



24 April 2012

Ms Julie Dennett  
Committee Secretary  
The Senate Standing Committee  
on Legal and Constitutional Affairs  
Department of the Senate  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Ms Dennett

**Inquiry into the Social Security Amendment (Supporting Australian Victims of Terrorism Overseas) Bill 2011 and the Assistance for Victims of Terrorism Overseas Bill 2012**

Thank you for providing the Attorney-General's Department with the opportunity to appear before the Committee's inquiry into the Social Security Amendment (Supporting Australian Victims of Terrorism Overseas) Bill 2011 (the Government Bill) and the Assistance for Victims of Terrorism Overseas Bill 2012 (the Private Senator's Bill) on 19 April 2012.

At the hearing, Departmental officers provided evidence about a range of matters, including eligibility criteria for primary and secondary victims and why the Government Bill proposes a maximum payment of \$75,000.

*Activation of the Scheme*

During the hearing, the Law Council of Australia expressed concern about the absence of criteria for making a declaration. In particular, Ms Moulds of the Law Council stated that the absence of criteria for making a decision that an incident is one to which the scheme applies could result in the "unfair and inconsistent" application of the proposed scheme. Indeed, the Law Council's submission, at paragraph 60 suggested racial discrimination could be exercised in the application of the scheme.

Departmental officers did not provide evidence at the hearing about that matter, and is pleased to provide the following information for the Committee's consideration. The Government Bill does not restrict the matters the Prime Minister may take into consideration when deciding whether to declare a particular overseas terrorism act as one to which the scheme will apply. This is designed to ensure the Prime Minister is not limited in making a declaration in circumstances where he or she determines the proposed scheme should apply, including factors that were not contemplated when the legislation was drafted. As mentioned at the hearing, it is designed to achieve precision which in turn can facilitate quick payment to victims and less expenditure on administration and litigation.



The Law Council's submission suggests that the absence of criteria could result in discrimination. There is no reason to suggest that the Prime Minister would exercise the discretion in a manner that is discriminatory. The Australian Government is party to a number of international treaties that protect the human rights of all individuals within its jurisdiction and prevent discrimination, including the Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights. These treaties require Australia to ensure its laws, and the application of those laws, do not discriminate against persons on a prohibited ground (such as race or national origin). The Australian Government is committed to upholding those obligations.

### *Eligibility – Residency*

During the hearing, the Committee noted that the Government Bill provides for "Australian residents" to be eligible to make a claim, and asked whether an Australian citizen ordinarily resident overseas would be eligible. Departmental officers advised that the meaning of "resident" for the purposes of the Government Bill was adopted from the social security legislation.

The Department is pleased to provide the Committee with the following, additional information about the meaning of "resident" for the purposes of the Government Bill.

Section 1061PAA of the Bill requires the claimant to be an Australian resident on the day the terrorist act occurred. Subsection 7(2) of the *Social Security Act 1991* (the Act) provides that a person must reside in Australia and be one of the following:

- an Australian citizen
- the holder of a permanent visa, or
- a special category visa holder who is also a 'protected SCV holder'.

The criteria for determining whether a person is a protected SCV holder under subsections 7(2A) to (2D) of the Act is attached. SCV or 'Special Category Visa' holders have permission to remain in Australia indefinitely. However, since 26 February 2001 only protected SCV holders can meet the definition of Australian resident and are entitled to a full range of social security payments under the Act. Non-protected SCV holders cannot meet the definition of an Australian resident and are not entitled to Australian social security payments. This is designed to ensure those who in fact have a remote connection to Australia are not able to access benefits.

These definitions were adopted for the purposes of the Government Bill because they have been tested in the context of the social security legislation over a number of years.

In addition, the Minister can provide that a class of persons who do not satisfy the residency test can be eligible for assistance under a determination.

### *Comparisons with Foreign Schemes*

The Committee noted that the British government is about to implement a victim of overseas terrorism scheme and requested further information about foreign schemes.

At the hearing, Departmental officers noted that, while there are a number of foreign schemes, there are significant differences between those schemes and the proposed scheme under the Government Bill. The Department is pleased to provide the following additional information about a selection of foreign schemes for the Committee's information.



