

Appealing to the District Court

How to appeal against
orders made in the Local or
Children's Court



If you are not happy about a decision made in your case, you have the right to appeal.

This brochure provides information on your rights to appeal to the District Court against orders made in the Local or Children's Court when you were present at court.

If an order was made by a Local Court in your absence you may lodge an application for annulment in the Local Court. See the Legal Aid NSW brochure [Reviewing Local Court decisions](#) for more information.

If you have been sentenced to a term of imprisonment by the Local Court and refused bail by the Local Court you may apply to the Supreme Court for bail. See the Legal Aid NSW brochure [Supreme Court bail](#) for more information. If your case has been transferred from the Local Court to the District Court you may apply for bail at the District Court. Speak to a lawyer about this. More information about bail is provided in the Legal Aid NSW brochure [A Guide to Bail](#).

When can I appeal to the District Court?

You can appeal against many decisions made by the Local Court or Children's Court, including when:

- the magistrate has found you guilty of an offence and you say that you are not guilty
- the magistrate has given you a penalty you think is too harsh
- the magistrate has disqualified you from driving for a period of time and you think that period is too long or that you shouldn't have been disqualified at all

- the magistrate has refused an application to annul a conviction or other order entered in your absence
- an Apprehended Violence Order (AVO) has been made against you and you think it is not necessary
- your application for an Apprehended Violence Order (AVO) was refused, or
- you are a party to an AVO that has been varied or revoked by the Local Court or the Local Court refused to vary or revoke an AVO.

There are other orders made by the Local Court that you may be able to appeal. You should get legal advice or check with the court staff at the Local Court to see if you can lodge an appeal in other matters.

How do I appeal?

You can lodge an appeal at any Local Court.

You should go to the Local Court registry and explain that you want to appeal. The Local Court staff will be able to assist you with completing a form called a Notice of Appeal.

You will need to pay a fee for lodging an appeal. If you are a low-income earner you may ask the registrar to waive or postpone this fee. It is a good idea to take proof of your financial details with you to court if you want to do this. Proof that you could bring includes a bank statement or a letter from Centrelink that states the benefit you receive.

If you are in gaol you can lodge an appeal from gaol. See the welfare officer or officer in charge of your complex as soon as possible. They will be able to give you a Notice of Appeal. You may also be able to get help from a solicitor from the Prisoners Legal Service.

When should I lodge the appeal?

You have 28 days from the date of the order (the date of your sentence) to appeal. It is a good idea to lodge your appeal as soon as possible after the order has been made by the Local or Children's Court.

If you have not lodged your appeal within 28 days you will need to lodge another form called an Application for Leave to Appeal. You must do this within three months of your order being made. You will need to explain why you did not lodge your appeal within the 28-day period. If more than three months have passed since the date of the conviction, sentence or other order made by the Local or Children's Court, then you will not be able to appeal.

What do I write on the Notice of Appeal form?

You need to give your personal details (name, address), details of the matter you had at court and the order you are appealing against. For example if you had a criminal or traffic matter at court you need to say whether you are appealing because:

- you are not guilty (called a conviction appeal) and/or
- the penalty is too severe (called a severity appeal).

Staff at the Local or Children's Court or at the gaol will be able to assist you with completing the Notice of Appeal.

What happens after I lodge the Notice of Appeal?

Your application will be listed at the District Court. The court registrar will notify you and any other person affected by the decision of when and where the appeal will be heard.

If the matter you are appealing against is a traffic or criminal matter the police and the Office of the Director of Public Prosecutions (DPP) will be notified. If it is an Apprehended Violence Order (AVO) the other parties involved with the AVO will be notified. They are entitled to attend court.

What happens to the Local Court/ Children's Court order until my appeal is heard?

When you lodge your appeal check with court staff about what will happen in your case.

Criminal matters

If you are appealing against an order made in a criminal matter the penalty is usually stayed (suspended) once the appeal is lodged. This only happens if you lodge your appeal within 28 days. If you are seeking leave to appeal the order will not be stayed until leave is granted.

If you received a sentence of imprisonment, including an intensive correction order, and you are released on bail your sentence is stayed.

If you received a sentence of imprisonment, including an intensive correction order, and you are refused bail while waiting for the appeal to be heard, then your sentence continues to run.

Traffic matters

If your licence was disqualified by the Local Court it is important to know whether that disqualification is stayed while you are waiting for your appeal. It is important that you know whether or not you are allowed to drive. If you drive while your licence is suspended or disqualified you may be charged and face a gaol sentence.

If you have a serious traffic matter, for example if you were charged with a mid-range or high-range drink driving offence or an offence involving death or grievous bodily harm, and your licence was suspended by the police at the time you were charged, your licence normally remains suspended even after you lodge your appeal. This means that you cannot drive.

