**EXPLANATORY STATEMENT**

**Social Security (Australian Victim of Terrorism Overseas Payment) Principle 2013**

TheSocial Security (Australian Victim of Terrorism Overseas Payment) Principle 2013 (the Principles) are made under subsection 1061PAF of the *Social Security Act 1991* (the Act) by the Attorney-General.

**Background**

The *Social Security Amendment (Supporting Australian Victims of Terrorism Overseas) Act 2012* (the Amending Act) amends the Act to provide a scheme for financial assistance to Australians who are victims of a declared overseas terrorist act. Victims are Australians who are harmed as a direct result of the declared overseas terrorist act or who are the close family member of a person who dies as a direct result of a declared overseas terrorist act. The scheme allows for payments to be made to these victims as an expression of the government’s empathy for the loss and suffering the victims have endured.

The Amending Act enables the Prime Minister to declare that an overseas terrorist incident is one to which the scheme applies. Australians who are harmed as a direct result of such an incident will be able to claim payments of up to $75,000. In addition, Australians who are the close family member of a person who dies as a direct result of such an incident will be able to claim financial assistance of up to $75,000.

The personal circumstances of each victim are likely to be extremely varied and, in some instances, very complex.  This is likely to be particularly evident when assessing the eligibility of close family members of a person who has died.  It is important that the Principles can take these circumstances into account whilst at the same time ensuring the scheme is not so complex that it is unworkable.  The scheme has been drafted to minimise the use of subjective tests and discretion, where appropriate, and ensures the decision maker has clear guidance as to how a claim should be assessed.   This means the scheme necessarily draws what may appear to be arbitrary lines.  However, these lines have been drawn by balancing the competing factors of flexibility and workability and, in some instances, drawing from analogous schemes that exist in State and Territory legislation.

The scheme is not intended to be an immediate payment to victims. A person can only make one claim in relation to their injuries. Primary victims have two years from the date of the declaration by the Prime Minister to make a claim (section 27B of the *Social Security (Administration) Act 1999*). Accordingly, claimants are encouraged to submit claims once their injuries have stabilised as the full impact of an injury may not be known immediately. Secondary victims have 12 months after the day the close family member passes away to make a claim.

The decision making function under the scheme will be delegated to the Department of Human Services.

**Statement of compatibility with human rights**

This legislative instrument 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*.

***Overview of the Principles***

The Australian Victim of Terrorism Overseas Payment (AVTOP) is a payment made to victims of overseas terrorist acts and their families. The Principles determine the quantum of AVTOP payable to a person who is eligible to receive an AVTOP. Section 1061PAF of the *Social Security Act 1991* (the Act) imposes an obligation on the Minister to determine the Principles.

Part 2 of the Principles determines the quantum of AVTOP payable to a primary victim. Subsection 1061PAA(2) of the Act defines a primary victim as a person who was in the place where a declared overseas terrorist act occurred and was harmed as a direct result of the act. The amount of AVTOP payable to a primary victim depends on:

* the nature of the victim’s injuries
* the impact of the terrorist act on the victim’s life
* if, and to what extent, the victim contributed to their injuries, and
* if, and to what extent, the victim received financial assistance from a foreign country for an injury arising from the terrorist act.

Part 3 of the Principles determines the quantum of AVTOP payable to a secondary victim. Subsection 1061PAA(3) of the Act defines a secondary victim as a person who is a close family member of a person who was in the place where a declared terrorist act occurred and who died within 2 years of the terrorist act as a direct result of the act. The amount of AVTOP payable to a secondary victim will depend on:

* if other people have qualified as a secondary victim in relation to the deceased person
* the nature of the relationship between the secondary victim and the deceased person
* if, and to what extent, the deceased person contributed to their death, and
* if, and to what extent, the victim received financial assistance from a foreign country for the deceased person’s death.

The AVTOP scheme is not intended to displace the responsibility of prudent travellers to consider taking other measures to protect against the risk of a terrorist attack, or the role of other Australian Government programs that assist victims of overseas terrorism. The Australian Government administers a range of programs, such as Medicare, which might assist victims of overseas terrorism.

***Human rights implications of the Principles***

The Principles promote the economic and social rights of victims of terrorism and members of their families, specifically their rights to:

* social security (Article 9, International Covenant on Economic, Social and Cultural Rights (ICESCR),
* an adequate standard of living (Article 11, ICESCR)
* health (Article 12, ICESCR)
* family life (Article 10, ICESCR), and
* rights of persons with a disability under the Convention on the Rights of Persons with Disabilities (CRPD), particularly Article 25 in relation to the right to health.

Terrorist attacks impose a heavy burden on victims and their families. In some cases, this burden will endure for life. Primary victims of terrorism may:

* lose their life
* 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 terrorism may:

* lose some or all of their family members, and
* experience a loss of support that they received from their family member.

*Right to social security and adequate standard of living*

Article 9 of ICESCR requires that States establish 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 Principles protect victims’ right to social security. AVTOP is not intended to replace other forms of government assistance.

*Right to health*

Article 12 of ICESCR provides the right to the enjoyment of the highest attainable standard of physical and mental health. The principles will promote the right to health by enabling victims to be provided with money which can be used for the payment of medical expenses. Victims who suffer serious injuries which require extensive medical treatment and/or domestic care and assistance may be eligible for a larger payment. The amount paid will also depend on a range of factors including the nature of the victim’s injuries, and the impact of the terrorist act on the victim’s life,

*Right to family life*

The Principles protect victims’ right to family life. The family is the fundamental and natural unit of society and requires the full protection of the state. Human rights law upholds the positive right of all peoples to marry and found a family. The Principles enable payments to be made to close family members of the deceased. This makes a contribution to 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, followed by their parent and then sibling.

***Conclusion***

The Principles are compatible with human rights because they advance the protection of human rights.

**Purpose**

The Principles will assist the decision maker when assessing claims for payments under the Act.

They will provide clear guidance on the factors to be considered when assessing claims, as well as the factors that are not to be considered when assessing claims.

**Explanation and effect of provisions**

**Part 1 – Preliminary**

Sections 1 to 5 of the Principles set out provisions of a technical nature.

**Section 1 – Name of Principles**

Section 1 sets out the title of the Principles as the *Social Security (Australian Victim of Terrorism Overseas Payment) Principle 2013*.

**Section 2 – Commencement**

Section 2 of the Principles provides that the Principles commence on the day after registration.

**Section 3 – Authority**

Section 3 sets out the authority under which the Principles are made. It provides that the Principles are made under the *Social Security Act 1991*.

**Section 4 - Definitions**

Section 4contains definitions and interpretation provisions that are relevant to the Principles as follows:

* ***Act*** means the *Social Security Act 1991*.
* ***AVTOP*** or ***Australian Victim of Terrorism Overseas Payment*** means a payment under Part 2.24AA of the Act.
* ***close family member*** is defined in subsection 1061PAA(4) of the Act.
* ***deceased person*** means a person who has died as a direct result of a declared overseas terrorist act.
* ***declared overseas terrorist act*** is defined in subsection 23(1) of the Act.
* ***injury*** means an injury mentioned in Schedule 1.
* ***parent*** includes a legal guardian.
* ***primary victim*** is defined in subsection 1061PAA(2) of the Act.
* ***secondary victim*** is defined in subsection 1061PAA(3) of the Act.

