



Submission to the Universal Periodic Review of Australia

Human Rights Watch

July 2020

Introduction

1. Human Rights Watch submits the following information regarding Australia's implementation of recommendations it accepted through its 2015 Universal Periodic Review (UPR) as well as information about developments in the human rights situation in Australia not addressed in the 2015 review.¹ This submission is not a complete review of the implementation of all recommendations either fully or partially supported by Australia, nor is it a comprehensive review of Australia protection of human rights in the domestic sphere.

2. The submission covers human rights concerns monitored by Human Rights Watch including treatment of asylum seekers and refugees, rights of Indigenous peoples, children's rights, disability rights, rights of older persons, and national security and counterterrorism measures, as detailed below.

Asylum seekers and refugees

3. During the 2015 UPR, Australia supported numerous recommendations to “review its immigration laws and policies and ensure compliance with its international obligations, especially regarding the rights of children” (136.245)² and “take adequate steps to promote and protect the rights of asylum seekers, refugees and migrants (136.239).³ However, Human Rights Watch has documented numerous abuses against asylum seekers, migrants, and refugees, especially for those forcibly transferred to Papua New Guinea (PNG) and Nauru.

4. During the 2015 UPR, Australia stated that processing centers in Nauru and PNG operate under Nauruan and PNG jurisdiction and are subject to the laws of those countries. However, Australia simply cannot outsource its international legal obligations by sending asylum seekers to other countries.⁴ The United Nations High Commissioner for Refugees (UNHCR) has repeatedly stated that Australia retains responsibility for people forcibly transferred under its offshore arrangements.⁵

5. More than 370 refugees and asylum seekers remain in PNG and Nauru.⁶ Following a campaign by civil society groups and medical professionals, since February 2019 no children remain on Nauru. Since 2013, 12 refugees and asylum seekers have died in Australia's offshore processing system – 6 due to suicide. Refugees and asylum seekers in PNG regularly endure violence, threats, and harassment from residents, with little protection from local authorities.⁷

¹ Additional information on the human rights issues in Australia can be found at Human Rights Watch, *Australia – World Report 2020*, <https://www.hrw.org/world-report/2020/country-chapters/australia>.

² All paragraph cites are to United Nations General Assembly, Human Rights Council, Report of the Working Group on the Universal Periodic Review: Australia, A/HRC/31/14 <https://www.ag.gov.au/RightsAndProtections/HumanRights/United-Nations-Human-Rights-Reporting/Documents/UPR-Report-of-the-Working-Group.pdf> (November 2015).

Recommendations accepted by Australia can be found here:

<https://www.ag.gov.au/RightsAndProtections/HumanRights/United-Nations-Human-Rights-Reporting/Documents/ResponsetoUPRrecommendations.pdf> (accessed March 16, 2020).

³ See for instance: 136.247, 136.249, 136.251, 136.253, 136.241, 136.252, 136.273, 136.282, 136.283, 136.269, 136.271, 136.271, 136.261, 136.258, 136.256, 136.257, 136.255, 136.254, 136.266, 136.248, 136.250, 136.246, 136.242, 136.264, 136.243, 136.265, 136.244, 136.267.

⁴ Andrew and Renata Kaldor Centre for International Refugee Law, “Who is Legally Responsible for Offshore Processing on Manus and Nauru,” October 1, 2018, <https://www.kaldorcentre.unsw.edu.au/publication/offshore-processing-australia%E2%80%99s-responsibility-asylum-seekers-and-refugees-nauru-and> (accessed March 16, 2020).

⁵ UNHCR, “UNHCR statement on Australia's repeal of Medevac legislation,” December 5, 2019, <https://www.unhcr.org/en-au/news/press/2019/12/5de8e3574/unhcr-statement-australias-repeal-medevac-legislation.html> (accessed March 16, 2020).

⁶ Game Over campaign, “People Still Detained in PNG/Nauru,” <https://gameover.org.au/> (accessed July 2, 2020).

⁷ “Australia/PNG: Refugees Face Unchecked Violence,” Human Rights Watch news release, October 25, 2017, <https://www.hrw.org/news/2017/10/25/australia/png-refugees-face-unchecked-violence>.

