

Criminal applications from the District Court to the Court of Appeal

District Court of Queensland Act - s118

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*.

Section 118 criminal applications are **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.

* See s 118 *District Court of Queensland Act 1967*; s 222 *Justices Act 1886*

Who are the parties to a section 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 Commissioner of Police.

How to commence a section 118 application

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

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.

- See [s 671 Criminal Code 1899 \(Old\)](#);
- [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.

For example:

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.

A precedent of a Form 27 is attached; this is to be used as a guide only.

Extension of Time Application for a section 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 \(Form 29 approved under the Supreme Court of Queensland Act 1991\)](#).

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](#)).

*See [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 twenty-eight days prior to the hearing date. The respondent's outline of argument must be lodged and served fourteen days prior to 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.

* See paragraph 35 of the [Court of Appeal Practice Direction 3 of 2013](#)

A precedent of a Form 29 is attached; this is to be used as a guide only.

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 appeal record book will generally contain:

- Transcript of Proceedings:
 - Magistrates Court Hearing and Decision;
 - District Court Hearing and Decision.
- any relevant exhibits tendered (Magistrates and District Court). 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, see the [Criminal Practice \(Fees\) Regulation 2000](#). Prices are subject to change and litigants should confirm these costs with the Appeal Records Section.

An appellant/applicant or their legal representative is responsible for payment of the fees associated with the preparation of the Appeal Record Book. A self-represented litigant, 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 prior to the hearing. This allows sufficient time for the preparation of the outline of argument (see outline of arguments below).

* See [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, due to the financial hardship of 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 section 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 a better understanding of 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.
- should include precise reference to the evidence relied upon in connection with each disputed factual conclusion.
- should 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 lodgement 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 prior to 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 twenty-eight days prior to the hearing date. The respondent's outline of argument must be filed and served no less than fourteen days prior to the hearing.

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

- (a) 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;
- (b) the written explanation may be contained either within the written outline of argument or in a separate document;
- (c) the late written outline of argument may not be accepted for filing in the Court of Appeal Registry, without such written explanation;
- (d) 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

- (e) 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.

* See paragraph 19 of [Court of Appeal 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 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 prior to 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.

* See paragraph 22 of the [Court of Appeal Practice Direction 3 of 2013](#)

Listing of Matters for Hearing and Listing Notice

The registrar of the Court of Appeal 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 litigant 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 the Queensland Corrective Services Commission to have him/her present at the appeal hearing.

Applicants who were originally self-represented but whom then obtain legal representation, must immediately inform the Court of Appeal Registry of the name of their lawyer and/or firm.

Applicants who are 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 the applicant must immediately inform the registry of the change.

* See [Rule 93 Criminal Practice Rules 1999](#)

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.

* See paragraphs 11 and 33 of the [Court of Appeal 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 whom 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 application and accompanying affidavits must be filed in the registry well before the hearing date and a copy must be served on the other parties. The court may grant leave to adduce further evidence only in very special circumstances.

* See [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](#); [Court of Appeal Practice Direction 3 of 2013](#).

Is it possible to abandon the section 118 application?

The applicant, at any time after filing the s 118 application may abandon the application by giving to the registrar a notice of abandonment of application ([Form 31 approved under the Supreme Court of Queensland Act 1991](#)).

For further information see [Rule 86 Criminal Practice Rules 1999](#), [Form 31 approved under the Supreme Court of Queensland Act 1991](#).

Can the applicant attend the hearing?

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

* See [Rule 75 Criminal Practice Rules 1999](#), and [s 671 Criminal Code 1899](#)

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 do the following:

- consider the application for leave to appeal in the applicant's absence; or
- decline to consider it; or
- summarily dismiss it; or
- make another order the court considers appropriate; and/or
- issue a warrant for the applicant's apprehension.

* See [Rule 76 Criminal Practice Rules 1999](#).

Where is the Court of Appeal Registry?

The registry is located on the ground floor of the Queen Elizabeth II Courts of Law, 415 George Street, Brisbane. General enquiries can be made by telephoning 07 3247 4713

The registry will accept the filing of documents between 8:30am and 4:30pm, Monday to Friday.