If you were charged with a less serious traffic offence and your licence was not suspended before you went to the Local Court and were sentenced to a period of disqualification, the disqualification period will be stayed.

It is very important that you know whether you can drive so check before you leave the court. If you are not sure whether you are allowed to drive do not do so until you get legal advice about whether your licence is suspended or disqualified.

Apprehended Violence Orders (AVOs)

If you are appealing against an AVO the order is not automatically stayed (suspended). You may ask the Local Court to stay the AVO while you are waiting for the appeal to be heard. If this does not happen you must comply with the AVO until you go to the District Court and a judge makes a decision about your case.

Can I get bail while waiting for my appeal?

If you received a sentence of imprisonment, including home detention, you may apply to be released on bail until you appear at the District Court. You can make an application for bail at the Local Court on the same date as you are sentenced or you can make it later at the gaol.

Sometimes it may be better not to apply for bail. If you are expecting that the District Court will also give you a gaol sentence but you are hoping that it will be a shorter sentence, it may be a good idea not to apply for bail and spend some time in gaol before you appear before the District Court. It is a good idea to get legal advice about this. If you were represented in the Local Court, speak to your lawyer. You could also contact the Prisoners Legal Service at the gaol or call LawAccess NSW on **1300 888 529**.

If you want to apply for bail see the Legal Aid NSW brochure [A guide to bail](#) for more information.

How can I prepare for my appeal?

You should go to the District Court registry and ask for a copy of all the papers which will be handed up to the judge on your appeal, including a copy of the transcript if it is a conviction appeal.

- You should make photocopies of any documents which you wish to give to the judge. These should be given to the Office of the Director of Public Prosecutions (DPP) solicitor before your court date. Ask the court staff at the District Court registry how to do this.
- If you have a conviction appeal and you want to give evidence, or call a witness to give evidence, you need to file a notice of motion and an affidavit explaining why the witness did not attend and give evidence in the Local Court. Ask the court staff to assist you with this. These documents must be served on the solicitor for the DPP before the court date.
- Make sure your witnesses attend court in case you are allowed to call them. Witnesses can also be subpoenaed.
- Think about what you want to say to the judge beforehand and write it out to make sure you remember everything. If it is easier you may want to hand up a letter setting out your arguments.

What happens at the hearing of the appeal?

A solicitor from the DPP represents the police in a criminal or traffic matter.

In a conviction appeal

The judge will look at any documents or other items that were tendered at the Local Court hearing and read the transcript of evidence given in the Local Court. The transcript is a typed copy of the spoken evidence given by the witnesses in the Local Court.

Normally the judge makes a decision about your case after reading these documents and listening to submissions (legal arguments) from the solicitor from the DPP and you.

You can only give evidence or call witnesses in a conviction appeal in the District Court if the judge gives you leave to do so. You need to explain why the witnesses did not attend the Local Court and give evidence there. In order to do this, you need to apply for leave. This is usually done by filing a Notice of Motion and an Affidavit explaining why the witness was not called in the Local Court and should be allowed to give evidence in the appeal.

It is very rare for witnesses who gave evidence in the Local Court to be called to give evidence again in the District Court. If you think that a witness should be called to the District Court to give evidence in your appeal it would be a good idea to get legal advice about this before going to court.

In a severity appeal

The judge will read the Local Court papers as they would in a conviction appeal. You can give evidence as part of a severity appeal. You may wish to give evidence yourself or call someone to give evidence about you. You may wish to give the judge some documents about you.

These may include:

- medical certificates if you have any health issues
- a report from a rehabilitation centre or counsellor if you have been participating in drug or alcohol rehabilitation
- a psychological or psychiatric report if that is relevant, or
- character references. See the Legal Aid NSW brochure [Character references](#).

It is a good idea to give copies of any certificates or reports that you intend to hand to the judge to the solicitor from the DPP before the court case so that they can check that they are genuine. If you don't do this, you may not be allowed to give them to the judge.

What happens in court?

In a conviction appeal

- The solicitor for the DPP will tender (give the court) all the documents from the Local Court. These will include the Local Court record of the proceedings, the transcript of the evidence given in the Local Court and any documents or other items tendered in the Local Court.
- If the transcript of evidence is not ready on the first date your appeal is listed at the District Court your appeal will have to be adjourned to another day.

- The judge must have the transcript before your appeal can be heard. If you wish to give evidence or call witnesses you will have to seek leave from the court to do so. Otherwise, you can make submissions to the judge about why you think you should not have been convicted (found guilty).

The DPP solicitor will then make submissions to the court.

The judge will then make a decision.

