

DPP

Commonwealth Director of Public Prosecutions

SUBMISSION BY THE COMMONWEALTH DPP

THE SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

INQUIRY INTO THE DETENTION OF INDONESIAN MINORS IN AUSTRALIA

Introduction

The Office of the Commonwealth Director of Public Prosecutions (CDPP) is responsible for the prosecution of criminal offences against the laws of the Commonwealth. The CDPP can only prosecute when there has been an investigation by an investigation agency. The CDPP does not have an investigative function.

The CDPP is responsible for the prosecution of people smuggling offences under the *Migration Act 1958* (the Migration Act) which are referred to the CDPP by the AFP or another investigation agency. The AFP is responsible for the investigation of alleged people smuggling offences.

People smuggling offences are serious offences which carry substantial terms of imprisonment. Mandatory minimum sentences of imprisonment are applicable to adults convicted of these offences. These mandatory minimum sentences are not applicable to juveniles.

The prosecution of persons for alleged people smuggling offences are commenced by the AFP arresting and charging a person. The CDPP is not usually involved in potential people smuggling matters prior to the commencement of the prosecution by the AFP. The AFP's policy has been not to arrest and charge juveniles unless there are exceptional circumstances involved.

Accordingly, where the AFP is of the view that the alleged offender is a juvenile and there are no exceptional circumstances, the AFP does not charge the person and DIAC returns the person to their country of origin.

From December 2011, a policy has been implemented of DIAC making an initial assessment of whether a crew member is a juvenile or not. If DIAC determines that the crew member is an adult, they refer the matter to the AFP for investigation and possible charging. If DIAC determines that the crew member is a juvenile, the person is returned to their place of origin.

Prosecutions for people smuggling offences are referred to the CDPP after charges have been laid by the AFP. The AFP provides a brief of evidence to the CDPP containing the evidence collected by the AFP in the course of the investigation which relates to the charge. The CDPP assesses briefs when they are referred to consider whether the prosecution should be continued in accordance with the *Prosecution Policy of Commonwealth*. This involves consideration of all the evidence in light of the two-stage test that:

- there must be sufficient evidence to prosecute the case; and
- it must be evident from the facts of the case, and all the surrounding circumstances, that the prosecution would be in the public interest.

HEAD OFFICE

4 Marcus Clarke Street Canberra City 2601
GPO Box 3104 Canberra ACT 2601
Telephone (02) 6206 5666 Facsimile

Where consideration is given to the prosecution of juveniles, the CDPP must also have regard to the factors in paragraphs 2.15 to 2.17 of the *Prosecution Policy*. The *Prosecution Policy* does not prohibit the prosecution of juveniles for Commonwealth offences, however it does note that:

“[p]rosecution of a juvenile should always be regarded as a severe step, and generally speaking a much stronger case can be made for methods of disposal which fall short of prosecution unless the seriousness of the alleged offence or the circumstances of the juvenile concerned dictate otherwise. In this regard, ordinarily the public interest will not require the prosecution of a juvenile who is a first offender in circumstances where the alleged offence is not serious.”

All defendants in people smuggling prosecutions are entitled to legal aid. The CDPP's experience is that defendants are legally represented. The CDPP conducts the prosecutions of these matters in this context and in the context of the Australian criminal justice system.

Defendants in people smuggling matters have the capacity to apply for bail in accordance with the applicable State and Territory laws in relation to bail. The CDPP policy since July 2011 is that the CDPP does not oppose bail in relation to people smuggling offences where the defendant disputes that they are an adult and has written to all the legal representatives of these defendants to ensure that they are aware of this.

The CDPP assesses all material provided on the referral of a matter and any additional material on age provided by the AFP or the defence in considering whether a court is likely to be satisfied on the balance of probabilities that the defendant was an adult in assessing whether there is a reasonable prospect of conviction in accordance with the *Prosecution Policy of the Commonwealth*. This may include any relevant information from Indonesia as to a person's age and the CDPP has requested the AFP obtain any such material. Where the CDPP has not been satisfied that a court would be likely to be satisfied on the balance of probabilities on all the evidence available that the defendant was an adult the CDPP has discontinued the prosecution.