***terrorist act*** is defined in subsection 23(1) of the Act and is linked to the definition in the Criminal Code Act 1995.

**Section 5** **– Purpose**

Section 5 sets out the purpose of the Principles, and explains the function of Parts 2 and 3 of the Principles.

Section 5 describes the dual purpose of the financial assistance scheme, which recognises the traumatic nature of terrorism and provides for financial assistance to victims of declared overseas terrorist acts.

Paragraph 5(a) notes that the scheme aims to provide financial assistance to a person who has suffered an injury as a direct result of a declared overseas terrorist act.

Paragraph 5(b) notes that the scheme also aims to provide financial assistance to a person who is the close family member of a person who died as a direct result of a declared overseas terrorist act.

A note after section 5 makes clear that a person may qualify for other forms of assistance that address their immediate financial needs resulting from an overseas terrorist act. Examples of other benefits mentioned are the Australian Government Disaster Recovery Payment, assistance under a Disaster Health Care Assistance Scheme, and consular or repatriation assistance. The other benefits available may vary depending upon government policies and programs.

**Section 6 – Simplified outline**

Section 6 of the Principles provides an overview of how the Principles work and explains the function of each Part. Part 1 contains definitions and explains the purpose of providing AVTOP assistance.

Part 2 contains the principles for determining an AVTOP for a primary victim.

For an adult primary victim, this involves the consideration of the nature of the injury, the impact of the terrorist act on the victim’s life, as well as any reduction because the primary victim received financial assistance from a foreign country in relation to the same incident or because of the circumstances in which the injury was incurred.

For a primary victim under 16 years of age, this involves the consideration of the nature of the injury, the impact of the terrorist act on the child’s behaviour and functioning, as well as any other financial assistance received by the child from a foreign country.

Part 3 contains the principles for determining an AVTOP for a secondary victim.

This involves the consideration of other secondary victims claiming an AVTOP in relation to the deceased person and the relationship between the secondary victim and the deceased person. It also involves the consideration of any reduction because of any financial assistance received by the victim or other claimants from a foreign country in relation to the deceased, as well as any AVTOP received by the deceased before he or she died and the circumstances in which the death occurred (except in the case of a child under the age of 16 years).

**Part 2 – Principles relating to primary victims**

**Division 2.1 – General approach to determining AVTOP for primary victims**

Division 2.1 sets out the general approach to determining the amount of AVTOP payable to primary victims under Part 2.24AA of the Act.

**Section 7 – Determining the amount of AVTOP**

There are a number of steps in determining an amount of AVTOP for a primary victim.

Section 7 of the Principles sets out the formula for determining the amount of AVTOP payable under Part 2.24AA of the Act. This formula takes into consideration physical and psychological injuries, as well as the impact of the terrorist act on the victim’s life. The injuries must have been sustained as a direct result of the terrorist act.

*Step 1 – maximum of $75,000*

Paragraph 7(a) provides that, when determining the amount payable to a primary victim of a declared overseas terrorist act, the Secretary must consider whether the primary victim has suffered an injury as a direct result of the terrorist act and if so determine a monetary amount under Division 2.2. The maximum amount payable for the purposes of paragraph 7(a) is $75,000. Accordingly, where the total exceeds $75,000, any amount in excess of $75,000 must be disregarded.

*Step 2 – consider impact of terrorist incident*

Paragraph 7(b) provides that, if the primary victim has suffered an injury as a direct result of the terrorist act and the amount determined under Division 2.2 is less than $75,000, the Secretary must also consider the impact of the terrorist act on the victim’s life.

For a primary victim 16 years of age or older, the Secretary is required to determine an amount under Division 2.3, which is designed to assess the impact of the terrorist act on the victim’s personal relationships, mobility, recreational and community activities, domestic activities, and employment activities (see also Schedule 2).

For a primary victim who is under 16 years of age, the Secretary is required to determine an amount under Division 2.4, which assesses the impact the terrorist act has on the victim’s behaviour and functioning (see also Schedule 3).

*Step 3 – disregard amount over $75,000*

Paragraph 7(c) provides that, where the Secretary determines amounts under both Divisions 2.2 and 2.3 (for a victim 16 years or older) or both Divisions 2.2 and 2.4 (for a victim under 16 years), the Secretary must add the amounts determined under paragraphs (a) and (b) together. The maximum amount payable for the purposes of paragraph 7(c) is $75,000. Accordingly, where the total exceeds $75,000, any amount in excess of $75,000 must be disregarded.

*Step 4 – financial assistance from a foreign scheme*

Paragraph 7(d) provides that, if the primary victim has received financial assistance from a foreign country in relation to an injury arising from the same terrorist act, the Secretary must determine how much financial assistance the person has received. Paragraph 7(d) notes that this does not include financial assistance received by the victim for economic loss resulting from the injury. This provision is necessary because the country in which the terrorist act occurs may also have a scheme to financially assist those injured in terrorist attacks, and it would be appropriate to consider that financial assistance when determining a primary victim’s AVTOP. For example, the ‘September 11 Victim Compensation Fund’ provided financial assistance to those injured and the next of kin of those who were killed in the 9/11 attack. However, some overseas schemes may also provide assistance to cover property damage to their business or home for instance as well as economic loss which is separate from the money they receive for the injury. It is therefore important to make a distinction between these payments. AVTOP is a payment for the harm suffered in the case of the Primary Victim and payment for the loss of a close family member in the case of a secondary victim. Therefore when determining an amount of AVTOP, only the payment from a foreign country in relation to the injury or loss of life should be taken into consideration.

The note at the end of section 7(d) clarifies that some of the foreign financial assistance schemes relevant to paragraph 7(d) may be listed on the following website: www.disasterassist.gov.au.

*Step 5- consider circumstances injury occurred*

Paragraph 7(e) provides that, the Secretary must then consider the circumstances surrounding the injury in order to determine whether a reduction to the amount payable is required. If a reduction is required, it is calculated in accordance with Division 2.5. Circumstances include the victim’s actions which may have contributed to the injury.

*Note: Subsection 14(2) provides that reductions will not be made in relation to the circumstances in Division 2.5 in the case of primary victims under the age of 16 years.*

To determine the final amount payable to a primary victim, paragraph 7(f) requires the Secretary to deduct any reductions under Division 2.5 as well as any financial assistance received from a foreign country (as outlined in paragraph 7(d)) from the amount payable under either Division 2.2 alone, or under both Division 2.2 and Division 2.3, or under both Division 2.2 and Division 2.4 as appropriate.

*Example 1: Maurice is an Australian temporarily living overseas and operating a small business. Maurice suffers the loss of one leg as a direct result of an overseas terrorist attack. He also suffers financial losses as a direct result of the terrorist attack. The foreign country establishes a scheme to assist nationals of that country injured as a result of the terrorist act and to assist all small businesses (regardless of the nationality of the owner or operator) adversely affected by the incident. Maurice does not receive any payment in relation to his physical injuries from the foreign scheme, as he is not a national of the foreign country. However, he receives $20,000 from the scheme to assist him to repair the building that housed his small business, and a further $30,000 to recognise the economic loss suffered because of the injuries he sustained in the terrorist act (as he was unable to work for several months). The incident is declared an overseas terrorist act under the Australian scheme. Maurice is eligible for a payment of $75,000 under Part 2.24AA of the Act as specified by Schedule 1. There is no reduction in the amount payable under Part 2.24AA of the Act to reflect the financial assistance he has received under the foreign scheme to repair the building or for the economic loss suffered.*

**Section 8 – Factors not to be taken into account**

Section 8 of the Principleslists factors that the Secretary is required to disregard when determining the amount payable to a primary victim under Part 2.24AA of the Act.

