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Office of the Director of Public Prosecutions

Cairns

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COURT OF APPEAL

The law allows one calendar month for an appeal to be lodged. An extension may be granted in limited circumstances.

WHO CAN APPEAL?

There are generally three situations in which appeals can be lodged:

1. If convicted (found guilty) by a jury, the accused has the right to appeal the conviction and the sentence imposed.
2. An accused person who pleads guilty to a charge has the right to appeal against the sentence imposed.
3. The Attorney-General can appeal against the sentence imposed in limited circumstances.

Appeals are heard in the Court of Appeal by three judges and there is no jury.

Lawyers for both sides (one representing the accused and one from the ODPP) present arguments to the court. The judges listen to the arguments of both lawyers and have a transcript of the trial or sentence (and other material including written submissions on behalf of both parties) before them as the arguments are presented.

CAN A CONVICTED PERSON APPLY FOR BAIL ONCE AN APPEAL HAS BEEN LODGED?

In rare cases, a convicted person who has been sentenced to imprisonment may be granted bail until their appeal is heard.

You will be informed if the convicted person makes an application for bail pending the outcome of their appeal.

WHAT ARE THE POSSIBLE OUTCOMES FROM THE COURT OF APPEAL?

When they have considered the arguments, the Judges come to a decision about whether to dismiss or allow the appeal. This may be on the same day or some time later.

If the Judges do not come to a decision on the day the appeal takes place, this is referred to as the Judges 'reserving' their decision.

If the appeal is dismissed, the original conviction and sentence is confirmed.

If an appeal is allowed for a conviction then the Court can

- order a new trial; or
- order that an acquittal (found not guilty) be entered and the convicted person is free to go; or
- convict the accused of an alternative (lesser) offence.

If an appeal is allowed for a sentence, a new sentence is imposed by the Court.

WHAT IS YOUR ROLE IN THE APPEAL PROCESS?

You will be notified if an appeal is to be held, and you are welcome to attend the hearing if you wish. There is an area at the court where you can sit.

If you are not present, the ODPP will let you know the result as soon as possible after the court gives its decision.

On appeal, it is usually only the lawyers who attend the Court hearing.

**CAN THE PROSECUTION APPEAL IF THE JURY
ACQUITTED THE ACCUSED?**

No, there can be no appeal if the accused is found not guilty. The legal process is over and the accused is free to go.

WILL I NEED A LAWYER AT AN APPEAL?

No, the prosecutor from the ODPP will argue on behalf of the State — that is, against the counsel for the accused.

**WILL I HAVE TO GIVE EVIDENCE AT AN
APPEAL?**

It is unusual that evidence is called at an appeal hearing.

However, if the appeal court decides that another trial must be held, you may be called as a witness again at the re-trial.

WHERE IS THE COURT OF APPEAL?

In Queensland, the Court of Appeal sits in;

Brisbane -
Level 3, Law Courts Complex,
415 George Street, Brisbane.

Townsville –
Level D, Townsville Law Courts
31 Walker Street, Townsville

Cairns –
Cairns Law Courts
5D Sheridan Street, Cairns

TRANSCRIPTION REQUEST FORM

Complete the following by entering detail or ticking boxes, as appropriate.

ACCUSED					FILE NO				
CYPHER					CLERK				
Date of Cmtl Hearing					Date required if urgent				
XO request date					Next Crt date				
LOCATION	Cairns				JURISDICTION	Supreme			
	Innisfail					District			
	Thursday Is.					CCQ			
	Cape Circuit					Magistrates			
	Yarrabah								
Murder	YES		NO						
ACW	YES		NO		Requested by:	DPP		QPS	

TYPE OF RECORDING & REQUISITE APPROVALS

STANDARD		APPROVAL REQUIRED					
ROI	s.93A	Search Warrant	Photo Board	Pretext Calls	Drive Around	Field Tapes	Other

BREAKDOWN OF RECORDINGS TO BE TRANSCRIBED

Type of Recording	Interviewee	Interviewer	Date of Interview	Duration

TOTALS	Discs		C90 tapes		Micro-tapes	
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Out of scope

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Form 23

NOTICE TO BE SERVED WITH SUBPOENA

THIS IS A VERY IMPORTANT DOCUMENT PLEASE READ IT CAREFULLY

Failure to comply with subpoena may result in arrest

Failure to comply with this subpoena without lawful excuse is contempt of court and may result in your arrest.

Not all subpoenas will specify a particular date and time to attend.

The courts often list a number of cases in the same time period. As cases are completed or adjourned others may progress up the list. The lists are constantly reviewed to maximise use of court time and to reduce the costs to the taxpayer. If you have not been given a definite date and time in the subpoena, the party serving the subpoena must, as soon as practicable, advise you when you are required to attend court or if your attendance is no longer required (Rule 29 *Criminal Practice Rules 1999*).

Entitlement to travelling expenses

A person must comply with a subpoena only if an amount sufficient to meet the person's reasonable travelling expenses in complying with the subpoena, or a ticket or other travel document needed to comply with it, is tendered either when the subpoena is served or within a reasonable time before the attendance under the subpoena is required (Rule 35 *Criminal Practice Rules 1999*).

Application to set aside subpoena

A person who has been served with a subpoena may apply to the court for an order to set aside the subpoena. If it is a subpoena to produce documents, an application may also be made to narrow its scope (e.g. by reducing the number of documents to be produced).

If the application to set aside or narrow the subpoena is successful, the applicant may apply to the court for an order that all or part of the applicant's costs incurred in applying to have the subpoena set aside or narrowed be paid by -

- (a) the party who served the subpoena; or
- (b) if the court finds the conduct of the party's lawyer in serving the subpoena was oppressive, vexatious or an abuse of process - the party's lawyer (Rule 33-35 *Criminal Practice Rules 1999*).

The applicant must serve a copy of the application to set aside a subpoena on the person who served the subpoena (Rule 33 *Criminal Practice Rules 1999*).

Subpoena to produce medical or hospital records or records of a department of government or a statutory authority of the Commonwealth or State

If a subpoena requires the production of a medical record, hospital record or a record of a department of government, or a statutory authority of the Commonwealth or State, the served person may comply by giving the record to the proper officer of the court in a sealed envelope clearly marked "**court exhibits**" or something similar. The record is to be given to the proper officer at least 1 clear day before the time stated for production in the subpoena (Rule 30 *Criminal Practice Rules 1999*).

If you wish to object to the record or part of it being inspected or copied you must give the proper officer a written statement stating the grounds for the objection (Rule 31 *Criminal Practice Rules 1999*).

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