These matters may involve complex situations and uncertainty as to precise dates of birth and accordingly the age of defendants. There have been instances of multiple dates of birth being provided and cases where different ages have been claimed at different stages. Age may be raised as an issue at different stages of the proceedings and can be re-litigated.

Prosecution statistics

As at 30 May 2012, the CDPP has conducted 405 prosecutions for people smuggling offences where the matter has been convicted, acquitted or discontinued since September 2008. Currently the CDPP is prosecuting 158 captain and crew for people smuggling offences across 8 jurisdictions.

There have been 104 people who at some point in the process from interception raised whether they were a juvenile; or where a wrist x-ray had been conducted or had been referred to in CDPP's correspondence file. Of those 104 matters, 28 matters resulted in conviction, 6 matters resulted in acquittal, 2 matters were never charged, 10 matters are still before the courts and 58 matters were discontinued by the CDPP.

Documentary material from Indonesia concerning the age of the defendant

The CDPP has been presented with a range of documents from Indonesia from both the defence and AFP seeking to prove the age of a defendant. They broadly fall into the following categories:

- Birth Certificates

There are no centralised records or database of births and it is not possible to request a computer search of birth records. Indonesian police have to travel to the local area and manually search records, often these are in remote locations.

- Affidavits, which are usually provided from parents, siblings, other family members or friends.
- School Records
School records have been provided to the AFP by Indonesian police, who have obtained the records by attending the school, which is often in a remote location. There are issues regarding the admissibility of these documents in the absence of having a witness produce them or obtaining them pursuant to a mutual assistance request.
- Citizenship/Identity Records
A KTP - identity card (Kartu Tanda Penduduk Republik Indonesia) can be obtained by an Indonesian citizen upon reaching 17 years of age. A KTP card can also be issued to those under 17 years of age if they are married.

These documents are sometimes seized from the defendant when they are apprehended on the SIEV, however it is more often the case that the defendant discloses that he has a KTP card during his DIAC entry interview.

A KK - Family Card (Kartu Keluarga) is issued to the head of the family who is the property owner. The names on a Family Card are not necessarily in chronological order and can be added and removed and a Family Card can record anyone living in a particular household.

- Other documentation such as baptismal certificates

A range of issues concerning admissibility, reliability and provenance have become apparent to the CDPP in relation to the use of these types of documentary material in the criminal justice system, which are highlighted in the discussion below.

The CDPP provides the following information in relation to the terms of reference.

a) Whether any Indonesian minors are currently being held in Australian prison, remand centres or detention centres where adults are also held, and the appropriateness of that detention;

- Convicted matters

Since September 2008, there have been 28 people convicted of people smuggling offences who at some point in the process from interception to conviction raised whether they were a juvenile; or where a wrist x-ray had been conducted or had been referred to in CDPP's correspondence file. Details of those matters are as follows:

| NAME | SIEV | Intercepted | Charged | Plea | Convicted | Sentence |
|------|------|-------------|---------|------|-----------|---|
| | 34 | 2/4/09 | 20/4/09 | NG | 9/2/11 | 5 years imprisonment, 3 years non parole period |
| | 36 | 15/4/09 | 30/5/09 | G | 28/10/09 | 5 years imprisonment, 3 years non parole period |
| | 36 | 15/4/09 | 5/6/09 | G | 28/10/09 | 5 years imprisonment, |

