

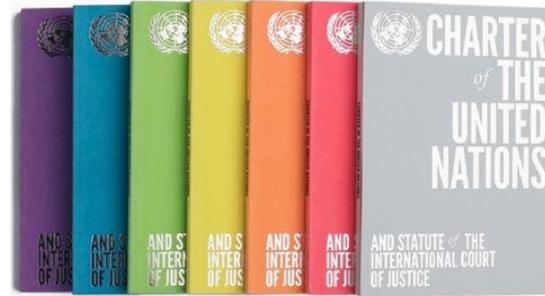
Assisting victims of terrorism: An Australian perspective



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VICTIMS' RIGHTS - Rights of victims of terrorism

- ▶ International human rights
 - ▶ Security of person
 - ▶ Equal and effective access to justice
 - ▶ Appropriate remedies
 - ▶ Provision for reparation

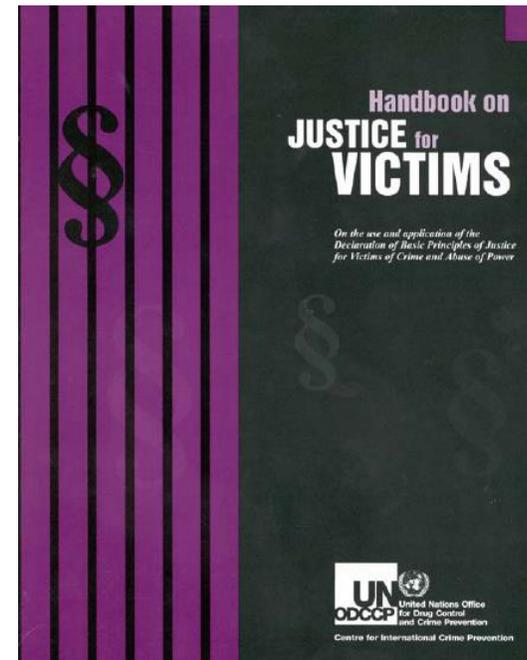


For example -

- ▶ Covenant on Civil & Political Rights (eg 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 (eg Articles 24 & 25)
- ▶ Convention against Corruption (eg Article 32)

VICTIMS' RIGHTS - Rights of victims of terrorism

- ▶ Responding to the needs of victims of terrorism:
 - ▶ Inform them of their role & responsibilities in the criminal justice process; progress of the investigation & prosecution.
 - ▶ Allow their views and concerns to be presented & considered at appropriate stages in criminal proceedings.
 - ▶ Provide assistance to them throughout the criminal justice process.
 - ▶ Minimise inconvenience to them, protect their privacy & take steps to maintain their safety.
 - ▶ Avoid unnecessary delay in criminal proceedings & in executing court or other orders grant in their favour.
 - ▶ Offer them material, medical, psychological and social assistance.
 - ▶ Offer them restitution and compensation



VICTIMS' RIGHTS - Rights of victims of terrorism

- ▶ Commonwealth Statement of Basic Principles of Justice for Victims of Crime (endorsed by Senior Law Officers for the Commonwealth 2005).
- ▶ National Charter on Victims' Rights (endorsed by the Standing Committee of Attorneys-General, Australia 1993):
 - SCAG Secretariat
- ▶ South Australia - to honour international & national obligations
 - Declaration on Victims' Rights (1985)
 - Declaration Governing Treatment of Victims (1999 (administrative; 2003 in Victims of Crime Act 2001)

Rights in relation to compensation and restitution ***(Section 12 Victims of Crime Act 2001)***

- ▶ (1) A victim should have access to information about how to obtain compensation or restitution for harm suffered as a result of the offence.

- ▶ (2) If the prosecutor is empowered to make an application for restitution or compensation on behalf of a victim in criminal proceedings -
 - (a) the prosecutor should bring that fact to the attention of the victim; and
 - (b) should, if asked to do so by the victim -
 - (i) make an application on the victim's behalf; and
 - (ii) bring to the attention of the court any relevant information provided by the victim in connection with the application.

Compensating Victims of Terrorism - South Australia

▶ Victims of Crime Act 2001

Provides for 'statutory compensation' for certain victims of crime:

- ▶ Direct victims of violent crime;
- ▶ Immediate family of victims of violent crime;
- ▶ 'Good Samaritans' - persons injured helping a victim during the immediate aftermath of the crime.

