



This brochure gives you basic information about appeal procedures in the Family Court. It deals only with appeals from a decision made by a Family Court judge or by a federal magistrate when the Family Court's jurisdiction is to be exercised by the Full Court. See the brochure *Appeal Procedures – Single Judge* for when the Family Court's jurisdiction is exercised by a single judge.

If you need information regarding the correct procedure for 'appeals' (strictly called reviews) from decisions made by Family Court judicial registrars, registrars or local court magistrates, call **1300 352 000**.

## Legal terms

**Appeal** – a procedure which enables a person (usually a party to legal proceedings) to challenge the decision made by a court. Chapter 22 of the *Family Law Rules 2004* sets out the procedure for an appeal from a decision of a Family Court judge or a federal magistrate.

**Appeal books** – a bound or fastened and indexed collection of all documents relevant to the appeal (see page 6 for more information).

**Appellant** – a person who files an appeal.

**Cross-appellant** – a person who files a cross-appeal.

**Draft index to the appeal books** – a list of the documents which were before the judicial officer on the hearing or trial.

**Full Court** – three judges hearing an appeal together. Appeals from a decision of a Family Court judge are heard by a Full Court. A Full Court may also, in some cases, hear an appeal from a federal magistrate. Judges who regularly sit on the Full Court are called judges of the Appeal Division.

**Judicial Officer** – the judge or federal magistrate who heard the original proceedings and made the orders under appeal.

**List of authorities** – the names of, and the citations for, any reported cases which will be referred to in support of the case.

**Leave to appeal** – in certain cases you need the Court's permission before you can file an appeal (see page 3 for more information).

**Reasons for judgment** – the reasons given by the judicial officer for the orders that are made.

**Respondent** – the other party or parties to the proceedings.

**Regional appeal registry** –

- BRISBANE Registry of the Family Court for appeals from matters heard in Queensland, the Northern Territory and Lismore.
- SYDNEY Registry of the Family Court for appeals from matters heard in New South Wales (except Lismore) and the Australian Capital Territory.
- MELBOURNE Registry of the Family Court for appeals from matters heard in Victoria, Tasmania and South Australia.
- PERTH Registry of the Family Court for appeals from matters heard in the Family Court of Western Australia.

**Transcript** – the written record of the evidence in court proceedings.

# Main stages in an appeal

## Within 28 days of the order being made

The appellant files the *Notice of Appeal* at the regional appeal registry together with a copy of the orders being appealed and pays the filing fee or makes an application for exemption or waiver.

## Within 14 days of filing the appeal

The appellant arranges for a copy of the *Notice of Appeal* to be served on the respondent and all other parties to the proceedings, including any independent children's lawyer.

## Within 14 days of being served with a *Notice of Appeal* or within 28 days of the order being appealed

The respondent may file a *Notice of Appeal* endorsed as a cross-appeal and pays the filing fee or makes an application for exemption or waiver.

## Within 28 days of filing the appeal or the date of reasons for judgment

The appellant files a draft index to the appeal books in the regional appeal registry and serves a copy on the other parties to the appeal.

\* If the Chief Justice directs that an appeal from a decision of a federal magistrate is to be heard by a single judge, the appeal process will be as explained in the brochure *Appeals Procedures – Single Judge*.

## After the draft index to the appeal books is filed

The appeal is listed before the regional appeal registrar for a procedural hearing. The parties to the appeal will be notified of a hearing date by the appeal registry.

## PROCEDURAL HEARING

The regional appeal registrar settles the draft index to the appeal books and makes orders to have the appeal prepared for hearing before the Full Court.

## By the date ordered at the procedural hearing

Appellant files and serves appeal books as directed by the regional appeal registrar. After the appeal books are filed the parties are advised of the appeal hearing date/s.

## At least 28 days before the 1st day of the appeal sittings

The appellant files with the Court and serves on the respondent and all other parties, including any independent children's lawyer; a summary of argument and list of authorities.

## At least 7 days before the 1st day of the appeal sittings

The respondent and any independent children's lawyer files a summary of argument and list of authorities with the Court and serves these documents on the appellant.

## THE APPEAL HEARING

# Appeals

## What is an appeal?

An appeal is not a rehearing of the original dispute. Therefore, for your appeal to succeed you must convince the Full Court that the judicial officer made an error.

