



New South Wales

# Compensation Court Rule (Privileged documents and things) 1998

under the  
Compensation Court Act 1984

The Compensation Court Rule Committee made the following rule of court under the *Compensation Court Act 1984* on 5 February 1998.

S Davidson  
Secretary of the Rule Committee

## Explanatory note

The object of this Rule is to amend the *Compensation Court Rules 1990* to confirm (in accordance with recent authority) that certain provisions of the *Evidence Act 1995* relating to privilege apply in relation to the pre-trial procedures involving discovery and inspection of documents, interrogatories, notices to produce and the issue of subpoenas.

## **1998 No 114**

Clause 1      Compensation Court Rule (Privileged documents and things) 1998  
Schedule 1      Amendments

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# **Compensation Court Rule (Privileged documents and things) 1998**

### **1 Name of Rule**

This Rule is the *Compensation Court Rule (Privileged documents and things) 1998*.

### **2 Commencement**

This Rule commences on 6 March 1998.

### **3 Amendment of Compensation Court Rules 1990**

The *Compensation Court Rules 1990* are amended as set out in Schedule 1

### **4 Notes**

The explanatory note does not form part of this Rule.

## **Schedule 1      Amendments**

(Clause 3)

### **[1]      Part 18, rule 5:**

Insert after rule 5:

#### **5A Privilege**

For the purposes of this Part, a document shall be privileged from production if it is:

- (i) a document of which evidence could not be adduced in the action 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 the party required to give discovery is a natural person, a document the contents or production of which may tend to prove that that party:
  - (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 section 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.

**[2] Part 19, rule 2(3)(c):**

Omit the paragraph, insert instead:

- (c) that evidence in answer to a question in terms of the interrogatory could not be adduced in the action 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.

**[3]      Part 23, rule 16**

Insert “(1)” after “16” and insert “or the document or thing is a privileged document or thing” after “Court otherwise orders”.

**[4]      Part 23, rule 16 (2)**

Insert at the end of rule 16:

(2)      In this rule:

*privileged document or thing*, in relation to a notice referred to in subrule (1), means:

- (a)      a document or thing of which evidence could not be adduced in an action 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)      if the party on whom the notice is served is a natural person—document or thing 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 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 directs that it cease to be a privileged document.

**[5]      Part 24, rule 1**

Insert after the definition of *person named*:

*privileged document or thing*, in relation to a subpoena, means:

- (a)      a document or thing of which evidence could not be adduced in an action 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) if the party on whom the subpoena is served is a natural person—a document or thing 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 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 directs that it cease to be a privileged document.

**[6] Part 24, rule 13**

Insert after rule 12:

**13 Application of Part 3.10 of the Evidence Act 1995**

Nothing in this Part compels a person on whom a subpoena is served to produce a privileged document or thing.