



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

No. 106, 2012

**An Act to provide support for Australian victims of
terrorist acts occurring overseas, and for related
purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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

No. 106, 2012

An Act to provide support for Australian victims of terrorist acts occurring overseas, and for related purposes

[Assented to 22 July 2012]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Social Security Amendment (Supporting Australian Victims of Terrorism Overseas) Act 2012*.

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

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2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	22 July 2012
2. Schedule 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	22 January 2013

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Main amendments

Social Security Act 1991

1 Subsection 23(1)

Insert:

Australian Victim of Terrorism Overseas Payment or *AVTOP*
means a payment under Part 2.24AA.

2 Subsection 23(1)

Insert:

AVTOP: see *Australian Victim of Terrorism Overseas Payment*.

3 Subsection 23(1)

Insert:

AVTOP Principles means the AVTOP Principles made by the
Minister under section 1061PAF.

4 Subsection 23(1)

Insert:

close family member has the meaning given by subsection
1061PAA(4).

5 Subsection 23(1)

Insert:

declared overseas terrorist act means a terrorist act in respect of
which there is a declaration under subsection 35B(1).

6 Subsection 23(1)

Insert:

primary victim of a declared overseas terrorist act has the meaning given by subsection 1061PAA(2).

7 Subsection 23(1)

Insert:

secondary victim of a declared overseas terrorist act has the meaning given by subsection 1061PAA(3).

8 Subsection 23(1)

Insert:

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

9 After section 35A

Insert:

35B Declared overseas terrorist act

- (1) The Prime Minister may, by legislative instrument, declare that a terrorist act that occurs outside Australia is a declared overseas terrorist act.
- (2) If the Prime Minister makes a declaration under subsection (1), then the Minister is taken to have made a determination under subsection 36(1) that the terrorist act is a major disaster.

10 At the end of subsection 36(1)

Add:

Note: If the Prime Minister makes a declaration under subsection 35B(1) that a terrorist act is a declared overseas terrorist act, the Minister is taken to have made a determination under subsection (1) of this section that the terrorist act is a major disaster (see subsection 35B(2)).

11 After Part 2.24

Insert:

Part 2.24AA—Australian Victim of Terrorism Overseas Payment

Division 1—Qualification for Australian Victim of Terrorism Overseas Payment

1061PAA Qualification for Australian Victim of Terrorism Overseas Payment

Qualification for AVTOP

- (1) A person is qualified for an Australian Victim of Terrorism Overseas Payment if:
- (a) the person is a primary victim or a secondary victim of a declared overseas terrorist act; and
 - (b) the person and the person's close family members were not involved in the commission of the terrorist act; and
 - (c) the person:
 - (i) is an Australian resident on the day the terrorist act occurred; or
 - (ii) is covered by a determination under subsection (6).

Note: For declared overseas terrorist act see section 35B.

*Meaning of **primary victim***

- (2) A person is a **primary victim** of a declared overseas terrorist act if the person:
- (a) was in the place where the terrorist act occurred; and
 - (b) was harmed (within the meaning of the *Criminal Code*) as a direct result of the terrorist act.

*Meaning of **secondary victim***

- (3) A person is a **secondary victim** of a declared overseas terrorist act if the person is a close family member of a person who:
- (a) was in the place where the terrorist act occurred; and
 - (b) died, before the end of 2 years starting on the day the terrorist act occurred, as a direct result of the terrorist act.

Meaning of close family members

- (4) The following are a person's *close family members*:
- (a) the person's partner;
 - (b) the person's child;
 - (c) the person's parent;
 - (d) the person's sibling;
 - (e) the person's legal guardian.

Meaning of involved

- (5) A person was *involved* in the commission of a declared overseas terrorist act if the person:
- (a) aided, abetted, counselled or procured the terrorist act; or
 - (b) induced the terrorist act, whether through threats or promises or otherwise; or
 - (c) was in any way (directly or indirectly) knowingly concerned in, or a party to, the terrorist act; or
 - (d) conspired with others to effect the terrorist act.

Ministerial determination

- (6) The Minister may, by legislative instrument, determine a specified class of persons for the purposes of subparagraph (1)(c)(ii).

1061PAB Whether a person can be qualified for more than one AVTOP in relation to the same terrorist act

Only one AVTOP for primary victim as primary victim

- (1) A person cannot be qualified as a primary victim for more than one AVTOP in relation to the same declared overseas terrorist act.

Only one AVTOP for secondary victims for same family member

- (2) A person cannot be qualified as a secondary victim for more than one AVTOP in relation to the same close family member.

When victims can qualify for more than one AVTOP

- (3) A person can be qualified for more than one AVTOP in relation to the same declared overseas terrorist act if the person:

- (a) is a primary victim and a secondary victim of the terrorist act (whether as a secondary victim in relation to one, or more than one, close family member); or
- (b) is a secondary victim of the terrorist act in relation to more than one close family member.

