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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Social Security Amendment (Supporting
Australian Victims of Terrorism
Overseas) Bill 2011**

No. , 2011

(Attorney-General)

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

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	2
Schedule 1—Amendments		3
Part 1—Main amendments		3
	<i>Social Security Act 1991</i>	3
	<i>Social Security (Administration) Act 1999</i>	10
Part 2—Other amendments		13
	<i>A New Tax System (Family Assistance) Act 1999</i>	13
	<i>Health and Other Services (Compensation) Act 1995</i>	13
	<i>Income Tax Assessment Act 1997</i>	13
	<i>Safety, Rehabilitation and Compensation Act 1988</i>	13
	<i>Social Security Act 1991</i>	14
	<i>Social Security (Administration) Act 1999</i>	14

1 **A Bill for an Act to provide support for Australian**
2 **victims of terrorist acts occurring overseas, and for**
3 **related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Social Security Amendment*
7 *(Supporting Australian Victims of Terrorism Overseas) Act 2011*.

8 **2 Commencement**

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

13

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.	
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.	

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

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

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.
12

1 **Schedule 1—Amendments**

2 **Part 1—Main amendments**

3 *Social Security Act 1991*

4 **1 Subsection 23(1)**

5 Insert:

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

8 **2 Subsection 23(1)**

9 Insert:

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

11 **3 Subsection 23(1)**

12 Insert:

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

15 **4 Subsection 23(1)**

16 Insert:

17 *close family member* has the meaning given by subsection
18 1061PAA(4).

19 **5 Subsection 23(1)**

20 Insert:

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

23 **6 Subsection 23(1)**

24 Insert:

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

1 **7 Subsection 23(1)**

2 Insert:

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

5 **8 Subsection 23(1)**

6 Insert:

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

9 **9 After section 35A**

10 Insert:

11 **35B Declared overseas terrorist act**

12 (1) The Prime Minister may, by legislative instrument, declare that a
13 terrorist act that occurs outside Australia is a declared overseas
14 terrorist act.

15 (2) If the Prime Minister makes a declaration under subsection (1),
16 then the Minister is taken to have made a determination under
17 subsection 36(1) that the terrorist act is a major disaster.

18 **10 At the end of subsection 36(1)**

19 Add:

20 Note: If the Prime Minister makes a declaration under subsection 35B(1)
21 that a terrorist act is a declared overseas terrorist act, the Minister is
22 taken to have made a determination under subsection (1) of this
23 section that the terrorist act is a major disaster (see subsection
24 35B(2)).

25 **11 After Part 2.24**

26 Insert:

1 **Part 2.24AA—Australian Victim of Terrorism**
2 **Overseas Payment**

3 **Division 1—Qualification for Australian Victim of**
4 **Terrorism Overseas Payment**

5 **1061PAA Qualification for Australian Victim of Terrorism**
6 **Overseas Payment**

7 *Qualification for AVTOP*

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

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

19 *Meaning of primary victim*

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

25 *Meaning of secondary victim*

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

1 *Meaning of close family members*

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

8 *Meaning of involved*

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

17 *Ministerial determination*

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

20 **1061PAB Whether a person can be qualified for more than one**
21 **AVTOP in relation to the same terrorist act**

22 *Only one AVTOP for primary victim as primary victim*

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

25 *Only one AVTOP for secondary victims for same family member*

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

28 *When victims can qualify for more than one AVTOP*

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

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

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

8 **1061PAC When AVTOP for secondary victims is not payable**

9 If:

- 10 (a) a person makes a claim for an AVTOP as a secondary victim
11 in relation to a close family member who has died as a direct
12 result of a declared overseas terrorist act; and
13 (b) either:
14 (i) before the claim was made, one or more persons were
15 granted an AVTOP as secondary victims in relation to
16 the close family member; or
17 (ii) the Secretary had notified the person under subsection
18 35B(2) of the Administration Act of the person's
19 entitlement to make a claim, but the person did not
20 make the claim before the day specified in the notice;
21 then the AVTOP is not payable to the person.

22 **Division 3—Amount of Australian Victim of Terrorism**
23 **Overseas Payment**

24 **1061PAD Amount of AVTOP for a primary victim**

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

1 **1061PAE Amount of AVTOP for a secondary victim**

2 *Secretary to determine amount of AVTOP*

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

11 *Limit on total payments in relation to close family member*

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

18 *Limit on total payments to secondary victim*

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

28 **1061PAF AVTOP Principles**

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

- 1 (2) Without limiting subsection (1), the AVTOP Principles may
2 provide that the following factors are to be taken into account
3 when determining the amount of the payment:
4 (a) for a primary victim:
5 (i) the nature of the injury or disease suffered as a direct
6 result of the terrorist act; and
7 (ii) the duration of the injury or disease; and
8 (iii) the impact of the injury or disease on the person's
9 bodily and mental functions; and
10 (iv) the impact of the injury or disease on the person's life;
11 and
12 (v) the likelihood of the person suffering future loss, injury
13 or disease as a direct result of the terrorist act; and
14 (vi) the circumstances in which the injury or disease was
15 incurred; and
16 (vii) whether the person was directed by an official of
17 Australia or a foreign country not to go to the place
18 where the terrorist act occurred;
19 (b) for a secondary victim in relation to a close family member
20 who has died:
21 (i) whether the person was dependant on the close family
22 member; and
23 (ii) the nature of the relationship between the person and the
24 close family member; and
25 (iii) the circumstances in which the close family member
26 died; and
27 (iv) whether the close family member was directed by an
28 official of Australia or a foreign country not to go to the
29 place where the terrorist act occurred; and
30 (v) whether there are other persons who have made a claim
31 for an AVTOP as a secondary victim in relation to the
32 close family member; and
33 (vi) if there are such other secondary victims and the person
34 and each of the other secondary victims agree on the
35 amount of the AVTOP that each should be paid—that
36 agreement; and
37 (vii) if there are such other secondary victims and the person
38 and each of the other secondary victims have not agreed
39 on the amount of the AVTOP that each should be

- 1 paid—whether the person has also made a claim as a
2 secondary victim of the terrorist act in relation to
3 another close family member;
4 (c) for a primary victim or a secondary victim:
5 (i) whether there was travel advice on an Australian
6 government website advising against travelling to the
7 foreign country, region or place where the terrorist act
8 occurred; and
9 (ii) whether the person has been paid or is likely to be paid
10 an amount by the Commonwealth, a State, a Territory, a
11 foreign country or any other person or entity in relation
12 to the terrorist act.

