

JU301*

Local Courts Act 1904

Local Court Amendment Rules (No. 2) 2002

Made by the Governor in Executive Council.

1. Citation

These rules may be cited as the *Local Court Amendment Rules (No. 2) 2002*.

2. Commencement

These rules come into operation on the day after the last day of the specified period, which is the period of one month after the day on which these rules are published in the *Gazette*.

3. The rules amended

The amendments in these rules are to the *Local Court Rules 1961**.

[* *Reprinted as at 13 October 2000.*

For amendments to 2 December 2002 see 2001 Index to Legislation of Western Australia, Table 4, p. 199.]

4. Appendix amended

Appendix Part II is amended by deleting the table of bailiff fees and inserting the following Table of Bailiff fees instead —

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Table of Bailiff fees

Item	Service	Fee
1. (a)	<u>Service</u> of any process when non-personal service may be utilised	\$17.25
1. (b)	<u>Service</u> of any process requiring personal service	\$24.00
1. (c)	<u>Additional fee</u> where an attempt to effect any service is unsuccessful and the clerk is satisfied that the failure was not due to any fault of the bailiff and that a further attempt to effect the service is necessary one additional fee not exceeding 50% of fee prescribed by either Item 1(a) or 1(b) is payable.	
2. (a)	<u>Warrant fee</u> which includes execution, (attempted execution), initial attendance, initial enquiry, seizure of goods, service of any notice and returns, investigation, appraisal of seizable goods, arrest and conveying a debtor to court when executing a bench warrant or chamber warrant, and eviction when executing a warrant of possession	\$46.00
2. (b)	<u>Enquires</u> or <u>attendances</u> prior to execution	\$24.00
2. (c)	<u>Inspection</u> of chattels under seizure	\$24.00
<u>NOTE:</u> Where the bailiff has several warrants only one fee is chargeable to the first warrant in priority		

Item Service	Fee
<p>3. (a) <u>Kilometreage</u></p> <p>For kilometres travelled on execution of a warrant or other process, or on service of a summons other process or document, or on making an arrest or for all other necessary attempts, attendances and inspections for each kilometre (one way) from the bailiff's office</p> <p><u>NOTE:</u> 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, only one allowance for kilometres travelled shall be chargeable.</p>	<p>\$0.90</p> <p>For travel in the metropolitan area: \$1.00</p> <p>For travel outside the metropolitan area or such additional fee as the clerk may allow</p>
<p><u>NOTE:</u> In addition to the above the bailiff may charge kilometreage to convey a debtor from a place of arrest to court or a lockup provided the clerk is satisfied those duties have been carried out and where a bailiff will be required to travel an excessive distance the clerk may require kilometreage to be prepaid into court. Prepaid fees shall be allowed or disallowed by the clerk upon completion of execution.</p> <p><u>NOTE:</u> Outside the metropolitan region kilometreage is not claimable for the first 6 kilometres by bailiffs stationed at Albany, Bunbury, Geraldton or Kalgoorlie when serving or executing a process.</p> <p>3. (b) <u>Special fee to bailiff at Albany, Bunbury, Geraldton or Kalgoorlie (for each process or document for service or execution in any one action) —</u></p> <p>(i) where there is one person named on the process or document</p> <p>(ii) where there is more than one person named on the process or document —</p> <p>(I) for the first named person at the same address</p> <p>(II) for each other person at the same address</p> <p>(III) for each person at a different address</p>	<p>\$6.30</p> <p>\$6.30</p> <p>\$2.10</p> <p>\$6.30</p>
<p>4. <u>Preparation for sale</u></p> <p>Provided the clerk is satisfied duties have been carried out, the following fees are allowed —</p> <p>For each REVS or other official record search (personalty)</p> <p>Bill of sale and encumbrance search (personalty)</p> <p>Encumbrance investigation (realty)</p> <p>Implementation of an advertising program (realty or personalty)</p>	<p>\$5.75</p> <p>\$11.50</p> <p>\$51.20</p> <p>\$63.00</p>

Item	Service	Fee
5.	<u>Attendance at sale</u> (or to cancel same)	\$53.00
6.	<u>Poundage</u> (a) Poundage on executing a warrant of execution or other process under or by reason of which money is received by the bailiff or by the Judgment creditor — after seizure 5% on the first \$13,000.00 and 2.5% 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 bailiff, poundage shall be charged at one-half the abovementioned rates <u>NOTE:</u> For the purpose of this item — (a) the service of a warrant of execution on the Registrar of Titles under section 133 of the <i>Transfer of Land Act 1893</i> (in the case of land or an interest in land); or (b) the seizure of chattels in the possession or apparent possession of the judgment debtor, is or is deemed to be “seizure”. <u>NOTE:</u> Poundage is to be calculated on the amount realised at the sale but the maximum amount upon which poundage is to be calculated is the amount of the judgment debt notwithstanding sale proceeds may exceed the amount of the judgment debt.	
7.	Where the sale, whether by public auction or otherwise, is conducted by the bailiff or his officer without the intervention of an auctioneer or agent, poundage of 1% of the proceeds of sale (in addition to that prescribed by item 6(a)) shall be chargeable; but the amount chargeable under this item shall not exceed \$105.00	
8. (a)	Poundage on executing a warrant of possession — 5% on the annual rental value of property as fixed by the clerk, but the amount chargeable under this item shall not exceed \$175.00	
8 (b)	Poundage on executing a warrant of delivery (Replevin) — 5% on the first \$10,000.00 and 2.5% on the balance of the value of the property delivered, as fixed by the clerk <u>NOTE:</u> Poundage as assessed by the clerk must be prepaid and held by the court until execution is completed.	
9.	<u>Possession</u> <u>NOTE:</u> Claimable by bailiff when he enters into close possession of chattels and retains actual physical possession and control. <u>NOTE:</u> If this item is claimed an allowance under item 12(d) is not appropriate	\$4.00 per day for maximum of 10 days

Item Service	Fee
10. 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 clerk may allow
11. 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 (b) for labour (if any) employed in lotting and showing goods or chattels, preparing catalogues 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 sums actually and reasonably paid
12. (a) Assistants required to execute a warrant or order 12. (b) Man in possession 12. (c) Out-of-pocket expenses incurred by the bailiff or officer while serving or executing any process including postage, telegraphic and telephonic messages, and travelling expenses of himself and assistants 12. (d) Warehousing or storage of goods or vehicles which are being or 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 12. (e) Removal or cartage expenses 12. (f) Where animals or other livestock have been removed, for taking charge of same and for their keep while in custody of the bailiff whether before or after removal 12. (g) REVS searches, corporate searches and any other search allowed by the clerk	The sums actually and reasonably paid

Item	Service	Fee
13.	Where a bailiff is required to attend court in charge of any person including a prisoner ordered to attend for examination pursuant to an order of the court, or to lodge any person in a lock up, 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	\$33.50
14.(a)	<u>Attendance</u> on a judgment summons hearing or related matter	\$2.20
	Other situations	\$1.00
14.(b)	<u>Attendance</u> at trial	\$2.60
15.	Where a bailiff, or other person employed under a bailiff, 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 clerk may allow	
16.	If GST (within the meaning of section 195-1 of the <i>A New Tax System (Goods and Services Tax) Act 1999</i> of the Commonwealth) is payable on a service listed in this Table of bailiff fees, the fee for the service is the applicable fee in this table, increased by 10%	

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.