6. Medical facilities in PNG and Nauru are woefully inadequate and have proven unable to cope with the complex medical needs of asylum seekers and refugees, particularly their mental health needs. In 2016, UNHCR recorded rates of anxiety, depression and post-traumatic stress disorder (PTSD) at over 80 percent in both locations.⁸ UNHCR has concluded that the dire mental health crisis cannot be appropriately addressed in PNG and that those with mental health conditions should be transferred to Australia as a matter of urgency.⁹ The harsh conditions have put immense pressure on refugees and asylum seekers to return to their home countries through what are essentially coerced “voluntary returns,” despite Australia’s support in the second UPR cycle to ensure that measures comply with the principle of non-refoulement (136.271, 136.282, 136.283). For instance, in 2019, the PNG government transferred more than 50 rejected asylum seekers to the Australian-funded Bomana Immigration Center where they were held virtually incommunicado, with insufficient food or medical care.¹⁰ Many had mental health conditions or physical illnesses, yet PNG authorities told them they would not be released unless they “volunteer” to return home. The *Guardian* reported that 34 men signed agreements to “voluntarily” return to their country of origin in order to be released from Bomana.¹¹ The UNHCR Handbook on Voluntary Repatriation says that “repatriation is not voluntary when host country authorities deprive refugees of any real freedom of choice.”¹²

7. Since November 2013, more than 1,200 refugees and asylum seekers have been transferred to Australia for medical or other reasons.¹³ But they remain in limbo, with no permanent visas and little support, under threat of being returned to Nauru or PNG at any time. Even though authorities approved their transfers for medical treatment, they have not received adequate medical care, especially for mental health conditions.¹⁴ Some of those transferred remain in detention and face restrictions on their movement – some refugees are being held under guard in hotels.¹⁵

8. ***Australia should:***

- Close offshore processing centers and process all asylum seeker claims in a fair, thorough, and transparent manner in Australia.
- End mandatory detention, introduce reasonable time limits for detention and ensure asylum seekers are only detained as a last resort.
- Ensure onshore and offshore asylum claims are dealt with thoroughly and promptly, in accordance with the Refugee Convention and subject to judicial review.
- Amend Australia’s migration processes to allow asylum seekers who arrive by boat to be eligible to apply for permanent protection visas.

Indigenous peoples’ rights

⁸ UNHCR, “Submission by the Office of the United Nations High Commissioner for Refugees on the Inquiry into the serious allegations of abuse, self-harm, neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any likely allegations in relation to the Manus Regional Processing Centre,” Referred to the Senate Legal and Constitutional Affairs Committee, November 12, 2016, <https://www.unhcr.org/en-au/publications/legal/58362da34/submission-to-the-senate-legal-and-constitutional-affairs-committee-serious.html> (March 16, 2020).

⁹ “Australia/PNG: Refugees Face Unchecked Violence,” Human Rights Watch news release.

¹⁰ “Papua New Guinea: Detainees Denied Lawyers, Family Access,” Human Rights Watch news release, November 13, 2019, <https://www.hrw.org/news/2019/11/13/papua-new-guinea-detainees-denied-lawyers-family-access>.

¹¹ Helen Davidson, “Leaked Photos of Papua New Guinea Prison Reveal ‘Torture’ of 18 Asylum Seekers Cut off From World,” *The Guardian*, January 15, 2020, <https://www.theguardian.com/world/2020/jan/15/leaked-photos-of-papua-new-guinea-prison-reveal-torture-of-18-asylum-seekers-cut-off-from-world> (accessed March 16, 2020).

¹² UNHCR, “Handbook – Voluntary Repatriation: International Protection, 1996, <https://www.unhcr.org/en-us/publications/legal/3bfe68d32/handbook-voluntary-repatriation-international-protection.html> (accessed March 16, 2020).

¹³ Refugee Council of Australia, “Offshore Processing Statistics,” October 27, 2019, <https://www.refugeecouncil.org.au/operation-sovereign-borders-offshore-detention-statistics/> (accessed March 16, 2020).

¹⁴ “Refugees and Asylum Seekers in Australia Under Medevac Laws Detained in Melbourne Hotel for Months,” *ABC News*, December 19, 2019, <https://www.abc.net.au/news/2019-12-19/medevac-refugees-locked-in-melbourne-hotel/11813008> (accessed March 16, 2020).

