



Prosecution of Juveniles for People Smuggling Offences

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Last Update: October 2014

The *Prosecution Policy of the Commonwealth* specifically addresses the prosecution of juveniles in paragraphs 2.15 to 2.17, stating that the welfare of the juvenile must be considered when prosecutorial discretion is exercised in relation to an offence alleged to have been committed by a juvenile. It notes that:

Prosecution of a juvenile should always be regarded as a severe step, and generally speaking a much stronger case can be made for methods of disposal which fall short of prosecution unless the seriousness of the alleged offence or the circumstances of the juvenile concerned dictate otherwise. In this regard, ordinarily the public interest will not require the prosecution of a juvenile who is a first offender in circumstances where the alleged offence is not serious.

Since late 2010, the CDPP's position has been that juveniles should not be prosecuted for people smuggling offences unless there are exceptional circumstances based on their significant involvement in a people smuggling venture or involvement in multiple ventures.

In circumstances where prosecution of a juvenile for a people smuggling offence is being contemplated, the following Instruction is to be followed:

Advice to the Australian Federal Police

1. The CDPP would prefer to be given the opportunity to assess a complete brief of evidence in the matter in accordance with the *Prosecution Policy of the Commonwealth* prior to the commencement of a prosecution of a juvenile for a people smuggling offence.
2. Written pre-charge advice should be provided to the AFP as quickly as possible.

Consideration of Whether a Prosecution of a Juvenile for a People Smuggling Offence Should Proceed

3. In considering whether the prosecution of a juvenile for a people smuggling offence should proceed, or be continued on the basis of their alleged significant involvement in a people smuggling venture or involvement in multiple ventures, prosecutors are required to take into account the facts, circumstances and available evidence in each case. Matters to be considered may include:
 - The age of the alleged offender;
 - The health of the alleged offender;
 - The role of the alleged offender in the venture or ventures;
 - In the case of multiple ventures, whether the alleged offender was cautioned following the first venture and whether there is admissible proof of the caution;
 - In the case of multiple ventures, whether there is sufficient evidence to prosecute the alleged offender in relation to all ventures;
 - The sentence the alleged offender is likely to receive; and
 - The period of time the alleged offender has spent, or may spend, in immigration detention and/or custody.
4. The decision whether a prosecution of a juvenile for a people smuggling offence should proceed, or be continued, will be made by the Deputy Director, Human Exploitation and Border Protection.

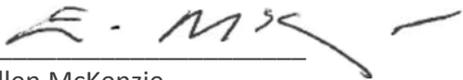
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Jurisdiction

5. Pursuant to s 20C of the *Crimes Act 1914*, a juvenile prosecuted for Commonwealth offences may be dealt with as if the juvenile was charged with State or Territory offences and therefore may be subject to the applicable State or Territory court processes. Section 4J of the *Crimes Act 1914* does not limit or circumscribe the application of s 20C of the *Crimes Act 1914*. The State or Territory provisions are picked up by virtue of section 68 of the *Judiciary Act 1903* and applied as a law of the Commonwealth “so far as it is applicable” to a person charged with a Commonwealth offence.
6. Prosecutors should refer to applicable State or Territory legislation to determine the appropriate process to be followed if a prosecution against a juvenile is to be undertaken.

Expeditious Trial

7. So far as is possible, the CDPP will seek to ensure the trial of a juvenile proceeds expeditiously.



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