| NAME | SIEV | Intercepted | Charged | Plea | Convicted | Sentence |
|------|------|-------------|----------|------|-----------|--|
| | | | | | | 3 years non parole period |
| | 45 | 23/6/09 | 20/8/09 | NG | 23/9/10 | 5 years imprisonment, 3 years non parole period |
| | 45 | 23/6/09 | 20/8/09 | NG | 23/9/10 | 5 years imprisonment, 3 years non parole period |
| | 51 | 11/9/09 | 15/10/09 | NG | 9/2/11 | 5 years imprisonment, 3 years non parole period |
| | 51 | 11/9/09 | 15/10/09 | NG | 9/2/11 | 5 years imprisonment, 3 years non parole period |
| | 51 | 11/9/09 | 15/10/09 | G | 7/4/10 | 5 years imprisonment, 3 years non parole period |
| | 52 | 12/9/09 | 15/10/09 | G | 4/5/10 | 5 years imprisonment, 3 years non parole period |
| | 58 | 27/9/09 | 7/12/09 | G | 6/7/10 | 5 years imprisonment, 3 years non parole period |
| | 58 | 27/9/09 | 7/12/09 | G | 6/7/10 | 5 years imprisonment, 3 years non parole period |
| | 61 | 9/10/09 | 26/11/09 | G | 19/11/10 | 5 years imprisonment, 3 years non parole period |
| | 67 | 23/10/09 | 15/12/09 | G | 21/5/10 | 5 years imprisonment, 3 years non parole period |
| | 72 | 15/11/09 | 11/2/10 | G | 1/10/10 | 7 years imprisonment, 3 years 6 months non parole period |
| | 73 | 16/11/09 | 3/2/10 | NG | 19/7/11 | 5 years imprisonment, 3 years non parole period |
| | 75 | 19/11/09 | 3/2/10 | G | 8/7/10 | 5 years imprisonment, 3 years non parole period |
| | 76 | 23/11/09 | 10/2/10 | NG | 23/5/11 | 5 years imprisonment, 3 years non parole period |
| | 79 | 27/11/09 | 12/12/09 | G | 7/5/10 | 5 years imprisonment, 3 years non parole period |
| | 79 | 27/11/09 | 12/12/09 | G | 7/5/10 | 5 years imprisonment, 3 years non parole period |
| | 80 | 3/12/09 | 4/3/10 | G | 17/9/10 | 5 years imprisonment, 3 years non parole period |
| | 80 | 3/12/09 | 4/3/10 | G | 17/9/10 | 5 years imprisonment, 3 years non parole period |
| | 86 | 18/12/09 | 31/3/10 | G | 22/12/10 | 5 years imprisonment, 3 years non parole |

| NAME | SIEV | Intercepted | Charged | Plea | Convicted | Sentence |
|------|------|-------------|---------|------|-----------|---|
| | | | | | | period |
| | 89 | 29/12/09 | 6/10/10 | G | 8/11/11 | 5 years imprisonment, 3 years non parole period |
| | 90 | 29/12/09 | 17/3/10 | G | 10/11/11 | 5 years imprisonment, 3 years non parole period |
| | 91 | 31/12/09 | 30/9/10 | G | 10/1/12 | 5 years imprisonment, 3 years non parole period |
| | 111 | 7/3/10 | 30/9/10 | G | 9/6/11 | 5 years imprisonment, 3 years non parole period |
| | 154 | 3/6/10 | 9/2/11 | NG | 23/2/12 | 5 years imprisonment, 3 years non parole period |
| | 186 | 13/9/10 | 21/4/11 | NG | 19/4/12 | 5 years imprisonment, 3 years non parole period |

Where a defendant pleaded not guilty, the matter proceeded to a trial before a jury in a superior court. Where a defendant pleaded guilty, the matter proceeded to sentencing by a superior court. Attached at attachment B are the transcripts or judgments in relation to these proceedings which the CDPP possesses.

In some prosecutions where the age of the defendant has been raised as an issue at some stage in the proceedings, admissions have later been made by the defendant through his legal representatives that the defendant is an adult and there is a corresponding acceptance by the defendant through their legal representative of the court's jurisdiction to hear the matter.

