



The Royal prerogative of mercy

The Royal prerogative of mercy has been an important constitutional safeguard in New Zealand's criminal justice system, providing a special avenue for criminal cases to be re-opened where a person may have been wrongly convicted or sentenced. Where it appears that a miscarriage of justice is likely to have occurred, the Governor-General has normally exercised the Royal prerogative of mercy to refer a case back to the courts, under section 406 of the Crimes Act. The grant of a pardon, or the suspension or remission of a sentence is extremely rare.

On 1 July 2020, there was an important change that affects people who want to apply to re-open a criminal case. The Criminal Cases Review Commission has taken over from the Governor-General the responsibility for reviewing criminal convictions and sentences, and deciding whether to refer them back to the courts.

Criminal Cases Review Commission

On 1 July 2020, the Criminal Cases Review Commission Act 2019 came into force. The Act established the Criminal Cases Review Commission (CCRC) as an independent Crown entity to investigate possible miscarriages of justice. If the CCRC considers a miscarriage of justice may have occurred, it can refer a conviction or sentence back to the courts for a further appeal.

The CCRC has taken over this responsibility from the Governor-General. Section 406 of the Crimes Act, which previously allowed the Governor-General to refer a criminal case back to the courts, was repealed on 1 July 2020.

That means that a person who thinks a miscarriage of justice has occurred in their case and wants their conviction or sentence to be reviewed should apply to the CCRC, not the Governor-General. You can find the [CCRC's website here \(https://www.ccrc.nz/\)](https://www.ccrc.nz/).

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The Royal prerogative of mercy is one of the surviving prerogative powers of the British Monarch. The Governor-General's authority to exercise the RPM in New Zealand comes from the Letters Patent Constituting the Office of the Governor-General 1983. In exercising the prerogative of mercy, the Governor-General acts on the advice of the Minister of Justice.

After 1 July 2020, the Governor-General retains the powers set out in the Letters Patent relating to the Royal prerogative of mercy: the powers to grant a free or conditional pardon, suspend the execution of any sentence, or remit a sentence.

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- In practice, however, the powers set out in the Letters Patent have rarely been used. Powers relating to sentences, and the conditional pardon, have been largely overtaken by sentencing and parole laws. The grant of a free pardon is extremely rare and is usually considered only where there is compelling new evidence that a person could not properly have been convicted.

It is important to emphasise that the normal remedy for an apparent miscarriage of justice is to refer the person's case back to the appeal courts. That is now the responsibility of the CCRC.

However, if you believe your case may merit the grant of a pardon, please contact the Official Secretary for further information.

Official Secretary to the Governor-General
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