- ▶ Grief Payments (Spouses, parents of children (under 18 years) & children (under 18 years) in homicide cases) - \$A20,000
- ▶ Funeral expenses in homicide cases - Maximum \$A14,000

Compensating Victims of Terrorism (in other places) - South Australia

▶ Victims of Crime Act 2001, section 27

(d) an *ex gratia* payment (not exceeding the limits prescribed by this Act in relation to an order for compensation) to a person in the following circumstances:

- ▶ (i) the person suffers injury, financial loss or grief in consequence of an offence committed outside this State;
- ▶ (ii) the victim is at the time of the commission of the offence ordinarily resident in this State;
- ▶ (iii) some person is convicted of the offence;

Compensating Victims of Terrorism (in other places) - South Australia

- ▶ (iv) if the law of the place where the offence is committed establishes a right to compensation—the claimant has taken reasonable steps to obtain compensation under that law but without success;
- ▶ (v) the claimant would, in the Attorney-General's opinion, probably have been awarded statutory compensation if the offence had been committed in this State;
- ▶ (vi) the claimant is, in the Attorney-General's opinion, in necessitous

Compensating Victims of Terrorism (in other places) - South Australia

- ▶ (e) such other *ex gratia* payments (not exceeding, in any particular case, the limits prescribed by this Act in relation to an order for compensation) as the Attorney-General considers necessary, and consistent with the objects and policy of this Act, to compensate harm resulting from criminal conduct or conduct of the kind described above

Compensating Victims of Terrorism - South Australia

- ▶ Paid from the Victims of Crime Fund:
 - ▶ Maximum Aug 1990 - June 2015 \$50,000 (Australia)
 - ▶ July 2015 \$100,000 (Australian)
- ▶ The Fund comprises:
 - ▶ Money paid as Victims of Crime Levy (Offenders)
 - ▶ Money paid from Consolidated Revenue (Tax-payers)
 - ▶ A proportion (20 per cent) of money paid as fines into Consolidated Revenue
 - ▶ Money recovered from the offender (convicted in court) after the state has paid compensation to the offender's victim
 - ▶ Money confiscated from some criminals (for example drug dealers) and money from selling criminals' assets (including selling traffic offenders' confiscated motor-vehicles)

Payments made to victims of Bali Bombings 2002

Process:

Commissioner for Victims' Rights –

- * Assisted bereaved families – noting their needs similar to those of other victims of violence
- * Advocated for compensation as per the right of a victim of violence

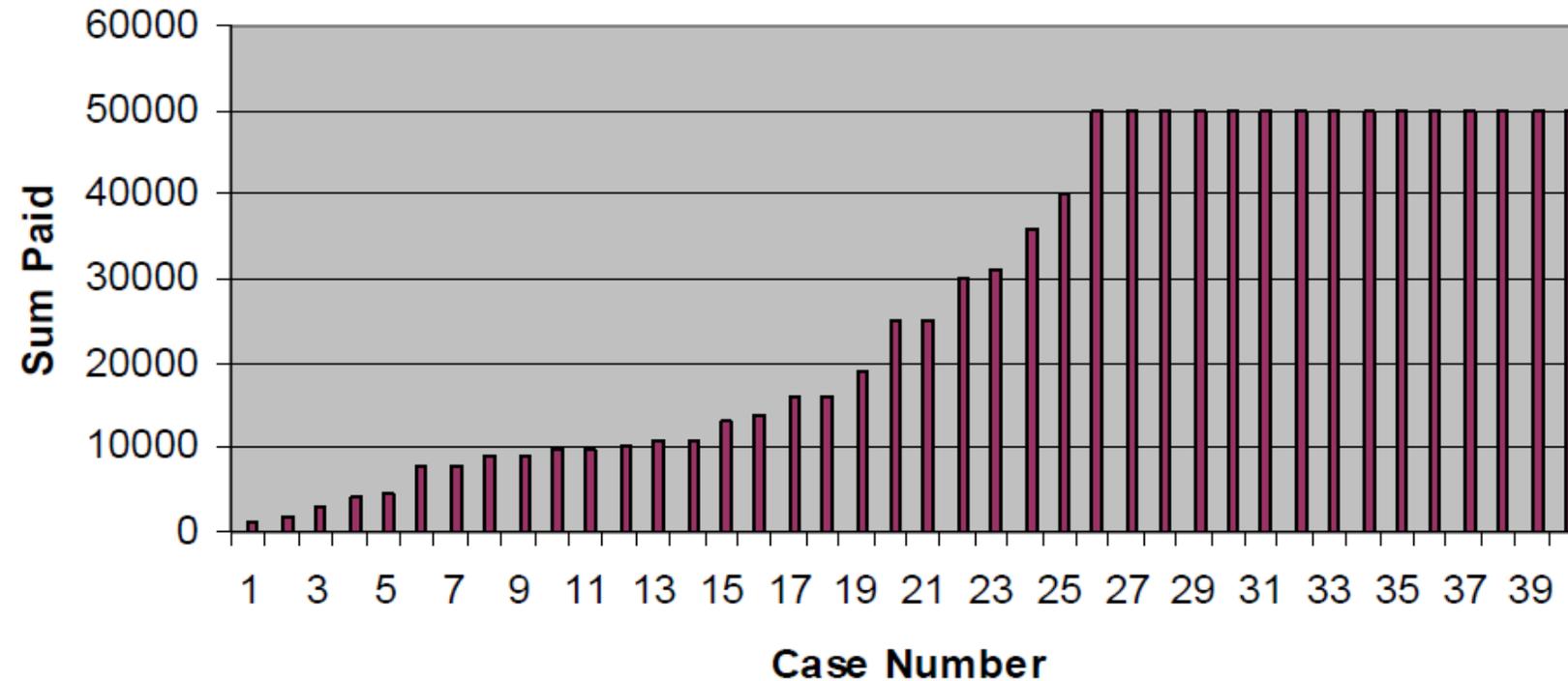
Attorney-General agreed to make ex gratia (compensation) payments from the Victims of Crime Fund

