

FEDERAL COURT OF AUSTRALIA
APPEALS





Appeals

Under the Federal Court of Australia Act 1976 the Court is able to hear appeals from:

- judgments of a single Judge of the Federal Court whether interlocutory or final;
- judgments of a Supreme Court of a Territory other than the Australian Capital Territory or Northern Territory;
- certain judgments of courts (other than a Full Court of the Supreme Court) of a State, the Australian Capital Territory or the Northern Territory, exercising federal jurisdiction;
- certain judgments of the Federal Magistrates Court.

The Court also hears appeals from decisions of persons, authorities and tribunals other than courts. You can get more information about the specific forms and procedures that apply to these types of appeals from any Federal Court Registry and on the internet at www.fedcourt.gov.au

Who hears appeals?

An appeal from a judgment of a Federal Magistrate in a non-migration case will be heard by a Full Court unless the Chief Justice of the Federal Court considers that it is appropriate for the appeal to be heard by a single Judge.

An appeal from the Federal Magistrates Court in a migration case will be heard by a single judge unless a judge of the Federal Court considers that it is appropriate for the appeal to be heard by a Full Court.

Appeals from a judgment of a single Judge or a Supreme Court are usually heard by a Full Court of three or more Judges sitting together.

How do you appeal?

You must complete a Form 55: Notice of Appeal. On this form you are called the appellant as you are the party making the appeal.

The original Notice of Appeal plus a copy for each other party must be delivered to the Federal Court. You can do this by bringing the documents to the Registry, or by posting or faxing them, or by sending them by the internet.

This is called filing.

More information about filing is available from the Registry and on the Court's website.

Make sure you have a copy of the Notice of Appeal for yourself.

If you are appealing from a decision of the Court of a State or Territory, a copy of the Notice of Appeal must also be filed in the office of the Registrar, Master or other proper officer of that court.

If the notice is in the correct form Registry staff will stamp the original and the copies of the Notice of Appeal.

You must arrange for a stamped copy of the Notice of Appeal to be served on each respondent within 5 days of filing your appeal.

Time limits

An interlocutory judgment is one that, generally speaking, deals with procedural matters rather than the merits of a case. Appeals from interlocutory judgments can only be made with the permission of the Court. You must apply to do this within 7 days of the pronouncement of the judgment or ruling by a single Judge of the Federal Court or within 21 days of the pronouncement of the judgment or ruling by another court, for example, the Federal Magistrates Court. If the time to appeal has, or is about to, run out, you can apply for an extension of this period.

Appeals from final judgments must be made within 21 days of the decision. If the time to appeal has, or is about to, run out, you can apply for an extension of this period.

How much does it cost?

A fee must be paid when you file a Notice of Appeal. This fee cannot be refunded if you withdraw or abandon the appeal. If you cannot afford this fee you can ask the Court to waive it. Some people are also exempt from paying fees (for example, if you have been granted Legal Aid or are the holder of a health care card).

You can get a form to ask the Court to waive or grant an exemption from the fee from the Registry.

What if someone is appealing against a decision in my favour?

If you have been served with a Notice of Appeal you will be known as the respondent in the appeal proceeding. You need to enter an appearance in the matter by filing a Form 15: Notice of Appearance.

If you also want to appeal part of the judgment in the original case or to have part of the original judgment varied you must fill out a modified Form 55: Notice of Cross-Appeal.

What happens after the Notice of Appeal is filed?

Unless the appeal is from a judgment of a Federal Magistrate, the Registry usually makes an appointment for both parties to attend a meeting to decide what material from the original case should be provided to the Court in the appeal book.

Not all documents from the original hearing may be relevant. This process is called 'settling the appeal book index'.

If the appeal is from a non-migration judgment of a Federal Magistrate, the Registry will allocate a date for a directions hearing or final hearing of the appeal.

If the appeal is from the Federal Magistrates Court in a migration case, the Registry will write to you about any directions or orders that the Court has made regarding appeal books, written submissions and other matters relating to the preparation of the

appeal for hearing. The Registry will write to you again to notify you of the date set for the hearing of the appeal.

You will also be required to file in the Court and serve on the respondent an outline of your submissions. This outline must contain a summary of the argument for each issue in the appeal and a list of cases that you wish to refer to in support of your case. This must usually be done no later than 5 clear working days before the start of the hearing of the appeal, although a Judge may set a different date.

The Hearing

You will be asked to argue your case first. The respondent will then be given an opportunity to reply. You will then be given a final opportunity to reply to anything raised by the respondent. You will be expected to be familiar with the contents of the appeal book and to be able to direct the Court to passages in the book that support your arguments.

If you are successful the Court may:

- make a different decision to the one made by the Court that heard the original case; or
- order that the case be heard again.

What are the chances of success?

For an appeal to succeed you must convince the Court that the Judge or Federal Magistrate who heard the original case made an error and that the error was of such significance that the decision should be overturned. Some examples of significant errors are that the Judge or Federal Magistrate who heard the original case:

- applied an incorrect principle of law; or
- made a finding of fact or facts on an important issue which could not be supported by the evidence.

