

Position Paper | No New Grounds

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Te Aronga | Purpose

1. This paper is intended to provide guidance for those considering applying to Te Kāhui Tātari Ture | Criminal Cases Review Commission (**Te Kāhui**). It sets out, at a high level, the general standard an applicant's grounds for review should meet in order to be accepted for review by Te Kāhui.

Te Tūanga | Position

Background

2. The primary function of Te Kāhui is to investigate and review convictions and sentences to decide whether to refer them to an appeal court.¹
3. A conviction or sentence may only be referred to an appeal court if Te Kāhui considers that it is in the interests of justice to do so.²
4. In deciding whether it is in the interests of justice to refer the case to the appeal court, the law requires Te Kāhui to give consideration to the following matters:³
 - 4.1. whether the eligible person has exercised their rights of appeal against the conviction or sentence;
 - 4.2. the extent to which the application relates to argument, evidence, information, or a question of law raised or dealt with in proceedings relating to the conviction or sentence;
 - 4.3. the prospects of the court allowing the appeal; and
 - 4.4. any other matter that Te Kāhui considers relevant.
5. This position paper effectively relates to the second and third matters: the extent to which the application relates to argument, evidence, information, or a question of law raised or dealt with in proceedings relating to the conviction or sentence; and the prospects of the court allowing the appeal.

¹ Criminal Cases Review Commission Act 2019, section 11.

² Section 17(1).

³ Section 17(2).

In general, application should raise new grounds

6. Some applicants may wish to re-state grounds already raised unsuccessfully at trial or on appeal, without raising any new grounds or providing new evidence.
7. Te Kāhui is mindful that if it referred a case back to the appeal court without presenting any new grounds or evidence, it is unlikely that the appeal would be successful. Accordingly, the general position Te Kāhui takes is that an application should raise new grounds or fresh matters of evidence that have not already been raised at trial or appeal.
8. If the application raises the same grounds or matters of evidence that have already been before the courts, then the applicant should show that there has nevertheless been a miscarriage of justice, for example by showing that the trial or appeal court did not correctly deal with the ground as a matter of law or appropriately assess the evidence.
9. Where an applicant does raise new grounds or fresh evidence in their application to Te Kāhui, Te Kāhui must then assess such material against the likelihood of any appeal being successful. Not all errors made in trial or on appeal will create a real risk that the outcome of the hearing was affected or will have caused the trial to be unfair or a nullity (the test applied on appeal). Applicants should bear this threshold in mind when preparing their application.

Assistance with preparing an application

10. Applications may be submitted by an applicant or their representative (such as a lawyer or support person).
11. If a potential applicant or their representative requires any assistance in preparing an application, or have any questions, Te Kāhui staff are available to help. The applicant and/or representative can contact Te Kāhui by:
 - calling – 0800 33 77 88 (this is a freephone call, please call Monday to Friday, 8pm-5pm)
 - emailing – info@ccrc.nz
12. While an applicant does not need a lawyer to apply to Te Kāhui, they may wish to engage a lawyer to assist them with preparing their application. Legal Aid may be available to an applicant who wishes to engage a lawyer when applying to Te Kāhui. Applicants who wish to access Legal Aid should call the Ministry of Justice on 0800 2 LEGAL AID (253 425) for assistance with making an application for Legal Aid.