

# Review of convictions or sentences under the Crimes (Appeal and Review) Act 2001

## Factsheet

In New South Wales, the criminal law allows a conviction or sentence to be reconsidered, in certain circumstances. The primary way to do this 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 statutory review mechanisms provided in the *Crimes (Appeal and Review) Act 2001*. This fact sheet describes how a conviction or sentence can be reviewed under those mechanisms.

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

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*. But, this can only be done within two years of the date of the conviction or sentence. An annulment means that 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, you should contact the Local Court that recorded the conviction or sentence. Details of Local Courts are listed at [www.localcourt.lawlink.nsw.gov.au](http://www.localcourt.lawlink.nsw.gov.au).

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.

An application to the Attorney General should detail the offence and the date on which the conviction or sentence was imposed. It should also demonstrate that a question or doubt exists as to your guilt or liability for a penalty. You must provide supporting documentary evidence. Further information is available at the website [www.justice.nsw.gov.au](http://www.justice.nsw.gov.au) under the tab “Legal and Regulatory Information Services”. An application to the Attorney General under this section should be sent to the Office of General Counsel, NSW Department of Justice, GPO Box 6, Sydney NSW 2001.

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 once the Attorney General makes a referral back to the Court.

### If you were convicted in the District Court or Supreme Court

If you were convicted by the 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.

However it is important to recognise that such an inquiry, review or pardon is only possible in exceptional circumstances. You must be able to bring forward fresh material which was unavailable at the time of the trial or appeal, which 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 approaches, under Division 2 and Division 3 of Part 7.

## Petition 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. A petition to the Governor must be delivered to the Office of the Governor of New South Wales, Government House, Macquarie Street, Sydney NSW 2000.

## 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 at the NSW Supreme Court, Queens Square, Sydney NSW 2000.

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.

## For further information

Further information about these processes is available on the Justice website at [www.justice.nsw.gov.au](http://www.justice.nsw.gov.au) under the "Legal and Regulatory Information Services" section.

*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 Justice can provide legal advice.*