and the Australian Children's Education and Care Quality Authority (ACECQA) where the disclosure is under or connected with the Education and Care Services National Law.

The Guidelines also add paragraph 16C(d). The purpose of this new paragraph is to clarify that protected information can be disclosed where 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.

A detailed description of the Guidelines follows.

Part 1—Preliminary

Part 1 sets out preliminary information about the Guidelines, namely, the name of the determination (**section 1**), commencement (**section 2**), revocation of the former instrument (**section 3**), saving of the former instrument with respect to certificates made under it (**section 3A**), purpose (**section 4**), definitions (**section 5**) and matters to which the Secretary of the Department of Social Services is to have regard (**section 6**).

An amendment was made to the definition of ‘family assistance payment’ in **section 5** to correct a legislative reference in paragraph (b) of that definition.

Section 6 provides for matters to which the Secretary must have regard, in the giving of a public interest certificate. The Secretary must have regard to any situation in which a person (to whom the information relates) is, or may be, subject to physical, psychological or emotional abuse. In such a situation, the Secretary must also have regard to whether the person may be unable to give notice of his or her circumstances because of age, disability or social, cultural, family or other reasons. Section 6 is intended to emphasise the importance of the release of protected information where individuals are not in a position to seek assistance themselves.

Part 2—Guidelines—public interest certificate (general)

Part 2 sets out how the release of protected information can generally occur under paragraph 168(1)(a) of the Act for the purposes of the family assistance law.

Subsection 7(1) provides that, for the purposes of Part 2, a public interest certificate may be given by the Secretary if:

- the information cannot reasonably be obtained from another source;
- the disclosure is to a person who has sufficient interest in the information; and
- that disclosure is for the purpose of section 8, 9, 9A, 10, 11, 12, 14, 14AA, 14A, 15, 16, 16A, 16B, 16C, 16D, 16E or subsection 13(1) or (2).

Subsection 7(2) specifies that a person will have a sufficient interest in the relevant information if the person either has a genuine and legitimate interest in the information or the person is a Minister.

Section 8 permits disclosure of protected information to prevent, or lessen, a threat to the life, health or welfare of a person. This reflects one of the *permitted general situations* defined in section 16A of the *Privacy Act 1988*.

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

- for the enforcement of a criminal law in relation to an indictable offence punishable by imprisonment of 2 years or more, or

- for the enforcement of a law imposing a pecuniary penalty equivalent to at least 40 penalty units, or
- to prevent an act that may have a significant adverse effect on the public revenue.

Alternatively, the disclosure must relate to an offence or a threatened offence against a Commonwealth employee or Commonwealth property, or in departmental or Department of Human Services premises.

The terms “criminal law” and “penalty units” are defined at **subsection 9(2)**.

Section 9A(1) is a new section that will allow for the disclosure of relevant information to a Commonwealth, State or Territory law enforcement agency where this is necessary for:

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

Subsection 9A(2) contains the definition of ‘proceeds of crime order’ for the purposes of section 9A.

Section 9A of these Guidelines is aimed at disrupting and combating serious and organised crime. The measure does this by assisting law enforcement agencies in their efforts to deprive individuals of the proceeds, instruments and benefits derived from unlawful activity.

Where a proceeds of crime order has been made or is being sought against an individual under a Commonwealth, State or Territory law, section 9A will ensure that law enforcement bodies and other relevant entities have access to the information they need to make, support or enforce the order.

Section 9A has been drafted based on section 355-70 in Schedule 1 to the *Taxation Administration Act 1953*. Section 9A has been drafted consistently with the provisions in that Act relating to the disclosure of protected tax information for proceeds of crime purposes.

Section 10 permits disclosure of protected information to correct a mistake of fact in relation to the administration of a program of the relevant department where either the integrity of the program is at risk if the mistake of fact is not corrected or the mistake of fact relates to a matter that has been, or will be, published.

