



Western Australia

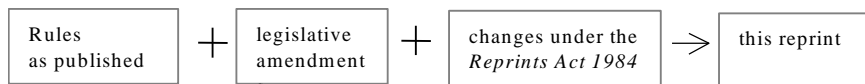
Legal Contribution Trust Act 1967

Legal Assistance Rules 1971

Reprint 1: The rules as at 13 February 2004

Guide for using this reprint

What the reprint includes



Endnotes, Compilation table, and Table of provisions that have not come into operation

1. Details about the original rules and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the rules being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

Notes amongst text (italicised and within square brackets)

1. If the reprint includes a regulation that was inserted, or has been amended, since the rules being reprinted were made, editorial notes at the foot of the regulation give some history of how the regulation came to be as it is. If the regulation replaced an earlier regulation, no history of the earlier regulation is given (the full history of the rules is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
 - removed (because it was repealed or deleted from the law); or
 - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

Reprint numbering and date

1. The reprint number (in the footer of each page of the document) shows how many times the rules have been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3rd reprint since the rules were published. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the rules are reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Western Australia

Legal Assistance Rules 1971

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Reprinted under the
Reprints Act 1984 as
at 13 February 2004

Western Australia

Legal Contribution Trust Act 1967

Legal Assistance Rules 1971

1. Citation

These rules may be cited as the *Legal Assistance Rules 1971*¹.

2. Interpretation

In these rules unless a contrary intention appears —

“**Act**” means the *Legal Contribution Trust Act 1967*;

“**applicant**” means a person applying for a certificate;

“**appropriate committee**” means a committee, appointed by the Society pursuant to section 36 of the Act², to which an application for a certificate is made, referred or transferred;

“**capital**” means the amount of money and the value of property convertible into money that the person concerned has at the date of an application;

“**certificate**” means a certificate or an amended or renewed certificate entitling a person to legal assistance;

“**council**” means the council of the Society;

“income” means the aggregation of the periodical receipts and benefits (expressed in terms of money) that may reasonably be expected to accrue to the person concerned during the period of 12 months next succeeding the date of an application; but the term does not include any amount payable to the person, under an order of a court or pursuant to an instrument, for the maintenance of a child.

3. Computation of capital and income

- (1) In computing the capital and income of an applicant, the appropriate committee —
 - (a) shall not take into account the value of the subject matter of any claim in respect of which the applicant is seeking legal assistance; and
 - (b) shall treat as resources of the applicant those of his spouse, unless —
 - (i) the spouse has a contrary interest in the claim in respect of which the application is made;
 - (ii) the applicant and his spouse are living separately and apart; or
 - (iii) it would be inequitable or impracticable to do so, in the particular circumstances of the case.
- (2) In computing the capital of an applicant, the appropriate committee may disregard the amount or value of any particular item of his resources.
- (3) In computing the income of an applicant, the appropriate committee may —
 - (a) in the absence of any other convenient means, take the income of the applicant as being that received during the period of 12 months, or during a financial year, immediately preceding the date of the application; and
 - (b) disregard any particular item of his income.

4. Qualification for legal assistance

- (1) Subject to the Act and these rules, legal assistance may be granted to an applicant whose disposable capital or disposable income does not exceed \$1,500.
- (2) Where —
 - (a) the disposable capital of an applicant is, or exceeds, \$200; or
 - (b) the disposable income of an applicant is, or exceeds \$500,

the applicant may be required to make a contribution to the Legal Assistance Fund or a payment to the assigned practitioner, in respect of costs or of disbursements payable on the applicant's account, in such amount as the appropriate committee thinks fit.

5. Computation of disposable capital

- (1) In computing the disposable capital of an applicant, the appropriate committee shall not take into account —
 - (a) articles of personal clothing;
 - (b) household furniture, linen and effects; or
 - (c) tools of trade not exceeding \$200, in value,of or belonging to the applicant or his spouse.
- (2) In computing the disposable capital of an applicant, the dwelling house occupied by him shall be taken into account to the extent, only, of one-half of the residual value of the dwelling, being the value obtained by deducting from its clear value the sum of any encumbrances and a further amount of \$6,000.

