

## Appeals against criminal convictions

### What is an appeal against conviction?

**Note:** This Information Sheet does not apply to criminal applications under s 118 of the *District Court of Queensland Act 1967*. Please see the separate information sheet for s 118 criminal applications.

An appeal against conviction is available in cases where the accused person has pleaded not guilty, has had a trial in either the Supreme or District Court and has been found guilty by a jury or a judge sitting alone. An accused person ordinarily can only make one appeal against conviction.

Only where a miscarriage of justice can be demonstrated can an accused person appeal against conviction after they have pleaded guilty.

An appeal against conviction may involve a complaint regarding the way in which a trial was conducted; for example, the failure of the trial judge to give an appropriate warning or direction to the jury, or if a judge allows into evidence inadmissible material. The most common grounds of appeal against conviction from the District or Supreme Courts to the Court of Appeal are:

- the verdict is unreasonable or cannot be supported having regard to the whole of the evidence (this is sometimes referred to as an “unsafe and unsatisfactory” verdict);
- there is an error of law or mixed law and fact, specifying the grounds relied upon; and/or
- that there has been a miscarriage of justice, specifying the grounds relied upon.

The Court of Appeal looks at the grounds of appeal and has the power to make numerous orders and directions, the most common being:

- dismissing the appeal against conviction if the court considers that no substantial miscarriage of justice has actually occurred ([s 668E\(1A\) Criminal Code](#));
- remitting the matter back to the originating court for retrial;
- quashing the conviction and directing a verdict of acquittal ([s 668E\(2\) Criminal Code](#));
- directing that there be no retrial without directing a verdict of acquittal;
- substituting a verdict of guilty of a different offence where the jury must have found an accused guilty of that other offence ([s 668F\(2\) Criminal Code](#));
- in exceptional circumstances, enter a finding of insanity, setting aside the sentence and ordering the defendant’s detention in strict custody. ([s 668F\(3\), \(4\) Criminal Code](#)).

### Who are the parties to an appeal?

The appellant is a party who is appealing the original decision. Appellants are the persons aggrieved by the decision in the originating court. The respondent is the other party involved in the appeal hearing and is usually the Director of Public Prosecutions Office, Queensland or Commonwealth.

## How to commence an appeal

### *Notice of Appeal and definition of an appeal period*

The appellant must file a notice of appeal ([Form 26 approved under the Supreme Court of Queensland Act 1991](#)) in the Court of Appeal Registry within the appeal period; that is within one calendar month from the date of the conviction, whether or not the sentence has been passed by the trial judge.

When calculating the appeal period, the day of conviction is not included. This means a calendar month is the period starting the day after conviction and ending immediately before the beginning of the corresponding day of the next month.

For example:

If X was sentenced on 2 September 2012, the notice could be filed up to and including 2 October 2012. If the notice is filed on or after 3 October 2012 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 2012 was not a business day, the period would finish on the next business day. A 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 the notice of appeal is being filed.

The notice of appeal must contain the grounds of appeal, or the notice will not be accepted for filing in the registry. There are no filing fees involved.

\* See [Rule 66 Criminal Practice Rules 1999](#); [Court of Appeal Practice Direction 3 of 2013](#); [s 671 Criminal Code](#).

## Extension of time application

The Court of Appeal has discretion to grant an extension of time where an appeal is brought outside the appeal period. 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.

The Notice of Appeal must be filed within the appeal period. If the notice is filed outside that period, the appellant must file with the Court of Appeal Registry a Notice of Application for Extension of Time for filing the notice ([Form 28 approved under the Supreme Court of Queensland Act 1991](#)). The Form 28 must set out, briefly and precisely, the reason for the delay in giving the notice and the grounds or basis upon which the court should extend the time. The Form 28 must be attached to a Form 26 (notice of appeal).

- See [Rule 66\(3\) Criminal Practice Rules 1999](#).

Generally, the Court of Appeal hears the extension of time applications 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 28 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 appeal against conviction, the following material is included in the appeal record book:

- Transcript of Proceeding
  - Plea
  - Evidence taken at trial (Opening and Closing addresses are **not** included unless relevant to the grounds of the appeal)
  - Trial Judge's summing up
  - Verdict
  - Sentence Remarks
- Indictment
- Verdict and Judgment Record
- Other relevant documentary exhibits
- Notice of appeal against conviction
- See [Rule 97\(2\) Criminal Practice Rules 1999](#).

