

[989]



Government Gazette

OF

WESTERN AUSTRALIA

(Published by Authority at 3.30 p.m.)

(REGISTERED AT THE GENERAL POST OFFICE, PERTH, FOR TRANSMISSION BY POST AS A NEWSPAPER)

No. 29]

PERTH : THURSDAY, 7th APRIL

[1960

SUPREME COURT ACT, 1935-1957.

Crown Law Department,
Perth, 23rd March, 1960.

THE following amendments to the Rules of the Supreme Court, 1909, are published for general information.

R. C. GREEN,
Under Secretary for Law.

Supreme Court Act, 1935-1957.

AMENDMENT OF THE RULES OF THE SUPREME COURT, 1909.

WE, the Honourable Sir Albert Asher Wolff, Chief Justice, the Honourable Lawrence Walter Jackson, Senior Puisne Judge, and the Honourable John Evenden Virtue, the Honourable Roy Vivian Nevile and the Honourable Gordon Bede D'Arcy, Puisne Judges of the Supreme Court of Western Australia, acting in pursuance of the powers conferred by the Supreme Court Act, 1935-1957, and of every other power enabling us in this behalf, do amend the Rules of the Supreme Court, 1909, in the manner hereinafter mentioned and declare that, subject as hereinafter provided in relation to the amendment of the Scale in Appendix N, such amendments shall come into operation forthwith upon publication thereof in the *Government Gazette*.

1.—ORDER LXV.

(a) Rule 1 is amended by deleting the words "has resulted in costs being unnecessary" in the third line of proviso (a) and substituting therefor the words "or that a claim by a party for an unreasonably excessive amount has resulted in costs being unnecessarily."

(b) Paragraph 1 of Rule 18 is rescinded and the following substituted:—

(1) Where the Court or Judge is of opinion that a Special Order as to costs should be made by reason of the unusual complexity or importance of the case or for any other good or sufficient reason the Court or Judge may order that any particular allowances in the scale be increased or may certify for the whole of the costs in accordance with the details of the scale irrespective of the limits in Note (b) to Appendix N or may direct the Taxing Officer to tax the costs on a higher scale and in giving any such direction the Court or Judge may fix a limit within which the Taxing Officer may allow such costs.

(c) After Rule 18 the following new Rule, to stand as Rule 18A is inserted:—

18A. In any matter or case to which Appendix N or the notes thereto do not apply, the Court or Judge may—

- (a) award a lump sum by way of costs;
- (b) direct the Taxing Officer to tax or allow costs analogous to those allowable under Appendix N;
- (c) direct the Taxing Officer to tax and allow reasonable costs.

2.—APPENDIX N.

Appendix N is amended as follows:—

(a) The Scale of Costs is deleted and the following new Scale substituted, provided that the old Scale shall apply to all proceedings commenced in the Court prior to the date of the publication of the new Scale in the *Government Gazette*, and the new Scale shall apply to all proceedings commenced in the Court on or after that date:—

	Lower Scale. (£1-£1,500) Guineas.	Higher Scale. (Over £1,500) Guineas.
1. Writ of Summons (including all instructions and Statement of Claim)	12	18
Substituted service—extra	5	6
Service out of jurisdiction—extra (or in the discretion of the Taxing Officer)	5	6
Additional defendants—for each extra	3	3
(Note: If costs under item 12 do not become allowable these allowances may be increased by a proportion of the allowances under item 12 fixed at the discretion of the Taxing Officer.)		

	Lower Scale. (£1-£1,500) Guineas.	Higher Scale. (Over £1,500) Guineas.
2. Guardian <i>ad litem</i>	5	6
3. Judgment by default without application to Judge	6	9
4. Judgment by default on Judge's order in Chambers	9	14
5. Payment into, or out of, Court	3	5
6. Discontinuance or dismissal of action where no fee specially fixed by a Judge or Taxing Officer	6	9
7. Application for summary judgment (including entry of judgment)	15	22
8. Statement of Defence (including instructions and necessary copies and attendances)	11	18
If with counterclaim	14	22
(Note: Apply note to item 1.)		
9. Reply (other than joinder of issue)	6	9
If with defence to counterclaim	8	12
10. Order for examination of witness in Western Australia	8	11
11. Examination before Master or person designated	5-15	8-30
12. Getting up case for trial	20-100	40-120 guineas for first £1,500, 4 per cent. for bal- ance to £3,000; then 2 per cent.
13. Application for and striking jury	6	9
14. Counsel fee on trial (Note: If after brief properly delivered the action is settled or discontinued before trial the Taxing Officer may make such allowances under this item as he thinks proper.)	30-100	50-100 guineas for first £1,500, 4 per cent. for bal- ance to £3,000; then 2 per cent.
14A. Solicitor's fee on trial per day not exceeding (Note: Not to be allowed unless principal gives substantial attendance but a proportionate sum may be allowed for the attendance of a clerk.)	20	30
14B. Fee on reserved Judgment	7 or a reasonable allowance in the circumstances.	10
15. Counsel fee for second and each succeeding day of trial or hearing if certified for not exceeding (Note: These fees and those in items 14, 14A and 14B cover all costs of and incidental to the conduct of the case in Court and the perfecting of the judgment unless otherwise specified in the Scale or ordered by the Judge.)	30	50

