



Australian Government

Statement by the Attorney-General for Australia, Senator the Hon George Brandis QC

Tabling of the Australian Human Rights Commission Report

KA, KB, KC and KD v Commonwealth of Australia [2014] AusHRC 80

I hereby table the enclosed report, *KA, KB, KC and KD v Commonwealth of Australia* [2014] AusHRC 80, from the President of the Australian Human Rights Commission, pursuant to my obligation under section 46 of the *Australian Human Rights Commission Act 1986* (the Act).

The report concerns complaints lodged on behalf of four Aboriginal men with disability, including intellectual disabilities, who allege a failure by the Commonwealth to take measures to work with the Northern Territory to provide accommodation and other support services for people with intellectual disabilities who are unfit to plead to criminal charges.

While the report raises complex issues and particular challenges for state and territory based services, the Commonwealth is of the view that the Commission has overstepped its jurisdiction in this report. The issue of detention raised by this report is primarily a matter for state and territory governments given their responsibilities for the criminal justice system, including police, courts and corrections. The Commonwealth is of the view that the complaints do not amount to an act or practice by the Commonwealth into which the Commission has power to inquire into under subsection 11(1)(f) of the Act.

Furthermore, the Commonwealth disagrees with the Commission's interpretation of Australia's international human rights obligations. Australia, comprised of the Commonwealth and the states and territories, is a party to a range of United Nations international human rights treaties. The Commonwealth and the states and territories are responsible for compliance with Australia's human rights obligations within their constitutional responsibilities.

In this report, the Commission appears to have conflated Australia, as a State Party to relevant treaties, with the Commonwealth Government. The Commission has relied upon this rationale to make adverse findings against the Commonwealth, holding it responsible for the actions of state or territory governments, without due regard for the allocation of responsibilities under the Constitution between the Commonwealth and the states and territories. The Commonwealth does not accept this analysis.

The Commission is an independent statutory agency, and will reach its own views as to the content of Australia's human rights obligations. However, the Commonwealth fundamentally disagrees with the Commission's interpretation of Australia's international human rights obligations, particularly in relation to economic, social and cultural rights.

As the Commission's report falls outside of its jurisdiction, the Commonwealth will not engage in a detailed assessment of its recommendations. However, the Government recognises that the detention of people with cognitive impairments presents particular challenges for the states and territories. The Commonwealth is committed to working with states and territories to find ways to improve the health, community safety, and wellbeing of Indigenous people, particularly those in remote and regional Australia.