

General Civil Appeals

What is a civil appeal?

Who can appeal?

A civil appeal to the Court of Appeal lies from a number of courts and tribunals.

Some appeals do not lie as of right to the Court of Appeal and first require leave of the Court of Appeal. Litigants should check to determine whether their appeal is as of right or whether leave of the court is required by considering the relevant legislation. Common leave applications include:

- Application for leave to appeal pursuant to the [QCAT Act 2009](#);
- Applications pursuant to [s 118 District Court of Queensland Act 1967](#) seeking leave to appeal;
- Applications pursuant to s 499 [Sustainable Planning Act 2009](#) seeking leave to appeal;
- Applications seeking an extension of time within which to file and/or serve an appeal.

If you require leave of the court to appeal, you should not file a notice of appeal in the Court of Appeal Registry without first obtaining leave of the Court of Appeal. For information on how to apply for leave to appeal, you should obtain a copy of the *Civil Applications Information Sheet*, which is available from the Court of Appeal Registry and the [Courts website](#).

Ordinarily, an appeal from a final decision in a proceeding to the Court of Appeal is an appeal by way of rehearing. This means the Court of Appeal considers the matter only on the evidence used in the primary court. An appeal by way of rehearing is a new determination of the rights and liabilities of the parties. Leave of the court is needed if new or fresh evidence is to be admitted and will be granted only in cases that satisfy special requirements, including cogency and if the evidence was not reasonably available at the time of the original hearing.

An appeal from a decision, other than a final decision in a proceeding, or an appeal about the amount of damages or compensation awarded by a single judge of the Supreme Court, or an appeal for a new trial, is brought by way of an appeal, unless the Court of Appeal is satisfied it is in the interests of justice to proceed by way of rehearing. A matter brought by way of an appeal allows the court to consider only whether the judgment appealed from was correct and usually the court considers only the law and facts which existed at the time the judgment was given. If the Court of Appeal is in the position to arrive at a decision on the material it has before it, then the appeal will not proceed by way of rehearing.

- See Rules [745\(2\)](#), [765 Uniform Civil Procedure Rules 1999](#).

Usually, the original judgment from the primary court is allowed to take effect unless or until it is set aside by an appellate court. A stay of execution, however, stops the enforcement of an original decision from the time the stay is imposed. Filing a notice of appeal does not stay the enforcement of the decision under appeal, unless the Court of Appeal, a Judge of Appeal or the original court orders it be stayed. Litigants who wish to stay the enforcement of the decision under appeal may apply for a stay of execution: see the *Civil Applications Information Sheet*, available from the Court of Appeal Registry and the [Courts website](#); see also [Practice Direction 3 of 2013](#).

- See [Rule 761 Uniform Civil Procedure Rules 1999](#).



Who are the parties to an appeal?

An appellant is a party who is appealing the original decision. Appellants are the persons aggrieved by the decision in the primary court. There can be more than one appellant.

A respondent is the other party involved in the appeal hearing. There can be more than one respondent. A respondent is a person who is directly affected by the relief sought in the notice of appeal or who is interested in maintaining the decision under appeal.

- See [Rule 749 Uniform Civil Procedure Rules 1999](#).

The Court of Appeal may order the inclusion, removal or substitution of a party to an appeal. A person who has not consented in writing, however, cannot be made an appellant.

- See [Rule 750 Uniform Civil Procedure Rules 1999](#).

How to commence an appeal?

Notice of Appeal

A notice of appeal is required to start an appeal or an application for a new trial.

- See [Form 64, Uniform Civil Procedure Rules 1999](#).

The heading of Form 64 must include the party's status in the Court of Appeal as well as in the primary court. The heading of the Form 64 should be the same as the name of the action in the primary court, even including those parties who are not a party to the appeal.

Form 64 must be brought to the Court of Appeal Registry, Brisbane by the appellant for filing, within twenty-eight days of the date of the original judgment from the primary court or tribunal. If the original proceeding was not started in the Supreme Court Registry, Brisbane, a copy of the notice of appeal must also be filed as soon as practicable in the registry in which the proceeding was started.

