



New South Wales

Victims Compensation Amendment (Enforcement of Orders for Restitution) 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*.

JEFFREY SHAW, QC., M.L.C.,
Attorney General

Explanatory note

Section 54 of the *Victims Compensation Act 1996* provides that an **order for restitution** made under that Act is taken to be a judgment of a Local Court in proceedings on a statement of claim under the *Local Courts (Civil Claims) Act 1970*, and that the order may be enforced accordingly by the Victims Claims Tribunal in accordance with the provisions of the latter Act. Section 54 (4) empowers the making of compensation rules for the purpose of section 54, and specifies that those rules may, for that purpose, apply the provisions of the *Local Courts (Civil Claims) Act 1970*, with or without modification.

(An order for restitution enables compensation paid to victims of crimes of violence under the statutory scheme set up by the *Victims Compensation Act 1996* to be recovered from persons found guilty of the crimes giving rise to the award of compensation.)

The object of this Rule is to apply (with the necessary modifications) 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) to the enforcement of orders for restitution.

This Rule is made under the *Victims Compensation Act 1996*, including section 87 (the general rule-making power) and section 54 (4).

1997 No 538

Clause 1 Victims Compensation Amendment (Enforcement of Orders for Restitution) Rule 1997

Victims Compensation Amendment,(Enforcement of Orders for Restitution) Rule 1997

1 Name of Rule

This Rule is the *Victims Compensation Amendment (Enforcement of Orders for Restitution) Rule 1997*.

2 Amendment of Victims Compensation Rule 1997

The *Victims Compensation Rule 1997* is amended as set out in Schedule 1.

3 Notes

The explanatory note does not form part of this Rule.

Schedule 1 Amendments

(Clause 2)

Part 4A

Insert after clause 12:

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,”,

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- (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 Court (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.

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- (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 Court (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.