

**LEGAL AID COMMISSION ACT 1976**  
**LEGAL AID COMMISSION (COSTS) RULES 1990**  
 Arrangement

**Reg.**

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**LEGAL AID COMMISSION ACT 1976**  
**LEGAL AID COMMISSION (COSTS) RULES 1990**

Made by the Legal Aid Commission of Western Australia and approved by His Excellency the Governor in Executive Council.

**Citation**

1. These rules may be cited as the *Legal Aid Commission (Costs) Rules 1990*.

**Interpretation**

2. In these rules, unless the contrary intention appears—

“approved” has the meaning assigned to it in section 14 (1a) of the Act;

“assigned practitioner” means a private practitioner to whom a grant of legal aid under Part V Division 3 of the Act is assigned;

“authorized officer” means a member of the staff of the Commission authorized by the Director under section 36 (2) of the Act to decide applications for legal aid;

"committee" means a legal aid committee or a review committee established under section 24 or section 50 of the Act respectively as the context may require;

"folio" means 100 words;

"legal services" means services performed by a private practitioner or an agent or counsel briefed by the private practitioner by way of legal assistance under Part V Division 3 of the Act.

#### Scales of fees

3. For the purposes of section 14 (1) (a) (i) of the Act the scales of fees set out—

- (a) in Schedule 1 are payable in the jurisdictions specified in that Schedule;
- (b) in Schedule 2 are payable—
  - (i) for services for which no other scale of fees is prescribed and where rule 9 (a) does not apply;
  - (ii) for services provided before proceedings have commenced; and
  - (iii) for services provided by an assigned practitioner where approval is given for the assigned practitioner to instruct counsel or Queen's Counsel;

and

- (c) in Schedule 3 are payable to counsel and Queen's Counsel instructed as approved, for the services specified in that Schedule other than services provided under the *Family Court Act 1975* and the *Family Law Act 1975* of the Commonwealth.

#### Application of Schedule 1—assigned practitioners

4. (1) Where the fees set out in Schedule 1 designate a range between a minimum and maximum fee, the fee payable to an assigned practitioner shall be an amount within the range as approved.

(2) Where the fees set out in Schedule 1 do not designate a range between a minimum and maximum fee, the fee specified is the maximum fee and in determining the fee payable to an assigned practitioner, the Director, an authorized officer or the committee shall consider all relevant factors including—

- (a) time spent in rendering the service;
- (b) the complexity of the service;
- (c) the seniority of the practitioner;
- (d) the jurisdiction in which the service is provided; and
- (e) the number of assisted persons represented by the practitioner at the same time.

#### Application of Schedule 2

5. The fees set out in Schedule 2 specify the maximum remuneration payable to an assigned practitioner for the services specified in that Schedule and in determining the fee payable to an assigned practitioner the Director, authorized officer and committee shall consider all relevant factors as specified in rule 4 (2).

#### Application of Schedule 3—Counsel and Queen's Counsel Fees

6. (1) An assigned practitioner may, without prior approval, instruct counsel, not being Queen's Counsel, where the total of the assigned practitioner's fees and those of counsel do not exceed the provisional costing of the legal aid assignment when the brief is delivered to counsel.

(2) Where approval is given to instruct Queen's Counsel the fee payable shall be in accordance with item 18 of Schedule 3.

(3) Where approval is given for counsel to assist Queen's Counsel, the fee payable to that counsel shall not exceed 75% of the amount payable under Schedule 3 had that counsel appeared without Queen's Counsel.

(4) Fees paid to counsel or Queen's Counsel shall not be treated as disbursements unless—

- (a) incurred by the Director, authorized officer or committee in relation to an action or likely action to which the Commission is a party; or
- (b) matters concerning the interpretation of the Act or rules are involved.

#### Computation of daily rate and hourly rate under Schedule 1 or Schedule 3

7. (1) Where fees set out in Schedule 1 or Schedule 3 are expressed as being for a day or as a daily rate, an assigned practitioner, counsel or a Queen's Counsel who attends court for a period of 5 hours is entitled to receive the fee specified in Schedule 1 or Schedule 3 as the case may be for the relevant jurisdiction.

