



DPP

Commonwealth Director of Public Prosecutions

Your reference:

Our reference: HA1110124

22 December 2011

The Committee Secretary
Joint Select Committee on Australia's Immigration Detention Network
PO Box 6100
Parliament House
Canberra ACT 2600



Dear Secretary,

Questions Taken on Notice by the Commonwealth Director of Public Prosecutions at the Hearing on 22 November 2011

On 22 November 2011, Mr John Thornton, First Deputy Director and Mr Mark de Crespigny, Senior Assistant Director of the Commonwealth Director of Public Prosecutions (CDPP) appeared before the Joint Select Committee on Australia's Immigration Detention Network (the Committee) to answer questions regarding the prosecution of detainees arising from disturbances at Immigration Detention Centres. In the course of the hearing, Mr Morrison asked the CDPP representatives certain questions which were taken on notice. The purpose of this letter is to provide answers to those questions.

The evidence of Mr Thornton and Mr de Crespigny is recorded at pages 51-56 of the Committee's transcript dated 22 November 2011. Three questions were taken on notice and are answered below. The first and third questions are related and it is convenient to answer them together.

The first and third questions

[the first question – at p.52 of the transcript] **Mr MORRISON:** ... how many matters have either been referred to you by the AFP with a brief or where charges have been laid and referred to you with a brief over that same period of time when, as you have mentioned, the 57 prosecutions have actually gone forward?

Mr Thornton: The figure that I do not have with me is the figure for matters referred to us to consider, as to whether there should be a prosecution, and we have said, 'No, there is not enough evidence.' I will have to take that part of it on notice. But the rest of it relates to the 57 matters that I have given you in total."

...

[the third question – at p.53 of the transcript] **Mr Thornton:** I should say that, where I have given you the number 57, that relates purely to the major instances—the individual cases. There are other incidents.

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Mr MORRISON: How many more are there?

Mr Thornton: I do not know that I have a total number in relation to that. I am told that, if you include all of the other matters that have come to us, there has been a total of 87 matters, but there may be some matters in New South Wales, in Villawood. Those are individual matters that are not prosecuted by us. The State police do some of those prosecutions. I am giving you that figure as it is indicative of the sorts of numbers that I have. I could take that on notice, but that is the sort of number we are thinking of.

By way of background, in the course of the hearing Mr Thornton advised the Committee that there were 57 prosecutions arising from five major incidents at Immigration Detention Centres, as follows:

1. North West Point IDC, Christmas Island – **21 November 2009**;
2. Northern IDC, Darwin – **29 August 2010**;
3. Northern IDC, Darwin – **24 October 2010**;
4. North West Point IDC, Christmas Island – **11-21 March 2011**;
5. Villawood IDC, Sydney – **20-21 April 2011**.

The CDPP's representatives provided the Committee with a statistical breakdown of the status of the 57 matters (at pp.51-52, Transcript). Since 22 November 2011 the status of some of these matters has changed. Taking those changes into account, the status of the 57 matters is as follows:

- **Prosecutions before the Courts completed:** Total of 28, of which:
 - 13 were discontinued:
 - 11 due to insufficient identification evidence;
 - 1 following deportation of the alleged offender;
 - 1 primarily on the grounds that it was likely the alleged offender was under the age of 18 years;
 - 3 resulted in findings of not guilty;
 - 12 resulted in offences being proven with the following outcomes:
 - 7 sentences of imprisonment;
 - 3 good behaviour bonds with convictions;
 - 1 good behaviour bond without a conviction;
 - 1 matter was included on a "S16BA Schedule" to be taken into account in a sentence for another offence.

- **Prosecutions before the Courts on-going:** total of 29, of which:
 - 18 are listed for defended summary hearings;
 - 2 summary proceedings are pending the outcome in people smuggling proceedings;

- 9 matters are listed for a committal hearing, being the 9 matters arising from the disturbances at Villawood IDC in April 2011;

The CDPP received briefs of evidence from the AFP in relation to two additional matters related to the five major incidents for which prosecutions have not commenced. Of these two matters:

- The first matter arose from the disturbance in the Northern IDC on 29 August 2010 and involved an Indonesian crew member of a Suspected Irregular Entry Vessel. The CDPP decided to take no action after a decision was taken not to continue the prosecution of the same person for an alleged people smuggling offence on the grounds that the accused was likely to be under the age of 18 years.
- The second matter arises from the unrest in the North West Point IDC on Christmas Island in March 2011. The CDPP has suspended its brief assessment pending the receipt of further evidence from the AFP.

This brings the total number of matters relating to the five major incidents to 59.

Regarding the third question, Mr Thornton noted during the hearing there were a further 11 matters arising from an incident in Darwin involving "stone-throwing et cetera" (p.53). The incident referred to by Mr Thornton arose at the Darwin Airport Lodge Alternative Place of Detention (DALAPOD) on 10 February 2010 during which the AFP arrested and charged 11 detainees. The CDPP discontinued each of these matters in due course either on the grounds that the accused was a juvenile (7 matters) or the evidence was insufficient to sustain the charge.

In addition, the CDPP has been able to identify from its records a further 27 matters involving incidents at Immigration Detention Centres, but not related to the five major incidents, in which prosecutions have been, or are being, conducted by the CDPP or in which the AFP has referred briefs of evidence to the CDPP for consideration of prosecution. All these matters arise from isolated incidents at a variety of Immigration Detention Centres. The following is a statistical breakdown of these matters:

- **Prosecutions before the Courts completed:** Total of 9, of which:
 - 4 were discontinued due to the alleged victim making a statement of no complaint;
 - 5 resulted in offences being proven with the following outcomes:
 - 3 sentences of imprisonment;
 - 1 good behaviour bond without a conviction;
 - 1 fine.
- **Prosecutions before the Courts on-going:** total of 12, of which:
 - 9 are listed for defended summary hearings;
 - 3 summary proceedings are listed for mention.
- **Brief assessments:** total of 6, of which:
 - 2 matters were closed after a decision was taken not to commence a prosecution;

- 1 matter was closed following deportation of the alleged offender;
- The assessment of 3 matters is suspended pending the receipt of further evidence from the AFP.

In conclusion, in answer to the third question, the CDPP has been able to identify from its records a total of 97 matters relating to Immigration Detention Centres:

- 59 matters arising from the five major incidents;
- 11 matters arising from the DALAPOD incident;
- 27 matters arising from isolated incidents.

As noted above there may be additional matters investigated by State and Territory authorities about which the CDPP is not aware.

The second question

[the second question – at pp.52-53 of the transcript] “**Mr MORRISON:** ... have you had cases where you have had detainees acting as witnesses to assist with your case?

...

Mr MORRISON: To the extent you can take that on notice, I would be grateful, particularly when you are looking at the specific cases that you have not been able to proceed with or those that you have discontinued or where you have not had sufficient witnesses or cooperation from those in the centres in order to support your case.”

As the Committee is aware the investigation of these matters is undertaken by the Australian Federal Police (AFP). The CDPP is only able to comment on the evidence that was able to be collected by the AFP and provided to the CDPP. The AFP would be in the best position to inform the Committee of difficulties that it encountered in obtaining evidence due to the lack of cooperation of detainees who may have been able to give evidence.

The CDPP has discontinued three prosecutions in which a detainee was the complainant. These three matters arose from a single incident unrelated to the five major incidents referred to above. Each of these matters was discontinued after the complainant was assessed as being unreliable and had made a statement of no complaint.

I trust these answers will be of assistance to the Committee. Please contact Mr Mark de Crespigny on _____ or _____ if any questions arise from this letter.

Yours faithfully,

John Thornton
Acting Director