- See the [Court of Appeal Practice Direction 3 of 2013](#);
- [Rules 745 to 748 Uniform Civil Procedure Rules 1999](#);
- [Form 64 Uniform Civil Procedure Rules 1999](#).

The notice of appeal must state whether the whole or part of the decision is appealed from and it must briefly and specifically state the grounds of appeal. The notice of appeal must also state the decision the appellant seeks from the Court of Appeal.

- See [Rule 747\(1\) Uniform Civil Procedure Rules 1999](#)

If leave has been granted by the court to start an appeal, the notice of appeal must set out the order giving leave, a concise statement of the reasons why leave was given and the specific questions for which leave was given.

- See [Rule 747\(2\) Uniform Civil Procedure Rules 1999](#)

The notice of appeal must be served on all parties to the appeal as soon as practicable after it is filed in the registry. As soon as practicable means on the day or within a few days of filing the notice in the registry. The Court of Appeal also has the power to direct the appellant to serve the notice of appeal on another person. The notice of appeal may be served on a party at the party's address for service in the proceeding in which the decision was given.

- See [Rules 748\(b\), 752\(1\), 752\(2\) Uniform Civil Procedure Rules 1999](#).

A notice of appeal may be amended without leave of the Court of Appeal when it is amended within the time limited for starting the appeal. If an appellant wants to amend a notice of appeal outside the twenty-eight day appeal period, leave of the Court of Appeal is required.

- See [Rule 751 Uniform Civil Procedure Rules 1999](#).

Once a notice of appeal is filed in the Court of Appeal Registry, a file is created by the registry and a timetable letter (prepared in accordance with the relevant Practice Direction) is issued to the parties, advising of due dates for lodgement of outlines and other documents. The instructions given to the litigants are directions from the Court and must be strictly followed. The registrar may issue other directions to the parties. Failure to comply with these directions may result in the matter being listed before the Court, with the non-compliant party being at risk of an order for costs against them.

Attached is a precedent of a Notice of Appeal. This should be used as a guide only.

Cost of filing an appeal

To obtain the up to date costs of filing an appeal for an individual or a company please refer to the [Uniform Civil Procedure \(Fees\) Regulation 2009](#) which can be found using the Courts website.

The registry will only accept payment in the form of bank cheques, solicitor's trust account cheques, cash or credit. Cheques should be made payable to the Department of Justice.

In cases of financial hardship the payment of the filing fee on an appeal may be reduced by the making of a fee reduction order. See the '[Reduction of civil court fees](#)' section of the Courts website.

Cross Appeals

A cross appeal is filed in circumstances where a respondent claims that the decision appealed from should be varied or set aside.

The respondent must file a notice of cross appeal in the approved form, ([Form 65, Uniform Civil Procedure Rules 1999](#)), stating the claim, and serve it on any other party who may be affected. It must state the part of the decision to which the cross appeal relates. It must also state briefly and specifically the grounds of the cross appeal and decision the respondent seeks. The notice of cross appeal must be filed within fourteen days after the service of the notice of appeal on the respondent. The notice of cross appeal must then be served, as soon as practicable, on all other parties to the appeal.

A notice of cross appeal may be amended with leave of the Court of Appeal.

Attached is a precedent for a notice of cross appeal. This should be used as a guide only.

- See [Rules 754, 755, 756, Uniform Civil Procedure Rules 1999](#);
- [Form 65 Uniform Civil Procedure Rules 1999](#).

Notice of contention

If a respondent claims a decision should be affirmed on a basis other than a basis relied on by the court that made the decision, the respondent must file a notice of contention, in [Form 66, Uniform Civil Procedure Rules 1999](#), specifying briefly the grounds of contention.

The notice of contention must be filed by the respondent within fourteen days after the day of service of the notice of appeal on the respondent.

The respondent must serve a copy of the notice of contention on all other parties to the appeal as soon as practicable.

Attached is a precedent for a notice of contention. This should be used as a guide only.

- See [Rule 757 Uniform Civil Procedure Rules 1999](#),
- [Form 66 Uniform Civil Procedure Rules 1999](#).

