



Australian Government
Department of Home Affairs

Submission

For decision
PDMS Ref. Number: MS24-000978
Date of Clearance: 02/09/2024

To Minister for Home Affairs, Minister for Immigration and Multicultural Affairs, Minister for Cyber Security

Subject Australian Victim of Terrorism Overseas Payment (AVTOP) Declaration – Bamyán shooting, Afghanistan

Timing For consideration by 25 September 2024.

Recommendations

That you:

- 1. **note** on 17 May 2024 the Islamic State-Khorasan Province (IS-KP) conducted an attack on a group of foreign tourists in Bamyán Province, Afghanistan. The Department of Foreign Affairs and Trade (DFAT) confirmed that **S. 47F(1)** wounded in the attack; noted / please discuss
- 2. **agree** to recommend to the Prime Minister, the Hon Anthony Albanese MP, that the shooting in Bamyán Province, Afghanistan be declared as an ‘overseas terrorist act’ for the purposes of the Australian Victim of Terrorism Overseas Payment (AVTOP) scheme; and agreed / not agreed
- 3. **sign** the letter to the Prime Minister at **Attachment A** recommending that the shooting in Bamyán Province, Afghanistan be declared an ‘overseas terrorist act’ for the purposes of the AVTOP scheme, attaching the package of all required documents for a declaration. signed / not signed

Minister for Home Affairs, Minister for Immigration and Multicultural Affairs, Minister for Cyber Security

Signature.....

Date:...../...../ 2024

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Minister's Comments

Key Issues

Commonwealth roles under AVTOP

1. You are the responsible Minister for administering the Australian Victim of Terrorism Overseas Payment (AVTOP) scheme under Part 2.24AA of the *Social Services Act 1991* (the Act). The AVTOP scheme provides financial assistance to Australian residents who are harmed or whose close family member is killed as a direct result of an overseas terrorist act.
2. The Prime Minister is responsible for declaring incidents as a 'declared overseas terrorist act' pursuant to subsection 35B(1) of the Act. You provide advice to the Prime Minister to support decision-making on declarations.
3. AVTOP claim assessments and payments are facilitated by the Department of Social Services.

Bamyan Shooting, Afghanistan

4. On 17 May 2024, Islamic State-Khorasan Province (IS-KP) conducted a shooting attack on a group of foreign tourists in Bamyan Province, Afghanistan. There were six fatalities and seven wounded from the attack.
5. The Department of Foreign Affairs and Trade (DFAT) has confirmed that s. 47F(1) s. 47F(1) wounded in the attack. DFAT has provided consular assistance to s. 47F(1) s. 47F(1). The Department of Home Affairs (the Department) is not aware of any other Australians directly involved, or Australians who have close family members that have been affected by this attack.
6. DFAT, the Minister for Social Services and the Prime Minister's Office have received ministerial correspondence asking for a declaration to be made for the purposes of AVTOP, to enable the affected s. 47F(1) to make a claim.
 - The s. 47F(1) may be eligible for AVTOP, subject to other criteria being met, should the attack be declared.

Departmental assessment and recommendation

7. The Department has assessed the incident for whether it could be considered a 'terrorist act' under subsection 100.1(1) of the *Criminal Code Act 1995* for the purposes of declaring the incident as a 'declared overseas terrorist' attack under subsection 35B(1) of the Act. Details of this assessment are at **Attachment E**.

8. The Department has assessed that the Prime Minister could be satisfied that the Bamyán attack was a terrorist attack. The Department of Prime Minister and Cabinet (PM&C) and DFAT have been consulted at the working level and agree with this assessment.
9. The Department recommends you write to the Prime Minister recommending he declare the Bamyán attack as an 'overseas terrorist act' for the purposes of the AVTOP scheme. A letter to the Prime Minister is attached (**Attachment A** refers).
 - To appropriately support the Prime Minister's consideration of the incident as a potential AVTOP declaration, and the further responsibilities of the Prime Minister for making of an instrument under the Act, the following documents are attached to the letter: a draft Declaration (**Attachment B**), Explanatory Statement and Statement of Compatibility with Human Rights (**Attachment C**), the AVTOP Declaration Criteria (**Attachment D**), and AVTOP Declaration Assessment (**Attachment E**).
 - The draft Declaration and Explanatory Statement and Statement of Compatibility with Human Rights will be tabled in Parliament if the Prime Minister decides to declare the incident an overseas terrorist attack. The Declaration is a disallowable legislative instrument.
 - The AVTOP Declaration Criteria lists the factors the Prime Minister may have regard to when making the decision to declare an incident an 'overseas terrorist act'. The AVTOP Declaration Assessment assesses the incident against the AVTOP Declaration Criteria and has been consulted with DFAT and PM&C.

