

1996—No. 387

SUPREME COURT RULES (AMENDMENT No. 304) 1996

NEW SOUTH WALES



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1. These rules are made by the Rule Committee on 19 August 1996.
2. The Supreme Court Rules 1970 are amended as follows:
 - (a) Part 23 rule 16.

The rule, as amended by amendment number 302 of 1966 (which applies to notices for discovery, and orders for discovery, given or made on or after 1 August 1996) is amended further by omitting paragraphs (a) and (b) and inserting instead:
 - (a) a document of which evidence could not be adduced in the proceedings over the objection of any person, by virtue of the operation of Part 3.10 (other than sections 128 and 130) of the Evidence Act 1995;
 - (b) where the party giving discovery is a natural person, a document the contents or production of which may tend to prove that the party:
 - (i) has committed an offence against or arising under an Australian law or a law of a foreign country; or
 - (ii) is liable to a civil penalty, within the meaning of section 128 (1) of the Evidence Act 1995;
 - (c) a document that relates to matters of state within the meaning of section 130 of the Evidence Act 1995, unless and until the Court decides that it cease to be a privileged document.
 - (b) Part 23 rule 1.

The rule, as inserted by amendment number 303 of 1996 (which applies to proceedings commenced on or after 1 October 1996) is amended further by omitting paragraph (c) (i), (ii), and (iii) and inserting instead:

- (i) a document of which evidence could not be adduced in the proceedings over the objection of any person, by virtue of the operation of Part 3.10 (other than sections 128 and 130) of the Evidence Act 1995;
- (ii) where party B is a natural person, a document the contents or production of which may tend to prove that party B:
 - (A) has committed an offence against or arising under an Australian law or a law of a foreign country; or
 - (B) is liable to a civil penalty,
 within the meaning of sections 128 (1) of the Evidence Act 1995;
- (iii) a document that relates to matters of state within the meaning of section 130 of the Evidence Act 1995, unless and until the Court directs that it cease to be a privileged document;

3. The Supreme Court Rules 1970 are further amended as follows:

(a) Part 24 rule 6(3) (c)

Omit the paragraph and insert instead:

- (c) that evidence in answer to a question in terms of the interrogatory could not be adduced in the proceedings over the objection of any person, by virtue of the operation of Part 3.10 (other than sections 128 and 130) of the Evidence Act 1995;
- (d) where the party is a natural person, that an answer to the interrogatory may tend to prove that the party:
 - (i) has committed an offence against or arising under an Australian law or a law of a foreign country, or
 - (ii) is liable to a civil penalty,
 within the meaning of section 128 (1) of the Evidence Act 1995;
- (e) that an answer to the interrogatory would contain information that relates to matters of state within the meaning of section 130 of the Evidence Act 1995, unless and until the Court directs that the information cease to be privileged.

(b) Part 24 rule 11

Omit the rule.

4. The amendments contained in paragraph 3 shall apply to notices to answer interrogatories, and orders to answer interrogatories, given or made on or after 1 October 1996.

5. The Supreme Court Rules 1970 are further amended as follows:

Part 74 rule 3 (b)

Omit “applicant for the order” and insert instead “registrar”.

EXPLANATORY NOTE

(This note does not form part of the rules).

1. The object of the amendments contained in paragraph 2 is to clarify the availability of privilege on the ground of self incrimination on discovery and to otherwise assimilate the grounds of privilege on discovery to those available at the hearing under the Evidence Act 1995.

2. The object of the amendment contained in paragraph 3 is to assimilate the grounds of privilege available in respect of interrogatories to those available in respect of discovery.

3. The object of the amendment contained in paragraph 5 is to place the obligation to serve a minute of an order transferring proceedings to or from the Court on the registrar, in place of the applicant for the order.

M. A. Blay
Secretary of the Rule Committee.
