

Civil Applications

Types of civil applications

The most common types of originating applications heard by the Court of Appeal include:

- Originating Application for an extension of time to appeal;
- Originating Application for leave to appeal pursuant to the [QCAT Act 2009](#);
- Originating Application for leave to appeal pursuant to the [Sustainable Planning Act 2009](#);
- Originating Application for leave to appeal pursuant to [s 118 District Court of Queensland Act 1967](#).
- The Court can also hear applications relating to existing Court of Appeal matters. For these types of interlocutory applications the registrar will ordinarily arrange direct with the parties and direct requirements for the individual circumstances of the case.

The most common of these types of applications include:

- Application for stay of execution;
- Application for security for costs;
- Application to amend a Notice of Appeal;
- Application for dismissal for want of prosecution.

What to file to commence an originating application

To apply to the Court, an application ([Form 69](#)) and a supporting affidavit ([Form 46](#)) must be filed and served.

For a new proceeding this must be done within the number of days allowed by the relevant legislation unless the application is for an extension of time. The time allowed can vary and may run from the day on which the judgment was pronounced or it may run from

when a copy of the judgment was received. The relevant legislation must be checked to ensure you are within time or else an extension of time must also be applied for.

The application must also list the affidavits to be relied on by the applicant at the hearing. The applicant must specify in the application the orders or other relief sought in the proceeding. If the application is made under an Act, it must state the name of the Act and section number under which the application is made.

The names in the heading of the application should be the same as in the order you wish to appeal, even including those parties who are not a party to the application in the Court of Appeal. However after each party's name you must add what that party's role is in the Court of Appeal proceedings. Anyone directly affected by the relief sought in the application must be named as a respondent.

[Paragraphs 47 and 48 of Practice Direction 3 of 2013](#), relate to applications for extension of time and leave to appeal. In those cases at least the following documents must be exhibited to the supporting affidavit:

- a copy of the reasons for judgment;
- a copy of the sealed order you wish to appeal;
- a copy of the proposed Notice of Appeal, ([Form 64](#)).

The affidavit must also set out the reasons why leave to appeal or extension of time ought be given, and in the case of extension of time, also give the reason for the delay, and whether any prejudice might result to a respondent because of the delay.



Where this is not done the application will ordinarily be refused for filing.

Pursuant to [Rule 29\(2\) of the Uniform Civil Procedure Rules 1999](#), the respondent may file and serve a notice of address for service in the approved form, being [Form 8, Uniform Civil Procedure Rules 1999](#). The Court may also require a respondent to file and serve a notice of address for service in [Form 8](#).

Attached are precedents of an application and affidavit. These should be used as a guide only.

Cost of filing an application

To obtain the up to date costs of filing an application 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 application may be reduced by the making of a fee reduction order. See the '[Reduction of civil court fees](#)' section of the Courts Website.

Hearing date assigned to the application

Where an applicant has complied with the requirements of [Practice Direction 3 of 2013](#) and any specific direction of the registrar, a hearing date will be fixed by the Registrar (Appeals).

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 application can be heard:

The applicant 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 Application.

Each respondent must lodge and serve a written *Outline of Argument, List of Authorities* (list only required, no copies), and a response to an applicant's draft index within twenty one days of receiving the applicant'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 applicant may lodge and serve a brief written *Reply* within seven days of receiving the respondent's outline.

The applicant 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 application.

The applicant must lodge a *record book* and serve a copy on each other party within twelve weeks of commencing the application. (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 applicant 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 applicants (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 thereunder are not complied with, the matter may be listed for mention before the Court of Appeal which may order that the application 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 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.

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 application.

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

Five 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.

- For further information, see paragraphs 12 – 19 and 41, [Practice Direction 3 of 2013](#).

Record Book and Index

A Record Book must be prepared by the applicant. 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 applicant 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 applicant 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 applicants (no duplication), not less than two clear court days prior to the hearing.

Dismissing an application by consent prior to the hearing

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

When the parties agree that the application 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 application 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 Forms](#).

Consent orders

A consent order, which seeks to allow an application, 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 application 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 the filing of documents 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 [Courts Website](#). The forms can also be found in the [Uniform Civil Procedure Rules 1999](#).

