

COURT OF APPEAL

Criminal applications from District Court to Court of Appeal

s118 District Court of Queensland Act 1967

What is a section 118 application?

A person convicted of an offence in the Magistrates Court who subsequently appeals to the District Court under section 222 of the *Justices Act 1886*, and that appeal is dismissed, can make an application for leave to appeal the District Court decision to the Court of Appeal under section 118 of the *District Court of Queensland Act 1967*.

A s 118 criminal application is not available against any judgment of the District Court in the exercise of its criminal jurisdiction under Part 4 of the *District Court of Queensland Act 1967*, i.e. in respect of any matter that was prosecuted on indictment.

Refer to:

- s 118 [District Court of Queensland Act 1967](#)
- s 222 [Justices Act 1886](#).

Who are the parties to a s 118 application?

The applicant is the party who is applying for leave to appeal the decision. The respondent is the other party involved in the application hearing, usually the police officer making the complaint or the Police Commissioner.

How to commence a s 118 application

The procedures for applications are set out in Chapter 15, Part 4 [Criminal Practice Rules 1999](#).

Application for leave to appeal and definition of an application period

An applicant seeking leave to appeal under s 118 must file a notice of application for leave to appeal (Form 27 approved under the *Supreme Court of Queensland Act 1991*) with the Registrar within one calendar month of the decision appealed from. The notice must be signed by the applicant or the applicant's lawyer and identify the District Court judgment against which the application is brought. It must state briefly and precisely the grounds of the application and why the Court should grant a further appeal to the Court from the District Court.

Refer to:

- s 671 [Criminal Code](#)
- Rules 84, 85, Sch 6 "appeal period", [Criminal Practice Rules 1999](#)
- [Form 27 approved under the Supreme Court of Queensland Act 1991](#).

When calculating the application period, the day of the decision is not included. This means that a calendar month is the period starting the day after the decision and ending immediately before the beginning of the corresponding day of the next month, e.g.:

If X was sentenced on 2 September 1999, the notice could be filed up to and including 2 October 1999. If the notice is filed on or after 3 October 1999 it is out of time and a notice of application for extension of time for filing the notice must be filed (see extension of time applications below).

If 2 October 1999 was not a business day, the period would finish on the next business day. (Business day means a day that is not a Saturday or a Sunday or a public holiday, special holiday or court holiday in the place where the notice of appeal is being filed.)

If it appears to the Registrar that a notice of application for leave to appeal does not show any substantial ground of appeal, the Registrar may refer it to the Court of Appeal. The Court of Appeal may dismiss the application as frivolous or vexatious without hearing argument.

Refer to:

- the attached example of Form 27 as a guide only
- [Form 27 approved under the *Supreme Court of Queensland Act 1991*](#).

Extension of time application for a s 118 application

The Court of Appeal has discretion to grant an extension of time where an application is sought to be brought out of time. An extension of time will not be granted as a matter of course. In every case, substantial reasons are required to show why an extension should be granted.

If the notice is filed outside the one month period allowed for filing an application, the applicant must also file with the Court of Appeal Registry a notice of application for extension of time within which to file a notice of application for leave to appeal under s 118 [District Court of Queensland Act 1967](#) using Form 29 approved under the *Supreme Court of Queensland Act 1991*.

The Form 29 must set out, briefly and precisely, the reason for the delay in giving notice and the grounds or basis upon which the court should extend the time. The Form 29 must be attached to a Form 27 notice of application for leave to appeal under s 118 [District Court of Queensland Act 1967](#).

- Refer to [Form 29 approved under the *Supreme Court of Queensland Act 1991*](#).

Generally, the Court of Appeal hears the extension of time application first, without an appeal record book being prepared.

For an extension of time application, unless otherwise directed by the Court (a Judge of Appeal or Registrar), the applicant's outline of argument must be lodged and served 28 days before the hearing date. The respondent's outline of argument must be lodged and served 14 days before the hearing date.

The first paragraph of the applicant's written outline of argument must include a short statement of the reason(s) for the delay and why the extension of time should be granted.

Refer to

- paragraph 35, [Practice Direction 3 of 2013](#)
- the attached example of Form 29 as a guide only
- [Form 29 approved under the *Supreme Court of Queensland Act 1991*](#).
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Appeal record book

The appeal record book is prepared by the Registry.

For an application for leave to appeal under s 118 of the [District Court of Queensland Act 1967](#) the book will generally contain:

- transcript of proceedings:
 - Magistrates Court hearing and decision
 - District Court hearing and decision
- any relevant exhibits tendered (Magistrates and District Courts). Exhibits are only included if they relate to the grounds of the Appeal
- all relevant District Court documents (i.e. affidavits, outline of arguments, order and reasons for judgment (if available))
- the notice of application for leave to appeal.

