



Western Australia

Legal Aid Commission Act 1976

Legal Aid Commission (Costs) Rules 1990

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Legal Aid Commission (Costs) Rules 1990

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5 December 2003

Western Australia

Legal Aid Commission Act 1976

Legal Aid Commission (Costs) Rules 1990

1. Citation

These rules may be cited as the *Legal Aid Commission (Costs) Rules 1990*¹.

2. Interpretation

In these rules, unless the contrary intention appears —

approved has the meaning assigned to it in section 14(1a) of the Act;

assigned practitioner means —

- (a) a private practitioner to whom a grant of legal aid under Part V Division 3 of the Act has been assigned; and
- (b) a practitioner employed by the Commission who, on behalf of the Director, has the conduct of a grant of legal aid assigned to the director;

authorised officer means a member of the staff of the Commission authorised by the Director under section 36(2) of the Act to decide applications for legal aid;

committee means a legal aid committee or a review committee established under section 24 or section 50 of the Act respectively as the context may require;

folio means 100 words;

legal services means services performed by a private practitioner or an agent or counsel briefed by the private practitioner by way of legal assistance under Part V Division 3 of the Act;

page means where a document is drawn or engrossed 2 or more folios of one and a half spaced typed or printed words or figures amounting to not less than 200 words or figures of originally composed text;

special circumstances includes —

- (a) the complexity of the facts;
- (b) the complexity of legal arguments which might reasonably be required; and
- (c) whether or not the legal aid assignment concerns a matter of public importance.

[Rule 2 amended in Gazette 30 Oct 1992 p. 5332-3.]

3. Scales of fees

For the purposes of section 14(1)(a)(i) of the Act the scales of fees set out —

- (a) subject to rule 15, in Schedule 1 are payable in the jurisdictions specified in that Schedule;
- (b) in Schedule 2 are payable —
 - (i) for services for which no other scale of fees is prescribed and where rule 9(a) does not apply;
 - (ii) for services provided before proceedings have commenced; and
 - (iii) for services provided by an assigned practitioner where approval is given for the assigned practitioner to instruct counsel or Queen's Counsel;

and

- (c) subject to rule 6, in Schedule 3 are payable to counsel and Queen's Counsel instructed as approved for the services specified in that Schedule.

[Rule 3 amended in Gazette 30 Oct 1992 p. 5333.]

4. Application of Schedule 1 — assigned practitioners

- (1) Where the fees set out in Schedule 1 designate a range between a minimum and maximum fee, the fee payable to an assigned practitioner shall be an amount within the range as approved.
- (2) Where the fees set out in Schedule 1 do not designate a range between a minimum and maximum fee, the fee specified is the maximum fee and in determining the fee payable to an assigned practitioner, the Director, an authorised officer or the committee shall consider all relevant factors including —
 - (aa) rule 9 of the *Legal Aid Commission Rules 1990*;
 - (a) time spent in rendering the service;
 - (b) the complexity of the service;
 - (c) the seniority of the practitioner;
 - (d) the jurisdiction in which the service is provided; and
 - (e) the number of assisted persons represented by the practitioner at the same time.

[Rule 4 amended in Gazette 30 Oct 1992 p. 5333.]

5. Application of Schedule 2

The fees set out in Schedule 2 specify the maximum remuneration payable to an assigned practitioner for the services specified in that Schedule and in determining the fee payable to an assigned practitioner the Director, authorised officer and committee shall consider all relevant factors as specified in rule 4(2).

6. Application of Schedule 3 — Counsel and Queen’s Counsel fees

- (1) An assigned practitioner may, without prior approval, instruct counsel, not being Queen’s Counsel, where the total of the assigned practitioner’s fees and those of counsel do not exceed the provisional costing of the legal aid assignment when the brief is delivered to counsel.
- (2) Where approval is given to instruct Queen’s Counsel the fee payable shall be in accordance with item 18 of Schedule 3.
- (3) Where approval is given for counsel to assist Queen’s Counsel, the fee payable to that counsel shall not exceed 75% of the amount payable under Schedule 3 had that counsel appeared without Queen’s Counsel.
- (4) Fees paid to counsel or Queen’s Counsel shall not be treated as disbursements unless —
 - (a) incurred by the Director, authorised officer or committee in relation to an action or likely action to which the Commission is a party; or
 - (b) matters concerning the interpretation of the Act or rules are involved.

6A. Schedule 3 — special circumstances

- (1) An assigned practitioner may, where he or she can show special circumstances why Schedule 3 should not apply in relation to a legal aid assignment, apply to the Commission for the fees, to be determined by the Director, an authorised person or a committee.
- (2) Where the Director, an authorised person or a committee is satisfied that the assigned Practitioner has shown that the application of Schedule 3 would not be reasonable the Director, an authorised person or committee shall determine the fees.

