

Factsheet: Child protection appeals in the Childrens Court

Who may appeal against a decision

A party to a proceeding for an application for a child protection order may appeal against a decision on the application.

This means the child, the child's parents and the Director of Child Protection Litigation may appeal against a decision. It also includes any separate representative that has been appointed for a child.

In what court are child protection appeals heard?

If the decision on an application for a child protection order was made by the Childrens Court constituted by a magistrate (which is usually the case), then the appellate court is the Childrens Court constituted by a judge. The Childrens Court constituted by a judge may sit at any place where a Magistrates Court or the District Court may be held.

How to start an appeal

An appeal is commenced by a person (appellant) filing a written notice of appeal (in the approved Form 42) with the registrar of the appellate court (a notice is filed when the registrar stamps the front of it with the court's seal and the date of filing). The notice can be obtained at the [Queensland Courts' website](#) or in person at any registry of the District Court, and may be filed in any registry of the District Court.

Contents of a notice of appeal

A notice of appeal must include the following:

- the name and last known address of each other person entitled to appeal against the decision;
- the details of the decision being appealed against, including whether all or part of the decision is being appealed; and
- the full grounds of the appeal and facts relied on.

Time limit to start an appeal

The notice must be filed within 28 days after the decision is made unless the court extends the period for filing a notice of appeal, which may occur at any time.

Service of an appeal

When an appellant files a notice of appeal, they must then serve (give) a copy of the document on each other person (party) entitled to appeal against the decision. However, an appellant may ask the clerk of the appellate court to arrange for an appeal to be heard by the court before a person is served.

Outlines of Arguments

An appellant must file and serve an outline of argument on each party to the appeal within 28 days after filing a notice of appeal, unless the court directs otherwise.

The respondents to the appeal must then file and serve an outline of argument on each other party to the appeal within 28 days of being served with the outline of argument.

The court may set aside with the 28-day requirement if urgent circumstances exist, such as on an appeal against a decision on an application for a temporary assessment order, temporary custody order, or court assessment order.

An outline of argument means a written statement, prepared by an appellant or respondent, of the issues and arguments in the appeal, including the following:

- a concise, logical statement of any factual and legal conclusions the appellant or respondent argues the court should form that are different from, or additional to, the factual and legal conclusions formed in the decision being appealed;
- the reasons why the court should form the factual and legal conclusions sought, including precise references to the evidence relied on to dispute the factual and legal conclusions formed in the decision being appealed;
- a concise, logical summary of submissions that includes citations of authorities and passages relied on and references to any statutory provisions, previous decisions and other material relied on; and
- a list of all documents, including exhibits, the appellant or respondent may wish to rely on in the appeal.

Stay of operation of a decision

The appellate court may stay (temporarily stop) the operation of a decision appealed against to secure the effectiveness of the appeal. The appellant must ensure the notice of appeal (Form 42) is completed correctly with respect to 'request for stay of decision'. If an appellant seeks a stay of the operation of the decision appealed against, the registrar may set a time, day and place for a stay hearing before the court for the appeal. Parties should attend in person, however the court may, on its own initiative or on the application of a party, direct that a person is to attend the stay hearing by audio visual link or audio link.

Directions about documents and hearings

A registrar may issue directions about documents and numbers of copies to be filed and served on another party.

A directions hearing

A registrar may list an appeal for a directions hearing through giving a written notice to the parties to the appeal of the date, time and place for the hearing. Parties should attend in person, however the court may, on its own initiative or on the application of a party, direct that a person attend the hearing by audio visual link or audio link.

At any listed directions hearing, the court may consider any issues with an appeal on its own initiative or on application of a party to the appeal, and may issue directions it considers appropriate.

This may include making directions about the following:

- who should be a party to an appeal and whether all parties have been properly named;
- that documents in an appeal be amended, including a notice of appeal in a way and on the conditions the court considers appropriate, which may include removing or adding parties as required;
- the requirements to serve a document on parties in an appeal;
- extending or shortening the 28-day time limit for the filing and serving of the outline of arguments;
- transcripts of hearing and decision appealed against;

- the preparation of an appeal book that contains all relevant filed material, including any exhibits and orders that the appellant or respondents may wish to rely on in the appeal; and
- list a date, time and place of the hearing of the appeal.

Appeal hearing

An appeal against a decision on a child protection order or court assessment order must be decided on the evidence and proceedings before the Childrens Court. However, the appellate court may order that the appeal be heard afresh, in whole, or in part by way of a rehearing.

Powers of appellate court

If the respondents appear before the court at the hearing for an appeal, in deciding the appeal, the appellate court may:

- confirm the decision appealed against; or
- vary the decision appealed against; or
- set aside the decision and substitute another decision; or
- set aside the decision appealed against and remit the matter to the Childrens Court that made the decision.

If the appellate court hears an appeal in the absence of a respondent, in deciding the appeal the court may, in addition to the above:

- stay the decision appealed against; or
- make a temporary order that temporarily varies the decision appealed against or temporarily sets aside the decision appealed against and substitutes another decision; or
- adjourn the appeal, whether or not the court stays the decision appealed against or makes a temporary order.

Legal assistance and representation

If you are considering appealing against a decision or are a respondent to an appeal and are not represented by a lawyer, you should seek legal advice. To do so, you can visit [Legal Aid Queensland](#) or call on 1300 65 11 88, or a [Community Legal Centre](#) an [Aboriginal and Torres Strait Islander Legal Service](#), (ATSILS).