¹⁵ Rosemary Bolger, “This is What it’s Like to be a Refugee Transferred to Australia for Medical Treatment,” *SBS News*, November 27, 2019, <https://www.sbs.com.au/news/this-is-what-it-s-like-to-be-a-refugee-transferred-to-australia-for-medical-treatment> (accessed March 16, 2020).

9. In the 2015 UPR, Australia agreed to increase efforts to reduce incarceration rates of Indigenous peoples (136.205; See also, 136.204, 136.112, 136.113). Despite this, Indigenous Australians remain significantly over-represented in the criminal justice system, often for minor offenses like unpaid fines. In 2019, Aboriginal and Torres Strait Islander people comprised 28 percent of Australia's adult prison population,¹⁶ but just 3 percent of the national population.

10. Deaths in custody of Aboriginal and Torres Strait Islander prisoners remains a pervasive problem in Australia. From January 2016 to July 2020 there were at least 48 Indigenous peoples' deaths in custody according to a database compiled by the *Guardian*.¹⁷

11. The *Guardian*'s analysis of deaths in the last year shows that "government failures to follow their own procedures and provide appropriate medical care to Indigenous people in custody are major causes of the rising rates of Indigenous people dying in jail."¹⁸ This is despite Australia's commitment at the 2015 UPR to address high mortality in prisons (136.200) and close the gap in Indigenous disadvantage by increasing opportunities in health (136.112, 136.127, 136.97, 136.98, 136.107, 136.108). The majority of recommendations from the 1991 royal commission into Aboriginal deaths in custody have not been implemented or only partly implemented, according to the government's own measures.¹⁹

12. ***Australia should:***

- Introduce national policies and strategies to reduce incarceration rates of Indigenous peoples.
- Ensure that laws, policies, and strategies aimed at reducing Indigenous imprisonment rates are guided by a human rights approach, and are designed in partnership with Aboriginal and Torres Strait Islander communities.
- End the overimprisonment of Aboriginal and Torres Strait Islander peoples by repealing punitive bail laws; mandatory sentencing laws; and decriminalizing public drunkenness.
- End the mistreatment of Aboriginal and Torres Strait Islander people in police cells and prisons through legislative safeguards and by urgently establishing independent bodies to oversee the detention conditions and treatment in accordance with Australia's obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Children's rights

13. Australia has made little progress on its commitment in the 2015 UPR to "reform the juvenile justice system in conformity with the international standards" and "improve conditions in youth detention facilities" (136.173, 136.175). Indigenous children are 23 times as likely as their non-Indigenous peers to be in detention.²⁰ Across Australia, around 600 children under the age of 14 are imprisoned each year.²¹ Australia states and territories set the age of criminal responsibility at 10.

¹⁶ Australian Bureau of Statistics, "Corrective Services, Australia, September Quarter 2019," November 28, 2019, <https://www.abs.gov.au/ausstats/abs@.nsf/mf/4512.0> (accessed March 11, 2020).

¹⁷ "Deaths Inside: Indigenous Australian deaths in custody 2019" *The Guardian*, <https://www.theguardian.com/australia-news/ng-interactive/2018/aug/28/deaths-inside-indigenous-australian-deaths-in-custody> (accessed March 11, 2020).

¹⁸ Lorena Allam, Calla Wahlquist and Nick Evershed, "Indigenous Deaths in Custody Worsen in Year of Tracking by Deaths Inside Project," *The Guardian*, August 23, 2019, <https://www.theguardian.com/australia-news/2019/aug/23/indigenous-deaths-in-custody-worsen-over-year-of-tracking-by-deaths-inside-project> (accessed March 11, 2020).

¹⁹ *Ibid.*

²⁰ Australian Institute of Health and Welfare, "Youth Justice in Australia: 2017-18," <https://www.aihw.gov.au/getmedia/f80cfc3-c058-4c1c-bda5-e37ba51fa66b/aihw-juv-129.pdf.aspx?inline=true> (accessed March 16, 2020), p. 39.

²¹ Human Rights Law Centre, "Explainer: Raising the Age," March 20, 2018, <https://www.hrlc.org.au/factsheets/2018/2/8/explainer-raising-the-age> (accessed March 11, 2020).