In a severity appeal

- The solicitor for the DPP will provide all the documents from the Local Court. These will include the Local Court record of the proceedings, the police fact sheet and your criminal or traffic record. It should also include all references and reports tendered in the Local Court. You should check that all documents have been included.
- The solicitor for the DPP will then tell the judge what penalty was given to you in the Local Court and the maximum penalty which applies for the offence.

It is then your turn to speak to the judge and explain why you think the penalty was too harsh. You may wish to:

- hand up character references, medical certificates, psychological reports or other documents that may be relevant to your case and that are not already in the bundle of documents which came from the Local Court;
- give evidence yourself, or
- call a witness to give evidence about your character or rehabilitation.

If you, or someone else, gives evidence the solicitor from the DPP may cross-examine (question) you, or your witness, about what you have said or anything else that is relevant to the case.

After all of the documents have been given to the judge you may then make submissions about your case. The DPP solicitor will then make submissions about your case.

The judge then makes a decision.

Could it be worse for me if I appeal?

Yes. It is possible that the judge may give you a harsher penalty. However, the judge must warn you if he or she is considering doing this. This is called a Parker Warning. If you receive a Parker Warning you then have the chance to withdraw your appeal and the original order of the Local Court stands (the penalty you received in the Local Court remains in place and, if it has been stayed, will start).

What happens if I am successful in the District Court?

- The judge might set aside the order or conviction against you.
- In a conviction appeal the judge might decide that you are not guilty.
- In a severity appeal the judge might decide that a less severe punishment is appropriate.
- In an appeal against an AVO the judge may decide that an AVO is, or is not, necessary or that the conditions should be changed.

What happens if I am unsuccessful in the District Court?

The orders made by the Local Court will take effect.

If you received a sentence of imprisonment from the Local Court and were given bail you will be taken into custody.

Can I apply for legal aid?

You may be granted legal aid for representation at court only in specific circumstances.

In a conviction appeal

- it is a type of matter for which legal aid is available in the Local Court
- your appeal has reasonable prospects of success
- Legal Aid NSW is satisfied that providing aid for your matter is an appropriate expenditure of limited public funds, and
- you satisfy the Legal Aid NSW means test.

In a severity appeal

- you have received a sentence of imprisonment from the Local Court (imprisonment includes an intensive correction order) or there are **exceptional circumstances**
- your appeal has reasonable prospects of success; and
- you satisfy the Legal Aid NSW means test.

When deciding whether to grant legal aid for a severity appeal, exceptional circumstances include:

- the applicant is under 18;
- the applicant is a person having substantial difficulty in dealing with the legal system due to:
 - › a psychiatric condition
 - › a developmental disability
 - › an intellectual impairment, or
 - › a physical disability.
- the applicant is an Aboriginal woman.

If you want to apply for legal aid, you should do so as soon as possible after lodging the appeal. You should contact the Legal Aid NSW office closest to the court where your appeal will be heard. Staff at the court registry can tell you which office to contact or you can call LawAccess NSW on **1300 888 529**.

Legal Aid NSW will need to make a decision about whether you are eligible for legal aid and whether your appeal has reasonable prospects of success.

Where can I get legal help?

LawAccess NSW

LawAccess NSW is a free government service that provides legal information and referrals for people in NSW. You can call LawAccess NSW on **1300 888 529** or access their webchat function at www.lawaccess.nsw.gov.au.

Legal Aid Youth Hotline

Provides legal advice and information to young people under 18. Operates 9am to midnight weekdays, with a 24-hour service from Friday 9am to Sunday midnight and also on public holidays. Call **1800 10 18 10**.

Legal Aid NSW

Legal Aid NSW helps people with their legal problems. Our legal services include legal advice, help at court and family dispute resolution. We can help in most areas of criminal law, family law and civil law. You can find out more at www.legalaid.nsw.gov.au.

LawAccess NSW can book an appointment for you at your local Legal Aid NSW office if you meet our eligibility criteria – you can call them on **1300 888 529**.

Aboriginal Legal Service (ALS)

If you are Aboriginal or Torres Strait Islander you can also contact the ALS for free legal advice. To find your closest ALS call **1800 765 767** or visit www.alsnswact.org.au.

This publication is a general guide to the law. You should not rely on it as legal advice, and we recommend that you talk to a lawyer about your situation.

The information is correct at the time of printing, however it may change. For more information contact LawAccess NSW on **1300 888 529**.



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For more information about Legal Aid NSW services:



Do you need help to contact us?



If you need an interpreter, call the Translating and Interpreting Service (TIS National) on **131 450** (9am – 5pm) and ask for LawAccess NSW.

Do you find it hard to hear or speak?



If you find it hard to hear or speak, call us through the National Relay Service (NRS) on **133 677** and ask for LawAccess NSW or visit: www.relayservice.gov.au