[Rule 6A inserted in Gazette 30 Oct 1992 p. 5333.]

7. Computation of daily rate and hourly rate under Schedule 1 or Schedule 3

- (1) Where fees set out in Schedule 1 or Schedule 3 are expressed as being for a day or as a daily rate, an assigned practitioner, counsel or a Queen's Counsel who attends court for a period of 5 hours is entitled to receive the fee specified in Schedule 1 or Schedule 3 as the case may be for the relevant jurisdiction.
- (2) A practitioner, counsel or Queen's Counsel referred to in subrule (1) who attends court —
 - (a) for a period of less than 5 hours; or
 - (b) for a period of more than 5 hours,is entitled to receive a *pro rata* fee for every hour or part thereof that the practitioner, counsel or Queen's Counsel attends court.
- (3) For the purposes of calculating the *pro rata* fee referred to in subrule (2) a period of 5 hours is deemed to be a day.

8. Percentage of fees

For the purposes of section 14(1)(a)(ii) of the Act the fees payable to an assigned practitioner shall be —

- (a) subject to rule 9, 80% of the fees payable to a private practitioner in the ordinary course of practice; and
- (b) where the services are provided in relation to summary proceedings under the *Family Law Act 1975* of the Commonwealth or the *Family Court Act 1975*², 100% of the fees prescribed under Order 38 rule 3(2)(a) of the *Family Law Rules* of the Commonwealth.

9. Application of rule 8(a)

For the purposes of rule 8(a) *fees payable to a private practitioner in the ordinary course of practice* means the fees payable —

- (a) under the rules relating to costs in force in the relevant court or tribunal in which the legal services under the legal aid assignment were provided; and

- (b) where the services are provided in relation to —
 - (i) the Administrative Appeals Tribunal; or
 - (ii) Administrative Judicial Review Applications,
in accordance with the Second Schedule to the Federal Court Rules.

10. Fees for services in respect of multiple charges or offences

- (1) Where in a criminal law case, a grant of aid authorises the provision of legal services in respect of more than one charge or offence (not being alternatives) payment will be on the highest fee applicable to the trial or plea in mitigation, as the case may be, and any additional payment in respect of each other charge or offence shall be determined in accordance with this rule.
- (2) In determining the amount of any additional payment referred to in subrule (1) the Director, authorised officer or committee shall consider all relevant factors including in particular —
 - (a) the jurisdiction or jurisdictions;
 - (b) the number and nature of the charges or offences;
 - (c) the complexity of the issues;
 - (d) the experience and seniority of the assigned practitioner;
and
 - (e) the time involved in the disposition of the charges or offences.
- (3) Notwithstanding subrule (2) an additional payment referred to in subrule (1) shall not exceed —
 - (a) 50% of the amount payable in respect of the highest fee;
or
 - (b) where the charges or offences are of a similar nature —
25% of the highest fee.
- (4) For the purposes of this rule an additional payment is only payable on the fees specified in Schedule 1 in relation to —
 - (a) getting up or preparation for trial; and

- (b) preparation for a plea in mitigation without a trial.
- (5) Where in any of the Schedules a separate amount is not specified in relation to preparation or getting up for the court appearance, two thirds of those fees shall be applied to preparation or getting up.

[Rule 10 amended in Gazette 30 Oct 1992 p. 5334.]

11. Fees for services in respect of more than one defendant

- (1) Subject to subrule (2) where in a criminal law case an assigned practitioner represents more than one defendant in relation to whom a grant of legal aid has been made, the assigned practitioner is entitled to an additional payment, as may be approved, being not greater than 50% of the amount of legal fees approved in respect of the first defendant, in Schedule 1, or getting up case for trial and preparation for a plea in mitigation without trial.
- (2) An additional amount is not payable for —
 - (a) remands;
 - (b) election appearances;
 - (c) pre trial conferences;
 - (d) procedural hearings; or
 - (e) attendance to receive sentence.

[Rule 11 amended in Gazette 30 Oct 1992 p. 5334.]

11A. Photocopying charges — Schedule 2

The charges in relation to photocopying, where an assigned practitioner may charge on a profit cost basis, are set out in Schedule 2.

[Rule 11A inserted in Gazette 30 Oct 1992 p. 5334.]

