



Western Australia

Evidence (Witnesses' and Interpreters' Fees and Expenses) Regulations 1976

Compare between:

[16 Nov 2007, 02-a0-04] and [30 Sep 2008, 02-b0-05]



Western Australia

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at 16 November 2007

Evidence Act 1906

Evidence (Witnesses' and Interpreters' Fees and Expenses) Regulations 1976

1. Citation

These regulations may be cited as the *Evidence (Witnesses' and Interpreters' Fees and Expenses) Regulations 1976*¹.

2. Terms used in these regulations

In these regulations unless the contrary intention appears —

expert witness means a witness called to give opinion evidence because of his special skill, technical knowledge or professional qualifications;

interpreter means an interpreter referred to in section 119(2) of the Act;

item means an item in the Schedule;

paying officer means a person appointed to be the paying officer, in the particular case, in accordance with regulation 2A;

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witness means a witness referred to in section 119(2) of the Act but does not include a police officer acting in the course of his duty.

*[Regulation 2 amended in Gazette 5 Dec 1995 p. 5585;
31 Dec 2004 p. 7142.]*

2A. Appointment of paying officer

- (1) In relation to matters referred to in section 119(2)(a)(ii) of the Act in which the prosecutor is a local government or other statutory body or a person acting on its behalf — the local government or statutory body may appoint one or more persons to be a paying officer, to make the payments prescribed by these regulations.
- (2) In relation to the matters referred to in section 119(2) or (2a) of the Act, other than the matters referred to in subregulation (1) —
 - (a) the chief executive officer;
 - (b) the Director of Public Prosecutions; or
 - (c) the Commissioner of Police,

(as the case requires) may appoint one or more persons to be a paying officer, to make the payments prescribed by these regulations.

*[Regulation 2A inserted in Gazette 31 Dec 2004 p. 7142;
amended in Gazette 31 Jul 2007 p. 3798.]*

3. Fees and expenses to be paid

The paying officer shall pay the fees and expenses determined under these regulations to witnesses and to interpreters.

[Regulation 3 amended in Gazette 31 Dec 2004 p. 7143.]

4. Fees (item 1 and item 2)

- (1) Subject to this regulation, the fees to be paid to a witness other than an expert witness or a witness who is a prisoner of the Crown are the fees prescribed in item 1.
- (2) Subject to this regulation, where the paying officer is satisfied that, other than an expert witness, a witness has, by reason of his attendance as a witness, lost income in an amount greater than the amount fixed in item 1 he shall pay the witness a fee that equals that loss so long as the amount so paid in respect of any one day does not exceed an amount determined by the person or body entitled to appoint the paying officer.
- (3) A witness who is normally employed —
 - (a) by the Public Service of the State or of the Commonwealth or of another State or Territory of the Commonwealth; or
 - (b) by a body or authority established or constituted under a law of the State or of the Commonwealth or of another State or Territory of the Commonwealth,

shall not be paid the fees prescribed in item 1 or item 2.

*[Regulation 4 amended in Gazette 5 Dec 1995 p. 5585;
31 Dec 2004 p. 7143.]*

5. Expert witnesses

- (1) An expert witness may claim fees and expenses incurred by reason of his or her attendance.
- (2) The paying officer is to pay such claims as are, in the officer's opinion, reasonable and justifiable in each particular case.

[Regulation 5 inserted in Gazette 31 Dec 2004 p. 7143.]

6. Young persons and accompanying parents

- (1) A witness under the age of 16 years shall not be paid any fee for attendance as a witness or attendance at, and participation in,

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programmes in preparation for giving evidence as a witness, but where the paying officer is satisfied that that witness has suffered a loss of income by reason of that attendance he shall pay him the fees prescribed by regulation 4.

- (2) A parent, guardian, relative or other support person who necessarily accompanies a witness under the age of 16 years may claim fees and expenses incurred by reason of his or her accompaniment.
- (3) A person who accompanies and assists a witness under the age of 16 years in order to enable the witness to —
 - (a) attend and give evidence at proceedings referred to in section 119(2)(a) and (b) of the Act; or
 - (b) attend and participate in programmes in preparation for giving evidence in those proceedings,

may claim fees and expenses incurred by reason of his or her accompaniment and assistance.