Division 2—Payability of Australian Victim of Terrorism Overseas Payment to secondary victims

1061PAC When AVTOP for secondary victims is not payable

If:

- (a) a person makes a claim for an AVTOP as a secondary victim in relation to a close family member who has died as a direct result of a declared overseas terrorist act; and
 - (b) either:
 - (i) before the claim was made, one or more persons were granted an AVTOP as secondary victims in relation to the close family member; or
 - (ii) the Secretary had notified the person under subsection 35B(2) of the Administration Act of the person's entitlement to make a claim, but the person did not make the claim before the day specified in the notice;
- then the AVTOP is not payable to the person.

Division 3—Amount of Australian Victim of Terrorism Overseas Payment

1061PAD Amount of AVTOP for a primary victim

- (1) The Secretary must determine the amount of an AVTOP payable to a person who is a primary victim of a declared overseas terrorist act.
- (2) The determination must be made in accordance with subsection (3) and the AVTOP Principles under section 1061PAF.
- (3) The amount must not exceed \$75,000.

1061PAE Amount of AVTOP for a secondary victim

Secretary to determine amount of AVTOP

- (1) The Secretary must determine the amount of an AVTOP (the **relevant AVTOP**) payable to a person who is a secondary victim in relation to a close family member who has died as a direct result of a declared overseas terrorist act.
- (2) The determination must be made in accordance with subsections (3) to (5) and the AVTOP Principles under section 1061PAF.
- (3) The amount must not exceed \$75,000.

Limit on total payments in relation to close family member

- (4) If the person is not the only secondary victim who has made a claim as a secondary victim in relation to the close family member, then, when working out the amount of the relevant AVTOP, the Secretary must ensure that the sum of all the AVTOPs (including the relevant AVTOP) that are paid in relation to the close family member does not exceed \$75,000.

Limit on total payments to secondary victim

- (5) If:
 - (a) the person is also a secondary victim of the terrorist act in relation to one or more other close family members; and
 - (b) an AVTOP has been paid to the person in relation to any of those other family members;then, when working out the amount of the relevant AVTOP, the Secretary must ensure that the sum of all the AVTOPs (including the relevant AVTOP) that are paid to the person as a secondary victim of the terrorist act does not exceed \$75,000.

1061PAF AVTOP Principles

- (1) The Minister must, by legislative instrument, determine the principles (the **AVTOP Principles**) to be applied for the purposes of determining the amount of an AVTOP payable to a person in relation to a declared overseas terrorist act.

- (2) Without limiting subsection (1), the AVTOP Principles may provide that the following factors are to be taken into account when determining the amount of the payment:
- (a) for a primary victim:
 - (i) the nature of the injury or disease suffered as a direct result of the terrorist act; and
 - (ii) the duration of the injury or disease; and
 - (iii) the impact of the injury or disease on the person's bodily and mental functions; and
 - (iv) the impact of the injury or disease on the person's life; and
 - (v) the likelihood of the person suffering future loss, injury or disease as a direct result of the terrorist act; and
 - (vi) the circumstances in which the injury or disease was incurred; and
 - (vii) whether the person was directed by an official of Australia or a foreign country not to go to the place where the terrorist act occurred;
 - (b) for a secondary victim in relation to a close family member who has died:
 - (i) whether the person was dependant on the close family member; and
 - (ii) the nature of the relationship between the person and the close family member; and
 - (iii) the circumstances in which the close family member died; and
 - (iv) whether 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
 - (v) whether there are other persons who have made a claim for an AVTOP as a secondary victim in relation to the close family member; and
 - (vi) if there are such other secondary victims and the person and each of the other secondary victims agree on the amount of the AVTOP that each should be paid—that agreement; and
 - (vii) if there are such other secondary victims and the person and each of the other secondary victims have not agreed on the amount of the AVTOP that each should be

- paid—whether the person has also made a claim as a secondary victim of the terrorist act in relation to another close family member;
- (c) for a primary victim or a secondary victim:
- (i) whether there was travel advice on an Australian government website advising against travelling to the foreign country, region or place where the terrorist act occurred; and
 - (ii) whether the person has been paid or is likely to be paid an amount by the Commonwealth, a State, a Territory, a foreign country or any other person or entity in relation to the terrorist act.
- (3) The AVTOP Principles may specify circumstances in which the amount of an AVTOP is nil.

Division 4—Other

1061PAG Consultation on the AVTOP Principles

- (1) Before determining the AVTOP Principles under section 1061PAF, the Minister must consult with representatives of the following groups (the *consultation groups*):
- (a) victims of overseas terrorist acts and their families;
 - (b) community or welfare organisations;
 - (c) health professionals;
 - (d) international humanitarian agencies;
 - (e) any other persons the Minister considers appropriate to consult.
- (2) The Minister must also consult representatives of the consultation groups each year after the year in which the AVTOP Principles commence.
- (3) A failure to consult as required by this section does not affect the validity of the AVTOP Principles.

