



**Government
of South Australia**

**Commissioner for
Victims' Rights**

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Reference
12/02919
LETTERSUBMISSION-COMPTERRORISMVICTIMS

Your Reference:
12/622-02

4 January 2012

Security Law Branch
Attorney-General's Department
3 - 5 National Circuit
BARTON ACT 2600

Attention: s22(1)(a)(ii)

Dear Geoff McDonald, First Assistant Secretary,

Re Financial assistance for Australian victims of overseas terrorism

I refer to the invitation seeking my comment on the draft Principles in relation to financial assistance for Australian victims of overseas terrorism.

Please note that his Excellency the Governor for South Australia appointed me as Commissioner for Victims' Rights. My role is likened to a (crime) victim ombudsman, although my functions are broader than traditionally associated with an ombudsman. As well as consult public officials on victims' grievances, I can, for instance, appear for crime victims and/or their families in certain criminal proceedings.

Please also note that the comments in my letter are mine, as an independent statutory officer, and do not represent the Government for South Australia or the Attorney-General for that State.

As Commissioner for Victims' Rights, I applaud the Australia Government and the Federal Parliament for enacting legislation to provide for a formal (rather than ad hoc) financial assistance scheme for Australian victims of overseas terrorism. I hasten to add that it is unfortunate that it has taken over three decades for an Australia Government to set-up such a scheme to allow "for payments to be made to [victims of terrorism] as an expression of the government's empathy for the loss and suffering [such victims endure]".

Background to my comments

In the 1950s, Margaret Fry, a British Magistrate and social reformer, argued that because offenders most often do not have the means to compensate their victims and the state

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forbids people arming themselves for protection against violent offenders, the state should run a criminal injuries compensation scheme.

In the 1960s and 1970s Australian States and the Northern Territory established such schemes; and, since then the ACT has done so. Each scheme, however, while primarily for victims of violent crime, is different. In the 1970s, these differences led Duncan Chappell, former Director of the Australian Institute of Criminology, to call for a national scheme, although this was never acted on. The Australian Law Reform Commission in the 1980s recommended a national criminal injuries scheme for victims of federal offences, but this recommendation was not acted on either. Consistently, the opposition to such a scheme represented a view of the nature of criminal justice under Australia's federal structure. Most crimes are violations of state law; yet federal responsibility in criminal law has expanded significantly since the 1990s.

Then in 1985 Australia, along with over 150 other countries, endorsed a United Nations' resolution in favour of a Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Article 12 states, "When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to- (a) Victims who have sustained bodily injury or impairment of physical or mental health as a result of serious crime; (b) The family, in particular dependants of persons who have died or become physically incapacitated as a result of such victimisation." Article 13 encourages the establishment, strengthening and expansion of national funds for compensation to victims.

Since the mid-1980s, States and Territories have been left with the task of giving effect to the UN Declaration. This seems to be a legacy of the distribution of power under Australia's Constitution, which leaves crime primarily as a matter for States. In 1993, however, Australia's Attorneys-General, including the Federal Attorney, endorsed a national charter on victims' rights that acknowledges that where "compensation is not available from the offender the victim of crime involving sexual or other personal violence should have recourse to a criminal injuries compensation scheme provided by the state." In this context, state means any self-governing group of people, for example, a sovereign power such as the Commonwealth as well as a State or Territory.

In the aftermath of the Bali bombings in 2002, Australia's Liberal Government offered emergency financial assistance for travel to and from Bali, accommodation in Bali and financial assistance for funeral expenses and associated costs. The then Government also promoted fast tracking applications for Centrelink payments, including disability pensions. Such Government, however, ignored the call to compensate those injured in the Bali bombing and the families of those killed¹.

In response to consultation with federal public servants on the merits of a national state-funded victim compensation scheme, I argued that the Australia Government should ask how best it might help Australia's victims of crimes overseas to recover and to reintegrate into their communities. Federal responsibility is accepted in the case of Australian citizens who are victimised abroad by both international law and Australia's Constitution, as well as foreign policy considerations. Responding to victims of mass violence and terrorism, such as the Bali bombings, highlighted the hodgepodge of legal situations relating to state-funded victim compensation. It would be desirable, I explained, to remove the discrepancies between the existing State-Territory based schemes by establishing a federal scheme. Furthermore, I respectfully pointed out that asking victims and families of those killed to line-up in Centrelink queues to be subjected to a barrage of questions, including whether or not they have received compensation and how much lacked empathy - in fact, the policy and practice was not in my view in accordance with Australia's pledge when it endorsed the

United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

I in addition urged the Australia Government to establish such a scheme as it was very likely that more Australian citizens would become victims of mass murders and other acts of terrorism. My pleas echoed those of victims and victims' families, as well as some politicians like then Senator Buckland of the Labor Opposition. The Government for South Australia did compensate its citizens, howeverⁱⁱ.

The new scheme is a significant development on the responses of successive Australia Governments' previous stances. Notwithstanding the aforementioned commitments to international law and subsequent commitments to the Commonwealth Nations Statement of Basic Principles of Justice for Victims of Crime, Australia Government and federal Parliaments have enacted a federal compensation scheme for victims of any crime. Indeed, although there is now a scheme for Australian victims of terrorism overseas, there is no national compensation scheme for victims of other federal crime.

South Australia's experience

On the occasion of the first Bali bombings, the Criminal Injuries Compensation Act 1978 was enforced, which has since been repealed and replaced by the Victims of Crime Act. In accordance with either Act, the Attorney-General has an absolute discretion to make:

an ex gratia payment (not exceeding the limits prescribed by this Act in relation to an order for compensation) to a person in the following circumstances:

- (i) the person suffers injury, financial loss or grief in consequence of an offence committed outside this State;
- (ii) the victim is at the time of the commission of the offence ordinarily resident in this State;
- (iii) some person is convicted of the offence;
- (iv) where the law of the place where the offence is committed establishes a right to compensation - the applicant has taken reasonable steps to obtain compensation under that law;
- (v) the applicant would, in the Attorney-General's opinion, probably have been awarded compensation under this Act if the offence had been committed in this State;
- (vi) the applicant is, in the Attorney-General's opinion, in necessitous circumstances.

The Attorney-General also has a broad discretion to make an ex gratia payment when satisfied that criminal conduct has happened. In exercising such discretion, the Attorney-General should be mindful of the objects of the Act (i.e. Victims of Crime Act 2001); and, he or she applies the same formula and scale to determine the sum to be paid to each victim-applicant. Lunn's *Criminal Procedure* provides a useful guidance on the formulation of payments.

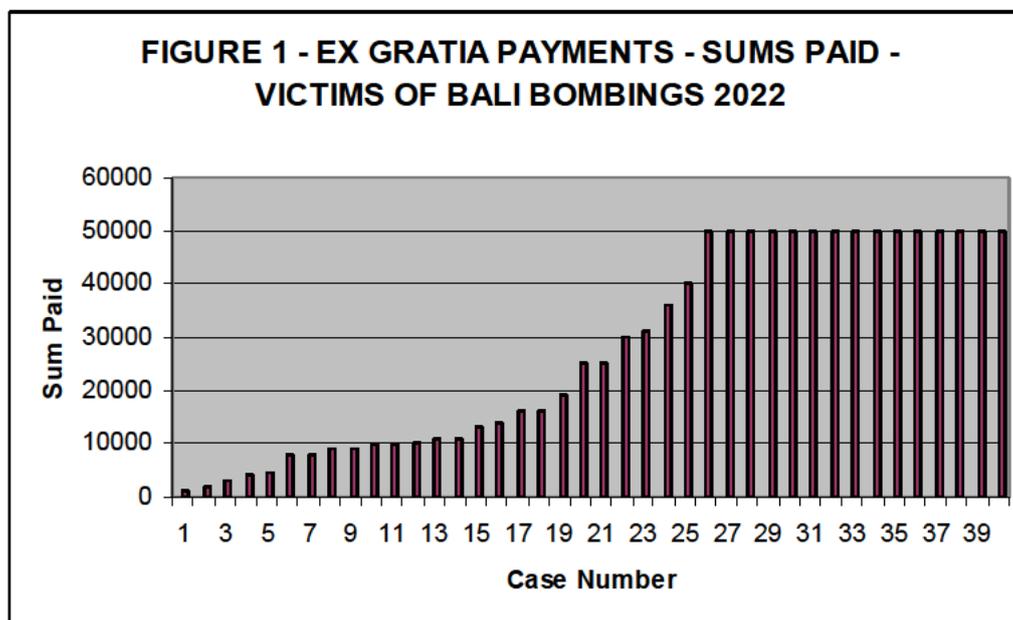
Compensation and ex gratia payments, like other payments provided for under the Victims of Crime Act 2001, are paid from the Victims of Crime Fund. Parliament created the Fund because where the offenders cannot be successfully sued victims would, without the statutory compensation scheme, be left enduring the harm done and bearing their losses. The Fund is a payer of last resort, so victims should first attempt to mitigate their losses and other avenues, thus Medicare and private health, should be exhausted before seeking

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payments from the Fund. Although there is a right to be heard in Court if victims are unsatisfied with the sums offered as compensation, there is no such right if victims are unsatisfied with the sums offered as ex gratia payments. The Fund's revenue consists of: a sum appropriated by Parliament; 20% of the sum paid into consolidated revenue as fines; money raised by the Victims of Crime Levy; money recovered from (convicted) offenders in lieu of compensation paid by the State to the respective victims; and, money paid under other Acts, such as money derived from selling confiscated vehicles driven by 'hoon' drivers and money derived from selling assets confiscated under criminal asset confiscation law.

I identified two South Australia residents affected by the attack on the World Trade Centre in addition to the family of a person killed in that attack. One of the two residents was successful in an application for an ex gratia payment because he or she was not eligible for a payment under the US federal scheme. Regarding the first Bali bombings, the Red Cross identified 55 persons as residents of South Australia who were directly or indirectly affected. A letter, under my signature, was sent to each victim-resident via the Red Cross inviting him or her to apply for an ex gratia payment to cover harm and losses not covered by the federal Bali Assist scheme.

The Attorney-General instructed the Crown's Victim Compensation Section staff to be model litigants and emphasised the 'benevolent' nature of the scheme. He agreed to review all decisions, in consultation with the Commissioner for Victims' Rights, which enhanced the process. Importantly, he approved paying the solicitors' fee and reasonable costs and disbursements as per the Regulations under the Victims of Crime Act 2001. This was necessary to ensure that victims were properly informed on their entitlement to apply and assisted as appropriate, as well as given advice on whether the sum offered by the Crown was fair and reasonable.