Subsection 81) provides that, in considering the nature of the injury suffered by a primary victim or the impact of the terrorist act on the victim’s life, the Secretary must disregard the extent to which the injury, or the effect of the injury, may be reduced or limited by an external removable aid or appliance. This reflects the policy that a victim should receive a payment commensurate with the actual injury sustained.

Subsection 8(2) provides that, in determining the amount of AVTOP payable to a primary victim, the Secretary must not take into account any expenses incurred by the primary victim as a result of the terrorist act. This reflects the fact that this financial assistance scheme is not designed to reimburse victims for any specific costs or expenses incurred following or as a result of a declared terrorist act.

**Division 2.2 – Nature of primary victim’s injury**

Division 2.2 provides for an assessment of a primary victim’s injury or injuries. Division 2.2 applies to primary victims both 16 years and over and under 16 years of age.

**Section 9 – Schedule of injuries**

Section 9 refers to the AVTOP Schedule of injuries for primary victims.

Subsection 9(1) provides that the Secretary must determine the amount payable under Part 2.24AA of the Act pursuant to Division 2.2 for a primary victim of a declared overseas terrorist act in accordance with Schedule 1. Schedule 1 of the Principles lists specific injuries and corresponding monetary amount for each injury. The use of Schedule 1 is designed to provide consistency when determining payments under Part 2.24AA of the Act to primary victims who suffer similar or identical injuries.

Subsection 9(2) provides that, where a primary victim has sustained an injury listed in Schedule 1, that victim will be eligible for the amount of payment under Part 2.24AA of the Act as specified in the item.

*Example: A person loses both eyes. The person is eligible for the maximum assistance of $75,000 in accordance with Item 51 of Schedule 1.*

*Subsection (3) provides that for an injury mentioned in item 298 of Schedule 1 the Secretary has discretion to award an amount of AVTOP for the injury that the Secretary considers appropriate having regard to the nature, severity and the amount of AVTOP specified for similar injuries in Schedule 1. The amount awarded must be under $75,000 but can also be zero if the Secretary deems it appropriate.*

**Section 10 – Multiple injuries**

Section 10 provides for the calculation of the component of the AVTOP relevant to the injury where a primary victim has sustained multiple injuries.

Subsection 10(1) provides that, where a primary victim has suffered more than one injury as a direct result of a declared terrorist act, the amount payable under Part 2.24AA of the Act for all the injuries is to be calculated according to the following formula:

1. the amount specified in Schedule 1 for the victim’s most serious injury, plus
2. 30% of the amount in Schedule 1 for the victim’s second most serious injury, and plus
3. if there are more than 2 injuries — 15% of the amount in Schedule 1 for the victim’s third most serious injury.

Subsection 10(2) defines the terms in subsection 9(1) and clarifies how this will apply.

1. the victim’s ***most serious injury*** is the injury, or one of the injuries, that has the highest amount in Schedule 1 out of all the victim’s injuries. This is the first amount.
2. the victim’s ***second most serious injury*** is defined as another injury that has either the same amount as the first injury or the second highest amount. This is the second amount.
3. the victim’s ***third most serious injury*** is defined as a further injury that has the same as the first amount, or the second amount or has the third highest amount, out of all the victim’s injuries.

Subsection 10(3) provides that the Secretary must not consider any further injuries resulting from the terrorist act in determining the amount payable to the primary victim under Part 2.24AA of the Act.

The effect of this provision is to limit consideration of multiple injuries. In the event that the primary victim suffers multiple injuries, only the three most severe injuries will be taken into account.

*Example 1: Joe sustains minor burns to the upper limb ($6,000 under item 218 Schedule 1), tinnitus in the ear lasting 6 to 13 weeks ($4,000 under item 29 Schedule 1), a fractured mastoid of the ear ($4,000 under Schedule 1), upper limbs scarring with minor disfigurement ($4,000 under item 221 Schedule 1), a sprained right wrist disabling it for 6 to 13 weeks ($4,000 under item 232 Schedule 1) as a direct result of a declared overseas terrorist act. Using the formula set out under section 10, only the three most serious injuries (the three injuries attracting the highest amount of financial assistance) can be taken into consideration when calculating the amount of financial assistance under Schedule 1. In this case, the most serious injury would be the minor burns to the upper limb. The second and third most serious injuries would be any two of the other injuries (as they are all of equal value under the Schedule). Joe would be eligible for a maximum payment of $7,800 under Division 2.2 (100% of $6,000 = $6,000, plus 30% of $4,000 = $1,200, plus 15% of $4,000 = $600).*

The rationale for only factoring in the three most serious injuries is so that a person with multiple minor injuries does not receive more AVTOP than a person who has sustained one or two significant injuries under the Schedule. This is consistent with the State and Territory victim compensation schemes*.*

**Section 11 – Burns and scarring**

Section 11 makes it clear that a primary victim is not eligible for a payment under Part 2.24AA of the Act for both burns and scarring to the same body part (as listed in Schedule 1) where those burns and scarring are essentially the same injury. This is adapted from the State and Territory victims compensation schemes.

Subsection 11(1) enables the Secretary to consider the victim’s burns to a part of the body or the victim’s scarring of that part of the body caused by the burns but not both.

Subsection 11(2) makes clear that a primary victim is only eligible for a payment under Part 2.24AA of the Act for scarring if the scarring is permanent.

**Division 2.3 – Impact of terrorist act on primary victim 16 years or older**

Division 2.3 provides for the assessment of the impact of a declared terrorist act on a primary victim who is 16 years of age or older. A primary victim is not eligible for financial assistance unless that primary victim establishes that he or she suffered an injury specified in Schedule 1 of the Principles.

**Section 12 – Assessing the impact of a terrorist act**

Section 12 provides a method to assess the impact of the declared terrorist act on the life of a primary victim who is 16 years or older. Section 12 recognises that a terrorist act could have an impact on the person’s life that is separate and distinct from the physical or psychological injury or injuries the primary victim sustains.

The purpose of this section is to ensure primary victims whose lives are adversely affected by a declared terrorist act, are given appropriate financial assistance under Part 2.24AA of the Act where they are not eligible for the maximum assistance payable under Schedule 1.

Subsection 12(1) provides that Division 2.3 only applies to primary victims aged 16 years or older at the time of the terrorist act.

Subsection 12(2) provides that, if the amount determined under Division 2.2 is less than $75,000, the Secretary must also determine the amount in relation to the impact of the terrorist act on the victim’s life under Division 2.3.

Subsection 12(3) specifies that Part 1 of Schedule 2 is to be used to rate the impact of the terrorist act on the victim’s personal relationships, mobility, recreational and community activities, and domestic activities. Part 1 of Schedule 2 uses rating scales of ‘0’ to ‘7’, with ‘0’ representing no or negligible impact and ‘7’ representing significant impact.

