



Social Security (Administration) (Public Interest Certificate Guidelines) (DEWR) Determination 2023

I, TONY BURKE, Minister for Employment and Workplace Relations make this Determination under paragraph 209(a) of the *Social Security (Administration) Act 1999*.

Dated 7 September 2023

Tony Burke
Minister for Employment and Workplace Relations

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Part 1 Preliminary

1 Name

This Determination is the *Social Security (Administration) (Public Interest Certificate Guidelines) (DEWR) Determination 2023*.

2 Commencement

This Determination commences on the day after it is registered.

3 Revocation

The *Social Security (Administration) (Public Interest Certificate Guidelines) (DEWR) Determination 2013* is revoked.

4 Authority

This Determination is made under paragraph 209(a) of the Act.

5 Definitions

In this Determination:

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

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

Department means a Department of State of the Commonwealth.

DEWR (short for the Department of Employment and Workplace Relations) means the Department responsible for employment policy, including employment services.

information means 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.

officer has the meaning given by section 201A of the Act.

public interest certificate means a certificate that may be given by the Secretary for the purposes of paragraph 208(1)(a) of the Act.

Relevant Department means a Department of State of the Commonwealth that is administered by a Minister who administers any part of the social security law or the family assistance law.

Relevant 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

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- (iv) the *Human Services (Medicare) Act 1973*; or
(b) the Prime Minister.

service organisation has the meaning given by subsection 202(2D) of the Act.

Note 1 A number of expressions used in this Determination are defined in the Act:

- (a) 1991 Act
- (b) 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):

- (a) family assistance law
- (b) family member
- (c) relationship parent
- (d) Secretary
- (e) 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 Application

This Part applies to information to which Part 3 does not apply.

Note: Part 3 applies to information that relates to a homeless young person: see section 22.

8 When a public interest certificate may be given

- (1) The Secretary may give a public interest certificate for the disclosure of information under this Part if:
 - (a) the information cannot reasonably be obtained from a source other than DEWR; and
 - (b) the Secretary is satisfied that the disclosure is for at least one of the purposes mentioned in a provision in this Part; and
 - (c) the disclosure will be made to:
 - (i) where the provision specifies a person to whom the information may be disclosed—that person; or
 - (ii) otherwise—a person who the Secretary is satisfied has a sufficient interest in the information.
- (2) A person has *sufficient interest* in the 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 Relevant Minister.

9 Threat to life, health or welfare

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.

10 Enforcement of laws

- (1) 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 an officer; or
 - (ii) against Commonwealth property; or
 - (iii) in premises occupied by a service organisation.
- (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 \$275 (subject to indexation under subsection (3)).’

11 Proceeds of crime order

- (1) 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) a court order (including a declaration or direction):
 - (i) under a State law or Territory law; and
 - (ii) relating to unexplained wealth.

12 Missing person

Information may be disclosed for the purpose of this section if:

- (a) the information is about a reported missing person or any other relevant person; and
- (b) the disclosure is necessary:
 - (i) to assist a court, coronial enquiry, Royal Commission, Department, or a department or other authority of a State or Territory, in relation to the whereabouts of the missing person; or
 - (ii) to assist in locating the missing person; and
- (c) there is no reasonable ground to believe that the missing person or the other relevant person would not want the information disclosed.

13 Deceased person

- (1) Information may be disclosed for the purpose of this section if:
 - (a) the information is about a deceased person or any other relevant person; and
 - (b) the disclosure:
 - (i) is necessary to assist a court, coronial inquiry, Royal Commission, Department, or a department or any other authority of a State or Territory, in relation to the death of the deceased person; or
 - (ii) is necessary to help a person locate a relative or beneficiary of the deceased person in relation to the administration of the estate of the deceased person; or
 - (iii) is necessary to assist the person 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 or the other relevant person would not want the information disclosed.
- (2) Information may be disclosed for the purpose of this section if the disclosure is necessary to establish:
 - (a) the death of a person; or
 - (b) the place where the death of a person is registered.

14 Public housing administration

- (1) Information may be disclosed 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:
 - (i) facilitate rent calculation or rent deduction in relation to public housing, or State- or Territory-managed housing; or
 - (ii) facilitate the administration of an income confirmation service in relation to public housing or State- or Territory-managed housing.
- (2) 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 State or Territory department or authority;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.

15 Operation of the Family Responsibilities Commission

- (1) Information may be disclosed for the purpose of this section if the disclosure is necessary 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).

16 Reparations

Information may be disclosed for the purpose of this section if the disclosure is necessary to contact a person in respect of their entitlement, or possible entitlement, to compensation or other form of recompense in a reparation process.

17 Child protection agencies

Information may be disclosed for the purpose of this section if the disclosure is necessary to assist a child protection agency contact a parent or relative in relation to a child.

18 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;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; or
 - (b) sewerage; or
 - (c) gas; or
 - (d) electricity; or
 - (e) telecommunications.

19 Matters of relevance to a Relevant Department or agency

- (1) Information may be disclosed for the purpose of this section if the disclosure is necessary to facilitate the progress or resolution of a matter of relevance:
 - (a) within the portfolio responsibilities of a Relevant Department, or
 - (b) to an agency responsible for the delivery of services under the social security law or family assistance law.
- (2) Without limiting subsection (1), a matter of relevance to a Relevant Department or agency includes a program or activity that provides assistance or services to a class of people that includes persons receiving payments or entitlements under the social security law or the family assistance law.

20 Research and statistical analysis

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

- (a) research into (including evaluation or monitoring of, or reporting on) matters of relevance to a Relevant Department; or
- (b) statistical analysis of those matters.

21 APS Code of Conduct investigations

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

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

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

22 Application

- (1) This Part applies to information that 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.

23 When public interest certificate may be given

- (1) The Secretary may give a public interest certificate for the disclosure of information under this Part if:
 - (a) the information cannot reasonably be obtained from a source other than DEWR; 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 at least one of the purposes mentioned in a provision in this Part.
- (2) The Secretary may also give a public interest certificate for the disclosure of information under this Part if:
 - (a) the information cannot reasonably be obtained from a source other than DEWR; 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 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.

24 Abuse or violence

Information may be disclosed 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.

25 Verification for payment

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.

26 Reconciliation

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 their parent or parents.

27 Assurance

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