	Lower Scale. (£1-£1,500) Guineas.	Higher Scale. (Over £1,500) Guineas.
16. Extra Counsel if certified for, first day not exceeding		
For each succeeding day if certified for, not exceeding	18	30
(Note: Extra Counsel shall not be certified for as a matter of course. The certificate shall not be granted for either the instructing solicitor or his partner or his or his firm's associate or employee or a partner associate or employee of the leading counsel or his firm or a practitioner who is, in the opinion of the Judge, acting more in the role of an instructing solicitor than in the role of extra counsel.)		
17. Conference fee on witness action if certified for	6	9
(Note: This fee will not be allowed to the practitioner or his partner acting as counsel.)		
18. On assessment of damages	One-half of the amounts allowable under items 12, 14 and 14A; two-thirds of the amounts allowable under items 15 and 16.	
19. New trials and re-hearings	Two-thirds of the amounts allowable under items 14 and 14A, 15 and 16.	
20. Adjournments	2-9	3-15
21. Proceedings under any special Statute to assess compensation for the taking or resumption of land or any other property by the Crown in right of the State or the Commonwealth or by any statutory instrumentality or any person or body pursuant to any statutory powers	The same costs <i>mutatis mutandis</i> as allowed in civil actions, but the Tribunal or Court shall determine what is a just and equitable basis in the circumstances for the taxation of such costs.	
22. Garnishee proceedings	8-20	15-30
But the Court may direct that the costs of the parties or any of them shall be taxed or fixed as in an ordinary action.		
23. Interrogatories (without order, including copies and service)	5-12	9-18
Answers to interrogatories	5-12	9-18
24. Discovery and inspection (without order)	5-12	9-23
(Add costs of order if with order.)		
25. Inspection (without order)	3-6	6-11
26. Interpleader, if uncontested	6	11
27. Special case or issue—preparing and settling	15	22
28. Conducting argument on special case or issue—not exceeding	60	120
(Note: This item includes all work done or incidental to the work done in court.)		

	Lower Scale. (£1-£1,500) Guineas.	Higher Scale. (Over £1,500) Guineas.
29. For each additional day, and in proportion for part of a day—not exceeding	45	75
(Note: When part of a day is involved on any day after the first, the proportion of the scale fee shall be as certified by the Judge.)		
30. Motions not specially provided for—as certified for	3-22	3-30
31. Applications on Originating Summons and Petitions	12 guineas to 225 guineas as may be certified by the Judge or allowed on taxation by the Taxing Officer, but the Court may direct that the costs of the parties or any of them shall be fixed as in an ordinary action.	
32. Extra Counsel where certified in items 28 and 31 for first day—not exceeding	30	53
For each subsequent day—not exceeding	18	30
(Note: Apply note to item 16.)		
33. Application in Chambers other than on originating summons or petition	3 guineas to 22 guineas, as certified for or allowed on taxation.	
34. Taking accounts and taxing costs, making enquiries and the like—per hour	1-5	2-5
35. Arbitration proceedings	The same costs as in an action, less 20 per cent.	
(Note: This amount covers all proceedings in arbitration.)		
36. Reference to Master or referee of any question for inquiry or report, or of any cause, matter, question or issue for trial	The order of reference shall direct the basis on which costs of the reference are to be assessed.	
37. Appeals from a Judge	45-120	60-225
Extra counsel—where certified for	The same allowances as prescribed in item 32.	
38. Conference or consultation—if certified for	6	12
(Note: Will not be allowed to practitioner or his partner acting as counsel.)		
39. Appeals from a local or warden's court	30-120	45-150
40. Appeals from inferior courts (not otherwise provided for)	30-120	45-150
41. For each additional day on the hearing of an appeal and in proportion for part of a day—not exceeding	45	75
42. Proceedings on mandamus, prohibition, or certiorari	22-100	35-200
43. Execution	6	8
Where execution against land is involved—extra	5	6
Any writ of execution other than <i>fi fa</i>	6	8