Preparation of material intended to be relied upon at hearing

Pursuant to [Practice Direction 3 of 2013](#), the following steps are required to be taken before an appeal can be heard:

The appellant must lodge and serve a written *Outline of Argument, List of Authorities* (list only required, no copies), and *Draft Index* to the record book within twenty eight days of the filing of the Appeal.

Each respondent must lodge and serve a written *Outline of Argument, List of Authorities* (list only required, no copies), and a response to an appellant's Draft Index within twenty one days of receiving the appellant's Outline and Draft Index.

Note: Five (5) copies of each party's Outline of Argument and List of Authorities are to be lodged with the registry.

The appellant may lodge and serve a brief written *Reply* within seven days of receiving the respondent's outline.

The appellant must lodge for approval by the registrar a record book index which has been agreed to by all parties within ten weeks of commencing the appeal.

The appellant must lodge a *record book* and serve a copy on each other party within twelve weeks of commencing the appeal. (See information sheet: 'Court of Appeal Guidelines for Preparation of Civil Record Books' for assistance in preparing a civil record book.)

Once the record book is lodged, each party must amend its written outline, but only to include accurate and comprehensive record book page

number references. Parties must lodge in the registry four copies of this **amended** written outline and serve a copy on each other party fourteen days after the lodging of the appeal record book.

The appellant must lodge three copies of their Part A authorities (or an agreed bundle of authorities), and each respondent must lodge three copies of their Part A authorities that are additional to those of the appellants (no duplication), no fewer than two clear court days prior to the hearing.

The Deputy Registrar (Appeals), or another person authorised by the President or a Judge of Appeal, may for good reason amend the time frames.

Where the requirements of [Practice Direction 3 of 2013](#) or a direction there-under are not complied with, the matter may be listed for mention before the court which may order that the appeal be struck out with costs.

Lodging and serving of written outline of argument

A written outline of argument is a written statement of the contentions and issues in the proceeding which need to be considered by the Court of Appeal. The outline should be concise and **no more than ten (10) pages**. It should briefly explain what the case is about and it should summarise the reasons of the primary court, so far as they are relevant to the points taken on appeal. The outline should contain precise references to the evidence relied upon in connection with each disputed factual conclusion. When referring to filed material, page references must be provided.

The respondent's outline need not necessarily repeat matters set out in the appellant's outline, but should make clear which matters are disputed and which are not disputed.

If a party lodges a written outline of argument outside the designated time period, a written explanation must be provided giving the particular reason as to why it is late and details of when the legal representative (if any) was instructed in the appeal.

A late written outline of argument may not be accepted for filing in the Court of Appeal Registry, without such written explanation.

Five (5) copies of the written outline of argument must be lodged in the Court of Appeal Registry by each party. One copy must also be served on each other party.

- See paragraphs 12 – 19 and 41 of [Practice Direction 3 of 2013](#).

Record Book and Index

A Record Book must be prepared by the appellant. This is to be prepared in accordance with the Information Sheet – Court of Appeal Guidelines for the Preparation of Civil Appeal Record Books.

Lodging of list of authorities

A list of authorities is a list of the cases and legislation which each party will rely upon and refer to in the hearing. A list of authorities must be prepared by the appellant and respondent. The list is comprised of two parts: Part A and Part B. Part A is 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.

A copy of the list of authorities is to be delivered and served with each copy of the outline of argument. The appellant must lodge three copies of their Part A authorities (or an agreed bundle of authorities), and each respondent must lodge three copies of their Part A authorities that are additional to those of the appellants (no duplication), not less than two clear court days prior to the hearing.

Listing for Court of Appeal hearings

The Registrar (Appeals) will generally consult in writing with the parties before listing an appeal for hearing. The parties will usually be asked to provide specific information to the Registrar in writing, including an estimate of time, name/s of counsel briefed and any dates the parties request that the matter not be listed. It is in the interests of the parties to respond promptly so that efforts can be made to list the appeal at a time convenient to both parties. While every effort is made to assign hearing dates which are convenient to the parties, this is not always possible. Once the hearing date has been allocated, it is usually final.

Dismissing an appeal by consent prior to the hearing

If the parties decide not to continue with the appeal, and they do not wish to appear before the Court of Appeal, the appeal may be disposed of under [Rule 762\(2\) Uniform Civil Procedure Rules 1999](#).

