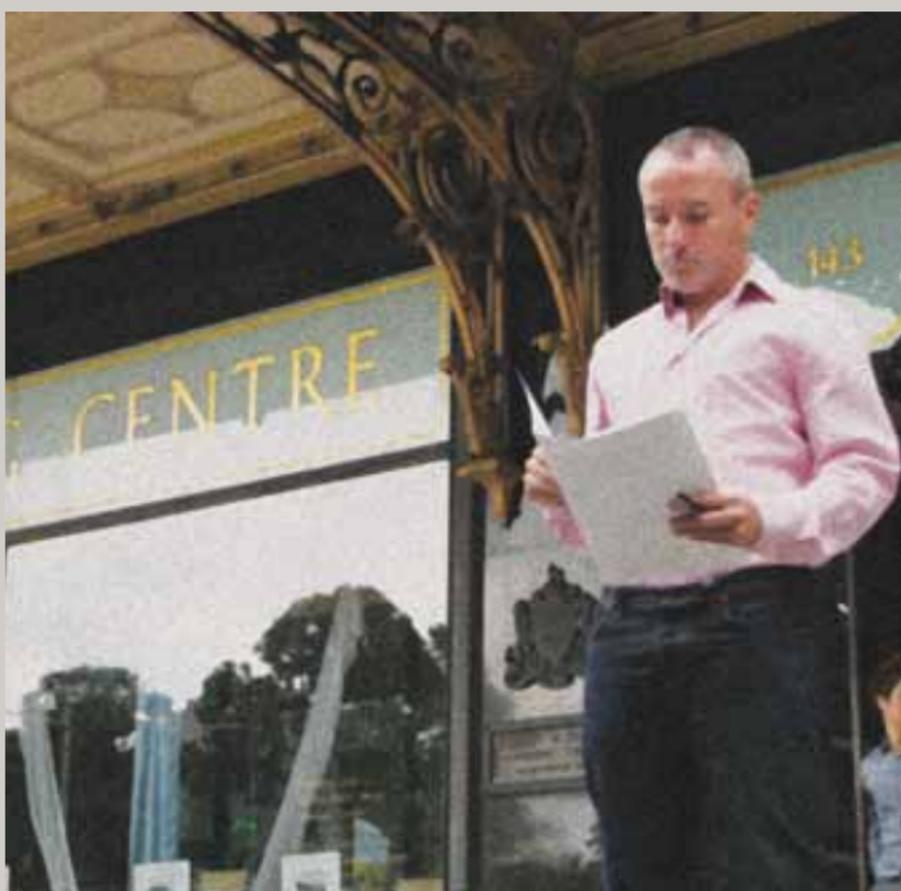


Reviewing Local Court decisions

Application for Annulment
(or what to do if you missed court)



This brochure explains what you may be able to do if you have had a criminal, traffic or apprehended violence (AVO) matter listed in the Local Court of NSW and you missed the court date.

Application for annulment

If you have a court date and you realise that you can not attend—for example, you have a car accident or you are too sick—you should telephone the court as soon as possible and explain what has happened. The court staff will tell you what to do. If you have a medical certificate or other evidence about your absence you should fax it to the court. The court staff will give you the fax number. However, sometimes something goes wrong and you may have missed the court date. If this has happened to you it is important that you find out what happened at court as soon as possible. You can do this by telephoning the court and asking the court staff. If you are not happy about the decision made by the magistrate you have the right to make an application to the court to review a conviction, penalty or order made in your absence. This is called an *application for annulment*. You may hear it called a **section 4 application**.

If you had bail to attend court and missed the court date it is very important that you find out what happened as soon as possible. The magistrate may have issued a warrant for your arrest. You should get legal advice as soon as possible. The Legal Aid NSW brochure *Understanding Bail: Helping you understand and apply for bail* may also assist you.

How do you apply for this review?

You can lodge an application in writing with the Registrar of the Local Court which made the decision. You may lodge the application at any Local Court, in which case your application will be transferred to the Local Court which made the decision and it is likely that you will have to attend that court when your application is to be determined.

The Local Courts have special forms for this application. You should go to the Local Court office and explain what has happened and what you want to do. The Local Court staff will be able to assist you with completing the form.

You will need to pay a fee for lodging the application. If you are a low income earner you may ask the Registrar to waive or postpone this fee. It is a good idea to take proof of your financial details with you to court if you want to do this.

When can you apply for a review?

It is in your interest to lodge this application as soon as possible. It is a good idea to go to the court as soon as you realise that you have missed your court date and lodge the application. You cannot lodge an application if more than two years have passed since the court made its decision. In some circumstances it may be possible to make an application to the Attorney General to refer your case back to the Local Court for review. This is very rare. You should get legal advice about whether this may be possible in your case.

What do you write in the form?

You need to give your personal details: name, address and details of the matter you had at court including the last court date. You also need to explain why you did not attend court. See *What do you have to prove on page 6*.

What happens after you lodge the application?

Your application will be listed at court. This may be on the same day that you lodge the application or it may be another day and you will have to come back. The Registrar of the Court will notify you, and any other person affected by the decision, when and where the application will be heard. It may be heard without the parties being present, in open court or in the magistrate's chambers. If it was a traffic or criminal matter the police will be notified. If it was an Apprehended Violence Order (AVO) the other parties involved with the AVO will be notified. They are entitled to attend court.

What happens until the application is heard?

The court may suspend the order made in your absence until the application for review has been heard. This will not happen in relation to an AVO made against you. You should check with the Registrar of the Local Court about what will happen in your case.

