**EXPLANATORY STATEMENT**

**Social Security (Declared Overseas Terrorist Act) Declaration 2013**

TheSocial Security (Declared Overseas Terrorist Act) Declaration 2013 (the Declaration) is made under subsection 35B(1) of the *Social Security Act 1991* (the Act) by the Prime Minister.

**Background**

Part 2.24AA of the *Social Security Act 1991* provides 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 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 financial assistance 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.

**Purpose**

The Declaration triggers the application of the scheme to specific overseas terrorist acts set out in this Declaration.

**Explanation and effect of provisions**

**Section 1 ‑ Name of Declaration**

Section 1 sets out the title of the Declaration as the *Social Security (Declared Overseas Terrorist Act) Declaration 2013*.

**Section 2 – Commencement**

Section 2 of the Declaration provides that the Declaration commences on 21 October 2013.

**Section 3 – Definitions**

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

* ***Act*** means the *Social Security Act 1991.*
* ***terrorist act*** has the same meaning it has in subsection 100.1(1) of the *Criminal Code*.

**Section 4 – Declared overseas terrorist act**

Section 4 of the Declaration sets out each of the overseas terrorist acts that the Prime Minister is declaring under subsection 35B(1) of the Act. These particular acts are declared because of the direct impact they had on Australian nationals and because of the extent to which the terrorist acts were targeted against western interests. Hundreds of Australians were either injured or killed in these acts and for that reason it is appropriate for the scheme to apply.

Subsection 4(1) provides that the hijacking and crashing of four commercial airliners:

* into the World Trade Center in New York,
* into the Pentagon building in Washington DC, and
* near Shanksville, Pennsylvania

in the United States of America on 11 September 2001 is a declared overseas terrorist act for the purposes of subsection 35B(1) of the Act:

Subsection 4(2) provides that the bombings:

* at Paddy’s Bar on Jelan Legion, Kuta
* at the Sari Club in Kuta, and
* in the vicinity of the US Consulate, Renon, Denpasar

in Bali, Indonesia on 12 October 2002 is a declared overseas terrorist act for the purposes of subsection 35B(1) of the Act.

Subsection 4(3) provides that the bus bombings at Tavistock Square and the train bombings:

* in the Circle Line tunnel between Liverpool Street and Aldgate stations,
* on the Circle Line outside Edgware Road, and
* in the Piccadilly Line tunnel between King’s Cross and Russell Square

in London, United Kingdom on 7 July 2005 is a declared overseas terrorist act for the purposes of subsection 35B(1) of the Act.

Subsection 4(4) provides that the suicide bombings in the vicinity of:

* the Four Seasons Hotel, Jimbaran Beach, Kuta
* the Kuta Shopping Centre, Kuta, and
* the Raja Bar and Restaurant, Kuta

in Bali, Indonesia on 1 October 2005 is a declared overseas terrorist act for the purposes of subsection 35B(1) of the Act.

Subsection 4(5) provides that the bombings in the vicinity of:

* the Nelson restaurant,
* the Aladdin café, and
* the Ghazala market

in Dahab, Egypt on 24 April 2006 is a declared overseas terrorist act for the purposes of subsection 35B(1) of the Act.

Subsection 4(6) provides that the small arms assault that occurred in the vicinity of:

* Chatrapati Shivaji Terminus
* Leopold Café
* Taj Hotel
* Oberoi – Trident Hotel, and
* Nariman House

in Mumbai, India between 26 November 2008 and 28 November 2008 is a declared overseas terrorist act for the purposes of subsection 35B(1) of the Act.

Subsection 4(7) provides that the suicide bombings in the vicinity of the JW Marriott and Ritz-Carlton hotels in Jakarta, Indonesia on 17 July 2009 is a declared overseas terrorist act for the purposes of subsection 35B(1) of the Act.

**Human rights implications of the Declaration**

This declaration is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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

The Declaration activates the AVTOP scheme to apply to Australian victims of the September 2001, Bali 2002, London 2005, Bali 2005, Egypt 2006, Mumbai 2008 and Jakarta 2009 terrorist acts.

The Declaration promotes 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 – the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability, and
  + Article 26 - effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life.

Terrorist attacks impose a heavy burden on victims and their families. In some cases, this burden will endure for life. Primary victims of declared overseas terrorist acts 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 declared overseas terrorist acts 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*

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.

This declaration promotes the rights of people who are primary and secondary victims of the declared overseas terrorist act in a number of ways. The declaration enables victims to access their right to social security. The payments to Australians who have been harmed in the declared overseas terrorist act are awarded on a sliding scale. A larger payment is awarded to victims who experience injuries that are more significant or the loss of a close family member because of the act. For example, a person who loses both legs is eligible for a payment of $75,000 whereas a person who has fractured their toes would only be entitled to $6,000. AVTOP is not intended to replace other forms of government assistance.

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

*Right to health*

Article 12 of ICESCR provides the right to the enjoyment of the highest attainable standard of physical and mental health. The scheme awards a larger payment to victims who suffer serious injuries. These types of injuries require extensive medical treatment and/or domestic care and assistance. The scheme will promote the right to health by providing money which can be used in any way by the recipient including for medical expenses.

The amount paid to the victim will depend on a range of factors including:

* 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 the injury arising from the terrorist act.

On this basis, the declaration promotes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

*Right to family life*

The Declaration promotes the 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 scheme awards payment to secondary victims who have a close family relationship with the deceased person. 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, then sibling.

On this basis, the declaration promotes the right of protection of and assistance to the family.

Conclusion

The Declaration is compatible with human rights because it promotes the protection of human rights.

**Consultation**

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

* Attorney-General’s Department
* Department of Human Services and
* Department of Foreign Affairs and Trade.