

**Nationally consistent
guidelines for the protection
of the rights of Australian
victims of terrorism overseas**

Produced by National Victims of Crime Working Group
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1. Executive summary

In its Communiqué of 9 February 2018, the Council of Australian Governments (COAG) asked the National Victims of Crime Working Group (Working Group) to consider nationally consistent guidelines to protect the rights of Australian victims of terrorism overseas.

Since that date, the Working Group has met three times to work on the reference and develop the guidelines and this report.

The Working Group's approach to this task was to first map the scope of the reference (section 3) and current assistance available to Australian victims of terrorism overseas immediately after an act of terrorism occurs and later, when victims may return to Australia. This information is detailed in section 5 of the report.

Drawing on, internationally agreed instruments and guidance documents, and the *National Framework of Rights and Services for Victims of Crime*¹ (National Framework), the Working Group has formulated five high-level good practice guidelines to protect the rights of Australian victims of terrorism overseas (**Attachment A**). These are supported by practical principles attached to each good practice guideline intended to assist and inform the work of those working with victims. The report uses these guidelines to analyse current assistance available and identifies the gaps and barriers to achieving good practice. This analysis is detailed in section 6 of the report.

In section 7, in light of the gaps and barriers identified, the report recommends that the Working Group be given the mandate to further explore options to address the gaps and barriers to ensure the domestic rights of Australian victims of terrorism overseas are consistently protected.

More broadly, considering the issues raised in the report, the Working Group recommends that COAG:

- A) **Endorse** the Guidelines and principles for responding to victims of an international terrorist act at Attachment A.
- B) **Note** that most victims of a terrorist act occurring overseas do not have access to any immediate financial assistance.
- C) **Note** that most victims of a terrorist act occurring overseas do not have access to Australian funded and trained specialised trauma counsellors.
- D) **Endorse** the Working Group examining the importance of, and recommending options for, how immediate financial assistance and trauma informed counselling services could be consistently provided for all Australian citizens and permanent residents who have been a victim (including witnesses of) a terrorist act overseas.
- E) **Endorse** the Working Group developing nationally consistent guidelines to assist victims in their contact with media.

¹ These were developed by the Working Group pursuant to a reference provided by the then SCAG in 2009 (SCAG Communiqué, 5-6 November 2009) and subsequently endorsed by the then Standing Council of Law and Justice in 2013 (SCLJ Communiqué, 4 April 2013). The Framework notes that in 1996 a National Charter of Victims' Rights was endorsed through the then Standing Committee of Attorneys-General (at p.5).

2. About the Working Group

The Working Group consists of representatives from each State and Territory. It was established by the then Standing Committee of Attorneys General (SCAG) in 2009 to develop a National Framework of Rights & Services for Victims of Crime (National Framework). The National Framework was endorsed by the then Standing Council of Law and Justice in 2013.

The Working Group is assisted by representatives from the Commonwealth Attorney-General's Department (AGD), Department of Human Services (DHS), Department of Home Affairs (Home Affairs) and Department of Foreign Affairs and Trade (DFAT). The Working Group thanks the representatives of those agencies for the assistance and information they have provided.

3. Scope

3.1 Reference considers the situation for Australian victims overseas and does not extend to consideration of Australian victims of domestic terrorism

The Working Group has interpreted the COAG reference as being limited to consideration of Australian victims of terrorism that occurs overseas. The Working Group notes that the guidelines developed for the purposes of this report also provide a useful framework for considering support available for victims of terrorism within Australia.

In brief, the fact that victim services across Australia differ on a state-by-state basis means it is not clear that consistent support would be available to victims, should there be a cross-jurisdiction terrorist attack.

The Working Group notes that victims of a terrorist incident that occurred solely within one jurisdiction in Australia would be able to access the victims of crime assistance services in that state or territory, although there may not be a consistent response between jurisdictions. However, pathways to assistance and services for victims of a terrorist incident that occurred across more than one jurisdiction in Australia (for example, a plane crash on the border between states or the poisoning of a river running through several states) is less clear. This is because most states and territories determine eligibility for victim services on the basis that the act of violence has occurred in that state or territory.²

The Working Group would welcome the opportunity to undertake further work to identify options for responding to such a scenario.