When the parties agree that the appeal should be dismissed by consent, a [Form 68](#) of the Uniform Civil Procedure forms must be lodged.

When the registrar stamps the form 68 with the seal of the court, it takes effect as an order dismissing the appeal and providing for costs in the way stated in the form.

Attached is an example. This should be used as a guide only.

- See [Rule 762\(2\) Uniform Civil Procedure Rules 1999](#);
- See [Form 68 Uniform Civil Procedure Rules 1999](#).

Consent orders

A consent order, which seeks to allow an appeal, will not be sealed by the registrar without referring the matter to the Court.

If the parties agree as to the substantive orders the Court of Appeal will be asked to make by consent, but are in dispute as to the order for costs, the appeal may be listed for hearing to determine the issue of costs.

- See [Rule 764 Uniform Civil Procedure Rules 1999](#).

Use of mediation prior to hearing

Mediation is a very useful tool and should be considered by the parties prior to the hearing date. Both parties need to consent to mediation before a matter is referred for mediation. The Court also has the power to refer a matter for mediation.

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 documents for filing between 8.30 am and 4.30 pm, Monday to Friday. If you are seeking to file documents after this time, you should apply for a late

opening by contacting the Law Courts Security on ph: 07 3247 4771 or ph: 07 3247 4775. You must advise security of your direct contact details and the urgency to file documents after hours. Security will then contact the Deputy Registrar rostered who will use their discretion to allow or disallow the late opening. [Fees apply for late openings](#).

Location of precedent forms

Precedent forms can be obtained from the Queensland Courts website located at <http://www.courts.qld.gov.au>. The forms can also be found in the [Uniform Civil Procedure Rules 1999](#).

Where else can I go for information about civil appeals in the Court of Appeal?

- [Court of Appeal Practice Direction 3 of 2013](#);
- [Uniform Civil Procedure Rules 1999 \(particularly Chapter 2 Part 4, and Chapter 18, Part 2\)](#);
- Information Sheet: [Court of Appeal Guidelines for Preparation of Civil Appeal Record Books](#);
- [Supreme Court of Queensland Act 1991](#) and [Civil Proceedings Act 2011](#);
- Queensland Courts Internet Site (<http://www.courts.qld.gov.au>);

Court of Appeal Registry

Business Address: 415 George Street, Brisbane

Telephone: 07 3247 4313

Postal Address: PO Box 15167
City East QLD 4002

Form 64

NOTICE OF APPEAL

rule 747(1)

**COURT OF APPEAL
SUPREME COURT OF QUEENSLAND**

CA NUMBER:

[number inserted by Court of Appeal]

NUMBER:

*[insert number in court from which appeal
is brought]*

Plaintiff:

[Insert appellant or respondent, as appropriate].

Defendant:

[Insert respondent or appellant, as appropriate].

NOTICE OF APPEAL

To the respondent

And to the Registrar, *[court appealed from]*

TAKE NOTICE that the appellant appeals to the Court of Appeal against *[specify whether the whole or a part, and if a part, which part]* of the order of the *[specify which court]* Court.

1. THE DETAILS OF THE JUDGMENT APPEALED AGAINST ARE –

Date of Judgment:

Description of Proceedings *[e.g. number and year]*

Description of parties involved in the proceedings *[including full names and party title e.g. plaintiff]*

as

And

as

Name of Primary Court Judge:

Location of Primary Court:

2. GROUNDS -

[Specify briefly the grounds of appeal]

3. ORDERS SOUGHT -

[Specify the order sought in lieu of that appealed from including any special order as to costs]

LEAVE TO APPEAL

[only complete this section where leave to appeal, being necessary has been obtained]

4. This appeal is brought pursuant to leave given by *[court]* on *[date]*.

5. Leave to appeal was given for the following questions –

(a)

(b)

6. Leave to appeal was given because *[specify why leave to appeal was given]*

7. RECORD PREPARATION

I/We undertake to cause a record to be prepared and lodged, and to include all material required to be included in the record under the rules and practice directions and any order or direction in the proceedings.