\$1,115,224 was paid as ex gratia payments to 40 victim-applicants (see Addendum A). Figure 1 shows the distribution of payments. About one quarter of the victims was immediate family members (n=12, secondary victims) of deceased victims (n=3); and, about one half of the family members were paid the maximum (\$50,000). Primary victims received payments ranging from \$8,000 to \$50,000, with the majority (n=10) receiving the maximum. Several immediate family members (n=5) of these primary victims received payments ranging from \$1,000 to \$4,500.

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Furthermore, a solicitor was engaged to assist each victim-applicant apply. These solicitors formulated victims' applications and appraised the Crown's offers then advised victims on the appropriateness of such, as well as advised victims on the implications of signing the notice of discharge. In addition to the sum of the ex gratia payments, the State paid solicitors \$1,000 (plus GST) for each successful application – totalling \$40,000 (ex GST) – and reimbursed the reasonable costs incurred in attaining medical reports and other evidence to substantiate victims' applications.

South Australia has also established a redress scheme for survivors of child sexual abuse in state-care. The scheme is founded on similar law that authorises the Attorney-General to make ex gratia payments from the Victims of Crime Fund. Unlike the approach taken to assist the victims of the Bali bombings, the State does not pay solicitors' fees to assist victim-survivors lodge their applications. Instead, the State pays a set solicitor fee so those victims who receive an offer to pay an ex gratia payment can seek legal advice on both the adequacy of the sum and the implications of signing the notice of discharge. Furthermore, should a victim-survivor want the offer reviewed, he or she can ask the Commissioner for Victims' Rights to help. The Commissioner, on behalf of the victim-survivor, requests the Crown conduct an internal review, which has happened several times. Some victim-survivors have written direct to the Crown with their requests for review. There is no provision for conciliation or arbitration by an independent authority, or for judicial review. It is assumed that the Attorney-General's discretion is absolute and not subject to challenge in court.

Comment on the Principles

Victims' rightsⁱⁱⁱ are human rights. A right is something that everyone - an Australian citizen - has just claim. Human rights are basic rights that generally are considered applicable to all people; for instance, all human beings are born free and equal in dignity and rights (Article 1, Universal Declaration of Human Rights). Everyone has the right to life, liberty and security of person (Article 3, Universal Declaration of Human Rights). Victimisation constitutes a violation of the victim's right to security of person. Every violent crime is an infraction against the individual victim's human right as well as an offence against the state (see, for example, Article 5 of the Directive of the European Parliament and of the Council on Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime (14 Dec 2011)).

The victims' right to compensation from offenders and the state has been examined in all Australian jurisdictions. Of particular relevance, the Victoria Supreme Court has acknowledged the connection between the human right to security of person (of which an assault is a violation), the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, that State's Charter on Human Rights and Charter on Victims' Rights and the right to compensation. As well, Victoria's Law Reform Committee indicated that 'the expression 'loss of or damage to [the victim]', as per that State's law on offender-paid compensation, should be given its usual meaning to include not only direct losses but consequential losses by way, for example, interest, finance and legal costs, that flow from the offence. Furthermore, the extension of loss or damage to include consequential loss or damage is consistent with Australia's obligations under the United Nations Declaration of the Basic Principles of Justice Relating to the Rights of Victims of Crime^{iv}.

From a victims' rights as human rights perspective, the core principles for state-funded crime victim compensation, including the Australian victim of terrorism payment scheme should be:

1. All victims of violent crime (such as terrorism) should be eligible for compensation unless implicated in the crime (such as terrorism).
2. State-funded compensation schemes should recognise both economic and non-economic losses for the primary and secondary victims of violent crime.
3. State-funded compensation (including financial assistance) schemes should recognise victims' on-going losses, such as future medical expenses and treatment costs.
4. All victims of violent crime should be informed on their right to compensation, including how to apply, and if necessary, assisted to apply.
5. The law and procedure governing state-funded compensation should be fair, and the application process should be respectful and timely, as well as both available and accessible.
6. Where compensation payments are determined by administrative decisions, there should be an independent authority of review (such as a Court), and victims should be informed on how to have decisions reviewed.
7. To ensure the financial security of the compensation scheme, the funding base should be broader than appropriation from consolidated revenue.
8. State-funded victim compensation should be an element of a broader needs-based system of victim assistance to support primary and secondary victims.

The table below compares the Principles in relation to the Commonwealth Social Security (Australian Victim of Terrorism Payment) with the provisions for ex gratia payments under the South Australia Victims of Crime Act.

Social Security (Australian Victim of Terrorism Payment)	Victims of Crime Act - ex gratia payment
Australian	Resident of South Australia
Victim - harmed as a direct result of the terrorist act or a close family member	Victim - harmed as a direct result of the criminal offence or an immediate (close) family member
Rationale - expression of the government's empathy for the loss and suffering the victims have endured	Rationale - "an act of grace" paid where the offenders cannot be successfully sued so victims would, without the statutory compensation scheme, be left enduring the harm done and bearing their losses
Declaration - Prime Minister declares an overseas terrorist incident	Declaration - unnecessary

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Maximum payable - \$75,000 (any sum in excess must be disregarded)	Maximum payable - \$50,000 (although additional payments such as funeral expenses and other practical assistance might be paid at the Attorney-General's discretion (see, for example, s31(2))
Person can only make one claim in relation to his or her injuries	Person can claim in relation to his or her injury, financial loss or grief
Primary (direct) victim to claim when injuries are stabilised	Primary (direct) victim has 3 years from date of criminal offence to claim
Secondary victim has 12 months after the day the close family member (direct victim) passes away	Secondary victim - immediate family member - has 12 months after the date of the death of the primary (direct) victim
	Limitation of time for a person under 18 years at the time of the criminal offence is calculated from the date of becoming of adult-age; otherwise no distinction in law between child and adult victim
Consider circumstances injury occurred - reduction may be made to the sum payable	Consider conduct contributing - reduction may be made to the sum payable (payment should not be made if the applicant was committing an indictable offence at the time he or she was injured)
Financial assistance from a foreign scheme - taken into account	Financial assistance from a foreign scheme or other source - taken into account
Victim should receive a payment commensurate with the actual injury sustained - must not take into account any expenses incurred by the primary victim as a result of the terrorist incident	Victim should receive a payment totalling financial & non-financial losses - Fund is a payer of last resort
Schedule of injuries for primary victims - designed to provide consistency in payments	Formula and scale designed to provide consistency - financial loss paid as first \$2,000 in full and 75% of any additional loss non-financial loss as assessed in comparison to a scale of 0-50 points
Multiple injuries - amount specified in Schedule of injuries is reduced by percentage for additional injuries - most serious / second most serious / third most serious	Multiple injuries are assessed as above but only one payment in total not exceeding \$50,000 is payable for personal (physical & mental) injury
Burns and scarring	Assessed as above but only one payment in total not exceeding \$50,000 is payable for personal (physical & mental) injury

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Impact of terrorist incident on primary victim 16 years or older	Victim, no matter his or her age, must establish a criminal offence happened that cause him or her personal injury, financial loss, or grief if a parent of a child victim (under 18 years) or spouse (including de facto and same-sex)
Assessing the impact of a terrorist incident - impact on the person's life that is separate and distinct from the physical or psychological injury or injuries the primary victim suffers	Assessing the non-financial loss (impact such as pain and suffering) - assessed in comparison to a scale of 0-50 points - however, the loss must be greater than 2 points to be eligible for a payment and each claim is "compared with the worst possible loss that anyone could suffer as the victim of the [criminal offence]"
Impact of a terrorist act on a primary victim under 16 years old	No distinction for ex gratia payments but 'special' provision exists to assess compensation applications by persons under 18 years
Circumstances in which primary victim's injury incurred - to ensure primary victims who contribute to their injuries by their own actions are not eligible for the full	Circumstances in which primary victim's injury incurred are taken into account when the Attorney-General exercises his or her discretion
Circumstances that must be taken into account - failed to take reasonable steps to avoid harm or acted recklessly; travelled to the place where the terrorist incident happened despite travel advice; and other.	Conduct contributing taken into account - Payment should not be made if the primary victim was committing an indictable offence at the time he or she was injured - Victim should mitigate the injury (for example, undertaken treatment as prescribed)
Reduction of sum payable	There is no set scale - each application is assessed on its merit, although 'case law' on compensation cases is persuasive but not binding on the Attorney-General's discretion
Close family member - primary victim's partner, child parent, sibling or legal guardian	Immediate family member - primary victim's spouse or domestic partner, parent (including legal guardian), grandparent, child (including adult child), grandchild (including adult grandchild), brother or sister
Maximum amount payable to secondary victims (close family members) of a deceased primary victim is \$75,000	Each immediate family member can apply for up to the maximum \$50,000, plus a spouse or domestic partner and a parent of a non-child can apply for a payment for grief (maximum of \$10,000) and the person who paid for the funeral expenses can apply for a payment up to a maximum of \$7,000

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Deductions - payments from foreign country	Deductions - payments from other sources (including private insurance) are taken into account
If more than one secondary victim - apportion payments	No apportion payments - Each immediate family member can apply for up to the maximum \$50,000, plus a spouse or domestic partner and a parent of a non-child can apply for a payment for grief (maximum of \$10,000) and the person who paid for the funeral expenses can apply for a payment up to a maximum of \$7,000
Secondary victim has more than one claim - totalling \$75,000	Secondary victim can only make one claim for an ex gratia payment totalling \$50,000, although he or she might be eligible for a 'discretionary payment' for practical assistance but such cannot be paid for the same effect or harm.
Factors not to be taken into account - must not take into account any expenses incurred by the secondary victim as a result of the terrorist incident - payment intended as a helping hand	None stated - Fund payer of last resort
Circumstances in which death occurred - taken into account	Circumstances in which death occurred - taken into account
Circumstances that must be taken into account	Secondary victim must mitigate injury - for example, under-go treatment as prescribed
Reductions - as provided in the relevant sections (by percentage)	Reductions at the Attorney-General's discretion, as per pointers above

There are many similarities in 'purpose' when the federal and State schemes are compared but there are notable differences. As Commissioner, I am most critical of the Principle on apportioning the \$75,000 payable to secondary victims. My criticism is grounded on 'equity' of entitlement and procedural justice.

Payments should be made for the harm done, not the incident itself. Capping the maximum payable to secondary victims by incident rather than treating each victim's application individually is contrary to the rationale for the federal scheme. It also ignores the literature on the impact of terrorism and other mass violence on close family members. Those effects can vary among secondary victims, which the process of apportioning payment does not satisfactorily reflect.