12. Travelling and waiting time

- (1) Subject to this rule and rules 13 and 14 no allowance is made for travelling or court waiting time.
 - (2) Subject to subrule (3) in a criminal case where the Director, an authorised officer or committee considers it reasonable for an assigned practitioner to wait in the court for a trial to commence or resume after an interruption, the assigned practitioner may receive payment at the rate of \$80 per hour or part thereof, for the time spent in the court to a maximum of 2 hours in any one day.
 - (3) Where a jury retires to —
 - (a) consider its verdict in a criminal trial; or
 - (b) deliberate as to the —
 - (i) verdict to be given; or
 - (ii) answer to be given to any question submitted to it by a Court or Judge; or
 - (iii) amount of damages to be assessed, in a civil trial,

an assigned practitioner is entitled to be paid at the rate of \$80 for every hour or part thereof that the assigned practitioner is required to remain in or near the Court.
 - (4) Subrule (2) shall not apply where, in a criminal case, the fees of the practitioner are assessed in accordance with Schedule 2.
- [Rule 12 amended in Gazette 30 Oct 1992 p. 5334.]*

13. Payment for actual time spent travelling or in conference etc.

- (1) Subject to subrule (2) an assigned practitioner may receive payment, as approved, for actual time spent —

- (a) in any of the circumstances referred to in rule 14(1)(a) including the time spent in travelling to and from such conferences or investigations; and
 - (b) in travelling within Australia in the conduct of a legal aid assignment.
- (2) Notwithstanding subrule (1) payment referred to in subrule (1) shall not exceed 8 hours in any one day at a rate not exceeding 60% of the hourly rate prescribed in Schedule 2 item 11.

[Rule 13 inserted in Gazette 30 Oct 1992 p. 5335.]

14. Travelling and special country allowances

- (1) Where it is not reasonable in all the circumstances to brief an agent and an assigned practitioner is required in the conduct of a legal aid assignment —
- (a) to travel more than 5 kilometres from the place at which the assigned practitioner practises (including branch or visiting offices maintained by the practitioner's firm) in order to —
 - (i) visit a prison, lock-up or police station;
 - (ii) attend on a witness;
 - (iii) make any necessary investigation; or
 - (iv) attend a court or tribunal hearing;
 - or
 - (b) to stay overnight in a town or place, being more than 100 kilometres from that in which the practitioner practises,

the assigned practitioner is entitled to travelling and subsistence allowances as determined from time to time by the Director on the recommendation of the Minister for Public Sector Management³.

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- (2) An allowance paid to an assigned practitioner under subrule (1) may be treated as a disbursement.

[Rule 14 inserted in Gazette 30 Oct 1992 p. 5335.]

15. Payment for exceptional work

- (1) An assigned practitioner may, where he or she can show special circumstances why Schedule 1 should not apply in relation to a legal aid assignment, apply to the Director, an authorised person or committee to determine that Schedule 2 should apply.
- (2) Where the Director, an authorised person or committee is satisfied that the assigned practitioner has shown that the application of Schedule 1 would not be reasonable, the Director, an authorised person or a committee shall determine that Schedule 2 shall apply.

[Rule 15 inserted in Gazette 30 Oct 1992 p. 5335-6.]

16. Agents' fees

- (1) Where an assigned practitioner briefs another practitioner to perform legal services for an assisted person, the agent is entitled to receive from the assigned practitioner the same remuneration as the assigned practitioner would have received if he or she had not briefed an agent.
- (2) An additional fee being no more than 30% of the fee payable to the assigned practitioner under these rules may be paid to an agent for legal services where an assigned practitioner —
- (a) whose office is situate within the metropolitan area necessarily employs as his or her agent a practitioner whose office is situate outside the metropolitan area; or
 - (b) whose office is situate outside the metropolitan area necessarily employs as his or her agent a practitioner whose office is situate within the metropolitan area.
- (3) In this rule **metropolitan area** means an area within a 65 km radius of the General Post Office Perth.

17. Court directed conferences

- (1) Where an assigned practitioner is required to attend, with or without his or her client, before a court or tribunal for a pre-trial conference or practice hearing (other than a hearing for directions) the assigned practitioner is only entitled to receive payment, equal to one hour at the rate prescribed in Schedule 2 item 11 irrespective of the time actually spent by the assigned practitioner in preparing for or attending the hearing.
- (1a) Subrule (1) applies to conferences and hearings concerning the conduct of the trial held —
 - (a) in relation to criminal matters; or
 - (b) in courts exercising jurisdiction concerning children other than the Family Court.
- (2) Notwithstanding subrule (1) an additional payment under Schedule 2 may be approved for time spent in preparing for and attending a hearing where the Director, authorised officer or committee is satisfied that a claim for additional payment is justified.