	Lower Scale. (£1-£1,500) Guineas.	Higher Scale. (Over £1,500) Guineas.
44. Service—		
Service of any process on a party—		
(a) where service by post is not authorised—15s.		
(b) where service by post authorised—9s.		
(c) where service is at the office of the solicitor on the record—12s.		
If served at a distance of more than two miles from the nearest place of business or office of the solicitor serving the same		According to the time occupied and fares paid, but not to exceed the cost of service by the nearest Sheriff's officer.
If served by Sheriff's officer		The amount properly paid in accordance with the scale of fees authorised to be taken by the Sheriff.
When it is proper to effect service through an agent—for correspondence		24s., in addition, reasonable agent's charges.
For service outside the jurisdiction		Such allowance as the Taxing Officer thinks fit.

(b) Note (a) is amended by inserting after the word "costs" in line five the words "(or expenses including counsel fees)" and by inserting after the word "client" in line nine the words "or in contesting and reducing a claim," and by inserting after the word "costs" in the same line the words "and expenses."

(c) Note (b) is amended by deleting the figure "£1,500" in line two and inserting in lieu thereof the figure "£2,250."

(d) A further proviso is added to Note (b) as follows:—

Provided further that unless in either case the Court certifies for the whole of the costs in accordance with the details of the scale, the total costs of an action (whether contested or only an assessment of damages) exclusive of disbursements, where the claim is for damages for personal injuries caused by the use of a vehicle as defined in the Traffic Act, 1919, and amendments, shall not exceed the costs which could be allowed if the amount recovered was £5,000.

(e) Note (c) is amended by inserting after the word "Solicitor" in line nine the words "acting for a Plaintiff."

(f) Note (f) is amended by inserting after the words "Taxing Officer" in line five the words "and the reasonable expenses approved by the Taxing Officer of the typing, printing and binding of Appeal Books."

(g) Paragraph (ii) of Note (g) is amended by deleting the word "three" in the last line and by inserting after the word "applicable" in the last line the words "in the calculation of the party and the party costs and in the calculation of the solicitor and client costs of each party. The value so fixed need not necessarily be the same for each party."

(h) Paragraph (iv) of Note (g) is amended by inserting after the word "party" in line three the words "unless the Judge at the trial or in Chambers summarily orders otherwise."

Dated this 29th day of February, 1960.

A. A. WOLFF,
Chief Justice.

L. W. JACKSON,
Senior Puisne Judge.

J. E. VIRTUE,
Puisne Judge.

R. V. NEVILLE,
Puisne Judge.

GORDON B. D'ARCY,
Puisne Judge.

Crown Law Department,
Perth, 23rd March, 1960.

THE following amendments to the Probate (Non-contentious Costs) Rules, 1949, are published for general information.

R. C. GREEN,
Under Secretary for Law.

PROBATE (NON-CONTENTIOUS COSTS) RULES, 1949.

THE Honourable Sir Albert Asher Wolff, K.C.M.G., Chief Justice of Western Australia, the Honourable Lawrence Walter Jackson, Senior Puisne Judge, the Honourable John Evenden Virtue, the Honourable Roy Vivian Neville and the Honourable Gordon Bede D'Arcy, Puisne Judges of the Supreme Court of Western Australia, do hereby, in pursuance of the powers contained in the Supreme Court Act, 1935-1957, and in The Administration Act, 1903-1956, and of every other power them in this behalf enabling, amend the Probate (Non-contentious Costs) Rules, 1949 (as amended by Rule dated the 22nd day of June, 1954) as follows:—

1. Rules 5 and 6 are deleted and the following substituted:—

5. The charges set forth in the First and Third Schedules hereto do not include disbursements necessarily made nor any costs of and incidental to the preparation and passing of the statement of assets and liabilities required under the Administration Act, 1903-1956, or under the Estate Duty Assessment Act, 1914-1957, of the Commonwealth and the satisfaction of requisitions relating thereto (including the obtaining, submission and lodging of valuations and vouchers and attendances in connection therewith or arising out of any question or dispute as to duties) and the payment of any duties assessed under either or both of such Acts.

