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SUPREME COURT ACT, 1935-1971

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AMENDMENT OF THE  
SUPREME COURT  
RULES, 1971.



## SUPREME COURT ACT, 1935-1971.

PURSUANT to the powers conferred by the Supreme Court Act, 1935-1971, and all other powers hereunto enabling, the Judges of the Supreme Court of Western Australia, with the concurrence of the Treasurer of the State, hereby make the following rules.

## AMENDMENT OF THE SUPREME COURT RULES, 1971.

1. In these rules the Rules of the Supreme Court, 1971 published in the *Government Gazette* on 18th November, 1971, as amended by rules so published on 17th December, 1971, 7th June, 1972 and 15th June, 1973, are referred to as the principal rules. Principal rules.
2. These rules shall come into operation on the first day of October, 1973. Commencement.
3. (1) The following orders and rules are revoked:— Revocation and amendment.
  - (a) Order as to Supreme Court Fees, 1888;
  - (b) Order as to Supreme Court Fees, 1909;
  - (c) Order as to Supreme Court Fees (1915);
  - (d) Rules as to payment of Supreme Court Fees and Probate Duties, 1925;
  - (e) Order as to Supreme Court Fees (1941);
  - (f) Order as to Supreme Court Fees, 1948;
  - (g) Order as to Supreme Court Fees, 1949; and
  - (h) all orders and rules amending the orders and rules referred to in the preceding paragraphs of this rule.

(2) Subrule (1) of this rule shall not be construed as reviving any orders or rules revoked by any of the orders or rules referred to in that subrule.

(3) The rules made under the Service and Execution of Process Act 1901 of the Commonwealth published in the *Government Gazette* on 29th June, 1917 are amended—

  - (a) by substituting for the words, "the Second Schedule hereto" in lines 5 and 6 of rule 18, the passage, "the Fifth Schedule to the Rules of the Supreme Court, 1971"; and
  - (b) by deleting the Second Schedule.
4. The principal rules as amended by these rules shall apply to and in relation to proceedings pending on the day on which these rules come into operation as well as to and in relation to proceedings commenced on and after that day; but the fees prescribed by the Fifth Schedule shall not apply to any pleading, application or other document filed, issued or otherwise dealt with or any other matter or thing done in the Court or by an officer of the Court before the day on which these rules come into operation. Application.

O.1 R.3  
amended.  
(Certain  
proceedings  
excluded.)

5. Rule 3 of Order 1 of the principal rules is amended—
- (a) by substituting for the word, "These" in line 1 of paragraph (2) the passage, "Subject to the provisions of paragraph (2A), these"; and
  - (b) by adding after paragraph (2) the following paragraph:—  
(2A) The provisions of Order 83A and of the Fifth Schedule shall apply to and in relation to proceedings of the kinds referred to in paragraphs 1, 2 and 3 of the Table contained in paragraph (2).

O.83A  
added.

6. The principal rules are amended by adding after Order 83 the following Order:—

#### ORDER 83A.

##### Fees.

Fees to be  
charged.

1. (1) Subject to this Order, the fees specified in the Fifth Schedule shall be charged in respect of the matters in relation to which they are specified.

(2) Except as provided in the Fifth Schedule, a fee shall not be charged in respect of any of the following matters:—

- (a) filing an affidavit;
- (b) filing a pleading;
- (c) search by a party;
- (d) sealing a copy of a document;
- (e) drawing up, settling or signing a judgment, order or decree;
- (f) amending a pleading;
- (g) making a request under these rules; or
- (h) filing, depositing, giving, issuing or serving any other document required or permitted by these rules to be filed, deposited, given, issued or served in connection with proceedings.

(3) A note to an item in the Fifth Schedule shall have effect according to its tenor as if it were a provision of these rules.

(4) Where a fee is payable, the proper officer shall mark the fee on the document filed or, where no document is filed, he shall note on a schedule sufficient particulars of the fee and of the matter to which it relates.

