



New South Wales

## **Victims Compensation Rule 1997**

under the  
Victims Compensation Act 1996

His Excellency the Governor, with the advice of the Executive Council, has made the following Rule under the *Victims Compensation Act 1996*.

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Attorney General

### **Explanatory note**

The object of this Rule is to make provision for a number of matters that are required or permitted to be prescribed by the victims compensation rules under the *Victims Compensation Act 1996* to take effect on the commencement of that Act on 2 April 1997. The matters include the form and details to be included in applications for victims compensation, applications and amounts payable for victims counselling and the scale of costs payable for witnesses and legal expenses in connection with applications for victims compensation.

This Rule is a rule of court for the purposes of any Act (see sec 87 (3)) and is therefore an excluded instrument for the purposes of the *Subordinate Legislation Act 1989*. This Rule is made under the *Victims Compensation Act 1996*, including section 87 and the other sections mentioned in the Rule.

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## Contents

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	Page
<b>Part 1 Preliminary</b>	
1 Name of Rule	3
2 Commencement	3
3 Definition	3
4 Notes	3
<b>Part 2 Applications for compensation</b>	
5 Form of application	4
6 Details of compensable injuries	4
7 Details of financial loss	4
8 Further details for application	5
<b>Part 3 Counselling</b>	
9 Application for payments for counselling of victims	6
10 Amount of payments	6
<b>Part 4 Costs and expenses</b>	
11 Witnesses—hearings	7
12 Professional costs—applications for compensation and proceedings before Tribunal	9
<b>Part 5 Miscellaneous</b>	
13 Standard conditions of awards of compensation	11
14 Service of documents	11
15 Appeals to Tribunal	12
Form of notice of objection to provisional order for restitution	12
17 Enforcement of orders for restitution by attachment of prison earnings	13

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## Victims Compensation Rule 1997

### Part 1 Preliminary

#### 1 Name of Rule

This Rule is the *Victims Compensation Rule 1997*.

#### 2 Commencement

This Rule commences on 2 April 1997.

#### 3 Definition

In this Rule:

*the Act* means the *Victims Compensation Act 1996*.

#### 4 Notes

The explanatory note, table of contents and notes in the text of this Rule do not form part of this Rule.

## 1997 No 125

Clause 5           Victims Compensation Rule 1997

Part 2             Applications for compensation

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## Part 2       Applications for compensation

### 5   Form of application

- (1) For the purposes of section 25 (2) of the Act, an application for statutory compensation is to be in a form approved and supplied by the Director.
- (2) The Director is required to provide to any person on request a copy of the appropriate approved form free of charge.

**Note.** Section 25 (2) (b) of the Act requires an application for compensation to be accompanied by such documentary evidence as is required by the approved application form.

### 6   Details of compensable injuries

- (1) An application for statutory compensation is to include a description of the compensable injuries for which compensation is sought.
- (2) A description of each of those injuries is required even if the applicant elects under section 11 of the Act to claim a single standard amount or range of compensation for all of those injuries.
- (3) If compensation is sought for 2 or more injuries, the application for compensation is to nominate the most serious injury, the second most serious injury and the third most serious injury (based on the largest, second largest or third largest standard amount payable).
- (4) The description of an injury is to be given in a manner that identifies the relevant item to which the injury relates in the schedule of compensable injuries in the Act.

### 7   Details of financial loss

- (1) An application for statutory compensation is to include full particulars of any financial loss for which compensation is sought as referred to in section 18 of the Act.

- (2) The application is to include:
- (a) in the case of actual expenses—receipts, invoices or other forms of substantiation of the expenditure incurred as the Director approves, or
  - (b) in the case of actual loss of earnings—the name and address of the employer, the period of absence from work and a statement from the employer substantiating those particulars, or
  - (c) in the case of loss of personal effects—a full description of each such item worn or carried by the primary victim that has been lost or damaged and substantiation of the particulars as required by the form of application.

### **8 Further details for application**

- (1) An applicant for statutory compensation may, with the approval of the Director, lodge further details for inclusion in a pending application for compensation.
- (2) Any such further details are to be lodged in a form approved by the Director.

**1997 No 125**

Clause 9            Victims Compensation Rule 1997

Part 3             Counselling

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**Part 3        Counselling**

**9    Application for payments for counselling of victims**

- (1) For the purposes of section 21 of the Act, an application for payment of approved counselling services is to be made in a form approved and supplied by the Director.
- (2) The application is to be accompanied by such documentary evidence as may be required by that form.
- (3) The Director is required to provide to any person on request a copy of the appropriate approved form free of charge.