6. Computation of disposable income

In computing the disposable income of an applicant, the appropriate committee shall deduct from the amount of his income computed in accordance with rule 3 —

- (a) the amount of any income tax payable by him pursuant to a law of the Commonwealth;
- (b) the sum of periodical payments to a hospital and sickness benefits fund, up to an amount of \$50;
- (c) the sum of periodical payments to a superannuation fund or of premiums paid or payable in respect to a life assurance policy or of both, up to an amount of \$50, in the aggregate;
- (d) the sum of such other periodical payments made by the applicant as should, in the opinion of the appropriate committee, be allowed;
- (e) the amount, where the capital or income of a spouse are treated as part of the applicant's resources, —
 - (i) of \$600 in respect of a spouse wholly or substantially maintained by the applicant; and
 - (ii) of \$300 in respect of any child wholly or substantially maintained by him or by his spouse.

7. Applications, how made

Every application for a certificate shall be made by way of statutory declaration in the form set out in the Schedule and the form shall be completed in accordance with the directions set out in the form.

8. Issue of certificates

- (1) Where an appropriate committee determines that legal assistance should be granted to an applicant, it shall issue its certificate to the applicant, in the form set out in the Schedule to these rules, and send forward a copy of the certificate to the

practitioner who is assigned to render the legal assistance to which the certificate relates.

- (2) A certificate may be issued in respect of —
- (a) one or more steps to assert or dispute a claim; or
 - (b) the whole or part of —
 - (i) proceedings in a court of first instance; or
 - (ii) proceedings in an appellate court;

but a certificate shall not relate to proceedings (other than interlocutory appeals) both in a court of first instance and in an appellate court or to proceedings in more than one appellate court.

- (3) A certificate shall not relate to more than one action, cause or matter, but it may relate —
- (a) to more than one claim, where the claims arise out of the same circumstances and, if proceedings were taken on them, they might conveniently be joined in the same action, cause or matter; or
 - (b) both to a claim and proceedings where the question of taking the proceedings arises out of the same general circumstances as the claim,

and may relate to an application to enable the action that is the subject of the certificate to be brought and may include proceedings to enforce, or give effect to, any agreement made in enforcing or disputing the claim, or any order or agreement made in the proceedings to which the certificate relates.

- (4) A certificate issued pursuant to this rule —
- (a) is sufficient authority to the practitioner to whom it is addressed to render the legal assistance to which it relates to the person named in the certificate; and

- (b) is evidence —
 - (i) for the purposes of Part V of the Act that the person named in the certificate is an assisted person; and
 - (ii) of the agreement (if any), made between the Society and the assisted person, regarding the terms and conditions as to contribution by the assisted person, under section 39(3) of the Act ².

9. Amendment of computations, etc

- (1) Where it appears to the appropriate committee that there has been an error in the computation of the disposable capital or disposable income of, or in determining the maximum contribution to be made by, an applicant, the committee may re-determine any of those things or, as the case may require, amend the computation and determination and, in that event, the amended computation or determination shall apply.
- (2) Where it appears to the appropriate committee that the circumstances upon which it has computed the disposable capital or the disposable income of the applicant have changed to an extent that the certificate issued by it should be amended or revoked, the committee shall amend the computation of the disposable capital or disposable income and re-determine the maximum contribution or revoke the certificate, as the case may require.

10. Appeals against computations and determinations of appropriate committees

- (1) An applicant who is aggrieved by a computation or determination of the appropriate committee may, by notice in writing given within 14 days after being notified of the computation or determination or within such further period as the council may allow, appeal to the council against the computation, determination or both.

