

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

What are annulments?

Part 2 of the *Crimes (Appeal and Review) Act 2001* provides a framework for the Local Court to review convictions or sentences that were made or imposed in the Local Court.

If a conviction or sentence is annulled, it means that the conviction or sentence ceases to have effect and any enforcement action previously taken is to be reversed. However, if a conviction or sentence is annulled, the Local Court must deal with the matter giving rise to the conviction or sentence ('original matter') afresh, which means that there will be a new hearing of any defended charge or a new sentencing hearing.

If, following the re-hearing, the Local Court finds the offence proven, you may incur additional costs. Therefore, before making a decision whether to proceed with an annulment application, **you should consider seeking independent legal advice.**

Reasons for annulments

You may wish to seek to annul your conviction or sentence if, for example, you were not able to attend your hearing for compelling reasons, there is new evidence available which goes to your guilt or innocence, or you were suffering from a serious health condition at the time of the offence or court proceedings. These are only examples, and there may be other reasons why you might be able to establish a basis for an annulment.

In particular, in relation to an application made under section 5 of the *Crimes (Appeal and Review) Act 2001*, which is explained below, you must establish that there is a question or doubt as to your guilt or liability for a penalty.

How a conviction or sentence in the Local Court be annulled?

If less than two years has passed since your conviction or sentence

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 localcourt.nsw.gov.au/local-court/cl-2.html

If more than two years has passed since your conviction or sentence

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

In your application you should provide the following information:

- personal details (such as your full name and date of birth);
- details of the offence, including any proceedings numbers or charge numbers;
- the date that the conviction and/or sentence was imposed;
- the location of the Local Court that convicted and sentenced you;
- the reasons why you think that a question or doubt exists as to your guilt or liability for a penalty (for example, if there is new evidence that was not before the Local Court at the time of a conviction which may tend to establish innocence); and
- any documentation that supports your reasons (for example, medical records).

Once your application is received by the Department, you will receive a letter acknowledging receipt of your application together with a consent form for you to complete so that the Department can verify the information in your application. Information that may be obtained may include your court file, criminal history and other records. **Please note that it is not Attorney General's role (or that of the Department) to conduct an investigation into your conviction or sentence.** It is for you to provide sufficient material to support your application, and further supporting materials may be requested from you.

In the process of reviewing your application, the Department may express a preliminary view about your application. You will be given the opportunity to respond and provide further information. In some cases, if your application is not capable of satisfying the decision maker of the existence of a doubt or question as to guilt or liability for a penalty, it will be deemed withdrawn.

Once the review process is complete, your application will be determined by the Attorney General or his delegate. If the Attorney General or his delegate decide to support your application, you will receive a written determination, which will also be sent to the registrar of the relevant Local Court. You will then be contacted by the Local Court as to when your matter will be re-listed.

Depending on the reasons set out in an annulment application, the review process can be lengthy, and it may take several months for your application to be determined. If there is a reason why your matter needs to be considered urgently, please include that in your application.

Section 5 applications should be made in writing to the Attorney General and sent to the **Department of Communities and Justice (Legal Branch), Locked Bag 5000, Parramatta NSW 2124.**

What if I have already appealed my conviction or sentence to the District Court?

If you have already unsuccessfully appealed your original Local Court *conviction* to the District Court, your conviction is now a conviction of the District Court rather than the Local Court. This means that the conviction cannot be annulled under sections 4 or 5 of the Act.

However, if you only appealed the *sentence* (rather than the conviction) to the District Court, the conviction remains one of the original Local Court, and you are eligible to apply for an annulment of that conviction.

How does the Local Court deal with annulment applications?

Procedure on receipt of the annulment application or referral

If an application for an annulment has been made directly to the Local Court under section 4 or referred to the Local Court by the Attorney General under section 5, the registrar of that Local Court must notify you and any other interested parties (this may include the NSW Police and/or the Director of Public Prosecutions) of the date, time and place for dealing with the annulment application.

However, the Local Court may ultimately choose to deal with an application in the presence or absence of the parties, and in open court or in private.

When dealing with an application for annulment, the Local Court may decide to stay the execution of the sentence concerned (that is, suspend the sentence) subject to such terms and conditions as it thinks fit.

Procedure after the Local Court decides whether or not to annul the conviction or sentence

Once the Local Court makes a decision about whether or not to annul your conviction or sentence, the Local Court must notify each of the interested parties of its decision as to an application for annulment.

If the Local Court's decides to annul the relevant conviction or sentence, the Local Court:

- must deal with the original matter afresh (either immediately or at a later date); and
- unless it does so immediately, must notify each of the interested parties of the date, time and place fixed for dealing with the original matter.

The Local Court will then deal with the original matter as if no conviction or sentence had been previously made or imposed (that is, it will hear it afresh). This means that there will be a new hearing of any defended charge or a new sentencing hearing.

Extinguishment of Historical Homosexual Offences: fact sheet

If, following the re-hearing, the Local Court finds the offence proven, you may incur additional costs. Therefore, before making a decision whether to proceed with an annulment application, you should consider seeking independent legal advice.

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](#).

For related information about reviews of convictions and sentences, see the [Review of convictions or sentences under the Crimes \(Appeal and Review\) Act 2001: 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.