



# Appeals to the NSW Court of Criminal Appeal

*Witness Assistance Service*

Date last updated 24/11/22

# Information about appeals

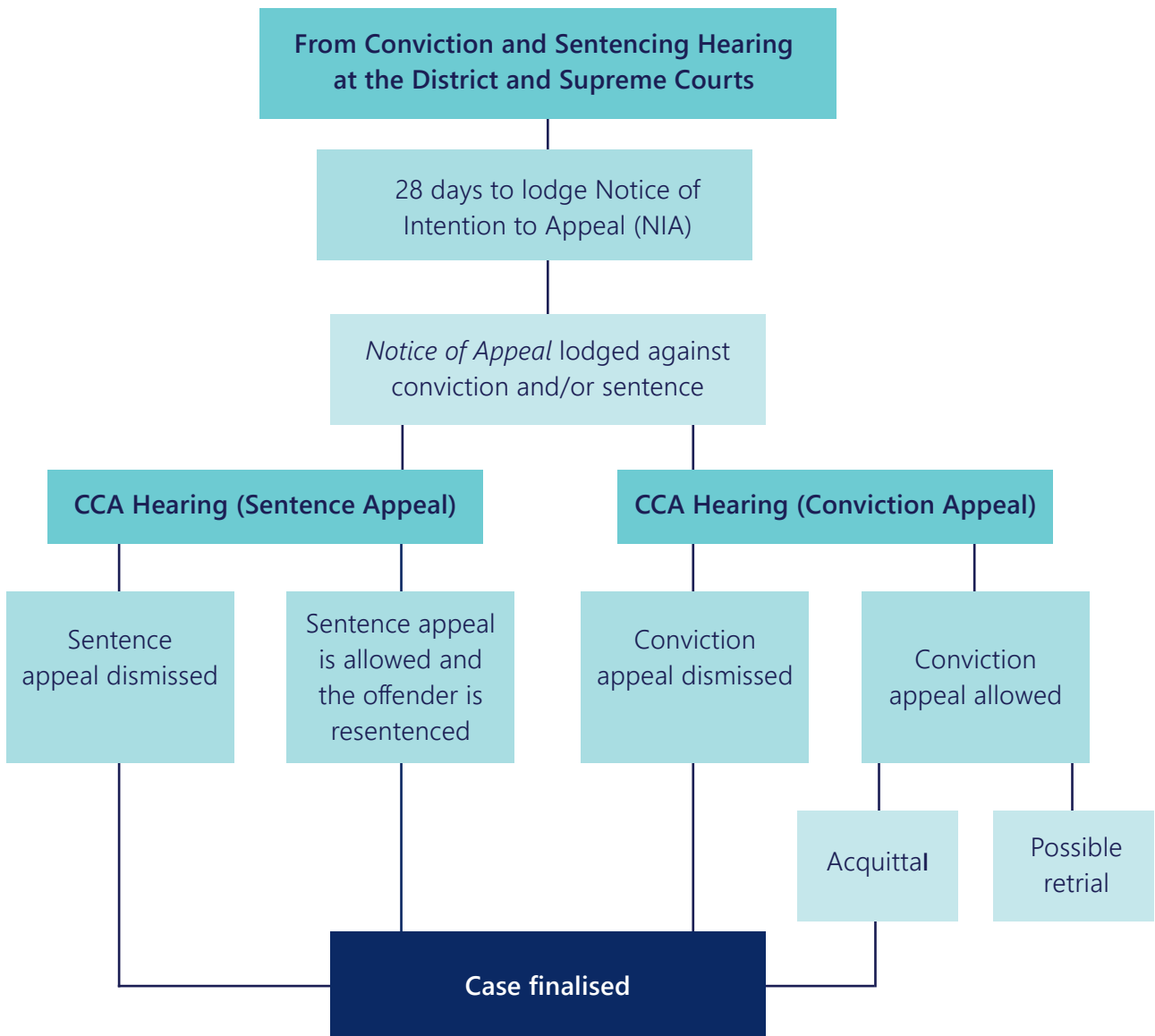
## Right to appeal

A person who has been found guilty of a crime may lodge an appeal to the Court of Criminal Appeal (CCA) against their conviction (the fact that they have been found guilty) or against the severity of their sentence. The Office of the Director of Public Prosecutions (ODPP) can appeal against the sentence if it is thought that the sentence was “manifestly inadequate”.

