

SUPREME COURT ACT 1935

SUPREME COURT AMENDMENT RULES (No. 3) 1990

Made by the Judges of the Supreme Court.

Citation

1. These rules may be cited as the *Supreme Court Amendment Rules (No. 3) 1990*.

Commencement

2. These rules shall come into operation on 1 September 1990.

Principal rules

3. In these rules the *Rules of the Supreme Court 1971** are referred to as the principal rules.

[*Reprinted in the Gazette of 18 March 1986 at pp. 779-1100. For Amendments to 18 July 1990 see pp. 358-359 of 1989 Index to Legislation of Western Australia and Gazettes of 23 February and 30 March 1990.]

The Fifth Schedule repealed and a Schedule substituted

4. The Fifth Schedule to the principal rules is repealed and the following Schedule is substituted—

THE FIFTH SCHEDULE			0.83A, R.1.
Fees			
Part I			
Fees to be taken in the Central Office			
Item	Matter	Fee \$	
1.	(a) Commencing any cause or matter other than proceedings of the kind referred to in item 1A or 9;		
	(b) Filing a cross appeal	250.00	
1A.	(a) Filing a counterclaim; or		
	(b) Issuing a third party notice or a notice under 0.19, R.8;		
	(c) An application to extend a period of time fixed by law including an application to extend time before proceedings are commenced;		
	(d) An application to limit a period of time within which proceedings may be taken;		
	(e) An application for leave to serve a writ or notice of a writ out of jurisdiction;		
	(f) An application to swear to the death of a person;		
	(g) An application for leave to appeal;		
	(h) An application to remove a local court appeal into the Full Court;		
	(i) An application for inclusion in the Expedited list	100.00	

Item	Matter	Fee \$
2.	Proceedings under the <i>Service and Execution of Process Act 1901</i> (Commonwealth)—	
	(a) on registering a certificate or judgment in proceedings under the <i>Service and Execution of Process Act 1901</i> (Commonwealth)	40.00
	(b) for a certificate of judgment under s.20	20.00
3A.	Entering for hearing a cause or matter except where item 3B applies	200.00
3B.	Entering for hearing an appeal resulting from an order of a Court of Petty Sessions	100.00
4.	On an appointment before a Master or Registrar—	
	(a) on a reference for trial or for inquiry and report;	
	(b) to pass accounts;	
	(c) to settle the index of a transcript for use upon the hearing of an appeal; or	
	(d) to settle a list of creditors under the <i>Companies (Western Australia) (Transitional Provision) Rules 1982</i> or for a certificate under r. 49 or 54 (3) of those rules	70.00
5.	On an appointment to tax a bill of costs in a cause or matter or under the <i>Legal Practitioners Act 1893</i> or the <i>Commercial Arbitration Act 1985</i> —	
	(a) lodgement fee plus	20.00
	(b) taxing fee—	
	(i) where the amount claimed is under \$2 000	50.00
	(ii) where the amount claimed is \$2 000 or more, 2.5% 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 2.5% of the amount found due on taxation.	
6.	For searching any proceeding or record other than a search made by or on behalf of a party to the proceeding	10.00
7.	(a) 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)	15.00
	(b) 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	25.00
8.	Admiralty Proceedings—	
	(a) on an application in a pending cause or matter whether by summons or on motion, other than an application by the Marshal; or	
	(b) entry for hearing of a reference to the Registrar	70.00
	(c) sealing a warrant of arrest, release, commission for the appraisement or sale or property or for the appraisement and sale of property	20.00

NOTES:

- (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.

Item	Matter	Fee \$
	(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.	
9.	(a) On an application for a commission to take affidavits or for sealing any other commission, unless otherwise prescribed; and (b) on an application for admission as a practitioner	50.00
10.	(a) For typing a copy of a document of any kind or for examining a typed copy of a document of any kind not bespoke, including marking as an office copy if required—for each page or part thereof	5.00
	(b) For a photographic copy of a document of any kind, including prepared transcript and of any plan, map, drawing or diagram, including marking as an office copy if required for each page or part thereof	3.00
	and for second or subsequent copies—per page	0.50
	(c) For a photographic copy of reasons for judgment consisting of not more than 10 pages—for each copy issued to a person not a party to the proceedings and for each copy in excess of one copy issued to a party to the proceedings	7.00
	and for each page in excess of 10	1.00
	(d) For photographic copies of exhibits or other documents (other than evidence or reasons for judgment) required for use on an appeal—for each page	1.00
	(e) For examining the transcript on an appeal or the documents to be certified under 0.70, R.19 of the High Court Rules—for each page	1.00
	NOTE: This fee is not payable where item 10 (d) applies.	
	(f) For a typed copy of a document in a foreign language or for a copy other than a photographic copy of a plan, map, section drawing, photograph or diagram—the reasonable cost thereof as certified by a Registrar.	
	(g) For certifying under seal that a document is a true copy—an additional fee of	5.00

PART II

Fees to be taken in the Probate Office

Item	Matter	Fee \$
11.	On application for an original grant or to reseal a foreign grant—	
	(a) where the value of the estate is less than \$5 000	50.00
	(b) where the value of the estate is \$5 000 or over	120.00

NOTES:

- (1) This fee covers:
 - (a) all documents files in support of the application;
 - (b) preparation of the necessary photographic copies of documents including will (if any) required for the grant and Court files; and
 - (c) the issue of the grant.