Providing financial assistance to secondary victims as they rebuild their lives is an important priority, which ought to be needs-based. Although the maximum sum payable under Australia's scheme is already set, it is only a proportion of that payable to like victims under the Federal USA scheme. In the aftermath of September 11 attack on the World Trade

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Centre, the Special Master tasked with administering the US Federal Victim Compensation Fund set the payments for pain and suffering in cases of death at \$250,000 per victim plus an additional \$100,000 for a surviving spouse and each surviving dependent. Furthermore, the Fund also compensated victims for economic losses calculated on a formula that took into account the victim's projected lifetime earnings, health and retirement benefits as well as the cost of replacement services, such as the cost of replacing the deceased if he or she was a carer of a child or elder.

A 'Table of Maims' as per the draft Principles is a method of assessing claims that is used in New South Wales for state-funded victim compensation and in other jurisdictions for other purposes (for example, workers' compensations schemes in South Australia and Victoria). Such tables provide consistency in payments but also are inflexible. The Table of Maims deals primarily with the assessment of the injury or impairment rather than measuring impact or effect of such. There is little scope to vary payments based on the 'actual' impact of the harm or the effects based on the 'whole-person' concept case-by-case. For instance, despite similarities in physical and/or psychological injuries suffered by primary victims of the Bali bombings, the impact on their lives varied, so payments varied.

Given the 'Table of Maims' is not precise and serves as an instrument for assessing victims' entitlements, there are likely to be disputes. Thus, there should be a dispute resolution process that is respectful of victims' dignity; and such process should be clearly articulated in information on the scheme. An internal reconsideration has proven, if conducted sensitively, a useful starting point. Conciliation and arbitration might then be appropriate, with judicial review as a last resort. A process for review exists in other state-funded compensation schemes. New South Wales victim compensation (NSW Victim Services (on-line) 2012) and jurisdictions with a 'Table of Maims' for workers' compensation (Safe Work Australia 2009) have dispute resolution processes.

Finally, victims should be assisted in lodging applications. Perhaps, the Commonwealth could consult the States and Territories on how this might be done. New South Wales has an on-line application form. Australian Capital Territory and Victoria provide for reimbursement of legal fees, although the Territory scheme caps the sum payable. South Australia's scheme is court-based but the emphasis is on a negotiated settlement, and solicitors, who are paid a set fee by the State, assist victims who are eligible. My experiences as the Commissioner who consults public officials and public agencies on victims' grievances indicates that injured primary victims and grieving secondary victims appreciate help in accessing services, such as applying for lump-sum payments (that is compensation or financial assistance).

Concluding comment

The state has a responsibility (it seems to me) to pay (limited) compensation to crime victims, including victims of terrorism. Such compensation is critical to helping individual victims rebuild their lives and, therefore, should be needs based. Compensating victims is in the public interest. While compensation is an important ingredient in a comprehensive victim assistance programme, it cannot address all that victims of terrorism suffer.

A properly devised, adequately funded and victim-needs based state-funded compensation scheme should be founded on the eight core principles stated above.

The Principles in relation to the Commonwealth Social Security (Australian Victim of Terrorism Payment) should be designed and applied in a manner that serves the needs of primary and secondary victims of terrorism. These victims should be at the centre of the scheme and their needs taken seriously. Given the 'fluidity' and scope for interpretation in

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the proposed principles, the success of the scheme will also rest on the benevolence of those tasked to administer it. Too often, history shows, alas, that the actions of public officials stand in sharp contrast to the intention to respond to the impact of crime and the complexities of trauma.

s22(1)(a)(ii)



Michael O'Connell | Commissioner
Commissioner for Victims' Rights
South Australia

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ADDENDUM A – EX GRATIA PAYMENTS - SUMS PAID

Case	Sum Paid
1	\$1,000
2	\$2,000
3	\$3,000
4	\$4,000
5	\$4,500
6	\$8,000
7	\$8,000
8	\$9,000
9	\$9,000
10	\$9,647
11	\$9,721
12	\$10,000
13	\$11,000
14	\$11,000
15	\$13,000
16	\$14,000
17	\$16,000
18	\$16,142.50
19	\$19,213
20	\$25,000
21	\$25,000
22	\$30,000
23	\$31,000
24	\$36,000
25	\$40,000
26	\$50,000
27	\$50,000
28	\$50,000
29	\$50,000
30	\$50,000
31	\$50,000
32	\$50,000
33	\$50,000
34	\$50,000
35	\$50,000
36	\$50,000
37	\$50,000
38	\$50,000
39	\$50,000
40	\$50,000
TOTAL	\$1,115,224

Explanatory Notes:

One victim-applicant was refused a payment because he or she did not reside in South Australia, although he or she is a close relative of a deceased victim.

Two applicants did not finalise their applications.

Endnotes:

ⁱ Friday 15th August 2003 - Premier is lobbying the Prime Minister for compensation for Bali bombing victims. Mike Rann is planning to lobby the Prime Minister for compensation for the Bali bombing victims and their families. Premier Rann says he believes it's the right thing to do:

(MIX 11am) "I just really want to ask the Prime Minister in a positive way, to be as generous as possible. We're doing it in South Australia. Apparently we're the only State in the nation to do so."

(891ABC 12noon) "South Australian victim's families and those who were hurt in Bali can apply under the South Australian scheme. We're doing it because we're a generous hearted State. We appeal to the Commonwealth Government to prove that we're a generous hearted nation."

(5DN 12noon) "So I just really want to ask the Prime Minister in a positive way to be as generous as possible. We're doing it in South Australia, apparently we're the only state in the nation to do so."

(891ABC 1pm) "Rather than going on to the attack what I would like to do is to in a responsible way ask the Prime Minister to reconsider and to do the right thing, the decent thing for those victims of the Bali tragedy. We've got to remember the enormous on going enduring grief that these people have gone through."

(5DN 1pm) "It's not a lot of money. Those hurt in the bombing, the families of those killed will be able to apply for up to \$50,000, but it's been vetoed by the Federal Government. I just think it's about doing the right thing."

ⁱⁱ The South Australia Attorney-General invited South Australian victims of the Bali bombings to claim compensation from the state's victims of crime fund. This followed a decision after the federal government failed to provide compensation to the victims and to the families of the 88 Australians killed in the Bali bombings.

ⁱⁱⁱ Vanscoy and Even (1999) suggest that victims' rights are not rights; however, crime victim rights and remedies have increased exponentially across developed nations in particular, and are emerging in developing nations.

^{iv} See also V Morabito, 'Compensation orders against offenders - An Australian perspective' (2000) *Singapore Journal of International & Comparative Law* 4, 59-114; and, J Miles, 'The Role of the Victim in the Criminal Process: Fairness to the Victim and Fairness to the Accused' (1995) 19 *Criminal Law Journal* 193, 201.

s22(1)(a)(ii)

From: [redacted]
Sent: Thursday, 24 January 2013 4:02 pm
To: McDonald, Geoff A
Subject: Reply to A.V.O.T. letter

Dear Geoff,

Reference 12/622-02

I am replying to your letter of 1st December, 2012, I have been reading through your documents, and found them to be very comprehensive indeed, your listing of injuries incurred during such an attack would appear to cover physical and mental injuries, [redacted]

Would you mind if I mention something, I believe is lacking?

The impact of this [redacted] was also pretty life changing for the mums and dads of the injured, [redacted] I think about what happened to them and the impact this had [redacted]

[redacted] I have sometimes wondered if a few sessions of counselling would have helped? [redacted]

Would the government allow counselling for close family? It may already be considered, but I don't know

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of it, ^{b47F} [REDACTED]

Thank you, for sending me your documents, I shall re-read them, and email again, I don't know how to make a submission.

Yours sincerely,

^{b47F} [REDACTED]

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under the *Freedom of Information Act 1982*



**Government
of South Australia**

**Commissioner for
Victims' Rights**

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Reference
12/02919
LETTERSUBMISSION-COMPTERRORISMVICTIMS

Your Reference:
12/622-02

5 February 2013

Security Law Branch
Attorney-General's Department
3 - 5 National Circuit
BARTON ACT 2600

Attention: s22(1)(a)(ii)

Dear Geoff McDonald, First Assistant Secretary,

Re Financial assistance for Australian victims of overseas terrorism

I refer to the invitation seeking my comment on the draft Principles in relation to financial assistance for Australian victims of overseas terrorism.

Please note that I provide this letter as comments in addition to my submission dated 4 January 2013. I also reiterate that the comments are mine, as Commissioner for Victims' Rights.

Medico-legal reports & other disbursements

It is unclear whether the victim-applicant will be entitled to reimbursement for the attainment of medico-legal evidence (such as medical notes and expert reports) to substantiate the harm (injury) resulting from the terrorist incident.

In South Australia, over \$1 million is reimbursed annually to victims' lawyers to cover expenses such as medico-legal reports. This sum is not taken to be compensation or financial assistance for harm but paid in addition.

If victims of terrorism are going to be required to attain legal-medico evidence then provision for reimbursement (even payment in advance in some situations) will be appropriate.

Evidence gathering

In one case involving the death of a road crash victim in a mainland Europe country, all reports (except the covering letter) were provided to the next-of-kin in the non-English language. The translation cost was too expensive for the victim's family — thankfully, a Law

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Professor who spoke the language who is a colleague provided a 12 or so page summary of the evidence to help the victim's family. Yet, in another case involving a death in a south-east Asian country, I have incurred translating cost of over \$2,000 to-date to have an autopsy report translated and I will soon incur the cost for translating a police report on the incident.

In several cases, where I have assisted victims' next-of-kin to attain visas to travel to Australia from other countries to deal with practical matters such as attending funerals or arranging for deceased persons' bodies to be transported to home countries, I have incurred costs in the thousands of dollars. I imagine that victim-applicants would incur like sums in dealings with overseas countries.

Thus, a clear, understandable policy and procedure needs to exist on what the applicant must provide to verify the harm and other matters pertinent to his or her application.

Lawyers' fees

Although the Commonwealth scheme is not intended to be statutory compensation, I still foresee the need to help victims complete applications. Provision for lawyers' fees at a prescribed (set) rate would be helpful. This would also be consistent with the entitlement allowed in most state-based victim (statutory) compensation.

For a number of reasons, victims might have difficulties in understanding information provided in standard, written form (whether hard-copy or e-copy). The victim's maturity, intellectual and emotional capacities, literacy levels and other factors (such as disability) may hinder the victim understanding the information, applications process and so on.

Commonwealth-State-Territory cooperation

Further, assistance to victims might be enhanced by the Commonwealth forging agreements with the States and Territories on local staff helping victims complete applications. The aim should be to ensure that the wide ranging needs of victims of terrorism, which cut across jurisdictional responsibilities and services, are respected and met.