Exemptions.

2. The provisions of this Order shall apply to all proceedings in the Supreme Court in any jurisdiction inherent in or conferred on the Court or a Judge other than—

- (a) criminal proceedings, or appeals under section 183 of the Justices Act, 1902;
- (b) proceedings under the Matrimonial Causes Act 1959 or the Bankruptcy Act 1966 of the Commonwealth;

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- (c) proceedings under the Adoption of Children Act, 1896;
- (d) proceedings in the Court of Disputed Returns;
- (e) applications for appointment as public notaries;
- (f) returns and copies of, or searches for, returns under the Newspaper Libel and Registration Act, 1884; or
- (g) proceedings in Prize Courts.

3. Subject to the provisions of this Order, a pleading, application or other document shall not be filed, issued or otherwise dealt with; and no other matter or thing shall be done in the Court or by an officer of the Court, unless the fee (if any) payable upon or in respect of filing, sealing, issuing or otherwise dealing with that pleading, application or other document or upon or in respect of the doing of that matter or thing, has been paid or unless an undertaking to pay the fee has been given to the Court or to the officer, as the case may be.

Fees to be paid before documents etc., filed.

4. If a question arises as to the fee payable or applicable in a particular case, that question shall be determined by the Master; but any person affected by the determination of the Master may have it reviewed by a Judge in a summary manner.

Master to decide disputed fees.

5. The Court may, in a particular case for special reasons, direct—

Court may remit fees.

- (a) that a fee shall not be taken, or that part only of a fee shall be taken, or, if taken, that the whole or part of the fee be remitted; or
- (b) that the payment of the whole or a part of a fee be postponed until such time, and upon such conditions, if any, as the Court thinks fit.

6. Where, by a Convention that applies to the State, it is provided that a fee is not required to be paid in respect of any proceedings, the fees referred to in rule 1 shall not be taken in respect of those proceedings.

Conventions.

7. The principal rules are amended by adding after the Fourth Schedule, the following Schedule:—

Fifth Schedule added.

#### THE FIFTH SCHEDULE.

O.83A R.1

#### FEES.

#### Part I.

#### FEES TO BE TAKEN IN THE CENTRAL OFFICE.

Item	Matter.	Fee. \$
1.	(a) Commencing an appeal, cause or matter other than a proceeding of the kind referred to in items 2, 3 or 22,	
	(b) Filing a counterclaim or	
	(c) Issuing a third party notice against a person not already a party	15.00

THE FIFTH SCHEDULE—*continued.*

Item	Matter.	Fee. \$
2.	Commencing a cause or matter that is— (a) an application to extend a period of time fixed by law including an application to extend time before proceedings are commenced; (b) an application to limit a period of time within which proceedings may be taken; (c) an application for leave to serve a writ or notice of a writ out of jurisdiction; or (d) an application to swear to the death of a person	5.00
3.	(a) Commencing an appeal from a local court or (b) making application for an order to review under s.197 of the Justices Act, 1902	10.00
4.	Entering an appearance, whether for one person or for more than one person	5.00
5.	Entering for hearing an appeal, cause, matter, issue or case, except where item 6 applies	20.00
6.	Entering for hearing— (a) an appeal from a local court; (b) an order to review under s.197 of the Justices Act, 1902; or (c) a case stated under s.29 of the Workers' Compensation Act, 1912	10.00
7.	On an application in a pending cause or matter, whether by summons or on motion, other than an application under item 16 Note: No fee is payable on an application— (a) for a certificate under the Suitors Fund Act, 1964; or (b) for the remission or postponement of a fee.	5.00
8.	On an appointment to settle the index of a transcript for use upon the hearing of an appeal	5.00
9.	On an appointment before the Master— (a) on a reference for trial or for inquiry and report; (b) to pass accounts; or (c) to settle a list of creditors under the Supreme Court (Companies) Rules, 1963	10.00
10.	On an appointment to tax a bill of costs in a cause or matter— (a) where the amount claimed is under \$100 (b) Where the amount claimed is \$100 or more—for every \$4 or part thereof of the amount at which the bill is drawn Note: The Taxing Officer shall allow against the person chargeable with the costs as taxed, taxing fees at the rate of .10c for every \$4 or part thereof of the amount found due on taxation.	1.00 0.10
11.	On an appointment to tax a bill of costs under the Legal Practitioners Act, 1893— (a) where the amount claimed is under \$100 (b) Where the amount claimed is \$100 or more—for every \$4 or part thereof of the amount at which the bill is drawn	1.00 0.10
12.	(a) For a certificate of the Master or Registrar (b) Settling or approving a security, notice, advertisement deed or other instrument or (c) On an appointment for an examination in aid of execution Note: No fee is payable for a certificate of taxation or search, or when a fee prescribed by items 9, 22 or 27 is payable.	5.00