## Appellate Litigation and Legal Resources (ALLR) Group

Solicitors from the ALLR Group, within the ODPP, together with senior Crown Prosecutors, prepare appeals on behalf of the Crown. The Crown Prosecutors appear for the Crown at the hearing.

## Steps in the appeal process



## Types of appeals

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There are three types of appeals that can take place:

### **Conviction Appeal**

An appeal by the convicted person against the fact that they were found guilty

### **Sentence Appeal**

An appeal by the convicted person against the severity of the sentence they received

### **Sentence Appeal by the Prosecution**

The ODPP can appeal against the sentence if it is thought that the sentence was "manifestly inadequate"

## Frequently asked questions

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### **Can a convicted person apply for bail?**

A convicted person who has lodged an appeal may apply for bail pending the hearing of the appeal. You will be advised if bail is granted

### **Will I need to give evidence again?**

Witnesses are not usually called to give evidence in the CCA. However, you may attend court on the day of the hearing, to observe the proceedings, if you wish

### **Can I put in a new victim impact statement?**

The judges in the CCA will have a copy of any Victim Impact Statement tendered on sentence. No further victim impact statement can be tendered at the appeal



## **Notice of Intention to Appeal**

The first step in the appeal process is for a *Notice of Intention to Appeal* to be filed with the Court of Criminal Appeal. The convicted person lodging the *Notice of Intention to Appeal* is known as the "applicant".

The Notice of Intention to Appeal is a short document indicating the offences which they were convicted of, and the sentences imposed on them, and indicating that they intend to lodge an appeal. They are also required to nominate whether they intend to appeal either: only their conviction; or their conviction and the length of the sentence; or only the length of the sentence. They do not need to specify the reasons for lodging the appeal (known as the "grounds of appeal") at this stage.

### **Filing a Notice of Intention to Appeal**

A Notice of Intention to Appeal must be filed within 28 days of the date of conviction or sentence, though it is common for the Registrar of the Court to grant an extension of time.

The Registrar will usually grant extensions for periods of 3 months at a time, provided the applicant supports their application for an extension with reasons. Whether or not an extension is granted is the decision of the Registrar. The ODPP is not involved in this decision.

It is not uncommon for the Registrar to grant more than one extension. This means that after a Notice of Intention to Appeal is filed, the applicant might not file a Notice of Appeal for 6, 9, or even 12 months later.

### **Can a Notice of Intention to Appeal be withdrawn?**

Even though a Notice of Intention to Appeal is filed, an applicant may decide they will not go ahead with an appeal. They are not required to formally advise the Court or the ODPP that they no longer intend to file an appeal. If no Notice of Appeal is filed within the time period specified by the Registrar, the Notice of Intention to Appeal will expire, and this means (in most cases) that the applicant will not be going ahead with an appeal.

## Notice of Appeal

The Court of Criminal Appeal will not list the appeal for hearing until a Notice of Appeal has been filed.

The applicant has 6 months after filing the Notice of Intention to Appeal to file a Notice of Appeal (which is often prepared by their lawyer) and must include the Grounds of Appeal as well as written submissions in support of each Ground of Appeal as to why the court should allow the appeal.

### When will the appeal hearing date be set?

It is only after a Notice of Appeal has been filed that the Court of Criminal Appeal will list the appeal for mention before the Registrar so that a hearing date can be fixed. Once the convicted person has lodged a Notice of Appeal they are called the "appellant".

Further time to file a Notice of Appeal (beyond 6 months) may be granted by the Registrar of the Court of Criminal Appeal.