(2) A practitioner, counsel or Queen's Counsel referred to in subrule (1) who attends court—

- (a) for a period of less than 5 hours; or
- (b) for a period of more than 5 hours,

is entitled to receive a *pro rata* fee for every hour or part thereof that the practitioner, counsel or Queen's Counsel attends court.

(3) For the purposes of calculating the *pro rata* fee referred to in subrule (2) a period of 5 hours is deemed to be a day.

#### Percentage of fees

8. For the purposes of section 14 (1) (a) (ii) of the Act the fees payable to an assigned practitioner shall be—

- (a) subject to rule 9, 80% of the fees payable to a private practitioner in the ordinary course of practice; and
- (b) where the services are provided in relation to summary proceedings under the *Family Law Act 1975* of the Commonwealth or the *Family Court Act 1975*, 100% of the fees prescribed under Order 38 rule 3 (2) (a) of the *Family Law Rules* of the Commonwealth.

#### Application of rule 8 (a)

9. For the purposes of rule 8 (a) "fees payable to a private practitioner in the ordinary course of practice" means the fees payable—

- (a) under the rules relating to costs in force in the relevant court or tribunal in which the legal services under the legal aid assignment were provided; and
- (b) where the services are provided in relation to—
  - (i) the Administrative Appeals Tribunal; or
  - (ii) Administrative Judicial Review Applications,
 in accordance with the Second Schedule to the Federal Court Rules.

#### Fees for services in respect of multiple charges or offences

10. (1) Where in a criminal law case, a grant of aid authorizes the provision of legal services in respect of more than one charge or offence (not being alternatives) payment will be on the highest fee applicable to the trial or plea in mitigation, as the case may be, and any additional payment in respect of each other charge or offence shall be determined in accordance with this rule.

(2) In determining the amount of any additional payment referred to in subrule (1) the Director, authorized officer or committee shall consider all relevant factors including in particular—

- (a) the jurisdiction or jurisdictions;
- (b) the number and nature of the charges or offences;
- (c) the complexity of the issues;
- (d) the experience and seniority of the assigned practitioner; and
- (e) the time involved in the disposition of the charges or offences.

(3) Notwithstanding subrule (2) an additional payment referred to in subrule (1) shall not exceed—

- (a) 50% of the amount payable in respect of the highest fee; or
- (b) where the charges or offences are of a similar nature—25% of the highest fee.

(4) For the purposes of this rule an additional payment is only payable on the fees specified in Schedule 1 in relation to—

- (a) getting up or preparation for trial; and
- (b) trial and a plea in mitigation; or
- (c) a plea in mitigation without trial.

#### Fees for services in respect of more than one defendant

11. (1) Subject to subrule (2) where in a criminal law case an assigned practitioner represents more than one defendant in relation to whom a grant of legal aid has been made, the assigned practitioner is entitled to an additional payment, as may be approved, being not greater than 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.

(2) An additional amount is not payable for—

- (a) remands;
- (b) election appearances;
- (c) pre trial conferences;

- (d) procedural hearings; or
- (e) attendance to receive sentence.

#### **Travelling and waiting time**

12. (1) Subject to this rule and rules 13 and 14 no allowance is made for travelling or court waiting time.

(2) Where in a criminal case the Director, committee or authorized officer consider it reasonable for an assigned practitioner to remain in or near the court, the assigned practitioner may receive payment for the time spent waiting up to a maximum period of 2 hours in any one day.

(3) Where a jury retires to—

- (a) consider its verdict in a criminal trial; or
- (b) deliberate as to the—
  - (i) verdict to be given; or
  - (ii) answer to be given to any question submitted to it by a Court or Judge; or
  - (iii) amount of damages to be assessed,
 in a civil trial,

an assigned practitioner is entitled to be paid at the rate of \$75 for every hour or part thereof that the assigned practitioner is required to remain in or near the Court.

#### **Travelling and special country allowances**

13. (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; or
  - (iii) make any necessary investigation;
 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.

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

14. (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 13 (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 5 hours in any one day at a rate not exceeding 50% of the hourly rate prescribed in Schedule 2 item 11.

