

LEGAL AID**LE301****LEGAL AID COMMISSION ACT 1976****LEGAL AID COMMISSION (COSTS) AMENDMENT RULES 1992**

Made by the Legal Aid Commission of Western Australia and approved by the Deputy of the Lieutenant-Governor and Administrator in Executive Council.

Citation

1. These rules may be cited as the *Legal Aid Commission (Costs) Amendment Rules 1992*.

Principal rules

2. In these rules the *Legal Aid Commission (Costs) Rules 1990** are referred to as the principal rules.

[* Published in the Gazette of 10 August 1990.]

Rule 2 amended

3. Rule 2 of the principal rules is amended —

- (a) by deleting the definition of “assigned practitioner” and inserting the following definition —

“ “assigned practitioner” means —

- (a) a private practitioner to whom a grant of legal aid under Part V Division 3 of the Act has been assigned; and
- (b) a practitioner employed by the Commission who, on behalf of the Director, has the conduct of a grant of legal aid assigned to the director;

”;

- (b) in the definition of "legal services" by deleting "Act." and substituting the following —

" Act; "; and

- (c) by inserting in the appropriate alphabetical positions the following definitions —

" "page" means where a document is drawn or engrossed 2 or more folios of one and a half spaced typed or printed words or figures amounting to not less than 200 words or figures of originally composed text;

"special circumstances" includes —

- (a) the complexity of the facts;
- (b) the complexity of legal arguments which might reasonably be required; and
- (c) whether or not the legal aid assignment concerns a matter of public importance. "

Rule 3 amended

4. Rule 3 of the principal rules is amended —

- (a) in paragraph (a) by inserting after the paragraph designation "(a)" the following —

" subject to rule 15, "; and

- (b) by deleting paragraph (c) and substituting the following paragraph —

" (c) subject to rule 6, in Schedule 3 are payable to counsel and Queen's Counsel instructed as approved, for the services specified in that Schedule. "

Rule 4 amended

5. Rule 4 of the principal rules is amended by inserting before paragraph (a) the following paragraph —

" (aa) rule 9 of the *Legal Aid Commission Rules 1990*; "

Rule 6A inserted

6. After rule 6 of the principal rules the following rule is inserted —

" **Schedule 3 — special circumstances**

6A. (1) An assigned practitioner may, where he or she can show special circumstances why Schedule 3 should not apply in relation to a legal aid assignment, apply to the Commission for the fees to be determined by the Director, an authorized person or a committee.

(2) Where the Director, an authorized person or a committee is satisfied that the assigned practitioner has shown that the application of Schedule 3 would not be reasonable the Director, an authorized person or committee shall determine the fees. "

Rule 10 amended**7. Rule 10 of the principal rules is amended —**

- (a) in subrule (4) by deleting paragraphs (b) and (c) and substituting the following paragraph —

“ (b) preparation for a plea in mitigation without a trial. ”;

and

- (b) after subrule (4) by inserting the following subrule —

“ (5) Where in any of the Schedules a separate amount is not specified in relation to preparation or getting up for the court appearance, two thirds of those fees shall be applied to preparation or getting up. ”.

Rule 11 amended

8. Rule 11 of the principal rules is amended in subrule (1) by deleting “25% of the amount payable in respect of the first defendant, as specified in Schedule 1 for getting up the case for trial and trial.” and substituting the following —

“ 50% of the amount of legal fees approved in respect of the first defendant, in Schedule 1, or getting up case for trial and preparation for a plea in mitigation without trial. ”.

Rule 11A inserted

9. After rule 11 of the principal rules the following rule is inserted —

“ **Photocopying charges — Schedule 2**

11A. The charges in relation to photocopying, where an assigned practitioner may charge on a profit cost basis, are set out in Schedule 2. ”.

Rule 12 amended

10. Rule 12 of the principal rules is amended —

- (a) by deleting subrule (2) and substituting the following subrule —

“ (2) Subject to subrule (3) in a criminal case where the Director, an authorized officer or committee considers it reasonable for an assigned practitioner to wait in the court for a trial to commence or resume after an interruption, the assigned practitioner may receive payment at the rate of \$80 per hour or part thereof, for the time spent in the court to a maximum of 2 hours in any one day. ”;

- (b) in subrule (3) by deleting “\$75” and substituting the following —

“ \$80 ”; and

- (c) by inserting after subrule (3) the following subrule —

“ (4) Subrule (2) shall not apply where, in a criminal case, the fees of the practitioner are assessed in accordance with Schedule 2. ”.