Background

10. Once the Prime Minister has declared an overseas terrorist act under the AVTOP scheme, Services Australia is responsible for receiving and processing applications, including making payments to eligible claimants.
11. Declarations under the AVTOP scheme are legislative instruments that are subject to disallowance under section 42 of the *Legislation Act 2003*. Once signed by the Prime Minister and registered on the Federal Register of Legislation, a copy of the instrument must be laid before both Houses of Parliament within six sitting days after registration. This process is managed by the Office of Parliamentary Counsel.

Eligibility Criteria

12. The AVTOP scheme provides for non-means tested financial assistance of up to \$75,000. Under section 1061PAA of the Act, a person is qualified for AVTOP if they:
 - were harmed, as a direct result of a declared overseas terrorist act; or
 - are a close family member of a person who was in the place where the terrorist act occurred and that person died within 2 years, as a direct result of the terrorist act; and
 - were an Australian resident at the time of the terrorist act, or are covered by a determination under subsection 1061PAA(6) of the Act.

Other considerations

13. Afghanistan in its entirety is subject to longstanding 'do not travel' advice from DFAT, which was in place at the time of the incident. This is a factor taken into account by Services Australia in deciding the amount of an AVTOP scheme payment, pursuant to s 12(2) of the *Social Security (Australian Victim of Terrorism Overseas Payment Principles) Determination 2023* (the 2023 AVTOP Principles Determination). If the incident were declared, this could limit the amount of financial assistance for which s. 47F(1) could be eligible.

Previous Declarations

14. From the AVTOP scheme's inception in 2013 until 8 August 2024, successive Prime Ministers have declared 49 overseas terrorist acts for purposes of the AVTOP scheme relating to events that have occurred since 2001.
15. The most recent declaration for the purposes of the AVTOP scheme is *Social Security (Declared Overseas Terrorist Act – Hamas Terrorist Attacks – 7 October 2023) Declaration 2024*, dated 2 February 2024 and relating to the Hamas terrorist attacks at 15 sites in Israel on 7 October 2023.

Consultation – internal/external

16. Internal – Legislation Branch, International Law & Protection Obligations (Legal Group), External Costings section and the Chief Financial Officer were consulted on matters relating to this submission.
17. External – Attorney-General's Department; s. 7(2A); Department of Finance; Department of Foreign Affairs and Trade; Department of the Prime Minister and Cabinet; Treasury; and Services Australia were consulted on matters relating to this submission.

Consultation – Secretary

18. The Secretary was not consulted on this submission.

Client service implications

19. The administration of the AVTOP application and payment processes is managed by Services Australia.

Risks and Sensitivities*Media - handling strategy*

20. As this declaration is likely to impact s. 47F(1) publicly announcing this declaration via a media release is likely to impact on the privacy of s. 47F(1).
21. In lieu of a media release, the Department recommends that, should the Prime Minister declare the Bamyán shooting an overseas terrorist act, the Department will contact s. 47F(1) of the declaration. This contact would be in the form of a Departmental response to the letter sent by s. 47F(1) to the Prime Minister on 12 June 2024.

22. To manage any media queries, the Department will provide talking points to your Office. Copies will be provided to officials at the Department of the Prime Minister and Cabinet, DFAT, Services Australia, the Attorney-General’s Department and **s. 7(2A)**.

Representations to date

23. On 22 May 2024, DFAT notified the Department that the Minister for Foreign Affairs, Senator the Hon Penny Wong, had received correspondence from **s. 47F(1)** MP, requesting the incident be declared a terrorist act, to allow **s. 47F(1)** to apply for the AVTOP scheme.

24. On 28 May 2024, the Department was notified by staff from the office of **s. 47F(1)** MP that they had been contacted by **s. 47F(1)** about receiving **s. 47F(1)** AVTOP payment for this incident.

- In this correspondence, the Department was informed that **s. 47F(1)** MP had additionally contacted the Minister for Social Services, the Minister for Foreign Affairs and the Prime Minister’s Office.

25. On 12 June 2024, the Department was notified that the Prime Minister had received correspondence directly from **s. 47F(1)**.

26. The information contained in this submission is classified and should not be publicly released without the authority of the Department of Home Affairs.

Financial implications

27. The Department is currently aware of **s. 47F(1)** in the 2024 Bamyán attack and may be found eligible as **s. 47F(1)**. The maximum cost of paying **s. 47F(1)**

28. It is possible that Australian residents may have close family members who died in the attack and could come forward as AVTOP claimants. Although unlikely, this could potentially result in additional costs.

29. If the Prime Minister declares the 2024 Bamyán attack an overseas terrorist act for the purpose of the AVTOP scheme, the Department will work with the Department of Finance to settle the financial implications through an increase to the AVTOP special appropriation to make the payment.