THE FIFTH SCHEDULE—*continued.*

Item	Matter.	Fee. \$
13.	(a) Entering or sealing a judgment given or entered before the cause has been set down for trial or hearing.	
	(b) Sealing an order made upon the hearing of an originating summons or originating motion (other than an application of the kind referred to in item 2) or a petition ....	10.00
14.	On payment into court under s. 99 of the Trustees Act, 1962 ....	2.00
15.	(a) For searching any proceeding, other than a search made by or on behalf of a party to the proceeding—for every half-hour or part .....	0.50
	(b) Where an inquiry is made through the post—for making the search and answering the inquiry .....	1.00
16.	On an application for the production of records or documents that are required to be produced to any court or tribunal (including an umpire or arbitrator) .....	2.00
	AND where an officer is required to attend at any court or place out of the Supreme Court building, his reasonable expenses and, in addition, for each hour or part of an hour when he is necessarily absent from his office .....	2.00
17.	Sealing a writ of execution or any other writ except a writ of summons or a writ of subpoena .....	5.00
18.	Settling and sealing a citation in a probate action .....	2.00
19.	Admiralty proceedings: Registry fees not otherwise prescribed—	
	(a) Sealing a warrant of arrest, release, commission for the appraisalment or sale of property or for the appraisalment and sale of property .....	5.00
	(b) Filing a bail bond or notice of objection to sufficiency of surety, or a caveat against arrest or release .....	2.00
	(c) On an application in a pending cause or matter whether by summons or on motion, other than an application by the Marshal .....	5.00
	(d) Entry for hearing of a reference to the Registrar .....	10.00
	Note:	
	(1) Where the Registrar is assisted by one or more merchants or other assessors, such daily fee shall be payable for each assessor or merchant as a Judge or the Registrar may consider reasonable.	
	(2) The fees payable to assessors or merchants shall become due <i>de die in diem</i> as the reference proceeds and shall be payable in the first instance by the claimant.	
20.	Proceedings under the Service and Execution of Process Act 1901 of the Commonwealth—	
	(a) on registering a certificate of judgment .....	10.00
	(b) for the service of process and for the execution and enforcement of process and judgments—the fees prescribed by Part III of this Schedule.	
21.	Sealing a commission to take affidavits (including motion) or sealing any other commission—unless otherwise prescribed .....	5.00
22.	On an application for admission as a practitioner .....	10.00
23.	(a) For making a plain or office copy—for each page or part thereof .....	1.00
	(b) For each additional copy .....	0.50
	Note: For copies of exhibits etc., required for use on an appeal, see item 29.	

THE FIFTH SCHEDULE—*continued*.