To obtain the relevant fees applicable for the preparation of the record book, refer to the [Criminal Practice \(Fees and Allowances\) Regulation 2021](#). Prices are subject to change and applicants should confirm these costs with the appeal records section. An applicant or their legal representative is responsible for payment of the fees associated with the preparation of the appeal record book. A self-represented applicant, who has not been granted legal aid, is not required to pay for the appeal record book. An invoice will be sent to the applicant's legal representative and payment should be made no later than six weeks before the hearing. This allows sufficient time for the preparation of the outline of argument as set out below.

- Refer to Rule 97, [Criminal Practice Rules 1999](#).

Rule 97 of the *Criminal Practice Rules 1999* provides that the Court or a Judge, may, by order, waive all or part of the cost of preparing and copying the criminal appeal record book, which is generally ordered where there is financial hardship for the applicant. To make such an application, the applicant must write a letter to the Deputy Registrar (Appeals) detailing why they believe all or part of the cost should be waived. A decision will then be made in relation to this application. The Court generally will not entertain an application under this section if the applicant has funded legal representation.

Written outline of argument for a s 118 application

An outline of argument is a written statement of the arguments and issues that need to be considered by the Court of Appeal. The purpose of the written outline of argument is to assist the Court to better understand each party's argument before the hearing and to ensure that each party is aware of the contentions of other parties involved.

The written outline of argument should:

- contain a concise logical statement on the relevant factual conclusions and set out why the Court of Appeal should form the factual conclusions sought.
- include precise reference to the evidence relied upon in connection with each disputed factual conclusion
- be a concise legal summary of submissions.

The outline should be no more than 10 pages. If a party intends to lodge an outline that is more than 10 pages, a written letter must accompany the outline explaining the reason for exceeding 10 pages. The Court may refuse to accept that part of a written outline which exceeds 10 pages.

The name/s of the person/s who prepared the written outline, on whose behalf it was prepared (e.g. applicant or respondent) and the date of its lodgment in the Registry must be stated at the end of the written outline.



Oral argument will ordinarily be restricted to issues raised by the outline.

Five copies of the outline of argument are required to be lodged by the due date, in addition a copy of it must be served on each other party. An outline of argument must be served before the hearing of an application for leave to appeal against sentence. In s 118 applications, the applicant's outline of argument must be filed and served by the applicant at least 28 days before the hearing date. The respondent's outline of argument must be filed and served no less than 14 days before the hearing.

If a party lodges a written outline of argument outside the designated time frame:

- the party will provide the Court of Appeal Registry with a written explanation as to why the written outline of argument is being filed after the due date
 - the written explanation may be contained either within the written outline of argument or in a separate document
 - the late written outline of argument may not be accepted for filing in the Court of Appeal Registry, without such written explanation
 - the written explanation will include details of when the legal representative (if any) was instructed in the appeal or application, and the particular reason why the material is being filed after the due date; and
 - if the written explanation is not contained within the written outline of argument, then the party will file five copies of the written explanation in the Court of Appeal Registry and an extra copy will be served on all parties.
- Refer to paragraph 19, [Practice Direction 3 of 2013](#).

List of authorities

A list of authorities is a list of the cases and legislation that each party will rely upon and refer to at the hearing. A list of authorities must be prepared by the applicant and the respondent.

The list is comprised of two parts:

- Part A – a list of all the cases and legislation upon which the party definitely intends to rely.
- Part B – contains all the other authorities to which the party will refer, but upon which they are not intending to rely.

Four copies of the list must be filed by each party in the Court of Appeal Registry no less than two clear court days before the appeal hearing. In addition, each party shall provide to the Court three copies of the authorities listed in Part A. The copies of the Part A authorities and legislative provisions may be printed double-sided but must be legible.

A party may apply to the Registrar, in writing, to waive the provision to supply copies on the basis that they will suffer financial hardship. Upon receipt of such notification, the Registrar will decide whether or not to waive the provision of such copies.

- Refer to paragraph 22, [Practice Direction 3 of 2013](#).

Listing of matters for hearing and listing notice

The Registrar lists the s 118 application for leave to appeal for hearing and will inform parties of the hearing date.

When parties are represented by solicitors, the solicitors are advised of the hearing dates and the solicitors, not the applicant, receive a copy of the appeal record book.

A self-represented applicant will personally receive a notice from the Court of Appeal Registry advising of the appeal hearing date. If the person is in custody, the prison authorities will also receive notice and



arrangements will be made with Queensland Corrective Services to have them present at the appeal hearing.

An applicant who was originally self-represented but whom then obtain legal representation, must immediately inform the Registry of the name of their lawyer and/or firm.

An applicant who is released from custody must immediately inform the Registry of their current address and telephone number. If a self-represented applicant changes address or telephone number, they must immediately inform the Registry of the change.