In other matters, the jurisdiction of the court is challenged by the defendant on the basis that the person is not an adult and an age determination hearing is held. The court must be satisfied that it has jurisdiction to deal with the defendant on the balance of probabilities, taking into account the Briginshaw test. If the court is satisfied that the defendant is 18 years old or over, the court has jurisdiction to hear the matter. If the court is not satisfied that the person is 18 years or old, the Court will remit the matter to be heard in the Children's Court.

- Age determination hearings

Since September 2008, age determination hearings have been held in 13 people smuggling prosecutions. The details of those age determination hearings are as follows:

| Name | SIEV | Intercepted | Charged | Age determination hearing | Age determination | Prosecution outcome |
|------|------|-------------|------------------------------|---------------------------------------|-----------------------|----------------------------------|
| | 36 | 15/4/09 | 5/6/09 (warrant executed) | Magistrates Court Decision 22/9/09 | Satisfied over 18 | Convicted. Sentenced on 28/10/09 |
| | 49 | 29/8/09 | 24/9/09 | District Court Decision 19/11/10 | Not satisfied over 18 | Discontinued 19/11/10 |
| | 64 | 18/10/09 | | Magistrates Court decision | Not satisfied over 18 | Discontinued 11/2/11 |

| Name | SIEV | Intercepted | Charged | Age determination hearing | Age determination | Prosecution outcome |
|------|------|-------------|----------|------------------------------------|-----------------------|-----------------------------------|
| | | | | 28/1/11 | | |
| | 72 | 15/12/09 | 11/2/10 | Magistrates Court decision 3/12/10 | Satisfied over 18 | Discontinued 14/11/11 |
| | | | | District Court decision 11/11/11 | Not satisfied over 18 | |
| | 86 | 18/12/09 | 29/3/10 | District court decision 22/12/10 | Satisfied over 18 | Convicted . Sentenced on 22/12/10 |
| | 90 | 29/12/09 | 17/3/10 | Magistrate court decision 16/11/10 | Satisfied over 18 | Convicted. Sentenced 10/11/11 |
| | 91 | 31/12/09 | 30/9/10 | Magistrate court decision 19/4/11 | Satisfied over 18 | Discontinued 6/12/11 |
| | 94 | 8/1/10 | 15/10/10 | Magistrate court decision 8/9/11 | Not satisfied over 18 | Discontinued 15/9/11 |
| | 105 | 20/2/10 | 14/10/10 | Magistrate court decision 15/8/11 | Satisfied over 18 | Discontinued 7/11/11 |
| | 196 | 13/10/10 | 24/3/11 | Magistrate court decision 12/9/11 | Satisfied over 18 | Discontinued 7/12/11 |
| | 155 | 5/6/10 | 2/12/10 | District court decision 25/10/11 | Satisfied over 18 | Acquitted 25/11/11 |
| | 155 | 5/6/10 | 2/12/10 | District court decision 25/10/11 | Not satisfied over 18 | Discontinued 26/10/11 |
| | 173 | 28/7/10 | 13/4/11 | Magistrate court decision 1/12/11 | Not satisfied over 18 | Discontinued 1/12/11 |

Where a court has not been satisfied that the defendant is 18 years or older, the CDPP has discontinued the prosecution. This is in addition to a large number of matters that the CDPP has discontinued without proceeding to an inquiry as to age.

Attached to this submission at attachment D are the transcripts or judgments in relation to the age determination hearings which the CDPP is in possession of.

- Acquitted matters

Since September 2008, there have been 6 people acquitted of people smuggling offences who at some point in the process from interception to acquittal raised whether they were a juvenile; or where a wrist x-ray had been conducted or had been referred to in CDPP's correspondence file. Details of those matters are as follows:

| SIEV | NAME | Intercepted | Charged | Acquitted |
|------|------|-------------|---------|-----------|
| 58 | | 27/9/09 | 7/12/09 | 30/3/11 |

| SIEV | NAME | Intercepted | Charged | Acquitted |
|------|------|-------------|----------|-----------|
| 64 | | 18/10/09 | 23/12/09 | 5/8/11 |
| 86 | | 18/12/09 | 31/3/10 | 23/5/11 |
| 137 | | 25/4/10 | 10/3/11 | 7/12/11 |
| 155 | | 5/6/10 | 2/12/10 | 25/11/11 |
| 211 | | 16/11/10 | 10/3/11 | 3/4/12 |

Attached at attachment F are the transcripts or judgments in relation to these proceedings which the CDPP is in possession of.