**Rules 13 and 14 repealed and
rules 13 and 14 substituted**

11. Rules 13 and 14 of the principal rules are repealed and the following rules are substituted —

**“ Payment for actual time spent travelling
or in conference etc.**

13. (1) Subject to subrule (2) an assigned practitioner may receive payment, as approved, for actual time spent —

- (a) in any of the circumstances referred to in rule 14 (1) (a) including the time spent in travelling to and from such conferences or investigations; and
- (b) in travelling within Australia in the conduct of a legal aid assignment.

(2) Notwithstanding subrule (1) payment referred to in subrule (1) shall not exceed 8 hours in any one day at a rate not exceeding 60% of the hourly rate prescribed in Schedule 2 item 11.

**Travelling and special
country allowances**

14. (1) Where it is not reasonable in all the circumstances to brief an agent and an assigned practitioner is required in the conduct of a legal aid assignment —

- (a) to travel more than 5 kilometres from the place at which the assigned practitioner practises (including branch or visiting offices maintained by the practitioner's firm) in order to —
 - (i) visit a prison, lock-up or police station;
 - (ii) attend on a witness;
 - (iii) make any necessary investigation; or
 - (iv) attend a court or tribunal hearing;or
- (b) to stay overnight in a town or place, being more than 100 kilometres from that in which the practitioner practises,

the assigned practitioner is entitled to travelling and subsistence allowances as determined from time to time by the Director on the recommendation of the Public Service Commissioner.

(2) An allowance paid to an assigned practitioner under subrule (1) may be treated as a disbursement. ”.

**Rule 15 repealed and
a rule substituted**

12. Rule 15 of the principal rules is repealed and the following rule is substituted —

“ Payment for exceptional work

15. (1) An assigned practitioner may, where he or she can show special circumstances why Schedule 1 should not apply in relation to a legal aid assignment, apply to the Director, an authorized person or committee to determine that Schedule 2 should apply.

(2) Where the Director, an authorized person or committee is satisfied that the assigned practitioner has shown that the application of Schedule 1 would not be reasonable, the Director, an authorized person or a committee shall determine that Schedule 2 shall apply.

Rule 17 amended

13. Rule 17 of the principal rules is amended by inserting after subrule (1) the following subrule —

“(1a) Subrule (1) applies to conferences and hearings concerning the conduct of the trial held —

- (a) in relation to criminal matters; or
- (b) in courts exercising jurisdiction concerning children other than the Family Court.

Schedule 1, 2 and 3 repealed and Schedules 1, 2 and 3 substituted

14. The Schedules to the principal rules are repealed and the following Schedules are substituted —

“

SCHEDULE 1

[Rules 3 (a), 4, 6A and 7]

FEES PAYABLE UNDER RULE 3 (a)

Item	Description	Rate \$
1.	COURT OF CRIMINAL APPEAL	
(1)	Appeal against sentence	1 000
(2)	Appeal against conviction	1 750
(3)	Application for extension of time within which to appeal and leave to appeal and an attendance before a single Judge	100-400
(4)	Attending on reserve decision including Section 20 Application	80
2.	OTHER APPELLATE OR REVIEW JURISDICTION	
(1)	Application for orders on appeal from an order or sentence of a magistrate	1 000
(2)	Appeal to single Judge (other than under subitem (1))	350-700
(3)	Attending on reserved decision	80
2A.	PREPARATION OF APPEAL BOOKS — ALL JURISDICTIONS Rates as in Schedule 2. (Provided the claim for collating, copying, numbering or binding does not exceed a reasonable fee for those services when charged by a commercial organization to the public.)	
		Maximum Rate \$
3.	SUPREME COURT — CRIMINAL JURISDICTION	
(1)	Plea of guilty without a prior trial including advice relating to plea, preparation and presentation of plea	660
(2)	Appearing to take sentence including address on pre-sentencing report	80
(3)	Appearing to obtain remands	80