The Court hearing the appeal:

- does not consider any new evidence or information that was not presented in the original case (except in special circumstances);
- does not call witnesses to give evidence;
- does read all the relevant documents filed by the parties for the original case ;
- does read the relevant parts of the transcript of the original case, if available;
- does listen to legal argument from both parties to the appeal.

Legal advice

Drafting a Notice of Appeal or Cross-Appeal is very difficult. It is therefore strongly recommended that a Notice of Appeal be prepared with legal assistance.

You can get contact details of organisations which may be able to provide free or low-cost legal advice or assistance from the Court or see the Court's website: www.fedcourt.gov.au

Court staff cannot provide legal advice.

Who pays the legal costs?

If you lose an appeal you will usually be ordered to pay the other party's legal costs.

What if I want to withdraw my appeal?

You can withdraw your appeal by filing a Form 29: Notice of Discontinuance. If the appeal has not yet been heard you do not need the permission of the Court to file the Notice of Discontinuance. If the hearing has begun, or if the hearing has ended but the Court has not yet delivered its judgment, you will need the Court's permission to file the Notice of Discontinuance.

If you discontinue the appeal you will usually be ordered to pay the other party's legal costs.

Appeals to the High Court of Australia

There is no automatic right of appeal to the High Court from a decision of the Full Court of the Federal Court or from a decision of a single Judge who heard an appeal from a Federal Magistrate.

You may apply to the High Court for permission (called 'special leave') to appeal, but this is only granted in special cases. If you make an application for special leave to the High Court, a copy of the application must also be given to the Federal Court Registry in the State or Territory where the decision that you wish to appeal from was made.

Where can you get forms?

You can get all of the forms mentioned in this brochure from any Federal Court Registry. They can also give you a copy of guides which show you how to fill out some of the forms.

You can also get the forms and guides from the Court's web site: www.fedcourt.gov.au

Interpreters

The Court may arrange for an interpreter to come to the hearing of the appeal. If you need an interpreter you must contact the Registry of the Court at least one week before the hearing.

If you do not contact the Registry they may not be able to get an interpreter and the hearing will be delayed.

You can also call 131 450 and speak to a telephone interpreter.

FEDERAL COURT REGISTRIES

ACT Registry

Commonwealth Law Courts Building
Childers Street
Canberra City ACT 2601
Telephone: (02) 6267 0566
Fax: (02) 6267 0625
TTY: (02) 6267 0537
Email: actman@fedcourt.gov.au

NSW Registry

Level 17, Law Courts Building
Queens Square
Sydney NSW 2000
Telephone: (02) 9230 8567
TTY: (02) 9230 8270
Fax: (02) 9230 8535
Email: nswdr@fedcourt.gov.au

NT Registry

Level 3, Supreme Court Building,
State Square, Darwin NT 0800
Postal address: PO Box 1806
DARWIN NT 0801
Telephone: (08) 8941 2333
Fax: (08) 8941 4941
TTY: (08) 8982 0838
Registry Filing Fax: (08) 8941 4941
Email: ntreg@fedcourt.gov.au

QLD Registry

Level 6, Commonwealth Law Courts
119 North Quay
Brisbane QLD 4000
Postal Address: P.O. Box 13084,
George Street Post Shop
Brisbane QLD 4003
Telephone: (07) 3248 1100
Fax: (07) 3248 1260
TTY: (07) 3248 1272
Email: qldreg@fedcourt.gov.au

VIC Registry

Commonwealth Law Courts
305 William Street
Melbourne VIC 3000
Telephone: (03) 8600 3333
Fax: (03) 8600 3281
TTY: (03) 9670 0320
Email: vicreg@fedcourt.gov.au

SA Registry

Level 5 Commonwealth Law Courts
3 Angas Street Adelaide SA 5000
Postal address: GPO Box 1350
Adelaide SA 5001
Telephone: (08) 8219 1000
Fax: (08) 8219 1001
TTY: (08) 8219 1011
Email: sareg@fedcourt.gov.au

TAS Registry

Commonwealth Law Courts Building
39-41 Davey Street
Hobart TAS 7000
Postal address: GPO Box 903
HOBART TAS 7001
Telephone: (03) 6232 1715
Fax: (03) 6232 1701
TTY: (03) 6232 1865
Email: tasreg@fedcourt.gov.au

WA Registry

Commonwealth Law Courts
1 Victoria Avenue
Perth WA 6000
Postal address: GPO Box A30
PERTH WA 6834
Telephone: (08) 9268 7100
Fax: (08) 9221 3261
TTY: (08) 9325 7053
Email: waregistry@fedcourt.gov.au

Principal Registry

Level 17, Law Courts Building
Queens Square
Sydney NSW 2000
Telephone: (02) 9230 8542
Fax (02) 9223 7706
Email query@fedcourt.gov.au