Aggravated People Smuggling
s.233B and s.233C (Cth) Migration Act 1958
Post June 2010

Offences Committed on or after 1 June 2010

s.233B - aggravated people smuggling (danger of death or serious harm)

Organises or facilitates the bringing or coming to Australia, or the entry or proposed entry into Australia, of a non-citizen who has no lawful right to come to Australia and does either of the following:

(b subjects the victim to cruel, inhuman or degrading treatment (within the ordinary meaning of that expression);

(c) gives rise to a danger of death or serious harm to the victim and is reckless as to that danger

Penalty: Imprisonment for 20 years or 2,000 penalty units, or both.

s.233C - aggravated people smuggling (at least 5 people)

Organises or facilitates the bringing or coming to Australia, or the entry or proposed entry into Australia, of a group of at least 5 persons who are non-citizens and have no lawful right to come to Australia.

Penalty: Imprisonment for 20 years

Penalty: Imprisonment for 20 years or 2,000 penalty units, or both.

s.236B – Mandatory minimum sentences

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

Mandatory minimum sentence for any offence under s.233B:	8 years NPP 5 years
Mandatory minimum sentence for offence under s.233C:	5 years NPP 3 years
Mandatory minimum sentence for repeat offence under s.233C:	8 years NPP 5 years

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

Case (age if known)	Offence	Plea	Sentence	Appeal	Record	Facts
Ambo (46) [2011] NSWDC 182 Knox SC DCJ	s.233C	VG	5y NPP 3y			Mandatory Sentencing Provisions Feb 2011 - Crew member of boat carrying 53 persons from Iran and Iraq intercepted near Christmas Island – some passengers subsequently granted visas – recruited in Indonesia for small amount of money – in charge on boat – recruited nephew Unemployed Indonesian fisherman – illiterate with minimal education
Nafi (2012) 32 NTLR 124 [2012] NTCCA 13	s.233C	VG	8y NPP 5y	AD	s.232A offence - 2001	Mandatory Repeat Offence Sentencing Provisions June 2010 - 33 people brought into Australia – no further details Application of mandatory minimum sentence for repeat offence – triggered by date of conviction not commission of earlier offence
Karim	s.232A: Bringing groups of non-citizens to Australia	VG	5y NPP 3y	AD		Mandatory Sentencing Provisions Karim and Bayu: Feb-April 2010 (old offence prior to amendments in June 2010) - no facts stated Magaming: Sept-Oct 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 – no facts stated Appeal considered application of mandatory sentencing provisions only – considered further in High Court appeal of Magaming
Bayu	s.232A: Bringing groups of non-citizens to Australia	PG	6y NPP 3y 6m			
Magaming (19)	233C	PG	5y NPP 3y			
Bin Lahaiya [2013] NSWCCA 23	233C	VG	5y NPP 3y			
Magaming [2013] HCA 40				AD		
Taru Ali [2013] NSWCCA 211	s.233C	VG	5y NPP 3y	Conviction AD		Mandatory Sentencing Provisions Aug-Sept 2010 - steering boat approaching Ashmore Reef with 52 passengers and 4 crew

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

Case (age if known)	Offence	Plea	Sentence	Appeal	Record	Facts
Radimin (35) ***Zakhria*** (18) [2013] NSWCCA 220	s.233C s.233C	VG VG	5y 6m NPP 3y 3m 5y NPP 3y	Conviction AD AD		Mandatory Sentencing Provisions Nov 2010 - crew on boat from Indonesia with 23 persons found at Browse Island – 22 Afghani and 1 from Pakistan – R described as captain with major role to steer and control – Z younger and mostly prepared food R – financial motivation – lower end of people smuggling hierarchy – prior good character - family
Sulaeman [2013] NSWCCA 283	s.233C	VG	5y NPP 3y	Conviction AD		Mandatory Sentencing Provisions Oct 2010 – in charge of vessel boarded near Christmas Island carrying 57 persons from Middle East – overloaded and leaking
DPP (Cth) v Haidari (38) [2013] VSCA 149	s.233: Take part in bringing non-citizen to Australia s.232A: Bringing groups of non-citizens to Australia s.307.2:import mkt qty methamphet s.233C	PG	4y 8y 6y 8y Total: 11y 6m NPP 8y	Crown AD		Mandatory Repeat Offence Sentencing Provisions Oct 2009-Feb 2010 (s.233 and 232A older offences committed prior to June 2010 amendments) - 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 – 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