- (4) The paying officer is to pay such claims under subregulation (2) or (3) as are, in the officer's opinion, reasonable and justifiable in each particular case, but is not to pay —
 - (a) fees and expenses for more than one parent, guardian, relative or other support person per witness unless regulation 15(2) applies;
 - (b) fees and expenses for more than one person to accompany and assist each witness;
 - (c) fees and expenses to a person for accompanying a child witness to court, where that person is appointed by the court to accompany and assist that child witness.

*[Regulation 6 amended in Gazette 5 Dec 1995 p. 5585;
31 Dec 2004 p. 7143-4.]*

6A. Special witnesses

- (1) A witness aged 16 years or more who is, or may be, declared to be a special witness under section 106R(1) of the Act may claim

fees and expenses incurred by reason of his or her attendance at, and participation in, programmes in preparation for giving evidence in proceedings referred to in section 119(2)(a) and (b) of the Act.

- (2) A person who necessarily accompanies and assists a witness aged 16 years or more in order to enable the witness to —
- (a) attend and give evidence at proceedings referred to in section 119(2)(a) and (b) of the Act; or
 - (b) attend and participate in programmes in preparation for giving evidence in those proceedings,
- (or both) may claim fees and expenses incurred by reason of his or her accompaniment and assistance.
- (3) A person appointed under section 106R(4)(a) of the Act to provide support for a special witness may claim fees and expenses incurred by providing that support.
- (4) Unless regulation 15(2) applies, the paying officer is to pay such claims under subregulation (2) of this regulation as are, in the officer's opinion, reasonable and justifiable in each particular case, and where —
- (a) a different person attends under paragraph (2)(a) to the person who attends under paragraph (2)(b); or
 - (b) a different person attends under a particular paragraph on a different occasion,

each is to be paid fees or expenses for that attendance in relation to the one witness.

- (5) The paying officer is to pay such claims under subregulation (3) of this regulation as are, in the officer's opinion, reasonable and justifiable in each particular case, but is not to pay fees or expenses for more than one person under that subregulation per witness, unless regulation 15(2) applies.

[Regulation 6A inserted in Gazette 31 Dec 2004 p. 7144-5.]

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7. Fees for interpreters

- (1) The paying officer is to pay an interpreter an attendance fee for his or her participation in proceedings.
- (2) The attendance fee payable is to be at an agreed rate or, where no agreement can be reached, the fee payable is to be one that is, in the officer's opinion, reasonable and justifiable in that particular case.

[Regulation 7 inserted in Gazette 31 Dec 2004 p. 7145.]

8. Travelling expenses (item 2)

- (1) A witness or interpreter shall be paid any bus or rail fares incurred by him.
- (2) Where the paying officer is satisfied that bus or rail transport is not reasonably convenient a witness shall be paid for the distance travelled each way in respect of his attendance at the rate per kilometre prescribed in item 2.
- (2a) Where the paying officer is satisfied that bus or rail transport is not reasonably convenient, an interpreter shall be paid at the rate prescribed in item 2 for every kilometre that he is required to travel.
- (3) Where a person who is entitled to be paid the travelling expenses prescribed by subregulation (2) or (2a) travels in the same vehicle as another person who is also entitled to be paid those expenses only one such payment shall be made.

*[Regulation 8 amended in Gazette 5 Dec 1995 p. 5585-6;
31 Dec 2004 p. 7145.]*

9. Air fares

- (1) Subject to subregulation (3) where it is necessary for a witness or interpreter to travel by air prior approval for such travel shall be obtained from the paying officer.

- (2) Where prior approval for the payment of air travel has been obtained the cost of the air fare shall be paid in accordance with that approval.
- (3) Where the paying officer is satisfied that it was not practicable to obtain prior approval for air travel he shall pay the air fares incurred by the witness.

10. Expenses for meals

- (1) Where a witness or interpreter is required to travel a distance exceeding 40 kilometres from his or her place of residence (but is not required to stay overnight), the paying officer shall pay the witness or interpreter the allowances for meals prescribed in item 3 in respect of the meals that are normally taken during the time of that travelling and attendance and the cost of which has been paid for by the witness.
- (2) Where a witness or interpreter is required to remain away from his or her residence overnight he or she shall be paid such actual costs for meals as, in the opinion of the paying officer, are reasonable having regard to the circumstances of the particular case.

[Regulation 10 inserted in Gazette 31 Dec 2004 p. 7146.]