Consideration should be given to the development of protocols to ensure that victims have access to a suite of support mechanisms which provide information and advice, emotional and psychological support and practical assistance.

State and Territory based victim support services have acquired over several decades a knowledge base and skills that the Commonwealth might 'tap into'

Existing services

I assume that the Commonwealth will continue to provide services as currently available to victims of crime overseas in general and victims of terrorism overseas in particular. Emergency help, such as provided by consular staff, is integral to the protection of victims' rights and addressing practical, social, medical and psychological needs.

Existing responses comprise mechanisms to identifying victims' needs, keeping them informed of proceedings (for instance) and providing for safety concerns as well as repatriation. The new scheme should improve the general environment for protecting rights and addressing needs.

- 3 -

Privacy & information sharing

Centre-link and the Red Cross played prominent roles in the aftermath of the Bali bombings, among other overseas terrorist incidents. Privacy law inhibited exchange of information when 'we' were trying to help victims dealing with those agencies and my staff and I. For example, I sent an open letter sent to all persons registered as victims of the first Bali bombings to alert them to the provision on ex gratia payments as compensation for harm done. I wrote and prepared the letter then gave it to Red Cross staff who labelled envelopes and sent them. Centre-link social work staff were helping most victims as well, so a mechanism had to be developed to allow for case-based conversations.

It seems to me that support, whether provided by government agencies and/or non-government organisations, should be available from the moment a terrorist incident takes place as well as thereafter. Support should be provided through a variety of mechanisms, without excessive formalities. Such formalities should enable referral to victim support, including financial assistance.

Hopefully, my further comments are helpful. We know that after a terrorist incident those victimised can be overwhelmed, frightened, untrusting and feeling that what has happened is incredibly unfair. There are many things that we cannot explain (as citizens, as public officials and as the Government), which can sometimes make the situation for victims worse. The aim should be to integrate the financial assistance scheme into a comprehensive package of victim support — delivered by a variety of government agencies and non-government organisations — that demonstrate the 'we care' and 'we are ready to give a helping hand'. Thus, all reasonable steps should be taken to avoid establishing mechanisms that re-victimise victims resulting in a 'second injury'.

Yours faithfully,

s22(1)(a)(ii)



Michael O'Connell | Commissioner
Commissioner for Victims' Rights
South Australia



Department of Justice

Community Operations and Victims Support Agency

s22(1)(a)(ii)

RECEIVED

13 FEB 2013

First Assistant Secretary
-SCID NSLFD

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7 February 2013

Our ref: CD/13/47772

Mr Geoff McDonald
First Assistant Secretary
National Security Law and Policy
Division
Attorney-General's Department
Robert Garran Offices
National Circuit
BARTON ACT 2600

Dear Mr McDonald

Financial assistance for Australian victims of overseas terrorism

Thank you for your recent letter, inviting this agency to participate in the consultation process to develop principles which will assist the decision maker to administer the financial assistance scheme for Australian victims of terrorism.

We were very pleased to see the Government enact this legislation to ensure that in the event of any future terrorist acts, Australian victims receive a consistent and positive response which is not dependent upon the state or territory in which they reside. As the Department of Justice agency responsible for victims of crime in Victoria, we would welcome the opportunity to provide input to the development of the scheme and to participate in any consultative mechanism.

As indicated above, we very much welcome the legislation which appears to draw on the NSW Schedule of Injuries. We note that the maximum sum of \$75,000 is the same for related victims in the event of a death as it is for primary victims. In Victoria, the pool of financial assistance for related victims is higher than for primary victims because it needs to meet the needs of multiple family members and dependents. Whilst we understand financial assistance is not intended to "compensate" family members for the death of a loved one, but to provide a "helping hand", a young family with dependent children may need considerable help if the breadwinner is killed by an act of terrorism.

It also seems to us that there may be a need for an increased level of flexibility in balancing the assessment criteria, which are necessarily subjective, with the weightings which are absolute. Two areas where this could apply would be in relation to apportioning payments among secondary victims (Section 19) and assessing the impact of the act on primary victims 16 years and over (Schedule 2).



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apportioning the amounts to be awarded to respective secondary victims, the process needs to allow the particular needs and circumstances of each victim to be taken into account. Similarly, in assessing the impact of a terrorist act on primary victims, the harm suffered and the impact experienced by individual victims can take many and varied forms which are not easily categorised.

It was not clear to us from the documentation provided who or which body within the Department of Human Services will have responsibility for determining awards and what, if any, appeal processes will be established. These would certainly be important considerations.

Thank you again for the opportunity to provide input to the principles underpinning this important legislation.

Yours sincerely

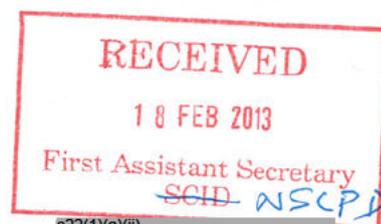
s22(1)(a)(ii)

Clare Morton
Director
Community Operations & Strategy/Victims Support Agency

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under the *Freedom of Information Act 1982*

**ACT**
Government

Justice and Community Safety



s22(1)(a)(ii)

Mr Geoff McDonald
National Security Law and Policy Division
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

Dear Mr McDonald

Financial assistance for Australian victims of overseas terrorism

I write in response to your letter of 12 December 2012 inviting me to make a submission to the Australian Government's consultation process on the *Social Security Amendment (Supporting Australian Victims of Terrorism Overseas) Act 2012* (the Act).

I understand that the Act establishes a scheme to provide financial assistance to Australians who are victims of a declared overseas terrorist act. The Act also contains principles for determining the appropriate amount of compensation payable to primary victims and secondary victims of overseas terrorism.

The ACT has its own criminal injury compensation scheme administered by the *Victims of Crime (Financial Assistance) Act 1983*, which compensates victims for injuries that occur within the ACT. The Australian Government scheme will introduce a further layer of protection for members of the community who have been affected by these terrible acts of violence.

Yours sincerely

s22(1)(a)(ii)

Kathy Leigh
Director-General

13 February 2013

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under the Freedom of Information Act 1982



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13/78

Mr Geoff McDonald
First Assistant Secretary
National Security Law and Policy Division
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3-5 National Circuit
BARTON ACT 2600

Dear Mr McDonald

Financial assistance for Australian victims of overseas terrorism

Thank you for the opportunity to make a submission on the proposed draft *Social Security (Australian Victim of Terrorism Overseas Payment) Principle 2012* (the Principles). The AMA submission specifically addresses the schedule of injuries contained in Schedule 1 - Australian Victim of Terrorism Overseas Payment Schedule of Injuries to the Principles.

The AMA supports and recognises the scheme is to provide primary and secondary victims financial support for the pain and suffering following the event of an overseas terrorist act where the Prime Minister declares the incident is one to which the scheme applies.

The AMA believes the following injuries should be considered for inclusion in Schedule 1 of the Principles:

- sexual assault injuries including both physical and psychological trauma and its consequences, i.e. pregnancy, termination of pregnancy, and where termination is not an option due to religious beliefs, loss of ability to carry pregnancy, reconstruction of breast/s where there has been slashing/cutting of the breast/s, and rectal and bowel injuries from acts of sodomy;
- pelvic fracture;
- detached retina – operable and inoperable;
- cancer developed from exposure to radiation as a result of terrorist attacks using nuclear, biological and chemical weapons; and
- injury to internal organs, e.g. liver, pancreas, great vessel, bladder, ureter/urethra, bowel, laryngeal and respiratory system.

D13/427

The AMA notes that the *Social Security Act 1991* and the Principles do not provide for indexation of the amounts specified in Schedule 1. These amounts should be indexed annually to ensure the scheme remains contemporaneous.

Yours sincerely

s22(1)(a)(ii)

Dr Steve Hambleton
President

13 February 2013

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D13/427



Reference:
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Chief Executive

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14 February 2013

Mr Geoff McDonald
 First Assistant Secretary
 Security Law Branch
 Attorney-General's Department
 3-5 National Circuit
 BARTON ACT 2600

Dear Mr McDonald

Re: Financial Assistance for Australian Victims of Overseas Terrorism

I refer to your correspondence dated 13 December 2012, seeking comment on the draft Principles relating to financial assistance for Australian victims of overseas terrorism.

The South Australian Attorney-General's Department is supportive of the financial assistance scheme, which will complement South Australia's existing criminal compensation scheme and is a positive step forward in addressing the rights of victims.

On review of the draft Principles, the following comments are provided:

- It is recommended that the Principles address the absence of an appeal mechanism for victims (either primary or secondary) who are denied any financial assistance or equally, for those who are aggrieved with the sum awarded. This could simply be addressed through an internal review or an external review conducted by a third party.
- It is noted that where there is one or more secondary victims, the amount payable remains capped at \$75,000, irrespective of the number of eligible close family members. It could be argued that where there is the greatest need for financial assistance (in larger families) there is no flexibility to address this inequality as section 1061PAE of the Act prohibits the sum of all payments to secondary victims exceeding \$75,000 irrespective of the number of eligible claimants. However, this issue appears to be beyond the scope of the draft Principles and may require legislative amendment of the Act.

By contrast in South Australia, each immediate family member can make separate applications up to a maximum of \$50,000 in addition to other payments such as grief and funeral expenses. This results in a more equitable approach.

- The level of financial assistance under the scheme is capped at \$75,000 and there may be cases where the threshold limit of \$75,000 is not reached, yet significant costs such as medico-legal reports are incurred. Whether the draft Principles can address these costs depends on the interpretation of s1061PAH which states that "for the purposes of

- 2 -

any law of the Commonwealth, a payment of AVTOP is not to be treated as being a payment of compensation or damages."

If reimbursement for medico-legal reports, disbursements and costs associated with the translation of documents constitutes compensation or damages, the Act expressly prohibits this and so in turn, it is not able to be remedied by the draft Principles. If not, there are strong reasons for such matters to be taken into account by the Secretary administering the financial assistance.

I note that a separate submission has also been provided by the South Australian Commissioner for Victims' Rights, who is an independent statutory officer. I understand that, as part of his submission, the Commissioner has provided information on the South Australian scheme administered pursuant to the *Victims of Crime Act 2001*.

If you require any further information, please do not hesitate to contact Mr David Mazzone, Director, Office of the Chief Executive on s22(1)(a)(ii)

Yours sincerely

s22(1)(a)(ii)

Rick Persse
Chief Executive
Attorney-General's Department



Victims Services Attorney General & Justice

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Security Law Branch
Attorney General's Department
3/5 National Circuit
BARTON ACT 2600

Your Ref: 12/622-02

By email: AVTOP.Principles@ag.gov.au

Dear Mr McDonald

Financial assistance for Australian victims of overseas terrorism

I write in reply to your correspondence dated 11 December 2012 regarding financial assistance for Australian victims of overseas terrorism.