6. Any additional charges shall be governed by any practice note made by the Judges or a majority of them.

2. The First Schedule is deleted and the following substituted:—

THE FIRST SCHEDULE.

Where the gross value of the property left in Western Australia does not exceed:	For the obtaining of a Grant of Probate of a Will or the Resealing in Western Australia of a Probate granted in another State or Country:	For the obtaining of Letters of Administration or the Resealing in Western Australia of Letters of Administration granted in another State or Country:
£	£ s. d.	£ s. d.
800	8 0 0	11 0 0
900	9 0 0	12 0 0
1,000	10 0 0	13 0 0
1,100	11 0 0	15 0 0
1,200	12 0 0	16 0 0
1,300	13 0 0	17 0 0
1,400	14 0 0	18 0 0
1,500	15 0 0	19 0 0
1,600	15 10 0	19 10 0
1,700	16 0 0	20 0 0
1,800	16 10 0	20 10 0
1,900	17 0 0	21 0 0
2,000	17 10 0	21 10 0
2,500	20 0 0	24 0 0
3,000	22 10 0	27 10 0
3,500	25 0 0	30 0 0
4,000	27 10 0	32 10 0
4,500	30 0 0	35 0 0
5,000	32 10 0	37 10 0
6,000	35 0 0	40 0 0
7,000	37 10 0	42 10 0
8,000	40 0 0	45 0 0
9,000	42 10 0	47 10 0
10,000	45 0 0	50 0 0
20,000	57 10 0	62 10 0
30,000	70 0 0	75 0 0
Where the property left exceeds £30,000	70 0 0	75 0 0
	plus 10s. for every £1,000 or part thereof by which the property exceeds £30,000 with a maximum of £200.	plus 10s. for every £1,000 or part thereof by which the property exceeds £30,000 with a maximum of £200.

3. This Rule shall apply to all business commenced in the Court after the date on which this Rule comes into force.

4. The Probate (Non-contentious Costs) Rules, 1949, as amended by Rule dated 22nd June, 1954, and by this Rule, may be cited as the Probate (Non-contentious Costs) Rules, 1949-1959.

Dated the 29th day of February, 1960.

A. A. WOLFF,
Chief Justice.

L. W. JACKSON,
Senior Puisne Judge.

J. E. VIRTUE,
Puisne Judge.

R. V. NEVILE,
Puisne Judge.

GORDON B. D'ARCY,
Puisne Judge.

Crown Law Department,
Perth, 23rd March, 1960.

THE following general order under section 64 of the Legal Practitioners Act, 1893-1958, is published for general information.

R. C. GREEN,
Under Secretary for Law.

GENERAL ORDER.

Legal Practitioners Act, 1893-1958.

WE, the Honourable Sir Albert Asher Wolff, K.C.M.G., Chief Justice of Western Australia, the Honourable Lawrence Walter Jackson, Senior Puisne Judge, the Honourable John Evenden Virtue, the Honourable Roy Vivian Nevile and the Honourable Gordon Bede D'Arcy, Puisne Judges of the Supreme Court of Western Australia, and we the undersigned, being a majority of the members of the Barristers' Board constituted and appointed under the Legal Practitioners Act, 1893-1958, do hereby order as follows:—

1. That the following remuneration shall be allowed to legal practitioners for the items of business hereinafter mentioned, in lieu of the remuneration heretofore allowed in respect of such items of business, where—

- (a) in the case of allowances for "instructions"—the initiating instructions are received after this order comes into effect; and
- (b) in the case of items of work other than instructions such items are performed after this order comes into effect.

INSTRUCTIONS.

(Note.—The item "instructions" includes the initial attendance when instructions are taken and all work done in or towards completion of the transaction except such work as is specifically covered by the ensuing items. When a transaction is not completed such proportion of the fee for instructions shall be allowed as is reasonable in the circumstances.)

