

Pardons in NSW

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

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.

The Royal Prerogative of Mercy is essentially a broad discretion to dispense clemency. It can be used to reduce or remove a person's liability for a penalty - including a period of imprisonment, payment of a fine or a disqualification from driving.

The exercise of the Royal prerogative of mercy may take a number of forms, principally:

- a free pardon,
- commutation (a conditional pardon substituting a different form of punishment), and
- remission (reducing the amount of a sentence without changing its character).

One of the biggest benefits of a pardon is that it converts an unspent conviction into a spent conviction.

Spent Convictions

Our system of justice believes in rehabilitation – that every offender can turn their life around and become a productive law-abiding citizen. Obviously, the system is intended to punish people, but it also intends to encourage and enable rehabilitation. One way it does this is to provide that convictions become spent after a ten year offence free period.

Spent convictions are still on the offender's record but this becomes a secret between the police and the offender. The offender is not required to disclose spent convictions to any other person for any purpose.¹ Questions concerning the person's criminal history are taken to refer only to any convictions of the person which are not spent.² Furthermore, the police are not allowed to disclose them to anyone except the court if the offender reoffends.³

In NSW, most convictions become spent after a crime free period of ten consecutive years.⁴ However, if the conviction is for a sexual offence or the offender is sentenced to more than six months imprisonment, then the conviction never becomes spent unless the offender applies for and receives a pardon from the Governor. The pardon changes the unspent conviction to a spent conviction and the same rules apply.⁵

¹ s12(a) Criminal Records Act (NSW) 1991

² s12(b) Criminal Records Act (NSW) 1991

³ s13 Criminal Records Act (NSW) 1991

⁴ s9 Criminal Records Act (NSW) 1991

⁵ s19 Criminal Records Act (NSW) 1991

The Petition

The application for a pardon is known as a petition for mercy. The Governor of NSW has a broad discretion which he or she exercises on the advice of the Attorney General's Department. However, granting clemency to one offender does an injustice to every other offender who has to cop it sweet. So, it is up to the petitioner to demonstrate the special circumstances that make their case different to other offenders.

There are no legal restrictions upon the sorts of matters that may be taken into account by the AG's Department when advising the Governor. However, the AG has a set of policies and procedures which it applies when considering petitions. The guidelines can be found [here](#). Most petitioners rely on the following grounds:

- Irregularities at trial,
- Matters not taken into account at trial or sentence,
- A severe or excessive sentence,
- Fresh evidence creating doubt as to guilt
- Undue financial or domestic hardship from the sentence,
- Medical need,
- Contrition,
- Good behaviour,
- Evidence of rehabilitation

I have attached a template to help you start writing your petition. It should be posted to:

Attention: Colonel Michael Miller RFD
Official Secretary to the Governor of New South Wales
Government House
Macquarie Street
SYDNEY NSW 2000

Or emailed to enquiries@governor.nsw.gov.au

Prospects of Success

In 2017, Justice disclosed the application outcomes for the period 2016 to 2017 in response to a GIPA application – see [here](#). Of the 85 petitions, 20 were approved, 14 were declined, 36 were not proceeded with, and 13 were still current. The vast majority of pardons were for the remission of driving disqualification periods. Since 2018, Justice publishes the number of petitions and the outcomes. The list can be found [here](#).

Should you require further assistance drafting a petition, I am available every day.

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Pardon Petition Template

There will be a cover letter addressed to the Governor stating that you wish to petition for the exercise of the Royal Prerogative of Mercy. Under this cover letter will be a personal statement explaining what led to the offending and what the offender has done since then to rehabilitate themselves. All the paragraphs should be numbered and you should use headings when you talk about different subjects.

The beginning

You should start by listing your convictions and the sentencing dates. Then explain that you seek a pardon so that your unspent conviction is converted to a spent conviction. This will allow you to move on with your life with a clean slate. Explaining this in the beginning will assist the person assessing your application.

The offending

After that you explain the circumstances of the offending. What motivated the crime – money, drug dependency, peer pressure? Did you act alone or was there a group? Were you the leader of the group or a follower? Did a friend mislead you? Were the other boys older than you? Were they friends from school? Did you plan the crime or just go along? Did you know the plan in advance or was it a spontaneous action?

Arrest and Court Proceedings

How were you caught? Did you plead guilty? Why did you plead guilty? Was it an early plea? Did you show remorse? Did you assist police? Did the other guys get heavier sentences? What did the sentencing judge say about your role and your prospects for rehabilitation?

Prison

How long did you spend in prison? How did it affect you? Did you do courses there? Did you find religion? Did you receive counselling from a psychologist or social worker? Did you make a conscious decision to change your life?

Release from Prison

Were you released early for good behaviour? What happened when you were released? Was it hard to find work? Did the criminal history make life hard? Did you find new friends? How did you find a job? How did you get into education? How did you gain the trust of your employers? What are you doing to help the community?

Family

How did you meet your partner? When did you tell them about the offending? Were you embarrassed or ashamed to tell them? Do you have children or other family to support?

The Future

Rather than say the conviction causes you hardship or stress and anxiety, perhaps say that you have paid a heavy price, you have changed your life, you are a different person now, you have lots of responsibilities and opportunities now and you would like to move on with a clean slate.

What are your plans for the future? How will your criminal record affect your plans?