Thank you for the opportunity to comment on the Australian Victims of Overseas Terrorism Payment (AVTOP) draft Principles and accompanying material. I hope that the feedback below is of assistance.

Expenses and disbursements

I note that the Principles emphasise the total maximum amount of AVTOP as \$75,000. Under paragraph 6(a), the primary victim must suffer injuries that are a direct result of the declared act of overseas terrorism. Section 6 of the AVTOP draft Principles sets out the process for determining the amount of AVTOP. This omits mention of payments for expenses, such as medical expenses, or disbursements, such as travel allowances. The *Social Security Amendment (Supporting Australian Victims of Terrorism Overseas) Act 2012* ('the Act') and draft Principles are focussed upon compensation for injuries as listed in Schedule 1 of the Act, however, other significant expenses occur following an act of violence.

Section 4 of the Principles notes that a person eligible for an AVTOP may qualify for other forms of assistance to help them in their recovery from the act of violence. It appears unclear if expenses or disbursements, as mentioned above, would be covered under the schemes mentioned.

Augmentation of existing services

The AVTOP is an important step in provision of service, at the federal level, to victims of an overseas terrorism act. It appears unclear if and to what extent the AVTOP will overlap with existing federally funded arrangements that are provided to victims of overseas terrorism and other violent acts. Further clarification around the

augmentation of existing services may be of assistance to those service providers who work in this area and to victims.

Clarification of State agencies involvement

As noted in the Explanatory Statement, some of the content of the draft Principles is drawn from the State and Territory criminal injuries compensation experience. Guidelines that detail the level of involvement of State agencies, such as Victims Services in NSW, may be of assistance. For example, given the standing of State and Territory agencies, eligible victims of an overseas terrorism act are likely to contact state agencies seeking information regarding an AVTOP. Protocols around referral and assistance to state support services that administer other compensation schemes may be required. This may be a matter contemplated by the Commonwealth, but it is not explicit in materials provided.

Review of decision

The Act and the draft Principles do not set out a review process from the decisions made under this Scheme. It is unclear if intention is that an unsuccessful or aggrieved applicant has to appeal the decision to a Court or there is no provision to review and/or appeal?

Thank you again for the opportunity to provide comment on this scheme and the draft Principles. If any further assistance is required, please do not hesitate to contact me on (02) s22(1)(a)(ii)

Yours faithfully

s22(1)(a)(ii)

Director
Victims Services



VICTIM
SUPPORT
SERVICE
INCORPORATED

Victim Support Service Inc

Australian Victims of Overseas Terrorism Payment Principle: a Submission to the Attorney-General's Department

Social Security Amendment (Supporting Australian Victims
of Terrorism Overseas) Act 2012

Anthony Waters, Chief Executive
Phone: s22(1)(a)(ii)

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**VICTIM
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INCORPORATED

*Assisting
victims of crime
since 1979*

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*Member of
Victim Support
Australia*

15 February 2013

First Assistant Secretary
Security Law Branch
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

Dear First Assistant Secretary,

RE: Financial assistance for Australian victims of overseas terrorism

Victim Support Service Inc welcomes the opportunity to participate in the consultation process concerning financial assistance for Australian victims of overseas terrorism.

Victim Support Service Inc is the peak victim advocacy body and non-government service provider for victims of crime in South Australia. As such, we have a longstanding and strong interest in ensuring that the Australian Parliament enacts comprehensive and robust legislation to underpin a co-ordinated national response to providing Australian victims of overseas terrorism with financial assistance.

Our submission will commence by providing an overview of the evolution of Victim Support Service Inc as the peak victim advocacy body in South Australia before providing some general comments and moving to specifically address our concerns with the proposed Social Security (Australian Victims of Terrorism Overseas Payment) Principle 2012.

Please feel free to contact me should you wish to clarify any of the content of our submission or seek additional feedback as the consultation process progresses.

Yours sincerely
Victim Support Service Inc

s22(1)(a)(ii)

Tony Waters
Chief Executive

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Our organisation

Victim Support Service Inc was established in 1979 in response to the lack of systemic support and advocacy for victims of crime. Victim Support Service Inc has since grown to eight offices across South Australia and continues to rely on the commitment of its highly valued staff and volunteers to provide a state-wide support service for victims. Our services include: counselling; providing information about victim's rights and services; engaging with communities; and advocating on behalf of victims.

Our vision is an Australia united in a commitment to safer communities through crime prevention, victim awareness and addressing the impact of crime. Our mission is to champion and promote our vision, and to work in partnership with our clients, communities and service providers to enhance community resilience, improve the well-being of people affected by crime and promote victims' rights.

As the peak victim-orientated organisation in South Australia we welcome the opportunity to participate in the consultation process in developing principles to assist the Department of Human Services in assessing claims for payments under the *Social Security (Australian Victim of Terrorism Overseas Payment) Principle 2012*.

General Comments

Victim Support Service Inc supports a national scheme to provide Australian victims of overseas terrorism with financial assistance in the aftermath of a declared terrorist incident. We have a long-standing role in advocating for Victims of Crime Compensation (VOCC), previously known as Criminal Injuries Compensation, in South Australia. VOCC is state-paid compensation to provide immediate victims of a criminal offence some recompense for injury sustained as the result of that crime.

In regard to the AVTOP Principle, we are seeking clarification as to which party is liable for the costs associated with the medical assessments necessary to determine the total AVTOP amount payable to a claimant. Should the victim of a declared terrorist incident be considered liable for such costs by the Principle, we recommend the victim is reimbursed should their AVTOP claim be successful or not. In addition, we are seeking clarification in regard to the nature of an AVTOP payment as a tax liability. We argue against a claimant, successful or not in their claim, being liable for the cost of any medical assessment in pursuit of such a claim. This would require that all claims be vetted to exclude frivolous and vexatious claims.

Another item for comment relates to the time period in which claims can be made from the date of declaration. We propose the time period put forward in the Principle be extended from two (2) years to three (3) years after the date of a terrorist incident overseas which has been declared as such by the Prime Minister.

We would also like to take this opportunity to recommend any out-of-pocket expenses associated with a deceased person, such as repatriation or funeral arrangements, be considered as separately claimable items to the compensation payment itself (unless otherwise covered by the primary victim's insurance).

Key Points and Recommendations

Division 2.1, Section 6(d) “Determining amount of AVTOP

The Principle outlines the circumstances in which the amount payable to a victim of overseas terrorism is mitigated by any financial assistance from a foreign country. However, the Principle does not include financial assistance to such a victim from an Australian jurisdiction, in particular, one of the Australian states.

Recommendation

We recommend the Principle explicitly outlines the effect of receiving financial assistance from an Australian jurisdiction on the total AVTOP amount payable to a primary victim claimant and a secondary victim claimant.

Division 2.1, Section 6(Note for paragraph (d)) “Determining amount of AVTOP”

There is no website provided for further details of foreign financial assistance in relation to the terrorist act.

Recommendation

We recommend the website address for further details of foreign financial assistance in relation to a terrorist act is forwarded to entities participating in the Principle consultation process and included in the Principle itself.

Division 2.3 “Impact of terrorist act on primary victim 16 years or older”

In South Australia, the *Age of Majority (Reduction) Act 1971* “confer[s] upon persons who have attained the age of eighteen years the juristic competence and capacity of full age and to confer and impose the attendant rights, privileges, responsibilities and obligations”¹.

Recommendation

We recommend the minimum age of a primary victim be amended to 18 years or older.

Division 2.5, Section 3(a) “Reduction of AVTOP”

Certain professions do not fit criteria (a) i or (a) ii. In particular, journalism requires such professionals to ignore ‘Do not travel’ warnings and spend time in foreign countries where there is significant political or social unrest.

Recommendation

We recommend Division 2.5, Section 3(a) be amended to include certain professions, such as journalism, which do not fit the criteria specified in (a) i or (a) ii.

¹ *Age of Majority (Reduction) Act 1971*

Division 2.5, Section 14(2) “Reduction of AVTOP”

The example used in Division 2.5, Section 14(2) of the Principle refers to a victim not taking “reasonable precaution when travelling in an area of known terrorist activity”. The Principle fails to define actions which constitute “reasonable precaution” in an area of known terrorist activity.

Recommendation

We recommend the Principle be amended to define the term “reasonable precaution” with specific reference to the example provided in Division 2.5, Section 14(2).

Division 3.3 Section 19(1) “Apportioning payments among secondary victims”

We strongly object to the apportioning of payments where there is more than one secondary victim claimant. The Principle proposes the portion of total AVTOP payable is shared equally among children if there is more than one child. In cases where there is only one child and no other siblings, 100% of the total AVTPO payable is granted to an only child. This significantly disadvantages children with siblings who experience the same trauma and loss from losing a parent as would a child without siblings. Under the proposed Principle, children with siblings will unfairly receive a smaller portion of a payment than children without siblings.

Recommendation

We strongly recommend the Principle is amended to include each secondary victim who has made a claim in relation to a deceased person as eligible for 100% of the maximum AVTOP payable. We are also in strong favour of a separate category for child claimants who are dependants of a deceased parent(s). Such a category may be called “Dependant of Deceased” as this would apply to a child dependant or a disabled adult dependant.

This would allow for multiple claims against one deceased person by close family members. Anything less fails to acknowledge the trauma and loss experienced by each secondary victim.

Our reference: 2108725
Your reference: 12/622-02



**Queensland
Government**

15 FEB 2013

Office of the
Director-General

Department of
Justice and Attorney-General

Security Law Branch
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

AVTOP.Principles@ag.gov.au

Dear Sir/Madam

**Re: Comments on Draft Principles - Australian Government Social Security
(Australian Victim of Terrorism Overseas Payment) Principle 2012**

Thank you for your letter of 13 December 2012 seeking comments on draft Principles regarding the provision of financial assistance for Australian victims of overseas terrorism.

The Queensland Department of Justice and Attorney-General wishes to provide the following comments in relation to the draft Principles for your consideration.

Background Information on support for victims of violent crime in Queensland

The *Victims of Crime Assistance Act 2009* (VOCAA) commenced on 1 December, 2009, following a state-wide government-led review into the then-criminal injuries compensation schemes operating under the *Criminal Offence Victims Act 1995* (COVA) and the Criminal Code.

The review recommended a financial assistance model to replace the criminal injuries compensation scheme under the now repealed COVA and the Code as these were found to be overly legalistic and lengthy processes which for most applicants involved action through the District or Supreme Courts.