- (2) An applicant who is aggrieved by a decision of the appropriate committee made under the provisions of section 39(2) of the Act ² may appeal to the council within the time and in the manner provided by subrule (1).
- (3) An applicant may send to the council with his notice of appeal such further information in writing as he may be advised.
- (4) The council shall cause the appropriate committee to send forward the application and all particulars and relevant documents of the application and shall thereupon determine the appeal and may —
 - (a) allow the appeal and substitute its own computation, determination or decision for that of the appropriate committee;
 - (b) refer the matter back to the appropriate committee for its further determination and report; or
 - (c) dismiss the appeal.

11. Transfer or referrals of applications

- (1) An appropriate committee may transfer or refer an application to some other committee appointed by the Society for consideration, computation of the applicant's capital and income and final determination; and the committee to which the application is so transferred or referred is, thereupon the appropriate committee as regards that application.
- (2) An appropriate committee may refer to the council any question relating to the granting, refusal, amendment or revocation of a certificate and the decision of the council on that question is final.

12. Certificate of fees

- (1) The appropriate committee may by way of a certificate, in the form set out in the Schedule, certify the fees that would be payable to a practitioner, in the ordinary course of practice, for services rendered by him to an assisted person; and the amount

r. 13

so certified, unless varied by the council pursuant to subrule (2), is conclusive for the purposes of section 42 of the Act².

- (2) A practitioner to whom a certificate is issued pursuant to subrule (1) may apply to the council for a variation of the amount of any fees set out in the certificate and the decision of the council on any such application is final and conclusive for the purposes of section 42 of the Act².

13. Percentage of fees — s. 42

The percentage of the fees, certified pursuant to rule 12, that a practitioner is entitled to be paid, pursuant to section 42 of the Act², is 90%.

Schedule

Western Australia

Legal Contribution Trust Act 1967

CERTIFICATE FOR LEGAL ASSISTANCE

TO:

....., Solicitor,
of

THIS IS TO CERTIFY THAT:

Mr.

Mrs

Miss.

of

has been granted legal assistance to —

.....
.....
.....
.....

Total costs and disbursements not to exceed \$

A contribution payable by the abovenamed assisted person and the manner of its payment has been fixed as follows: —

Maximum contribution \$:
Amount paid to date \$:
\$: payable at the rate of

ISSUED at this day of
20

For Appropriate Committee.

Certificate No.

File No.

Schedule

Western Australia

Legal Contribution Trust Act 1967

CERTIFICATE OF FEES PAYABLE

(Section 42)

I, the undersigned, acting on behalf of the Appropriate Committee in this matter,
HEREBY CERTIFY that the fees that would be payable to

.....
in the ordinary course of practice in the matter of

.....
.....

are \$

ASSESSMENT OF AMOUNT PAYABLE.

Amount of fees as above \$:

Less 10% _____

Net fee

Add disbursements _____

Amount certified for payment \$:

DATED the _____ day of _____ 20 ..

.....

Secretary

Cert No.

File No. _____

RECEIVED the amount of

..... (\$ _____) this

day of 20

.....

Solicitor for Applicant

Western Australia

Legal Contribution Trust Act 1967

LEGAL ASSISTANCE SCHEME

The Law Society of Western
Australia

Applicant's Solicitor

.....

Address:

Phone No.

Ref.:

APPLICATION FOR LEGAL AID

Date Interview

Legal Assistance Officer:

.....

File No.

.....

BEFORE COMPLETING THIS FORM PLEASE READ THE ATTACHED
"CONDITIONS OF ASSISTANCE"

| | | |
|-----------|----------------------------|-------|
| (Surname) | (Christian or Given Names) | (Sex) |
|-----------|----------------------------|-------|

(Any assumed names if correct names are not used)

| | |
|-----------------------|------------------|
| (Residential Address) | (Postal Address) |
|-----------------------|------------------|

| | | |
|---------|------------|-------------------------|
| Tel No. | Occupation | Date of Birth / / 20 |
|---------|------------|-------------------------|

You are entitled to choose a lawyer to act for you. This is your right.
A lawyer will be chosen for you only if you do not make a choice.