14. In 2016, disturbing footage showing the teargassing, hooding, and shackling of children at the Don Dale Youth Detention Centre in 2014²² led to a royal commission into child protection and youth detention in the territory. It found that the Northern Territory's youth detention centers are "not fit for accommodating, let alone rehabilitating" the children they lock up, and called for their closure.²³ The report recommended that the Northern Territory raise the minimum age of criminal responsibility from 10 to 12 years, and that children below 14 years should only be detained for the most serious offenses.²⁴

15. ***Australia should:***

- Raise the age of criminal responsibility to a minimum age of at least 14 years or older.
- Prohibit the practice of solitary confinement of children.
- End abuse of children in detention and ensure perpetrators are held to account.

Disability rights

16. In Australia, more than half the prison population has a physical, sensory, psychosocial (mental health) or cognitive disability.²⁵ In the second UPR cycle, Australia agreed it would "continue implementing its voluntary commitment to improve the way the criminal justice system treats people with mental and/or cognitive disability."²⁶

17. Human Rights Watch has found that prisoners with disabilities, including Indigenous prisoners, regularly experience sexual, physical, and verbal violence, including racism, from fellow prisoners or staff, and endure difficult conditions of confinement.²⁷

18. Inadequate staff sensitivity and training contribute to frequent punishment of prisoners with disabilities for behavior that is linked to a lack of support and accommodation of their disability.²⁸ Prisoners with disabilities are disproportionately represented in solitary confinement units, where lack of social contact and meaningful mental health services coupled with the stress of a closed and heavily monitored environment can be particularly damaging. These prisoners may spend weeks, months or years in detention, crisis, or maximum security units for 22 hours or more per day with minimal human interaction. The UN Committee on Rights of Persons with Disabilities in its review

²² "Australia's Shame," Four Corners, *ABC News*, July 25, 2016, <https://www.abc.net.au/4corners/australias-shame-promo/7649462> (March 16, 2020).

²³ Royal Commission into the Detention and Protection of Children in the Northern Territory, Final Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, November 17, 2017, <https://www.royalcommission.gov.au/royal-commission-detention-and-protection-children-northern-territory> (accessed March 16, 2020).

²⁴ The United Nations Committee on the Rights of the Child recommends that state parties increase their minimum age to at least 14 years of age. United Nations, Committee on the Rights of the Child, "Children's Rights in Juvenile Justice," General Comment No. 24 (201x), replacing General Comment No.10 (2007), U.N. Doc CRC/C/GC/24 (2019), <https://www.ohchr.org/Documents/HRBodies/CRC/GC24/GeneralComment24.pdf> (accessed March 19, 2020) p. 9, para. 33.

²⁵ Australian Institute of Health and Welfare, "Mental health of Prison Entrants" in "The Health of Australia's Prisoners 2015," <https://www.aihw.gov.au/getmedia/9c42d6f3-2631-4452-b0df-9067fd71e33a/18878.pdf.aspx?inline=true> (accessed May 24, 2017), pp. 12, 44, 146; Australian Institute of Health and Welfare, "Mental health of prison entrants" (Factsheet, AIWH, 2015); National Mental Health Consumer & Carer Forum, "Mental Health Facts and Figures," advocacy brief, June 2014, 2; Senate Select Committee on Mental Health, "A national approach to mental health – from crisis to community," March 30, 2006, chapter 13; NGO coalition (#ausUPR), "Australia's UPR, 2015: NGO Coalition Factsheet," p. 1; Toby Hall, "This is why you should care about the health of prisoners," *ABC News*, November 27, 2015, <http://www.abc.net.au/news/2015-11-27/hall-this-is-why-you-should-care-about-the-health-of-prisoners/6981364> (accessed July 3, 2017). Australian Institute of Health and Family Welfare, "The Health of Australia's Prisoners 2015," <https://www.aihw.gov.au/getmedia/9c42d6f3-2631-4452-b0df-9067fd71e33a/18878.pdf.aspx?inline=true>, (accessed May 27, 2017), p. 80.

²⁶ Human Rights Council, Report of the Working Group on the Universal Periodic Review: Australia, U.N. Doc. A/HRC/31/14/Add.1 (November 2015), p. 5, para 37.

²⁷ Human Rights Watch, "*I Needed Help, Instead I Was Punished*": Abuse and Neglect of Prisoners with Disabilities in Australia, February 6, 2018, <https://www.hrw.org/report/2018/02/06/i-needed-help-instead-i-was-punished/abuse-and-neglect-prisoners-disabilities>.