Section 11 permits the disclosure of information if the disclosure is necessary:

- to enable a Minister to consider complaints or issues raised by, or on behalf of a person, and respond to that person accordingly;
- to brief a Minister for a meeting or forum that the Minister is to attend;

- to brief a Minister 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;
- to brief a Minister about an error or delay by the Department of Human Services; or
- to brief a Minister about an anomalous or unusual operation of the family assistance law.

Section 12 permits disclosure of protected information which is necessary to assist a court, coronial inquiry, Royal Commission, department or any other authority of a State or Territory in relation to the whereabouts of a reported missing person or to locate a missing person. However, disclosure will only be possible if there is no reasonable ground to believe that the missing person would not want the information disclosed.

A reported missing person is a person who has a missing person's report filed with the police.

Subsection 13(1) allows disclosure of protected information which is:

- necessary to assist a court, coronial inquiry, Royal Commission, department or any other authority of a State or Territory in relation to a deceased 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, disclosure will only be possible if there is no reasonable ground to believe that the deceased person would not have wanted the information disclosed.

Subsection 13(2) provides that the relevant information may also be disclosed if the information is to establish the death of the person or the place where the death of the person is registered.

Section 14 provides that protected information can be released where this is done for policy development or research purposes, including evaluation, monitoring and reporting and/or statistical analysis in relation to any programme or activity within the portfolio responsibilities of a department that is administering any part of the family assistance law or the social security law.

Section 14AA provides that protected information can be released where this is done for policy development or research purposes, including evaluation, monitoring and reporting, and/or statistical analysis in relation to any programme or activity within the portfolio responsibilities of a department which is responsible for administering early childhood development, or preschool education, policies and programmes.

Subsection 14A(1) provides that relevant information can be disclosed to facilitate the progress or resolution of any matters of relevance within the portfolio responsibilities of a Department administering the social security law or the family assistance law.

Subsection 14A(2) provides that 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.

The Department administers programmes and schemes that deliver additional support and assistance to people in receipt of social security and family assistance payments or entitlements. This additional support does not necessarily fall within the social security law or the family assistance law. Section 14A enables the disclosure of protected information in the public interest where it is necessary to facilitate or progress a departmental programme or scheme that is designed to deliver services to support and assist a group of community members wholly or partly comprised of social security or family assistance recipients, whether or not that program or scheme falls within the social security law or family assistance law.

This section enables a delegate to disclose information where the disclosure is not already authorised by section 162 of the Act, or by another section in these Guidelines. Section 14A is also subject to section 7 of these Guidelines which requires that any disclosure to a person can only occur where that person has a genuine and legitimate interest and the information cannot reasonably be obtained other than from the Department of Human Services or the Department. A certificate under section 168 of the Act would also specify who specifically disclosure can be made to in any given circumstance.

Section 15 is a new clause that allows for disclosure of relevant information to a Regulatory Authority or ACECQA for the purposes of a Regulatory Authority or ACECQA where the disclosure is under or connected with the National Law.

The terms “National Law” and “Regulatory Authority” are defined in subsection 15(2) as having the same meaning as in the Act and the National Law respectively. “ACECQA” is defined in subsection 15(2) as the Australian Children’s Education and Care Quality Authority established under the National Law.

Subsection 16(1) provides for relevant protected information to be disclosed where it is necessary for the purpose of the establishment of the Queensland Family Responsibilities Commission as well as in assisting in the performance of its functions and exercise of its powers.

This section is aimed at supporting the Family Responsibilities Commission which was established by the *Family Responsibilities Commission Act 2008 (Qld)* (FRC Act). This statutory body underpins the Cape York Welfare Reform Trials.