If you had bail to attend court and didn't attend you may be arrested on a warrant and the court will have to decide whether to release you on bail until your application is heard. You may need to convince the court that you will attend on the next occasion if granted bail. For more information see the Legal Aid NSW brochure *Understanding Bail: Helping you understand and apply for bail*.

If you have any evidence, ie, witnesses or documents that could help your application, you should take them to court.

What happens when you go to court?

When you go to court you will need to explain why you did not attend court on the previous date. You may be required to give evidence about this. You may also call other people to give evidence on your behalf. If you give evidence the other people involved in your case (usually the police prosecutor) can cross-examine (question) you about your evidence. If you have witnesses they will remain outside the court room until it is their turn to give evidence.

What do you have to prove?

You must satisfy the Local Court that:

- you were not aware of the proceedings, or
- you could not take part in the proceedings because of accident, illness, misadventure or other cause, or
- the circumstances of your case justify the application being granted.

If you have any evidence - witnesses or documents - that could help your application you should take them to court. For example, if you were in hospital take a report from the hospital showing when you were admitted and discharged and what was wrong with you. If you were sick and attended a doctor ask for a certificate which explains why you were not able to attend court and what was wrong with you. If the certificate only says that you were not able to go to work it may not be enough to satisfy the magistrate to grant your application.

It is a good idea to give copies of any certificates or reports to the other people involved in your case (usually the police prosecutor) before the court case. This is so that they can check that they are genuine. If you don't do this you may not be allowed to give them to the magistrate.

What happens if you are successful?

The Court will annul the decision. This means that the conviction, penalty or order made in your absence no longer has any effect. The case will proceed as if the previous order had not been made.

If it is a criminal or traffic matter you will be required to tell the court whether you

are pleading guilty or not guilty. If it is an application for an AVO you will need to advise whether you consent to the order and if so to what conditions.

If you are pleading not guilty or are defending any application the case may have to be adjourned to another day for witnesses to attend court to give evidence or for other reasons.

What happens if you are unsuccessful?

The conviction, penalty or orders made in your absence will take effect.

Can you appeal the refusal to grant an annulment?

Yes. You can appeal to the District Court by lodging an appeal in writing with the Registrar of any Local Court. You should lodge your appeal within 28 days of the decision being made in the Local Court. If you don't, you can seek leave to appeal within three months of the decision. You will have to explain why you did not lodge the appeal within 28 days. You cannot appeal if your appeal is lodged more than three months after the decision in the Local Court. You cannot ask the District Court to annul

If you have a matter listed at the Local court, it is very important that you take it seriously.

It is a good idea to get legal advice about the matter before going to court (see back page). There are also a lot of brochures available from Legal Aid NSW which will give you more information about court. Visit www.legalaid.nsw.gov.au/publications



← *Going to court* is one of the many helpful brochures available to assist you.

any conviction, penalty or sentence made in your absence unless the Local Court has first refused your application.

Legal Aid NSW has a brochure *Appealing to the District Court* which provides more information.

What happens if you are successful in the District Court?

If you are successful in your appeal against the Local Court's decision refusing to annul your conviction or sentence, the District Court will send your case back to the Local Court which will hear the case again.

What happens if you miss court again?

Generally you are only able to lodge one application to annul a Local Court decision in relation to the same matter.

If you lodge the application and don't attend court on the day it is to be heard your application is likely to be dismissed. This means that the previous order will take effect. You are able to apply for leave to lodge a second application. You would have to have a very good reason for missing court.

If you have missed court once and have been successful in your application to annul that order (either at the Local Court or on appeal at the District Court) and you miss court again you are able to apply for leave to lodge a second application. You would have to have a very good reason for missing court.

It is very important that you do not miss court a second time.

You are only able to appeal to the District Court once in relation to an application for annulment against a Local Court decision.

What if you were on bail when you missed court?

If you were on bail to attend court and you missed your court date you should get advice as soon as you can. You may be able to get advice from one of the places listed at the back of this brochure.

You should telephone the court and ask what happened.

There may be a warrant for your arrest. This means that the police may arrest you at any time. If you are arrested by police you will be taken to court and may apply for bail again. You would have to explain why you did not attend court and satisfy the magistrate that if given bail you will attend court on the next date.

It may be a good idea to go to the police station and 'hand yourself in'. You may be more likely to satisfy the magistrate that you will attend court on the next occasion if you do this rather than wait until you are arrested by the police on a warrant.

If there was a good reason why you did not attend court and you have any evidence it would be a good idea to take that evidence, for example a medical certificate, with you when you go to the police station.

It may help to tell someone what has happened. You may need a 'surety' to get bail again.

A 'surety' is someone who agrees to pay money to guarantee that you will attend court if granted bail. That person may lose their money if you do not attend court unless you have a very good reason.

For further information about bail see the Legal Aid NSW brochure *Understanding Bail: Helping you understand and apply for bail*.

You can order or download this brochure and many others at www.legalaid.nsw.gov.au/publications

Relevant laws

Crimes (Appeal and Review) Act 2001.

Can you apply for legal aid for an annulment application?

You are able to get advice about an application for annulment from:

- LawAccess NSW 1300 888 529
- Legal Aid NSW offices (for locations, see www.legalaid.nsw.gov.au)
- the duty solicitor at your Local Court.

You may be granted legal aid for representation at court if:

- legal aid would have been available for the original proceedings in the Local Court; and
- your application has reasonable prospects of success; and
- you satisfy the Legal Aid NSW means test.

See back panel for more contacts.

