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Senate Legal and Constitutional Affairs Committee
Online submission

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Dear Committee,

Assisting Victims of Overseas Terrorism Bill 2012 and the provisions of the Social Security Amendment (Supporting Victims of Terrorism Overseas) Bill 2011

Thank you for the opportunity to make a short submission to this inquiry. The creation of a scheme to compensate victims of overseas terrorism should be supported as consistent with Australia's support for the United Nations' Global Counter-Terrorism Strategy (2006), section I, paragraph 8 of which calls on countries:

To consider putting in place, on a voluntary basis, national systems of assistance that would promote the needs of victims of terrorism and their families and facilitate the normalization of their lives.

Section IV of the Global Strategy also stresses the promotion of victims' human rights. Historically Australia did not vote in support of certain General Assembly resolutions addressing the victims of terrorism and its current support for victims is to be preferred.

Areas for Improvement

First, the operation of the scheme should not depend on a Prime Ministerial declaration, which both unduly politicises the scheme (requiring the Prime Minister to make a determination of whether the legal definition of a 'terrorist act' in the Criminal Code is met) and may leave victims of the many smaller, undeclared incidents uncompensated. There is no persuasive reason to distinguish between victims on such an ad hoc political basis, and it is preferable for the scheme to operate in an objective, universal manner.

Secondly, there is no convincing reason for compensating only victims of overseas terrorism, but not victims of other international crimes abroad, such as war crimes, crimes against humanity, torture or genocide. It would be preferable to create a more comprehensive regime which enables compensation of victims of any serious international crime such as these (such as, for instance, the 'Balibo Five'). The simplest approach would be to enable compensation for victims of any federal offence, which would include international crimes of extraterritorial application in the *Criminal Code*.

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In this regard I draw attention to the *UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, adopted by General Assembly Resolution 60/147 (2005), which provide at paragraph 16:

States should endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.

Many international crimes are of comparable or more serious gravity than acts of terrorism, and it makes sense to make compensation available across the board.

Thirdly, I note that some countries, such as the United States, have gone further than Australia proposes to go in supporting victims of terrorism by creating structures within government to deal with victims in a more holistic manner. In 2005 the US Department of Justice established an Office of Justice for Victims of Overseas Terrorism with various supportive functions: www.justice.gov/nsd/overseas_terrorism.pdf.

Please be in touch if I can be of any further assistance.

Yours sincerely

Professor Ben Saul