Under Part 4 of the FRC Act, a notice about a person, called an 'agency notice', will be given to the FRC in a wide range of circumstances. These circumstances include: where a child who is a dependant of the person is not enrolled in school, is not meeting school attendance requirements or is the subject of a child protection notification; where the person is convicted of an offence in the Magistrates Court; and where the person is in breach of certain tenancy obligations. However, the FRC can only hold a conference about a person for whom it has received an agency notice if the person is a 'community member' (see sections 7, 8 and 49 and the definition of 'relevant person' in the Schedule to the FRC Act).

Accordingly, for each agency notice that the FRC receives, the FRC must determine, before holding a conference: who is the 'relevant person' for the agency notice; whether the relevant person is a 'welfare recipient' within the meaning of section 8 of the FRC Act; and whether the person is a 'community member' within the meaning of section 7 of the FRC Act.

The provision of this information by the Department of Social Services, through the Department of Human Services, will facilitate the Cape York Welfare Reform Trials: it will support the FRC's decision-making, enabling the FRC to correctly identify persons who are within the jurisdiction of the FRC and ensuring that conferences are held, and decisions are made, on a valid basis.

Subsection 16(1) is also subject to section 7 of these Guidelines which requires that any disclosure to a person can only occur where that person has a genuine and legitimate interest and the information cannot be obtained other than from Centrelink or the Department. A certificate issued under section 168 of the Act would also specify who disclosure can be made to in a given circumstance.

Subsection 16(2) provides that in section 16, the Family Responsibilities Commission means the Commission established by section 9 of the *Family Responsibilities Commission Act 2008 (Qld)*.

Section 16A allows for the disclosure of protected information where the information will be used by a State, Territory or the Commonwealth government for the purpose of contacting the customer in respect of compensation or other forms of recompense in various reparation processes, including the 'stolen wages' reparations in Queensland. This helps ensure that this assistance, formerly undertaken under the In Touch Program, can still be provided.

Section 16B allows for the disclosure of information about a parent or relative of a child to State or Territory Child Protection agencies where the agency is seeking to contact the parent or relative when section 8 of these guidelines is not available because there is no identifiable threat to the life, health or welfare of the child. For example, section 16B may apply when a child protection agency is seeking to contact a parent to assist in a court case. This section helps ensure that this assistance, formerly undertaken under the In Touch Program, can still be provided.

Section 16C deals with disclosures that are permitted in relation to the administration of public housing.

This provision authorises the disclosure of income details about people in public housing from DHS to bodies such as State Housing Authorities (SHAs) to allow for the accurate calculation of rents. The provision also ensures that relevant information can be disclosed to agents or contracted service providers of State/Territory departments or authorities to deal with different organisational arrangements in States and Territories for the administration of public housing. This provision authorises the disclosure of information from DHS to bodies such as SHAs in the context of the administration of an income confirmation service (such as the Automatic Income Confirmation Service). The disclosure of information under this provision provides administrative efficiency for government agencies and those in public housing who need to have their rents determined according to their household income.

Paragraph 16C(d) has been added to these Guidelines to clarify that information can be disclosed for the purposes of investigating or taking enforcement action in relation to public housing or State or Territory managed housing including to assist with an investigation into either:

- the misreporting of income by tenants of public housing or State or Territory managed housing; or
- the unauthorised occupation of public housing or State or Territory managed housing by any person.

The intention of this change is to further support existing income confirmation services and provide a clear basis for the Department to disclose information where it is necessary to investigate fraudulent activity and the misuse of public housing.

Paragraph 16C has also been amended to cover the disclosure of information regarding an 'an applicant to become a tenant'. Further, the provision has been amended to expressly address situations in which public housing has been outsourced and is carried out by an agent or contracted service provider and protected information is to be disclosed to the agent or contracted service provider.

The intention of these two changes is to more closely align the drafting of section 16C with equivalent provisions in the guidelines and rules dealing with

the disclosure of protected information collected under the social security law, *Paid Parental Leave Act 2010* and *Student Assistance Act 1973*.

