

Reviewing Local Court decisions

What to do if you
missed court



Reviewing a local court decision

This guide explains how to apply for an annulment in a Local Court in New South Wales.



Contents

I missed my court date – what should I do?	3
How do I apply for an annulment?	4
When can I apply for an annulment?	5
What do I write on the form?	6
What happens after I lodge the application? ...	6
What happens until the application is heard? ...	7
What happens when I go to court?	7
Can I appeal the refusal to grant an annulment?	10
What happens if I miss court again?	11
What if I was on bail when I missed court?	12
Can I get legal aid for an annulment application?	13
Getting help	14

I missed my court date – what should I do?

Sometimes something goes wrong and you miss your court date. The magistrate might make a decision about your case in your absence. If this has happened to you it is important that you find out what happened at court as soon as possible. The first thing to do is to phone Court Services on **1300 679 272** and ask the court staff what happened at court.

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 any 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. See page 12: *What if I was on bail when I missed court?*

If you have a court date and you realise that you cannot 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 email it to the court. Find

the email address of the Local Court where your case is listed on their website:

<https://localcourt.nsw.gov.au/>



How do I apply for an annulment?

You can apply for an annulment by lodging an annulment application form with the Local Court. You can lodge the application at any Local Court either in person or by post. It is not possible to email an application for annulment. 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.

You can get the 'Annulment Application' form:

- online on the Local Court website: <https://localcourt.nsw.gov.au/>
- in person at your Local Court registry. Tell the registry staff what has happened and what you want to do. The staff will be able to assist you with completing the form.
- You must pay a fee for lodging the application. If you are a low-income earner or are on a Centrelink benefit you can ask the registrar to waive or postpone this fee. It is a good idea to take proof of your financial situation with you to court if you want to do this.

When can I apply for an annulment?

You should 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. You also cannot lodge an application for annulment if you have entered a plea by lodging a notice in writing (Written Notice of Plea). 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.

Written Notice of Plea

It is a good idea to get legal advice before lodging a written notice of plea. There are many consequences of entering a plea by written notice. You should speak to a lawyer to find out what these are. One consequence of lodging a written notice of plea is that you cannot later lodge an application for an annulment of the conviction or sentence you are given after you have sent in a written notice of plea.

What do I write on the form?

You must write your personal details: name, address and details of the case you had at court including the last court date. You also need to explain why you did not attend court. Include any documentary evidence with the form and make sure you keep a copy for yourself. See: *What do I have to prove.*

What happens after I 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 annulment has been heard. This will not happen in relation to an AVO made against you unless you make an application to have the AVO suspended. You should check with the registrar of the Local Court to confirm 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 for annulment 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 [*A guide to bail.*](#)

What happens when I 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. 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 have to stay outside the court room until it is their turn to give evidence. The other people involved in your case, for instance the prosecutor, can also cross-examine these witnesses on their evidence.



What do I 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
- having regard to the circumstances of your case, it in the interests of justice for 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 I am 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 go ahead 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 tell the magistrate 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 (delayed) to another day for witnesses to attend court to give evidence or for other reasons.

What happens if I am unsuccessful?

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

Can I 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 refusal 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 refusal decision in the Local Court. You cannot ask the District Court to annul 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.

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 your case before going to court. There are also other publications available from Legal Aid NSW which will give you more information about court.

Visit www.legalaid.nsw.gov.au/publications

What happens if I am 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 I miss court again?

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

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 the second time round.

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 again.

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 I was on bail when I missed court?

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

You should telephone the court and ask what happened.

Phone Court Services on **1300 679 272**.

If you were on bail to attend court and did not attend, 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 is 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.

Can I get legal aid for an annulment application?

You can get 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.

Getting help

LawAccess NSW

For free legal information and referrals call LawAccess NSW on **1300 888 529**.

Legal Aid NSW

To find your nearest Legal Aid NSW office visit: www.legalaid.nsw.gov.au/contact-us

Local Courts in NSW

To find your nearest Local Court visit www.localcourt.nsw.gov.au/local-court/cl-2.html

Private lawyers

The Law Society of NSW can refer you to private lawyers in your area. Call the Law Society Solicitor Referral Service on **(02) 9926 0300** or visit www.lawsociety.com.au.

The Law Society of NSW Pro Bono Scheme is a service to connect people with private lawyers who are willing to help for free or at reduced rates. Visit www.lawsociety.com.au/for-the-public/pro-bono-scheme or call **(02) 9926 0364**.

Community Legal Centres

Community Legal Centres provide free legal services, including telephone advice. To find a centre near you, call LawAccess NSW on **1300 888 529** or visit www.clcnsw.org.au.

Aboriginal or Torres Strait Islander services

Aboriginal Legal Services (ALS): call ALS on **1800 765 787** or visit www.alsnswact.org.au.

Wirringa Baiya Aboriginal Women's Legal Centre: **1800 686 587** (free call)

First Nations Women's Legal Contact Line: **1800 639 784** (free call)

Aboriginal client service specialists are located at a number of local courts to provide assistance and information. Contact your Local Court to find the location of an Aboriginal specialist near you.

Justice Advocacy Service

The Justice Advocacy Service (JAS) supports young people and adults with cognitive impairment in contact with the NSW criminal justice system, including as victims, witnesses and suspects/defendants to exercise their rights and fully participate in the process. JAS can arrange for one of its trained volunteers to support people with cognitive impairment when appearing at Court. Contact the JAS on **(02) 9265 6350** or visit <https://idrs.org.au/jas>



This brochure is a general guide to the law. You should not rely on it as legal advice, and we recommend that you talk to a lawyer about your situation.

The information is correct at the time of printing, however it may change. For more information contact LawAccess NSW on **1300 888 529**.

The brochure is also available in Arabic, Chinese (Sim) and Vietnamese.



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Order brochures online at:

www.legalaid.nsw.gov.au/publications

Find us on social media:



Do you need help to contact us?



If you need an interpreter, call the Translating and Interpreting Service (TIS National) on **131 450** (9am – 5pm) and ask for LawAccess NSW.

Do you find it hard to hear or speak?



If you find it hard to hear or speak, call us through the National Relay Service (NRS) on **133 677** and ask for LawAccess NSW or visit:

www.relayservice.gov.au