3.2 Guidelines not necessarily limited to victims of ‘terrorist acts’ as defined in the Criminal Code

The Working Group has been asked to develop guidelines with a focus on Australians who are ‘victims of terrorism’. It is noted that the term ‘terrorist act’ is specifically defined in the Criminal Code (scheduled to the *Criminal Code Act 1995 (Cth)*)³ and that definition is used for the purposes of the Australian Victims of Terrorism Overseas Payment (AVTOP) scheme, as discussed at 5.2.1.

While the guidelines have been developed by the Working Group in response to the referral from COAG, they are not limited in their application only to victims of terrorism overseas, but may be applied to any victim of serious crime committed overseas.

While the Working Group recognises that eligibility criteria may be necessary for determining financial assistance and access to other supports, it notes in 6.2, Guideline 5 that Australian victims of serious crime overseas where the crime does not meet the definition of ‘terrorist act’ have very limited access to assistance and support. This may or may not be appropriate. Further work would be required to consider the policy implications of applying the guidelines more broadly.

3.3 Victims include witnesses

The Working Group includes witnesses when speaking of victims of terrorist acts. Witnesses are included in the definition of ‘primary victim’ for the purposes of AVTOP, if they were present at the scene and were harmed by the terrorist act.⁴ Further, witnesses are generally recognised as victims in State and Territory victims’ assistance legislation.

2 There is an exception in the South Australian legislation that enables payments to be made where the act of violence occurs outside of that state: Section 27(4) (d) & (e) and 31(2), *Victims of Crime Act 2001 (SA)*.

3 Section 100.1, *Criminal Code*.

4 Section 1061PAA(2), *Social Security Act 1991 (Cth)*

4. Context

The focus on effective prevention of and responses to terrorism, both domestically and internationally, has increased in recent years in line with the number of high profile attacks. Traditionally, these activities have focused on intelligence and emergency services capability and capacity. More recently, there has been a growing acknowledgement that victims' assistance and services need to be included in these responses. In the post-incident scene, it can be difficult to coordinate the activities of multiple response agencies and bystanders. Emergency Management Strategies are helpful; however, after a terrorist incident these strategies have often proven to be incomplete. For example, in addition to police, other agencies need to maintain security, preserve evidence and locate potential perpetrators, as well as triage and transfer victims. There are, as identified throughout this report, victims' rights that should be respected and victims' needs that should be met. The COAG reference responds to this acknowledgement.

5. Overview of current assistance available to victims of terrorism overseas

This section outlines the support generally available to victims of terrorism overseas both while they are overseas and when they return to Australia.

The Working Group notes that additional assistance has been provided in response to particular incidents on an *ad hoc* basis. An overview of this additional assistance is provided in the Senate Legal and Constitutional Affairs Legislative Committee's 2012 report on the Bills leading to the AVTOP legislation.⁵

The Working Group also notes that much research and experience shows the needs of direct victims of terrorism are in a financial, psychological and physical sense similar to those of other victims of violent crime.⁶ The needs of victims of terrorism differ, however, in degree or in possibilities for accessing services.⁷

5.1 Support for victims while they are overseas

5.1.1 Assistance provided by DFAT

The immediate Australian Government response to Australian victims of an overseas terrorist incident is provided by DFAT in conjunction with other Commonwealth agencies, including, but not limited to, the Australian Federal Police (AFP) and occasionally, the DHS. DFAT provides consular assistance to Australian citizens overseas and, in a crisis, may assist permanent residents.⁸

The initial identification of victims is undertaken by relevant foreign authorities. DFAT consular officers then endeavour to contact victims and/or families to provide timely and accurate information about the incident, including the scope of the assistance available in the foreign jurisdiction and through the Australian Government in response to the incident.

DFAT also has a publication to assist all consular clients on managing approaches made by the media.⁹ In extenuating circumstances only, DFAT would consider providing a loan to repatriate injured or deceased victims. The consular role involves facilitating victims' access to local medical and other services (for example translation or legal services) and helping victims and families to understand local laws and processes (for example whether an autopsy is required by law). DFAT will assist victims and families in obtaining new Australian passports where required.

DFAT maintains a database of certain medical and legal services available in each foreign jurisdiction. This information is regularly updated. Following a terrorist attack, or other crisis involving Australians overseas, DFAT contacts relevant local authorities and service providers to reconfirm what local assistance is available. This information is accessible to consular officers and crisis response teams, but not directly to the public. In providing information, DFAT is mindful not to be seen to recommend one service provider (for example, a lawyer or translator) over another.