- Current prosecutions

As at 28 May 2012, there were ten defendants before the courts in relation to people smuggling offences who at some point in the process from interception raised whether they were a juvenile; or where a wrist x-ray had been conducted or had been referred to in CDPP's correspondence. In 6 of these matters, age has been conceded or not further raised by the defence.

- Review of convicted matters by Attorney General

The CDPP has provided documentation in relation to the 28 people who have been convicted of people smuggling offences who at some point in the process from interception to conviction raised whether they were a juvenile; or where a wrist x-ray had been conducted or had been referred to in CDPP's correspondence file to the Attorney General's Department to be considered in the review of convicted people smuggling crew queried to be minors announced by the Attorney General on 2 May 2012.

b) What information did the Australian authorities possess or have knowledge of when it was determined that a suspect or convicted person was a minor;

Attached at attachment G are documents from Indonesia concerning the age of the defendant which were provided to the courts in people smuggling prosecutions where there was a conviction, acquittal or an age determination hearing.

In the matter of Mr Idris, a birth certificate and family card relating to Mr Idris were tendered to the court in the age determination hearing. The birth certificate had been whited out at the part setting out the year of the birth date of Mr Idris and typed words "Sembilanpuluh lima" meaning "nineteen ninety-five" written in over the whited out part. The family card had been whited out at the part setting out the birth date of Mr Idris and the number "96" hand written over the original stated date. Further, the details of the third child had been entirely whited out.

In *R v Daud* [2011] WADC 175 delivered on 25 October 2011 Bowden DCJ found on the balance of probabilities that Mr Idris was over the age of 18 years. He did so based on the fact of falsified documentation submitted in support of the claimed age. Mr Idris maintained a plea of not guilty and the matter went to trial. Mr Idris was acquitted by the jury.

Documents have been critically assessed by courts in some matters. For example, in the course of the age determination hearing in relation to Mr Bin Sutis, the defence indicated that the Indonesian Embassy (Consulate) in Darwin had a copy of his birth certificate. There was a short adjournment to allow that to be faxed to the court. The document was in Indonesian and dated 2 February 2011. It was in the name of Egi Sutisna (which is accepted as the Indonesian version of Bin Sutis) and gives a date of birth of 10 September 1996. Bin Sutis gave evidence he had asked his older sibling to make enquiries regarding his birth certificate and this was the document obtained.

The date of birth of 10 September 1996 is not the date of birth Bin Sutis gave to the RAN boarding team, which was 15 May 1995, nor the date of birth he gave the DIAC officer, which

was 15 May 1990. The purported birth certificate was not in the usual form provided by the Indonesian Government as an extract of the official register of births. It does not purport to be such an extract, but rather is a certificate produced by a local regional official.

On 12 September 2011 the Magistrate found on the balance of probability that Bin Sutis was over the age of 18 years at the time of the offending. The matter was adjourned to 26 September 2011 and on that date Bin Sutis entered a plea of not guilty and was committed for trial in the District Court (NSW).

In relation to the evidence of Bin Sutis and the documents His Honour found:

- Bin Sutis gave evidence that he lied to DIAC for his own benefit, and it was certainly to his benefit to lie in his evidence;
- There were 3 conflicting dates of birth before the court;
- It is clear that the birth certificate tendered was not a birth certificate from an official register;

His Honour found that he was persuaded the answers given at the DIAC entry interview on 6 November 2010 on Christmas Island was a more accurate record of the age of the accused.