Item	Matter.	Fee. \$
24.	For examining a plain copy not bespoken including marking as an office copy if required—for each page or part thereof ....	0.50
25.	For a copy in a foreign language and for a copy of a plan, map, section drawing, photograph or diagram—the reasonable cost thereof as certified by the Master.	
26.	For reasons for judgment given by the Court or Master in a proceeding—for each copy issued to a person not a party to the proceeding and for each copy in excess of one copy issued to a party to the proceeding—for each page ....	1.00
27.	For certifying under seal that a document is a true copy—an additional fee ....	1.00
28.	For a photographic copy of a document of any kind and of any plan, map, drawing, or diagram including marking as an office copy if required—for each page or part thereof ....	1.00
29.	For photographic copies of exhibits or other documents (other than evidence or reasons for judgment) required for use on an appeal—for each page ....	0.20
30.	For examining the transcript on an appeal or the documents for inclusion therein or copies of pleadings required to be certified under O.70 R.19 of the High Court Rules—for each page ..	0.20

Note: This fee is not payable where item 29 applies.

## Part II.

## FEES TO BE TAKEN IN THE PROBATE OFFICE.

31.	On application for an original grant or to reseal a foreign grant ....	15.00
	Notes:	
	(1) This fee covers:	
	(a) all documents filed in support of the application;	
	(b) preparation of the necessary photographic copies of documents including will (if any) required for the grant and Court file; but where the will consists of more than one page any additional pages shall be charged for under item 39; and	
	(c) the issue of the grant.	
	(2) This fee is not chargeable on a grant <i>pendente lite</i> or <i>ad colligenda bona</i> , as to which see item 33.	
	(3) In this item and in subsequent items in this Part, "grant" means a grant of probate or administration with or without the will, or an order to administer.	
32.	On application for a second or subsequent grant in relation to the same deceased person ....	4.00
	Notes:	
	(1) Where the first grant was a grant <i>pendente lite</i> or <i>ad colligenda bona</i> , the fee on application for the second grant shall be calculated in accordance with item 31.	
	(2) This fee is in addition to item 39.	
33.	On application for a grant <i>pendente lite</i> or <i>ad colligenda bona</i> ....	4.00
	Note: This fee is in addition to item 39.	
34.	For filing an election by the Public Trustee ....	1.00
35.	For noting on a grant that the deceased died domiciled in Western Australia (if not so noted when the grant was issued), or for noting on the record that an executor to whom power was reserved has renounced ....	2.00



THE FIFTH SCHEDULE—*continued.*

Item	Matter.	Fee. \$
36.	For amendment or revocation of a grant (including Master's order and noting grant or record) ....	4.00
37.	For annexing to a grant a certified photographic copy of an order under the Inheritance (Family and Dependents Provision) Act, 1972 and for noting the grant and record, and filing copy order ....	2.00
38.	For impounding a grant or releasing an impounded grant ....	2.00
39.	For photographic copies of a will or other document and marking as an office copy if required—for each page .... Note: This fee is subject to Note (1) to item 31.	1.00
40.	For a plain or office copy of a will or other document—for each page or part thereof ....	1.00
41.	For collating a copy with the original document and marking as an office copy if required—for each page or part thereof .... Note: This fee is not payable where the copy is a photographic copy or where item 40 is payable.	0.50
42.	For a duplicate or triplicate probate or letters of administration with or without the will, or for certifying an exemplification or a copy of a grant .... Note: This fee is in addition to item 39.	4.00
43.	For drawing and engrossing a grant in a personal application (other than an application under s. 55 of the Administration Act, 1903) including collating but excluding fee for photographic copies ....	4.00
44.	For the entry or subduction of a caveat or for settling and sealing a citation or a subpoena ....	2.00
45.	(a) For a search for and inspection of a document or file of documents .... (b) Where an inquiry is made through the post—for making the search and answering the inquiry ....	0.50 1.00
46.	For depositing a will of a deceased person in the Registry, (including renunciation of executor) or for depositing the will of a living person for safe custody ....	2.00
47.	On an appointment to pass accounts ....	10.00

## Part III.

## FEES TO BE TAKEN BY THE SHERIFF AND THE MARSHAL.

## Fees to be taken by the Sheriff.

48.	Receiving and entering a writ or order for execution, including issuing warrant and statement under O.47, R. 11 ....	5.00
49.	Receiving and entering a writ or other process for service ....	2.00
50.	(a) Service of a writ, petition or other process or document .... (b) Where the process or other document cannot be served (in addition to mileage) .... (c) Where the process or document is subsequently served at another address, for attempted service in the discretion of the Master or Sheriff (in addition to mileage) ....	5.00 2.00 2.00

Note: Where a person is or could have been served with more than one document at the one time, one fee only shall be allowed.

