

THE ROYAL PREROGATIVE OF MERCY
MISCARRIAGES OF JUSTICE



**INFORMATION
FOR APPLICANTS**





WHAT IS THE ROYAL PREROGATIVE OF MERCY?

THE ROYAL PREROGATIVE OF MERCY IS AN IMPORTANT CONSTITUTIONAL SAFEGUARD IN NEW ZEALAND'S CRIMINAL JUSTICE SYSTEM.

It provides a special avenue for criminal cases to be re-opened where a person may have been wrongly convicted or sentenced.

In New Zealand, the prerogative of mercy is exercised by the Governor-General as the Queen's representative. The Governor-General will act on the advice of the Minister of Justice, and has the power to grant a pardon, reduce a sentence, or refer a case back to the courts for reconsideration.

WHEN WILL A CASE BE RE-OPENED?

A PERSON'S CASE WILL NORMALLY BE RE-OPENED WHEN NEW INFORMATION BECOMES AVAILABLE THAT RAISES SERIOUS DOUBTS ABOUT A CONVICTION OR SENTENCE.

There should be a good reason why the new information could not be produced at a person's trial or appeal. Examples are that a new witness has just been discovered, an important witness at trial has changed their story, or new scientific evidence raises questions about the accuracy of evidence given at trial.

The prerogative of mercy does not operate as another right of appeal. The Governor-General will not override the final decision of the courts if the prosecution and the defence have had the opportunity to produce and test all relevant evidence and exercise appeal rights. The prerogative of mercy therefore cannot be used to repeat arguments that were unsuccessful in the courts or re-examine facts that have already been considered by a jury or judge.

Where it appears that a miscarriage of justice is likely to have occurred, the Royal prerogative of mercy will normally be exercised to refer the case back to the courts. The grant of a pardon is extremely rare and is usually considered only where there is compelling new evidence that a person could not properly have been convicted.

WHO CAN APPLY FOR EXERCISE OF THE ROYAL PREROGATIVE OF MERCY?

IF YOU HAVE BEEN CONVICTED IN A NEW ZEALAND COURT AND BELIEVE YOU HAVE SUFFERED A MISCARRIAGE OF JUSTICE, YOU CAN APPLY TO THE GOVERNOR-GENERAL TO HAVE YOUR CASE REVIEWED.

First, however, you should use your rights of appeal in the courts. An application for the Royal prerogative of mercy will normally be considered only after you have completed your appeals. If you have not yet appealed against conviction or sentence you should seek legal advice promptly, even if the time limit to lodge an appeal has passed.



You can make an application yourself or someone, such as a lawyer, can apply on your behalf. A lawyer can advise you on the merits of making an application and, if you go ahead, can also help you collect relevant information and prepare your submissions.

In some cases, legal aid may be available to help pay for a lawyer. The Legal Services Agency decides if someone is eligible for legal aid.

CHECKLIST: SHOULD I MAKE AN APPLICATION?

IF YOU ARE THINKING OF APPLYING FOR THE EXERCISE OF THE ROYAL PREROGATIVE OF MERCY, CONSIDER THE FOLLOWING QUESTIONS.

- Have you been convicted of a criminal offence in New Zealand?
- Have you appealed against your conviction and/or sentence?
- Do you believe that you have suffered a miscarriage of justice in relation to your conviction and/or sentence?
- Do you have new information about your conviction and/or sentence that has not previously been examined by a court?

If you answered NO to any of these questions, you should not go ahead with an application. You should, however, consider talking to a lawyer about your case if you have not already done so.

If you answered YES to all 4 questions, you may wish to make an application for the exercise of the Royal prerogative of mercy.

HOW DO I APPLY?

IF YOU WANT TO APPLY FOR THE EXERCISE OF THE ROYAL PREROGATIVE OF MERCY, YOU MUST COMPLETE AN APPLICATION FORM.

The form asks for important information about your case, including:

- Full details of the relevant conviction(s) and sentence(s)
- Full details of all related court proceedings, including any appeals
- The grounds on which you want your case to be reviewed
- Any documents or papers supporting your application
- Your name, address and contact details
- The name, address and contact details of any lawyer or other person who is acting on your behalf.

You can download an application form from this site: <http://www.gg.govt.nz/role/royalprerogative.htm>

When your application form has been completed, the form and any supporting documents should be sent to:

Official Secretary to the Governor-General
Government House
Private Bag
Wellington



WHAT WILL HAPPEN TO YOUR APPLICATION?

ONCE THE GOVERNOR-GENERAL RECEIVES A COMPLETED APPLICATION, IT WILL BE REFERRED TO THE MINISTER OF JUSTICE WITH A REQUEST FOR FORMAL ADVICE.

The Minister's office will then ask officials at the Ministry of Justice to assess your application. The Ministry will contact you at an early stage.

The Ministry will review all the information and submissions you supply with your application. It may gather additional information and make further inquiries. In some cases, an independent lawyer may be appointed to help consider an application. At the end of the process, the Ministry will provide a report on your application to the Minister of Justice. The Minister of Justice will then decide what advice to give the Governor-General.

The Governor-General will consider and act on the Minister's advice. The Official Secretary to the Governor-General will write to you, or to the person acting on your behalf, with the decision and inform you of any further steps that may be required.

FURTHER INFORMATION

If you have any further questions, you can contact **Government House** ph: (04) 389 8055 or the **Ministry of Justice** ph: (04) 918 8800.

This information about the Royal prerogative of mercy was produced by **Government House** and the **Ministry of Justice**. It can be downloaded from this site: <http://www.gg.govt.nz/role/royalprerogative.htm>