The British scheme to compensate victims of terrorist attacks will be limited to British nationals who sustain an injury from one of the six specified terrorism acts that occurred outside the United Kingdom. The families of those killed in the terrorist attacks are not eligible for assistance under the British scheme. In contrast, the Government Bill provides up to \$75,000 to the close family members of those killed in a declared overseas terrorist attack.

Eligibility under the British scheme will be limited to an individual who “continues, on the date of application, to suffer a disability”, potentially excluding a large number of victims of those incidents. For example, persons who were severely injured in the Bali 2002 bombings but who no longer suffer a disability would not be eligible. Under the Australian scheme, a claimant will only need to establish he or she suffered physical harm or harm to his or her mental health. The British scheme provides that a victim can receive a payment consisting of 100% of the maximum for the most serious injury, 30% of the maximum for the second most serious injury, and 15% of the maximum for the third most serious injury. This could amount to a maximum payment of £319,000 where, at the time of making the claim, the person continues to suffer from the three most serious injuries listed in the relevant table (quadriplegia, very serious brain injury, and the loss of both hands or both feet).

The amount payable under the British scheme could be reduced or no payment made if the person was the recipient of other payments from the UK Government (eg, payments under the Armed Forces Compensation Scheme) or where the “the applicant’s character” (as determined by criminal convictions or other evidence) “makes it inappropriate to make a full payment, or any payment at all”. In contrast, the Government Bill provides that other benefits received, including damages, compensation and Medicare, will not affect a payment under the proposed scheme. Further, while the Government Bill excludes persons involved in the terrorist act, it treats all victims equally.

The Israeli scheme for victims of terrorist acts is limited to persons injured in the Israeli-Arab conflict. In comparison, the Government Bill could apply to any overseas terrorist act. The Israeli scheme is also limited to persons aged 18 years and older. Recognising the psychological and physical trauma a child can suffer as a result of a terrorist act, the Government Bill would provide for assistance for victims of all ages, including a child who tragically loses a parent to terrorism.

Some countries, including Italy and Spain, have schemes that primarily provide for social security support or pensions for victims of terrorist attacks. Others, including Northern Ireland and the United States have schemes that are not limited to terrorist acts, and that extend to persons injured as a result of a criminal act. There are some similarities between these schemes and Australia’s State and Territory victims of crime schemes.

I trust this information is of assistance to the Committee in undertaking its inquiry.

The action officer for this matter is Karen Horsfall who can be contacted on

Yours sincerely

Geoff McDonald  
First Assistant Secretary  
National Security Law and Policy Division

(2A) A person is a *protected SCV holder* if:

- (a) the person was in Australia on 26 February 2001, and was a special category visa holder on that day; or
- (b) the person had been in Australia for a period of, or for periods totalling, 12 months during the period of 2 years immediately before 26 February 2001, and returned to Australia after that day.

(2B) A person is a *protected SCV holder* if the person:

- (a) was residing in Australia on 26 February 2001; and
- (b) was temporarily absent from Australia on 26 February 2001; and
- (c) was a special category visa holder immediately before the beginning of the temporary absence; and
- (d) was receiving a social security payment on 26 February 2001; and
- (e) returned to Australia before the later of the following:
  - (i) the end of the period of 26 weeks beginning on 26 February 2001;
  - (ii) if the Secretary extended the person's portability period for the payment under section 1218C—the end of the extended period.

(2C) A person who commenced, or recommenced, residing in Australia during the period of 3 months beginning on 26 February 2001 is a *protected SCV holder* at a particular time if:

- (a) the time is during the period of 3 years beginning on 26 February 2001; or
- (b) the time is after the end of that period, and either:
  - (i) a determination under subsection (2E) is in force in respect of the person; or
  - (ii) the person claimed a payment under the social security law during that period, and the claim was granted on the basis that the person was a protected SCV holder.

(2D) A person who, on 26 February 2001:

- (a) was residing in Australia; and
- (b) was temporarily absent from Australia; and
- (c) was not receiving a social security payment;

is a *protected SCV holder* at a particular time if:

- (d) the time is during the period of 12 months beginning on 26 February 2001; or
- (e) the time is after the end of that period, and either:
  - (i) at that time, a determination under subsection (2E) is in force in respect of the person; or
  - (ii) the person claimed a payment under the social security law during that period, and the claim was granted on the basis that the person was a protected SCV holder.