Application to adduce further evidence

A s 118 application is ordinarily heard on the record of evidence before the Magistrates and District Courts and the record of proceedings in the Magistrates and District Courts hearings. Any other evidence or matter not contained in the record is ordinarily treated as irrelevant and should not be submitted either in the written outline of argument or at the hearing.

- Refer to paragraphs 11 and 33, [Practice Direction 3 of 2013](#).

If an applicant seeks to present further evidence to the Court, the applicant must file an application for leave to adduce evidence in the Court of Appeal Registry (Form 38 approved under the *Supreme Court of Queensland Act 1991*). The application must be accompanied by a supporting affidavit of the witness who will be giving or producing the evidence. For evidence that is to be given by the witness, the affidavit must state what evidence the witness will give. For evidence that is to be produced by the witness, the affidavit must clearly state the nature of the evidence to be produced.

The supporting affidavit should include why the further evidence was not called upon in the primary court and why the Court should receive it now.

The application and accompanying affidavits must be filed in the Registry, and served, as soon as practicable and at least 28 days before the hearing date. The Court may grant leave to adduce further evidence, only in very special circumstances.

Refer to:

- Rule 108, [Criminal Practice Rules 1999](#)
- [Form 38](#) approved under the *Supreme Court of Queensland Act 1991*
- [Form 11](#) approved under the *Supreme Court of Queensland Act 1991*
- [Practice Direction 3 of 2013](#).

Is it possible to abandon the s 118 application?

The applicant may, at any time after filing an application, abandon the matter by giving the Registrar a Form 31 notice of abandonment.

Refer to:

- Rule 86, [Criminal Practice Rules 1999](#)
- [Practice Direction 3 of 2013](#)
- the attached example of Form 31 as a guide only
- [Form 31](#) approved under the *Supreme Court of Queensland Act 1991*.



Can the applicant attend the hearing?

An applicant who is in custody and has legal representation is not entitled to be present at the hearing unless the applicant has leave of the Court.

Refer to:

- Rule 75, [Criminal Practice Rules 1999](#)
- s 671D, [Criminal Code](#).

Applicant on bail who fails to attend

If an applicant who has been admitted to bail and is not legally represented does not attend a hearing, the Court may

- consider the application in the applicant's absence, or
 - decline to consider the application, or
 - summarily dismiss the application, or
 - make another order the Court considers appropriate, or
 - issue a warrant for the applicant's apprehension.
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- Refer to Rule 76, [Criminal Practice Rules 1999](#).

Forms

Forms are available from the Registry and the [Queensland Courts website](#).

For more information

- [Criminal case management process](#) information sheet
- [Practice Direction 3 of 2013](#)
- [Criminal Practice Rules 1999](#) (particularly Chapter 15)
- [Criminal Code](#)
- [Supreme Court of Queensland Act 1991](#)
- [Queensland Courts website](#).

Court of Appeal Registry

Business address Ground floor, QEII Courts of Law
415 George Street, Brisbane

Postal address PO Box 15167
City East QLD 4002

Telephone 1800 497 117

Document filing The Registry accepts documents for filing 8.30am–4.30pm, Monday to Friday.
Outside of these hours, apply for a late opening via Law Courts Security (07) 3738 7743. Advise Security of your direct contact details and the urgency to file documents after hours. Security will contact the rostered Deputy Registrar who will decide whether to allow or disallow the late opening. Fees apply for late openings.

Form 27 – Notice of application for leave to appeal under the *District Court of Queensland Act 1967, s 118*

Criminal Practice Rules 1999
Form 27 (Version 7)
Notice of application for leave to appeal under the *District Court of Queensland Act 1967, s118*

(rule 84)

In the Court of Appeal, Supreme Court of Queensland

The Queen against[*name of applicant*]

Child

[tick if Youth Justice Act 1992 applicable]

I,[*name of applicant*], desire to appeal to the Court of Appeal against a judgment of the District Court.

1. The details of the judgment appealed against are—

Date of judgment:

Name of Primary Court Judge:

Location of District Court:

Offence(s) of which convicted:

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.....
.....

Sentence:

.....
.....
.....

Part of judgment appealed against: [*state the operative part of the judgment appealed against*]

.....
.....
.....

2. The grounds of my application are—

[You must set out, briefly and precisely, the grounds or reasons why you say the judgment should be set aside or changed].

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.....
.....
.....



3. The orders I will seek on the appeal are that—

- (a) the appeal be allowed;
- (b) the judgment be set aside or changed;
- (c) *[insert details of other orders sought, including, for example, any order sought in relation to costs].*

.....
.....
.....

4. The reasons why the Court should grant leave for this further appeal to be brought are—

[state the reasons]

.....
.....

5. Details of the Applicant:

Address of Applicant: *[if in custody state Correctional/Detention Centre]*

.....
.....

Telephone number:

Email Address:

6. Have you engaged a lawyer to act for you in this application: Yes / No

If yes:

Name of lawyer and/or Law Firm:

Address for service:

.....

