



Prosecution of Immigration Detention Centre Disturbance Matters Instruction Number: 3

Last Updated: June 2015

General

1. This Practice Group Instruction ('PGI') supersedes Director's Litigation Instruction No. 16, issued 9 August 2013.
2. The CDPP has a role in prosecuting detainees for alleged offences arising from disturbances at Immigration Detention Centres ('IDCs'). The subjects of these prosecutions are often kept in immigration detention until the prosecution has been finalised. Further, if the alleged offender is an asylum seeker their protection claims may not be assessed until the prosecution has been finalised.
3. All IDC disturbance matters will be dealt with in accordance with the *Prosecution Policy of the Commonwealth* and the CDPP will, so far as possible, seek to ensure they are dealt with expeditiously as the prosecution process may impact on the length of time the individual may remain in immigration detention.
4. These matters should be identified as 'significant matters' and the Practice Group Leader of the 'Human Exploitation and Border Protection' practice group should also be notified.

Bail

5. Any application for bail should be considered on its own merits, on a case by case basis. Prosecutors are to consider all relevant bail considerations including:
 - i) applicable statutory bail considerations in the prosecuting jurisdiction;
 - ii) the strength of the prosecution evidence against the defendant;
 - iii) if bail is granted, the likelihood of the defendant reappearing before the court; and
 - iv) any necessary conditions of bail.

The role of the CDPP v State & Territory prosecuting authorities

6. Generally speaking, the CDPP is responsible for prosecuting Commonwealth offences at IDCs whereas State and Territory prosecuting authorities are responsible for prosecuting State and Territory offences at IDCs.
7. As IDCs are 'Commonwealth places' under the *Commonwealth Places (Application of Laws) Act 1970* ('COPAL Act'), for present purposes 'State offences' include offences against State law which are applied as Commonwealth law under the COPAL Act. Therefore, by virtue of the COPAL Act scheme, State prosecuting authorities are generally responsible for prosecuting 'applied' State offences at IDCs.
8. In some limited circumstances it may be appropriate for the CDPP to undertake the prosecution of applied State offences at IDCs. For example, if the matter has some significant Commonwealth connection such as other Commonwealth offences which should properly be prosecuted in a single trial.
9. In prosecuting applied State offences, the CDPP may be required to rely on a delegated authority given by a State DPP. The decision whether or not to undertake such prosecutions is made in accordance with agreements for joint trial arrangements between the CDPP and its State counterparts.

Issued: June 2015

10. Christmas Island is an exception to this division of prosecutorial responsibility. Although Western Australian law applies as Commonwealth law on Christmas Island by virtue of the *Christmas Island Act 1958* (Cth), the CDPP is responsible for prosecuting all offences on Christmas Island including at the IDC.



David Adsett
Deputy Director
National Practice Group Leader
Illegal Imports and Exports
Human Exploitation & Border Protection
/ June 2015