#### **Payment for exceptional work**

15. (1) Notwithstanding rule 3 where an assigned practitioner satisfies the Director, authorized officer or committee that an exceptional amount of work has been or will necessarily be done in a particular matter to which the fees set out in Schedule 1 apply the Director, authorized officer or committee, as the case may be, may determine that the assigned practitioner's fee shall be assessed in accordance with Schedule 2.

(2) In making a determination under subrule (1) the director, authorized officer or committee shall have regard to—

- (a) the jurisdiction;
- (b) the number and nature of the charges or offences;
- (c) the complexity of the issues; and
- (d) the time involved in the disposition of the charges or offences.

**Agents' fees**

16. (1) Where an assigned practitioner briefs another practitioner to perform legal services for an assisted person, the agent is entitled to receive from the assigned practitioner the same remuneration as the assigned practitioner would have received if he or she had not briefed an agent.

(2) An additional fee being no more than 30% of the fee payable to the assigned practitioner under these rules may be paid to an agent for legal services where an assigned practitioner—

- (a) whose office is situate within the metropolitan area necessarily employs as his or her agent a practitioner whose office is situate outside the metropolitan area; or
- (b) whose office is situate outside the metropolitan area necessarily employs as his or her agent a practitioner whose office is situate within the metropolitan area.

(3) In this rule "metropolitan area" means an area within a 65 km radius of the General Post Office Perth.

**Court directed conferences**

17. (1) Where an assigned practitioner is required to attend, with or without his or her client, before a court or tribunal for a pre-trial conference or practice hearing (other than a hearing for directions) the assigned practitioner is only entitled to receive payment, equal to one hour at the rate prescribed in Schedule 2 item 11 irrespective of the time actually spent by the assigned practitioner in preparing for or attending the hearing.

(2) Notwithstanding subrule (1) an additional payment under Schedule 2 may be approved for time spent in preparing for and attending a hearing where the Director, authorized officer or committee is satisfied that a claim for additional payment is justified.

**Reimbursement where costs recovered**

18. Notwithstanding any other provision of these rules, where, as the result of the legal services provided to an assisted person by the assigned practitioner, an assisted person obtains an order for costs then the Director, authorized officer or committee may determine that the assigned practitioner may retain the whole or part of the recovered costs in full or partial discharge of any fees payable by the Commission to the assigned practitioner.

**Repeal**

19. The *Legal Aid Commission (Costs) Rules 1982* are repealed.

**Transitional and savings**

20. (1) These rules apply—

- (a) in relation to costs payable, as approved, where a legal aid assignment is received on or after the day that these rules take effect; and
- (b) in relation to costs payable, as approved, for services performed on or after the day these rules take effect and whether or not the legal aid assignment in respect of those services was received before that day.

(2) Notwithstanding rule 19 of these rules, the *Legal Aid Commission (Costs) Rules 1982* apply in relation to costs payable, as approved, for legal services performed before these rules take effect.

**SCHEDULE 1**

(Rules 3 (a), 4 and 7)

**FEES PAYABLE UNDER RULE 3 (a)**

Item	Description	Rate
1.	<b>COURT OF CRIMINAL APPEAL</b>	
	(1) Appeal against sentence .....	\$300-\$900
	(2) Appeal against conviction .....	\$400-\$1 500
	(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 .....	\$78.00
2.	<b>OTHER APPELLATE OR REVIEW JURISDICTION</b>	
	(1) Application for order <i>nisi</i> including original application and application for order absolute .....	\$400-\$900
	(2) Appeal to single Judge (other than for 2 (1)) .....	\$350-\$700
	(3) Attending on reserved decision .....	\$70