5 See Senate Legal and Constitutional Affairs Legislation Committee, *Report on two Bills providing for Assistance to Victims of Overseas Terrorism* (May 2012), page 3-4.

6 Letschert, R, Staiger, I & Pemberton, A (2010) *Assisting victims of terrorism: Towards a European standard of justice*, Springer, London, UK; O'Connell, M (2015) *Victims of Terrorism: Rights & Assistance – Necessary for sustainable development*. Speech Sustainable Development Policy Institute, Islamabad, Pakistan

7 For example in the immediate aftermath of the Bali terrorist bombings on 12 October 2002, steps were taken to implement "Operation Bali Assist" which involved a mobilisation of emergency military support from the Australian Defence Force and support from law enforcement. It is important to note Australia has responded only to this attack in this manner.

8 For an overview of DFAT's consular services see: <http://smartraveller.gov.au/services/pages/consular-services-charter.aspx#what-help-we-may-provide>

9 The DFAT guide is consistent with those produced by states such as NSW http://www.victimsclearinghouse.nsw.gov.au/Pages/victims_clearinghouse_victims_media/victims_clearinghouse_victims_media.aspx ; and SA <http://voc.sa.gov.au/dealing-media>

5.1.2 Assistance available from the foreign country

The Working Group conducted a high level scan of financial assistance and other services available in various countries to visiting Australians. This scan suggests that the availability of financial and other assistance for non-citizen or resident victims varies significantly and depending on the jurisdiction may extend to immediate counselling and financial assistance, ongoing financial support in relation to treatment for injuries and compensation payments.

The Working Group also notes that access to any assistance, entitlements or compensation may depend upon the victim's ability to engage in criminal justice processes in some jurisdictions. It is noted that DFAT does not provide longer-term support specifically to enable victims to participate in criminal justice processes following a terrorist incident.¹⁰ Any assistance provided by a victim to a foreign prosecution as a result of an overseas terrorist act would be facilitated via any existing formal mutual legal assistance process between the foreign country and Australia.

5.2 Support for victims when they arrive back in Australia

Consular assistance through DFAT appropriately concludes once the victim arrives back in Australia. Currently, no formal referrals are made for continuing support in Australia. DFAT's Consular Strategy 2017-19 recognises that victims of serious crimes committed overseas¹¹ can be precluded from access to victim support schemes and services when they return to Australia.

To address this gap, DFAT has developed a letter for returning victims of terrorism overseas and their families, which provides an introduction to possible support available through Australian jurisdictions. The Working Group has been consulted on the content of this letter.

Victims of terrorism overseas generally will not be able to access established State and Territory victims support services (such as counselling, or brokerage for other services provided through victims support), as most state-based victims support legislation limits eligibility to state-provided financial assistance and other support services to cases where the act of violence occurred within the particular jurisdiction.¹²

Certain victims of terrorist acts overseas may have access to financial assistance through the AVTOP scheme or in very rare circumstances, a small payment through the Australian Government Disaster Recovery Payment (AGDRP). These schemes are discussed below.

5.2.1 Financial assistance

AVTOP is a Commonwealth scheme established under the *Social Security Act 1991 (Cth)* which commenced in 2013 to provide financial assistance to victims of 'declared' overseas terrorist acts.¹³ The AVTOP scheme was enacted in acknowledgement of the special and tragic nature of terrorism and the need to assist and support victims of overseas terrorist acts.¹⁴

9 The DFAT guide is consistent with those produced by states such as NSW http://www.victimsclearinghouse.nsw.gov.au/Pages/victims_clearinghouse_victims_media/victims_clearinghouse_victims_media.aspx ; and SA <http://voc.sa.gov.au/dealing-media>

10 Victims who remain in or return to the country in which the incident occurred can access the usual consular services, such as the list of English speaking lawyers or interpreters. See <http://smartraveller.gov.au/services/Pages/consular-services-charter.aspx>

11 DFAT's *State of Play 2016-17* report notes 317 people received consular assistance in relation to an assault overseas in the 2016-17 financial year.

12 See note 2.

13 The AVTOP scheme only applies to an overseas terrorist act which is the subject of a declaration by the Prime Minister.

14 Social Security Amendment (Supporting Australian Victims of Terrorism Overseas) Bill 2011, Revised Explanatory Memorandum.

