

**Aggravated People Smuggling
s.232A (Cth) Migration Act 1958
Pre June 2010**

Offences Committed prior to 1 June 2010

232A Migration Act:

(1) A person who:

(a) organises or facilitates the bringing or coming to Australia, or the entry or proposed entry into Australia, of a group of 5 or more people to whom subsection 42(1) applies;
and

(b) does so reckless as to whether the people had, or have a lawful right to come to Australia;

is guilty of an offence punishable, on conviction, by imprisonment for 20 years or 2,000 penalty units, or both.

s.233C Mandatory penalties for certain offences Commenced 27.9.2001

Applies unless offender under 18 years of age when offence committed.

Mandatory minimum sentence for any offence under s.232A: 5 years NPP 3 years

Mandatory minimum sentence for repeat offence under s.232A: 8 years NPP 5 years

Case (age if known)	Offence	Plea	Sentence	Appeal	Record	Facts
Cita	s.232A	PG	7y NPP 3y 6m	AD		Feb 2000 – skippered boat bringing 282 people to Christmas island – Indonesian national – unemployed seaman needed money for family – aware acts were forbidden – limited education - largest single importation of unlawful non-citizens
Lamaha (28) (2001) 120 A Crim R 307 [2001] WASCA 5	s.232A	PG	5y 6m NPP 2y 9m	AD		Nov 1999 – skippered boat bringing 190 people from West Java to Christmas Island – Indonesian national - unemployed fisherman involved for financial gain – secondary role - remorse

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Case (age if known)	Offence	Plea	Sentence	Appeal	Record	Facts
Kadem (40) (2002) 129 A Crim R 304 [2002] WASCA 133	s.232A	PG	4y NPP 2y	AA 3y Released to recog after 18m		Sept-Nov 1999 - illegally arrived on Indonesian boat at Ashmore Reef with pregnant wife and five children as part of 353 illegal immigrants – third attempt – acted as interpreter on several occasions in Indonesian in order to secure passage on boat Iraqi national - co-operation with authorities – not charged until one year later
Disun	s.232A	VG	7y NPP 3y	Conviction AD Crown AD		Aug 2001 – part of four man crew on Indonesian fishing vessel bringing 433 people to Christmas Island – D captained and principally responsible for navigation – N assisted in steering and management of vessel - rescued by Norwegian boat and brought to Christmas Island – major and dangerous people smuggling operation
Nurdin [2003] WASCA 47	s.232A	VG	4y NPP 18m			
Daoed (37) (2005) 158 A Crim R 381 [2005] QCA 458	s.232A	VG	9y NPP 4y 6m	AD	nil	Jul-Oct 2001 – Extensively involved in arranging 300 people to leave Indonesia by boat– many drowned when boat capsized – offence more serious due to dangerous overcrowding Kuwaiti national – extradited from Sweden 2003 – remorse – good prospects rehabilitation
Pulendren (36) [2010] NSWDC 335 Tupman DCJ	s.232A	PG	5y 5m NPP 3y			Mandatory Sentencing Provisions Feb-June 2009 - involved in organising 20 Tamils to come to Australia as part of group of 194 on boat from Malaysia – effectively an agent in Sydney – always intended boat would be detected to enable applications for asylum - revealed offence to police having become concerned for safety of those on board boat – motivated by financial gain Sri Lankan Tamil national came to Australia as refugee

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Bahar (early 20s) Abdullah (45) Anto (early 20s) (2011) 214 A Crim R 417 [2011] WASCA 249	s.232A	VG	5y NPP 3y	Conviction AD Crown AD		Mandatory Sentencing Provisions June 2009 - Crew of boat intercepted near Ashmore Reef with 43 Afghani and 7 Iranian refugees – bottom level of hierarchy Indonesian nationals – limited education – easy prey to people smuggling organisers and financial incentive Approach to mandatory sentencing provisions considered
Narru [2012] QCA 364	s.232A	VG	5y 6m NPP 3y 6m	Conviction AD		Mandatory Sentencing Provisions April 2010 - crew member on boat intercepted near Ashmore Reef with 23 passengers and 3 crew – mainly responsible for steering
Alif (28) Amin (81) [2012] QCA 355	s.232A	VG	5y NPP 3y	Conviction AD		Mandatory Sentencing Provisions March 2010 - captain and crew on small fishing vessel found floating in Timor Sea with 24 passengers of Muslim Rohingya minority from Burma – both engines broken – passengers picked and up and transported to Australia by naval vessel – third offender successful conviction appeal Indonesian subsistence fishermen
Karabi (47) [2012] QCA 47	s.232A	PG	6y 6m NPP 4y	AD	People smuggling (2000) Using foreign boat on two occasions	Mandatory Sentencing Provisions Captain on board boat carrying 6 passengers from Indonesia – crew included 16y son Indonesian fisherman - motivated by desire to seek asylum in Australia
Nitu [2012] QCA 224	s.232A	PG	5y NPP 3y	AD		Mandatory Sentencing Provisions March 2010 - Crew member on board ship carrying 8 Sri Lankan asylum seekers and 4 Indonesians Consideration of constitutional validity of mandatory sentencing provisions