### The Full Court:

- does not consider any evidence or information that was not before the judicial officer, except in special circumstances
- does not call witnesses to give evidence
- reads all the relevant documents that were filed by the parties for the original hearing before the judicial officer and the relevant parts of the transcript of the proceedings
- takes into account the written summaries of argument, and
- listens to legal argument from both sides.

As the appellant, you have to convince the Full Court that the judicial officer made an error such that the decision should be set aside.

In order to do this you must persuade the Full Court that the judicial officer:

- applied a wrong principle of law, or
- made a finding of fact or facts on an important issue which could not be supported by the evidence, or
- exercised his or her discretion to arrive at a decision which was clearly wrong.

A finding of fact is, for example:

- a finding that a certain event did or did not occur
- that something was said or not said, or
- that something has a certain value (for example, your house).

A judicial officer exercises discretion when the result of the case does not depend on a fixed rule, but where the judicial officer has to weigh up different factors, all of which are of some relevance to his or her decision. To succeed on an appeal it is not enough for you to show that another judicial officer might have formed a different view on the facts or decided the case differently.

For example:

- In a financial case there is a margin within which the Court may have a range of decisions open to it; all of which will be legally valid or acceptable.
- In a parenting case matters may be so finely balanced between the parties that the judicial officer could decide in favour of either party, without being in error in a legal sense.

If the judicial officer accepted the evidence of one party in preference to that of the other party, the judges of the Full Court will be reluctant to take a different view because, unlike the judicial officer, they do not see and hear the parties or their witnesses giving evidence.

## Leave to appeal

You must apply to the Full Court for leave to appeal against a judicial officer's decision in the following circumstances:

- Where you want to challenge an interim or procedural order which does not relate to a parenting order and which is not final; for example, an order stopping you from accessing money in a bank account until further order.
- Where you want to challenge an order made under the *Child Support (Assessment) Act 1989* or the *Child Support (Registration and Collection) Act 1988*.

Leave to appeal is sought using the same document that you file for an appeal.

## Outcome of appeal

If your appeal is successful, the Full Court may:

- make a different order to the one made by the judicial officer, or
- order a retrial (that is, another hearing) by a single judicial officer.

It is also possible for the Full Court to find that although the judicial officer made some errors, he or she came to the correct conclusion and the appeal should be dismissed.

## Cost

Before deciding whether to appeal against the judicial officer's decision, it is important to be aware of the costs involved. They include:

- a filing fee (you may be exempt from paying the filing fee in certain circumstances or you may apply for a fee waiver due to financial hardship).

To find out the current filing fee or for an exemption or waiver form:

- ~ go to [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au)
- ~ call 1300 352 000, or
- ~ visit your nearest family law registry

- the cost of a transcript of the proceedings before the judicial officer. Each appellant buys transcripts at their own cost. There is no exemption or waiver.

In addition, if your appeal is unsuccessful, it is likely that the Court will order you to pay some or all of the other costs of all other parties to the appeal.

## Legal advice

You should seek legal advice before deciding what to do. A lawyer can help you understand your legal rights and responsibilities, and explain how the law applies to your case. Court staff can help you with questions about court forms and the court process, but cannot give you legal advice.

You can get legal advice from a:

- legal aid office
- community legal centre, or
- private law firm.

Before seeking legal advice, you should have a copy of the orders from which you want to appeal and the judicial officer's reasons for judgment. You can get these from the family law registry where your case was originally heard. You can get procedural information from the regional appeal registrar (see the back page for contacts).

# What to do and when

## 1 Preparing your appeal

You prepare your appeal by completing a *Notice of Appeal* and attaching a copy of the orders you seek to appeal. The notice must be typed or printed clearly and must state:

- If you are applying for leave to appeal, the facts relied on in support of the application for leave.
- Whether the appeal is against all or only part of the orders. If it is against part of the orders, state which part.
- The grounds on which you claim that the decision is wrong. You should point out specifically which principles of law the judicial officer applied wrongly, and/or which of his or her findings of fact are wrong, and why you say the decision is wrong. It is important that the grounds of appeal are prepared carefully as they govern the matters the Full Court will consider in deciding the appeal.
- What order you want the Full Court to make in place of the order made by the judicial officer or whether you want a new trial.

## 2 Time limits on appealing

The *Notice of Appeal* must be filed in the regional appeal registry no later than 28 days after the day on which the order being appealed was made.

You may apply for an extension of time by filing an Application in an Appeal and an affidavit in support of the application. These documents must be filed in the regional appeal registry and served on the other parties or their lawyers (including any independent children's lawyer).

