



## How do I appeal my Magistrates Court conviction?

**Author:** [Callan Lloyd](#)

**Email:** [clloyd@gnl.com.au](mailto:clloyd@gnl.com.au)

**Phone:** 0421 406 476

**Date:** Monday October 28, 2019

A person convicted of a criminal offence in the Queensland Magistrates Court has a right to appeal the court decision. That means that you don't need the 'leave', or in other words 'permission' of a court to have your appeal heard.

Nonetheless, if you are the defendant in a criminal matter the focus should always be on achieving the best possible result in the first instance because:

- it is generally much easier to obtain a great result at your first hearing than on appeal; and
- in an appeal, you are often limited to the evidence relied upon the first time.

## How long do I have to lodge an appeal against a Magistrate's conviction?

Generally, an appeal against a conviction from a Magistrate must be lodged within one calendar month of the original decision.

There is a basis upon which that can be extended but it can involve a difficult argument, with a close examination of the reason for the delay. It is certainly an argument to be avoided if at all possible.

Therefore, anyone considering appealing a Magistrates Court decision should consult an experienced criminal lawyer as soon as possible after the original decision, and well within the calendar month time period they have to lodge an appeal.

# Who can appeal a Magistrate's decision?

The parties to the original hearing, that is the defence and the prosecution can appeal against a Magistrate's order. Generally, however, a 'not guilty' finding is final and cannot be appealed by the prosecution. An appeal by the prosecution is therefore usually limited to the issue of sentence where a defendant is found guilty.

If a defendant pleaded guilty in the Magistrates Court, they are generally entitled to only lodge an appeal against the sentence imposed.

The Attorney General, even though not a party to the original hearing, may also lodge an appeal; for example, if they consider a sentence originally imposed was inadequate.

An appeal from a Magistrates Court is usually determined by a single judge in the District Court. However, if the Attorney General appeals the decision, all related proceedings are then heard in the Court of Appeal.

# Can I rely upon new evidence during an appeal?

Appeals are usually determined on the evidence from the first hearing; usually using a transcript of the original hearing and any exhibits that were tendered.

This is an example of why it is important to do things well the first time around rather than adopting the "*sort it out on appeal if required*" mindset.

There is a possible exception to the prohibition against new evidence.

The appeal court can in some circumstances allow "fresh evidence". This is generally restricted to evidence that was not available to the defendant at the time of the original hearing, or there is some other good explanation of why the evidence was not put before the Magistrates Court.

# What orders can the appeal court make?

The District Court has the discretion to make a wide variety of orders.

If the defendant is unsuccessful in an appeal, the court will refuse the appeal. If the defendant is successful, then the appeal court can vary or substitute the Magistrate's orders. This could include setting aside the original orders made, such as the defendant's conviction, or sentence imposed.

In an appeal against conviction, the appeal court can find the defendant not guilty and acquit them or send the matter back to the Magistrates Court for a fresh trial.

In an appeal against the sentence is successful, the appeal court will generally resentence the defendant.

## If I'm successful on appeal, will I have my costs reimbursed?

There is limited scope to obtain reimbursement for legal costs for matters determined on appeal in the District Court.

The reimbursement rates are generally unimpressive and even successful litigants are often left out of pocket for legal expenses incurred.

Gilshenan &Luton can assist with an appeal against a Magistrate's decision and assist defendants and/or family members to determine whether there are valid grounds for an appeal.

It is critical to remember though, that there are time limits for lodging an appeal. So, if you or a family member are considering appealing a decision of any court, you should contact an experienced criminal lawyer as soon as possible.

### Contacting Gilshenan &Luton criminal lawyer

07 3361 0222 (24/7)

[gnl@gnl.com.au](mailto:gnl@gnl.com.au)

---

*This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.*