Subsection 12(4) specifies that Part 2 of Schedule 2 is to be used to rate (on a scale of 0 to 5) the impact of the terrorist act on the victim’s employment activities. Part 2 of Schedule 2 uses rating scales of ‘0’ to ‘5’, with ‘0’ representing no or negligible impact and ‘5’ representing significant impact.

Subsection 12(5) specifies that each rating calculated under subsections 12(3) and (4) is to be converted into a monetary amount using the table in subsection 12(5). The amounts specified in the table range from no increase in the amount payable under Part 2.24AA of the Act to an increase of up to $75,000.

Subsection 12(6) provides that the amount payable under section 12 of the Principles is to be determined by adding the amounts calculated for the purposes of subsection 12(5) for each of the five scales and dividing that amount by five. As provided in section 7, that amount is to be added to the amount determined under Schedule 1. As provided by paragraph 7(a), the maximum amount payable under Part 2.24AA of the Act is $75,000. Accordingly, after adding the amount determined under Division 2.2 and Division 2.3, any amount in excess of $75,000 is to be disregarded.

*Example: Natalia has commenced a modelling career. She sustains moderately disfiguring burns to her face ($30,000 under Schedule 1) and the loss of her index finger ($30,000 under Schedule 1) as a direct result of an overseas terrorist act.* *Under Division 2.2 Natalia would be eligible for $39,000 ($30,000 plus 30% of $30,000) in relation to the injuries sustained. Given this is less than $75,000 paragraph 7(b) requires the Secretary to go on to consider the impact of the declared overseas terrorist act on her life. The terrorist act has a significant impact on Natalia, particularly on her employment, as assessed by Schedule 2. Natalia may be eligible for a maximum payment under Part 2.24AA of the Act of up to $75,000 depending on the extent of the impact of the terrorist act, as assessed by Schedule 2.*

**Division 2.4 – Impact of terrorist act on primary victim under 16 years old**

Consistent with Division 2.3 (which applies to primary victims 16 years or older), Division 2.4 provides the process for assessing the impact of a terrorist act on a primary victim who is under 16 years of age at the time of the terrorist act. This is recognising that the impact of a terrorist act on a child would be different to the impact the same act would have on an adult. A primary victim is not eligible for financial assistance unless that primary victim establishes that he or she suffered an injury specified in Schedule 1 of the Principles.

**Section 13 – Assessing the impact of a terrorist act**

Section 13 provides the method for assessing the impact of the declared terrorist act on the life of a primary victim who is under 16 years of age at the time of the terrorist act. Consistent with section 12 (which applies to primary victims 16 years or older), this section recognises that a terrorist act is likely to have an impact on the person’s life.

The purpose of this section is to ensure primary victims whose lives are impacted by a declared terrorist act are given appropriate financial assistance under Part 2.24AA of the Act where they are not eligible for the maximum assistance of $75,000 payable under Schedule 1.

Subsection 13(1) provides that Division 2.4 only applies to primary victims aged under 16 years of age at the time of the terrorist act.

Subsection 13(2) provides that, if the amount payable to the primary victim under Division 2.2 is less than $75,000, the Secretary must also determine the amount of AVTOP payable to the primary victim for the impact of the terrorist act on the victim’s life in accordance with Division 2.4.

Subsection 13(3) specifies that Schedule 3 is to be used to rate the impact of the terrorist act on the victim’s behaviour and functioning. Each of the measures in Schedule 3 is to be assessed on a scale of ‘0’ to ‘3’ where ‘0’ represents no impact and ‘3’ represents significant impact.

Subsection 13(4) specifies that the rating worked out under subsection 13(3) for each question answered is to be converted into a dollar amount using the table set out in subsection 13(4). The amounts specified in the table range from no increase in the amount payable to an increase of up to $75,000.

Subsection 13(5) provides that the amount payable under Part 2.24AA of the Act is to be determined by adding the amounts calculated for the purposes of subsection 13(4) and dividing that total amount by the number of questions answered. Schedule 3 provides for a claimant to answer between eight and twelve questions, depending on the age and behaviours of the child before the declared terrorist act. Accordingly, it is necessary to divide the calculated amount by the number of questions answered. Consistent with the process for primary victims aged 16 or older and as provided in section 7, that amount is to be added to the amount determined under Schedule 1, disregarding any amount exceeding $75,000.

*Example: Five-year-old Emily was holidaying overseas with her family. Emily was injured in a mass shooting near the hotel where her family was staying, in which several people were killed. This shooting is later declared as an overseas terrorist act to which the scheme applies. Following this incident Emily has ongoing nightmares, bed-wetting and an extreme fear of unfamiliar places. Sounds of gunfire on television and any loud sounds (like fireworks) terrify her. Emily also displays a fear of being alone in a room. Emily is diagnosed as suffering a psychological disorder category 1 (which is item 5 in Schedule 1). The incident is declared as a terrorist act to which the scheme applies and the amount payable in relation to Emily’s injuries as assessed under Schedule 1 is $30,000. The Schedule 3 assessment reveals that Emily’s behaviour and functioning have been significantly impacted by the terrorist act, and the amount payable under Part 2.24AA of the Act is increased accordingly.*

**Division 2.5 – Circumstances in which primary victim’s injury incurred**

Division 2.5 provides for the reduction of the amount payable under Part 2.24AA of the Act in certain specified circumstances. These reductions are created in accordance with subsection 1061PAF(2) of the Act which states that the AVTOP Principles may provide for factors to be taken into account in determining an amount of the payment.

Division 2.5 is designed to ensure primary victims who contribute to their injuries by their own actions are not eligible for the full maximum payment available under Part 2.24AA of the Act.

Reductions under Division 2.5 do not apply to amounts payable to primary victims under 16 years of age.

**Section 14 – Circumstances that must be taken into account**

Section 14 provides that the Secretary must take into account specified factors when determining the amount payable to a primary victim aged 16 years or older under Part 2.24AA of the Act. This is recognising that a person is still required to exercise a degree of care for their personal safety, by following advice and not putting themselves in harm’s way.

Section 14(1) provides that the Secretary must take into account whether the primary victim:

1. failed to take reasonable steps to avoid harm or acted recklessly when the terrorist act occurred
2. travelled to the place where the terrorist act occurred despite travel advice on an Australian government website, at the time of commencing travel, advising people to reconsider the need to travel to that place because of a high risk of a terrorist act
3. travelled to the place where the terrorist act occurred despite travel advice on an Australian government website, at the time of commencing travel, advising against travelling to that place because of a high risk of a terrorist act, or
4. was directed by an official of Australia or a foreign country to leave or not to go to the place where the terrorist act occurred because of a high risk of a terrorist act.

Subsection 14(2) provides that section 14 does not apply if the primary victim was under 16 years of age at the time the terrorist act occurred. This is based on the rationale that generally an adult responsible for their care would be making a decision about the child’s travel plans.

**Section 15 – Reduction of AVTOP**

Section 15 specifies the percentage by which the Secretary must reduce the amount payable to a primary victim aged 16 years or older at the time the terrorist act occurred where one of the circumstances specified in section 14 applies.

Subsection 15(1) lists the percentage amounts by which the amount payable under Part 2.24AA of the Act must be reduced in the circumstances specified in section 14.

Item 1 provides that, where the person fails to take reasonable steps, the amount payable is reduced by 10%.