## THE FIFTH SCHEDULE—continued.

Item	Matter.	Fee. \$
51.	(a) For executing a writ or other process or for an arrest ....	10.00
	(b) For the release from arrest of any person ....	5.00
	(c) For enquiries concerning judgment debtor's property or for attempted execution (item 51 (a) is not payable) ....	5.00
52.	Mileage on execution of a warrant or other process, or on service of a writ, process or other document, or on making an arrest or attending a view, for each kilometre (one way) from the Sheriff's office or Bailiff's office ....	0.18
	Note: Where more than one process or document is executed or served at the same time on the same person or on different persons at the same address, one mileage only shall be chargeable.	
53.	(a) Poundage on executing a writ of <i>fiery facias</i> or other process under or by reason of which money is received by the Sheriff or by the judgment creditor, after seizure, five per cent on the first \$1,000.00 and two and a half per cent on the balance above that amount.	
	(b) Where the sale of land, interest in land, or goods or chattels is conducted by a licensed auctioneer instructed by the Sheriff, poundage shall be charged at one-half the above-mentioned rates.	
	Note: In the case of land, or an interest in land, service of the writ of <i>fiery facias</i> on the Registrar of Titles under s.133 of the Transfer of Land Act, 1893 shall be deemed to be "seizure" for the purpose of this item.	
54.	Where the sale, whether by public auction or otherwise, is conducted by the Sheriff or his officer without the intervention of an auctioneer or agent, the rates of poundage specified in paragraph (a) of item 53 shall be increased by one per cent for the first \$3,000.00.	
55.	Poundage on executing a writ of possession: five per cent on the first \$1,000.00 and two and a half per cent on balance of the annual rental value of the property as fixed by the Sheriff.	
56.	For auctioneer's or agent's commission, advertising and sundry expenses on account of sale by auction or otherwise of goods or chattels, or land or any interest in land, whether a sale does or does not take place ....	A fee fixed in accordance with the recognised scale of charges for auctioneers and agents in the State of Western Australia, or such other fee as the Sheriff may allow.
57.	Where a sale takes place by auction or private contract, or when no sale takes place—	
	(a) for advertising and giving publicity to any sale, or intended sale, printing catalogues and bills, and distributing and posting the same ....	The sums actually and reasonably paid.
	(b) for labour (if any) employed in lotting and showing goods or chattels, preparing catalogue, and where a sale takes place by auction attending the sale and superintending the removal of goods or chattels by purchaser ....	
	(c) Travelling expenses ....	