The application will be heard by a judge or the Full Court. The Court has discretion whether or not to extend the time. Matters that will be taken into account when deciding whether to allow you the extension of time to file the appeal will include:

- the length of the delay
- the reasons for the delay
- any disadvantage it has caused the other party
- the merits of the proposed appeal, and
- the overall justice of the case.

If a judge refuses to grant an extension of time you can apply to the High Court for special leave to appeal. See 'Appeals to the High Court' on page 8 for more information.

## 3 Filing the appeal

The *Notice of Appeal* and orders you seek to appeal (the original plus one copy for each party to the appeal) must be filed in the regional appeal registry. Filing can be done by post, by delivering the documents to a family law registry or by electronic communication (that is, fax or email).

At filing, you must pay a filing fee. If you are filing the *Notice of Appeal* by electronic communication, you may pay the filing fee at your nearest family law registry and fax or email a copy of your receipt (or an application for exemption or waiver of the fee) with your *Notice of Appeal*. You must also send or deliver the original *Notice of Appeal* plus copies so that they reach the regional appeal registry within seven days of filing.

Note – the filing fee cannot be returned if you withdraw or abandon your appeal.

## 4 Serving the *Notice of Appeal* on the other party

You must arrange for a copy of the *Notice of Appeal* to be served on each other party to the appeal or their lawyers, including any independent children's lawyer, within 14 days of filing. Service may be by:

- **post** (by you or someone acting for you)
- **hand** (personal delivery – you cannot serve the papers yourself).

The Court's *Service Kit* provides information on service and includes the *Affidavit of Service* that will be given to you when you file the *Notice of Appeal*. You can follow the instructions in the guide or arrange for service to be conducted by a process server for a fee.

## 5 Draft Index to the Appeal Books

Within 28 days of filing the *Notice of Appeal* (or the date of any reasons for judgment), you must file a draft index to the appeal books with the Court and serve it on the respondent and all other parties to the appeal. The draft index lists the documents that you think should be included in the appeal books. If you fail to file and serve a draft index within 28 days of filing, the appeal will be taken to be abandoned (see 'Prosecution of the appeal' on page 6).

### Cross-appeals

The respondent to the appeal may also appeal if he or she considers that the judicial officer was in error. This is done by filing an original (and one copy for service on each other party) of the *Notice of Appeal* endorsed as a cross-appeal in the regional appeal registry. The respondent must file the *Notice of Appeal* endorsed as a cross-appeal no later than 14 days after service of the original *Notice of Appeal* or within 28 days of the order being made, whichever is the later.

The time for filing a cross-appeal may also be extended by order of the Court.

A fee must be paid when filing a cross-appeal and this fee cannot be returned if you withdraw the cross-appeal.

You may be exempt from paying the filing fee in certain circumstances or you may apply for a fee waiver due to financial hardship. You can get the exemption or waiver forms:

- ~ from [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au)
- ~ by calling 1300 352 000, or
- ~ or your nearest family law registry.

### Effect of appeal – filing an appeal does not stop the order

Filing a *Notice of Appeal* does not automatically affect the orders made by the judicial officer (except where the order is a divorce order). This means that both you and the other party must obey the orders, even if you have filed an appeal.

If you want to stop the operation of the orders until your appeal is decided, you must file an *Application in a Case* to stay the orders and an affidavit. That application can only be filed after the *Notice of Appeal* has been filed. You may request an early hearing so that the matter can be dealt with quickly.

The application will be decided by the judicial officer from whom you are appealing, if available.

An *Application in a Case* to stay an appeal must be filed in the family law registry where the proceedings were heard originally, not the regional appeal registry.

If a stay is granted, the judicial officer's orders have no effect until the appeal is decided or some other order is made in relation to the stay.

# The procedural hearing and the appeal books

The *Notice of Appeal*, orders and reasons for judgment of the judicial officer, relevant documents from the original hearing and relevant parts of the transcript of the hearing must be provided to each of the judges sitting on the Full Court. Copies of these documents are bound or fastened to form the appeal books. The appellant must prepare the appeal books.

After the appellant files a draft index to the appeal books, a date is allocated for a procedural hearing. At the procedural hearing, the regional appeal registrar will discuss the draft index with you and the respondent and all other parties (or your lawyers) and decide which material should be included in the appeal books. The regional appeal registrar and parties must endeavour to exclude parts of the transcript and other documents that are irrelevant or unnecessary. This will reduce, as far as practicable, the number and length of documents to be included in the appeal books. The regional appeal registrar will require estimates from the parties of how long the appeal hearing is likely to take. The regional appeal registrar will advise you how many copies of the book you must prepare.