13 **1061PAG Consultation on the AVTOP Principles**

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

28 ***Social Security (Administration) Act 1999***

29 **12 After Subdivision FA of Division 1 of Part 3**

30 Insert:

1 **Subdivision FB—Time limit for claims for AVTOP**

2 **27B Time limit for claims for AVTOP**

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

15 **13 At the end of Subdivision J of Division 1 of Part 3**

16 Add:

17 **35B Secondary victim claims for AVTOP**

- 18 (1) If a person makes a claim for an AVTOP as a secondary victim in
19 relation to a close family member who has died, the Secretary must
20 make reasonable inquiries as to whether there are other persons (a
21 **potential claimant**) who may also qualify for an AVTOP as a
22 secondary victim in relation to the same close family member.
- 23 (2) If the Secretary considers there are potential claimants, the
24 Secretary must give each of them a written notice stating that:
- 25 (a) he or she may make a claim for an AVTOP as a secondary
26 victim in relation to the close family member; and
- 27 (b) he or she must make a claim before the day (the **claim due**
28 **day**) specified in the notice; and
- 29 (c) if he or she fails to make a claim by the claim due day, an
30 AVTOP in relation to the close family member will not be
31 payable to him or her.
- 32 (3) The claim due day must be at least 30 days after the day the notice
33 is given to the potential claimant.

Schedule 1 Amendments
Part 1 Main amendments

- 1 (4) If the Secretary is satisfied that it is appropriate to do so, the
2 Secretary may change the claim due day to a later day.
- 3 (5) If the Secretary changes the claim due day under subsection (4),
4 then:
- 5 (a) the Secretary must change the claim due day for each of the
6 potential claimants to the new claim day; and
- 7 (b) the Secretary must give each of the potential claimants a
8 written notice of the new claim due day; and
- 9 (c) the new claim due day is taken to be the day specified in the
10 notice under subsection (2) for the purposes of subparagraph
11 1061PAC(b)(ii) of the 1991 Act.

12 **14 At the end of section 36**

13 Add:

- 14 (3) If more than one person makes a claim for an AVTOP as a
15 secondary victim of a declared overseas terrorist act in relation to
16 the same close family member, the Secretary must determine the
17 claims at the same time.
18

1 **Part 2—Other amendments**

2 ***A New Tax System (Family Assistance) Act 1999***

3 **15 After paragraph 7(c) of Schedule 3**

4 Insert:

5 (ca) an Australian Victim of Terrorism Overseas Payment under
6 Part 2.24AA of the *Social Security Act 1991*;

7 ***Health and Other Services (Compensation) Act 1995***

8 **16 After paragraph 4(2)(b)**

9 Insert:

10 (ba) a payment of an Australian Victim of Terrorism Overseas
11 Payment under Part 2.24AA of the *Social Security Act 1991*;
12 or

13 ***Income Tax Assessment Act 1997***

14 **17 After subsection 52-10(1J)**

15 Insert:

16 (1K) Australian Victim of Terrorism Overseas Payment under
17 Part 2.24AA the *Social Security Act 1991* is exempt from income
18 tax.

19 **18 Section 52-40 (after table item 2AA)**

20 Insert:

2AB	Australian Victim of Terrorism Overseas Payment	Part 2.24AA	Not applicable	Not applicable
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21 ***Safety, Rehabilitation and Compensation Act 1988***

22 **19 Subsection 48(9)**

23 Repeal the subsection, substitute:

- 1 (9) In this section, *damages* does not include the following:
2 (a) an amount of damages paid to the Commonwealth in
3 accordance with section 76 of the *Veterans' Entitlements Act*
4 *1986*;
5 (b) an Australian Victim of Terrorism Overseas Payment under
6 Part 2.24AA of the *Social Security Act 1991*.

7 ***Social Security Act 1991***

8 **20 Subsection 14A(1) (after paragraph (da) of the definition of**
9 ***liquid assets*)**

10 Insert:

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

14 **21 Section 19B (after paragraph (g) of the definition of *liquid***
15 ***assets*)**

16 Insert:

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

20 **22 Subsection 23(1)**

21 Insert:

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

24 ***Social Security (Administration) Act 1999***

25 **23 At the end of subsection 16(6)**

26 Add:

- 27 ; or (c) claims for AVTOP.

28 **24 After subsection 31(1)**

29 Insert:

- 30 (1A) Section 29 does not apply to a claim for an AVTOP.

1 **25 Subsection 36(1)**

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

3 **26 After section 46A**

4 Insert:

5 **46B Payment of AVTOP**

6 (1) Unless the Secretary makes a determination under subsection (2), a
7 person’s AVTOP is to be paid in accordance with section 47.

8 (2) If the Secretary considers that it is appropriate for a person’s
9 AVTOP to be paid by instalments, the Secretary may determine
10 that the person’s AVTOP is to be so paid.

11 **27 Subsection 47(1) (after paragraph (aa) of the definition of**
12 ***lump sum benefit*)**

13 Insert:

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