

Applications for leave to appeal against sentence to the Court of Appeal

What is an application for leave to appeal against sentence?

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.

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

- See [s 668D\(1\)\(c\) Criminal Code \(Old\)](#).

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.

- See [s 668E Criminal Code \(Old\)](#).

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 appellant 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.

- See [s 669A Criminal Code \(Old\)](#);
- [Form 34 approved under the Supreme Court of Queensland Act 1991](#).



How to Commence an Application

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

Notice of Application for Leave to Appeal against Sentence and definition of an appeal period

Any person convicted who wishes to apply for leave to appeal against their sentence must file a notice of application for leave to appeal against sentence (Form 26 approved under the *Supreme Court of Queensland Act 1991*) in the prescribed manner within one calendar month of the date of sentence.

- See [s 671 Criminal Code \(Old\)](#); [Rule 92 \(b\) Criminal Practice Rules 1999](#).

When calculating the appeal period, the day of sentence is not included. 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.

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 [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 (see extension of time applications, 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 notice of application for extension of time ([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 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).

- See [Rules 65\(3\) and 66\(3\) Criminal Practice Rules 1999](#);
- [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 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 application for leave to appeal against sentence, the following material is included the Appeal Record Book:

- 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 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 Appeal 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 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 \(4\) 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 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 Applications for Leave to Appeal against Sentence

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 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 (e.g. applicant or respondent) and the date of its lodgement in the registry must be stated at the end of the written outline.

The applicant's written outline of argument must be filed 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 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 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 Matters for Hearing before the Court

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 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.

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

Application to adduce further evidence

An application is ordinarily heard on the record of the evidence at the 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 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 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 application?

The applicant 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](#)).

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

- See [Rules 69 and 70 Criminal Practice Rules 1999](#);
- [Form 30 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.

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

Applicant on bail who fails to attend

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

- consider the 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 phoning 07-3247 4313

The registry will accept the filing of documents between 8.30 am and 4.30 pm 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 \(Qld\)](#)
- 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.

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 e.g. 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 e.g. 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 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

(rules 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.