

# Pardons in NSW

*Division 7, Crimes (Appeal & Review) Act (NSW) 2001*

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In my criminal law practice I have had the pleasure of seeing many criminal clients change their lives and become honest and respected members of the community. Sadly, many of these clients are haunted by criminal convictions and licence disqualifications that cause them hardship which is disproportionate to the mistakes they have made.

Remission of sentence is of particular interest to offenders who have received lengthy licence disqualifications from a magistrate. Long disqualification periods can cause extreme hardship due to reasons such as ill health (self or a family member), family obligations and by denying access to work and training.

Such offenders are excellent candidates to apply to the Governor for remission of their sentence. This article seeks to explain in simple terms the nature of the royal prerogative of mercy and the application process.

## Pardons

The Governor of NSW has a broad discretion to dispense clemency which he or she exercises on the advice of the Attorney General's Department. In response to an application, the Governor has the power to grant a free and absolute pardon or grant remission of the sentence imposed by a court.

A pardon is granted to a person who has been wrongly convicted of an offence. This is not the same or equivalent to an acquittal. A pardon does not mean the court records or criminal history will be deleted or expunged. It clears a person from all consequences of the offence, but does not eliminate the conviction itself.

The only body with the power to quash (remove) a conviction is the Court of Criminal Appeal. Quashing a conviction means it has been overturned by the court and no longer has any legal or binding force.

## Remission of Sentence

The Governor also has broad discretion to reduce the penalty handed out to an offender. Most offenders seek remission of their sentence rather than a pardon. This can be a reduction in the length of a prison term, reducing the amount of a fine or reducing the length of a court imposed licence disqualification. However, it is up to the petitioner to provide compelling reasons for the Governor to intervene.

## Petitioning for Mercy

It is up to the petitioner to demonstrate why the Governor should intervene instead of allowing the law to run its course. There are no legal restrictions upon the sorts of matters that may be taken into account by the Attorney General's Department when advising the Governor.

Granting clemency to one offender does an injustice to every other offender who has to cop it sweet. So the petitioner needs to show:

1. that their case is special
2. that the sentence is causing them extreme hardship, or
3. that they deserve remission on compassionate grounds.

Petitioners should provide documents to support their claim of special circumstances or hardship. Petitions to the Governor under Division 2 should be posted to the Governor at:

Office of the Governor of New South Wales  
Level 3, Chief Secretary's Building  
121 Macquarie Street  
Sydney NSW 2000

The Governor refers these petitions to the Attorney General who receives the advice of Crown law officers and makes a recommendation to the Governor. The Governor then finalises the matter with the assistance of the Executive Council.

Chris Nowlan  
Barrister-at-Law  
Ph: (02) 9024 9533  
[chris@chrisnowlan.com](mailto:chris@chrisnowlan.com)