Location of Precedent Forms

Precedent forms for an application can be obtained from the registry or alternatively the Queensland Courts website <http://www.courts.qld.gov.au/>. The Forms are approved under the Supreme Court of Queensland Act 1991 and can be found on the website under the Forms section of the [*Criminal Practice Rules 1999*](#).

Other places to find information concerning section 118 applications

- Court of Appeal [Practice Direction 3 of 2013](#);
- [Criminal Practice Rules 1999 \(Old\)](#);
- [Criminal Code 1899 \(Old\)](#);
- Queensland Courts website <http://www.courts.qld.gov.au>;
- Court of Appeal Registry
Telephone: 07 3247 4313
Postal Address: PO Box 15167
City East QLD 4002
- Court of Appeal Information Sheets are available from the Court of Appeal registry and the Queensland [Courts website](#), including "Information for self-represented persons about hearings of the Court of Appeal".

Form 27
NOTICE OF APPLICATION FOR LEAVE TO APPEAL UNDER THE DISTRICT COURT ACT 1967, s
118

(rule 84)

In the Court of Appeal, Supreme Court of Queensland

The Queen against *[name of applicant]*

Juvenile

[tick if Juvenile 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: *[state offence e.g. by using the words in the form in schedule 3 of the Criminal Practice Rules 1999]*

Sentence: *[state full details of sentence including type and length]*

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:

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].

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]

Do you wish to be present when the court considers your appeal or application? Yes/No

[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 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 Act 1967, s118

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

Address for service:

Telephone:

Fax:

**Form 27
(rule 84)**

Form 29

NOTICE OF APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO FILE NOTICE OF APPLICATION FOR LEAVE TO APPEAL UNDER THE DISTRICT COURT ACT 1967, s 118

(rule 85)

In the Court of Appeal, Supreme Court of Queensland

The Queen against *[name of applicant]*

Juvenile

[tick if Juvenile 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: *[state full details of sentence including type and length]*

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:

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]

[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 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 Act 1967, s 118

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

Address for service:

Telephone:

Fax:

Form 29 (rule 85)

Form 31
NOTICE OF ABANDONMENT OF APPLICATION

(rule 86)

In the Court of Appeal, Supreme Court of Queensland

The Queen against [name of appellant or applicant]

I, [name of appellant or applicant], abandon my application.

1. The details of my application are –

Date notice of application filed:

Court of Appeal number: *[insert the number given to the notice by the registrar]*

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] Appellant

Date:

Place:

Notice of abandonment of application

Filed on behalf of: [state name of party]

Address for service:

Telephone:

Fax:

Form 31

(rule 86)

Form 38
APPLICATION FOR LEAVE TO ADDUCE EVIDENCE

(rule 108)

In the Court of Appeal, Supreme Court of Queensland

The Queen against *[name of applicant]*

I, *[name of applicant]*, having applied for leave to appeal to the Court of Appeal, apply to the court –

- (a) for leave to call the following witnesses;
- (b) for an order that the following witnesses attend court and be examined on my behalf;
- (c) for an order for the production of a document, exhibit or other thing.

[Cross out paragraphs that do not apply]

Details of the evidence –

[The names of the witnesses or the nature of the evidence to adduced must be listed here]

Name and address of witness:

Was the witness called at your trial: Yes/No

If the witness was not called at your trial, why wasn't the witness called?

Nature of the evidence to be adduced: *[if you are not applying for leave to call a witness, describe what other evidence you want to adduce]*

[Notice to applicant]

1. *You must attach to this application an affidavit of the witness or witnesses giving or producing the evidence.*
2. *The affidavit must state the following –*
 - (a) for evidence that is to be given by the witness – what the evidence is;*
 - (b) for evidence that is to be produced by the witness – the nature of the evidence.]*

[Signed] Applicant

Date:

Place:

Application for leave to adduce evidence

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

Address for service:

Telephone:

Fax:

Form 38

(rule 108)

Please note: This publication was produced prior to the current government.