



Western Australia

Legal Aid Commission Act 1976

Legal Aid (Unassisted Persons Costs) Rules 1984

Legal Aid (Unassisted Persons Costs) Rules 1984

Contents

1.	Citation	1
2.	Application	1
3.	Interpretation	1
4.	Modification of section 45(1) of the Act	2
5.	Application to be filed	2
6.	Entry of appearance	3
7.	Listing of application subject to compliance	4
8.	Applicant to apply for time and place of hearing	4

Schedule

Notes

Compilation table	8
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Defined terms



Western Australia

Reprinted under the
Reprints Act 1984 as
at 5 December 2003

Legal Aid Commission Act 1976

Legal Aid (Unassisted Persons Costs) Rules 1984

1. Citation

These rules may be cited as the *Legal Aid (Unassisted Persons Costs) Rules 1984*¹.

2. Application

These rules apply to and in relation to any application made or sought to be made under section 45 of the Act and in relation to any application made under that section that is pending at the time that these rules come into operation.

3. Interpretation

In these rules, unless the contrary intention appears —

application means an application by an unassisted person for an order;

order means an order of a court or tribunal made under section 45 of the Act that the whole or any part of the costs of an unassisted person be paid to him by the Commission;

rule means one of these rules;

the Act means the *Legal Aid Commission Act 1976*.

4. Modification of section 45(1) of the Act

The provisions of section 45(1) of the Act in their application to an unassisted person who is concerned in a proceeding in a fiduciary, representative or official capacity are modified so that they apply to him only in that capacity and for the purposes of determining whether an order should be made in a case in which such an unassisted person is a party the court or tribunal shall have regard to —

- (a) the value of the property, estate or fund out of which the unassisted person is entitled to be indemnified;
- (b) the resources of the persons, if any, who are beneficially interested in that property, estate or fund; and
- (c) if there is no property, estate or fund available from which the unassisted person can be indemnified, the resources of the unassisted person.

5. Application to be filed

- (1) An application shall be in the form of Form 1 in the Schedule and shall be filed with the court or tribunal in which the proceedings in respect of which the order is sought took place.
- (2) An application shall be accompanied by —
 - (a) a certified copy of the order establishing the liability of the assisted person to pay the costs of the unassisted person;
 - (b) except where the amount of the costs for which the assisted person is liable has been fixed by the court or tribunal in the order, a certified copy of the bill of costs of the unassisted person and of the taxing officer's allocatur; and
 - (c) a statement verified by a statutory declaration setting out the facts upon which the applicant intends to rely so as to satisfy the court or tribunal that —
 - (i) in all the circumstances of the case it is just and equitable that the order should be made; and

- (ii) the unassisted person would suffer undue financial hardship if the order were not made.

6. Entry of appearance

- (1) Where a copy of an application is served on him the Director shall within 21 days of such service enter an appearance on the application.
- (2) An appearance for the purposes of subrule (1) shall be made by filing a memorandum of appearance in the form of Form 2 in the Schedule in the court or tribunal and in such memorandum of appearance the Director shall state whether he consents to or opposes the making of the order applied for.
- (3) Where in a memorandum of appearance the Director states that an application will be opposed the Director shall in the memorandum of appearance specify —
 - (a) whether or not the applicant is required to be present at the hearing to present himself for cross-examination; and
 - (b) whether or not the applicant is required to produce documents or papers for inspection or copying or both by the Director prior to the hearing of the application.
- (5) A copy of a memorandum of appearance shall be served on the applicant as soon as may be after the filing of the memorandum with the court or tribunal.
- (6) Where in a memorandum of appearance the Director specifies that he requires the production of any documents or papers for inspection or copying or both the applicant shall make such documents and papers available to the Director at an office of the Commission or a place not more than 5 km from the court or tribunal and shall notify the Director in writing of the place where, during ordinary office hours, such documents may be inspected.

- (7) Where the Director requires any document to be copied the applicant shall supply such copy to the Director as soon as reasonably practicable.

7. Listing of application subject to compliance

Where the Director has in a memorandum of appearance opposed the making of an order and specified pursuant to rule 6(3)(b) that he requires the production of any documents or papers for inspection and copying the applications shall not be listed for hearing by the court or tribunal unless the proper officer of the court or tribunal is satisfied that the applicant has complied with such requirement.

8. Applicant to apply for time and place of hearing

An applicant shall apply to the court or tribunal for a time and place of the hearing of his application and when the time and place of the hearing has been fixed the applicant shall forthwith notify the Director of such time and place.

Schedule

Form 1

LEGAL AID COMMISSION ACT 1976

LEGAL AID (UNASSISTED PERSONS COSTS) RULES 1984

IN THE (Court or tribunal)

IN THE MATTER of the Legal Aid Commission Act 1976 and IN THE MATTER of a (state nature of the proceedings e.g. action etc.) in the court (or tribunal) wherein was (plaintiff or as the case may be) and was (defendant or as the case may be)

APPLICATION FOR AN ORDER BY AN UNASSISTED PERSON RELATING TO COSTS

(Section 45)

I of in the State of occupation being the in the above-mentioned proceedings hereby apply for an order that costs amounting to \$ incurred by me in the (state nature of proceedings) be paid to me by the Legal Aid Commission.

Form 2

LEGAL AID COMMISSION ACT 1976

LEGAL AID (UNASSISTED PERSONS COSTS) RULES 1984

[Heading as in application]
MEMORANDUM OF APPEARANCE

Enter an appearance for the Director of Legal Aid in this matter.

I { consent to the application
(or)
oppose the application and

I do/do not require the Applicant to be present at the hearing to present himself/herself for cross-examination and

I do/do not require the Applicant to produce to me prior to the hearing of the application the following documents and/or papers for inspection or copying or both.

Dated this day of 20 .

.....
Director of Legal Aid.

The address of the Legal Aid Commission for the purposes of this matter is . .
.....
.....

Notes

- ¹ This is a reprint as at 5 December 2003 of the *Legal Aid (Unassisted Persons Costs) Rules 1984*. The following table contains information about these rules and any reprint.

Compilation table

Citation	Gazettal	Commencement
<i>Legal Aid (Unassisted Persons Costs) Rules 1984</i>	10 Aug 1984 p. 2351-3	10 Aug 1984
Reprint 1: The <i>Legal Aid (Unassisted Persons Costs) Rules 1984</i> as at 5 Dec 2003		

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
application.....	3
order.....	3
rule.....	3
the Act.....	3