I would like Mr. (or M/s) to act for me.

I hereby apply for Legal Assistance in accordance with the provisions of the
Legal Contribution Trust Act 1967 as amended from time to time, and the
"Conditions of Assistance" attached to this form.

Schedule

I DO SOLEMNLY AND SINCERELY DECLARE: —

1. THAT I am seeking legal assistance in connection with: —
(Here give brief details of the type of difficulty)
.....
.....
.....
.....
2. THAT to the best of my knowledge, information and belief the statements made by me and my answers to the questions asked below are true.

PERSONAL DETAILS

3. If you are married please give the following details: —
 - (a) Your husband or wife's full names
 - (b) His or her address
 - (c) Are you living with your husband or wife? YES/NO
4. If you are not married please give the following details: —
 - (a) Are you divorced?
 - (b) When and where were you divorced?
 - (c) Are you widowed?
 - (d) When did your husband or wife die and where?
5. If you are not living with your spouse or you are not married —
 - (a) Are you living with anyone as husband and wife? YES/NO ...
 - (b) If "YES" to the above question what are the full names of person you are living with
6. If you have dependent children please give their full names and the day, month and year they were born starting with the eldest: —

| Surname | Christian or Given Names | Date of Birth |
|---------|--------------------------|---------------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

7. *Employment Income:*

- (a) Name and address of your employer

 Name and address of the employer of your spouse or *de facto* . .

 Take home pay (including overtime) Self per week
 Spouse or *de facto* per week

- (b) Are you or your spouse or *de facto* self employed — YES/NO
 If “YES” state: —
 Nature of business
 Last year’s net profit as per Income Tax Return \$.

- (c) If not working when did you last cease work
 Reason for not working
 Are you registered at any Commonwealth Employment Bureau?
 YES/NO
 When do you intend to start any or what work?

- (d) *Other Income — Per Week:*
 Child Endowment, Social Service and/or family
 allowance pension \$ p.w.
 Superannuation \$ p.w.
 Maintenance by Court order or otherwise \$ p.w.
 If not being paid what are the approximate total
 arrears \$
 Board or subletting \$ p.w.
 Car allowance, expenses, commissions \$ p.w.
 Any other income, give details \$ p.w.
 Total \$

- (e) *Outgoings — Per Week:*
 House Repayments \$ p.w.
 Rent \$ p.w.
 Board \$ p.w.
 Hire Purchase payments \$ p.w.
 Hospital Benefit Fund \$ p.w.
 Life Assurance \$ p.w.
 Maintenance actually paid by you \$ p.w.
 Other, give details \$ p.w.
 Total \$

Schedule

8. *Property owned partly or wholly by you —*

Give description and value. Estimated if values not known.

- (a) House(s) Value
- (b) If jointly owned state with whom
- (c) State if matrimonial home YES/NO
- (d) Amount owing thereon to
..... \$
- (e) Vacant land Value \$
- (f) Motor vehicles (make and model) Value \$
Amount owing \$
- (g) Tools of Trade Value \$
Amount owing \$
- (h) Money in Banks, Name and A/c No. Amount \$
- (i) Any other property or money — give details and values

Give details of any property (including money) owned solely by your husband, wife, *de facto* or any child or under their control: —

.....
.....

9. *Details of liabilities for which you alone are liable:*

- (a) Mortgages \$
- (b) Bills of Sale \$
- (c) Hire Purchase Agreements \$
- (d) Other — (Give details) \$

10. Have you, your spouse or *de facto* disposed or given away any property or money during the last 2 years? YES/NO. If “YES”, give details including values and/or amounts

11. What can you contribute towards legal costs and fees?

- (a) By way of lump sum \$
- (b) By way of weekly instalments \$

12. Can any relation, friend or other person give you financial assistance?
.....

13. State financial position of father, mother and children.
.....
.....

Schedule

SOLICITOR'S CERTIFICATE

(To be completed if application made through a Solicitor)

I, CERTIFY that I am of the opinion that this application has legal merit, that the applicant, if not already a party in the above matter, has reasonable grounds for being a party, and in my view aid should be granted. (If a criminal matter please state if for a defence or plea in mitigation.)