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Attachments

Attachment A Letter to the Prime Minister

Attachment B *Social Security (Declared Overseas Terrorist Act—Bamyan 2024) Declaration 2024*

Attachment C Explanatory Statement and the Statement of Compatibility with Human Rights

Attachment D Prime Minister’s Declaration Criteria for AVTOP

Attachment E AVTOP Declaration Criteria Assessment

<p>Authorising Officer</p> <p>Cleared by:</p> <p>Gemma Smyth First Assistant Secretary Counter-Terrorism Coordination Centre National Security and Resilience Group</p> <p>Date: 02/09/2024 Ph: s. 22(1)(a)(ii) Mob: s. 22(1)(a)(ii)</p>

Contact Officer (minimum SES Band 1) Alisha Warner, Assistant Secretary Counter-Terrorism Strategic Policy
Mob s. 22(1)(a)(ii)

Through Chief Finance Officer

- CC**
- Secretary
 - DS Chief Operating Officer
 - DS National Security and Resilience
 - DS Executive
 - Group Manager Legal
 - Chief Finance Officer
 - FAS Executive Coordination
 - Assistant Secretary Legislation

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The Hon Tony Burke MP
Minister for Home Affairs
Minister for Immigration and Multicultural Affairs
Minister for Cyber Security
Minister for the Arts
Leader of the House

Ref No: MS24-000978

The Hon Anthony Albanese MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime Minister

I write to recommend that you declare the 17 May 2024 shooting in Bamyán, Afghanistan an 'overseas terrorist act' for the purposes of the Australian Victim of Terrorism Overseas Payment (AVTOP) scheme.

Under subsection 35B(1) of the *Social Security Act 1991* (Social Security Act), you may declare an incident as one to which the AVTOP scheme applies if you are satisfied that the incident meets the definition of a 'terrorist act' in the *Criminal Code Act 1995* (Criminal Code).

On 17 May 2024 several gunmen belonging to a listed terrorist organisation, namely Islamic State-Khorasan Province, conducted an attack against a group of tourists in Bamyán, Afghanistan. Six people were killed and seven injured. The Department of Foreign Affairs and Trade has confirmed that s. 47F(1) [REDACTED] injured.

Having regard to all available information, I recommend that you declare the shooting on 17 May 2024 in Bamyán, Afghanistan as an 'overseas terrorist act' under the Criminal Code for the purposes of the AVTOP scheme in your capacity as decision maker under subsection 35B(1) of the Social Security Act. My recommendation has been informed by consultations and agreement across relevant Commonwealth agencies, as led by the Department of Home Affairs.

The AVTOP Declaration Criteria (attached) outlines what to consider when making a declaration. Several factors in support of making a declaration in relation to this incident are present:

- The attack targeted foreign tourists, including s. 47F(1), who suffered injuries as a result of the attack;
- The attack had a direct impact on at least s. 47F(1);
- The attack was committed by the listed terrorist organisation Islamic State Khorasan Province; and
- The attack received media coverage in Australia.

Further information on the attack and the extent to which it satisfies the definition of 'terrorist act' within the Criminal Code is contained in the Declaration Assessment attached.

Attached to this letter is an Explanatory Statement and Statement of Compatibility with Human Rights which further articulates the grounds for listing this terrorist attack, and an instrument to give effect to a decision to list should you agree with my recommendation. The Department has advised that the maximum cost of paying s. 47F(1), in accordance with the *Social Security (Australian Victim of Terrorism Overseas Payment Principles) Determination (LIN 23/059) 2023*.

Should you agree to my recommendation, the Department will work with the Department of Finance to settle the financial implications. Consistent with previous practice, no offsets should be required to meet the costs of payments made under the Special Appropriation (*Social Security (Administration) Act 1999, section 242*).

I have copied this letter to the Attorney-General, the Hon Mark Dreyfus KC MP; the Minister for Finance, Senator the Hon Katy Gallagher; the Minister for Foreign Affairs, Senator the Hon Penny Wong; the Treasurer, the Hon Dr Jim Chalmers MP; and the Minister for Government Services, the Hon Bill Shorten MP.

Yours sincerely

TONY BURKE

/ / 2024

Encl. *Declaration Criteria, Declaration Assessment, Explanatory Statement and Statement of Compatibility with Human Rights, draft Declaration*



Social Security (Declared Overseas Terrorist Act—Bamyán 2024) Declaration 2024

I, ANTHONY NORMAN ALBANESE, Prime Minister, make the following declaration.

Dated 2024

Anthony Albanese
Prime Minister

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1 Name

This instrument is the *Social Security (Declared Overseas Terrorist Act—Bamyan 2024) Declaration 2024*.