**10   Amount of payments**

The amount of the payment to be made or reimbursed for each hour of approved counselling services under section 21 of the Act is the amount calculated in accordance with the scale set out in the Table to this clause in respect of the relevant class of counsellor providing the service.

**Table**

(1) Social workers .....	\$70 per hour
(2) Psychologists (including clinical psychologists).....	\$90 per hour
(3) Psychiatrists .....	\$110 per hour

## Part 4 Costs and expenses

### 11 Witnesses—hearings

- (1) For the purposes of section 52 (6) of, and clause 19 of Schedule 2 to, the Act, the allowances and expenses payable to witnesses at any hearing in connection with proceedings under the Act before the Tribunal are to be in accordance with the scale set out in the Table to this clause.
- (2) The allowances and expenses are not payable to a witness who is the applicant for statutory compensation, any agent representing the applicant or (if the applicant is not the person to whom the application relates) the person to whom the application relates.

#### Table

##### Loss of earnings

- (1) A witness who is a member of a profession, or who has been called to give expert evidence, is entitled to:
  - (a) for each day of the hearing, an amount (not exceeding \$300) calculated at the rate of
    - (i) \$200 for the first 2 hours or any part of the first 2 hours, and
    - (ii) \$50 for each additional half-hour or part of a half-hour,
 in respect of any period of absence from home, hospital, place of practice, office or place of employment for the purpose of attending the hearing, and
  - (b) in the case of a witness who has been called to give expert evidence, an additional \$50 for the hearing.
- (2) Any other witness is entitled, for each day of the hearing, to an amount (not exceeding \$200) calculated by multiplying:
  - (a) the witness's hourly rate of income, salary or wages, or
  - (b) \$50,

## 1997 No 125

Clause 11          Victims Compensation Rule 1997

Part 4              Costs and expenses

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whichever is the lesser, by the number of hours (including parts of hours) of any working time lost by the witness for the purpose of attending the hearing.

### **Meals and accommodation**

A witness is entitled to:

- (a) \$120.50 a day, or such greater amount as the Tribunal may allow, while attending, or while travelling to or from, the hearing, or
- (b) except where an allowance is payable under paragraph (a), \$18.10 by way of meal allowance for each meal that the witness has while attending, or while travelling to or from, the hearing.

### **Travelling expenses**

A witness is entitled to be paid, for travelling to and from the place where the hearing is being held, an amount equivalent to:

- (a) if public transport is reasonably available—the normal fee for travelling by public transport, or
- (b) if public transport is not reasonably available:
  - (i) a petrol allowance calculated at the rate of 50 cents per kilometre travelled, or
  - (ii) such amount as is necessary to pay for alternative travelling arrangements approved by the Director in respect of the witness.

**12 Professional costs—applications for compensation and proceedings before Tribunal**

- (1) The scale of costs for the purposes of section 35 of the Act is the scale set out in the Table to this clause.
- (2) If 2 or more legal practitioners represent an applicant for statutory compensation, the amounts payable in relation to their costs and expenses are to be apportioned between them in such manner as the Tribunal or compensation assessor determines.

**Table  
General**

- (1) For work carried out by a solicitor or barrister in relation to the lodgment of an application for compensation, preparation of material required to enable the application to be determined and for work after determination ..... \$750
- (2) For work carried out by a solicitor or barrister in relation to an appeal to the Tribunal
  - (a) in the case of an appeal determined without a hearing ..... \$1,000
  - (b) in the case of an appeal determined after a hearing— including preparing for hearing, conferring with the applicant, attending the hearing and travelling to and from the hearing ..... \$1,500

**Disbursements**

Such disbursements as are, in the opinion of the Tribunal or compensation assessor, both reasonable and necessary, up to a maximum limit of \$1,000, but not including:

- (a) any amount for which provision has been made in an award of compensation to the applicant, or
- (b) allowances or expenses for witnesses at the hearing, or

**1997 No 125**

Clause 12      Victims Compensation Rule 1997

Part 4          Costs and expenses

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- (c) expenses incurred in attending the hearing by the applicant, any agent representing the applicant or (if the applicant is not the person to whom the application relates) the person to whom the application relates, or
- (d) fees for a barrister or other advocate.

