

## SUMMARY OF POINTS

The UN Special Rapporteur on the right to privacy, Joseph Cannataci has called on the Australian Government to put aside its proposed Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018 saying “It is fatally flawed.”

Professor Cannataci said today “In my considered view, the Assistance and Access Bill is an example of a poorly conceived national security measure equally as likely to endanger security as not; it is technologically questionable if it can achieve its aims and avoid introducing vulnerabilities to the cybersecurity of all devices irrespective of whether they are mobiles, tablets, watches, cars, etc., and it unduly undermines human rights. It is out of step with international rulings, raising the related issue of how the Australian government would enforce this law on transnational technology companies.”

The Special Rapporteur cited seven main areas of concern with the Bill including a lack of independent judicial oversight, unjustified impact upon human rights, its overly broad scope and major technical problems. The Special Rapporteur also questioned the case for the legislation, the haste with which the Bill has been introduced into the Parliament and the apparent failure to consider alternate means to achieve the required outcomes.

“A convincing case for these extra new powers needs to be made given the draconian nature of the powers, the potential risk to cybersecurity extending beyond Australia, the secrecy provisions and the penalty regime.”

“As the European Court of Human Rights said recently in a significant judgment, while it's important that States are able to carry out secret surveillance to counter terrorism and other threats, going too far can also represent a threat to the liberty of citizens. Surveillance regimes have the potential to be abused, with serious consequences for individuals and society.”

The Special Rapporteur said it is permissible to limit human rights where the measure is expressed in clear and unambiguous terms, is directed towards a legitimate aim, is necessary to achieve that aim, and is proportionate. “This Bill however, appears to fail each of these criteria. Requiring companies to install any software in any device constitutes legislative overreach and is unlikely to meet the principles of reasonableness and proportionality”, he said.

“At a practical level, it is difficult to see how the Australian Government can achieve its aims without weakening encryption and thereby Australia’s cybersecurity. Further, the legislative framework established in Australia is important internationally due to the heightened risks of malware introduced into one device, spreading laterally throughout IT environments – a risk that is growing with the convergence of cyber and electronics and of progressive concern to the technical and cyber security communities.”

The Special Rapporteur commended the submissions of the Australian Human Rights Commission and the coalition of civil society organisations comprising Digital Rights Watch with the Australian Privacy Foundation, Electronic Frontiers Australia, Future Wise, The

Queensland Council for Civil Liberties, The New South Wales Council for Civil Liberties, Access Now and Blueprint for Free Speech, amongst others. He pointed out their concerns are not restricted to Australia. A coalition of 31 international civil society organizations, companies, and trade associations has written to the Australian government to point out that, if enacted, the threats to digital security and privacy world-wide by undermining encryption.

“For all of the reasons set out above and in the detailed submission, this Bill needs to be re-thought.”

ENDS

**Prof. Joseph Cannataci** (Malta) was appointed as the first [Special Rapporteur on the right to privacy](#) by the Human Rights Council in July 2015. Recently, his term was extended to 2021. He is an academic who has had a pioneering role in the development on data protection, privacy law and technology law. A UK Chartered Information Technology Professional & Fellow of the British Computer Society, he also continues to act as Expert Consultant to a number of international organisations.

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