



17 December 2024

Beatriz Balbin  
Chief  
Special Procedures Branch  
Office of the High Commissioner for Human Rights  
Palais des Nations  
1121 Geneva 10  
SWITZERLAND

Dear Ms Balbin

Thank you for your correspondence of 6 June 2024 concerning UN Special Procedures: Joint Communication on delays in advice on accountability and reparation, and in paying compensation to Afghan families.

On 18 July 2024, the Defence (Afghanistan Inquiry Compensation Scheme) Regulations 2024 (the Regulations) were made by the Governor-General of Australia, Her Excellency the Hon Ms Sam Mostyn AC, acting on the advice of the Federal Executive Council.

The Regulations established the Afghanistan Inquiry Compensation Scheme (the Scheme) to implement recommendations of the Inspector-General of the Australian Defence Force Afghanistan Inquiry (the Afghanistan Inquiry).

The Afghanistan Inquiry made 15 recommendations to pay compensation to alleged victims or their families where there was credible information of unlawful killing or assault without the establishment of criminal liability.

The Scheme provides a process for the Chief of the Defence Force to refer certain individuals to the Minister-appointed Afghanistan Inquiry Compensation Advocate (the Advocate) for consideration. The Advocate will then make recommendations to the Chief of the Defence Force on appropriate actions, which may include monetary or 'in-kind' compensation. Eligibility for compensation will be limited to circumstances where the Afghanistan Inquiry found credible evidence of incidents of alleged unlawful killings and misconduct by members of the Australian Defence Force in Afghanistan from 2005 to 2016. Most, if not all, benefits will accrue to non-citizens of Australia, including persons in Afghanistan.

Australia notes that Afghanistan is experiencing an economic and humanitarian crisis and Taliban-linked individuals and entities are subject to sanctions. In this context, the Regulations establish the Scheme with appropriate flexibility to operate sensitively and effectively in a logistically and culturally complex operating environment with significant international policy considerations.

Examples of the Scheme's flexibility include the standard of evidence to establish identity where documentary evidence may be hard to provide, consideration of cultural expectations recognising family structures and determining appropriate action, and assessing the potential

impact and suitability of financial compensation or alternative infrastructure and aid development funding while Afghanistan is in a crisis. Considering, for example, the potential for compensation money to fund the Taliban or for adverse outcomes for recipients at the time of making a decision, strong protections to prevent payments to persons that could fund a terrorist organisation, therefore breaching sanctions, will be a key element of the Scheme.

The Chief of the Defence Force will be responsible for referring matters to the Advocate. The referral process will be managed in a way that minimises the risk of the advocate receiving a high volume of individual claims, including ambit or spurious claims, and encourage expeditious assessment of claims.

The Scheme will operate independently from the ongoing work of the Office of the Special Investigator, with compensation available through the Scheme as a separate process. The Office of the Special Investigator was established to investigate, with the Australian Federal Police, activities of Australian Defence Force personnel in Afghanistan from 2005 to 2016, and refer alleged criminal offences arising from or related to any breaches of the Laws of Armed Conflict for prosecution.

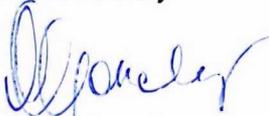
Operations of the Scheme will not affect other statutory and common-law obligations, or the ongoing work of the Office of the Special Investigator and the obligations of the Australian Defence Force under Australian law. Work is underway to assist the minister to appoint the advocate.

A copy of the Regulations and the Explanatory Statement are available on the Federal Register of Legislation: <https://www.legislation.gov.au>.

Eligible payments or authorised representatives are able to access information on the Scheme and/or submit a claim via the Afghanistan Inquiry Compensation Scheme website: <https://www.defence.gov.au/about/complaints-incident-reporting/afghanistan-inquiry-compensation-scheme>.

Thank you for contacting us on these matters. I trust this information is of assistance.

Yours sincerely



Amanda Gorely

Ambassador and Permanent Representative  
Australian Permanent Mission to the United Nations Office and other international organisations in Geneva