

Victims Compensation Rule 1997

[1997-125]



New South Wales

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Victims Compensation Rule 1997



New South Wales

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.

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.

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,

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.
- (3) In addition to the amount awarded in accordance with the scale set out in the Table to

this clause, the amount so awarded is to include the amount of any GST that is payable in respect of the work or disbursements concerned.

(4) Subclause (4) does not permit the awarding of an amount that is greater than:

- (a) 10% of the amount of the costs awarded (apart from that subclause), or
- (b) the amount permitted under the New Tax System Price Exploitation law, whichever is the lesser.

(5) In subclauses (3) and (4):

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

New Tax System Price Exploitation law means:

- (a) the New Tax System Price Exploitation Code, as applied as a law of New South Wales by the *Price Exploitation Code (New South Wales) Act 1999*, or
- (b) Part VB of the *Trade Practices Act 1974* of the Commonwealth.

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
- (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 4A Enforcement of restitution orders

12A Application of Parts 5 and 6 of *Local Courts (Civil Claims) Act 1970* and associated legislation

For the purposes of section 54 of the Act, Parts 5 and 6 (sections 40–68) of the *Local Courts (Civil Claims) Act 1970* (and any terms defined, and any regulations or rules made, for the purposes of those Parts), modified as provided by this Part, apply to and in respect of the enforcement of an order for restitution.

12B General modification of Parts 5 and 6 of *Local Courts (Civil Claims) Act 1970* and associated legislation

Parts 5 and 6 of the *Local Courts (Civil Claims) Act 1970* (and any terms defined, and any regulations or rules made, for the purposes of those Parts) are generally modified as follows:

- (a) a reference to a judgment creditor is taken to be a reference to the Director,
- (b) a reference to a judgment debt is taken to be a reference to the amount payable under the order for restitution,
- (c) a reference to a judgment debtor is taken to be a reference to the defendant,
- (d) a reference to the registrar of any court is taken to be a reference to the Registrar of the Tribunal, except:
 - (i) in Division 2 of Part 5 (sections 41–46) of that Act, and
 - (ii) in Part 28 of the *Local Courts (Civil Claims) Rules 1988* made under that Act,
- (e) a reference to any court (other than the Supreme Court or the District Court) is taken to be a reference to the Tribunal, except for the last reference to a court in section 67 (2) of that Act, and except in:
 - (i) Division 2 of Part 5 (sections 41–46) and sections 56 (2) and 59 (1) of that Act, and
 - (ii) Part 28, and Part 30 rules 6 (1) and (6) and 20 (5) and (6), of the *Local Courts (Civil Claims) Rules 1988* made under that Act.

12C Other modifications of Parts 5 and 6 of *Local Courts (Civil Claims) Act 1970*

The following specific modifications are made to Parts 5 and 6 of the *Local Courts (Civil Claims) Act 1970*:

- (a) section 41 (1) is modified by omitting “registrar of the court in which the judgment is given or entered up” and by inserting instead “Registrar of the Tribunal”,
- (b) section 41 (2) (a) is modified by omitting “registrar of the court in which it was filed” and by inserting instead “Registrar of the Tribunal”,
- (c) section 43A (1) is modified by omitting “registrar of the court in which a judgment is given or entered up” and by inserting instead “Registrar of the Tribunal”, and all subsequent references in that subsection to the registrar are taken to be references to the Registrar of the Tribunal,
- (d) the reference in section 43A (2) to the registrar is taken to be a reference to the Registrar of the Tribunal,
- (e) section 47 (3) is modified by omitting “, and shall be supported by an affidavit of,”,
- (f) section 52 (1) and (2) are modified to read as follows:
 - (1) If the Director is satisfied that a garnishee order relating to the amount payable under an order for restitution has not been complied with by the garnishee on whom it was served, the Director may file with the Registrar of the Tribunal a summons requiring the garnishee to show cause to the Tribunal why the garnishee should not comply with the garnishee order.
 - (2) A summons filed under subsection (1) is returnable before the Tribunal at the place, at the time and on the return date specified in the summons.
- (g) section 52 (4) (a) is modified to read as follows:
 - (a) if the Tribunal is satisfied that the debt concerned exceeds \$50,000—by its order, discharge the garnishee order, and the garnishee order, on that discharge, ceases to have any force or effect, or
- (h) section 54 is modified by omitting “the judgment for the judgment debt may be set aside or the judgment reversed” and by inserting instead “the conviction of the defendant of the relevant offence may be quashed”,
- (i) the penalty attaching to section 56 (1) is omitted,
- (j) Division 5 of Part 5 (sections 63 and 64) is omitted,
- (k) section 65 is modified to read as follows:

