

EXPLANATORY STATEMENT

Social Security (Declared Overseas Terrorist Act) Declaration 2016 – Brussels

The *Social Security (Declared Overseas Terrorist Act) Declaration 2016 – Brussels* (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 who are victims of an overseas terrorist act.

The Act authorises the Prime Minister to declare that an overseas terrorist incident is a 'terrorist act' within the meaning of section 100.1 of the *Criminal Code Act 1995* (the Criminal Code). The scheme only applies to overseas terrorist acts which are the subject of a declaration by the Prime Minister.

Once the Prime Minister has made a declaration applying the scheme to an overseas terrorist act, the Act authorises victims of the terrorist act to apply for financial assistance of up to \$75,000. Victims are Australian residents 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.

Purpose

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

Explanation and effect of provisions

Section 1 – Name of Declaration

Section 1 sets out the title of the Declaration as the *Social Security (Declared Overseas Terrorist Act) Declaration 2016 – Brussels*

Section 2 – Commencement

Section 2 provides that the Declaration commences on the day after this instrument is registered.

Section 3 – Definitions

Section 3 sets out the interpretive provisions that are relevant to the Declaration as follows:

- **Act** means the *Social Security Act 1991*.

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

Section 4 – Declared overseas terrorist act

Section 4 provides that the following incidents are declared overseas terrorist acts for the purposes of subsection 35B(1) of the Act:

- (1) the bombings in Brussels, Belgium on 22 March 2016 at the following locations:
 - a. two bomb attacks at approximately 7.58am (local time) at the departure check-in area at Brussels Zaventem Airport, and
 - b. a bomb attack at approximately 9.15am (local time) on a train near Maelbeek Metro station, Brussels.

Human rights implications of the Declaration

The Declaration 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*.

This statement has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Declaration activates the AVTOP scheme to apply to Australian resident victims of the bombings in Brussels, Belgium on 22 March 2016, as outlined in Section 4 of the Declaration.

Terrorist attacks impose a heavy burden on both those harmed or killed 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 acts are individuals who are harmed as a direct result of the act. 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 acts are individuals whose close family member died as a direct result of the act. Such persons may:

- lose one or more family members, and

- experience a loss of support that they received from their now deceased family member.

The Declaration promotes the economic and social rights of victims of terrorism and members of their families, specifically:

- the right to social security (Article 9, International Covenant on Economic, Social and Cultural Rights (ICESCR))
- the right to family life (Article 10, ICESCR)
- the right to an adequate standard of living (Article 11, ICESCR)
- the right to health (Article 12, ICESCR), 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.

Right to social security in Article 9 of the ICESCR

Article 9 of ICESCR requires States to recognise the right of everyone to social security, including social insurance, including establishing a social security system and, within its maximum available resources, ensure 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 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 a range of social security benefits.

Under the scheme, financial assistance to Australian residents 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 more severe and more enduring. The maximum amount payable to a person in relation to the harm they suffer is \$75,000.

A fixed 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. The amount is apportioned between family members using rules modelled on succession laws.

The financial assistance provided to Australian residents harmed in the declared overseas terrorist act or whose close family member dies as a result of the terrorist act is not compensation or damages. 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.

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

Right to family life in Article 10 of the ICESCR

Article 10 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 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 scheme enables financial assistance to be provided to close family members of a person who died as a direct result of an overseas terrorist act. This financial assistance assists in preserving the integrity of the family unit during a difficult time. The 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

Article 11 of the ICESCR requires 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, housing and to the continuous improvement of living conditions.

The scheme provides financial assistance for Australian residents who have been injured or whose close family relatives died as a direct result of a terrorist act. The scheme acknowledges the economic impact of an injury on a primary or secondary person's lifestyle.

Financial assistance provided under the 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 an 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

Article 12 of ICESCR provides for the right to the enjoyment of the highest attainable standard of physical and mental health.

The scheme provides for a higher amount of financial assistance to be provided to victims 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 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 Declaration promotes the right to health by providing financial assistance to victims that they can use in any way, including for the purposes of medical and psychological treatment.

On this basis, the Declaration promotes the right to health.

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 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 scheme does not discriminate on basis of disability, but provides financial assistance to all Australian victims harmed as a direct result of an overseas terrorist attack or whose close family member dies as a direct result of such an attack. The financial assistance provided takes account of a person who may be harmed or disabled by physical and psychological injuries.

The scheme does not prescribe the manner in which funds receive 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 a terrorist act.

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

Conclusion

The Declaration is compatible with human rights as it promotes those human rights outlined above.

Consultation

Consultation on this Declaration was undertaken with key stakeholders. In particular, consultation was undertaken with:

- the Australian Security Intelligence Organisation
- the Attorney-General's Department
- the Department of Human Services, and
- the Department of the Prime Minister and Cabinet.