



# Family Assistance (Public Interest Certificate Guidelines) Determination 2015

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

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I, Scott Morrison, Minister for Social Services, make this Determination under paragraph 169(a) of the *A New Tax System (Family Assistance) (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 *Family Assistance (Public Interest Certificate Guidelines) Determination 2015*.

### 2 Commencement

This Determination commences on the day after it is registered.

### 3 Revocation

The *Family Assistance (Public Interest Certificate Guidelines) (DSS) Determination 2014* is revoked.

### 3A Savings provision

Despite the revocation in section 3, the *Family Assistance (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 for the purposes of paragraph 168(1)(a) of the Act.

### 5 Definitions

In this Determination:

*Act* means the *A New Tax System (Family Assistance) (Administration) Act 1999*.

*Department* means the Department of Social Services.

*Human Services Department* means the Department of Human Services.

*family assistance payment* means:

- (a) a payment of a benefit, allowance or advance that constitutes family assistance within the meaning of the Family Assistance Act; or
- (b) a payment of an enrolment advance under Division 3 of Part 8A of the Act; or
- (c) a payment of one-off payment to families.

*family member* has the same meaning as in the *Social Security Act 1991*.

*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 *Human Services (Centrelink) Act 1997*; or
- (b) the Prime Minister.

**public interest certificate** means a certificate, under paragraph 168(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 family assistance law.

**social security payment** has the same meaning as in the *Social Security Act 1991*.

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

- Family Assistance Act
- family assistance law
- officer
- protected information
- Secretary.

*Note 2* The following expression is defined in the Family Assistance Act and has the same meaning in the Act (see subsection 3(2) of the Act):

- one-off payment to families.

## **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; 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, 9A, 10, 11, 12, 14, 14AA, 14A, 15, 16, 16A, 16B, 16C, 16D, 16E or subsection 13(1) or (2).
- (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 Human Services Department 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 \$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 family assistance 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; 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 Research, statistical analysis and policy development – family assistance law and related purposes**

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); or
  - b) statistical analysis of; or
  - c) policy development 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.

#### **14AA Research, statistical analysis and policy development – education and related purposes**

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); or
  - b) statistical analysis of; or
  - c) policy development in relation to,
- any programme or activity within the portfolio responsibilities of a department (other than a department administering any part of the family assistance law or the social security law) which is responsible for administering early childhood development, or pre-school education, policies and programmes.

#### **14A 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.



## **15 Administration and enforcement of the National Law**

(1) Relevant information may be disclosed if the disclosure is to a Regulatory Authority or ACECQA for any purpose of the Regulatory Authority or ACECQA under, or in connection with, the National Law.

(2) In this section:

*ACECQA* means the Australian Children's Education and Care Quality Authority established under the National Law.

*National Law* means the laws and regulations mentioned in subsection 161(1A) of the Act.

*Regulatory Authority* has the same meaning as in the National Law.

## **16 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)*.

### **16A 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.

### **16B 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.

### **16C 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.

#### **16D 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.

#### **16E 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.

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

### 17 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 family assistance 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.

### 18 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 18, 19, 20 or 21.

(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.

## **19 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.

## **20 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 payment under the family assistance law or 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 1* Payments made under the family assistance law, appropriated for the purpose, are made by the Human Services Department on behalf of the Department.

*Note 2* Social security payments, appropriated for the purpose, are made by Human Services Department on behalf of the Department in accordance with section 8A of the *Human Services (Centrelink) Act 1997*.

## **21 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.

## **22 Assurance**

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

- (a) a parent, or the parents, of a homeless young person have 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.