65 Interpleader by Sheriff or bailiff

An application for relief by way of interpleader may be made to the Registrar of the Tribunal by the Sheriff or a bailiff if a claim is made to any money, goods, or chattels, taken or intended to be taken in execution under a writ of execution, or to the proceeds or value of any such goods or chattels, by any person other than the person against whom the writ issued.

12D Other modifications of Parts 27-30A of [Local Courts \(Civil Claims\) Rules 1988](#)

The following specific modifications are made to the [Local Courts \(Civil Claims\) Rules 1988](#) made under the [Local Courts \(Civil Claims\) Act 1970](#):

(a) Part 27 rule 1 (1) is modified to read as follows:

(1) The Tribunal may, on application by or on behalf of the defendant, or without any such application being made, at any time order that the amount payable under the order for restitution (or the amount owing at the time the order is made) be paid at such time, or by such instalments payable at such times, as the Tribunal thinks fit.

(b) the references in Part 27 rules 1 (6) and (7), 2 (12) and (13) and 3 (2) and (3) to a judgment are taken to be references to an order for restitution,

(c) Part 27 rule 2 (6), (15) and (16) are omitted,

(d) the reference in Part 28 rule 1 (1) to the registrar is taken to be a reference to the Registrar of the Tribunal, and the reference in that subrule to any other registrar before whom the summons is returnable is taken to be a reference to the registrar before whom the summons is returnable,

(e) Part 28 rule 1 (2) is modified to read as follows:

(2) The Director may file with the examination summons a request that the registrar of the court at which the defendant is required to attend orally examine the defendant as provided in section 41 (4) (b) of the Act, together with a copy of the request for that registrar.

(f) Part 28 rules 1 (2A) and 4 are omitted,

(g) Part 28 rule 5 is modified to read as follows:

5 Report of examination

If a person is examined by a registrar under an examination summons in relation to an order for restitution, the results of the examination are to be reported by the registrar to the Registrar of the Tribunal as soon as practicable.

- (h) Part 30 rule 2 (1) (c) is modified by omitting “section 39 of the Act” and by inserting instead “section 54 (2) of the *Victims Compensation Act 1996*”,
- (i) Part 30 rules 5, 10A and 10B are omitted,
- (j) Part 30 rule 6 (3) is modified to read as follows:
 - (3) As soon as practicable after issuing a writ of execution, the Registrar of the Tribunal is to hand the writ and any notice accompanying it to the Sheriff, and the Sheriff is, as soon as practicable, to forward the writ and any notice accompanying it to the bailiff at the court nearest to the place of execution.
- (k) Part 30A rule 5 (1) (c) is modified by omitting “at the relevant court” and by inserting instead “required to execute the writ”,
- (l) Part 30A rule 5 (3) is omitted.

12E Jurisdiction of Tribunal

- (1) For the purpose of enforcing an order for restitution, the Tribunal has the jurisdiction necessary to make any determination or order, and to give any judgment, in relation to garnishees or third parties:
 - (a) that the applied provisions allow it to make or give, and
 - (b) that is ancillary to enforcing the order for restitution.
- (2) In this clause, **the applied provisions** means such of the provisions of Parts 5 and 6 of the *Local Courts (Civil Claims) Act 1970* (and any terms defined, and any regulations or rules made, for the purposes of those Parts), modified as provided by this Part, as are applied by this Part for the purpose of enforcing an order for restitution.

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.

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.