## **Part 5      Miscellaneous**

### **13   Standard conditions of awards of compensation**

For the purposes of section 34 (2) of the Act, every award of statutory compensation is subject to the following conditions:

- (a) The person to or for whose benefit the award is made must notify the Director of any money received in the future from other sources in connection with the injuries, expenses and losses taken into account in the award.
- (b) The person to or for whose benefit the award is made must repay from the amount awarded any such future amounts as referred to paragraph (a) on demand by the Director.
- (c) The person to or for whose benefit the award is made must repay to the Director the amount awarded if it is subsequently ascertained that the award was obtained by fraud or collusion.
- (d) The person to or for whose benefit the award is made (if a primary or secondary victim of an act of violence) is to provide reasonable assistance to any person or body engaged in the official investigation of the act of violence.

### **14   Service of documents**

- (1) Any document required or authorised to be served under the Act by the Tribunal, a compensation assessor or the Director may be served:
  - (a) personally, or
  - (b) by leaving it at, or by sending it by post to, an appropriate address of the person on whom it is to be served, or
  - (c) by any other manner authorised by the Tribunal in the particular case.
- (2) For the purposes of this section, an appropriate address of a person is:
  - (a) the address supplied by the person as the address for service of documents in connection with the proceedings concerned, or
  - (b) the residential address of the person last known to the Tribunal, compensation assessor or Director.

## 1997 No 125

Clause 15      Victims Compensation Rule 1997

Part 5            Miscellaneous

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### 15 Appeals to Tribunal

- (1) An appeal under section 36 of the Act against:
  - (a) a determination of a compensation assessor in respect of an application for compensation, or
  - (b) a determination of the Director to refuse leave for a late application for compensation,

is to be instituted by the lodgment of a notice of appeal with the Registrar of the Tribunal.

**Note.** Section 36 (3) of the Act requires an appeal to be lodged within 3 months after notice of the determination is served on the appellant or within such further time as the Tribunal in exceptional circumstances allows.

- (2) A notice of appeal is to be in a form approved and supplied by the Registrar of the Tribunal. The Registrar is required to provide to any person on request a copy of the appropriate approved form free of charge.
- (3) A notice of appeal must contain all the grounds of appeal and full particulars of those grounds of appeal.
- (4) On the lodgment of the notice of appeal, the Registrar of the Tribunal is to endorse on the notice and on a copy of the notice the date of receipt of the notice and date for call-over of the appeal. The Registrar is to return a copy so endorsed to the appellant.
- (5) The Registrar is to conduct a call-over of the appeal:
  - (a) to consider the preparations for the hearing of the appeal, and
  - (b) to give directions for the conduct of the appeal proceedings.

### 16 Form of notice of objection to provisional order for restitution

- (1) For the purposes of section 47 (2) of the Act, a notice of objection by the defendant to the confirmation of a provisional order for restitution is to be in a form approved and supplied by the Director.

- (2) The Director is required to provide to any person on request a copy of the appropriate approved form free of charge.

**Note.** Section 47 (2) of the Act requires any such notice of objection to include the grounds of the objection on which the defendant intends to rely.

### **17 Enforcement of orders for restitution by attachment of prison earnings**

- (1) This clause applies to an order for restitution in connection with a relevant offence referred to in section 46 of the Act for which the person liable under the order is convicted and sentenced to imprisonment or children's detention.
- (2) An amount payable under an order for restitution to which this clause applies that is not paid by the due date may also be enforced by deducting the amount due from the person's prison earnings.
- (3) If it is to be so enforced, the Director is to serve notice of the amount unpaid on the relevant custodial officer, who may make the appropriate deduction from the person's prison earnings.
- (4) In this clause:

***children's detention*** means detention under an order under section 33 (1) (g) of the *Children (Criminal Proceedings) Act 1987*.

***prison earnings*** means:

- (a) in the case of a person sentenced to imprisonment—the person's earnings at the correctional centre in which the person is imprisoned, or
- (b) in the case of a person sentenced to children's detention—the funds held on behalf of the person at the detention centre in which the person is detained.

***relevant custodial officer*** means:

- (a) in the case of a person sentenced to imprisonment—the Commissioner of Corrective Services or the governor of the correctional centre in which the person is imprisoned, or
- (b) in the case of a person sentenced to children's detention—the Director-General of the Department of Community Services or the person in charge of the detention centre in which the person is detained.