Telephone number:

Email address:

If no:

Have you applied or are you applying for Legal Aid? Yes / No

If no:

Do you intend to represent yourself? Yes / No

7. If legally represented, are you applying to be present when the court considers your application? Yes / No

(If representing yourself, ordinarily you are entitled to be present at the hearing.)

[Notice to applicant

- 1. *Unless special grounds are shown in form 38 (Application for leave to adduce evidence (rule 108)) and are made out, the application will be decided on the same material that was before the trial or sentencing judge.*
- 2. *If you change your address, or place of custody, or your legal representatives, you must notify the registrar in writing.*



3. *If this notice is not filed with the Registrar or given to the General Manager of the prison or person in charge of any other place in which the person is held in custody within 1 calendar month after the judgment appealed against, you must also complete form 29 (Notice of application for extension of time within which to file Notice of application for leave to appeal under the District Court of Queensland Act 1967, s 118) and attach it to this notice (rule 85)]*

[Signed] Applicant or Lawyer

Date:

Place:

Notice of application for leave to appeal under the District Court of Queensland Act 1967, s118

Filed on behalf of: *[state name of party]*

Address for service:

Telephone:

Fax / Email:



**Form 29 – Notice of application for extension of time within which to file
Notice of application for leave to appeal under the *District Court of
Queensland Act 1967, s 118***

Criminal Practice Rules 1999

Form 29 (Version 5)

**Notice of application for extension of time within which to file Notice of application for leave to appeal
under the *District Court of Queensland Act 1967, s 118***

(rule 85)

In the Court of Appeal, Supreme Court of Queensland

The Queen against[*name of applicant*]

Child

[tick if Youth Justice Act 1992 applicable]

I,[*name of applicant*], apply to the
Court of Appeal for an extension of the time within which I may give notice of application for leave to
appeal.

1. The details of the judgment appealed against are—

Date of judgment:.....

Name of Primary Court Judge:

Location of District Court:.....

Offence(s) of which convicted: [*state offence e.g. by using the word in the forms in schedule 3 of the
Criminal Practice Rules 1999*]

.....
.....
.....

Sentence:.....

.....
.....
.....

Part of judgment appealed against: [*state the operative part of the judgment appealed against*]

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2. The grounds of my application are—

[You must set out, briefly and precisely, the reason for the delay in giving the notice, and the grounds on which you say the court should extend the time]

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3. Details of the Applicant:

Address of Applicant: *[if in custody state Correctional/Detention Centre]*

.....
.....

Telephone number:

Email Address:

4. Have you engaged a lawyer to act for you this application: Yes / No

If yes:

Name of lawyer and/or Law Firm:.....

Address for service:

.....

Telephone number:

Email address:

If no:

Have you applied or are you applying for Legal Aid? Yes / No

If no:

Do you intend to represent yourself? Yes / No

5. If legally represented, are you applying to be present when the court considers your application?

Yes / No

(If representing yourself, ordinarily you are entitled to be present at the hearing.)

[Notice to applicant

- 1. If you change your address, or place of custody, or your legal representatives, you must notify the registrar in writing.*
- 2. This notice must be attached to form 27 (Notice of application for leave to appeal under the District Court of Queensland Act 1967, s 118) (rule 85).]*



[Signed]Applicant or lawyer

Date:.....

Place:.....

Notice of application for extension of time within which to file notice of application for leave to appeal under the District Court of Queensland Act 1967, s 118

Filed on behalf of: *[state name of party]*

Address for service:.....

Telephone:.....

Fax / Email:.....



Form 31 – Notice of abandonment of application

Criminal Practice Rules 1999 (rule 86)

CA /

Form 31, Version 2 — Notice of abandonment of application

In the Court of Appeal, Supreme Court of Queensland

The Queen against[*name of applicant*]

I,[*name of applicant*], abandon my application.

1. The details of my application are—

Date notice of application filed:

Court of Appeal number: CA

2. The details of the judgment appealed against are—

Date of judgment:

Offence(s) of which convicted: [*state offence e.g. by using the schedule form*]

Part of judgment appealed against: [*state the operative part of the judgment appealed against*]

.....

.....

Address: [*if in custody, name the prison or detention centre*]

.....

Lawyer:

[*Notice to applicant*]

Your application is taken to be refused by the court when this notice is given to the registrar (rule 86).]

[*Signed*]:Applicant

Date:

Place:

[*At the lower left corner of the first page:*]

Notice of abandonment of application

Filed on behalf of: [*state name of party*]

Address for service:

Telephone:

Fax / Email:

Form 31, Version 2, approved 10 September 2018

Criminal Practice Rules r86

Form 31 (Version 2), approved 10 September 2018
(Rule 86)

This is Page 1 of 1 – Form 31

