

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

Group: 2

Program: 1.6

Question: BE14/103

Senator Singh asked the following questions at the hearing on 26-29 May 2014:

1. Given the Government's commitment to establishing and increasing mandatory minimum jail sentences for people smugglers what are the proposed offences being contemplated in this area? Why is this considered necessary in light of claims that there has been a significant reduction in the numbers of asylum seekers arriving by boat?
2. Is the Department monitoring the number of people who are prosecuted under current people smuggling offence provisions? If so, what are the numbers?
3. Has there been an increase or decrease in the number of people prosecuted under current people smuggling offence provisions since 4 March 2014 when the Attorney-General rescinded the direction on people smuggling not to prosecute certain categories of people smugglers?

The answers to the honourable senator's questions are as follows:

1. The Government will establish and increase mandatory minimum penalties for people smuggling offences, as part of its Delivering Stronger Borders policy. The implementation of this policy is currently under consideration. The policy, in combination with an increasing prosecutorial focus on the organisers of people smuggling ventures, will amplify the deterrent effect of mandatory minimum penalties. The Government considers that increasing and establishing mandatory minimum penalties remains an effective way of communicating the government's position on people smuggling to potential offenders and deterring future ventures.

2. The Department is closely monitoring the number of people brought before courts under the current people smuggling offence provisions, contained in sections 233A-233E *Migration Act 1958* (Cth).

Since 1 June 2010, when the current people smuggling offence provisions entered into force through amendments introduced by the *Anti-People Smuggling and Other Measures Act 2010* (Cth), 566 persons have been charged with facilitating or organising ventures. Of these, 305 were found guilty. 295 of those convicted were crew members, while 10 were organisers.

As at 24 September 2014, there were 19 people smuggling matters before the courts. Of those, 11 persons have been charged as organisers and 8 as crew.

3. The former government directed the CDPP not to prosecute low culpability crew under section 233C of the *Migration Act*, with the effect that low culpability offenders would not face mandatory minimum penalties. However, low culpability crew members continued to face prosecution under the basic people smuggling offence in s 233A of the *Migration Act*. The Attorney-General's decision to revoke the direction served to reinvest prosecutorial discretion in the CDPP. The CDPP has since been prosecuting alleged offenders under the most appropriate offence, as determined on a case-by-case basis.

Between 27 August 2012 and 4 March 2014 (the time during which the direction was in force) 172 persons appeared before the courts on people smuggling charges. Of these persons, 148 were charged as crew and 24 as organisers.

Between 4 March 2014 and 4 July 2014 (the period immediately following the revocation of the direction) 40 persons appeared before the courts for people smuggling offences. Of these, 20 were charged as organisers and 20 as crew. Over the four month period immediately preceding the revocation of the direction (i.e. between 4 November 2013 and 4 March 2014), 39 persons appeared in court, with 20 charged as organisers and 19 charged as crew.

Since the Attorney-General rescinded the direction, the number of prosecutions has remained roughly consistent. In the months following the commencement of Operation Sovereign Borders, there have been no known incidents involving loss of life in Australian territorial waters and just one people smuggling venture to Australia in seven months. With an ongoing reduction in boat arrivals, it is expected that prosecutions of people smuggling crew will decline into the future. This will allow the investigative and prosecutorial focus to shift towards those organising, or attempting to organise, people smuggling ventures to Australia.