
Government Departments

Attorney-General

**Director of Public Prosecutions—
Attorney-General's Direction 2012***Director of Public Prosecutions Act 1983*

I, Nicola Louise Roxon, Attorney-General, having consulted the Director of Public Prosecutions (the *Director*), give the following direction under subsection 8(1) of the *Director of Public Prosecutions Act 1983*.

1. The Director must not institute, carry on or continue to carry on a *prosecution* for an offence under section 233C of the *Migration Act 1958* against a person who was a *member of the crew* on a vessel involved in the bringing or coming, or entry or proposed entry, of unlawful non-citizens to Australia unless the Director is satisfied that:
 - (a) the person has committed a *repeat offence* or may be convicted of a repeat offence in the same proceedings; or
 - (b) the person's role in the people smuggling venture extended beyond that of a crew member; or
 - (c) a death occurred in relation to the people smuggling venture.
2. This direction does not apply to any proceedings, including appeals, in relation to an offence a person has been sentenced for prior to the date of this direction.
3. To avoid doubt this direction applies to proceedings where a person has been convicted of an offence but not sentenced prior to the date of this direction, or where a person has pleaded guilty but not been sentenced prior to the date of this direction.
4. This direction also applies to prosecutions against section 232A or section 233A of the *Migration Act 1958* (repealed) as in force before the commencement of section 236B of the *Migration Act 1958*.
5. In those prosecutions to which paragraph 1 applies, the Director must consider instituting, carrying on or continuing to carry on a prosecution against the person pursuant to section 233A of the *Migration Act 1958* in accordance with the *Prosecution Policy of the Commonwealth*.

6. This general policy should be pursued, and the steps set out above should be taken, in a manner consistent with the *Prosecution Policy of the Commonwealth*.
7. In this direction:
member of the crew includes the captain or master of a vessel.
repeat offence is an offence a person has committed if:
 - (a) whether in the same proceedings as the proceedings relating to the offence, or in previous proceedings, a court:
 - (i) has convicted the person of another offence, being an offence against section 233A of the *Migration Act 1958*; or
 - (ii) has found, without recording a conviction, that the person has committed such an offence; or
 - (b) the person has been convicted of an offence with the same meaning of 'repeat offence' in subsection 236B(5) of the *Migration Act 1958*.

Dated 27 August 2012

ATTORNEY-GENERAL