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Latif (58) [2012] QCA 278	s.232A	PG	6y NPP 3y	Crown AA 6y NPP 4y	People smuggling offences – not repeat offences under s.233C	Mandatory Sentencing Provisions April 2010 - deputy captain of vessel that brought 31 passengers to Australia – elected to stay on board after finding out vessel would transport people to Australia – did not arrange voyage and received little remuneration Poor Indonesian fisherman – limited education Discussion about application of mandatory minimum sentence
Selu (64) [2012] QCA 345	s.232A	PG	6y 6m NPP 3y	Crown AA 6y 6m NPP 4y	Prior conviction for people smuggling	Mandatory Sentencing Provisions March 2010 - captain on boat containing 45 Afghani and 1 Iranian asylum seekers from Indonesia detected near Hibernia Reef Subsistence fishermen supporting family – poverty - poor health Prior offence too early to trigger repeat mandatory sentencing provisions
Karim Bayu Magaming (19) Bin Lahaiya [2013] NSWCCA 23 Magaming [2013] HCA 40	s.232A s.232A 233C: Agg people smuggling (group of 5 or more) 233C: Agg people smuggling (group of 5 or more)	VG PG PG VG	5y NPP 3y 6y NPP 3y 6m 5y NPP 3y 5y NPP 3y	AD AD		Mandatory Sentencing Provisions Karim and Bayu: Feb-April 2010 - no facts stated Magaming Sept-Oct 2010 (new offence after amendments made in June 2010) - facts from High Court judgment - crew on boat intercepted near Ashmore Reef carrying 52 passengers and 4 crew - simple Indonesian fisherman recruited to help steer boat – seriousness at bottom on scale Bin Lahaiya Sept-Oct 2010 (new offence after amendments made in June 2010) – no facts stated Appeal considered application of mandatory sentencing provisions only – considered further in High Court appeal of Magaming

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DPP (Cth) v Haidari (38) [2013] VSCA 149	s.233: Take part in bringing non-citizen to Australia s.232A s.307.2: Import mkt qty methamphet s.233C: Agg people smuggling (group of 5 or more)	PG	4y 8y 6y 8y <u>Total:</u> 11y 6m NPP 8y	Crown AD		Mandatory Repeat Offence Sentencing Provisions Oct 2009-Feb 2010 – took \$8000 from Iranian man in Indonesia to include in voyage of 49 passengers to Australia – boat intercepted near Christmas Island – several months later arranged for passage of 6 Iranian Kurds in overcrowded boat June 2011 - found in possession of 505.4g pure imported methamphetamine Sept-Oct 2011 – (s.233C new offence committed after June 2010 amendments) - controlled operation – agreed with undercover officer to arrange passage for 6 persons Organiser acting for financial gain although also some element of altruism Came to Australia by boat as Kurdish asylum seeker – difficult and violent background – offered to assist On appeal: no error in mitigating culpability in view of involvement of police
Abbas [2019] WASCA 64	s.232A(1) s.232A(1) s.233C: Agg people smuggling (group of 5 or more)	VG	6y 6y 8y <u>Total:</u> 12y NPP 7y	Crown AA 8y 8y 11y <u>Total:</u> 14y NPP 9y	'Immigration' offences in Indonesia	Mandatory Repeat Offence Sentencing Provisions Note: s.233C new offence committed after June 2010 amendments 2009-2011 – high level participant in international people smuggling network – central and pivotal role – over several years arranged for over 200 passengers to be transported to Australian waters – involved planning and pre-meditation – boats crowded and constituted serious risk to passengers – motivated by financial gain Afghani national – hardship in custody away from family – remorse – dysfunctional and difficult childhood in Afghanistan On appeal: sentences inadequate in view of offender's role in offences

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