1061PAH AVTOP is not compensation or damages

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

Social Security (Administration) Act 1999

12 After Subdivision FA of Division 1 of Part 3

Insert:

Subdivision FB—Time limit for claims for AVTOP

27B Time limit for claims for AVTOP

- (1) A claim for an AVTOP by a primary victim of a declared overseas terrorist act must be lodged within 2 years after the day the declaration is made under subsection 35B(1) of the 1991 Act.
- (2) A claim for an AVTOP by a secondary victim of a declared overseas terrorist act must be lodged within 12 months after the day the close family member to whom the claim relates died.
- (3) However, a claim may be lodged after the period referred to in subsection (1) or (2) if the Secretary is satisfied that:
 - (a) there are special circumstances applying to the person's claim that justify a late lodgment; and
 - (b) the claim is lodged within a reasonable period having regard to those circumstances.

13 At the end of Subdivision J of Division 1 of Part 3

Add:

35B Secondary victim claims for AVTOP

- (1) If a person makes a claim for an AVTOP as a secondary victim in relation to a close family member who has died, the Secretary must make reasonable inquiries as to whether there are other persons (a ***potential claimant***) who may also qualify for an AVTOP as a secondary victim in relation to the same close family member.

- (2) If the Secretary considers there are potential claimants, the Secretary must give each of them a written notice stating that:
 - (a) he or she may make a claim for an AVTOP as a secondary victim in relation to the close family member; and
 - (b) he or she must make a claim before the day (the *claim due day*) specified in the notice; and
 - (c) if he or she fails to make a claim by the claim due day, an AVTOP in relation to the close family member will not be payable to him or her.
- (3) The claim due day must be at least 30 days after the day the notice is given to the potential claimant.
- (4) If the Secretary is satisfied that it is appropriate to do so, the Secretary may change the claim due day to a later day.
- (5) If the Secretary changes the claim due day under subsection (4), then:
 - (a) the Secretary must change the claim due day for each of the potential claimants to the new claim day; and
 - (b) the Secretary must give each of the potential claimants a written notice of the new claim due day; and
 - (c) the new claim due day is taken to be the day specified in the notice under subsection (2) for the purposes of subparagraph 1061PAC(b)(ii) of the 1991 Act.

14 At the end of section 36

Add:

- (3) If more than one person makes a claim for an AVTOP as a secondary victim of a declared overseas terrorist act in relation to the same close family member, the Secretary must determine the claims at the same time.

Part 2—Other amendments

Income Tax Assessment Act 1997

17 After subsection 52-10(1J)

Insert:

- (1K) Australian Victim of Terrorism Overseas Payment under Part 2.24AA the *Social Security Act 1991* is exempt from income tax.

18 Section 52-40 (after table item 2AA)

Insert:

2AB	Australian Victim of Terrorism Overseas Payment	Part 2.24AA	Not applicable	Not applicable
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Social Security Act 1991

20 Subsection 14A(1) (after paragraph (da) of the definition of *liquid assets*)

Insert:

- (db) an amount of an AVTOP that the person received, if the Secretary is satisfied that the length of time since receiving the payment is still reasonable in the circumstances; or

21 Section 19B (after paragraph (g) of the definition of *liquid assets*)

Insert:

- ; or (h) an amount of an AVTOP that the person received, if the Secretary is satisfied that the length of time since receiving the payment is still reasonable in the circumstances.

22 Subsection 23(1)

Insert:

involved in the commission of a declared overseas terrorist act has the meaning given by subsection 1061PAA(5).

Social Security (Administration) Act 1999

23 At the end of subsection 16(6)

Add:
; or (c) claims for AVTOP.

24 After subsection 31(1)

Insert:
(1A) Section 29 does not apply to a claim for an AVTOP.

25 Subsection 36(1)

Omit “subsection (2)”, substitute “this section”.

25A At the end of section 39

Add:

- (6) The Secretary may determine that a specified period, being a period that is longer than 13 weeks, applies for the purposes of claims for an AVTOP in relation to a declared overseas terrorist act.
- (7) If, under subsection (6), there is a determination of a period in force for the purposes of claims for an AVTOP in relation to a declared overseas terrorist act, then this Act applies to those claims as if references in subsections (1) and (3) to the period of 13 weeks were references to the period referred to in the determination.
- (8) A determination under subsection (6) is not a legislative instrument.

26 After section 46A

Insert:

46B Payment of AVTOP

(1) Unless the Secretary makes a determination under subsection (2), a person’s AVTOP is to be paid:

- (a) in accordance with section 47; and
 - (b) on the date that is determined by the Secretary to be the earliest date on which it is reasonably practicable for the payment to be made to the person.
- (2) If the Secretary considers that it is appropriate for a person's AVTOP to be paid by instalments, the Secretary may determine that the person's AVTOP is to be so paid.

27 Subsection 47(1) (after paragraph (aa) of the definition of lump sum benefit)

Insert:

- (aaa) AVTOP, except where the Secretary has made a determination under subsection 46B(2); or

*[Minister's second reading speech made in—
House of Representatives on 24 March 2011
Senate on 22 June 2012]*

(64/11)

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