



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. 61]

PERTH: MONDAY, 13th JULY

[1964

SUPREME COURT ACT, 1935-1960.

MATRIMONIAL CAUSES ACT 1959 (COMMONWEALTH).

Crown Law Department,
Perth, 6th July, 1964.

THE following Costs Rules for the Matrimonial Causes Jurisdiction of the Supreme Court are published for general information.

R. C. GREEN,
Under Secretary for Law.

SUPREME COURT ACT, 1935-1960.

MATRIMONIAL CAUSES ACT 1959 (COMMONWEALTH).

COSTS RULES.

WE, the Honourable Sir Albert Asher Wolff, K.C.M.G., Chief Justice of Western Australia, the Honourable Sir Lawrence Walter Jackson, Kt., Senior Puisne Judge, and the Honourable John Evenden Virtue, the Honourable Roy Vivian Nevile, the Honourable Gordon Bede D'Arcy, the Honourable John Hale and the Honourable Oscar Joseph Negus, Puisne Judges of the Supreme Court of Western Australia, acting in pursuance of the powers conferred by the Supreme Court Act, 1935-1960, and the Matrimonial Causes Act 1959 (Commonwealth), and of every other power enabling us in this behalf, make the following rules relating to costs of proceedings in the Matrimonial Causes Jurisdiction of the said Court and the assessment or taxation of those costs, and declare that such rules shall come into operation on the day following the publication thereof in the *Government Gazette*.

These rules shall apply to every matrimonial cause instituted on and after the date on which such rules come into operation, and for the purpose of this direction the expression "matrimonial cause" has the same meaning as in section 5 (1) of the Matrimonial Causes Act 1959 (Commonwealth):—

COSTS RULES.

(MATRIMONIAL CAUSES JURISDICTION).

1. Subject to the provisions of the Matrimonial Causes Act, 1959, and the Rules made thereunder, the costs which may be allowed shall be as follows:—

Principal Relief.

	Guineas.
1. Suit for restitution of conjugal rights, jactitation of marriage, declaration of validity, which is undefended as to the claim for principal relief including undefended claim for custody or maintenance, or both	55-80
2. Suit for dissolution, judicial separation, or nullity of marriage which is undefended as to claim for principal relief, including undefended claim for custody or maintenance, or both	80
3. Suit defended as to claim for principal relief including suit where there is a cross-petition for principal relief	100-200
4. Suit to which answer to claim for principal relief is filed which is entered for trial and prepared as defended suit but which is heard as undefended suit on either petition or cross-petition	80-130
5. Application for leave to institute proceedings for principal relief	15-35

Ancillary Relief (Part I).

(Extra in all cases where heard with proceedings for principal relief.)

	Guineas.
6. Claim for custody—if defended	10-50
7. Claim for maintenance—	
(a) if undefended and a certificate of means was requisite and has been obtained	5-15
(b) If defended—	
Where a certificate of means has not been obtained	5-25
Where a certificate of means was requisite and has been obtained	10-45
8. Claim for damages—	
If undefended	5-15
If defended	15-50
9. Claim for access—Such amount (if any) as may be certified for by trial judge.	

Ancillary Relief (Part II).

(Where proceedings are not heard with proceedings
for principal relief.)

	Guineas.
10. Application for custody or variation of order for custody	10-60
11. Application relating to access	10-30
12. Application for maintenance or variation of order for maintenance—	
(a) If undefended—	
Where a certificate of means has not been obtained	10-15
Where a certificate of means was requisite and has been obtained	20-25
(b) If defended—	
Where a certificate of means has not been obtained	20-50
Where a certificate of means was requisite and has been obtained	25-75

Appeals, etc.

	Guineas.
13. Against the decision of a Registrar (R.292)	10-35
14. To the Full Court	30-130
(In addition, the reasonable expense of Appeal Books may be allowed.)	
15. Application to set proceedings aside for irregu- larity (R.308)	10-30
16. Intervention proceedings under Part VII of the Act	20-100
17. Determination of a matter stated by a Regis- trar (R.291)	10-25

Proceedings for Enforcement of Orders, etc.

	Guineas.
18. Application for leave to issue a writ of attach- ment or sequestration	5-20
19. Registering in the Court an order or decree of another Court having jurisdiction under the Act	7
20. On any other enforcement of a decree or order—Such costs as may be allowed by the Taxing Officer.	

Miscellaneous.

Guineas.

21. In every case where proceedings whether for principal or ancillary relief are defended and continue beyond one day of hearing or where the hearing of an appeal or intervention or other proceeding so continues, for each additional day, if certified for, a sum not exceeding	60
Note.—If less than a day is involved the additional fee shall be such proportion of the daily fee as the Taxing Officer may allow.	
22. Application for leave to institute proceedings for ancillary relief (when certified by Judge)	5-10
23. Reserved judgment	4-7
24. Application for substituted service or dispensation of service, if certified for	10-25
25. Any other interlocutory application, if certified for	5-15
26. Affidavit of discovery or particulars, if certified for	5
27. Supplementary pleading, if certified for	7
28. Application for an order for payment of maintenance or for custody, pending the disposal of proceedings	5-20
29. Application relating to settlement of property	20-150
30. On an assessment by Registrar (R.204)	5
31. Service outside the State—Such allowance as the Taxing Officer considers reasonable.	
32. Agency allowance—	
Where a town agent is necessarily employed	5-20

2. The above costs shall include the costs of all services including counsel fees, but subject thereto shall not include disbursements necessarily and properly paid or incurred: Provided that notwithstanding anything hereinbefore contained—

- (a) in any suit, application or proceeding presenting unusual difficulty or special features, or which is of special importance, and in the opinion of the Court or Judge calls for a higher fee, the Court or Judge may certify accordingly, and as to the fee which the Court or Judge thinks proper, and thereupon such fee shall be the fee allowed and recoverable;
- (b) the Court or Judge may direct that the costs be taxed, in which case the taxing officer, subject to any special directions of the Court or Judge, shall fix and allow the costs within the limits prescribed by this Rule;

- (c) a respondent and co-respondent or petitioner and party cited by the respondent who defend by the same solicitor, or are represented at the trial by the same counsel, shall be allowed only one set of costs, unless the Judge otherwise orders.

