



New South Wales

District Court Rule (Privileged Documents and Things) 1998

under the

District Court Act 1973

The District Court Rule Committee made the following rule of court under the *District Court Act 1973* on 5 March 1998.

J G Cowen

Secretary to the Rule Committee

Explanatory note

The object of this Rule is to amend the *District Court Rules 1973* 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 the issue of subpoenas and notices to produce.

1998 No 156

Clause 1 District Court Rule (Privileged Documents and Things) 1998

District Court Rule (Privileged Documents and Things) 1998

1 Name of Rule

This Rule is the *District Court Rule (Privileged Documents and Things) 1998*.

2 Commencement

This Rule commences on 20 March 1998.

3 Amendment of District Court Rules 1973

The *District Court Rules 1973* are amended as set out in Schedule I.

4 Notes

The explanatory note does not form part of this Rule.

Schedule 1 Amendments

(Clause 3)

[1] Part 28, rule 18

Insert “or the document or thing is a privileged document or thing” after “Court otherwise orders”.

[2] Part 28, rule 18 (2)

Insert at the end of rule 18:

(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—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.

[3] Part 29, 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.

[4] Part 29, rule 11

Insert after rule 10:

11 Application of Part 3.10 of Evidence Act 1995

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