On 24 November 2011 the defence provided the CDPP with five affidavits from Indonesia. The CDPP accepted the documents at face value notwithstanding reservations as to the veracity, provenance, reliability, and accuracy of the contents. The CDPP discontinued the prosecution.

In an age determination hearing in the matter of M, the CDPP, though having an expert report in relation to wrist x-ray evidence, was also relying on documentary evidence from Indonesia to be satisfied that the defendant was 18 years or over. Prior to the age determination hearing the AFP obtained documents from Indonesia comprising a declaration from the Population and Civil Registry Office Rote, a Family Card and a declaration by Anwar Idris, the village chief which recorded and states M's date of birth as 12 April 1987. According to that date, M would have been 23 years of age at the time the offence was committed. These documents were all provided to the defence prior to the age determination hearing.

An age determination hearing took place in the Melbourne Magistrates Court on 31 August 2011. The hearing was part heard and continued over three days. The prosecution called the informant AFP officer and tendered documents obtained from the Civil Registry Office Rote. Dr Low gave evidence for the Crown as to his interpretation of the wrist x-ray.

The hearing was adjourned to 13 October 2011 where the prosecution called the author of the DIAC age assessment interview. Further evidence was also tendered namely a statement by an Indonesian police officer who had obtained the documents from the Civil Registry Office in Rote. No other evidence was led by the Crown. The defence called evidence from Dr Prelog. She gave evidence in accordance with her report dated 3 August 2011. While she concluded that M's x-ray is consistent with skeletal age of 19 years, she opined that M could be under 18 years of age as his chronological age cannot be accurately established based solely on the application of the Greulich & Pyle Atlas.

The hearing was adjourned to 18 November 2011 to allow time for the defence to call Professor Cole and also to travel to Indonesia and take a statement from M's mother. The hearing actually resumed on 24 November 2011.

Prior to the resumption of the hearing the defence made a further submission to the CDPP to discontinue the prosecution. On 8 November 2011, they provided an affidavit of M's mother. In the affidavit she said that she gave birth to M at home on 1 January 1993. She says that she did not register the birth and does not have a birth certificate for M or any of her children. She was shown a copy of the Family Card and said that she did not apply for it and thought her son Iwan

had applied for it so that he could enrol in school. She said that some of the dates in the Family Card were incorrect.

On 14 November 2011, the CDPP rejected the submission and informed the defence that it was appropriate for the part heard age determination hearing to continue.

On the resumption of the hearing Professor Cole gave evidence. He opined that the Greulich & Pyle Atlas was not designed to determine age and that Dr Low was wrong in his statistical analysis. He disagreed with Dr Low's use of 19 as the mean age for an adult x-ray and also to his use of the standard deviation.

Her Honour delivered her decision on 1 December 2011. She was not satisfied on the balance of probabilities that M was 18 or over at the time of the alleged commission of the events. Although Her Honour summarised the evidence before the Court she did not give detailed reasons as to why she came to this conclusion. She seems to have given little weight to the documents produced from Indonesia. She was not persuaded by the evidence of Dr Low and indicated that a mature x-ray did not assist her in determining age. She accepted the accused's submissions that an expert statistical opinion as opposed to an expert radiological opinion as to the probability is to be preferred. That evidence is that 60 per cent of males would have obtained skeletal maturity before the age of 18 years. Accordingly, once the Family Card evidence was discounted she found that the prosecution had not discharged the onus of proof on the balance of probabilities. The CDPP then discontinued the prosecution.

c) Whether there have been cases where information that a person is a minor was not put before the court;

The CDPP has provided the Committee with information in confidence about matters where there were documents from Indonesia concerning the age of the defendant which the CDPP was aware of but which were not provided to the courts in people smuggling prosecutions where there was a conviction, acquittal or an age determination hearing. The CDPP has noted that there have been cases where the prosecution has been in possession of documents which support the defendant being 18 years or over but have not relied on them because of issues with the documents such as issues of admissibility or identification. The CDPP also noted that there have also been matters where documentation from Indonesia which indicates that the defendant is an adult has not been put before the court because the jurisdiction of the court is accepted by the defence. There have also been cases where documentation from Indonesia has not been provided to the court because it was not available until after the age determination hearing.