Where else can I go for information about civil applications 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 Website](#);

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](#)), including the Civil Appeals fact sheet.

Form 69

Application to Court of Appeal

rule 779(2)

(Title - as in Form 64)

APPLICATION TO COURT OF APPEAL

TAKE NOTICE that the *[party applying]* is applying to the Court of Appeal for the following orders:

1. *[Set out the orders sought in numbered paragraphs]*

- (1)
- (2)
- (3)

2. 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

.....as

and

.....as

.....as

Name of Primary Court Judge:

Location of Primary Court:

This application will be heard by the Court of Appeal at Brisbane

on: *[date of hearing]*

at: *[time]*

Filing date: *[date]*

Registrar: *[registrar to sign and seal]*

If you wish to oppose this application or to argue that any different order should be made, you must appear before the Court in person or by your lawyer and you shall be heard. If you do not appear at the hearing the orders sought may be made without further notice to you.

On the hearing of the application the applicant intends to rely on the following affidavits:

Affidavit of ABC sworn *(date)*

Affidavit of DEF to be sworn *(or as the case may be)*.

PARTICULARS OF THE APPLICANT:

Name:

Residential or business address

Applicant'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 applicant has no solicitor:

applicant's address for service:

applicant's telephone number or contact number:

applicant's fax number (*if any*):

applicant's e-mail address (*if any*):

PARTICULARS OF THE RESPONDENT:

Name:

Residential or business address:

Respondents 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: (*party or solicitor*)

Description: (*of signatory*)

Dated:

This application is to be served on: (*name of party*)

**Form 64
NOTICE OF APPEAL**

rule 747(1)

**COURT OF APPEAL
SUPREME COURT OF QUEENSLAND**

CA NUMBER: of
[number inserted by Court of Appeal]
NUMBER: of
*[insert number in court from which
appeal is brought]*

Plaintiff:
(Appellant)

Defendant:
(Respondent)

Second Defendant:
(Not a party to the appeal)

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

.....as

And

.....as

.....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)

(c)

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

7. RECORD PREPARATION *[Delete whichever does not apply]*

I/We request that preparation of a record be started and that the record contain all material required to be included in the record under the rules and practice directions and any order or direction in the proceeding.

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 46

AFFIDAVIT

rule 431

(Title - Form 1)

(Full name of deponent) of (residential or business address, or place of employment), (occupation or other description)¹ states on oath [or: solemnly and sincerely affirms and declares]:

1. I am *etc.*
2. Exhibit A to this affidavit is *etc.*

If the affidavit extends over more than one page, at the foot of the first and every other page except the last:

Page 1

Signed: *(deponent[s] to sign)*

Taken by: *(person taking the affidavit to sign)*

At the end of the body of the affidavit:

Sworn [or: Affirmed] by *(full name)* on *(date)* at *(place)* in the presence of:

(Signed by deponent)

Deponent

(Signed by person taking affidavit)

(Statement of capacity to take affidavit)²

[who certifies that the affidavit was read in the presence of the deponent who seemed to understand it, and signified that that person made the affidavit. *(If required: see R.433(1))*]

[who certifies that the affidavit was read in the presence of the deponent who seemed to understand it, and signified that that person made the affidavit, but was physically incapable of signing it. *(If required: see R.433(2))*]

¹ If more than one deponent, continue with the name, address and description of each other deponent.

² For example, “solicitor”, “barrister”, “Justice of the Peace”.

**COURT OF APPEAL
SUPREME COURT OF QUEENSLAND**

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

Appellant: *(Insert appellant or respondent, as appropriate)*

AND

[First] Respondent: *(Insert appellant or respondent, as appropriate)*

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 to sign)*

Description: *(of signatory eg. solicitor)*

Date: *(insert date)*

Signed: *(respondent or solicitor to sign)*

Description: *(of signatory eg. solicitor)*

Date: *(insert date)*

NOTICE OF AGREEMENT TO DIMISSAL OF APPEAL
Filed on Behalf of the *(party)*
Form 68 Rule 762(2)

Name:
Address:
Phone No:
Fax No:

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