Commissioner for Victims' Rights –

- * Wrote to all known residents of South Australia identified with the Red Cross as victims (approx. 55 people) to notify them on the 'scheme' & alerted media
- * Invited lawyers to assist victims apply for compensation for the personal injury resulting from the 'murder' or 'assault', which would be paid in addition to the financial assistance offered by the federal government
- * Helped victims by explaining the scheme and by identifying a lawyer with knowledge and skill in state-funded victim compensation applications

On settlement, drafted a personal (individualised) letter to each victim that was sent under the Attorney-General's signature

Payments made to victims of Bali Bombings 2002



\$1,115,224 was paid as ex gratia payments to 40 victim-applicants. Graph shows the distribution of payments. About one quarter of the victims was immediate family members (n=12, secondary victims) of deceased victims (n=3); and, about one half of the family members were paid the maximum (\$50,000). Primary victims received payments ranging from \$8,000 to \$50,000, with the majority (n=10) receiving the maximum. Several immediate family members (n=5) of these primary victims received payments ranging from \$1,000 to \$4,500.

Commissioner for Victims' Rights - Authorities to intervene

- ▶ Section 16 of the Victims of Crime Act (the Act) lists the CVR's function, which include assisting victims dealing with public officials and public agencies and carrying out functions, consistent with the objects of the Act, as assigned by the Attorney-General*.
- ▶ The Act defines a victim as anyone who suffers harm as a result of an offence (but does not include a suspect / accused).
- ▶ Section 31(1) & (2) of the Act empowers the Attorney-General (or another with delegation from the Attorney-General) to make 'discretionary payments' from the Victims of Crime Fund.
- ▶ CVR was on-call 24/7 to make discretionary payments in emergency / crisis situations, such as the terrorist incident in London

London Bridge Terrorism

- ▶ KB killed on London Bridge - 'Close friend' acted as 'good Samaritan' / first responder. KB's partner / next-of-kin bereaved. Four others impacted.
- ▶ KB's parents in South Australia.
- ▶ Dept. Foreign Affairs / Consular staff in London and via crisis response centre in Australia.
- ▶ Aust. Federal Police Family Liaison officers (AFP) dealing with immediate family in Australia.
- ▶ As Commissioner for Victims' Rights (CVR) responded to request for financial assistance to cover KB's repatriation.
- ▶ As CVR liaised with London-based funeral director then paid local and international costs for repatriation from London UK to Loxton AUST
- ▶ As CVR liaised with Qantas staff then paid for six UK to AUST return airfares - all passengers (co-victims) to be on the same flight as KB's body.
- ▶ As CVR arranged accommodation and other for six co-victims on arrival in AUST.
- ▶ As CVR via AFP referred SA-based family to Victim Support Service.
- ▶ Later consulted KB's partner and parents on SA Government proposal to establish a scholarship programme for students from regional SA training to be nurses, which on approval, now runs dedicated to KB.
- ▶ On 1st anniversary of the 'incident' addressed Victim Support UK's request on behalf of a British citizen holidaying in Australia who felt they might need to 'talk to someone'.

Compensating Victims of Terrorism (overseas) - Australia

- ▶ Australia Parliament has passed law to provide for 'compensation' for Australian citizens who are victims of a terrorist incident overseas. Government says the payment will be made to acknowledge the harm done.
- ▶ Maximum payable to direct victim \$75,000
- ▶ Maximum payable to 'immediate family' \$75,000 (but (proposed to be) shared among family members)
- ▶ Prime Minister must declare an incident as a terrorist incident.
- ▶ Minister for Families and Communities has discretion to make payments that are assessed using a 'Maims Table' (that is a table that lists the injuries and states the sum that is payable).

AVTOP Data 2013-2017

AVTOP calls, claims and amounts paid 2013 to 2017				
	2013/14	2014/2015	2015/2016	2016/2017
Hotline calls taken	1825	369	223	333
Primary claims finalised	360	100	38	15
Primary claim payments	270	83	26	11
Primary claims total paid	\$19 612 979	\$5 689 717	\$1 489 000	\$748 600
Secondary claims finalised	256	13	0	2
Secondary claim payments	176	5	0	0
Secondary claims total paid	\$7 725 647	\$337 500	\$0	\$0

Source: *Department of Human Services Annual Reports
2013/14 to 2016/17*

Nationally consistent guidelines - Australian victims of terrorism overseas

- ▶ In its Communiqué of 9 February 2018, the Council of Australian Governments 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.

Thank you

Shukran Xiexie Hvala

Tak Dank u Kiitos

Merci Danke Efharisto

Mahalo Terima kasih Grazie

Arigato Kamsahamnida Takk

Obrigado Spasiba Gracias

Salamat Kop khun