VOCAA also sets out the Fundamental Principles of Justice for Victims of Crime which explain the treatment victims have the right to receive from a government agency. VOCAA also enables a victim to make a complaint about a government entity if they believe the treatment they have received is inconsistent with the principles.

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Victim Assist Queensland was established within the Queensland Department of Justice and Attorney-General to administer VOCAA and provide victims of violent crime with timely access to support services and financial assistance. Victim Assist Queensland acts as a central point to access information, improve service coordination, training and policy development for victims of crime in Queensland.

The Queensland Department of Justice and Attorney-General (the Department) supports the introduction of financial assistance for Australian victims of overseas terrorism.

General Comments on the introduction of financial assistance for Australian victims of overseas terrorism

The Department notes that in contrast to the Queensland Financial Assistance Scheme under VOCAA, the Australian Victim of Terrorism Overseas Payment (AVTOP) is not intended to be an immediate payment to victims and that the amount of assistance is based on the nature of the victim's injury and impact of the terrorist act on the victim's life. The Department understands that the AVTOP complements other types of immediate assistance provided by the Government to victims of overseas terrorism.

The amounts payable under the AVTOP are comparable to amounts under the Queensland scheme for victims of violent crime. The maximum amount of assistance for a primary victim (\$75,000) is similar to the maximum amount of assistance available under VOCAA and the repealed COVA, while the maximum amount of assistance under the AVTOP for a secondary victim (close family member of a person who has died as a direct result of an incident (\$75,000)) is higher than the maximum available for a close family member of a victim who has died due to an act of violence in Queensland under VOCAA (\$50,000).

The Department acknowledges that the AVTOP has been drafted to minimise the use of subjectivity and discretion, and provide clear guidance and consistency to decision-makers (explanatory statement, page 1). The schedule of injuries contained in the schedule 1 is similar to the criminal injury compensation scheme under the now repealed COVA scheme. While the schedule of injuries may assist in determination of amounts not related to other types of assistance, the Department's experience under the repealed COVA indicates that victims can have difficulty in providing information and evidence of their injuries. For example, many applicants under the repealed COVA scheme sought expensive medico-legal reports in relation to their injuries which were not claimable and reduced the benefit of the compensation payment to them. It may also be difficult to obtain medical information depending on the location of the incident and immediate treatment. This issue could be addressed by providing guidelines on the type of information required to support an application.

It may also be appropriate to consider some provision for assistance in making an application. For example, under VOCAA an applicant may apply for a maximum of \$500, in addition to financial assistance, for legal assistance in making the application.

Guiding principles re AVTOP legislation (specific feedback to sections contained within draft legislation)

Sections 13 and 15 – Circumstances that must be taken into account and reduction of AVTOP

- The Department acknowledges the AVTOP's intention to encourage individuals to take some degree of personal care including considering official warnings. However, it may be difficult to determine when the travel commenced. If a person is travelling to a number of countries over a period of time, they may be unable to access information and travel advice before travelling to a location where a recent travel advice has been issued.
- Many Australians, visit their immediate family (particularly close relatives with whom they have had little contact) overseas as a significant commitment to their family, culture and identity. Such travel would not appear to come under travel for a "humanitarian" purpose under the Principles. Such travel may also be undertaken to a place where a travel warning is in place without acting recklessly. While the Principles would appear to provide that the Secretary may have regard to such factors when considering a reduction, the development of broader guidelines in relation to when reductions are appropriate may also be useful.
- Travel warnings may pertain to a particular region within a country and a person can take steps to maximise their security while in the country by avoiding the region. However, they may become the victim of a terrorist incident in the country despite those steps. The Department assumes that the use of the word "place" in these provisions would mean that a person in such circumstances would not receive a reduction.

Section 19 – Apportioning payments among secondary victims

- The financial assistance scheme in Queensland recognises a number of close family members may be impacted upon through the death of a loved one as a consequence of criminal acts, and provides for a pool of assistance of \$100,000 to eligible related victims of crime (the surviving family members of a primary victim who dies through an act of violence).
- The Department notes that under section 19 of the draft principles, the portion of total assistance payable for secondary victims changes according to the combination and nature of the relationship (parent, partner, child, sibling) of the applicants to the primary victim. It may be problematic to identify all possible combinations of secondary victims and to make assumptions about the relative weight that each type of family relationship should be given (in terms of payments to be made) as is currently contemplated in section 19. The Queensland VOCAA scheme overcomes these problems by providing that if there are two or more related victims of a person who has died, the government assessor must decide the proportions of the assistance limits that are granted to each victim on the basis of their relative needs rather than the status of the related victim as a parent, a child etcetera (VOCAA, section 86(4)). The

approach taken under VOCAA has the advantage of building flexibility into the way payments are administered, and ensures that the needs of victims can be assessed on an individualised basis.

Section 15: Determining amount of AVTOP

- The Department supports consideration being given to any other compensation or assistance amounts provided to the victim as a result of the act of terrorism.
- However, given the lack of control the Australian government has over compensation schemes and benefits in other jurisdictions, particularly around timeframes, it is important to ensure that victims of terrorism are not left with uncompensated injuries and expenses for excessive timeframes while awaiting outcomes from other schemes.

Other considerations

Time to apply

- The Department notes that related victims under the AVTOP have 12 months and primary victims two years to apply for financial assistance. The Queensland scheme provides a time period of three years in which to apply for assistance or if the victim is a child, three years from the time the victim turns 18. A three year time period may align more closely with other State and Territory schemes.

Child Victims

- The Department recommends that further consideration be given to specific provisions regarding child victims, similar to that under the Queensland scheme, including extended time periods for making an application as well as financial assistance to support children in making an application, such as to access legal advice.
- While the Department notes under section 27B of the *Social Security (Administration) Act 1999*, there is discretion to allow for late lodgment of a claim for an AVTOP where there are special circumstances, this does not recognise the level of support that children in most cases will require to make a claim. A lack of adequate support and advice may prove a significant barrier to children accessing financial assistance even where they are entitled to such assistance. Secondary child victims may be particularly disadvantaged where they do not have the support or maturity to make a claim at the same time as other victims. This is because once an AVTOP is paid out to a family member or members of a deceased victim, an AVTOP is not payable to any other family members who might later make a claim (*Social Security Act 1991*, section 1061PAC). As an example, children from a previous relationship of a deceased victim may not be supported to make a claim and may be cut off from receiving assistance where other secondary victims have accessed the AVTOP.

The needs of victims of crime and victim rights

- Financial assistance is one element towards meeting the needs of victims of crime which for victims of personal violence (including terrorist acts) are varied. Following an act of violence, victims are largely seeking accurate and timely information, and referrals to relevant agencies.
- The *Victims of Crime Assistance Act (2009)* contains nine Fundamental Principles of Justice for Victims of Crime in Queensland (justice principles). Each Australian State and Territory upholds its own justice principles or charter of victims rights which outline the needs of victims and attempts to set a benchmark of service delivery (particularly from government agencies) when working with victims. These justice principles include the requirement for agencies to treat victims with dignity and respect and be responsive to their needs, that victims have the right to information on available services to assist them, that victims should (where practicable) be given information on the investigation and prosecution of the offender and the right to privacy and confidentiality. The Department recognises the value for victims in the establishment of such justice principles/charters, and notes the value in including some form of victim rights instrument within relevant legislation. These justice principles reinforce the need for processes and services which are coordinated and responsive to the needs of victims of violent acts.
- Along side the development of the AVTOP principles it is important to consider how Australian victims of overseas terrorism can connect with relevant support agencies which are best placed within the community to meet their needs. Relevant State based agencies such as Victim Assist Queensland provide information and referral to services in addition to financial assistance and compensation. In the absence of a Commonwealth Agency, it is likely that State agencies will receive enquiries from victims of overseas terrorism. Given this is a Commonwealth responsibility, it would be appropriate to consider what forms of information and assistance the Commonwealth can provide to State agencies to support them, to give accurate and timely information to victims of overseas terrorism and to ensure that victims can access available support services in their community.

I trust this information is of assistance. Should your officers have any queries in relation to this matter, ^{s22(1)(a)(ii)} [redacted] Director, Victim Assist Queensland, would be pleased to assist. ^{s22(1)(a)(ii)} [redacted] can be contacted via email at: ^{s22(1)(a)(ii)} [redacted]@justice.qld.gov.au, or on telephone (07) ^{s22(1)(a)(ii)} [redacted]

Yours sincerely

^{s22(1)(a)(ii)} [redacted]

John Sosso
Director-General

Security Law Branch
Attorney-General's Department
3-5 National Circuit
Barton ACT 2600
AVTOP.Principles@ag.gov.au

Financial Assistance for Australian Victims of overseas terrorism

Thank you for the opportunity to comment on the draft *Social Security (Australian Victim of Terrorism Overseas Payment) Principle 2012*.

The Mental Health Council of Australia (MHCA) is the peak, national organisation representing and promoting the interests of the Australian non-government mental health sector. The membership of the MHCA includes national organisations of mental health services, consumers, carers, special needs groups, clinical service providers, community and private mental health service providers, national research institutions and state/territory peak bodies.

The MHCA is pleased that the draft *Social Security (Australian Victim of Terrorism Overseas Payment) Principle 2012* acknowledges that exposure to terrorism has the capacity to cause psychological or psychiatric injury.

However the MHCA is concerned about the limitation on time to apply for assistance. The MHCA notes that *Schedule 1 – AVTOP Schedule of Injuries*, specifies:

Some psychiatric/psychological injuries can take several months to surface. For the purposes of division 2.2, it is not necessary for the injury to still be present at the time the claim is made. However, a primary victim must make a claim within 2 years of the incident.

It is possible that someone with a mental illness may not access treatment and thus receive a diagnosis within the specified time period of 2 years.

Stigma and lack of understanding about mental illness in the community and amongst health and mental health professionals is the main reason for this. Stigma and lack of understanding can cause individuals to ignore or deny symptoms, feel too ashamed to access help, self-medicate with alcohol or drugs or otherwise delay seeking medical assistance.

If medical intervention is sought, stigma and lack of understanding about mental illness can cause health professionals to not recognise or acknowledge symptoms of mental illness or attribute them to other illnesses in the first instance.

While these issues alone can delay diagnosis and treatment, they can also result in further deterioration of mental health and the complication of crises such as alcohol or drug dependency, or homelessness. Such lifestyle factors can further delay access to treatment and diagnosis.

Released by Department of Home Affairs
under the Freedom of Information Act 1982

It is also worth noting that there is evidence that the onset of post-traumatic stress disorder can be delayed.¹ This also has the potential to delay help seeking or diagnosis and treatment.