Item 2 provides that, where the person travels despite a Department of Foreign Affairs and Trade “reconsider need to travel” advice, the amount payable is reduced by 15%.

Item 3 provides that, where the person travels despite Department of Foreign Affairs and Trade “do not travel” advice, the amount is reduced by 20%.

Item 4 provides that, where the person was directed not to go to the place where the terrorist act occurred because of a high risk of terrorist act, the amount is reduced by 50%.

*Example: In response to intelligence that there is likely to be a terrorist act at the City Building in an overseas country, police attend the building and prohibit persons from entering the building until the threat has been investigated. Marjorie ignores the prohibition and enters the building. A bomb is detonated in the building and Marjorie is injured, sustaining a collapsed lung as a result of smoke inhalation. Marjorie could be eligible for $14,000 under Schedule 1 and a further $15,000 under Schedule 2, totalling $29,000. However, the Secretary decides Marjorie failed to follow official direction, and reduces the amount payable by 50%. Accordingly, Marjorie would be eligible for $14,500.*

Subsection 15(2) provides that, where more than one reduction could technically apply, only the highest reduction will apply.

The Principles provide an example after subsection 15(2) of how this provision operates.

Subsection 15(3)provides that the Secretary must not reduce the amount payable to the primary victim under Part 2.24AA of the Act if the primary victim was in the place, or travelled to the place where the declared terrorist act occurred, for a humanitarian purpose or on official business for the government of the Commonwealth, a State or Territory. A reduction will also not apply where the Secretary considers it appropriate in the circumstances to not reduce the amount of AVTOP.

Subparagraph 15(3)(a)(i) will ensure there is no reduction in the payment to a primary victim who was in the place where the terrorist act occurred for humanitarian purposes. A note to subsection 15(3) lists some of the activities that would fall within the humanitarian exception, including visiting a dying relative, travelling to make a kidney donation, and carrying out relief work following a natural disaster.

Subparagraph 15(3)(a)(ii) will ensure there is no reduction in the payment to a primary victim who was in the place where the terrorist act occurred on official business for the government of the Commonwealth, a State or Territory.

Paragraph 15(3)(b) gives the Secretary discretion to not reduce the amount payable where that is appropriate in all the circumstances. This is designed to ensure a victim’s payment will not be reduced where that victim travelled to the place or was in the place where the attack occurred for reasons not contemplated at the time of developing the Principles.

**Part 3 – Principles relating to secondary victims**

Part 3 sets out the Principles that apply when considering claims by secondary victims. The Act (subsection 1061PAA (4)) defines secondary victims as a person’s close family members. A close family member is a person’s partner, child, parent, sibling or legal guardian.

The scheme provides for assistance to be paid to Australians who are close family members of persons who die in a declared overseas terrorist attack, to recognise the loss they have suffered as a result of the terrorist attack. The payment to secondary victims will be apportioned according to the nature of the relationship between the deceased and the close family member. As the category of close family members is broad and a large number of people could qualify for the payment, the state and territory succession laws have been adapted and modified to determine the priority of payment. Those who are likely to have a closer relationship with the deceased are given priority over other close family members. Whilst no amount of money can truly atone for the loss of a loved one, this is a more equitable way of apportioning a limited sum of money.

**Division 3.1 – General approach to determining AVTOP for secondary victims**

Division 3.1 outlines the general approach to determining the amount payable to secondary victims under Part 2.24AA of the Act.

**Section 16 – Determining the amount of AVTOP**

Section 16 lists the factors to be taken into account when determining the payment under Part 2.24AA of the Act to which a secondary victim will be eligible. The maximum amount payable to secondary victims of a deceased person who died in a declared terrorist incident is $75,000.

Section 16 sets out the steps the Secretary is required to follow in determining the amount payable to secondary victims under Part 2.24AA of the Act.

*Step 1- Deductions*

Paragraph 16(1)(a) requires the Secretary to deduct from $75,000 factors set out in subsection 16(2). Subsection 16(2) provides that financial assistance received as the secondary victim from a foreign country for the death of the deceased should be deducted from the amount of AVTOP payable, as well as any amount received by the deceased from a foreign country and any AVTOP received by the deceased as a primary victim. See below for further detail.

*Step 2 - reductions*

Paragraph 16(1)(b) requires the Secretary to reduce from the amount of AVTOP determined under paragraph 16(1)(a) a further amount, if the deceased had somehow contributed to their death in accordance with Division 3.2.

*Step 3 – if more than one secondary victim, apportion payments*

Paragraph 16(1)(c) provides that where more than one secondary victim who is entitled to a share has made a claim in relation to the deceased, the Secretary is required to determine their share of AVTOP payable (following deductions made in paragraphs 16(1)(a) and (b)), in accordance with Division 3.3.

*Step 4 – secondary victim has more than one claim*

Paragraph 16(1)(d) applies to secondary victims who are the close family members of more than one deceased and they have more than one claim for AVTOP in relation to the same terrorist act. This provision requires the Secretary to ensure that the secondary victim does not receive more than $75,000. This is consistent with the requirements under subsection 1061PAE(5) of the Act.

*Deductions*

Paragraph 16(2)(a) provides that if the secondary victim or any other secondary victims who have made a claim for AVTOP in relation to the deceased received financial assistance from a foreign country (other than for economic loss) then that amount should be deducted from $75,000.

If secondary victims have received more than $75,000 in financial assistance in relation to the death of the deceased from a similar overseas scheme, they will not receive any financial assistance under the Act.

*Example: Katy, an Australian, dies in a declared overseas terrorist act in a foreign country. The foreign Government sets up a scheme to provide financial assistance to victims that is similar to the Australian scheme. As her next of kin, Katy’s husband receives $100,000 in financial assistance under the foreign scheme. Katy’s husband and daughter subsequently apply for financial assistance under the Australian scheme. Although Katy’s close family members would otherwise be eligible for $75,000 under Part 2.24AA of the Act, that amount would be reduced by the amount already received by Katy’s husband from the similar foreign scheme ($100,000). Accordingly, Katy’s husband and daughter would not receive additional financial assistance under Part 2.24AA of the Act.*

However, where secondary victims have received less than $75,000 in financial assistance in relation to the death of the deceased from a similar overseas scheme, the secondary victims may be eligible for a payment under Part 2.24AA of the Act.

*Example: John, an Australian, dies in a declared overseas terrorist act in a foreign country. The foreign Government sets up a scheme to provide financial assistance to victims that is similar to the Australian scheme. John’s close family members receive $50,000 in financial assistance under the foreign scheme in recognition of John’s death. Although John’s close family members would otherwise be eligible for $75,000 under Part 2.24AA of the Act, that amount would be reduced by the amount already received ($50,000). Accordingly, John’s close family members would be eligible for $25,000 under Part 2.24AA of the Act (less any reductions as per Division 3.2). In this scenario, John’s close family members may also be eligible for payments as primary victims under the overseas scheme for any injuries they sustained. Any payment received by the close family members as primary victims, would not be taken into account when assessing their claim for AVTOP as a secondary victim.*

Paragraph 16(2)(b) provides that any amount received from a foreign country by the deceased person (other than for economic loss) for the injuries sustained as a direct result of the terrorist act must also be deducted from the secondary victim’s claim of AVTOP in accordance with Division 3.3.