.....
Solicitor for the Applicant

CONDITIONS OF ASSISTANCE

1. The Committee reserves an absolute discretion as to the granting of assistance to me under this Scheme and may, without giving any reason, refuse or withdraw assistance.
2. The Law Society, its Legal Aid Committee or an assigned Legal Practitioner may take any step necessary to have the hearing of my case adjourned to enable this application to be dealt with in the normal course. I understand however that unless I am expressly informed to the contrary, my case (if proceedings have begun) will continue in accordance with any notice as to hearing or otherwise that I may have received.
3. That apart from any offer made by me to pay costs and fees if Legal Aid is granted I may be required to make a contribution towards any costs and fees but I shall have the opportunity to consider the terms upon which legal aid will be given before making up my mind whether to accept.
4. That the Society does not need to accept any offer made by me to contribute towards costs but where such offer is made and accepted or a contribution is agreed I am bound by that acceptance or agreement.
5. If the Court makes an Order requiring me to pay the costs of the other party this will be additional to my liability for contributions (if any) and is quite distinct therefrom.
6. Irrespective of any agreement as to the payment of costs by me, if assistance is granted and if in the opinion of the Society's Legal Aid Committee my financial position is such at any time that I can reasonably be expected to do so then, after taking into account such contribution as I may already have made, I shall be liable to pay to the Committee the costs which in the opinion of the Committee, would, normally be

properly chargeable to me for legal costs as between solicitor and client in this matter. The Committee may, in its absolute discretion, waive its entitlement to all or any portion of the said sum which otherwise I would be legally liable to pay by way of costs.

7. I shall disclose any change in my financial position whilst in receipt of assistance and upon receipt of information of any change to the Society's Legal Aid Committee may revise any arrangement as to costs.
8. If I refuse to accept the advice of any legal practitioner assigned to me or to act in accordance with such advice then the Law Society's Legal Aid Committee may in its absolute discretion withdraw all assistance under the Scheme.
9. In the event of assistance under the Scheme being withdrawn: —
 - (i) I may remain liable for fees and costs incurred up to the time of such withdrawal and including any costs payable consequent upon an adjournment of any action then proceeding;
 - (ii) the retainer of any legal practitioner engaged on my behalf is thereby terminated, and
 - (iii) The Society's Legal Aid Committee or a legal practitioner authorised by it shall be entitled to retain all documents relating to my case until I have paid all amounts required to be paid.
10. Every legal practitioner appointed to act for me shall be at liberty in his absolute discretion to disclose to the Society or to its Legal Aid Committee or to any officer of the Society for the information of the Society or its Committee all information given to him by me or received by him on my behalf from any source whether before or after assistance is granted, and to this extent I hereby expressly waive the privilege of Solicitor and/or Barrister and client and to that extent the legal practitioner shall not be bound to keep such information confidential.

[Schedule 1 amended in Gazette 27 Apr 1973 p. 1072-6.]



Notes

- ¹ This reprint is a compilation as at 13 February 2004 of the *Legal Assistance Rules 1971* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

| Citation | Gazettal | Commencement |
|---|--------------------------|---------------------|
| <i>Legal Assistance Rules 1971</i> | 26 May 1971 p. 1761-9 | 26 May 1971 |
| Untitled rules | 27 Apr 1973 p. 1072-6 | 27 Apr 1973 |
| Reprint 1: The <i>Legal Assistance Rules 1971</i> as at 13 Feb 2004 (includes amendments listed above) | | |

- ² Repealed by the *Legal Contribution Trust Act Amendment Act 1976* s. 6.