2 Commencement

This instrument commences on the day after it is registered.

3 Authority

This instrument is made under subsection 35B(1) of the *Social Security Act 1991*.

4 Definitions

In this instrument, **terrorist act** has the same meaning as in subsection 100.1(1) of the *Criminal Code*.

5 Declared overseas terrorist act

The following terrorist act is a declared overseas terrorist act:

- (1) the shooting at approximately 6pm (local time) in Bamyan Province, Afghanistan on 17 May 2024.

Note: If the Prime Minister makes a declaration under subsection 35B(1) of the *Social Security Act 1991*, then subsection 35B(2) provides that the Minister is taken to have made a determination under subsection 36(1) that the terrorist act is a major disaster.

EXPLANATORY STATEMENT

Issued by authority of the Prime Minister

Social Security Act 1991

Social Security (Declared Overseas Terrorist Act—Bamyan 2024) Declaration 2024

The *Social Security (Declared Overseas Terrorist Act—Bamyan 2024) Declaration 2024* (the Declaration) is made under subsection 35B(1) of the *Social Security Act 1991* (the Act) by the Prime Minister.

Background

Part 2.24AA of the Act provides a scheme for financial assistance to Australian residents and certain other persons who are victims of a ***declared overseas terrorist act***, known as the Australian Victim of Terrorism Overseas Payment (AVTOP) scheme.

Victims of ***terrorist acts*** who either were an Australian resident on the day the ***terrorist act*** occurred, or are covered by a determination made by the Minister under subsection 1061PAA(6) of the Act, may be eligible for an AVTOP payment (see subsection 1061PAA(1)). Under subsection 1061PAA(6), the Minister may determine a specified class of persons by legislative instrument for the purposes of subparagraph 1061PAA(1)(c)(ii).

The AVTOP scheme only applies to overseas ***terrorist acts*** that are the subject of a declaration by the Prime Minister. Subsection 35B(1) of the Act authorises the Prime Minister to declare a ***terrorist act*** to be a ***declared overseas terrorist act***. Subsection 23(1) of the Act provides that a ***terrorist act*** has the same meaning as in subsection 100.1(1) of the *Criminal Code*.

Section 5 of the Declaration declares the shooting in Bamyan Province, Afghanistan that occurred at approximately 6pm (local time) on 17 May 2024 to be a ***terrorist act*** that is ***declared overseas terrorist act*** for the purposes of the AVTOP scheme.

A ***terrorist act*** is relevantly defined in section 100.1 of the *Criminal Code*. A ***terrorist act*** is an action, or a threat to commit an action, that is done or made with the intention of advancing a political, religious or ideological cause, and the action is done or the threat is made with the intention of coercing or influencing by intimidation a government, or intimidating the public or a section of the public. The action must also:

- cause death or serious physical harm to a person
- endanger another person's life
- cause serious damage to property
- create a serious risk to the health or safety of the public or a section of the public, or
- seriously interfere with, seriously disrupt or destroy an electronic system such as an information system, telecommunications system, financial system, system used for the delivery of essential government services, or system used for or by an essential public utility or transport system.

A **terrorist act** does not cover engaging in advocacy, protest, dissent or industrial action that is not intended to cause a person's death or serious physical harm, or to endanger the life of another person, or to create a serious risk to the health or safety of the public or a section of the public.

In considering whether to declare a **terrorist act** that occurs outside Australia to be a **declared overseas terrorist act** for the purposes of the AVTOP scheme, the Prime Minister has regard to the factors outlined in the *Australian Victim of Terrorism Overseas Payment Declaration Criteria* (the Declaration Criteria).

The factors that may support the Prime Minister making a declaration are:

- whether the **terrorist act** targeted Australia or Australian interests or had a direct or indirect impact on Australia or Australians (including incidents that target Western interests more broadly)
- whether a terrorist organisation or member of a terrorist organisation has claimed responsibility for the **terrorist act**, particularly where the organisation is listed under the *Criminal Code* or a United Nations Security Council Resolution
- the nature or extent to which the **terrorist act** attracted broad media coverage and is of national significance, and
- whether the Australian Security Intelligence Organisation or a foreign security or intelligence agency has assessed that a terrorist organisation is responsible for the incident.

Other factors that do not support a declaration being made are also outlined in the Declaration Criteria.

Australian residents or, where applicable, persons covered by a subsection 1061PAA(6) determination who are harmed as a direct result of a **declared overseas terrorist act** or whose close family member dies as a direct result of a **declared overseas terrorist act** can apply for financial assistance of up to \$75,000 under the AVTOP scheme.

Purpose

The Declaration triggers the application of the AVTOP scheme to the overseas **terrorist act** specified in the Declaration.

