

Review of convictions or sentences under the *Crimes (Appeal and Review) Act 2001*: fact sheet

In New South Wales, the criminal law allows a conviction or sentence to be reconsidered in certain circumstances. The primary way this happens is through an appeal to a court.

The Attorney General has no role in considering an appeal of a conviction or sentence. That is the role of the courts. The Attorney General also cannot provide legal advice to individuals about the making of an appeal.

Apart from an appeal, a conviction or sentence may be reviewed in NSW under the procedures set out in the *Crimes (Appeal and Review) Act 2001*. This fact sheet describes how a conviction or sentence can be reviewed under those procedures.

It is recommended that you seek independent legal advice before making an appeal to any court or seeking a review of a conviction or sentence.

If you were convicted by the Local Court and want your conviction or sentence annulled

If you were not present when the conviction or sentence was imposed, you can apply to the Local Court for an annulment under section 4 of the *Crimes (Appeal and Review) Act 2001*. An application under section 4 can only be made within two years of the date of the conviction or sentence. If the Court grants an annulment, the conviction or sentence imposed in your absence will need to be considered again by the Court, and you will then have the opportunity to be present. To apply, or for more information about how to apply, you should contact the Local Court that recorded the conviction or sentence. Details of Local Courts are listed on the [Local Court website](#).

Under section 5 of the *Crimes (Appeal and Review) Act 2001*, you may apply to the Attorney General to refer your case back to the Local Court, even if more than two years have passed since the date of the conviction or sentence, and even if you were present in court when you were convicted.

After receiving your application, the Attorney General decides whether or not to refer your case back to the Local Court. Before referring your case back to the Court, the Attorney General needs to be satisfied that a question or doubt exists as to your guilt or your liability for the penalty.

It should be noted that the Attorney General does not grant the annulment. That is a matter for the Local Court to determine if the Attorney General makes a referral back to the Court.

An application to the Attorney General under section 5 of the *Crimes (Appeal and Review) Act 2001* should include:

- details of the offence and the proceedings before the Local Court (such as which Local Court heard your matter and the date on which the conviction or sentence was imposed)
- the reasons why you think that a question or doubt exists as to your guilt or liability for a penalty
- any supporting documentary evidence.

An application to the Attorney General under this section should be sent to the **Department of Communities and Justice (Legal Branch), Locked Bag 5000, Parramatta NSW 2124.**

If you were convicted in the Local Court, District Court or Supreme Court, and want your conviction or sentence reviewed

If you were convicted by the Local Court, District Court or Supreme Court AND all appeal avenues have been exhausted, you may be able to apply for an inquiry into your conviction or sentence, a review of the conviction or sentence, or the exercise of the Governor's pardoning power. For further information about the Governor's pardoning power, please see the [Royal prerogative of mercy: fact sheet](#). Further information about the review of convictions and sentences is provided below.

An inquiry or review into a conviction or sentence will only be granted in exceptional circumstances. You must be able to bring forward fresh material which was unavailable at the time of the trial or appeal, that has not been previously considered by the court. There must be a doubt or question as to your guilt, as to any mitigating circumstances in the case, or as to any part of the evidence in the case.

The law that provides for an inquiry or review of a conviction or sentence is Part 7 of the *Crimes (Appeal and Review) Act 2001*. There are two alternative pathways, under Division 2 and Division 3 of Part 7.

Application under Division 2

Division 2 of Part 7 provides that a petition for review of a conviction or sentence (or the exercise of the Governor's pardoning power), may be made to the Governor by the convicted person or by another person on behalf of the convicted person. After considering the petition, the Governor may direct that an inquiry be conducted by a judicial officer, or the Attorney General may refer the whole case to the Court of Criminal Appeal to be dealt with as an appeal, or the Attorney General may request the Court of Criminal Appeal give an opinion on any point arising in the case.

In order for the Governor to review an individual's conviction or sentence, the individual must petition the Governor in writing, clearly setting out the reasons in support of their petition. The considerations and requirements governing a review are set out in section 77 of the *Crimes (Appeal and Review) Act 2001*.

A successful petitioner must provide material that raises a doubt or question as to

1. the petitioner's guilt
2. the mitigating circumstances in the case
3. any part of the evidence in the case.

The Governor will consider the Attorney General's recommendation in respect of the petition. If the petition is successful, the Governor may refer the matter to a judicial officer for an inquiry into the conviction or sentence. Alternatively, the Attorney General can refer the matter to the Court of Criminal Appeal. The Attorney General may also request the Court of Criminal Appeal to give an opinion on any point arising in the case.

A petition to the Governor may sent to the following address: **Official Secretary to the Governor of New South Wales, Government House, Macquarie Street, Sydney NSW 2000** or enquiries@governor.nsw.gov.au.

Application under Division 3

Division 3 of Part 7 provides that an application for an inquiry into a conviction or sentence may be made to the Supreme Court, by the convicted person or by another person on behalf of the convicted person. After considering an application, the Supreme Court may direct that an inquiry be conducted by a judicial officer or may refer the case to the Court of Criminal Appeal, to be dealt with as an appeal. An application under Division 3 must be lodged with the **Criminal Registry, Supreme Court of NSW, Level 5 Law Courts Building, 184 Phillip Street, Sydney NSW 2000**. The postal address is **Criminal Registry, Supreme Court of NSW, GPO Box 3, Sydney NSW 2001**.

It is up to you, in consultation with your legal adviser, to decide if an application should be made to the Supreme Court or a petition to the Governor.

Reporting on petitions

Since 2018, the Attorney General publishes an annual summary document of petitions for the exercise of the Royal prerogative of mercy and petitions for the review of a conviction or sentence under section 76 of the *Crimes (Appeal and Review) Act 2001*. The publication of a summary document aims to best address the balance of privacy and public interest concerns involved in the consideration of petitions, with ensuring and promoting open justice and transparency.

Details of both successful and unsuccessful petitions are published here:

<https://www.dcj.nsw.gov.au/justice/royal-prerogative-of-mercy-and-reviews-of-convictions-sentences/release-of-information.html>

Generally, and subject to the Attorney General's discretion to refuse to release information, the following information will be published

- a. general information as to the nature of the offence for which the petitioner has sought review or the exercise of the Royal prerogative of mercy will be released
- b. the grounds on which the petitioner sought review or the exercise of the Royal prerogative of mercy will be released
- c. the outcome and date of decision.

In relation to unsuccessful petitions, identifying information, including the petitioner's name, or any specifics regarding the subject offending, will not be released. However, in relation to successful petitions, in addition to the above, the petitioner's name and brief reasons for the decision will be released.

Procedure

Where the Attorney General forms a preliminary view that the Governor of NSW ought to exercise the Royal prerogative of mercy, or that action should be taken under section 77(1) of *Crimes (Appeal and Review) Act 2001* in respect of a petition, the petitioner will be advised of the proposed information to be released in respect of the petition. The petitioner will be invited to comment on the release of information, or to withdraw the petition. However, the Attorney General has the ultimate discretion on what information is published.

For further information

Further information about these processes is available on the [Department of Communities and Justice website](#).

For related information about the Governor's discretionary power known as the **Royal prerogative of mercy**, see the Royal prerogative of mercy [fact sheet](#).

DISCLAIMER: This fact sheet contains general information only, is not legal advice, and does not take into account individual circumstances. You should seek independent legal advice about your own particular circumstances. Neither the Attorney General nor the Department of Communities and Justice can provide legal advice.