

COURT OF APPEAL

Applications for leave to appeal against sentence

What is an application for leave to appeal against sentence?

Note: This Information sheet does not apply to criminal applications under s118 of the *District Court of Queensland Act 1967*. Refer to the separate [information sheet for s118 criminal applications](#).

Unless the sentence is fixed by law (i.e. sentence that is mandatory), a person convicted by the Supreme Court or District Court may appeal by leave of the Court against their sentence.

- Refer to s 668D(1)(c) [Criminal Code](#).

An application for leave to appeal against sentence is generally made when the person sentenced has good grounds for thinking that their sentence is too severe or wrong in law, and wants it reduced, or replaced with a different sentence altogether (e.g. a community service order instead of imprisonment).

The most common ground is that the sentence is manifestly excessive (i.e. that the sentence is so far outside the range of appropriate sentences that it can be said that the Judge made a mistake in sentencing). Other possible grounds may include that the Judge has:

- acted on a wrong principle of law (e.g. by applying a principle of law incorrectly, or by applying a principle not applicable to the matter at hand)
- mistaken the facts
- failed to take into account some relevant consideration, or taken into account extraneous or irrelevant matters, (e.g. by overlooking, undervaluing, overestimating or misunderstanding some feature or the evidence, ignoring a matter which he/she ought to have considered, or taking into account a matter which he/she ought to have ignored).

The Court will consider the grounds of appeal and may compare the sentence with other sentences imposed in similar cases. If the Court is of the opinion that some other sentence, whether more or less severe, is warranted in law, it may allow the appeal. If the court allows the appeal, it must vary or set aside the original sentence and pass such other sentence as is appropriate.

- Refer to s 668E [Criminal Code](#).

Who are the parties?

The person who applies for leave to appeal against sentence is the applicant. The applicant is the person aggrieved by the sentence imposed in the primary court. The respondent is the other party involved in the hearing and will be the prosecution except in Attorney-General appeals.

Attorney-General appeals

The Attorney-General may appeal as of right (that is, leave to appeal is not necessary) to the Court of Appeal against a sentence if the Attorney-General claims the sentence is too lenient.

The Attorney-General is represented by the Director of Public Prosecutions (Queensland or Commonwealth). In Attorney-General appeals, the Attorney-General is the applicant and the person sentenced is the respondent.

A respondent may defend the appeal, for example by showing that the sentence was appropriate in the circumstances or by referring to other comparable sentences.

Refer to:

- s 669A [Criminal Code](#)
- the attached example of a Form 35 as a guide only
- [Form 35 approved under the Supreme Court of Queensland Act 1991](#).

How to commence an application

The procedures for appeals are set out in Chapter 15 of the [Criminal Practice Rules 1999](#).

Any person convicted who wishes to apply for leave to appeal against their sentence must file a Form 26 notice of application for leave to appeal against sentence in the prescribed manner within one calendar month of the date of sentence.

Refer to:

- s 671 [Criminal Code](#)
- Chapter 15, [Criminal Practice Rules 1999](#)
- Rule 92 (b), [Criminal Practice Rules 1999](#)
- the attached example of a Form 26 as a guide only
- [Form 26 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 sentence 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.)

The Form 26 must be signed by the applicant or the applicant's lawyer and must state briefly and precisely the grounds of the application for leave to appeal. If the notice of appeal does not contain the grounds of appeal, it will not be accepted for filing in the registry. There are no filing fees involved.

If the Form 26 is not filed within time, the applicant must also file a notice of application for extension of time for filing the notice of appeal. Refer to extension of time section below.

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 26 is attached; this is to be used as a guide only



Extension of time application

The Court of Appeal has discretion to grant an extension of time where an application is brought outside the appeal period. An extension of time will not be granted as a matter of course and substantial reasons must be shown before an extension will be granted.

If the notice is filed outside the appeal period, the applicant must file with the Court of Appeal Registry a Form 28 notice of application for extension of time. The Form 28 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 for filing. The Form 28 must be attached to a Form 26 notice of appeal or application for leave to appeal against conviction or sentence.

Refer to:

- Rules 65(3) and 66(3), [Criminal Practice Rules 1999](#)
- the attached example of a Form 28 as a guide only
- [Form 28 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. An extension of time application may not be granted if the Court considers that the appeal would obviously fail, so the question as to whether the sentence appears to be excessive is likely to be discussed when the extension application is heard.

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 prior to the hearing date. The respondent's outline of argument must be lodged and served 14 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.

Refer to:

- paragraph 35, [Practice Direction 3 of 2013](#)
- the attached example of a Form 28 as a guide only
- [Form 28 approved under the Supreme Court of Queensland Act 1991](#).

Appeal record book

The appeal record book is prepared by the Registry.

For an application for leave to appeal against sentence the record book will contain:

- transcript of proceedings:
 - plea
 - verdict (only when the accused person is convicted after trial)
 - antecedent and criminal history of accused person
 - sentencing submissions
 - sentence remarks
- notice of application for leave to appeal against sentence
- other relevant documentary exhibits.

If a party requires additional material to be included, in the 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.



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

To obtain the relevant fees applicable for the preparation of the record book, refer to the *Criminal Practice (Fees) Regulation 2000*. 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

An outline of argument is a written statement of the argument 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 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 applicant or respondent) and the date of its lodgment in the Registry must be stated at the end of the written outline.

The applicant's written outline of argument must be filed by the applicant no less than 28 days before the hearing. The respondent must file a written outline of argument no less than 14 days before 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:

- 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 else 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 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 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 who 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

An application 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 cannot be placed before the Court of Appeal either in the written outline of argument or at the appeal 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 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 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](#)
- [Practice Direction 3 of 2013](#).

Is it possible to abandon the appeal?

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

Refer to:

- Rule 70, [Criminal Practice Rules 1999](#)
- [Practice Direction 3 of 2013](#)
- the attached example of a 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 of Appeal.

Refer to:

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

Applicant on bail who fails to attend the appeal hearing

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

- consider the appeal in the applicant's absence, or
- decline to consider the appeal, or
- summarily dismiss the appeal, or
- make another order the court considers appropriate, or
- issue a warrant for the applicant's apprehension.

- 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.

March 2023



Form 26 – Notice of appeal

Criminal Practice Rules 1999

Form 26 (Version 8)

Notice of Appeal or application for leave to appeal against conviction or sentence (for appeals other than under the *District Court of Queensland Act 1967, s118*)

(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 Child in the primary court.

[*tick if Youth 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:

The grounds of my appeal/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]

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

2. Details of the Appellant/Applicant:

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

.....
.....

Telephone number:

Email Address:

3. Have you engaged a lawyer to act for you this appeal/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

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

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



[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 of Queensland Act 1967, s 118)**

Filed on behalf of: [state name of party]

Address for service:

Telephone:

Fax / Email:



Form 28 – Notice of application for extension of time within which to appeal

Criminal Practice Rules 1999
Form 28 (Version 7)
Notice of application for extension of time within which to appeal

(rule 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 Child in the primary court.
[tick if Youth 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:

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

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].

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

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/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 / Email:



Form 30 – Notice of abandonment of appeal or application

Criminal Practice Rules 1999 (rules 69 & 70)

Form 30, Version 3 — Notice of abandonment of appeal or application

In the Court of Appeal, Supreme Court of Queensland

The King 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 e.g. 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:

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

Notice of abandonment of appeal or application

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

Address for service:

Telephone:

Fax/Email:

Form 30, Version 3, approved on 17 October 2022

Criminal Practice Rules rr 69 and 70