²⁸ Ibid.

of Australia raised concerns about the use of solitary confinement of persons with disabilities.²⁹

19. Australian law allows persons with disabilities to be sterilized without their free and informed consent if a family court or a guardianship tribunal determines that they “lack capacity” and the procedure is in their “best interests.”³⁰ This is true even though UN treaty bodies have condemned Australia for the practice of forced sterilizations and recommended that the government pass legislation prohibiting the sterilization of children and adults with disabilities without their free and informed consent. Despite recommendations in the 2015 UPR cycle for Australia to end forced sterilizations of persons with disabilities for non-therapeutic reasons (136.180, 136.181, 136.182, 136.183, 136.184), Australia stated it would not change its current arrangements.

20. *Australia should:*

- Introduce laws and policies that ensure prisoners with disabilities cannot be held in solitary confinement.
- Ensure prisoners with disabilities have adequate access to support and mental health services.
- Adopt uniform legislation prohibiting sterilization of women and girls with disabilities in the absence of free and informed consent.

Rights of older persons

21. During the second UPR cycle, Australia stated its commitment to “promoting and protecting the rights of older Australians”³¹ and accepted recommendations on combatting age discrimination against older people.

22. In a 2019 report,³² Human Rights Watch found that many aged care facilities in Australia routinely give older people with dementia dangerous medicines to control their behavior, a practice known as “chemical restraint.”³³ In addition to the physical, social, and emotional harm for older people restrained with these drugs, the use of these drugs in older people with dementia is associated with an increased risk of death.³⁴

23. The Royal Commission into Aged Care Quality and Safety’s interim report called on the government to address chemical restraint as an urgent priority.³⁵

24. Australia’s 2019 attempt to regulate the practice of chemical restraint in aged care was the topic of inquiry by a parliamentary human rights committee, which reported that the regulation on restraints in aged care could violate Australia’s commitments under international law to prohibit

²⁹ United Nations, Convention on the Rights of Persons with Disabilities, Concluding Observations on the Combined Second and Third Periodic Reports of Australia, U.N. Doc. CRPD/C/AUS/CO/2-3 (October 15, 2019), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fAUS%2fCO%2f2-3&Lang=en, (accessed March 16, 2020) p. 8.

³⁰ Disabled People’s Organisations Australia, “Factsheet: Forced Sterilisation of People with Disability and People with Intersex Variations,” March 9, 2018, https://dpoa.org.au/factsheet-sterilisation/#_edn6 (accessed March 19, 2020).

³¹ Human Rights Council, Report of the Working Group on the Universal Periodic Review: Australia, U.N. Doc. A/HRC/31/14/Add.1 (November 2015), p. 5, para. 33.

³² Human Rights Watch, “*Fading Away*”: *How Aged Care Facilities in Australia Chemically Restrain Older People*, October 15, 2019, <https://www.hrw.org/report/2019/10/15/fading-away/how-aged-care-facilities-australia-chemically-restrain-older-people>.

³³ Australian Government, Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019, <https://www.legislation.gov.au/Details/F2019L00511>.

³⁴ Prescribing Information on the US Food and Drug Administration’s website, <https://wayback.archive-it.org/7993/20171102213617/https://www.fda.gov/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/ucm124830.htm> (accessed March 16, 2020).

³⁵ Royal Commission into Aged Care Quality and Safety, Interim Report, October 31, 2019, <https://agedcare.royalcommission.gov.au/publications/Pages/interim-report.aspx> (accessed March 16, 2020).

torture and ill-treatment and to guarantee the rights to health and non-discrimination.³⁶

25. *Australia should:*

- Introduce legislation to prohibit the use of chemical restraints as means of controlling the behavior of older people with dementia or for the convenience of staff. Any new law should ensure informed consent for all treatment or interventions; independent monitoring; and effective, accessible, independent complaint mechanisms.
- Ensure all aged care policies and actions are consistent with the UN Convention on the Rights of Persons with Disabilities.
- Develop more community-based services for older people with dementia to ensure support for older people to live independently in their communities, including at home.

National security and counterterrorism measures

26. During the second UPR cycle, Australia agreed to “ensure that national security, counterterrorism and telecommunications interception legislation are subject to strict safeguards, oversight and ongoing review.”³⁷ However, since 2015, problematic national security provisions and sweeping law enforcement powers have been introduced that infringe on the rights of all Australians.