An applicant may still file a Notice of Appeal if they miss the deadline set by the court. The appellant will need to satisfy the Court that they should be allowed to have their appeal heard even though they did not file their appeal in time. This is known as seeking "leave to appeal out of time".

They will need to provide reasons as to why their Notice of Appeal was not filed in time, and the ODPP will have an opportunity to respond.



## The hearing

*After a Notice of Appeal* is filed, the matter will be listed for mention before the Registrar of the Court of Criminal Appeal to set a hearing date. Sometimes a matter may be listed for mention on a number of occasions before a hearing date is set.

The Registrar will fix a date for the appeal to be heard and will also set a timetable, fixing the date by which the Crown must file written submissions in reply to the written submissions filed by the applicant.

You will be notified by our Office of the date on which an appeal is listed for hearing, including details of the solicitor from the ALLR Group handling the appeal.

The appeal will usually be heard by three judges. Prior to the hearing the judges receive a copy of the transcript of the District or Supreme Court proceedings, as well as all the exhibits, and the written submissions filed by the applicant and the Crown.

At the hearing, counsel for each party will make oral submissions. The judges will consider the transcript, exhibits, written submissions, legal arguments, the legislation and prior cases to reach a decision. The decision, known as a Judgement, may be delivered on the day of the hearing or (as often occurs) it may be reserved to a later date.

## Updates on the appeal process

### Notice of Intention to Appeal

You will be informed of a Notice of Intention to Appeal by the Police Officer in Charge, the previous trial solicitor or a Witness Assistance Service (WAS) Officer.

### Notice of Appeal

The ALLR Group will inform you once the Notice of Appeal has been lodged. The solicitor assigned to the matter will then keep you informed of the court dates for mentions, callovers, hearing and judgment.



## Possible results of the appeal

### *Conviction appeals*

If a conviction appeal is unsuccessful, it will be dismissed, the conviction will stand and the appellant must continue to serve the sentence imposed by the original sentencing Judge. In some cases the appellant may lodge an appeal against this decision to the High Court of Australia. This, however, happens rarely.

A successful conviction appeal can result in the Court directing a re-trial. A re-trial means that there will be a new trial on the charges. Witnesses who gave evidence in the earlier trial may have to give evidence again (though there is legislation which allows for victims of sexual assault to have their evidence

from an earlier trial played in a re-trial). If a re-trial is directed, the applicant may be granted bail pending the new trial.

A successful conviction appeal can also result in the Court overturning the conviction and entering a verdict of not guilty (known as an "acquittal").

This will mean that the sentence imposed by the sentencing Judge will also be quashed and (usually) means that the applicant will be released from custody immediately.

### *Sentence appeals*

If the applicant's sentence appeal is successful, the Court will impose a new sentence which may be less than the original sentence.

If the ODPP appeal is successful the sentence may be increased.

If the applicant's sentence appeal is unsuccessful, it will be dismissed and the applicant must continue to serve the sentence imposed by the original sentencing Judge.



## ***Witness Assistance Service of the ODPP***

The Witness Assistance Service is a Statewide service provided by the ODPP to assist victims and family members by providing support throughout the criminal proceedings, including any appeal.

If you require further assistance please contact the Officer with whom you have had prior contact, or, if you are making contact for the first time, telephone Sydney Head Office or toll free number below and ask to speak to a WAS Officer.

## ***Contact numbers in the ALLR Group***

For any further information you may telephone the Managing Lawyer of the ALLR Group, on (02) 9285 8641.

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## ***Information about the appellant's custody***

If you require information regarding details of the appellant's custody arrangements including:

1. Change in security classification which may result in the appellant being eligible for unescorted leave from gaol;
2. Due for parole consideration or release;
3. Escape from custody;

It will be necessary for you to apply to go onto the Victims Register, or ask your WAS officer to make a referral by NSW Corrective Services ph: (02) 8688 0100.