[Rule 17 amended in Gazette 30 Oct 1992 p. 5336.]

18. Reimbursement where costs recovered

Notwithstanding any other provision of these rules, where, as the result of the legal services provided to an assisted person by the assigned practitioner, an assisted person obtains an order for costs then the Director, authorised officer or committee may determine that the assigned practitioner may retain the whole or part of the recovered costs in full or partial discharge of any fees payable by the Commission to the assigned practitioner.

[19. Omitted under the Reprints Act 1984 s. 7(4)(f).]

20. Transitional and savings

- (1) These rules apply —
 - (a) in relation to costs payable, as approved, where a legal aid assignment is received on or after the day that these rules take effect; and
 - (b) in relation to costs payable, as approved, for services performed on or after the day these rules take effect and whether or not the legal aid assignment in respect of those services was received before that day.
- (2) Notwithstanding rule 19, the *Legal Aid Commission (Costs) Rules 1982* apply in relation to costs payable, as approved, for legal services performed before these rules take effect.

Schedule 1

[Rules 3(a), 4, 6A and 7]

Fees payable under rule 3(a)

Item	Description	Rate
		\$
1.	COURT OF CRIMINAL APPEAL	
(1)	Appeal against sentence	1 000
(2)	Appeal against conviction	1 750
(3)	Application for extension of time within which to appeal and leave to appeal and an attendance before a single Judge	100-400
(4)	Attending on reserve decision including Section 20 Application	80
2.	OTHER APPELLATE OR REVIEW JURISDICTION	
(1)	Application for orders on appeal from an order or sentence of a magistrate	1 000
(2)	Appeal to single Judge (other than under subitem (1))	350-700
(3)	Attending on reserved decision	80
2A.	PREPARATION OF APPEAL BOOKS — ALL JURISDICTIONS	
	Rates as in Schedule 2. (Provided the claim for collating, copying, numbering or binding does not exceed a reasonable fee for those services when charged by a commercial organization to the public.)	
		Maximum Rate
		\$
3.	SUPREME COURT — CRIMINAL JURISDICTION	
(1)	Plea of guilty without a prior trial including advice relating to plea, preparation and presentation of plea	660

Schedule 1 Fees payable under rule 3(a)

	Maximum Rate \$
(2) Appearing to take sentence including address on pre-sentencing report	80
(3) Appearing to obtain remands	80
(4) Getting up	1 250
Trial First day	850
Second or subsequent day	700
(5) Application for bail to Supreme Court Judge from inferior jurisdiction	350
(6) Application as to venue, jurisdiction or other preliminary issue	250
(7) Viewing or listening to video or sound tapes per hour relating to the proceedings	80
(8) Transcribing video or sound tapes per page relating to the proceedings	3
4. DISTRICT COURT — CRIMINAL JURISDICTION AND CHILDREN’S COURT WHERE CONSTITUTED BY PRESIDENT	
(1) Plea of guilty including advice relating to plea, all necessary preparation and presentation	600
(2) Appearing to take sentence including address and a pre-sentence report or application for bail	80
(3) Appearing to take remand including bail application	80
(4) Trial, Getting Up	825
First day	700
Second or subsequent days	600
(5) Viewing or listening to video or sound tapes per hour relating to the proceedings	80
(6) Transcribing video or sound tapes per page relating to the proceedings	3

Fees payable under rule 3(a) Schedule 1

	Maximum Rate \$
5. COURT OF PETTY SESSIONS AND CHILDREN'S COURTS	
(1) Oral committal proceedings — if specially approved first day including preparation	450
each other day	400 per day
(2) Attending on committal by a hand-up brief	80
(3) Defended cases whether or not indictable cases triable summarily, including an address in mitigation following conviction	
first day including preparation	675
each other day	385 per day
(4) Plea of guilty including all advice relating to plea, preparation, Court attendance and presentation of plea	350
(5) Attending on reserved decision, taking sentence or applying for bail (not being renewal of existing bail)	75
(6) Attending on remand	50
(7) Application for extraordinary motor driver's licence	300
(8) Attending on Coronial enquiry (where specially approved)	
first day including preparation	700
each other day	400
(9) Application for restraining order —section 172 of the <i>Justices Act 1902</i> — initial hearing — including all necessary preparation	300
(10) Application for confirmation of order — section 172 <i>Justices Act 1902</i>	600
(11) Application for variation of order under section 172 of the <i>Justices Act 1902</i> including necessary preparation	300

Schedule 1 Fees payable under rule 3(a)

	Maximum Rate \$
(12) Application for care and protection	
first day (including all necessary preparation)	800
second or subsequent days	450
or	85 per hour
(13) Appeal to President of Children's Court from Magistrate or Justice	500

[Schedule 1 inserted in Gazette 30 Oct 1992 p. 5536-7.]

