

Contacts

For information over the phone:

LawAccess NSW 1300 888 529

If you are under 18:

Legal Aid Youth Hotline 1800 10 18 10



If you are deaf or have a hearing or speech impairment, call the NRS on 133 677.



If you need an interpreter, call the Translating and Interpreting Service (TIS) on 13 14 50. They can arrange an interpreter to call LawAccess NSW or Legal Aid NSW.

Legal Aid NSW has other brochures including:

Are you applying for Supreme Court Bail?

Are you facing a committal?

Character references

Going to court

Police powers

Reviewing Local Court decisions

Understanding bail

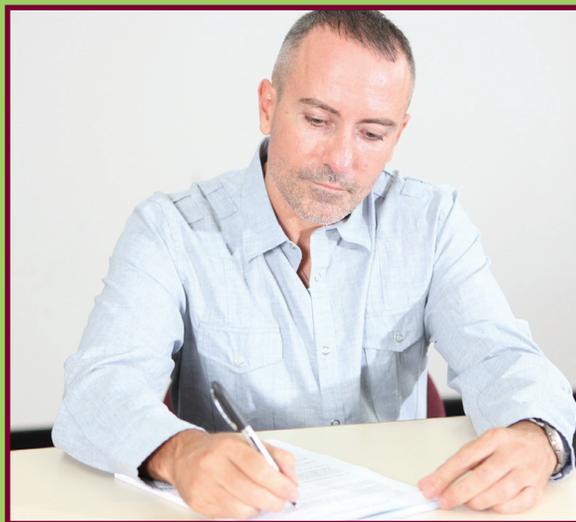
These can be viewed or ordered at our online publications web page at:

www.legalaid.nsw.gov.au/pubsonline

or from the Publications Unit on 9219 5028.

Appealing to the District Court

If you have attended a Local or Children's Court and are not happy about a decision made about your case you may wish to consider an 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.

Legal Aid
NEW SOUTH WALES

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 refused bail by the Local Court you may apply for bail to the Supreme Court. See the Legal Aid NSW brochure *Applying for 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. More information about bail is provided in the Legal Aid NSW brochure *Understanding Bail*.

When can you appeal to the District Court?

You can appeal against many decisions made by the Local Court, including when:

- the magistrate has found you guilty of an offence and you say that you are not guilty; or
- the magistrate has given you a penalty which you think is too harsh; or
- the magistrate has disqualified you from driving for a period of time that you think is too long or that you shouldn't have been disqualified at all; or
- the magistrate has refused an application to annul a conviction or other order entered in your absence; or

- an Apprehended Violence Order (AVO) has been made against you and you think that is not necessary; or
- your application for an Apprehended Violence Order (AVO) was refused; or
- you are a party to an AVO which 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 which 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 you appeal?

You can lodge an appeal at any Local Court. The Local Courts have a special form called a Notice of Appeal. You should go to the Local Court office and explain that you want to appeal. The Local Court staff will be able to assist you with completing the 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.

If you are in gaol you can lodge an Appeal at the 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 see a solicitor from the Prisoners Legal Service who will be able to assist you.

When should you lodge the appeal?

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

For conviction or severity appeals:

If you have not lodged your appeal within 28 days you may apply for leave to appeal within three months of the order. You will need to lodge another form called an Application for Leave to Appeal. 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 Court, then you are 'out of time' and you will not be able to appeal.

What do you 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 Court or at the gaol will be able to assist you with completing the Notice of Appeal.

What happens after you lodge the Notice of Appeal?

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

If it was a traffic or criminal matter the police and the Office of the Director of Public Prosecutions (DPP) will be notified. If it was 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 order until your appeal is heard?

When you lodge your appeal check with the court staff of the Local Court 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 home detention, and you are released on bail your sentence is stayed.

If you received a sentence of imprisonment, including home detention, 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 which gave you 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 you get bail while waiting for your 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 and lodge your appeal 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 about this. You may also contact the Prisoners Legal Service at the gaol or call LawAccess NSW on 1300 888 529.

If you want to apply for bail more information is contained in the Legal Aid NSW brochure *Understanding Bail: Helping you understand and apply for bail*.

How can you prepare for your 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 tender to the judge. These should be given to the Office of the Director of Public Prosecutions (DPP) solicitor before your court date if possible. 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 if possible.
- Make sure your witnesses attend court in case you are allowed to call them.
- 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 the 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. You can give evidence on 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 – how they can help you if you are going to court*.

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. This is so that he, or she, 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?

For a conviction appeal

- The solicitor for the DPP will tender 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 may 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 make a decision.

For a severity appeal

- The solicitor for the DPP will tender 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 are not already in the bundle of documents which came from the Local Court
- Give evidence yourself
- 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.
- 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. You then have the chance to withdraw your appeal and the original order of the Local Court stands.

What happens if you are 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 you are 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 you apply for legal aid?

You are able to get advice about an appeal from:

- LawAccess NSW 1300 888 529
- Legal Aid NSW offices (for locations, see www.legalaid.nsw.gov.au)

You may be granted legal aid for representation at court if:

For a conviction appeal

- it is a type of matter for which legal aid is available in the Local Court and
- your appeal has reasonable prospects of success and
- you satisfy the Legal Aid NSW means test.

For a severity appeal

- a sentence of imprisonment, including a suspended sentence, has been imposed or there are exceptional circumstances and
- your appeal has reasonable prospects of success and
- you satisfy the Legal Aid NSW means test.

Exceptional circumstances include:

- an applicant who is a child; or
- 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.

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 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.

Relevant laws

Crimes (Appeal and Review) Act 2001

Crimes (Domestic and Personal Violence)

Act 2007