27. These measures include efforts to revoke the citizenship of Australians suspected of involvement in terrorism activity, and weakening of encryption and metadata protections in the name of protecting national security. New laws have increased the penalties for unauthorized disclosures of information that is having a “chilling effect” on freedom of expression.³⁸ Some of these measures are overly broad and vague, and contradict the recommendation accepted by Australia in 2011 to “ensure that its legislation and methods to combat terrorism are in accordance with the International Covenant on Civil and Political Rights” (86.139).

28. These broadly drafted national security laws can be used to intimidate lawyers, journalists, and whistleblowers. In 2019, police raided a journalist’s home in relation to her story on a leaked plan to expand government surveillance. The next day, police raided the ABC’s Sydney headquarters over a series of stories in 2017 alleging abuses by Australian special forces in Afghanistan. The warrant authorized the police to “add, copy, delete or alter other data ... found in the course of a search.”³⁹

29. Since 2015, the Australian government can, without adequate legal safeguards,⁴⁰ revoke Australian citizenship from dual nationals aged 14 years or older who have engaged in terrorism-related conduct abroad, and from dual nationals convicted in Australia of terrorism-related offenses and sentenced to at least six years’ imprisonment.⁴¹

³⁶ Parliamentary Joint Committee on Human Rights, Inquiry Report, Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019, November 13, 2019, https://www.aprh.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/QualityCareAmendment/Report (March 16, 2020).

³⁷ Human Rights Council, Report of the Working Group on the Universal Periodic Review: Australia, U.N. Doc. A/HRC/31/14/Add.1 (November 2015), p. 6, para. 51.

³⁸ Roger Gyles, “Report on the impact on journalists of section 35P of the ASIO Act,” https://www.pmc.gov.au/sites/default/files/publications/inslm_report_impact_s35p_journalists.pdf (accessed March 16, 2020), pp. 13-14.

³⁹ Hannah Wootton, “Police Raid on ABC ‘Unconstitutional,’” *Australian Financial Review*, August 2, 2019, <https://www.afr.com/companies/media-and-marketing/police-raid-on-abc-unconstitutional-20190801-p52czc> (accessed March 16, 2020).

⁴⁰ “Australia: Don’t Revoke Citizenship Without Safeguards,” Human Rights Watch news release, December 13, 2015, <https://www.hrw.org/news/2015/12/13/australia-dont-revoke-citizenship-without-safeguards#>.

⁴¹ Australian Government, Australian Citizenship Amendment (Allegiance to Australia) Act 2015, <https://www.legislation.gov.au/Details/C2015A00166>.

30. According to the *Sydney Morning Herald*, authorities have revoked the citizenship of at least 17 Australians since 2015.⁴² A 2019 report by the independent national security legislation monitor raised concerns that citizenship-stripping provisions “do not sufficiently protect human rights and they are likely to result in breaches of international law.”⁴³ A bill currently before Australia’s parliament would make it even easier to remove citizenship from people accused of terrorism offenses.⁴⁴

31. Since 2019, Australia has banned the return of citizens as young as 14 for two years if they are suspected of supporting a foreign terrorist organization.⁴⁵ Meanwhile, approximately 66 Australian women and children who are relatives of ISIS suspects remain arbitrarily and indefinitely detained in harsh and often life-threatening conditions in camps in northeast Syria. In June 2019, the government brought home eight children, but since then there have been no further returns. If the Australian authorities have grounds to believe that Australian citizens have committed crimes during their years under the Islamic State, they should investigate and prosecute them in Australia as appropriate, in line with international standards.

32. Since 2015, the government has required telecommunications companies and internet service providers to retain metadata for at least two years. Law enforcement and intelligence agencies now have unprecedented access to stored metadata in the interest of “national security.” A Commonwealth Ombudsman report for the period July 2016 to June 2017 revealed how police conducted a series of illegal metadata searches, including Western Australian police obtaining invalid warrants targeting journalists. After the report’s disclosures, Australian Capital Territory police acknowledged accessing metadata of Australian citizens more than 3,300 times without proper authorization.⁴⁶ This illustrates how metadata retention can be subject to abuse by authorities. A 2014 OHCHR report characterized metadata as giving an insight into an individual’s behavior, social relationships, private preferences and identity that go beyond even that conveyed by accessing the content of a private communication, and warned that mandatory third-party data appears neither necessary nor proportionate.⁴⁷

33. In December 2018, the Australian parliament rushed through legislation undermining encryption and cybersecurity, allowing law enforcement and security agencies to order technology companies, to facilitate access to encrypted data and devices.⁴⁸ Once back doors are introduced, malicious hackers and cybercriminals will seek them out, sell them on private grey markets, or

⁴² Anthony Galloway, “Two More Australians Stripped of Citizenship for Islamic State Links,” *Sydney Morning Herald*, January 17, 2020, <https://www.smh.com.au/politics/federal/two-more-australians-stripped-of-citizenship-for-islamic-state-links-20200117-p53shv.html> (accessed March 16, 2020).