Explanation and effect of provisions

Section 1 – Name

Section 1 sets out the title of the Declaration as the *Social Security (Declared Overseas Terrorist Act— Bamyán 2024) Declaration 2024*.

Section 2 – Commencement

Section 2 provides that the Declaration commences on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

Section 3 provides that the Declaration is made under subsection 35B(1) of the Act.

Section 4 – Definitions

Section 4 sets out the defined terms that are relevant to the Declaration, and provides that *terrorist act* has the same meaning as in subsection 100.1(1) of the *Criminal Code*.

Section 5 – Declared overseas terrorist act

Section 5 of the Declaration provides that the shooting that occurred at approximately 6pm (local time) in Bamyan Province, Afghanistan on 17 May 2024 is a *declared overseas terrorist act* for the purposes of the Act.

Consultation

Consultation on this Declaration was undertaken with key stakeholders. In particular, the Department of Home Affairs consulted with:

- Attorney-General's Department;
- Department of Finance;
- Department of Foreign Affairs and Trade;
- the Department of the Prime Minister and Cabinet;
- the Department of the Treasury;
- Services Australia.

The Declaration is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Declaration is compatible with the human rights and freedoms for the purpose of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A statement of compatibility with human rights is included in the [Attachment](#).

ATTACHMENT

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Social Security (Declared Overseas Terrorist Act—Bamyan 2024) Declaration 2024

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

Part 2.24AA of the *Social Security Act 1991* (the Act) provides a scheme for financial assistance to Australian residents or certain other persons who are victims of a ***declared overseas terrorist act***, known as the Australian Victim of Terrorism Overseas Payment (AVTOP) scheme.

Victims of ***terrorist acts*** who either were an Australian resident on the day the ***terrorist act*** occurred, or are covered by a determination made by the Minister under subsection 1061PAA(6) of the Act, may be eligible for an AVTOP payment (see subsection 1061PAA(1)). Under subsection 1061PAA(6), the Minister may determine a specified class of persons by legislative instrument for the purposes of subparagraph 1061PAA(1)(c)(ii).

The AVTOP scheme only applies to overseas ***terrorist acts*** that are the subject of a declaration by the Prime Minister. Subsection 35B(1) of the Act authorises the Prime Minister to declare a ***terrorist act*** to be a ***declared overseas terrorist act***. Section 23 of the Act provides that a ***terrorist act*** has the same meaning as in subsection 100.1(1) of the *Criminal Code*.

Section 5 of the Declaration declares the shooting in Bamyan Province, Afghanistan that occurred at approximately 6pm (local time) on 17 May 2024 to be a ***terrorist act*** that is a ***declared overseas terrorist act*** for the purposes of the AVTOP scheme.

In considering whether to declare a ***terrorist act*** to be a ***declared overseas terrorist act*** for the purposes of the AVTOP scheme, the Prime Minister has regard to the factors outlined in the *Australian Victim of Terrorism Overseas Payment Declaration Criteria*. The factors that may support the Prime Minister making a declaration are:

- the ***terrorist act*** targeted Australia or Australian interests or had a direct or indirect impact on Australia or Australians (including incidents that target Western interests more broadly)
- a terrorist organisation or member of a terrorist organisation has claimed responsibility for the ***terrorist act***, particularly where the terrorist organisation is listed under the *Criminal Code* or a United Nations Security Council Resolution
- the nature or extent of the ***terrorist act*** attracted broad media coverage and is of national significance, and
- the Australian Security Intelligence Organisation or a foreign security or intelligence agency has assessed that a terrorist organisation is responsible for the incident.

Australian residents or, where applicable, persons covered by a subsection 1061PAA(6) determination who are harmed as a direct result of a ***declared overseas terrorist act*** or whose close family member dies as a direct result of a ***declared overseas terrorist act*** are able to apply for financial assistance of up to \$75,000 under the AVTOP scheme.

Human rights implications

The Declaration engages the following rights:

- the right to social security (Article 9, International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 26, Convention on the Rights of the Child (CRC))
- the right to family life (Article 10, ICESCR)
- the right to an adequate standard of living (Article 11, ICESCR and Article 27, CRC)
- the right to health (Article 12, ICESCR and Article 24, CRC), and
- the rights of persons with a disability under the Convention on the Rights of Persons with Disabilities (CRPD), particularly:
 - Article 25 – the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability, and
 - Article 26 – effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life.

The Declaration activates the AVTOP scheme to apply to Australian residents or persons covered by a subsection 1061PAA(6) determination who are victims of the ***terrorist act*** listed in section 5 of the Declaration.

Terrorist attacks impose a heavy burden on those harmed by the attack, as well as the family members of those harmed or killed. In some cases, the burden on both the person and the person's family will endure for life.