If a party requires additional material to be included, in the Appeal Record Book, the party may apply in writing to the Deputy Registrar (Appeals) within 14 days of the commencement of the appeal. The written application must contain specific details of the further material requested to be included in the book and the reasons for the inclusion of such material. Permission to include further material in the Appeal Record Book may be granted in extraordinary cases.

- See the [Court of Appeal Practice Direction 3 of 2013](#).

To obtain the relevant fees applicable for the preparation of the record book, see the [Criminal Practice \(Fees\) Regulation 2010](#). 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 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 appellant'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 \(4\) to \(7\) 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 appellant. To make such an application, the appellant 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 appellant has funded legal representation.

### Written Outline of Argument for Conviction Appeals

A written outline of argument is a written statement of the arguments and issues in the proceeding which 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:

- (a) should identify any errors the trial judge is said to have made, and set out the corresponding appeal record book references;
- (b) should be clear and concise;
- (c) when it includes any statement about the facts, give reference to the relevant page of the record of the evidence at trial;
- (d) should generally only refer to evidence actually given before the court at trial (not committal); and
- (e) where it is alleged the jury verdicts are inconsistent, unreasonable or not supported by the evidence; the outline should set out the submissions/particulars made by the

prosecution during the trial, together with a summary of all relevant evidence, with appeal record book references noted.

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 with 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 (eg appellant or respondent) and the date of its lodgement in the registry must be stated at the end of the written outline.

The appellant's written outline of argument must be filed by the appellant no less than twenty-eight days prior to the hearing. The respondent must file a written outline of argument no less than fourteen days prior to the hearing.

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 the relevant Director of Public Prosecution

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 else 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 the 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 appellant 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 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 Hearing and Listing Notice*

The registrar of the Court of Appeal lists the 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 appellant, 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.

Appellant's 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.

Appellants who are released from custody must immediately inform the registry of their current address and telephone number. If a self-represented appellant changes address or telephone number the appellant must immediately inform the registry of the change.

- For further information see [Rule 93 Criminal Practice Rules 1999](#).

#### Application to adduce further evidence

An appeal is ordinarily heard on the record of the evidence at the trial hearing; any other evidence or matter not contained in the record is ordinarily treated as irrelevant and can not be placed before the Court of Appeal either in the written outline of argument or at the appeal hearing.

- See [paragraphs 11 and 33 of the Court of Appeal Practice Direction 3 of 2013](#).

If an appellant seeks to present further evidence to the court, the appellant 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 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 twenty-eight days before the hearing date. The court may grant leave to adduce further evidence, only in very special circumstances.

- See [Rule 108 Criminal Practice Rules 1999; Court of Appeal Practice Direction 3 of 2013](#).

#### Is it possible to abandon the appeal?

The appellant may, at any time after filing an application or appeal, abandon the matter by filing with the Registrar a notice of abandonment ([Form 30 approved under the Supreme Court of Queensland Act 1991](#)) T

A precedent of a Form 30 is attached, please use this as a guide only.

- See [Rule 70 Criminal Practice Rules 1999; Court of Appeal Practice Direction 3 of 2013](#).

#### Can the appellant attend the appeal hearing?

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

- \* See [Rule 75 Criminal Practice Rules 1999](#) and [s 671 Criminal Code](#).

## Appellant on bail who fails to attend the appeal hearing

If a self represented appellant who has been admitted to bail and does not attend the appeal hearing, the court may:

- consider the appeal in the appellant's absence;
- decline to consider the appeal;
- summarily dismiss the appeal;
- make another order the court considers appropriate;
- issue a warrant for the appellant's apprehension.
- For further information 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 4313.

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 appeals against conviction:

- \* [Court of Appeal Practice Direction 3 of 2013](#);
- \* [Criminal Practice Rules 1999](#) (particularly Chapter 15);
- \* [Criminal Code \(Old\)](#);
- \* 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 (available from the Court of Appeal Registry and on the [Queensland Courts website](#): [www.courts.qld.gov.au](http://www.courts.qld.gov.au)).