Schedule 2

[Rules 3(b), 5, 11A and 13]

Fees payable under rule 3(b)

Item	Description	Maximum Rate
		\$
1.	Drawing documents not in print	4.25 per folio
2.	Engrossing any document	0.60 per folio
3.	Engrossing drafts (where necessary)	1 per page
4.	Photocopying — where reasonably necessary	
	(1) Single sheets	0.55 per page
	(2) Multiple copies	0.25 per page
5.	Letters	
	(1) Circular	6 per item
	(2) Short	11 per folio
	(not less than 1 folio)	
	(3) Long	25 per page
	(not less than 3 folios and the rate for 5(2) thereafter)	
6.	Telegram, facsimile, telex	
	— transmission where reasonably necessary and required by the urgency of the situation or	
	— receiving using the practitioners' machine	
	(1) Sending or receiving	5.50 per item
	(2) Drafting message as per item 5	
7.	Attendances	
	(1) Junior clerk	45 per hour
	(2) Senior clerk	100 per hour
	(3) Practitioner	115 per hour
	(where legal skill is reasonably required)	

Schedule 2 Fees payable under rule 3(b)

Item	Description	Maximum Rate
8.	Telephone calls	
	(1) Practitioner	\$6 up to 5 minutes and thereafter \$2 per minute
	(where legal skill is reasonably required)	
	(2) Non-qualified person	\$3 up to 5 minutes and \$1 per minute thereafter
9.	Perusals	
	(where scanning is not appropriate)	
	(1) Technical or expert reports	6 per page
	(including medical reports)	
	(2) Other papers	5 per page
10.	Scanning	
	60 folios per hour	60
11.	Hourly rate where no other fee applies	115 per hour

[Schedule 2 inserted in Gazette 30 Oct 1992 p. 5338.]

Schedule 3

[Rules 3(c), 6 and 7]

Fees payable under rule 3(c)

Item	Description	Maximum Rate
		\$
	OPINIONS	
1.	Opinion on liability	700
2.	Opinion on quantum	700
3.	Opinion on liability and quantum	1 000
4.	Opinion on appeal against sentence	500
5.	Opinion on appeal conviction	1 000
6.	Opinion on appeal against conviction and sentence	1 350
7.	Advice on evidence, jurisdiction or procedure	350
	SETTLING, DRAWING	
8.	Grounds of appeal — criminal	450
9.	Grounds of appeal — civil	480
10.	Pleadings	500
11.	Other documents	300
	PRETRIAL CONFERENCES (Supreme, District Court)	
12.	Attending conference including preparation	450
	APPEARING IN COURT OR TRIBUNAL (if no applicable fees in the Court or Tribunal)	
13.	Federal Court each day	850
14.	High Court each day	1 500
	(or <i>pro rata</i> for time spent in making appearance)	
15.	Preparation	2 000
	Federal or High Court	

Schedule 3 Fees payable under rule 3(c)

Item	Description	Maximum Rate
15A.	Family Court each day	850
	(or per hour gross) for preparation where counsel is not the assigned practitioner or a member of his or her firm	145
16.	Supreme or District Court at rates applicable to the jurisdiction	
17.	Criminal appearances at rates set out in the First Schedule	
	QUEEN'S COUNSEL	
18.	The rates set out above plus an amount not exceeding 50% where the appearance of Queen's Counsel has been approved in advance.	
19.	Preparation — at the hourly rate where counsel is not the assigned practitioner or a member of his or her firm.	

[Schedule 3 inserted in Gazette 30 Oct 1992 p. 5338-9.]

Notes

- ¹ This reprint is a compilation as at 5 December 2003 of the *Legal Aid Commission (Costs) Rules 1990* 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>Legal Aid Commission (Costs) Rules 1990</i>	10 Aug 1990 p. 3852-9	10 Aug 1990
<i>Legal Aid Commission (Costs) Amendment Rules 1992</i>	30 Oct 1992 p. 5332-9	30 Oct 1992
Reprint 1: The <i>Legal Aid Commission (Costs) Amendment Rules 1992</i> as at 5 Dec 2003 (includes amendments listed above)		

- ² Repealed by the *Family Court Act 1997*.
- ³ Under the *Public Sector Management Act 1994* s. 112(2), a reference in a written law to Public Service Commissioner is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the Minister for Public Sector Management (as defined in the *Interpretation Act 1984*). This reference was amended under the *Reprints Act 1984* s. 7(3)(h).