The note at the end of section 16 indicates that many of the foreign financial assistance schemes relevant to paragraphs 16(a) and (b) may be listed on the internet at www.disasterassist.gov.au However, there will be some schemes that could apply that may not appear on the website.

In the same vein paragraph 16(2)(c) requires the Secretary to deduct any amount of AVTOP received by the deceased person as a primary victim from the secondary victim’s claim.

**Section 17 – Factor not to be taken into account**

Section 16 provides that the Secretary must not take into account expenses incurred by a secondary victim as a result of the terrorist act when determining the payment under Part 2.24AA of the Act to which any secondary victim will be eligible.

This recognises that a payment to a secondary victim under Part 2.24AA of the Act is intended as a helping hand and is not intended to reimburse secondary victims for specific out of pocket expenses, such as the costs associated with a funeral.

**Division 3.2 – Circumstances in which death occurred**

Division 3.2 provides for reductions in the amount payable to secondary victims under Part 2.24AA of the Act depending on the circumstances in which the death occurred. Division 3.2 is in similar terms to Division 2.5, which relates to reductions for primary victims. Consistent with Division 2.5, Division 3.2 does not apply to deceased persons who were under 16 years of age at the time of the terrorist act.

**Section 18 – Circumstances that must be taken into account**

Section 18 provides that the Secretary must take into account certain factors when determining the amount payable to a secondary victim in relation to a deceased who is 16 years old or older.

Subsection 18(1) provides that the Secretary must take into account whether the deceased:

1. failed to take reasonable steps to avoid harm or acted recklessly when the terrorist act occurred
2. travelled to the place where the terrorist act occurred despite travel advice on an Australian government website, at the time of commencing travel, advising people to reconsider the need to travel to that place because of a high risk of a terrorist act
3. travelled to the place where the terrorist act occurred despite travel advice on an Australian government website, at the time of commencing travel, advising against travelling to that place because of a high risk of a terrorist act, or
4. was directed by an official of Australia or a foreign country to leave or not to go to the place where the terrorist act occurred because of a high risk of a terrorist act.

Subsection 18(2) provides that section 18 does not apply where the deceased was a child under 16 years of age at the time of the declared terrorist act. This is consistent with Division 2.5, which applies to primary victims.

**Section 19 – Reduction of AVTOP**

Section 19 specifies the amount by which the Secretary must reduce the amount payable under Part 2.24AA of the Act in relation to a deceased who is 16 years of age or older where one of the circumstances specified in section 18 applies. Section 19 is designed to ensure the close family members of a deceased who contributed to his or her own death by their own actions are not eligible for the full payment available under Part 2.24AA of the Act.

Subsection 19(1) lists the proportions by which the amount payable to secondary victims under Part 2.24AA of the Act are to be reduced in the circumstances specified in section 18.

Item 1 provides that, where the deceased failed to take reasonable steps, the amount payable is reduced by 10%.

Item 2 provides that, where the deceased travelled despite a DFAT “reconsider need to travel” advice, the amount is reduced by 15%.

*Example: The DFAT travel advisory on smartraveller.gov.au contains the following warning: “We advise you to reconsider your need to travel to [the foreign country] at this time due to the very high threat of terrorist attack”. Despite the warning, Daniel travels to the foreign country and dies as a result of a terrorist act. Daniel’s close family members would normally be eligible for $75,000. However, the Principles provide for a 15% reduction for persons who travel contrary to the warning to reconsider the need to travel. Accordingly, Daniel’s close family members would be eligible for a payment of $63,750.*

Item 3 provides that, where the deceased travelled despite DFAT “do not travel” advice, the amount is reduced by 20%.

Item 4 provides that, where the deceased travelled contrary to an official direction, the amount is reduced by 50%.

Subsection 19(2) provides that, where more than one reduction applies under section 19(1), the Secretary must reduce the amount by applying the highest relevant percentage reduction. Accordingly, if the reductions in both Items 2 and 4 were relevant, for example, the Secretary would apply a 50% reduction.

*Example: If the Secretary decides that a deceased person ignored a ‘Do not travel’ warning and also failed to take reasonable precautions when travelling in an area of known terrorist activity, the circumstances in items 1 and 3 of the table would apply. Therefore, the Secretary must reduce the secondary victim’s AVTOP by 20%, as this is the highest percentage reduction of the two applicable circumstances (item 3 compared to item 1).*

Subsection 19(3) provides that the Secretary must not reduce the amount payable to a secondary victim under Part 2.24AA of the Act if the deceased was in the place, or travelled to the place where the declared terrorist act occurred, for a humanitarian purpose, or on official business for the government of the Commonwealth, a State or Territory. In addition, a reduction will not apply where the Secretary considers it appropriate not to reduce the amount of payment.

A note to subsection 19(3) specifies some of the activities that would fall within the humanitarian exception, including visiting a dying relative, travelling to make a kidney donation, and carrying out relief work following a natural disaster.

**Division 3.3 – Apportioning AVTOP where more than one secondary victim has claimed**

Division 3.3 provides the method of apportioning financial assistance between eligible secondary victims. This is necessary because Part 2.24AA of the Act provides that the maximum amount payable to one or more secondary victims in relation to a deceased is $75,000.

**Section 20– Apportioning payments among secondary victims**

Subsection 20 (1) provides that a payment under Part 2.24AA of the Act is to be apportioned among the secondary victims who have made a claim. A close family member’s share of the AVTOP is determined by the relationship between the deceased and the relevant close family member.

Section 20 sets out the rules the Secretary must follow when apportioning a payment under Part 2.24AA of the Act between the secondary victims who have made a claim in relation to the deceased person.

Items 1 to 5 are designed to cover all scenarios of secondary victims who could apply for a payment under Part 2.24AA of the Act.

The rules seek to ensure that the current partner and children of the deceased will be eligible for a payment under Part 2.24AA of the Act. Where the deceased has a current partner and/or children, other close family members will generally not receive a payment.

Item 1 provides that, where the deceased had a partner and no children, the partner of the deceased is eligible for the full payment under Part 2.24AA of the Act.

*Example: Michael is married to Suzanne. Michael’s parents are deceased and he does not have any children or siblings. Michael dies in a declared overseas terrorist act. In accordance with item 1 and subject to any reductions under Division 3.3, Suzanne is eligible for the full payment under Part 2.24AA of the Act ($75,000).*

Item 2 provides that, where the deceased had a partner and children, the partner is eligible for 50% of the payment available under Part 2.24AA of the Act, and the remaining 50% is to be shared equally between the children.

*Example 1: Glen dies in a declared terrorist attack. Glen is in a de‑facto relationship with David. Glen’s 15-year-old daughter from his first marriage, Sarah, lives with Glen’s ex‑wife, Susan. Glen and David also have a child, Gladys, who is 10 years old and is a full time student. Subject to any reductions under Division 3.3, David is eligible for $37,500 (50%), while Gladys and Sarah share the remaining 50% equally and each would be eligible for payments under Part 2.24AA of the Act of $18,750.*

Item 3 provides that, where the deceased had a child or children and no partner, the payment is to be apportioned equally between the children.

Item 4 provides that, where the deceased had parents and no partner, or children, who have made a claim the payment is to be apportioned between the parents.