11. Accommodation expenses

Where a witness or interpreter is required to remain away from his residence overnight he shall be paid only such actual costs for accommodation at an hotel, motel or other place as in the opinion of the paying officer are reasonable having regard to the circumstances of the particular case.

*[Regulation 11 amended in Gazette 5 Dec 1995 p. 5586;
31 Dec 2004 p. 7146.]*

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12. Witnesses and interpreters from outside State

- (1) Where a witness or interpreter is required to attend from outside this State prior approval of expenses shall be obtained from the paying officer.
- (2) Where a witness or interpreter travels to this State he shall be paid such expenses as in the opinion of the paying officer are reasonable.

[13. Repealed in Gazette 31 Dec 2004 p. 7146.]

14. Miscellaneous expenses

The paying officer may at his discretion pay laundry charges and such other reasonable expenses that have been incurred by a witness or interpreter having regard to the circumstances of a particular case.

15. Discretion to pay higher amounts in certain circumstances

- (1) Where a paying officer is presented with a substantiated claim for expenses, loss of earnings, etc., that exceeds the usual amount paid under these regulations, the person who appointed that payment officer may approve the payment of such higher amount as that person thinks is reasonable, and the amount so fixed by the person shall be the amount payable under these regulations in that case.
- (2) Where, in the opinion of —
 - (a) the chief executive officer;
 - (b) the Director of Public Prosecutions; or
 - (c) the Commissioner of Police,

(as the case requires), a witness under 16, a special witness, or a person who may be declared a special witness, necessarily requires a second parent, guardian, relative or other support person to accompany that witness, payment of a further amount

may be approved for that second person to accompany the witness.

[Regulation 15 inserted in Gazette 31 Dec 2004 p. 7146-7.]

Schedule

[r. 4, 8, 10]

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| 1. Fees for attendance | |
| For a half-day | 10.00 |
| For a full day | 15.00 |
| 2. Rate per kilometre 37.5 cents | |
| 3. Meals — | |
| Breakfast | 10.00 |
| Lunch | 10.00 |
| Dinner | 20.00 |

[Schedule inserted in Gazette 31 Dec 2004 p. 7147.]

Notes

- ¹ This reprint is a compilation as at 16 November 2007 of the *Evidence (Witnesses' and Interpreters' Fees and Expenses) Regulations 1976* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

| Citation | Gazettal | Commencement |
|---|--------------------------|--|
| <i>Evidence (Witnesses' and Interpreters' Fees and Expenses) Regulations 1976</i> | 19 Mar 1976 p. 801-3 | 1 Apr 1976 |
| Untitled regulations | 19 Jan 1979 p. 126 | 19 Jan 1979 |
| <i>Evidence (Witnesses' and Interpreters' Fees and Expenses) Amendment Regulations 1982</i> | 13 Aug 1982 p. 3109 | 13 Aug 1982 |
| <i>Evidence (Witnesses' and Interpreters' Fees and Expenses) Amendment Regulations 1987</i> | 19 Jun 1987 p. 2387 | 1 Jul 1987 (see r. 2) |
| <i>Evidence (Witnesses' and Interpreters' Fees and Expenses) Amendment Regulations 1995</i> | 5 Dec 1995 p. 5585-6 | 5 Dec 1995 |
| Reprint of the <i>Evidence (Witnesses' and Interpreters' Fees and Expenses) Regulations 1976</i> as at 17 May 2002 (includes amendments listed above) | | |
| <i>Evidence (Witnesses' and Interpreters' Fees and Expenses) Amendment Regulations 2004</i> | 31 Dec 2004 p. 7141-7 | 1 Jan 2005 (see r. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130) |
| <i>Evidence (Witnesses' and Interpreters' Fees and Expenses) Amendment Regulations 2007</i> | 31 Jul 2007 p. 3798 | r. 1 and 2: 31 Jul 2007 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Aug 2007 (see r. 2(b)) |
| Reprint 2: The <i>Evidence (Witnesses' and Interpreters' Fees and Expenses) Regulations 1976</i> as at 16 Nov 2007 (includes amendments listed above) | | |
| <u>These regulations were repealed by the <i>Evidence (Fees, Allowances and Expenses) Regulations 2008</i> r. 13 as at 30 Sep 2008 (see r. 2(b) and <i>Gazette</i> 11 Jul 2008 p. 3253)</u> | | |