Item	Matter	Fee \$
	(2) This fee is not chargeable on a grant <i>pendente lite</i> or <i>ad colligenda bona</i> , as to which see item 11A.	
	(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.	
11A.	On application for a second subsequent grant in relation to the same deceased person or for a grant <i>pendente lite</i> or <i>ad colligenda bona</i> ... NOTE: This fee is subject to Note (2) to item 11.	75.00
12.	For depositing a will of a deceased person in the Registry, (including renunciation of executor)	20.00
13.	(a) For photographic copies of a will or other document, including marking as an office copy if required—for each page and for second or subsequent copies per page	3.00 0.50
	(b) For typing of a copy of a will or other document including marking as an office copy if required—for each page or part thereof	5.00
	(c) 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 13 (b) is payable.	5.00
	(d) For certifying under seal that a copy of a document is a true copy—an additional fee of	5.00
14.	(a) For a duplicate or triplicate probate or administration (in addition to item 13 (a)); (b) For an exemplification of a grant (in addition to item 13 (a)); or (c) for drawing and engrossing a grant in a personal application (other than an application under s.55 of the <i>Administration Act 1903</i>) including collating	25.00
15.	For settling and sealing a citation or a subpoena	25.00
16.	For a search for and inspection of a document or file of documents	6.00

PART III

Fees to be taken by the Sheriff and the Marshal
Fees to be taken by the Sheriff

Item	Matter	Fee \$
17.	(a) Receiving and entering a writ or order for execution including issuing warrant and statement under 0.47, R.11	50.00
	(b) Receiving and entering a writ or other process for service	10.00
18.	(a) Service of a writ, summons or other process or document	20.00
	(b) Attempted Service: Where after reasonable inquiry the process or other document cannot be served (in addition to an allowance for kilometres travelled)	8.00

Item	Matter	Fee \$
	(c) Where the process or document is subsequently served at another address, for attempted service in the discretion of the Registrar or Sheriff (in addition to an allowance for kilometres travelled)	8.00
	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.	
19.	(a) For executing a writ or other process or for an arrest	40.00
	(b) For the release from arrest of any person	20.00
	(c) For inquiries concerning judgement debtor's property or for attempted execution (where item 19 (a) is not payable)	20.00
20.	For kilometres travelled on execution of a warrant or other process, or on service of a writ, summons other process or document, or on making an arrest or attending a view, for each kilometre (one way) for the Sheriff's office or Bailiff's office	0.65
	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, only one allowance for kilometres travelled shall be chargeable.	
21.	(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, 5% on the first \$10 000.00 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 Sheriff, poundage shall be charged at one-half the abovementioned 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 <i>Transfer of Land Act 1893</i> shall be deemed to be "seizure" for the purpose of this item.	
22.	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, poundage of one <i>per centum</i> of the proceeds of sale (in addition to that prescribed by item 21 (a)) shall be chargeable; but the amount chargeable under this item shall not exceed \$75.00.	
23.	(a) Poundage on executing a writ of possession; 5% on the first \$10 000.00 and 2.5% on balance of the annual rental value of property as fixed by the Sheriff.	
	(b) Poundage on executing a writ of delivery: 5% on the first \$10 000.00 and 2.5% on the balance of the value of the property delivered, as fixed by the Sheriff.	
24.	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 recognized scale of charges for auctioneers and agents in the State of Western Australia, or such other fee as the Sheriff may allow.

Item	Matter	Fee \$
25.	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 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	
26.	(a) Assistants required to execute a writ of possession	The sums actually and reasonably paid.
	(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 custody of the Sheriff whether before or after removal ...	
27.	Preparing for the sale of real or personal property including drawing advertisements and particulars and conditions of sale but excluding actual disbursements (see items 24, 25 and 26)	100.00
28.	For attendance at sale	40.00
29.	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	25.00
30.	Fee to the Sheriff for attending a view—	
	(a) within 15 kilometres of his office	20.00
	(b) if at a greater distance than 15 kilometres	40.00
31.	(a) Striking a jury and preparing jury panel ...	100.00
	(b) Attendance of Sheriff's Officer at hearing (per day of part thereof)	40.00

Item	Matter	Fee \$
32.	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.	
	<i>Fees to be taken by the Marshal in Admiralty</i>	
33.	Receiving and entering a warrant or release	50.00
34.	Receiving and entering a writ of summons, decree, order, commission or other instrument under the seal of the Court	20.00
35.	For service of writ of summons	40.00
36.	For executing a warrant for the arrest of a ship or other property	100.00
37.	Where a writ of summons is served at the same time as a warrant of arrest is executed, in lieu of items 35 and 36 a fee of	120.00
38.	For the execution of an attachment—for each person	40.00
39.	For the release from arrest of a vessel, goods, or person	20.00
40.	For attending the discharge of cargo, or removal of a vessel or goods, per hour	25.00
41.	For the execution of a commission of appraisement or sale, or appraisement and sale, in addition to the fees paid to the appraiser or auctioneer	40.00
42.	For the execution of a decree or order, commission, or other instrument other than those herein provided	40.00
43.	On the gross proceeds of a vessel or goods, etc., sold— For every \$100.00 or part thereof up to \$20 000.00	4.00
	For each additional \$100.00 or part thereof ..	2.00
44.	(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	20.00
	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 authorized person.	
45.	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.	
46.	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.

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Dated the 1st day of August 1990.

A. R. A. WALLACE.
W. P. PIDGEON.
B. W. ROWLAND.
E. M. FRANKLYN.
P. L. SEAMAN.
R. D. NICHOLSON.
T. A. WALSH.
H. A. WALLWORK.
M. J. MURRAY.