Item 5 provides that, where the deceased had no close family members who have made a claim other than siblings, the payment is to be apportioned between the siblings in accordance with section 19.

*Example: Linda is 27 years old and dies as a result of a terrorist act. She lived alone and was financially independent. She has no other close family apart from her sibling Steven, who also lives alone and is financially independent. Steven is eligible for the total amount payable under Part 2.24AA of the Act, subject to any reductions.*

Subsection 20(2) provides that where a secondary victim has made a claim but is not entitled to a share because of the rules in subsection (1), the amount of AVTOP payable to them is nil.

There may be a situation where a person is a secondary victim in relation to more than one deceased person and there are a number of other close family members who have also made a claim in relation to one/all of the deceased persons.

Paragraph 16(1)(d) provides that a secondary victim can only receive a total payment of $75,000 even if the secondary victim has a claim in relation to more than one deceased person.  Accordingly, the amount the secondary victim might otherwise be eligible to receive is reduced to ensure their payment does not exceed $75,000.  However, subsection 20(3) ensures that the amount by which the payment is reduced can be redistributed to other secondary victims who have made a claim in relation to one/all of the deceased persons.  This redistribution would be done at the discretion of the Secretary and in a manner that maximises the payment to all close family members who have made a claim and in accordance with the hierarchy set out in the Table in section 20.  However, no secondary victim will be able to ever receive more than $75,000 in total in respect of the same incident.

*Example:  James is 14 years old and lives at home with his parents, Ian and Janice.  Ian’s father, Andrew, is 85 years old and also lives in the home.  While on holiday overseas, Ian and Janice are killed in a declared terrorist attack.*

*James lodges a claim as a secondary victim in respect of both Ian and Janice.  Andrew lodges a claim as a secondary victim in respect of Ian.*

*Under section 16 it is determined that James is eligible to receive a payment of $75,000 in respect of his mother Janice and a payment of $75,000 in relation to his father Ian.  However, because of paragraph 16(1)(d), James can only receive a total of $75,000 and his total AVTOP amount is reduced by $75,000.*

*Ordinarily, Andrew would not be eligible for a payment in relation to Ian because the rules for apportioning payments set out in 20(1) give greater priority to a child (James).  However, under subsection 20(3) the Secretary would be able to distribute $75,000 to Andrew in respect of Ian*.

**Schedule 1 – AVTOP Schedule of Injuries**

Schedule 1 sets out the AVTOP Schedule of Injuries*.*

The schedule of injuries is modelled on the State and Territory Victims of Crimes Assistance schemes and also draws from the Guide to the Assessment of Rates of Veterans’ Pensions.

To assist in identifying the relevant injury or injuries suffered by the primary victim, the table provides a comprehensive list of injuries using the following headings:

* Brain damage
* Psychological or psychiatric disorder
* Burns
* Disease or other recognised medical illness causing disability (not being a disease or illness of the mind)
* Head
* Neck
* Torso
* Upper limbs
* Lower limbs

The item numbers on the left hand side of the Schedule correspond to the type of injury that can be sustained in a terrorist attack. The right hand side of the schedule provides the corresponding dollar amount payable for such an injury.

These amounts are payable under Part 2.24AA of the Act in relation to the injury in accordance with the Principles. The amount specified varies depending on the severity of the injury. For instance, the fracture of one or more fingers on one hand (with full recovery) is $4,000 whereas the loss of two or more fingers would amount to $40,000.

The Schedule provides for greater payments in relation to more severe, enduring and chronic injuries. For example, fracture of both wrists including scaphoid fracture with continuing disability would attract $40,000 and permanent and serious injury to a person’s upper arm, which has resulted in, impairment to the person’s ability to grip with both arms would attract $60,000.

The Schedule also has a discretionary clause so the Secretary can consider claims for injuries that are not listed in Schedule 1 but occur as a direct result of the terrorist incident. The Secretary could award an appropriate amount of AVTOP under $75,000 for such injuries.

It will be necessary for an appropriately qualified health professional to assess the primary victim’s injury or injuries. This medical information, together with the Schedule, will be used to determine the amount payable. For instance, it is anticipated that an approved psychiatrist or psychologist would make an assessment about a person’s claim for psychological or psychiatric disorder.

As there can only be one claim made, claimants are encouraged to submit claims once the full extent of their injuries is known. Some psychiatric/psychological injuries can take several months to surface. For the purposes of Division 2.2, it is not necessary for the injury to still be present at the time the claim is made. However, a primary victim must make a claim within 2 years of the date of declaration by the Prime Minister.**Schedule 2 – AVTOP: Assessing the impact of a terrorist act on a primary victim 16 years old and older**

Schedule 2 provides a number of questions designed to assist primary victims who are 16 years old or older to assess the impact of the terrorist act on their life. The impact of the terrorist act on the victim is assessed at the time the claim is made. Therefore, temporary ailments that are no longer present at the time the claim is made are unlikely to attract additional payment.

**Part 1 – Assessing impact on personal relationships, mobility, recreational and community activities and domestic activities**

Part 1of Schedule 2is designed toassess the impact of the terrorist act on the victim’s personal relationships, mobility, recreational and community activities and domestic activities.

**Personal Relationships**

The personal relationships rating assesses the impact of the declared terrorist act on the victim’s ability to take part in and maintain customary social, sexual and interpersonal relationships. The person’s inability to maintain customary social, sexual and interpersonal relationships for reasons unrelated to the declared terrorist act is not to be taken into account.

The assessment of personal relationships uses a scale from ‘Nil’ to ‘Seven’, where ‘Nil’ indicates no or negligible effect on personal and social relationships and ‘Seven’ indicates a significant effect, where the victim is no longer able to relate to anyone.

**Mobility**

The mobility rating assesses the impact of the declared terrorist act on the victim’s ability to move about effectively in carrying out the ordinary activities of life. It takes into account both physical and psychological impediments to mobility, including mental health factors. Restrictions on the person’s mobility for reasons unrelated to the declared terrorist act is not to be taken into account.

The assessment of mobility uses a scale from ‘Nil’ to ‘Seven’, where ‘Nil’ indicates no or minimal restrictions of mobility or full mobility and ‘Seven’ indicates severe restriction where the victim is restricted to a room or a chair.

**Recreational and community activities**

The recreational and community activities rating assesses the impact of the declared terrorist act on the victim’s ability to take part in activities of the victim’s choosing. The person’s inability to participate in recreational and community activities for reasons unrelated to the declared terrorist act is not to be taken into account.

The assessment of recreational and community activities uses a scale from ‘Nil’ to ‘Seven’, where ‘Nil’ indicates the victim is able to undertake the full range of usual recreational pursuits and community activities and ‘Seven’ indicates the victim is unable to take part in any recreational activities.

**Domestic activities**

The domestic activity rating assesses the impact of the declared terrorist act on the victim’s ability to sustain effective routines in a domestic environment. The person’s inability to undertake domestic work for reasons unrelated to the declared terrorist act is not to be taken into account.

The assessment of domestic activities uses a scale from ‘Nil’ to ‘Seven’, where ‘Nil’ indicates the victim is able to engage in his or her usual employment and ‘Seven’ indicates the victim is unable to carry out domestic tasks and is totally dependent on others.