Usually, at least seven copies are required:

- ONE for each of the three judges who will hear the appeal
- ONE for the regional appeal registry file
- TWO for each other party to the appeal, including any independent children's lawyer, and
- ONE for the appellant.

The regional appeal registrar will also provide you with written guidelines to assist you in preparing the appeal books.

It is not usually necessary to include copies of exhibits in the appeal books. They should be discussed with the regional appeal registrar at the procedural hearing. All the relevant exhibits will be available at the appeal hearing if you wish to refer to them. Please read carefully the information under 'Prosecution of the appeal' about abandonment if filing and service has not occurred. A hearing date will only be given by the regional appeal registrar after you have filed the appeal books.

If you fail to file and serve the appeal books by the date ordered at the procedural hearing, your appeal will be deemed abandoned under the rules.

Documents in the appeal books are usually arranged in this order:

- 1 *Notice of Appeal*
- 2 Orders appealed against
- 3 Reasons for judgment of the judicial officer
- 4 Any relevant previous or subsequent order (for example, a stay of the judicial officer's orders)
- 5 Relevant application, response, affidavits and other documents in order of filing
- 6 Any family report
- 7 Relevant transcript
- 8 List of all exhibits
- 9 Copies of relevant exhibits (where necessary).

## Prosecution of the appeal

If you do not obey directions made by the Court or fail to appear in court or attend appointments, the Full Court may dismiss your appeal 'for want of prosecution' without hearing it. You will be given prior written notice of this and the opportunity to appear before the Full Court before this can occur.

If your appeal is dismissed for want of prosecution or taken to be abandoned, you may be liable to pay the other parties' costs relating to the appeal.

An appeal or cross-appeal may be taken to have been abandoned if the appellant or cross-appellant fails to file and serve all relevant documentation by the due dates and comply with all orders made concerning the conduct of the appeal. This will happen automatically under the Family Law Rules without the need for any further communication with you if you fail to file the draft index to the appeal books or the appeal books. You may file an application to re-instate your appeal on an *Application in an Appeal* with a supporting affidavit.

## Transcript

If you decide to appeal, you must order and pay for the relevant parts of the transcript of the hearing before the judicial officer. Transcripts are available from an independent service provider. You can get an order form and a schedule of the local costs from any family law registry.

Each appellant buys transcripts at their own cost. The independent service provider provides these transcription services and the Court cannot exempt or waive the transcription fees.

## The hearing date

At the procedural hearing, the regional appeal registrar will advise you of the likely sittings of the Full Court in which the appeal will be listed for hearing. Appeals may be given priority. You should make a submission to the judge or regional appeal registrar if there is any urgency about your case. In some cases, you may be required to file an *Application in a Case* together with an affidavit in support of the application to request an urgent hearing.

## Summaries of argument and lists of authorities

The appellant must file with the Court and serve on the respondent and other parties, including any independent children's lawyer, a summary of your argument and a list of authorities.

This must occur no later than 28 working days before the starting date of the sittings in which the appeal is listed for hearing or as otherwise ordered. The Court will need four copies of each of those documents, and the respondent and any other parties, including any independent children's lawyer, will need two copies.

If participating in the appeal, the respondent and/or independent children's lawyer must then file with the Court and serve on the appellant and any other parties, including any independent children's lawyer, their outline of argument and list of authorities. This must happen not less than seven working days before the starting date of the sittings in which the appeal is listed for hearing or as otherwise ordered.

The summary of argument must set out, in relation to each ground of appeal, a statement of the arguments setting out the points of law or fact to be discussed, and the orders you seek. The document must not exceed 10 pages (unless the Court orders otherwise), each paragraph must be numbered consecutively and it must be signed. At the hearing of the appeal each party will be expected to speak to their written summary of argument.

## The appeal hearing

As the appellant, you will put your case to the Full Court first. The respondent and any other parties will then be called on to answer your case. You will then be able to reply to anything raised by the respondent and any other parties. In presenting your case, you are expected to be familiar with the material in the appeal books. You should be able to direct the attention of the Full Court to the pages and passages which support your argument.