As AVTOP is not intended to provide for immediate assistance, there is a delay between the incident and the declaration of an incident under the AVTOP scheme. This delay is due to a number of factors, including the need to determine whether the overseas incident falls within the definition of a 'terrorist act' under the Criminal Code. The amount of financial assistance available is scaled according to the level of injury and impact.¹⁵ Consequently, victims are encouraged to make applications after their injuries have stabilised.¹⁶

Once an overseas terrorist act is declared under AVTOP, DHS is responsible for assessing and determining AVTOP claims. With the consent of the victim, following a declaration that an incident is a terrorist act, DFAT provides the names and contact details of victims to DHS which can provide support in making an AVTOP claim and direct victims to other support services, such as health services.¹⁷

Not all overseas terrorist incidents are declared as 'terrorist acts' under the AVTOP scheme. The AVTOP scheme only applies to those overseas terrorist acts which are 'declared' by the Prime Minister.

AGDRP is an Australian government one-off non-means tested payment of \$1,000 to adults (and \$400 for children) provided for immediate short-term assistance for persons adversely affected by major disasters, including overseas incidents. As with AVTOP, under the *Social Security Act 1991*, for AGDRP to be payable, the relevant Minister must make a determination that the event is a major disaster.¹⁸

5.2.2 Access to other support services

State and Territory-based victims' support services provide a range of services including access to counselling, assistance with criminal justice processes and brokerage (flexible funding) to address other needs, such as accommodation.¹⁹ As with financial assistance to victims of crime, generally, these services are available only to victims where the act of violence occurred in the relevant state or territory.²⁰

¹⁵ *Social Security (Australian Victim of Terrorism Overseas Payment) Principle 2013*.

¹⁶ Counter-Terrorism Policy Branch, Department of Home Affairs, Response to questions from National Working Group, April 2018.

¹⁷ The nature of these support services is discussed at 6.2.

¹⁸ <https://www.disasterassist.gov.au/Pages/disaster-recovery-payment.aspx>

¹⁹ It is noted that the range of services available is not consistent across Australian jurisdictions.

²⁰ An exception to this is Queensland where any victim of crime who lives in Queensland can access state funded counselling through Relationships Australia Queensland's Victims Counselling and Support Service, regardless of when or where the act of violence occurred. Victoria's Victims Assistance Program's eligibility guidelines provide for services to be limited to where the act of violence occurred in Victoria, but also include provision for 'exceptional circumstances' that may enable services to be provided in cases where the act of violence occurred outside of Victoria. In South Australia, residents who become victims of crime in other jurisdictions can be offered support by the Victim Support Service, including free counselling; victims of sexual assault can access the Rape & Sexual Assault Service, Health SA; the Commissioner for Victims' Rights can provide 'limited' financial assistance; and, the Attorney-General has discretion to make ex gratia payments from the Victims of Crime Fund.

6. Good practice guidelines

This section sets out good practice guidelines drawn from established practice for victim support as reflected internationally and domestically.

Each good practice is analysed against existing services and the current gaps and barriers (if any) in relation to achieving good practice both when the victim is overseas and when the victim returns to Australia are identified. It is noted that where there is an inability to access State and Territory victims support schemes this is a significant gap.

6.1 Sources of good practice

The Working Group has drawn on a number of existing sources including internationally agreed instruments and guidance documents, in identifying good practice, many of which are reflected in the 2013 *Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings* (Madrid Memorandum).²¹ The practices in the Madrid Memorandum, originally framed to apply to States, have been modified by the Working Group to apply to the Australian context.

The Working Group has also drawn on the *National Principles Guiding Existing Services to Victims and Supporting Victims' Rights* (the National Principles), that were endorsed by the then Attorneys-General as part of the National Framework in 2013. The Principles are based on the United Nation's 1985 *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* and form the basis of the victims' charters in each Australian State and Territory as well as the National Charter on Victims' Rights. The National Principles are:

- respectful and dignified treatment
- information and access
- justice and fair treatment
- financial assistance; and
- leadership and collaboration.

6.2 The Guidelines

Guideline 1: Governments and service providers should collaborate to provide services to victims of terrorism

The Madrid Memorandum notes the importance of effective cooperation and collaboration between agencies providing responses to victims of terrorism.²²

Where a major emergency occurs within Australia, cooperation and collaboration between jurisdictions is through emergency management plans. Victims' services are generally included in these plans.²³

However, appropriate support for victims is not effectively integrated into current responses where the emergency, such as a terrorist act occurs overseas.