Primary victims of ***declared overseas terrorist act*** are individuals who are harmed as a direct result of the declared overseas terrorist act, and who were in the place where that act occurred. Such persons may:

- require medical treatment
- require ongoing domestic care and assistance
- lose some or all of their capacity to work and earn income, and
- experience mental health problems.

Secondary victims of ***declared overseas terrorist act*** are individuals whose close family member was in the place where the declared overseas terrorist act occurred and died as a direct result of that act within 2 years of the date of the act. Such persons (such as a partner, child, parent, sibling, or legal guardian of a deceased person) may:

- lose one or more family members, and
- experience a loss of support that they received from their now deceased family member.

The Declaration takes steps to promote the economic and social rights of victims of terrorism and members of their families as follows.

Right to social security in Article 9 of the ICESCR and Article 26 of the CRC

Article 9 of ICESCR and Article 26 of the CRC require States to recognise the right of everyone to social security, including social insurance. This includes establishing a social security system and, within the State's maximum available resources, ensuring access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

The Declaration promotes the rights of people, including children, who are primary and secondary victims of the **declared overseas terrorist act** in a number of ways, including in acknowledging a victim's right to social security.

Under the AVTOP scheme, financial assistance to Australian residents or persons covered by a subsection 1061PAA(6) determination who are harmed as a direct result of the **terrorist act** is awarded on a sliding scale, with larger payments being available to victims who experience physical or psychological harm that is severe and enduring. The maximum amount payable to a person in relation to the harm they suffer is \$75,000.

A maximum amount of \$75,000 is payable to the close family members of a person who is killed as a direct result of the **terrorist act**, where those family members were resident in Australia at the time of the incident. The amount is apportioned between family members using rules modelled on succession laws.

The financial assistance provided does not replace other forms of welfare that might be available to the person. Rather, it is designed to facilitate the person's access to necessary goods and services, including, but not limited to, health care.

The financial assistance provided to Australian residents or persons covered by a subsection 1061PAA(6) determination harmed in the **declared overseas terrorist act** or whose close family member dies as a result of the **terrorist acts** is not compensation or damages.

On this basis, the Declaration promotes the right to social security.

Right to family life in Article 10 of the ICESCR

Article 10(1) of the ICESCR requires States to recognise the widest possible protection and assistance to the family as the fundamental and natural unit of society, requiring the full protection of the state. Article 10(3) also recognises that States must take special measures to protect and assist children and young persons without discrimination for reasons of parentage and other conditions.

The AVTOP scheme enables financial assistance to be provided to close family members of a person who died as a direct result of the overseas **terrorist act**. The AVTOP scheme gives priority of payment to a deceased person's partner and child or children, followed by their parent or parents, and finally the person's sibling or siblings.

On this basis, the Declaration promotes the right of protection of, and assistance to, the family.

Right to an adequate standard of living in Article 11 of the ICESCR and Article 27 of the CRC

Article 11(1) of the ICESCR and Article 27 of the CRC require States to recognise and adopt measures to realise an individual and his or her family's right to an adequate standard of living, including adequate food, clothing and housing and to the continuous improvement of living conditions.

The AVTOP scheme provides financial assistance for Australian residents or persons covered by a subsection 1061PAA(6) determination, including children, who have been injured or whose close family member died as a direct result of the **terrorist act**. The AVTOP scheme acknowledges the economic impact of an injury on a primary or secondary victim's lifestyle.

Financial assistance provided under the AVTOP scheme could be used by an individual or a family for the purposes of improving their overall living conditions, particularly where they have suffered physical or mental harm or trauma as a direct result of the overseas **terrorist act**.

On this basis, the Declaration promotes the right to an adequate standard of living.

Right to health in Article 12 of the ICESCR and Article 24 of the CRC

Article 12(1) of ICESCR and Article 24 of the CRC provide for the right to the enjoyment of the highest attainable standard of physical and mental health.

The AVTOP scheme provides for a higher amount of financial assistance to be provided to victims, including children, who suffer greater harm as a direct result of the **terrorist act**. This includes physical injuries and emotional trauma that could require extensive and ongoing treatment, as well as domestic care and assistance. The AVTOP scheme also provides for financial assistance to be paid to secondary victims of a deceased person giving priority to the deceased person's partner and child, followed by their parent, then sibling. The financial assistance available under the AVTOP scheme supplements other Government benefits for which the person may be eligible.

The Declaration promotes the right to the highest attainable standard of health by providing financial assistance to victims that they can use in any way, including for the purposes of medical and psychological treatment.

Rights of persons with a disability in Articles 25 and 26 of the CRPD

The CRPD promotes, protects and ensures the full enjoyment of all human rights and fundamental freedoms, by all persons with disabilities.