⁴³ Dr. James Renwick CSC SC, Australian Government, Independent National Security Legislation Monitor, Report to the Attorney-General, “Review of the Operation, Effectiveness and Implications of Terrorism-Related Citizenship Loss Provisions Contained in the Australian Citizenship Act 2007,” 2019, <https://www.inslm.gov.au/sites/default/files/INSLM%20Citizenship%20unclassified%20report%20FINAL.pdf> (accessed March 16, 2020), p. xiv.

⁴⁴ Australian Human Rights Commission, “Australian Citizenship Amendment (Citizenship Cessation) Bill 2019 (Cth): Submission to the Parliamentary Joint Committee on Intelligence and Security,” October 14, 2019, <https://www.humanrights.gov.au/our-work/legal/submission/australian-citizenship-amendment-citizenship-cessation-bill-2019-cth> (accessed March 16, 2020).

⁴⁵ Rosemary Bolger, “Dutton to Move on Legislation to Ban Returning Australian Foreign Fighters for Up to Two Years,” *SBS*, July 4, 2019, <https://www.sbs.com.au/news/dutton-to-move-on-legislation-to-ban-returning-australian-foreign-fighters-for-up-to-two-years> (accessed March 16, 2020).

⁴⁶ Paul Karp, “ACT police admit they unlawfully accessed metadata more than 3,000 times,” *The Guardian*, July 26, 2019, <https://www.theguardian.com/australia-news/2019/jul/26/act-police-admit-unlawfully-accessed-metadata-more-than-3000-times> (accessed March 16, 2020).

⁴⁷ United Nations General Assembly, Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights, The Right to Privacy in the Digital Age, A/HRC/27/37, June 30, 2014, https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A.HRC.27.37_en.pdf (accessed March 16, 2020).

⁴⁸ Human Rights Watch, *Australia – World Report 2019*, <https://www.hrw.org/world-report/2019/country-chapters/australia>.

exploit them for abuse or profit, putting users' privacy and security further at risk.⁴⁹ The law is overly broad, lacking adequate safeguards to protect individuals from misuse by government officials. The attorney-general can issue notices without prior judicial oversight and can determine whether a notice is reasonable and proportionate.⁵⁰ Without sufficient oversight, there may be instances where law enforcement determines it is "reasonable" and "proportionate" to issue a notice against a journalist, lawyer, human rights activist or individual involved in exposing government misconduct.⁵¹

34. *Australia should:*

- Revise counterterrorism legislation to ensure that the definitions of terrorist acts are narrowly crafted, covering only conduct that is "genuinely of a terrorist nature," as set out by the UN special rapporteur on human rights and counterterrorism.
- Abolish legislation that would ban the return of Australian citizens for up to two years if they are suspected of being foreign fighters abroad.
- Urgently repatriate Australian children and women who remain indefinitely and arbitrarily detained in camps in northeast Syria.
- Repeal and revise the current metadata and encryption laws to ensure appropriate judicial oversight and that any restriction on encryption is made on a case-specific basis and meets the requirements of legality, necessity, and proportionality.
- Introduce safeguards to protect journalists, human rights activists, lawyers, whistleblowers, and others making disclosures in the public interest.

⁴⁹ Letter from Human Rights Watch to the Hon. Malcolm Turnbull MP, "Letter to Prime Minister Turnbull re Encryption and Human Rights," August 3, 2017, <https://www.hrw.org/news/2017/08/03/letter-prime-minister-turnbull-re-encryption-and-human-rights>.

⁵⁰ Assistance and Access Bill 2018, Explanatory Document (2018).

⁵¹ Letter from Human Rights Watch to the Hon. Malcolm Turnbull MP, "Letter to Prime Minister Turnbull re Encryption and Human Rights."