Section 16D permits disclosure of relevant information where it 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. Section 16D will facilitate the release of information to ensure children who should be enrolled and attending school, under State and Territory laws, are 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. Section 16D is intended to ensure that relevant information held by the Commonwealth is shared so that action can be taken to facilitate enrolment and improve attendance in accordance with State or Territory laws.

Section 16E permits the disclosure of relevant information where it is necessary to plan for, meet or monitor infrastructure and resource needs in one or more schools.

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

Part 3 sets out how the release of protected information can occur under paragraph 168(1)(a) of the Act in relation to homeless young people for the purposes of a payment under the family assistance law.

Section 17 provides that this Part applies in regard to a homeless young person and also provides relevant definitions for the purposes of this Part.

Subsection 18(1) provides that for the purposes of Part 3, a public interest certificate may be given by the Secretary if:

- the information cannot be obtained from another source;
- the Secretary is satisfied that no harm will result to the homeless young person if information is disclosed; and
- the Secretary is satisfied that the disclosure is for the purpose of section 19, 20, 21 or 22.

Subsection 18(2) provides that for the purposes of Part 3, a public interest certificate may be given by the Secretary if:

- the information cannot be obtained from another source;
- the disclosure is to a welfare authority of a State or Territory;

- the homeless young person, to whom the information relates, is either in the care of a welfare authority of a State or Territory or is under 15 years of age; and
- the Secretary is satisfied that no harm will result to the homeless young person if information is disclosed.

Section 19 permits disclosure of protected information to an appropriate authority if the information is about a family member of a homeless young person and the Secretary is satisfied that the homeless young person or a family member of the homeless young person has been subjected to abuse or violence.

Disclosure of information to verify a circumstance by which a homeless young person under the age of 15 years may qualify for a social security or family assistance payment is sanctioned by **section 20**.

In the case of a reconciliation, or possible reconciliation, between the homeless young person and his or her parent or parents, disclosure of information to facilitate such a reconciliation may be made under **section 21**.

Section 22 allows for disclosure of information about a homeless young person to a parent, or parents of the homeless young person but only to assure the parent, or parents (but only where the parent or parents have sought such an assurance), that the homeless young person has been in contact with the department or the Department of Human Services.

Consultation

The Department of Human Services has also been involved in the development of these Guidelines over previous iterations.

DHS and the Attorney-General's Department were consulted in the development of these Guidelines.

Regulatory Analysis

These Guidelines do not require a Regulatory Impact Statement and/or a Business Cost Calculator Figure. These Guidelines are not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact. It is not expected that any compliance costs will be incurred by business as a result of these Guidelines.

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) Determination 2015

The *Family Assistance (Public Interest Certificate Guidelines) Determination 2015* 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

These Guidelines are made under paragraph 169(a) of the *A New Tax System (Family Assistance) (Administration) Act 1999* ('the Act'). The purpose of these Guidelines is to assist the Secretary (or a delegate) of the Department of Social Services (DSS) in the exercise of their power under paragraph 168(1)(a) of the Act to disclose protected information where it is necessary in the public interest.

The family assistance system involves the collection, use, storage and disclosure of significant amounts of information, much of which is of a personal nature. Part 5 of the Act provides a legal framework to ensure that a high level of protection is accorded to such information. Personal information handled under the family assistance law is also protected by the *Privacy Act 1988*.

Part 6 of the Act contains comprehensive provisions relating to the management of personal information, including provisions relating to the disclosure of such information. Among these provisions, paragraph 168(1)(a) provides that the Secretary (or the delegate) can disclose information acquired by an officer under the family assistance law if he or she certifies that it is necessary in the public interest to do so in a particular case or class of cases. A certificate under this provision must specify the persons to whom, and the purposes for which, the information is provided. Under section 169, the Minister has the power to make guidelines for the exercise of the Secretary's power in paragraph 168(1)(a).