21 Global Counterterrorism Forum, *Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings*, adopted 27 September 2013. See, in addition to the Universal Declaration on Human Rights, for example, Covenant on Civil & Political Rights (for example, Article 2); Declaration of Basic Principles of Justice for Victims of Crime & Abuse of Power (General Assembly resolution 40/34); Basic Principles & Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations (General Assembly resolution 60/147); Set of Principles for the Protection & Promotion of Human Rights through Action to Combat Impunity (E/CN.4/2005/102/Add.1); Convention against Transnational Organised Crime (for example, Articles 24 & 25); Convention against Corruption (for example, Article 32)

22 Madrid Memorandum, Good practices 1, 3c, 4, 7 and 10.

23 Although discussion among Working Group members revealed the need to strengthen the role and visibility of victim support services in emergency management plans in some states and territories.

When victims are overseas

DFAT endeavours to build and maintain productive relationships with foreign governments and relevant service providers overseas to enable the provision of timely and effective consular and crisis assistance, in accordance with the Consular Services Charter, to Australians. However, DFAT has no authority to dictate or guarantee the level of service consular officers will be able to provide to Australian victims of terrorism in foreign jurisdictions, even in countries with which Australia has close ties. In addition, the Australian Government's ability to provide consular assistance in locations rated as Do Not Travel or Reconsider Your Need to Travel is extremely limited, at any time.²⁴

When victims return to Australia

Collaboration and information sharing between agencies to support victims of terrorism overseas upon return to Australia occurs with the consent of the victim.

As noted at 5.2, DFAT's Consular Strategy 2017-19 acknowledges the 'clear gap in home-based support for Australians who are victims of crime committed overseas' and states that it will work with states and territories and federal agencies to help bridge this gap.²⁵

Guideline 2: Individuals and organisations that provide assistance to victims should have appropriate knowledge and skills

Good practice is that individuals and organisations that provide assistance to victims should have appropriate knowledge and skills. The Madrid Memorandum notes the importance of victim assistance professionals being involved in planning for and responding to terrorism incidents because of the specialist nature of the response required.²⁶

Appropriate advice and support from victim assistance professionals contributes to respectful and dignified treatment of victims, including ensuring the privacy and confidentiality of victims is protected and that interactions with victims are compassionate, non-intrusive and avoid re-traumatisation.

It is widely recognised that what victims need most in the aftermath of interpersonal trauma is safety, security, and social support. These are important elements to have incorporated in victim service systems and delivered by skilled staff.

This is reflected in the literature on responding to victims of terrorism or other mass violence,²⁷ as well as more generally in the practice of state-based victim support services where staff (or accredited providers) undergo extensive training to ensure specialist knowledge and skills in relation to understanding the impact of crime and assisting victims with crime related complex trauma.²⁸

24 [Smartraveller.gov.au](http://smartraveller.gov.au)

25 DFAT Consular Strategy 2017-19: <http://dfat.gov.au/about-us/our-services/consular-services/Pages/consular-strategy-2017-19.aspx>

26 Madrid Memorandum, Good Practice 1 and 4; Pemberton, A (2010) 'Psycho-social assistance' in Letschert, R, Staiger, I & Pemberton, A (eds) *Assisting victims of terrorism: Towards a European standard of justice*, Springer, London, UK, 143-170; O'Connell, M (2015) *Victims of Terrorism: Rights & Assistance – Necessary for sustainable development*. Speech Sustainable Development Policy Institute, Islamabad, Pakistan.

27 Centre for Mental Health Services (2004) *Mental Health Responses to Mass Violence and Terrorism*, US Department of Health & Human Services, Rockville, MD, USA; Letschert, R, Staiger, I & Pemberton, A (2010) *Assisting victims of terrorism: Towards a European standard of justice*, Springer, London, UK; Canada Federal Ombudsman for Victims of Crime (2017) *Victims' First, International Conference on Victims of Terrorism*, Office of the Federal Ombudsman for Victims of Crime, May 2017.

28 For example, victims services staff in Victoria undergo an extensive training program, including mental health trauma training and trauma informed care, for sexual assault victims training.