**Part 2 – Assessing impact on employment activities**

Part 1of Schedule 2is designed toassess the impact of the terrorist act on the victim’s employment activities. The person’s inability to undertake employment activities for reasons unrelated to the declared terrorist act is not to be taken into account.

A rating for each of the above categories is inserted into the formula in subsection 12(6) of the Principles to determine the appropriate dollar amount for the impact of the terrorist incident on the victim’s life.

**Schedule 3 – AVTOP: Assessing the impact of a terrorist act on a primary victim under 16 years old**

Schedule 3 provides 12 questions designed to assess the impact of the terrorist act on primary victims under 16 years old.

The first eight questions are compulsory. However, the last four questions, relating to hygiene and grooming and social and community skills, should only be answered if they are relevant to the child. This is because it is not possible to assess the impact of the terrorist act on a very young child who had not yet developed these skills. The impact of the terrorist act is assessed at the time the claim is made.

**Sleeping habits**

Question 1 assesses the impact of the terrorist act on the child’s sleep patterns.

The assessment of sleeping habits uses a scale from ‘Nil’ to ‘Three’, where ‘Nil’ indicates the child’s sleeping patterns have not been affected and ‘Three’ indicates that, since the terrorist act, the child frequently experiences difficulties getting to sleep or has disrupted sleeping patterns.

**Functional skills**

Questions 2 to 5 assess the impact of the terrorist act on the child’s functional skills.

Question 2 assesses the impact of the terrorist act on the child’s ability to speak or communicate in a manner appropriate to the child’s age.

The assessment of the impact on the child’s communication skills uses a scale from ‘Nil’ to ‘Three’, where ‘Nil’ indicates the child’s communication skills have not been affected and ‘Three’ indicates the child’s communication skills have been significantly affected.

Question 3 assesses the impact of the terrorist act on the child’s eating habits.

The assessment of the impact on the child’s eating habits uses a scale from ‘Nil’ to ‘Three’, where ‘Nil’ indicates the child’s eating habits have not been affected and ‘Three’ indicates the child’s eating habits have been significantly affected.

Question 4 assesses the impact of the terrorist act on the child’s ability to go to the toilet independently or the child’s progress in toilet training.

The assessment of the impact on the child’s toilet habits uses a scale from ‘Nil’ to ‘Three’, where ‘Nil’ indicates the child’s toilet habits have not been affected and ‘Three’ indicates the child’s toilet habits have been significantly affected.

Question 5 assesses the impact of the terrorist act on the child’s ability to walk or move about.

The assessment of the impact on the child’s ability to walk or move about uses a scale from ‘Nil’ to ‘Three’, where ‘Nil’ indicates the child’s ability to walk or move about has not been affected and ‘Three’ indicates the child’s ability to walk or move about has been significantly affected.

**Concerning or Unusual Behaviours**

Questions 6 and 7 assess the impact of the terrorist act on the emergence of or increase in concerning or unusual behaviours.

Question 6 assesses the impact of the terrorist act on the emergence of or increase in concerning or unusual behaviours.

The assessment of the emergence of or increase in concerning or unusual behaviours following the terrorist act uses a scale from ‘Nil’ to ‘Three’. ‘Nil’ indicates the child has not exhibited an increase in concerning or unusual behaviours since the terrorist act. ‘Three’ indicates the child frequently exhibits concerning or unusual behaviours since the terrorist act in comparison to the concerning or unusual behaviours exhibited before the terrorist act.

Question 7 assesses the impact of the terrorist act on the emergence of or increased anxiety, fear or depression.

The assessment of the emergence of or increase in anxiety, fear or depression following the terrorist act uses a scale from ‘Nil’ to ‘Three’. ‘Nil’ indicates the child has not exhibited an increase in anxiety, fear or depression since the terrorist act. ‘Three’ indicates the child frequently exhibits concerning or unusual behaviours since the terrorist act in comparison to the anxiety, fear or depression exhibited before the terrorist act.

**Special needs**

Question 8 assesses the impact of the terrorist act on the emergence of or increase in special needs.

The assessment of the requirement for additional visits to a health professional, special medical equipment or medication that the child did not require before the terrorist act uses a scale from ‘Nil’ to ‘Three’. ‘Nil’ indicates the child does not require additional visits to a health professional, special medical equipment or medication. ‘Three’ indicates the child requires significantly more visits to a health professional, special medical equipment or medication that the child did not require before the terrorist act.

**Hygiene and grooming skills**

Question 9 assesses the impact of the terrorist act on the child’s hygiene and grooming skills.

Question 9 should only be answered if the child groomed, dressed or bathed independently before the terrorist act.

The assessment of the impact on the child’s hygiene and grooming skills uses a scale from ‘Nil’ to ‘Three’, where ‘Nil’ indicates the child’s ability to groom, dress or bathe independently has not been affected and ‘Three’ indicates the child’s ability to groom, dress or bathe independently has been significantly affected.

**Social and community skills**

Questions 10 to 12 assess the impact of the terrorist act on the child’s social and community skills.

Questions 10 to12 should only be answered if the child demonstrated social and community skills appropriate to the child’s age before the terrorist act. They do not need to be answered if the child was too young to demonstrate the skills or if a pre-existing disability or impairment prevented the child from demonstrating the skills before the terrorist act.

Question 10 assesses the impact of the terrorist act on the child’s ability to learn or concentrate.

The assessment of the impact on the child’s ability to learn or concentrate uses a scale from ‘Nil’ to ‘Three’, where ‘Nil’ indicates the child’s ability to learn or concentrate has not been affected and ‘Three’ indicates the child’s ability to learn or concentrate has been significantly affected.

Question 11 assesses the impact of the terrorist act on the child’s ability to socialise with his or her peers or relate to others.

The assessment of the impact on the child’s ability to socialise with his or her peers or relate to others uses a scale from ‘Nil’ to ‘Three’, where ‘Nil’ indicates the child’s ability to socialise with his or her peers or relate to others has not been affected and ‘Three’ indicates the child’s ability to socialise with his or her peers or relate to others has been significantly affected.

Question 12 assesses the impact of the terrorist act on the child’s ability to participate or enjoy a particular activity or interest that the child previously enjoyed or participated in.

The assessment of the impact on the child’s ability to participate or enjoy a particular activity or interest uses a scale from ‘Nil’ to ‘Three’, where ‘Nil’ indicates the child’s ability to participate or enjoy a particular activity or interest has not been affected and ‘Three’ indicates the child’s ability to participate or enjoy a particular activity or interest has been significantly affected.

**Consultation**

Consultation on these Principles was undertaken with key stakeholders to ensure a coordinated approach.

In particular, consultation was undertaken with:

* the Department of the Prime Minister and Cabinet
* the Department of Human Services
* the Department of Families, Housing, Community Services and Indigenous Affairs
* the Department of Veterans’ Affairs
* the Department of Health and Ageing
* the Department of Foreign Affairs and Trade
* the Department of Employment Education and Workplace Relations, and
* the Australian Federal Police

Representatives of the following groups were also consulted:

* victims of overseas terrorist acts and their families
* community or welfare organisations
* health professionals, and
* international humanitarian agencies.

**Regulatory Impact Analysis**

These Principles do not require a Regulatory Impact Statement or a Business Cost Calculator Figure. These Principles are not regulatory in nature, will not impact on business activity, and will have no, or minimal, compliance costs or competition impact.