Prior to the Guidelines, the Minister most recently exercised the guideline-making power by making the *Family Assistance (Public Interest Certificate Guidelines) (FaHCSIA) Determination 2014* (the 2014 Guidelines). The 2014 Guidelines provided guidelines relating to the disclosure of information in the public interest in a number of precisely-defined situations, and subject to a number of conditions (including that the information cannot reasonably be obtained from other sources and the person receiving the information has a sufficient interest in it).

The Guidelines retain the content of the 2014 Guidelines (which are revoked), and include three new public interest grounds for the disclosure of protected information. These three grounds are discussed in turn.

New section 9A states that information may be disclosed to a Commonwealth, State or Territory law enforcement agency if the disclosure is necessary for the making, or proposed or possible making, of a proceeds of crime order or supporting or enforcing a proceeds of crime order.

New section 14AA states that information may be disclosed to a department responsible for child care policy and programmes; and co-ordination of early childhood development policy; and pre-school education policies and programmes.

New paragraph 16C(d) clarifies that protected information can be disclosed where 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.

The Guidelines also insert a new section 15 to facilitate the disclosure of protected information to State and Territory Regulatory Authorities and the Australian Children's Education and Care Quality Authority (ACECQA) to assist them in performing their functions and exercising their powers under the Education and Care Services National Law.

Disclosure of protected information under sections 9A, 15 and paragraph 16C(d) are subject to the condition that information can only be disclosed if it cannot reasonably be obtained from a source other than DSS or the Department of Human Services (DHS), and that the person to whom the information will be disclosed has a "sufficient interest" in the information (see section 7 of the Guidelines). The term "sufficient interest" is satisfied if the person has a genuine and legitimate interest in the information or the person is a Minister (see subsection 7(2) of the Guidelines).

Human rights implications

Interference with privacy

The Guidelines engage the prohibition on interference with privacy, which impacts on changes to Commonwealth secrecy provisions relating to personal information. Article 17 of the International Covenant on Civil and Political Rights (ICCPR) prohibits unlawful or arbitrary interferences with a person's privacy. It also provides that persons have a right to the protection of the law against such interference.

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 is recognised that limitations may be imposed on the general prohibition on interference with privacy, provided that such limitations are reasonable, necessary and proportionate.

Section 9A – proceeds of crime orders

The new measure in section 9A of these Guidelines is reasonable, necessary and proportionate. The measure is reasonable in that it addresses a particular situation where a public benefit will flow from the disclosure of the information.

To the extent that the new measure affects the right to privacy, such limitation is aimed at disrupting and combating serious and organised crime. The measure does this by assisting law enforcement agencies in their efforts to deprive individuals of the proceeds, instruments and benefits derived from unlawful activity.

This new measure is necessary to achieve, and is reasonable in achieving, the aim of disrupting criminal activity and combating serious and organised crime.

The amendments are consistent with the right to privacy because the records or disclosures will be authorised by law and not arbitrary. The amendments provide a reasonable, necessary and proportionate means of achieving the legitimate objective of confiscating financial benefits gained through criminal activities.

Where a proceeds of crime order has been made or is being sought against an individual under a Commonwealth, State or Territory law, section 9A will ensure that law enforcement bodies and other relevant entities have access to the information they need to make, support or enforce the order.

Section 9A has been drafted based on section 355-70 in Schedule 1 of the *Taxation Administration Act 1953*. Section 9A has been drafted consistently with the provisions in that Act relating to the disclosure of protected tax information for proceeds of crime purposes.

Section 14AA – Research, analysis and policy development for education purposes

The new measure in section 14AA of these Guidelines is reasonable, necessary and proportionate to the right of privacy.

To the extent that this new measure affects the right to privacy, such limitation is aimed at ensuring the effective operation of a department that has responsibilities for child care policy and programmes; co-ordination of early childhood development policy; and pre-school education policies and programmes.