Article 25 of the CRPD requires States to promote the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability.

Article 26(1) of the CRPD requires States to adopt effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life.

The AVTOP scheme does not discriminate on the basis of disability, but provides for the availability of financial assistance to all Australian residents or persons covered by a subsection 1061PAA(6) determination harmed as a direct result of a declared overseas terrorist attack, or whose close family member dies as a direct result of such an attack. The financial assistance provided takes into account factors specified in the AVTOP Principles made under section 1061PAF of the Act, including in relation to physical and psychological injuries suffered by the primary victim.

The AVTOP scheme does not prescribe the manner in which funds received by a victim should be used. The financial assistance may be used by the victim to enable that person to attain maximum independence, inclusion and participation in all aspects of life, following their injury sustained as a direct result of the *terrorist act*. The financial assistance does not replace other forms of assistance to which a person with a disability may also have access.

On this basis, the Declaration promotes the rights of persons with a disability.

Conclusion

The Declaration is compatible with human rights and specifically promotes those human rights outlined above.



PROTECTED

Assessment for a Declaration under the AVTOP scheme – Bamyan shooting (Bamyan Province, Afghanistan)

Background

At approximately 6pm local time on 17 May 2024, several gunmen opened fire in a bazaar in Bamyan, Afghanistan.¹ The targets of the attack were tourists and their local guides. Bamyan is the top tourist destination in Afghanistan as the area is home to a United Nations world heritage site and the remains of two giant Buddha statues. One of the victims has stated to the press that a gunman on foot approached the group's vehicles and opened fire.²

Six fatalities have been confirmed, with three Spanish nationals and three locals confirmed as the deceased.³ According to Abdul Mateen Qani, a spokesman for the Taliban's interior ministry, seven other people, including four foreign nationals, were wounded in the attack.⁴ A local non-governmental organisation reported that the persons injured consists of nationals from Spain, Lithuania, Norway, Australia, and Afghanistan.⁵

Seven suspects were arrested at the scene. Islamic State-Khorasan Province (IS-KP) claimed responsibility for the attack.⁶

On 22 May 2024, the Department of Foreign Affairs and Trade (DFAT) notified the Department of Home Affairs (the Department) that the Minister for Foreign Affairs had received correspondence from s. 47F(1) MP, requesting the incident be declared a terrorist act, to allow s. 47F(1) family to apply for the AVTOP scheme.

Assessment that the incident meets definition of 'terrorist attack' for the purposes of S35B of the *Social Security Act*

An incident may be declared as an incident to which the AVTOP scheme applies if it is declared by the Prime Minister to be a 'declared overseas terrorist act'. The incident must satisfy the definition of 'terrorist act' and have occurred outside of Australia. For the purposes of the legislation, a 'terrorist act' has the same meaning as in subsection s100.1(1) of the *Criminal Code Act 1995* ('Criminal Code')

¹ Hindeleh, Basil, s. 47F(1) 'Injured in deadly shooting in central Afghanistan.' ABC News, 17 May 2024, <[https://www.abc.net.au/news/2024-05-18/s.47F\(1\)-injured-in-afghanistan-deadly-shooting/103865146](https://www.abc.net.au/news/2024-05-18/s.47F(1)-injured-in-afghanistan-deadly-shooting/103865146)>

² SBS News, s. 47F(1) 'injured in Afghanistan shooting reportedly in stable condition.' SBS, 18 May 2024, <[https://www.sbs.com.au/news/articles/s.47F\(1\)-injured-in-afghanistan-shooting-reportedly-in-stable-condition/8crpcnpis](https://www.sbs.com.au/news/articles/s.47F(1)-injured-in-afghanistan-shooting-reportedly-in-stable-condition/8crpcnpis)>

³ Gul, Ayaz, 'Taliban raise death toll to 6 in gun attack on Western Tourists', VOA News, 18 May 2024, <https://www.voanews.com/a/taliban-raise-death-toll-to-6-in-gun-attack-on-western-tourists/7617367.html>

⁴ Al Jazeera, 'Three Afghans, three Spanish tourists killed in Bamyan shooting.' Al Jazeera, 18 May 2024, <<https://www.aljazeera.com/news/2024/5/18/three-afghans-three-spanish-tourists-killed-in-bamyan-shooting>>

⁵ EMERGENCY International, 'Five wounded in Bamiyan armed attack receive treatment at EMERGENCY's surgical centre in Kabul.' EMERGENCY International NGO press release, 22 May 2024, <<https://en.emergency.it/press-releases/five-wounded-in-bamiyan-armed-attack-receive-treatment-at-emercyncys-surgical-centre-in-kabul/>>