When victims are overseas

DFAT consular officers who provide initial assistance to victims of terrorism may not necessarily have the appropriate knowledge and skills required to effectively respond to the needs of victims of complex trauma. However, consular officers will refer victims to appropriate local medical and support services, depending on the individual's needs. DFAT's Consular Strategy 2017-19 notes that consular officers have a range of valuable skills and experiences, but are not professional social workers or counsellors. DFAT has undertaken to augment specialist training to help consular officers to sensitively manage the growing number of consular cases which involve mental health issues.²⁹

When victims return to Australia

DHS has specially trained Customer Service Officers who assist individuals in making an application for financial assistance under the AVTOP scheme.

However, due to the inability of victims of terrorism overseas to access State and Territory-based victim support upon their return to Australia, for other support needs DHS may refer victims to general support services.

Guideline 3: Victims of terrorism overseas should have timely access to appropriate and accurate information about available services and support

Good practice is that information should be provided quickly, simply and preferably by a single contact point.³⁰ The Madrid Memorandum provides examples of the types of information victims of terrorism may require. These include information about the progress and response to the incident for victims and their families, information about available local services, information about how to deal with the media and information about criminal justice processes.

When victims are overseas

Information about the progress and response to the incident

As discussed at 5.1.1, DFAT consular staff are generally the first Australian point of contact for victims of terrorism overseas and endeavour to provide timely and accurate information to victims and their families about the incident. The Working Group has no indication that this response requires enhancing from a victims' perspective, indicating that such principles may be working well in practice.

Information about available local services

As discussed in relation to Guideline 2, DFAT recognises that consular officers are not professional social workers or counsellors. DFAT maintains a comprehensive database of locally available services. This information is regularly updated. Consular officers endeavour to provide timely and accurate information about these services to all consular clients, including in a crisis.

Following a terrorist attack, or other crisis involving Australians overseas, DFAT will contact relevant local authorities and service providers to reconfirm what local assistance is available.

²⁹ DFAT's Consular Strategy 2017-19.

³⁰ Madrid Memorandum, Good Practice 2.

Information about dealing with the media

DFAT has developed a brochure to assist all consular clients and their families to manage approaches from the media. State agencies have also developed resources for victims regarding media contact. It is proposed that, if the recommendations of this report are accepted, further work be undertaken on developing nationally consistent guidelines to assist victims in their contact with media.

Information about criminal justice processes

While DFAT has no role in the legal process, consular officers can assist by providing victims with lists of English-speaking local lawyers and can monitor legal proceedings. DFAT is mindful not to be seen to recommend one service provider (for example, a lawyer or translator) over another.

When victims return to Australia

Information about financial assistance

As discussed at 5.2.1, if an overseas incident is declared a terrorist act for the purposes of the AVTOP scheme, with the victims' consent, DFAT provides the victim's contact details to DHS which will proactively attempt to contact the victim with information about the AVTOP scheme.

Information about other support services

Where AVTOP is activated, a DHS worker provides information about health and other services that may be available to them.

However, if an overseas terrorist incident is not declared for the purposes of AVTOP, DHS does not have a role, and DFAT can do no more than provide the contact details for support services directly to the individual.³¹ DFAT representatives who attended the Working Group noted that they were aware of victims in this situation who continued to seek assistance from DFAT even though DFAT had no further role after the victim had returned to Australia, highlighting the significant gap for victims in this situation.³² DFAT is also aware of victims of serious crime whose symptoms have been exacerbated due to being unable to easily access domestic support upon their return to Australia.

Information about criminal justice processes

Where a victim returns to Australia, no particular agency in the Commonwealth, state or territory has a specific role in monitoring all criminal proceedings in the foreign country, for the purpose of providing information to victims. If a criminal prosecution is initiated, in some cases it may take months or even years. A victim's role as a witness in a foreign prosecution may be facilitated via the formal mutual legal assistance process, but this would not be for some time after the incident.

³¹ As noted at 5.2.2, DFAT has developed a letter to victims in this situation to provide them with information about available services.

³² Working Group meeting 2 May 2018. As noted at note 25, DFAT's consular strategy recognises this gap.

Guideline 4: Services should be responsive to the needs of victims of terrorism

Good practice is that services should be responsive to the needs of victims. This includes creating links between different service providers (such as through providing ‘warm referrals’³³) so that the victim experiences a seamless service and does not have to retell their story multiple times.³⁴ Warm referral practice is also based on the established understanding that the provision of information to highly traumatised individuals is often not effective in assisting with engagement of services. Australian State and Territory-based victims support services in all jurisdictions use warm referral practices where practicable and appropriate.

