

# Annulment Applications

*Section 4 Crimes (Appeal & Review) Act (NSW) 2001*

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It is common for Defendants to fail to attend court and just as common for them to be convicted and sentenced in their absence. These people often turn up at my office asking what can be done to fix this. Fortunately, the sentence or finding of guilt can be cancelled by a 'Section 4 Annulment'. This article aims to assist practitioners appearing in the Local Court of NSW.

## Local Court Review of Local Court Decisions

The Local Court has power to review its own decisions under Part 2 of the Crimes (Appeal & Review) Act 2001. An application can be made under section 4 on the basis that the defendant was 'not in appearance' before the Local Court when the conviction was made or the sentence imposed.

## Grounds for Annulment

Section 8 provides that the court must grant an annulment if satisfied:

- (a) that the defendant was not aware of the original Local Court proceedings until after the proceedings were completed, or*
- (b) that the defendant was otherwise hindered by accident, illness, misadventure or other cause from taking action in relation to the original Local Court proceedings, or*
- (c) that, having regard to the circumstances of the case, it is in the interests of justice to do so.*

It is up to the applicant to provide evidence to show they fall into one of these categories.

## Consequences of Annulment

If the Annulment application is granted, then the court must deal with the matter afresh<sup>1</sup> as if no conviction or sentence had been previously made or imposed.<sup>2</sup> On being annulled, a conviction or sentence ceases to have effect and any enforcement action previously taken is to be reversed.<sup>3</sup> It follows that any fine is repayable to the person by whom it was paid.<sup>4</sup>

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<sup>1</sup> s9 (2)(a) Crimes (Appeal & Review) Act 2001

<sup>2</sup> s9 (3) Crimes (Appeal & Review) Act 2001

<sup>3</sup> s10 (1) Crimes (Appeal & Review) Act 2001

<sup>4</sup> s10 (3) Crimes (Appeal & Review) Act 2001