This new measure is reasonable and necessary to ensure that information held only by the Commonwealth can be provided to a department responsible for education that manages organisations, for example the National Early Childhood Education and Care Collection, to assist them in performing their programmes or activities.

There are safeguards regarding the disclosure of protected information and these are detailed below. These safeguards assist to ensure that this measure is reasonable, necessary and proportionate to the right of privacy.

Section 15 – Administration of the National Law

The new measure in section 15 of these Guidelines is reasonable, necessary and proportionate to the right to privacy.

To the extent that this new measure affects the right to privacy, such limitation is aimed at ensuring the effective operation of the Education and Care Services National Law.

This new measure is reasonable and necessary to ensure that information held only by the Commonwealth can be provided to Regulatory Authorities and ACECQA to assist them in exercising their regulatory powers and performing their regulatory functions under the Education and Care Services National Law.

There are safeguards regarding the disclosure of protected information and these are detailed below. These safeguards assist to ensure that this measure is reasonable, necessary and proportionate to the right to privacy.

Paragraph 16C(d) - public housing administration

The new measure in paragraph 16C(d) of these Guidelines is reasonable, necessary and proportionate to the right to privacy.

To the extent that this new measure affects the right to privacy, such limitation is aimed at assisting public housing authorities with undertaking investigations or enforcement action in relation to public housing, including the misreporting of income and the unauthorised occupation of public housing.

The disclosure of protected information under paragraph 16C(d) will assist the relevant public housing authorities to achieve a fairer and more equitable public housing system where public resources are directed to those who are most in need of assistance.

As well as engaging the right to privacy, the new measure in paragraph 16C(d) of the Guidelines engages the right to social security as recognised in Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The right to social security requires that a system be established under domestic law, and that public authorities must take

responsibility for the effective administration of the system. The social security scheme must provide a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

The new measure in paragraph 16C(d) of the Guidelines promotes the right to social security. This measure promotes this right by enabling disclosures of information to assist public housing authorities to fairly and equitably distribute public housing assistance.

Safeguards concerning the disclosure of protected information

There are a number of safeguards in place in relation to the disclosure of information under the new measures, many of which apply (and have applied over time) in relation to public interest disclosures under other provisions in the Guidelines. These include the following:

- As noted above, while the *Privacy Act 1988* continues to apply in relation to the management of social security information, the social security law imposes a higher level of protection to such information than is imposed under the *Privacy Act 1988*. For example, criminal sanctions apply for the unauthorised use or disclosure of information under the family assistance law (see section 164 of the *A New Tax System (Family Assistance) (Administration) Act 1999*);
- Public interest certificates made on the basis of the Guidelines are made by experienced Commonwealth officers (usually in DHS) at appropriate levels, and are subject to administrative arrangements which recognise the significance of such decisions;
- In appropriate circumstances, the disclosure of information under the Guidelines may be accompanied by additional measures to further protect the information (eg Deeds of confidentiality may be required for recipients of the information); and
- The family assistance law provides that information provided to a person on the basis of a public interest certificate must be used for the purpose for which it was provided. It is not possible for that recipient to disclose the information to other parties unless the disclosure is for the same purpose or the disclosure is otherwise authorised by law.

In relation to new section 9A it should also be noted that the *Privacy Act 1988* currently provides Commonwealth agencies with the ability to use or disclose 'personal information' where the agency reasonably believes that the use or disclosure of the information is reasonably necessary for one or more enforcement related activities conducted by, or on behalf of, an enforcement body (see Australian Privacy Principle 6.2(e) in Schedule 1 to the *Privacy Act 1988*).

While Australian Privacy Principle 6.2(e) does not authorise the disclosure of 'protected information', it demonstrates a general acceptance in the law that Commonwealth agencies need to be able to provide information to law enforcement agencies to assist them with their enforcement activities (including proceeds of crime and unexplained wealth investigations).

Concluding remarks

These 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.

Conclusion

The Guidelines are compatible with human rights.