It is also good practice to recognise that victims may require both immediate support as well as longer term support following the incident, even though this may not be a consistent level of intensity. Assistance and support may be particularly necessary during and after criminal justice processes.³⁵ All states and territories also provide other support services for victims for the duration of criminal justice processes, for example by providing direct financial assistance for justice related expenses.

When victims are overseas

Level and duration of services

The impact of terrorism can be acute and last for long periods, particularly where there is significant media coverage of events. This suggests the importance of both immediate and longer term specialist assistance.³⁶

While DFAT provides initial practical assistance, it does not have a role in providing victim support services (such as case management to assist a person to address their range of medical or psychological needs).

As noted above, DFAT can provide information and monitoring assistance, but not support to participate in criminal justice processes where victims stay overseas.

Creating links between services

As noted above, DFAT consular officers provide victims of terrorism who are overseas with information about local services and can, with the individual’s consent, endeavour to facilitate access to these services. DFAT does not provide ‘warm referrals’ in terms of information sharing or formalised memoranda of understanding with agencies in Commonwealth or foreign jurisdictions.

When victims return to Australia

Level and duration of services

As noted above, no state or territory agency has a role in monitoring legal proceedings for the purpose of providing information to victims once they have returned to Australia. While there are avenues to facilitate participation as a witness in the criminal prosecution overseas (via formal mutual legal assistance processes), there is no specific support available similar to that provided by State and Territory-based victims’ services in domestic prosecutions.

33 ‘Warm referrals’ refers to the practice between agencies with established relationships of assisting clients to access services through, for example, introducing the client to the other service on the phone. Warm referrals are often underpinned by other arrangements such as information sharing and formalised through memoranda of understanding such as those developed for inter-jurisdictional referral under strategy 1.3 and 1.4 of the National Framework.

34 Madrid Memorandum, Good Practices 7 and 10.

35 Madrid Memorandum, Good Practices 9-17.

36 European Parliament Policy Department for Citizens’ Rights and Constitutional Affairs, *How can the EU and the Member States better help victims of terrorism?*, September 2017. This notes that some 30% of victims of 2004 bombings in Madrid continued to exhibit symptoms of psychological distress at apparent clinically significant levels some 13 years after the events (p.102). Likewise, trials in connection with the 2001 attacks in the United States saw five suspects still not facing trial four years after arraignment (p.112).

Creating links between services

As noted in Guideline 3, with the victims' consent, there is an exchange of the individuals' contact information between DFAT and DHS where a terrorist act is declared for the purposes of the AVTOP scheme.

Where the incident is not declared for the purposes of the AVTOP scheme, DHS has no role. As discussed at 5.2, DFAT is trying to address the gap by providing returning victims and families with a letter that introduces domestic services that may be available to them.

Guideline 5: Victims of terrorism should be assisted to access available financial assistance

Good practice is that victims are able to access available financial assistance.³⁷

The importance of immediate financial assistance is reflected in the availability of interim financial assistance in all Australian states and territories. The need for longer-term financial assistance is recognised through the ability for victims to apply for a variation of an award of financial assistance to address additional needs after the determination of a final award.³⁸

When victims are overseas

Many travel insurance policies exclude coverage for loss associated with acts of terrorism³⁹ so victims are often required to fund return travel. The Working Group is aware of a few recent cases, in which victims and their families have used crowd funding to assist with covering expenses, such as helping family members travel to the scene of the incident and with funeral and ongoing medical expenses.⁴⁰

Overseas financial assistance schemes are often complex and victims may be required to prove certain evidentiary thresholds before being able to claim. Such applications therefore are likely to require not only access to lawyers, but also medical, psychological or other reports. DFAT can provide lists of English-speaking service providers, such as translators and lawyers. The individual is required to meet costs associated with these services.

When victims return to Australia

Primary and secondary victims of overseas terrorist acts may be eligible for financial assistance under the AVTOP scheme if the incident is declared by the Prime Minister as a 'terrorist act'. However, there are a number of eligibility requirements that must be met in order to qualify for a one-off payment of financial assistance under the AVTOP scheme.

For victims of overseas terrorist acts that are not declared for the purposes of the AVTOP scheme no financial assistance is available as, with one exception, State and Territory-based schemes are restricted to where the act of violence occurred in that state.⁴¹

37 Madrid Memorandum, Good Practice 16.

38 For example, in Victoria, victims may apply for a variation of an award up to six years after the making of a final award: *Victims of Crime Assistance Act 1996* (Vic), s 60.

