



New South Wales

# Evidence Amendment (Miscellaneous) Regulation 2008

under the

Evidence Act 1995

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Evidence Act 1995*.

JOHN HATZISTERGOS, M.L.C.,  
Attorney General

## Explanatory note

The object of this Regulation is to amend the *Evidence Regulation 2005* to make amendments consequential on the commencement of the *Evidence Amendment Act 2007* (the **amending Act**). The amending Act inserts section 128A into the *Evidence Act 1995* (the **Principal Act**), which makes provision with respect to the ability to assert the privilege against self-incrimination in respect of disclosure of information in connection with search and freezing orders in civil proceedings.

This Regulation:

- (a) removes the reference to “related” events with respect to the coincidence rule in section 98 of the Principal Act to bring the Regulation into line with that section (as substituted by the amending Act), and
- (b) amends the form of the certificate for privilege against self-incrimination to include reference to section 128A of the Principal Act.

This Regulation is made under the *Evidence Act 1995*, including sections 99 and 197 (the general regulation-making power).

## **2008 No 596**

Clause 1 Evidence Amendment (Miscellaneous) Regulation 2008

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### **Evidence Amendment (Miscellaneous) Regulation 2008**

under the

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#### **1 Name of Regulation**

This Regulation is the *Evidence Amendment (Miscellaneous) Regulation 2008*.

#### **2 Commencement**

This Regulation commences on 1 January 2009.

#### **3 Amendment of Evidence Regulation 2005**

The *Evidence Regulation 2005* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Clause 3)

**[1] Clause 5 The tendency rule and the coincidence rule—form of notices**

Omit “related” from clause 5 (3) (a).

**[2] Clause 6 Privilege against self-incrimination—form of certificate**

Insert “or 128A” after “section 128” in clause 6 (1).

**[3] Schedule 1 Forms**

Omit Form 1. Insert instead:

**Form 1 Certificate under section 128 or 128A of the Evidence Act 1995**

(Clause 6)

*[Set out heading to action or matter]*

This Court certifies under section 128\*/128A\* of the *Evidence Act 1995* of New South Wales that evidence in these proceedings by *[state name of witness]* on *[state date or dates]*, a record of which is attached to this certificate, is evidence\*/information\* to which section 128 (7)\*/ 128A (8)\* of that Act applies.

*A transcript, or other record, of the evidence is to be attached to this certificate, and duly authenticated by the court or its proper officer.*

Dated:

L.S.

(affix seal)

Judge or magistrate of the Court

*\* Delete if not applicable*

**Note.** Section 128 (7) of the *Evidence Act 1995* provides as follows:

(7) In any proceeding in a NSW court or before any person or body authorised by a law of this State, or by consent of parties, to hear, receive and examine evidence:

(a) evidence given by a person in respect of which a certificate under this section has been given, and

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#### Schedule 1 Amendments

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- (b) evidence of any information, document or thing obtained as a direct or indirect consequence of the person having given evidence,

cannot be used against the person. However, this does not apply to a criminal proceeding in respect of the falsity of the evidence.

Section 128A (8) of the *Evidence Act 1995* provides as follows:

- (8) In any proceeding in a NSW court or before any person or body authorised by a law of this State, or by consent of parties, to hear, receive and examine evidence:

- (a) evidence of information disclosed by a relevant person in respect of which a certificate has been given under this section, and

- (b) evidence of any information, document or thing obtained as a direct result or indirect consequence of the relevant person having disclosed that information,

cannot be used against the person. However, this does not apply to a criminal proceeding in respect of the falsity of the evidence concerned.

BY AUTHORITY

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