⁶ Faiez, Rahim, 'The Islamic State claims attack in Afghanistan that killed 3 Spanish citizens and 3 Afghans.' AP News, 20 May 2024, <<https://apnews.com/article/islamic-state-claim-shooting-spanish-citizens-bfb9f9293922a53bb5adc1f647c48d7b>>

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The Bamyán incident satisfies the following elements of a terrorist attack:

- The action was made with the intention of advancing a political, religious or ideological cause (s100.1(1)(b))
- The action was made with the intention of intimidating the public or a section of the public (s100.1(1)(c)(ii))
- The action caused serious harm that is physical harm to a person (s100.1(2)(a)) AND
- The action caused a person's death (s100.1(2)(c)) AND
- The action endangered a person's life, other than the life of the person taking the action (s100.1(2)(d))
- The act does not fall within s100.1(3) of the Criminal Code as legitimate advocacy, protest, dissent or industrial action.

Assessment against the Prime Minister's Declaration Criteria

The terrorist act targeted Australia or Australian interests or had a direct or indirect impact on Australia or Australians.

- DFAT has confirmed that s. 47F(1) suffered injuries in the attack in Bamyán, Afghanistan.
- The Hon s. 47F(1) MP has written to Senator the Hon Penny Wong, Minister for Foreign Affairs, asking for a declaration to be made, noting that s. 47F(1) was impacted by the incident.

A terrorist organisation has claimed responsibility for the terrorist act

- IS-KP released a statement on 19 May 2024, claiming responsibility for the attack and declaring that it came pursuant to the directives of IS officials to "target nationals of coalition states wherever they are."⁷
- Australia has listed IS-KP as a terrorist organisation under the Criminal Code since November 2017.

The nature or extent of the terrorist act attracted broad media coverage and is of national significance

- The attack received moderate media coverage with articles about the known s. 47F(1) being published in mainstream media outlets including the ABC,⁸ SBS,⁹ and Sky News.¹⁰
- The Spanish Ministry of Foreign Affairs said in a statement that three Spaniards died in the attack and at least one more was injured. The Spanish Prime Minister also made a social media post condemning the attack and confirming that the victims were tourists.

⁷ SITE Intelligence, 'ISKP Claims Armed Attack on Foreign Tourists in Bamyán (Afghanistan)', SITE Intel Group, 19 May 2024, <<https://ent.siteintelgroup.com/Jihadist-Threat-Statements/iskp-claims-armed-attack-on-foreign-tourists-in-bamyán-afghanistan.html>>

⁸ Basil, s. 47F(1) injured in deadly shooting in central Afghanistan', ABC News, 17 May 2024, <[https://www.abc.net.au/news/2024-05-18s.47F\(1\)-injured-in-afghanistan-deadly-shooting/103865146](https://www.abc.net.au/news/2024-05-18s.47F(1)-injured-in-afghanistan-deadly-shooting/103865146)>

⁹ SBS News, s. 47F(1) injured in Afghan shooting reportedly in stable condition.' SBS, 18 May 2024. <[https://www.sbs.com.au/news/article/s.47F\(1\)-injured-in-afghanistan-shooting-reportedly-in-stable-condition/8crpcnpis](https://www.sbs.com.au/news/article/s.47F(1)-injured-in-afghanistan-shooting-reportedly-in-stable-condition/8crpcnpis)>

¹⁰ Godsell, Oscar, s. 47F(1) injured in horrific Afghanistan attack, six dead and eight injured.' Sky News, 19 May 2024, <[https://www.skynews.com.au/australia-news/s.47F\(1\)-injured-in-horrific-afghanistan-attack-six-dead-and-eight-injured/news-story/6dd17c68077b87e60335fdbc6485cdfb](https://www.skynews.com.au/australia-news/s.47F(1)-injured-in-horrific-afghanistan-attack-six-dead-and-eight-injured/news-story/6dd17c68077b87e60335fdbc6485cdfb)>

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- The United States Special Representative for Afghanistan expressed condolences on social media.¹¹
- To the Department's knowledge, no other countries have activated a victims' payment scheme in response yet, noting that the attack is recent.

s. 7(2A)

[REDACTED]

[REDACTED]

- DFAT has classified all of Afghanistan as a Do Not Travel zone on their SmartTraveller page, citing potential for terrorism as a factor in this classification.¹²
 - The classification of an area as a Do Not Travel zone does not preclude it from being included in an AVTOP declaration.

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¹¹ BBC News, 'Spain confirms three of its citizens killed in Bamiyan attack.' BBC News Persia, 19 May 2024, <<https://www.bbc.com/persian/articles/cgrwlgj6y51o>>

¹² Smart Traveller, 'Afghanistan', 20 May 2024, <<https://www.smartraveller.gov.au/destinations/asia/afghanistan>>