39 <http://www.abc.net.au/news/2017-05-29/will-your-travel-insurance-cover-you-in-a-terror-attack/8567866>.

40 See for example <https://www.gofundme.com/wpgbg-london-terror-affects-local-family> and <https://www.theaustralian.com.au/news/nation/thousands-raised-for-barcelona-terror-victim-julian-cadman-on-gofundme-page/news-story/db044e101c42adb9f3c08ad9c881ebd2>

41 The exception is South Australia. See note 2.

7. Conclusion

Victims of terrorism suffer physical, emotional, and mental effects, as well as financial harm. Meeting the needs of these victims requires many tasks and various interventions, including: providing immediate emergency assistance, facilitating 'psychological first aid', material help (for example, financial assistance), victim-survivor and community education, and informing as well as enhancing victim-survivors' social support. Victims' rights should be upheld, not overlooked.

While there are good practices in dealing with Australian victims of terrorism overseas which have been identified and a commitment to improvement, this report has highlighted significant gaps in achieving good practice for the protection of rights of Australian victims of terrorism overseas.

Within the current service model, some of these gaps could be addressed by continuing to strengthen relationships between Commonwealth agencies responsible for services to victims of terrorism and state-based victims support services. However, this response will always be limited.

The development of a comprehensive national approach will involve bridging the gap between Commonwealth services and the established and professional domestic victims' support system to ensure all victims can access the support they need. Broadening the application of existing domestic victim support services (available to victims of crime that occurs within the jurisdiction) to victims of terrorism overseas would likely achieve this.

It is noted that in some instances, due to the high profile nature of a terrorist attack, governments go to extensive lengths to assist victims far beyond established entitlements described in this paper. The Working Group acknowledges there are many reasons for this type of approach but these have not been canvassed in this discussion. Instead, the Working Group remains focussed on encouraging a consistent approach across all levels of government, to victims of terrorism.

To progress the issues identified in this report, the Working Group seeks approval to further explore ways in which existing domestic support for victims of terrorism overseas could be improved and options for enabling victims of terrorism to access established state-based support services.

Attachment A: Guidelines and principles for responding to victims of an international terrorist act

These are high-level good practice guidelines to protect the rights of Australian victims of terrorist acts overseas. They are intended to assist agencies who are involved in the response to victims and to promote a focus on the rights and recovery of the victims. These are supported by practical principles attached to each good practice guideline drawn from a range of international and Australian instruments and material relating to victims' rights and treatment.

Guideline 1: Governments and service providers should collaborate to provide services to victims of terrorism

Principle 1.1: Victims rights to privacy and confidentiality will be respected and consent obtained before sharing personal information.

Principle 1.2: All jurisdictions will know of and assist victims with access to appropriate supports.

Guideline 2: Individuals and organisations that provide assistance to victims should have appropriate knowledge and skills

Principle 2.1: Service providers should have a trauma informed practice.

Guideline 3: Victims of terrorism overseas should have timely access to appropriate and accurate information about available services and support

Principle 3.1: The most effective mode of communication should be used including traditional and, where appropriate, social media to provide Australian victims with accurate information about events and available support services.

Principle 3.2: The victims will be provided information and support about dealing with the media.

Principle 3.3: The victims will be provided with timely and, where available, accurate information about any support services that they may access both in Australia and in the country the terrorist act occurred.

Guideline 4: Services should be responsive to the needs of victims of terrorism

Principle 4.1: Victims will be given respectful and dignified treatment.

Principle 4.2: Victims will be provided with fair treatment.

Principle 4.3: All jurisdictions will support warm referrals, where there is consent and where it is within their mandate to do so, to minimise the risk of re-traumatisation from repeating traumatic experiences.

Guideline 5: Victims of terrorism should be assisted to access available financial assistance

Principle 5.1: The Commonwealth will provide timely and accurate information to Australian victims about the Australian Victim of Overseas Terrorism Overseas Payment scheme.

Principle 5.2: Where available the Commonwealth will provide timely and accurate information to Australian victims about financial assistance that may be available from the country in which the terrorist act occurred.

Principle 5.3: State and Territory jurisdictions will provide timely and accurate information to Australian victims about any jurisdictional based financial assistance they may receive.