To address these issues and ensure that the Principle is equitably applied, the MHCA proposes that relevant paragraph of the Schedule be amended to include:

.....In the case of psychological or psychiatric injury this 2 year limitation period may be extended.

I hope that this proposal is useful. If you would like to discuss this matter further, please feel free to contact s22(1)(a)(ii) MHCA Policy Officer on s22(1)(a)(ii) or s22(1)(a)(ii) @mhca.org.au.

Yours faithfully

s22(1)(a)(ii)

Melanie Cantwell
Deputy CEO

¹ Australian Centre for Post Traumatic Health. (2007) Australian Guidelines for the Treatment of Adults with Acute Stress Disorder and Posttraumatic Stress Disorder. ACPH, Melbourne.



Law Council
OF AUSTRALIA

Martyn Hagan
Acting Secretary-General

1 March 2013

Mr Geoff McDonald
First Assistant Secretary
National Security Law and Policy Division
Attorney-General's Department
3-5 National Circuit
Barton ACT 2600

By email: AVTOP.Principles@ag.gov.au

Dear Mr McDonald

AUSTRALIAN VICTIMS OF TERRORISM OVERSEAS PAYMENT PRINCIPLE 2012

Thank you for your letter of 11 December 2012 inviting the Law Council to comment on the *Social Security (Australian Victim of Terrorism Overseas Payment) Principle 2012* (the Principle). I also thank you for the extension of time obtained from your department on 17 January 2013 for the Law Council's comments.

The Law Council has consulted with its constituent bodies and has received comments from the Law Society of South Australia (LSSA) which may be of assistance in finalising the Principle. These comments are detailed below.

As you know, the *Social Security Amendment (Supporting Australian Victims of Terrorism Overseas) Act 2012* (Cth) (the Act) establishes a scheme for financial assistance for Australians injured overseas as a result of terrorist acts and for close family members of Australians killed through such acts. The assistance takes the form of an Australian Victim of Overseas Terrorism Payment (AVTOP) by the Government.

The Act provides that the Secretary of the Attorney-General's Department (the AGD Secretary) determines the amount of an AVTOP in accordance with AVTOP Principles made by the Attorney-General. Accordingly, the Principle is being made pursuant to section 1061PAF of the *Social Security Act 1991* (Cth) (the 1991 Act).

The Principle contains criteria for the determination of the amounts of AVTOPs for primary and secondary victims. Primary victims are people harmed as a result of a declared terrorist act. Secondary victims are family members of people who die as a result of such an act within two years of the day the terrorist act occurred. The amount of an AVTOP for

a primary or secondary victim must not exceed \$75,000 and the sum of all AVTOPs for secondary victims must not exceed \$75,000.

The criteria for primary victims include:

- The nature of the injury as determined in accordance with a list of injuries and corresponding amounts;
- The impact of the terrorist act on the victim's life as determined in accordance with ratings of impacts and corresponding amounts; and
- Any reduction applied because of other financial assistance received from a foreign country or because of circumstances, such as the victim travelling to a foreign country despite an Australian Government travel warning not to do so.

The criteria for secondary victims include:

- The relationship between the secondary victim and the deceased;
- The number of secondary victims (who must share the maximum AVTOP of \$75,000); and
- Any reduction applied because of: other financial assistance from a foreign country; any AVTOP made to the deceased as a primary victim and relevant circumstances such as the close family member travelling to a foreign country despite an Australian Government travel warning.

The Act provides that a primary victim must claim financial assistance within two years of the declaration by the Prime Minister of a terrorist act as a 'declared overseas terrorist act' under the 1991 Act. A secondary victim must claim within 12 months of the death of the close family member. The AGD Secretary may accept late claims in defined circumstances.

The Law Society of South Australia (LSSA) notes that there appears to be an inconsistency between the Act and the Explanatory Statement to the Principle, which refers at page 23 to the primary victim being required to make a claim within two years of the incident rather than within two years of the declaration of the terrorist act as provided in the Act.

The Principle provides that the Secretary must not take into account any expenses incurred by primary or secondary victims in determining the amount of the AVTOP. The Explanatory Statement notes that this reflects the fact that the financial assistance scheme is not designed to reimburse victims for any specific costs incurred and that this is consistent with state and territory victims of crime schemes.

The LSSA questions the fairness of these provisions in the Principle, as it notes that significant and substantial expenses are often incurred by primary victims and close family members for repatriation to Australia of injured primary victims or deceased close family members. While the Law Council acknowledges that the AVTOP scheme supplements other forms of assistance such as repatriation assistance and the Australian Government Disaster Recovery Payment scheme, which could cover repatriation costs, it queries the necessity for the exclusion of all incurred costs.

The Law Council also queries the assertion in the Explanatory Statement that the exclusion of incurred costs is consistent with state and territory victims of crime schemes. While some schemes such as the NSW scheme do not reimburse for costs where the victim can access a relevant service provided by the Government or where the victim can be reimbursed through other means such as insurance, most schemes allow claims for costs and losses, as well as compensation for injuries and pain and suffering, or relating to a death.¹

The Principle provides a schedule listing injuries suffered by primary victims and corresponding amounts. The Explanatory Statement notes that the scheme has been drafted to minimise the use of subjective tests and discretion and to ensure that the decision maker has clear guidance as to how a claim should be assessed. It also notes that this means that the scheme necessarily draws what may appear to be arbitrary lines. Even if this need for 'arbitrary lines' is accepted, the LSSA notes what appear to be a number of anomalies in the schedule of injuries for primary victims, which the Law Council suggests should be addressed before the Principle is finalised. These anomalies include:

- The failure to include toe amputations in the schedule other than big toes when amputations of all fingers have been included;
- The allocation of only double the amount for the loss of four or more front teeth than the amount for the loss of one front tooth and the allocation of only 50% more for fracture of two or more ribs than the amount for one fractured rib.

Section 1061PAF of the Act also states that the AVTOP Principles may provide that certain factors can be taken into account in determining the amount of an AVTOP. These factors include: the circumstances of the relevant injury or death; whether the primary victim or the close family member was directed by an official of Australia or a foreign country not to go to the place where the terrorist act occurred; and whether there was travel advice on an Australian Government website advising against travelling to the country, region or place where the terrorist act occurred.

The Principle provides that the Secretary may reduce the amount of an AVTOP in such circumstances by defined percentages according to whether the primary victim or the close family member:

- Failed to take reasonable steps to avoid harm or acted recklessly when the terrorist act occurred (10%);
- Travelled to the relevant place despite travel advice on an Australian government website advising people to reconsider the need to travel there because of the high risk of a terrorist act (15%);
- Travelled to the relevant place despite travel advice on an Australian government website advising against travel there because of a high risk of a terrorist act (20%);
- Was directed by an official of Australia or a foreign country to leave or not go to the relevant place because of a high risk of a terrorist act (50%).

¹ See *Victims of Crime (Financial Assistance) Act 1983* (ACT); *Victim Support and Rehabilitation Act 1996* (NSW); *Victims of Crime Act 2001* (SA); *Victims of Crime Assistance Act 1996* (Vic); *Criminal Injuries Compensation Act 2003* (WA); *Victims of Crime Assistance Act 2009* (Qld); *Victims of Crime Assistance Act 2006* (NT); and *Victims of Crime Assistance Act 1976* (Tas).

The Principle also provides that the Secretary must not reduce the amount if the primary victim or the deceased person was in the place for a humanitarian purpose, or on official government business, or if the Secretary considers it appropriate in the particular case not to reduce the amount.

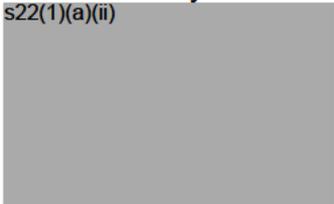
The LSSA notes that it may be difficult for primary victims or close family members to access advice on Australian government websites if they are travelling in remote areas. While the Law Council acknowledges that the Secretary's general discretion not to reduce the amount would be able to be exercised in these circumstances, it also suggests that the relevant provisions in the Principle could be amended to provide that the reduction only applies if the primary victim or the close family member was able to access the relevant advice and still travelled to the relevant place.

I trust that these matters are of assistance to the Attorney-General's Department in finalising the Principle. Thank you again for providing the Law Council with the opportunity to comment.

These comments are made with the authority delegated to the Secretary-General by the Directors of the Law Council of Australia, but do not necessarily reflect the views of each Director.

Yours sincerely

s22(1)(a)(ii)



Martyn Hagan
Acting Secretary-General

Summary of issues raised during consultation on draft AVTOP Principles 2013

Issue	Raised by	Response/Reasons
Payments to secondary victims		
<p>The pool of financial assistance for secondary victims should be higher than for primary victims to meet the needs of multiple family members. It is inequitable that the maximum amount payable to all secondary victims in relation to a deceased person is \$75,000, regardless of the needs of those victims.</p>	<p>South Australian Commissioner for Victims' Rights, Department of Justice Victoria, South Australian Attorney-General's Department.</p>	<p>Disagree. Where there is more than one secondary victim in relation to a deceased the AVTOP payment needs to be apportioned between the victims as there is a cap of \$75,000 available per deceased. This maximum amount is set out in the Act (s1061PAD(3) in relation to primary victims and s1061PAE(3) and (4) in relation to secondary victims). Accepting the suggested proposal would require an amendment to the Act. The rationale for the scheme is to provide assistance to victims of terrorism. It is a helping hand. It does not replace any other forms of assistance or benefits a person may be entitled to.</p>
<p>More discretion should be given to the decision maker when apportioning payments amongst secondary victims.</p>	<p>QLD Attorney-General's Department, South Australian Victim Support Service.</p>	<p>Disagree. The Principles set out what percentage of the \$75,000 should be given to secondary victims, depending on their relationship with the deceased. The Principles provide that the deceased's partner and children will have priority over the payment under the scheme, followed by parents of the deceased, then siblings. For example, if there is a partner and two children, the partner will receive 50% of the payment and the two children will each receive 25% of the payment.</p> <p>The personal circumstances of each victim are likely to be extremely varied. An alternative model is to give the decision maker greater discretion in apportioning the payments by, for example, allowing them to apportion a greater amount to secondary victims who had a higher dependency on the deceased. However, it would be difficult for the decision maker to obtain the required information to make this assessment and for numerous decision makers to apply this discretion consistently. This could result in a greater number of applications for review of decisions. The scheme has been designed so that decision makers have clear guidance as to how</p>

