# Policy: Release of information relating to applications for the exercise of the Royal prerogative of mercy and petitions submitted under section 76 of the *Crimes (Appeal and Review) Act 2001*

## Purpose

This policy has been developed for the purpose of identifying what information may be released by the Attorney General of NSW and the NSW Department of Justice in relation to applications for the exercise of the Royal prerogative of mercy and petitions submitted under section 76 of the *Crimes (Appeal and Review) Act 2001* (‘CARA’). Collectively, these will be referred to as ‘petitions’.

## Policy Statement

The Attorney General has an absolute discretion to release information in respect of all matters, including the manner of release, the recipient of any information, and the content of any released information. The following policy does not derogate from the Attorney General’s discretion. It is intended as a general guideline for how the discretion is commonly exercised.

*Publication of summary document*

1. The Attorney General may, from time to time, release a document which provides information regarding petitions determined (‘summary document’) since the last summary document was released.
2. The summary document will be published on the Department of Justice NSW website.
3. The provision 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.
4. If 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 CARA 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 withdraw the petition should the petitioner so choose.
5. The Attorney General may take any comments made by the petitioner into account in exercising his or her discretion to release information. The Attorney General’s absolute discretion not to release information is outlined at [11]-[13].

*Content of summary document*

1. The level of detail released in the summary document in respect of each petition will vary depending on the circumstances of the petition.
2. Generally, and subject to the Attorney General’s discretion to refuse to release information, the Department of Justice’s release of information in relation to petitions which have been **declined** will be as follows:
3. 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.
4. A noting of the grounds on which the petitioner sought review or the exercise of the Royal prerogative of mercy will be released.
5. The fact that the petition was declined will be released.
6. The date the petition was declined will be released.
7. Identifying information, including the petitioner’s name, or any specifics regarding the subject offending, will not be released.
8. Generally, and subject to the Attorney General’s discretion to refuse to release information, the Department of Justice’s release of information in relation to petitions which have been **granted** will be as follows:
9. 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.
10. The fact that the petition was granted will be released.
11. The petitioner’s name will be released.
12. Brief reasons for the decision will be released.
13. The date the petition was granted will be released.
14. In respect of **all petitions**, the material submitted in support of the petition will not be released (other than a summary of the arguments in favour of the petition, where that is otherwise appropriate).
15. In respect of **all petitions**, the name of any victim will not be released in the summary document.

*Attorney General’s discretion not to release information*

1. In respect of **all petitions**, the Attorney General maintains an absolute discretion to partially or wholly refuse to release information regarding any aspect of a petition.
2. Examples of matters where the Attorney General may exercise his or her discretion to refuse to release information are where release of the information may:
3. Prejudice the prevention, investigation or prosecution of an offence.
4. Disclose, or enable a person to ascertain, the existence or identity of a confidential source of information relating to the enforcement or administration of a law of the Commonwealth or a State.
5. Jeopardise the safety of the petitioner.
6. The Attorney General’s discretion to refuse to release information regarding a petition is not limited to the above matters.
7. The Department of Justice will reviewany information which is intended to be released in the summary document to take care that its inclusion in the summary document does not:
8. Present a risk of placing the publisher in contempt of court.
9. Contravene any statutory non-publication provisions.
10. Waive legal professional privilege.
11. Contravene non-publication or suppression orders made under the *Court Suppression and Non-Publication Orders Act 2010*.

*Notification of victims*

1. The Attorney General may, at his or her absolute discretion, prior to the Governor’s decision on a petition, direct that contact be made with any registered victim relating to the offence which is the subject of a petition. This includes, in his or her discretion, where the Attorney General forms a preliminary view that the Governor ought to exercise the Royal prerogative of mercy, or that any other action should be taken under section 77(1) of CARA in respect of a petition.
2. The Department of Justice will only contact victims who are registered on the victims registries maintained by Corrective Services New South Wales and Juvenile Justice.
3. Any registered victim who is notified of the petition will be invited to comment on the petition within a specified time period.
4. The Attorney General retains an absolute discretion to determine if or when one or more registered victims will be contacted after considering a petition. The examples listed in [12] are similarly relevant to the Attorney General’s discretion to decline to contact a registered victim.
5. Where a registered victim is contacted, the registered victim will be informed of the fact that a petition was made, the grounds on which the petitioner seeks the exercise of the Governor’s discretion, the relief sought by the petitioner, and a fact sheet explaining the Royal prerogative of mercy and/or reviews of conviction or sentence. Registered victims will not be provided any petition material.

## Amendment

## The Attorney General has the discretion to amend this policy from time to time.

## Scope

This policy applies to the Attorney General and the officers of the Department of Justice responsible for the release of information regarding petitions.

## Communication

The policy will be published on the Department of Justice’s website.

## Implementation

The Attorney General and Department of Justice are responsible for the implementation of this policy.

## Legislative Context

*Crimes (Appeal and Review) Act 2001*

*Criminal Records Act 1991*

*Government Information (Public Access) Act 2009*

*Health Records and Information Privacy Act 2002*

*Privacy and Personal Information Protection Act 1998*

## Related Policies

N/A

## Consultation and Organisational Impact

The development of this policy was the subject of public consultation. A call for public submissions as to the proposed release of information relating to petitions closed on 9 February 2018. 17 submissions were received from the public. The Office of General Counsel, Department of Justice, also consulted with other States, Territories and the Commonwealth as to practices in other jurisdictions.

Implementation of the policy will result in greater public awareness of both the quantity and variety of petitions received by the Attorney General, as well as the quantity and type of petitions which are approved.

There will be no major change to operational processes or major financial impacts beyond those associated with compiling the summary document and corresponding with petitioners and registered victims.

## Document Information

Title**: Release of information relating to applications for the exercise of the Royal prerogative of mercy and petitions submitted under section 76 of the *Crimes (Appeal and Review) Act 2001***

### Document Number: D18/278224/DJ

### Policy Owner: Office of the General Counsel, Department of Justice

### Classification: None

### Key Words: Royal prerogative of mercy, review of conviction or sentence

### Applicability: Limited application within the department

## Document History

| **Version** | **Date** | **Reason for Amendment** |
| --- | --- | --- |
| 1 | 5 October 2018 | Original version.  |