Item	Description	Maximum Rate
3.	<b>SUPREME COURT—CRIMINAL JURISDICTION</b>	
	(1) Plea of guilty including advice relating to plea, preparation and presentation of plea .....	\$600
	(2) Appearing to take sentence including address on pre-sentencing report .....	\$75
	(3) Appearing to obtain remands .....	\$75
	(4) Trial, Getting Up .....	\$1 000
	First day .....	\$800
	Second or subsequent day .....	\$600
	(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 .....	\$75
	(8) Transcribing video or sound tapes per page relating to the Proceedings .....	\$0.50
4.	<b>DISTRICT COURT—CRIMINAL JURISDICTION AND CHILDREN'S COURT WHERE CONSTITUTED BY PRESIDENT</b>	
	(1) Plea of guilty including advice relating to plea all necessary preparation and presentation .....	\$550
	(2) Appearing to take sentence including address and a pre-sentence report or application for bail .....	\$75
	(3) Appearing to take remand including bail application .....	\$75
	(4) Trial, Getting Up .....	\$750
	First day .....	\$650
	Second or subsequent days .....	\$550
	(5) Viewing or listening to video or sound tapes per hour relating to the proceedings .....	\$75
	(6) Transcribing video or sound tapes per page relating to the proceedings .....	\$0.50
5.	<b>COURT OF PETTY SESSIONS AND CHILDREN'S COURTS</b>	
	(1) Oral committal proceedings—if specially approved	
	first day including preparation .....	\$400
	each other day .....	\$350 per day
	or .....	\$70 per hour
	(2) Attending on committal by a hand-up brief .....	\$75
	(3) Defended cases whether or not indictable cases triable summarily,	
	first day including preparation .....	\$600
	each other day .....	\$350 per day
	or .....	\$75 per hour
	(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 .....	\$40
	(7) Application for extraordinary motor driver's licence .....	\$300
	(8) Attending on Coronial enquiry (where specially approved)	
	first day including preparation .....	\$400
	each other day .....	\$300 per day
	or .....	\$60 per hour
	(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> .....	\$300
	(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) ..	\$600
	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) and 5)

## 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 .....	\$1.00 per page
4.	Photocopying	
	(1) Single sheets .....	\$0.50 per page
	(2) Multiple copies .....	\$0.25 per page
5.	Letters	
	(1) Circular .....	\$6.00 per item
	(2) Short .....	\$10.00 per folio
	(not less than 1 folio)	
	(3) Long .....	\$20.00 per page
	(not less than 3 folios and the rate for 5 (2) thereafter)	
6.	Telegram, facsimile, telex	
	(1) Sending or receiving .....	\$5.00 per item
	(2) Drafting message as per item 5	
7.	Attendances	
	(1) Junior clerk .....	\$40.00 per hour
	(2) Senior clerk .....	\$90.00 per hour
	(3) Practitioner .....	\$104.00 per hour
	(where reasonably necessary)	
8.	Telephone calls	
	(1) Practitioner .....	\$6.00 up to 5
	(where reasonably necessary)	minutes and
		thereafter \$2 per
		minute
	(2) Non-qualified person.....	\$3.00 up to 5
		minutes and \$1
		per minute
		thereafter
9.	Perusals	
	(where scanning is not appropriate)	
	(1) Technical or expert reports .....	\$3.00 per folio
	(including medical reports)	
	(2) Other papers .....	\$2.00 per folio
10.	Scanning	
	(1) 30 folios or less .....	\$30.00
	(2) More than 30 folios .....	\$70.00 per hour
11.	Hourly rate where no other fee applies .....	\$104.00 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 .....	\$600.00
2.	Opinion on quantum .....	\$500.00
3.	Opinion on liability and quantum .....	\$1 000.00
4.	Opinion on appeal against sentence .....	\$400.00
5.	Opinion on appeal conviction .....	\$960.00
6.	Opinion on appeal against conviction and sentence .....	\$1 200.00
7.	Advice on evidence, jurisdiction or procedure .....	\$320.00
	SETTLING, DRAWING	
8.	Grounds of appeal—criminal .....	\$400.00
9.	Grounds of appeal—civil .....	\$480.00
10.	Pleadings .....	\$440.00
11.	Other documents .....	\$300.00
	PRETRIAL CONFERENCES (Supreme, District Court)	
12.	Attending conference .....	\$300.00
	APPEARING IN COURT OR TRIBUNAL	
	(if no applicable fees in the Court or Tribunal)	
13.	Federal Court each day .....	\$700.00
14.	High Court each day .....	\$800.00
	(or <i>pro rata</i> for time spent in making appearance)	
15.	Preparation .....	\$1 750.00
	Federal or High Court	

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Item	Description
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 50%.

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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:

C. BAHEMIA, Member.

BARRY HODGE, Member.

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Approved by His Excellency the Governor in Executive Council this 7th day of August 1990.

G. PEARCE, Clerk of the Council.