**Form 26**

**NOTICE OF APPEAL OR APPLICATION FOR LEAVE TO APPEAL AGAINST  
CONVICTION OR SENTENCE (FOR APPEALS OTHER THAN UNDER THE  
DISTRICT COURT ACT 1967, S 118)**

(rules 65 and 66)

In the Court of Appeal, Supreme Court of Queensland

The Queen against *[name of appellant or applicant]*

**YOU MUST TICK ONE OF EACH OF THE FOLLOWING:**

**A.**  I was dealt with as an Adult in the **primary court.**

**OR**

I was dealt with as a Juvenile in the primary court.  
*[tick if Juvenile Justice Act 1992 applicable]*

**B.**  I was found Guilty after a trial in the primary court.  
*[tick if not guilty plea entered in primary court]*

**OR**

I pleaded Guilty in the primary court.  
*[tick if guilty plea entered in primary court]*

I, *[name of appellant or applicant]*, desire to appeal to the Court of Appeal against-

\**(a) my conviction [if you wish to appeal against your conviction];*

\**(b) my sentence [if you wish to appeal against your sentence]; or*

\**(c) my conviction and my sentence [if you wish to appeal against your conviction and your sentence].*

*\*[cross out the paragraphs that do not apply].*

**1. The details of my conviction are-**  
Court *[name the court appealed from]*

Judge:

Date convicted:

Date sentence passed:

Offence(s) of which convicted: *[state offence eg by using the words in the form in schedule 3 of the Criminal Practice Rules 1999]*

Sentence:

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

Lawyer:

**The grounds of my appeal (or application) are-**

*[You must set out, briefly and precisely, the grounds or reasons why you say your conviction should be quashed or your sentence reduced]*

Do you wish to be present when the court considers our appeal or application?

Yes/No

**[Notice to applicant/appellant]**

1. *Unless special grounds are shown in form 38 (Application for leave to adduce evidence (rule 108) and are made out the application or appeal 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 28 (notice of application for extension of time within which to appeal) and attach it to this notice (rule 65 and 66)].*

*[Signed]*

Appellant, applicant or lawyer

Date:

Place:

**Notice of appeal or application for leave to appeal against conviction or sentence**

**(for appeals other than under the District Court Act 1967, s 118)**

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

Address for service:

Telephone:

Fax:

**Form 26**

**(rules 65 and 66)**



## Form 28

### NOTICE OF APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO APPEAL

(rules 65(3))

In the Court of Appeal, Supreme Court of Queensland

The Queen against *[name of applicant]*

**YOU MUST TICK ONE OF EACH OF THE FOLLOWING:**

A.  I was dealt with as an Adult in the primary court.

**OR**

I was dealt with as a Juvenile in the primary court.  
*[tick if Juvenile Justice Act 1992 applicable]*

B.  I was found Guilty after a trial in the primary court.  
*[tick if not guilty plea entered in primary court]*

**OR**

I pleaded Guilty in the primary court.  
*[tick if guilty plea entered in primary court]*

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

1. **The details of my conviction are-**  
Court *[name the court appealed from]*

Judge:

Date convicted:

Date sentence passed:

Offence(s) of which convicted: *[state offence eg by using the words in the form in schedule 3 of the Criminal Practice Rules 1999]*

Sentence:

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/appellant**

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 26 (Notice of appeal or application for leave to appeal against conviction or sentence (rules 65 and 66))*

*[Signed]* Appellant or lawyer

Date:

Place:

### **Notice of application for extension of time within which to appeal**

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

Address for service:

Telephone:

Fax:

## **Form 28**

**(rules 65(3))**

**Form 30**

**NOTICE OF ABANDONMENT OF APPEAL OR APPLICATION**

(rule 69 and 70)

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 appeal (or application).

**1. The details of my appeal (or application) are –**

Date notice of appeal (or application) filed:

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

**2 The details of my conviction are –**

Court: [name the court appealed from]

Judge:

Date when convicted:

Date when sentence passed:

Offence(s) of which convicted: [state offence eg by using the schedule form]

Sentence:

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

Lawyer:

***[Notice to appellant/applicant***

*Your appeal or application is taken to be refused or dismissed by the court when this notice is given to the registrar (rules 69 and 70)*

*[Signed]* Appellant or applicant

Date:

Place:

**Notice of abandonment of appeal or application**

Filed on behalf of: [state name of party]

Address for service:

Telephone:

Fax:

**Form 30**

**(rules 69 and 70)**

**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.**