The CDPP provides the following information in relation to the prosecution of Ali Jasmin. The CDPP received a copy of a birth certificate which originated from the Indonesian consulate concerning Ali Jasmin on 24 August 2010. The CDPP was aware that the defendant had a copy of the document on 24 August 2010 and provided a translation when it was available. The document was provided to the AFP to make inquiries. Neither the defence nor the prosecution put the document before the court. The document indicated that the birth had been registered on or after 2006. As a result, while the authenticity of the record was not in question, the accuracy of the information contained in the document was uncertain given the time between the alleged date of birth and the dated of the record. Given the concerns about the veracity of the information contained in the document, the prosecution did not put the document before the court.

d) What checks and procedures exist to ensure that evidence was given to an Australian authority or Department about the age of a defendant/suspect is followed up appropriately;

Enquiries in Indonesia by AFP

The CDPP requested that the AFP make enquiries in Indonesia for relevant documentation regarding the age of defendants charged with people smuggling offences where age was disputed. From a national perspective, the CDPP wrote to the AFP on 3 March 2011 raising whether anything more could be done to obtain documentation from Indonesia. The CDPP wrote to the AFP again on 15 July 2011 requesting that proactive inquiries be made in all cases where there is some doubt as to an individual's age seeking any relevant information from Indonesia.

CDPP prosecutors also made individual requests to the AFP to make inquiries for documentation from Indonesia when age was in dispute in their cases.

The CDPP is conscious of the length of time that it can take for the AFP to make inquiries and obtain documentation from Indonesia. Where material has not been available within a reasonable timeframe, the CDPP has considered whether to continue the prosecution without the benefit of that material. This has led to matters being discontinued where material was later obtained from Indonesia which supported the person being an adult.

The CDPP understands that the AFP is currently required to seek this type of information from Indonesia by way of a mutual assistance request rather than police to police request, which is a more formal and time consuming process.

Documents to be tendered by the defence

In mid 2011, the CDPP recognised the need for a court to have all documentary material before it in determining age, rather than just that material which was admissible. The CDPP's position became that the CDPP will not dispute the admissibility of any documentary evidence that the defendant wishes to tender, however it may be appropriate for comment to be made about the weight if any which a Court may wish to give to any evidence.

e) The relevant procedures across agencies relating to cases where there is a suggestion that a minor has been imprisoned in an adult facility;

Bail

In the first half of 2011, the CDPP considered whether bail should be opposed for people claiming to be juveniles who are charged with people smuggling offences. Prior to that time, the CDPP's practice had been to oppose bail in people smuggling matters.

In July 2011, the CDPP's position changed to not oppose bail for persons claiming to be juveniles who are charged with people smuggling offences.

In November 2011, a practice was implemented to write to all legal representatives of defendants claiming to be juveniles but who have not applied for bail concerning the CDPP's position not to oppose bail for persons claiming to be juveniles.

The CDPP notes that not all defendants charged with people smuggling offences who claim to be juveniles apply for bail. This is a matter between the defendant and their legal representation.

Correctional services

Prior to March 2011 there were no formal arrangements between CDPP and AFP concerning the notification of Corrections of a claim to be a juvenile or a finding that a person was a juvenile.

In most cases prior to the person being charged, the AFP would make contact with the relevant Corrections Department and notify them of the issue. Once the CDPP became involved in the matter the CDPP or the AFP, or both may have contacted the relevant Corrections Department to advise of the age issue. As a result of discussions between the AFP and the CDPP from March 2011 the AFP took responsibility for the notification of age issues to the relevant Corrections Department.

Corrections have been provided with the name of the defendant and the fact that the person was claiming to be a juvenile. Corrections have also been advised if a wrist x-ray had been done.