THE FIFTH SCHEDULE—*continued.*

Item	Matter.	Fee. \$
58.	(a) Assistants required to execute a writ of possession ....	
	(b) Man in possession ..	
	(c) Out-of-pocket expenses incurred by the Bailiff or officer while executing any process including postage, telegraphic and telephonic messages, and travelling expenses of himself and assistants ....	
	(d) Clerical assistance when necessary ..	
	(e) Warehousing or storage of goods or vehicles which are being or are about to be, or have been removed, and insurance thereof against fire, damage, and in the case of motor vehicles, accident and third party risk ....	
	(f) Removal or cartage expenses ..	
	(g) Where animals or other livestock have been removed, for taking charge of same and for their keep while in the custody of the Sheriff whether before or after removal ....	
	The sums actually and reasonably paid.	
59.	Drawing inventory ..	5.00
60.	Preparing for the sale of real or personal property, including drawing advertisements and particulars and conditions of sale but excluding actual disbursements (see items 56, 57 and 58) ....	5.00
61.	Keeping office open after hours—as directed by the Sheriff ..	5.00 to 10.00
62.	Where an officer is required to attend Court in charge of any person including a prisoner ordered to attend for examination pursuant to a Judge's order, the reasonable travelling and other expenses of the officer and the person or prisoner, and in addition for each hour or part of an hour when the officer is necessarily engaged ..	2.00
63.	Fee to the Sheriff for attending a view—	
	(a) within fifteen kilometres of his office ..	5.00
	(b) if at a greater distance than fifteen kilometres ..	10.00
64.	Striking a jury and preparing jury panel ..	10.00
65.	Summoning a juror or serving a notice to a juror ..	3.00
66.	Mileage on the service of a jury summons—the allowances prescribed by item 52. Note: Where more than one juror in the same cause is, or could be, served at the same time in the same locality, one-half only of the fees for mileage shall be allowed.	
67.	Where a Sheriff's officer, or other person employed under the Sheriff shall be necessarily put to and incur extra trouble and expense in the discharge of any duty incidental to his office or employment or for any duty or service not herein provided, such sum or such additional sum, as the case may be, as the Sheriff may allow.	
Fees to be taken by the Marshal in Admiralty.		
68.	Receiving and entering a writ of summons, warrant, release, decree, order, commission or other instrument under the seal of the Court ..	2.00
69.	For service of a writ of summons ..	10.00
70.	For executing a warrant for the arrest of a ship or other property ..	25.00
71.	Where a writ of summons is served at the same time as a warrant of arrest is executed, in lieu of items 69 and 70, a fee of ..	30.00
72.	For the execution of an attachment—For each person ..	10.00

THE FIFTH SCHEDULE—*continued.*

Item	Matter.	Fee. \$
73.	For the release from arrest of a vessel, goods, or person ....	5.00
74.	For attending the discharge of cargo, or removal of a vessel or goods, per hour ....	2.00
75.	For the execution of a commission of appraisal or sale, or appraisal and sale, in addition to the fees paid to the appraiser or auctioneer ....	10.00
76.	For the execution of a decree or order, commission, or other instrument other than those herein provided ....	10.00
77.	On the gross proceeds of a vessel or goods, etc., sold— For every \$100.00 or part thereof up to \$10,000.00 .... For each additional \$100.00 or part thereof ....	2.00 1.00
78.	(a) For retaining possession of a vessel with or without cargo, or of a cargo without a vessel, the expenses per day actually paid in respect of a shipkeeper or shipkeepers, and in addition per day .... Note: Where the possession is for a lengthy period this fee may be reduced at the discretion of the Marshal. (b) Other actual and necessary payments made by the Marshal for the safe custody of property under arrest may be also allowed. Note: No fee shall be payable for the custody and possession of property under arrest if it consists of money in a bank, or of goods stored in a bonded warehouse, or if it is in the custody of a customs house officer, or other authorised person.	5.00
79.	The Marshal or any of his officers, if required to travel for the purpose of discharging his duty shall be entitled to his reasonable expenses for travelling, board and maintenance, in addition to the foregoing fees.	
80.	For any duty or service not provided for in this Part, or where the fee prescribed is insufficient having regard to the circumstances of the case, such sum, or such additional sum, as the Marshal, upon special application, may allow. Note: The Marshal may require a deposit of money on account of the fees applicable to any proceedings before the proceedings are commenced. He may also require an undertaking in writing to pay any further fees or charges which may become payable beyond the amount so deposited.	

Dated the 30th day of August, 1973.

L. W. JACKSON, C.J.  
J. E. VIRTUE, S.P.J.  
FRANCIS BURT, J.  
J. M. LAVAN, J.  
JOHN WICKHAM, J.  
R. WALLACE, J.

I concur in the foregoing Rules and Order—

JOHN T. TONKIN,  
Treasurer.