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

Case (age if known)	Offence	Plea	Sentence	Appeal	Record	Facts
Heydarkhani (41) [2014] WASCA 52	s.233C s.233C s.233B s.233B	PG	7y 8y 11y 14y Total: 14y NPP 9y 6m	AD		Mandatory Repeat Offence Sentencing Provisions June-Nov 2010 – organised for two boats to transport 71 passengers each including children –boats in poor condition and overcrowded Nov-Dec 2010 – arranged for 89 passengers to be transported by boat – boat founded on rocks at Christmas Island and 47 passengers drowned – boat in poor condition with minimal safety equipment Nov 2010-Jan 2011 – aware of sinking of previous boat arranged transport of further 90 passengers, including 25 children, in unseaworthy boat Essential role in substantial people smuggling business generating substantial revenue – misrepresented condition of boats - displayed contempt for vulnerability and safety of passengers – financial reward Originally Iranian national granted refugee status and citizenship in Australia
Dui Kol (44) [2015] NSWCCA 150	s.233C	PG (25%)	9y NPP 5y	AA 5y 3m NPP 3y 10m	s.233A offence	Mandatory Sentencing Provisions Took 88 persons from Indonesia – only crew member on board – sufficient life jackets but bot in poor condition – did not organise trip but aware of nature of voyage – criminality not lowest category so must be greater than minimum sentence Fisherman living in poverty in Indonesian village – married with family – health issues On appeal: mistakenly sentenced on basis this was a repeat offence
Fayazi (28) [2017] NSWDC 362 Scotting DCJ	s.233C Sched: 5 x 'people smuggling' offences	PG (15%)	8y NPP 4y		Nil	Mandatory Sentencing Provisions Feb 2013 – boat with 88 Iranian passengers intercepted near Christmas Island – offender worked for people smugglers over several months in people management role – not organiser – course of conduct – involved in arranging passage of four people in Dec 2012 and one person in March 2013 - working to pay for own passage Refugee from Iran – hoping to join family in Australia – moral culpability significantly reduced by circumstances – physical and mental health issues – remorse – good prospects of rehabilitation – exceptional hardship to family

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

Case (age if known)	Offence	Plea	Sentence	Appeal	Record	Facts
Abbas [2019] WASCA 64	s.232A: Bringing groups of non-citizens to Australia s.232A: Bringing groups of non-citizens to Australia s.233C	VG	6y 6y 8y Total: 12y NPP 7y	Crown AA 8y 8y 11y Total: 14y NPP 9y	'Detention' offences in Indonesia	Mandatory Repeat Offence Sentencing Provisions Note: s.232A older offences committed prior to June 2010 amendments 2009-2011 – high level participant in intentional people smuggling network – central and pivotal role – over several years arranged for over 200 passengers to be transported to Australia 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
Azar (59) [2020] NSWDC 265 King SC DCJ	s.233C s.233C Sched: 2 x s.233A	PG (10%)	Indicative: 8y NPP 5y 3m 10y NPP 6y 6m Aggregate: 12y NPP 8y		Nil in Australia – no further information	Mandatory Repeat Offence Sentencing Provisions 2011-2013 - principal of people smuggling syndicate in Indonesia – primary organiser – over 19 months dealt with 28 people from Iran- organised accommodation in Indonesia and eventual transportation by boat to Christmas Island – aware boat could be unseaworthy and therefore dangerous Iranian national – extradited to Australia 2 years after arrest – no expression of remorse – good conduct in custody