For example:

- If you are claiming that the judicial officer applied a wrong principle of law, you should draw to the attention of the Full Court the relevant grounds of appeal and the passage in the judgment; then refer to the section of the *Family Law Act 1975* or other relevant legislation and/or to the reported decisions of the Court published in the law reports which show that the judicial officer was in error.
- If you are claiming that the judicial officer made an error in the findings of fact, the finding should be referred to or identified from the judgment. You should direct the Full Court to all the evidence in the affidavits, transcript and exhibits relevant to that finding (including evidence supporting that finding).
- If you are claiming that the judicial officer exercised his or her discretion wrongly, you should draw the Full Court's attention to those aspects of the case that you claim were not given proper consideration and which ought to have led the judicial officer to reach a different decision, as well as to those aspects that you claim were given too much weight by the judicial officer.

In each case you should be able to give the Full Court references to page number, paragraph number and location on the page of the appeal books (this is usually done by dividing a page roughly into 10 so that a passage appearing half way down the page is described as being at 'point 5').

## Personal Safety

If you have any concerns about your safety while attending court, please call **1300 352 000** before your court appointment or hearing. Options for your safety at court will be discussed and arrangements put in place. By law people must inform a court if there is an existing or pending family violence order involving themselves or their children. More detail is in the brochure *Do you have fears for your safety when attending court?*

## Further evidence

In all but exceptional circumstances, the only evidence that the Full Court will consider is that given at the hearing before the judicial officer.

If you wish the Full Court to consider other evidence, you will need to make an application to ask the Court to allow you to present that further evidence. Usually, if the additional evidence was available at the time of the trial, but you or your lawyer did not call that evidence, the further evidence will not be admitted at the hearing of the appeal. If you wish to apply to the Full Court, you must file an:

- an *Application in a Case*, and
- an affidavit in support of the application.

The affidavit should set out the grounds on which you are making the application, any evidence necessary to establish those grounds and include or provide an outline of the further evidence you want the Full Court to receive. Original and service copies of the application and affidavit must be filed in the regional appeal registry; and two copies served on each other party to the appeal no later than 14 days before the starting date of the Full Court sittings.

The other party can file an answering affidavit no later than seven days before the sittings, setting out any extra facts relied upon in opposing the application. The Full Court usually deals with an application to admit further evidence at the start of the appeal hearing.

## Legal costs

If your appeal is dismissed, it is likely that the other parties will apply to the Full Court for an order that you pay their costs associated with your appeal. It is common for a costs order to be made against the appellant in those circumstances. If your appeal is successful, you may seek an order that the respondent to the appeal pay your legal costs (if any) and expenses. Alternatively, if the appeal succeeds on a question of law, you may ask the Full Court to recommend to the Attorney-General that a contribution be made towards those costs from a special fund. The Court may do this by granting a 'costs certificate'. The most you can be paid from the fund is \$4000.

## Stopping an appeal

You can stop your appeal at any time. You do so by filing a *Notice of Discontinuance* in the regional appeal registry and serving a stamped copy on the respondent and any other parties, including any independent children's lawyer. The Family Law Rules provide that if you withdraw your appeal you may be required to pay the costs of the respondent and any other parties, including any independent children's lawyer, relating to the appeal.

## Appeals to the High Court

There is no right of appeal to the High Court of Australia from a decision of the Full Court of the Family Court. You may apply to the High Court for special leave to appeal but this is granted only in special cases. If you make any application to the High Court you must also file a copy of that application in the regional appeal registry. You should check with the High Court registry regarding any time limits which may apply.

## Regional Family Court Appeal Registries

The Family Court has four appeal registries.

### BRISBANE

Cnr North Quay and Tank Street Brisbane QLD 4000

**TEL** (07) 3248 2322

**FAX** (07) 3248 2251

(Appeals from Queensland, the Northern Territory and Lismore)

### SYDNEY

97-99 Goulburn Street Sydney NSW 2000

**TEL** (02) 9217 7206

**FAX** (02) 9217 7217

(Appeals from New South Wales (except Lismore) and the Australian Capital Territory)

### MELBOURNE

305 William Street Melbourne VIC 3000

**TEL** (03) 8600 3777

**FAX** (03) 8600 3950

(Appeals from Victoria, Tasmania and South Australia)

### PERTH

Family Court of Western Australia

150 Terrace Rd Perth WA 6000

**TEL** (08) 9224 8222

**FAX** (08) 9224 8360

(Appeals from the Family Court of Western Australia)

## More information

For more information about the Family Law Courts:

- Go to [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au)
- Call 1300 352 000, or
- Visit a family law registry near you.