Where such parties, though defending by the same solicitor, are represented at the trial by separate counsel, additional costs shall be allowed only if the Judge is satisfied that their interest are diverse, and that it is proper in the circumstances that additional costs be allowed.

In all cases mentioned in this paragraph where additional costs are allowed, the Judge in his discretion shall fix the amount thereof;

- (d) when dealing with the costs of a petition and cross-petition which have been tried together, or of consolidated suits, or where for any reason it becomes necessary for the costs of a suit to be apportioned, or a party is entitled to receive the costs applicable to any part of the suit or matter, the Judge shall give such directions as may be necessary to ensure that the incidence of the order for the costs of the litigation shall be equitable. If any doubt or difficulty arises on taxation there shall be deemed to be reserved in every such order an authority to the Taxing Officer, or any party to refer the question to the Judge;
- (e) in any particular case where the quantum of work performed does not justify the allowance of a fee according to the scale prescribed, or a fee equal to the minimum fee prescribed, the Court or Judge or the Taxing Officer may fix such fee as in his opinion is just and reasonable;
- (f) in awarding or disallowing any particular part of the costs relating to any suit or proceedings the Court or Judge may fix the appropriate sum;
- (g) the Court, Judge or Taxing Officer, shall fix the sum considered proper to be charged for costs in any case not covered by the preceding scale;
- (h) if, in the opinion of the Judge at trial, the trial of any suit has been unnecessarily protracted through the fault of any party otherwise entitled to costs in accordance with these Rules, the Judge may disallow such portion of the costs as he thinks just.

3. All bills of costs required to be taxed under these Rules shall be referred to a Registrar or such other taxing officer as the Chief Justice may appoint for taxation of bills of costs. Such bills shall be filed and notice of the time appointed for taxation shall be given to the party filing the bill and he shall give to the other parties entitled to be heard on the taxation at least two days' notice of the appointment and shall at the same time or previously deliver to them a copy of the bill to be taxed.

4. The Taxing Officer shall also tax and give his allocatur for all disbursements properly recoverable and carry into the allocatur the sum properly allowable for costs under these Rules so as to show the total amount recoverable

5. Subject to the provisions of the Legal Practitioners Act, 1893, and its amendments, permitting a solicitor to make a written agreement as to costs with his client, the fees and disbursements allowed under this Rule shall apply both as between party and party, and solicitor and client, but where costs have been incurred which in the opinion of the Taxing Officer are not properly recoverable against the party liable under the decree or order to pay costs, but have nevertheless been properly incurred, or where costs have been incurred at the special request of the client, such costs shall be recoverable from the client, and the Taxing Officer is hereby authorised to fix such sum as he thinks reasonable to cover such additional costs.

6. (i) Subject to any special agreement in writing made between a solicitor and his client as to the remuneration payable to the solicitor both the solicitor and the client shall have the right to have the solicitor's charges in respect of solicitor and client costs taxed at any time before delivery of the bill or within thirty days after delivery of the bill.

(ii) On being requested by the client by notice in writing to submit his bill of costs for taxation the solicitor shall within fourteen days after receiving such notice file his bill for taxation and thereupon the taxing officer shall appoint a day and time to proceed with the taxation of the bill.

(iii) Notice of such appointment and a copy of the bill as filed for taxation shall be served by the solicitor on the client at an address to be specified in the notice requesting the bill to be submitted for taxation, such address to be not more than five miles from the office of the Court at Perth.

(iv) Where a solicitor on his own initiative files his bill of costs for taxation as between solicitor and client the Taxing Officer shall appoint a day and time to proceed with the taxation. Notice of such appointment and a copy of the bill shall be served by the solicitor on the client.

(v) If there is no attendance of the client or of anyone on his behalf at the time appointed for the taxation the Taxing Officer shall before proceeding with the taxation be satisfied by affidavit that the bill of costs and notice of the taxation have been served on the client in accordance with these Rules and a reasonable time before the time appointed for taxation.

(vi) Where a client has requested a solicitor to submit his bill of costs as between solicitor and client for taxation according to this rule no costs shall be recoverable by the solicitor except such costs as may be allowed by the Taxing Officer on taxation.

(vii) The costs of a taxation under this Rule shall be in the discretion of the Taxing Officer who may add to them, or deduct from them, any sum payable by or to a party to the taxation.

7. Rules 19, 20, 22, 23, 24, 25, 32, 33, 34, 35, 36 and 37 of Order 65 of the Rules of the Supreme Court shall, so far as they are not inconsistent with these Rules or Rules made under the Matrimonial Causes Act 1959 (Commonwealth), apply *mutatis mutandis* to taxation of costs under these Rules.

Dated this 26th day of June, 1964.

A. A. WOLFF,
Chief Justice.

L. W. JACKSON,
Senior Puisne Judge.

J. E. VIRTUE,
Puisne Judge.

R. V. NEVILE,
Puisne Judge.

G. B. D'ARCY,
Puisne Judge.

JOHN HALE,
Puisne Judge.

OSCAR J. NEGUS,
Puisne Judge.