PARTICULARS OF THE APPELLANT:

Name:

Residential or business address:

Appellant's solicitor's name:

and firm name:

Solicitor's business address:

Address for service:

DX(if any):

Telephone:

Fax:

E-mail address (if any):

[If the appellant has no solicitor:

appellant's address for service:

appellant's telephone number or contact number:

appellant's fax number (if any):

appellant's e-mail address (if any):]

PARTICULARS OF THE RESPONDENT:

Name:

Residential or business address:

Respondent's solicitor's name:

and firm name:

Solicitor's business address:

Address for service:

DX (if any):

Telephone:

Fax:

E-mail address (if any):

[If the respondent has no solicitor:

respondent's address for service:

respondent's telephone number or contact number:

respondent's fax number (if any):

respondent's e-mail address (if any):]

Signed: *[appellant or solicitor]*

Description: *[of signatory]*

Dated:

This Notice of Appeal is to be served on: *[respondent's name]*

Form 65

NOTICE OF CROSS APPEAL

rule 755(1)

**COURT OF APPEAL
SUPREME COURT OF QUEENSLAND**

CA NUMBER:

(number to be inserted by Court of Appeal)

NUMBER:

(insert number in court from which appeal is brought)

Plaintiff:

(Appellant)

Defendant:

(Respondent)

Second Defendant:

(Not a party to the appeal)

NOTICE OF CROSS APPEAL

To the appellant

1. The respondent cross appeals from: *(state the part of the decision to which the cross appeal relates)*

GROUND

2. *(Specify briefly the grounds of cross appeal)*

ORDER SOUGHT

3. *(Specify the order the respondent seeks)*

PARTICULARS OF THE RESPONDENT:

Name:

Residential or business address:

Respondent's solicitor's name:

and firm name:

Solicitor's business address:

Address for service:

DX (if any):

Telephone:

Fax:

E-mail address (if any):

[If the respondent has no solicitor:

respondent's address for service:

respondent's telephone number or contact number:

respondent's fax number (if any):

respondent's e-mail address (if any):]

Signed: (respondent or solicitor)

Description: (of signatory)

Dated:

This Notice of Cross Appeal is to be served on: (appellant's name)

Form 66

NOTICE OF CONTENTION

rule 757(2)

**COURT OF APPEAL
SUPREME COURT OF QUEENSLAND**

CA NUMBER:
(number to be inserted by Court of Appeal)
NUMBER:
(insert number in court from which appeal is brought)

Plaintiff:
(Appellant)

Defendant:
(Respondent)

Second Defendant:
(Not a party to the appeal)

NOTICE OF CONTENTION

To the appellant

1. On the hearing of the appeal the respondent will contend that the decision of the Supreme Court in Brisbane should be affirmed on a ground other than a ground relied on by the Supreme Court in Brisbane.

GROUND(S) OF CONTENTION

2. *(Specify briefly the ground contended for)*

PARTICULARS OF THE RESPONDENT:

Name:

Residential or business address:

Respondent's solicitor's name:
and firm name:

Solicitor's business address:

Address for service:

DX (if any):

Telephone:

Fax:

E-mail address (if any):

[If the respondent has no solicitor:
respondent's address for service:
respondent's telephone number or contact number:
respondent's fax number (if any):
respondent's e-mail address (if any):]

Signed: (respondent or solicitor)

Description: (of signatory)

Dated:

Form 68

MEMORANDUM OF AGREEMENT TO DISMISSAL OF APPEAL

rule 762(2)

**COURT OF APPEAL
SUPREME COURT OF QUEENSLAND**

CA NUMBER:

(number to be inserted by Court of Appeal)

NUMBER:

(insert number in court from which appeal is brought)

Plaintiff:
(Appellant)

Defendant:
(Respondent)

Second Defendant:
(Not a party to the appeal)

NOTICE OF AGREEMENT TO DISMISSAL OF APPEAL

The appellant and respondent agree –

- (1) that this appeal should be dismissed by consent;
- (2) (specify 1 or more of the matters in r 762(3) as appropriate)

Signed: *(Appellant or solicitor)*

Description: *(of signatory)*

Dated:

Signed: *(Respondent or solicitor)*

Description: *(of signatory)*

Dated:

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