

26 November 2012

To all media organisations

**Criminal Procedure Act 2011: restrictions on publication under the sentence indication scheme**

1. I write to you on behalf of the Solicitor-General to ensure that you are aware of the restrictions that apply under the Criminal Procedure Act 2011 to the publication of information about sentence indications. The statutory provisions in question came into force on 5 March 2012 and apply to any proceeding commenced before that date if the trial, or summary hearing at which the charge will be determined, has not begun.
2. Sections 60–65 of the Criminal Procedure Act 2011 codified a formalised sentence indication scheme. Section 63 provides:

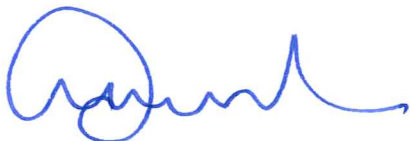
**63 Offence and penalty relating to sentencing indication**

- (1) Every person commits an offence who, before the defendant has been sentenced or the charge has been dismissed, knowingly publishes any information about—
  - (a) a request for a sentence indication; or
  - (b) a sentence indication that has been given.
- (2) A person who commits an offence against (1) is liable on conviction, -
  - (a) in the case of an individual, to a term of imprisonment not exceeding three months;
  - (b) in the case of a body corporate, to a fine not exceeding \$50,000.
3. The rationale behind restriction on publication in the scheme reflects the concern that a defendant's request for a sentence indication might be thought to imply an admission of guilt, and therefore premature publication might cause prejudice to a fair trial. Accordingly, s 63 prohibits the reporting of information about a sentence indication until the defendant has either been sentenced or the charge dismissed after a hearing or trial.
4. The statutory restriction on publications that s 63 imposes is in addition to any other statutory prohibition that may apply and to any suppression order that may be imposed in any individual case.
5. "Sentence indication" is defined in s 60. A sentence indication may relate to sentence type only (e.g. imprisonment, home detention), sentence type within a particular range or of a particular quantum (e.g. two years' imprisonment, 12 months'

home detention), a sentence that would not be imposed (e.g. not imprisonment) or a combination of sentences (e.g. home detention and community work).

6. Since ss 60–65 came into force on 5 March 2012, there have been several occasions where information about sentence indications has been reported in the media in breach of s 63. Examples include publication of information about:
  - a hearing at which a request for a sentence indication was declined;
  - a case where an accused absconded on bail after accepting a sentence indication of 11 years' imprisonment; and
  - a sentence indication hearing where a request for a discharge without conviction was refused.
7. Once the proceedings have concluded, the restrictions no longer apply. There is no restriction on the publication of a request for a sentence indication, or a sentence indication that has been given, after the defendant has been sentenced or the charge has been dismissed.
8. Any breach of s 63 could potentially seriously undermine a defendant's fair trial rights. Please take note that breach of s 63 is a summary offence liable to be prosecuted by the Police.

Yours faithfully  
**Crown Law**



Cameron Mander  
Deputy Solicitor-General