- (a) For instructions to act for—
 - (i) a purchaser on a sale or other disposition for valuable consideration of real and/or personal property;
 - (ii) settlor or trustees, or both, on a settlement of real and/or personal property;
 - (iii) donor or donee, or both, on a gift of real property, chattels, real or mixed realty and personalty—

	£	s.	d.
Where the consideration or value, or as the case may be, is less than £500—the sum of		15	0
Where the consideration or value, as the case may be, is more than £500 but less than £1,000—the sum of	1	10	0

Where the consideration or value, as the case may be, is £1,000 or more—a sum calculated at the following rates:—

For every complete £100 of the consideration or value, as the case may be, up to £10,000	....	5	0
Thereafter, for every complete £100 of the consideration or value, as the case may be, up to £1,000,000 and, for every complete £1,000 above £1,000,000	....	2	6

(b) For instructions to act for a mortgagee, grantee, or chargee on a mortgage, bill of sale, hire purchase agreement, charge, or other security over real and/or personal property—a sum calculated on the amount secured at the same rates as are provided in paragraph (a) hereof:

Provided—

- (i) in computing the amount secured there shall be excluded that portion thereof which is secured by any already existing collateral security prepared by the same legal practitioner after the date of the commencement of this order and within one year prior to the instructions;
- (ii) in the case of a security for an annuity the advance shall be deemed to be the total amount of the annuity to be paid if for a fixed term up to a maximum of twelve times the annual rate, or twelve times the annual rate if terminable on a life.

(c) For instructions to act for a lessor on a lease of real and/or personal property—a sum calculated at the following rates:—

	£	s.	d.
For every complete £100 of the total rent up to £3,000	....	10	0
Thereafter, for every complete £100 of the total rent	....	2	6
Provided that the minimum allowance shall be	....	15	0

And provided further that the maximum rent on which the allowance shall be calculated shall not exceed twelve times the annual rent.

(d) For instructions to act for a vendor, mortgagor, grantor, hirer, chargor or lessee in a matter covered by paragraphs (a), (b) and (c) hereof, one-half of the amount therein allowable to the other party's solicitor, as the case may be. Where the same legal practitioner acts for both parties, he shall be allowed both charges.

(e) For instructions to prepare Memorandum and Articles and register a company where the—

Nominal capital does not exceed £25,000	£	25
Nominal capital does not exceed £50,000		40
Nominal capital does not exceed £100,000		50
Nominal capital does not exceed £500,000		100
Nominal capital does not exceed £1,000,000		200
Nominal capital over £1,000,000		350

(f) In other cases not covered by (a), (b), (c), (d) or (e) above, a charge may be made for instructions as may be reasonable having regard to the skill and responsibility involved, the value of the property in question, the complexity of the transaction, and other circumstances of the case.

Documents (not being letters)—

	Drawing.	£	s.	d.
(a)	Not wholly or partly in print—per folio	5	6	
(b)	Partly in print, for so much as remains in print—per folio	2	0	
(c)	Partly in print, for so much as is not in print—per folio	5	6	

Engrossing.

On paper in manuscript or typewriting—per folio	2	0
For each carbon or other facsimile engrossment and drafts for perusal—per folio	1	0

Copying.

On paper in manuscript or typewriting—per folio	1	6
For each carbon or other facsimile copy—per folio	1	0
For an attested carbon copy—per folio	1	6

Perusing.

For perusal of unexecuted documents—per folio	2	6
For perusal of executed documents—per folio	1	0

Letters.

Acknowledgments and circular letters (after the first)	7	6
Ordinary letter	15	0
Telegram or special letter	A reasonable charge according to the circumstances.	

Attendances.

	Rate per Hour or Proportionately for Part thereof.
Legal practitioners (if the personal attendance of a legal practitioner is necessary)	£2 12s. 6d. to £5 5s. according to the nature and importance of the work.
Senior Clerks	£1 11s. 6d. to £2 12s. 6d.
Other clerks	15s. to £1 10s.

Where, with regard to the above item "Attendances: Legal Practitioners," the Taxing Officer is of opinion that the particular matter is one of exceptional difficulty and complexity and that it has been attended to by a practitioner of senior professional standing, a higher rate than that itemised may be allowed.

2. This order shall take effect from and after the publication thereof in the *Government Gazette* for a period of one calendar month.

Dated this 29th day of February, 1960.

A. A. WOLFF,
Chief Justice.

L. W. JACKSON,
Senior Puisne Judge.

J. E. VIRTUE,
Judge.

R. V. NEVILE,
Judge.

GORDON B. D'ARCY,
Judge.

P. R. ADAMS,

J. DUNPHY,

R. D. FORBES,

S. H. GOOD,

H. V. REILLY,

H. T. STABLES,

Members of the Barristers' Board.