Summary of issues raised during consultation on draft AVTOP Principles 2013

Issue	Raised by	Response/Reasons
		claim should be assessed and ensures the scheme is not so complex that is unworkable.
Review Rights		
It is not clear what the claimant's appeal rights are. There are likely to be disputes over a decision maker's assessment of a claimant's injuries and entitlement. There should be a dispute resolution process – internal reconsideration would be a useful starting point.	South Australian Commissioner for Victims' Rights, Victims Services in NSW, South Australian Attorney General's Department	No action required. The Principles do not need to set out the review and appeal rights. The Principles will be made under the <i>Social Security Act 1991</i> . Part 4 of the <i>Social Security (Administration) Act 1999</i> sets out the review and appeal rights that apply to decisions made under social security legislation, including under the AVTOP scheme. Claimants will be able to seek an internal review of the decision. Claimants will also be notified of their appeal rights when they receive a notice of the decision about their claim.
Costs		
Claimants should be reimbursed for the costs and disbursements they incur in making an application. These costs include fees for obtaining medical reports to support an application and legal fees.	SA Commissioner for Victims' Rights, NSW Victims Services, SA Victim Support Service, SA Attorney-General's Department, QLD Attorney-General's Department	Further consideration required, but no amendments to Principles are necessary. The Principles provide that the decision maker must not take into account any expenses incurred by the primary or secondary victims as a result of the terrorist act in determining the amount of AVTOP. This would include the cost of making an application under the scheme. Although the Principles could be amended, the Act provides for a maximum of \$75,000 to be paid in respect of each deceased. Accordingly, unless the Act is amended, a claimant could only receive payment for the costs of making an application under the scheme if the payment for their injuries was less than \$75,000. It would be inequitable to pay costs in some cases and not in others. Some State and Territory schemes allow for the payment of costs of expenses in making the application. For example, in NSW and the ACT, if a

Summary of issues raised during consultation on draft AVTOP Principles 2013

Issue	Raised by	Response/Reasons
		<p>medical examination is required, the costs of that examination are paid to the claimant. In Queensland, the claimant can receive up to \$500 for the cost of legal fees they incur in making the application. In the ACT and South Australia, lawyers are only allowed to charge a maximum amount when assisting a claimant with their application. ^{s47B(b)}</p> <p>[REDACTED]</p> <p>We are working with the Department of Human Services (DHS) (who will be administering the scheme) to determine the specific information applicants will be required to provide when making a claim. However, an underlying principle of the scheme is to ensure that claimants will find it as simple as possible to make an application. As an alternative to amending the Act, at the time of seeking funding for the scheme, consideration could be given to seeking funding for the costs of medical providers, legal assistance and dedicated staff at DHS who will be able to assist victims in filling out the required forms if necessary.</p>
<p>Out of pocket expenses associated with the deceased should be considered separate to the payment of AVTOP – eg repatriation or funeral expenses</p>	<p>Law Council of Australia</p>	<p>No action required. AVTOP does not replace other benefits and payments currently in place. DFAT have in the past paid the repatriation expenses. There are other payments administered by the Department of Human Services on behalf of the Department of Health and Ageing and AGD that would likely be activated for future incidents. However this would depend on the nature and scale of the incident.</p>
<p>Schedule of injuries</p>		

Summary of issues raised during consultation on draft AVTOP Principles 2013

Issue	Raised by	Response/Reasons
Allocation of double the amount for loss of four or more front teeth than for the loss of one front tooth considered inadequate. Similar issue is raised in relation to the ribs.	Law Council of Australia	Disagree. The allocation of the payment is reasonable and proportionate to the other injuries.
Schedule of injuries provides consistency in payments but is inflexible. It does not measure the impact of an injury on a victim's life. Despite similarities in physical or psychological injuries primary victims may suffer, the impact on their lives may vary. Payments should vary accordingly. The weightings that apply when assessing the impact of the terrorist act are also inflexible.	South Australian Commissioner for Victims' Rights, Department of Justice	Disagree. Schedules 2 and 3 to the Principles allow for the decision maker to consider the impact of the incident on a primary victim's life. The Principles have been designed to provide as much flexibility as possible whilst at the same time ensuring the scheme can be administered consistently by different decision makers.
Suggestions of specific injuries to add to the schedule.	AMA, Law Council of Australia	Agree. The Principles have been amended to include cancer, tumours, miscarriage, loss of fertility, loss of breast(s) and loss of toes. The Principles have also been amended to enable the decision maker to consider injuries that are not specified in Schedule 1.
There is no allowance for indexation to the amounts in the schedule.	AMA	Disagree. The Act would need to be amended if we were to accept this suggestion as it only allows a payment of up to \$75,000.
Claim Period		
Claim period should be extended from 2 years to 3 years for primary victims.	South Australian Victim Support Services	Disagree. Section 27B of the Social Security Administration Act gives the Secretary discretion to accept claims lodged within a reasonable time after the last date for lodgement of claims, provided special circumstances exist.

Summary of issues raised during consultation on draft AVTOP Principles 2013

Issue	Raised by	Response/Reasons
Two year claim period should not apply in relation to person's suffering from psychiatric and psychological injuries.	Mental Health Council of Australia	Agree in principle but no action required. The stigma associated with mental health may delay a person from seeking help and getting diagnosed. Also mental health issues take time to develop. Section 27B of the Social Security Administration Act already gives the Secretary discretion to accept claims lodged within a reasonable time after the last date for lodgement of claims, provided special circumstances exist.
Reduction of AVTOP amount		
Paragraph 14(3)(a) should be amended to include journalists.	South Australian Victim Support Services	Disagree. The Principles require the decision maker to reduce the amount of AVTOP payable where the primary victim acted without due regard to the consequences or against advice. In considering this, the decision maker can take into account whether the victim failed to follow a DFAT do not travel warning. However, the decision maker has discretion under paragraph 14(3)(a) of the Principles to not reduce the amount if the primary victim was in the place where the terrorist act occurred for a humanitarian purpose (eg visiting a dying relative) or on official government business. It would not be appropriate to include journalists as a specific exception. In certain circumstances the journalist's presence at the place could be justified, but in other circumstances it may not be. The decision maker has a residual discretion not to reduce the amount of AVTOP if they consider it is appropriate. This discretion provides enough flexibility. The Department will prepare additional guidelines about circumstances where the decision maker could consider not to reduce the amount.
Guidelines should be developed to further explain when the decision maker would or would not reduce the amount of AVTOP.	QLD Attorney-General's Department	Agree but no amendments to Principles required. The decision maker has discretion under the Principles to reduce the amount of AVTOP in certain circumstances. The Department will prepare additional guidelines on these

Summary of issues raised during consultation on draft AVTOP Principles 2013

Issue	Raised by	Response/Reasons
		circumstances.
It may be difficult for the primary victim to take into account travel warnings once they have already commenced their travel – particularly when travelling in remote regions.	QLD Attorney-General's Department, Law Council of Australia	Agree but no amendments to Principles required. The Principles allow the decision maker to reduce the amount of AVTOP payable where the primary victim has contributed to their injury by, for example, failing to follow a DFAT do not travel warning. The decision maker will look at the travel warning issued at the time the primary victim commenced their travel. It would not be reasonable to expect people to be continually checking the DFAT travel warnings, particularly when they are in regions where internet access is limited or non-existent.
Define the phrase 'reasonable precaution' that is used in the example that illustrates when the Secretary must reduce the amount of AVTOP for the primary victim.	South Australian Victim Support Services	Disagree. The Principles allow the decision maker to reduce the amount of AVTOP payable where the primary victim has contributed to their injury by, for example, failing to take reasonable steps to avoid harm or by acting recklessly when the terrorist act occurred. The Principles give the example of a person who does not take 'reasonable precaution' when travelling in an area of known terrorist activity. It would be better to leave the phrases 'reasonable steps' and 'reasonable precaution' undefined to give the decision maker as much discretion as possible. What is reasonable in one circumstance may not be in another.
Explain the effect of receiving financial assistance from an Australian jurisdiction on the total AVTOP amount payable (note, currently, South Australia is the only State scheme that would allow for compensation to be paid to victims of overseas terrorism).	South Australian Victim Support Services	No amendments to Principles required. AVTOP does not replace existing payments and benefits available. If the State and Territory governments decide to pay their residents compensation for the same incident then that is their prerogative. In practice, we would expect the State and Territories to wait and see if the Federal Government is going to announce the AVTOP scheme before they activate theirs.

Summary of issues raised during consultation on draft AVTOP Principles 2013

Issue	Raised by	Response/Reasons
Other		
<p>Unsure how AVTOP interacts with existing federally funded schemes.</p>	<p>NSW Victims Services</p>	<p>Noted, but no amendments to Principles required. AVTOP does not replace other benefits and payments currently in place. DFAT has in the past provided consular assistance and paid repatriation expenses. There are other payments administered by the Department of Human Services on behalf of the Department of Health and Ageing and AGD that will be activated for future incidents. However this would depend on the nature and scale of the incident. The Department will be developing a communication strategy to ensure the public understands what is available. Information about available assistance will be set out in a central website www.disasterassist.gov.au.</p>
<p>It may be difficult to obtain medical information from some locations. This issue could be addressed by providing guidelines on the type of information required to support an application.</p>	<p>QLD Attorney-General's Department</p>	<p>Agree but no amendments to Principles required. All incidents will be overseas and most of the victims will be initially treated in overseas hospitals/clinics. It will be difficult in some circumstances to obtain medical reports from some locations. The decision maker will take this into account when considering their decision. The Department will prepare guidelines on this issue.</p>
<p>Provide website address of where the list of foreign schemes will be outlined.</p>	<p>South Australian Victim Support Services</p>	<p>The website details will be included in the final draft of the Principles www.disasterassist.gov.au</p>
<p>Change the minimum age for primary victims to 18 years – from 16 years.</p>	<p>South Australian Victim Support Services.</p>	<p>Disagree. ^{s47C} [REDACTED] A child of any age will be eligible to make a claim. However, the claim is assessed differently, depending on how old they are. If the child is under 16 years of age, the impact of the terrorist act will be assessed according to Schedule 3. If the child is over 16 years of age, the impact of the terrorist act will be</p>

Summary of issues raised during consultation on draft AVTOP Principles 2013

Issue	Raised by	Response/Reasons
		assessed according to Schedule 2.
Assistance to victims under the scheme could be enhanced by the Commonwealth forging agreements with State and Territories on local staff helping victims.	South Australian Commissioner for Victim's Rights, NSW Victims Services, SA Attorney-General's Department, Victorian Department of Justice.	Agree in principle but no amendments to Principles required. We will consider this issue further, in consultation with other government departments, when developing our contingency plan.