Item	Description	Maximum Rate \$
(4)	Getting up	1 250
	Trial First day	850
	Second or subsequent day	700
(5)	Application for bail to Supreme Court Judge from inferior jurisdiction	350
(6)	Application as to venue, jurisdiction or other preliminary issue	250
(7)	Viewing or listening to video or sound tapes per hour relating to the proceedings	80
(8)	Transcribing video or sound tapes per page relating to the Proceedings	3
4.	DISTRICT COURT — CRIMINAL JURISDICTION AND CHILDREN'S COURT WHERE CONSTITUTED BY PRESIDENT	
(1)	Plea of guilty including advice relating to plea all necessary preparation and presentation	600
(2)	Appearing to take sentence including address and a pre-sentence report or application for bail	80
(3)	Appearing to take remand including bail application	80
(4)	Trial, Getting Up	825
	First day	700
	Second or subsequent days	600
(5)	Viewing or listening to video or sound tapes per hour relating to the proceedings	80
(6)	Transcribing video or sound tapes per page relating to the proceedings	3
5.	COURT OF PETTY SESSIONS AND CHILDREN'S COURTS	
(1)	Oral committal proceedings — if specially approved first day including preparation	450
	each other day	400 per day
(2)	Attending on committal by a hand-up brief	80
(3)	Defended cases whether or not indictable cases triable summarily, including an address in mitigation following conviction first day including preparation	675
	each other day	385 per day
(4)	Plea of guilty including all advice relating to plea, preparation, Court attendance and presentation of plea	350
(5)	Attending on reserved decision, taking sentence or applying for bail (not being renewal of existing bail)	75
(6)	Attending on remand	50
(7)	Application for extraordinary motor driver's licence	300
(8)	Attending on Coronial enquiry (where specially approved) first day including preparation	700
	each other day	400
(9)	Application for restraining order — section 172 of the <i>Justices Act 1902</i> — initial hearing — including all necessary preparation	300
(10)	Application for confirmation of order — section 172 <i>Justices Act 1902</i>	600
(11)	Application for variation of order under section 172 of the <i>Justices Act 1902</i> including necessary preparation	300
(12)	Application for care and protection first day (including all necessary preparation)	800
	second or subsequent days	450
	or	85 per hour
(13)	Appeal to President of Children's Court from Magistrate or Justice	500

SCHEDULE 2

[Rules 3 (b), 5, 11A and 13]

FEES PAYABLE UNDER RULE 3 (b)

Item	Description	Maximum Rate \$
1.	Drawing documents not in print	4.25 per folio
2.	Engrossing any document	0.60 per folio
3.	Engrossing drafts (where necessary)	1 per page
4.	Photocopying — where reasonably necessary	
	(1) Single sheets	0.55 per page
	(2) Multiple copies	0.25 per page
5.	Letters	
	(1) Circular	6 per item
	(2) Short	11 per folio (not less than 1 folio)
	(3) Long	25 per page (not less than 3 folios and the rate for 5 (2) thereafter)
6.	Telegram, facsimile, telex — transmission where reasonably necessary and required by the urgency of the situation or — receiving using the practitioners' machine	
	(1) Sending or receiving	5.50 per item
	(2) Drafting message as per item 5	
7.	Attendances	
	(1) Junior clerk	45 per hour
	(2) Senior clerk	100 per hour
	(3) Practitioner	115 per hour (where legal skill is reasonably required)
8.	Telephone calls	
	(1) Practitioner	\$6 up to 5 minutes and thereafter \$2 per minute (where legal skill is reasonably required)
	(2) Non-qualified person	\$3 up to 5 minutes and \$1 per minute thereafter
9.	Perusals (where scanning is not appropriate)	
	(1) Technical or expert reports	6 per page (including medical reports)
	(2) Other papers	5 per page
10.	Scanning 60 folios per hour	60
11.	Hourly rate where no other fee applies	115 per hour

SCHEDULE 3

[Rules 3 (c), 6 and 7]

FEES PAYABLE UNDER RULE 3 (c)

Item	Description	Maximum Rate \$
	OPINIONS	
1.	Opinion on liability	700
2.	Opinion on quantum	700
3.	Opinion on liability and quantum	1 000
4.	Opinion on appeal against sentence	500
5.	Opinion on appeal conviction	1 000
6.	Opinion on appeal against conviction and sentence	1 350
7.	Advice on evidence, jurisdiction or procedure	350

Item	Description	Maximum Rate \$
	SETTLING, DRAWING	
8.	Grounds of appeal — criminal	450
9.	Grounds of appeal — civil	480
10.	Pleadings	500
11.	Other documents	300
	PRETRIAL CONFERENCES (Supreme, District Court)	
12.	Attending conference including preparation	450
	APPEARING IN COURT OR TRIBUNAL (if no applicable fees in the Court or Tribunal)	
13.	Federal Court each day	850
14.	High Court each day (or <i>pro rata</i> for time spent in making appearance)	1 500
15.	Preparation	2 000
	Federal or High Court	
15A.	Family Court each day (or per hour gross) for preparation where counsel is not the assigned practitioner or a member of his or her firm	850 145
16.	Supreme or District Court at rates applicable to the jurisdiction.	
17.	Criminal appearances at rates set out in the First Schedule.	
	QUEEN'S COUNSEL	
18.	The rates set out above plus an amount not exceeding 50% where the appearance of Queen's Counsel has been approved in advance.	
19.	Preparation — at the hourly rate where counsel is not the assigned practitioner or a member of his or her firm.	

The Common Seal of the Legal Aid Commission of Western Australia was
hereunto affixed pursuant to a resolution of the Commission in the presence of:

R. E. LINDSAY, Member.
M. McCUSKER, Member.

Approved by the Deputy of the Lieutenant-Governor and Administrator in
Executive Council this 27th day of October 1992.

D. G. BLIGHT, Clerk of the Council.