



Minister of Justice

INITIAL BRIEFING ON THE ROYAL PREROGATIVE OF MERCY

Date:	28 January 2008	File Number:	CON 34-22
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Action Sought

Timeframe

Note: the content of this briefing;

Outside of scope

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Contacts for telephone discussion (if required)

Name	Position	Telephone	1 st Contact
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	Office of Legal Counsel	n/a	

s9(2)(a) privacy of natural persons

Minister's office to complete

<input type="checkbox"/> Noted	<input type="checkbox"/> Approved	<input type="checkbox"/> Overtaken by events	<input type="checkbox"/> Referred to: _____
<input type="checkbox"/> Seen	<input type="checkbox"/> Withdrawn	<input type="checkbox"/> Not seen by Minister	

Minister's office comments

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INITIAL BRIEFING ON THE ROYAL PREROGATIVE OF MERCY

Purpose of Report

- 1 This paper discusses the exercise of the Royal prerogative of mercy and introduces you to the current work of the Ministry.

Background

- 2 The prerogative of mercy is a unique constitutional safeguard that provides an avenue for convicted persons to seek a remedy in cases where a miscarriage of justice may have occurred. It is usually sought after appeal rights have been exhausted. Most often an application will be based on new information which is alleged to raise doubt about the reliability of the conviction. In practice the prerogative of mercy is no longer exercised purely for merciful reasons.
- 3 In New Zealand, convention dictates that the Governor-General acts on the advice of the Minister of Justice when considering applications for the exercise of the Royal prerogative. The responsible Minister in turn seeks advice from the Ministry of Justice.

Constitutional position

- 4 The power to exercise the Royal prerogative of mercy is delegated by the Queen to the Governor-General in New Zealand under clause XI of the Letters Patent 1983. Under the prerogative powers the Governor-General may grant a number of remedies, including a full pardon (which has occurred on only two or three occasions in New Zealand's history).
- 5 Section 406 of the Crimes Act 1961, which supplements the prerogative of mercy, provides that the Governor-General may, on the application of a convicted person, either refer the conviction or sentence back to the Court of Appeal or the High Court for determination, or ask the Court of Appeal for an opinion on a particular issue.
- 6 Section 406 is important in the New Zealand setting because it provides an option between granting a full pardon and declining relief. Section 406(a) enables the Governor-General to return a meritorious case to the Courts for further consideration. When this is done the Court deals with the matter as if it were hearing an appeal. Section 406(b) enables the Governor-General to seek the Court of Appeal's opinion on any point arising in an application.

The Royal prerogative of mercy in practice

- 7 Applications are received by Government House and referred to the Minister of Justice with a request for legal advice. The Minister then refers the application to the Ministry. The Ministry reviews the information and submissions supplied in

Outside of Scope

Current work

Policy

- 16 There has been considerable public debate around whether an independent body should be established to review alleged miscarriages of justice. The Ministry has been undertaking policy work to look at the current organisational arrangements for dealing with complaints about miscarriages of justice and options for the future. In thinking about the best way to examine cases which warrant referral back to the Court for consideration, a key objective is that there is a robust, cost-effective system for investigating the minority of claims which are complex or have some real substance.
- 17 The options being examined include:
- strengthening the Ministry's own capacity;
 - making greater use of external counsel to review advice;
 - introducing a special panel to oversee the Ministry's review function; or
 - establishing an independent Criminal Cases Review Board or similar body.
- 18 An initial policy paper canvassing options for reform has been completed by the Ministry and will be sent to you for your consideration shortly.

support of the application as well as all relevant Court and Police files. Sometimes additional information will be gathered or further enquiries made. In complex cases a senior lawyer or retired judge may be appointed to help with the consideration of the application or to peer review draft advice. The Ministry then prepares a report for the Minister containing full legal analysis of the application.

- 8 The Minister of Justice provides formal advice to the Governor-General with a copy of the report from the Ministry. When the Governor-General has considered the Minister's advice, the Official Secretary to the Governor-General will inform the applicant of the outcome.
- 9 Applications can be made by a convicted person or someone on their behalf. In practice, the majority of applications received by the Governor-General involve applicants not represented by a lawyer.
- 10 The existing rate of Royal prerogative applications is relatively low. Volumes of applications have remained steady over the last decade at approximately 10-12 applications per year. On average, each application takes about 10-12 months to complete, though complex applications can take much longer. About 12% of applications since 1995 have resulted in a referral to the High Court or the Court of Appeal.

Current Ministry procedure

- 11 The Ministry continues to seek advice from a retired High Court Judge or senior member of the legal profession in complex and high profile cases. In recent years the Ministry has taken a number of steps to strengthen its procedures and overall capability. The main features of these improvements are:
 - Royal prerogative work has been consolidated in the Office of Legal Counsel, the Ministry's in-house legal team, with an expanded pool of legal advisers;
 - the development of procedural guidelines for staff has meant that applications are tracked through each stage of the process;
 - regular communication with the applicant, commencing early in the process, is established in order to keep the applicant informed regarding the progress and timing of the case; and
 - publication of information about the Royal prerogative of mercy in pamphlet form and on the Governor-General's website has enhanced public access to information about this function and is used as a introductory material for applicants.
- 12 Since the end of 2003 the Ministry has prepared quarterly status reports for the Minister of Justice and, through the Minister, Government House, on the progress of current applications.

Recommendations

- 22 It is recommended that you:
- 1 note the contents of this report;
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Michael Petherick

Michael Petherick
Acting Chief Legal Counsel
Office of Legal Counsel

APPROVED / SEEN / NOT AGREED

[Signature]
Hon Annette King
Minister of Justice

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