

Privilege Against Self-Incrimination at NCAT NSW: Understanding Your Rights

As someone who is about to give evidence at the NSW Civil and Administrative Tribunal (NCAT), you may have concerns about self-incrimination. This means that you may be worried that the evidence you provide could be used against you in a criminal or civil proceeding. Fortunately, there are legal provisions in place that protect your rights in such a situation. One such provision is Section 128 of the Evidence Act 1995 (NSW), which provides the privilege against self-incrimination.

Section 38 of the Civil and Administrative Tribunal Act 2013 (NSW) further elaborates on the privilege against self-incrimination, specifically in the context of NCAT proceedings. In this article, we will explain what the privilege against self-incrimination is, how it applies in civil proceedings, and what protections you have when giving evidence at NCAT. We will also touch on the interaction between Section 128 and Section 38, so that you have a clear understanding of your rights when giving evidence at NCAT.

What is the Privilege Against Self-Incrimination in Civil Proceedings?

The privilege against self-incrimination is a fundamental right that protects individuals from being compelled to give evidence that may incriminate themselves in criminal proceedings. However, this right is not limited to criminal proceedings and also applies to civil proceedings.

In civil proceedings, the privilege against self-incrimination allows a witness to refuse to answer questions or provide evidence that may incriminate themselves. This privilege is important because it ensures that individuals are not compelled to assist in their own prosecution, even in civil cases where the stakes may not be as high as in criminal cases.

Section 128 of the Evidence Act 1995 (NSW) codifies the privilege against self-incrimination in NSW. This means that if you are called to give evidence in a civil proceeding before NCAT, you may invoke the privilege against self-incrimination to avoid answering questions or providing evidence that may incriminate you.

However, it's important to note that the privilege against self-incrimination is not absolute and may be subject to limitations. For example, a court may require you to provide evidence that may incriminate you if the public interest in doing so outweighs your right to remain silent.

You can be confident that you are getting
the right legal advice.

If you are concerned about giving evidence that may incriminate you in a civil proceeding before NCAT, it's important to seek legal advice to understand your rights and obligations. A lawyer can help you assess the risks and benefits of giving evidence, and advise you on how to claim the privilege against self-incrimination if necessary.

What is Section 128 of the Evidence Act 1995 NSW?

Section 128 of the Evidence Act 1995 (NSW) deals with the privilege against self-incrimination. This section provides a witness with the right to refuse to answer questions or provide evidence that may incriminate them in a criminal offence or expose them to a civil penalty. This means that if you are giving evidence in a proceeding, and you are concerned that your evidence may incriminate you, you can raise an objection based on section 128.

The section applies when a witness objects to giving evidence or answering a particular question on the ground that it may tend to prove that they have committed an offence under Australian law or a foreign country's law, or make them liable to a civil penalty. An objection can only be raised when a witness is compelled to give evidence, such as when you are subpoenaed to appear before NCAT.

If you raise an objection based on section 128, the tribunal will determine whether there are reasonable grounds for your objection. If the tribunal is satisfied that there are reasonable grounds for the objection, it may grant a certificate prohibiting the use of that evidence in separate proceedings. The certificate does not provide immunity from prosecution, but it prevents the use of your evidence against you in any future proceedings.

Understanding Section 38 of the Civil and Administrative Tribunal Act 2013 (NSW)

Section 38 of the Civil and Administrative Tribunal Act 2013 (NSW) deals with the application of the privilege against self-incrimination in proceedings before NCAT. It outlines the circumstances in which the privilege may be claimed by a witness.

Section 38(1) provides that a witness cannot be compelled to give evidence or produce a document that may tend to incriminate them in a criminal offence, except in certain limited circumstances. This means that a witness has the right to refuse to answer questions or produce documents that could be self-incriminating.

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However, section 38(2) sets out an exception to this general rule. It states that if the Tribunal is satisfied that the public interest in the administration of justice outweighs the public interest in the protection of the witness, the Tribunal may require the witness to answer the question or produce the document.

It is important to note that the decision to require a witness to answer a self-incriminating question or produce a self-incriminating document is not taken lightly. The Tribunal will carefully consider the competing public interests before making a decision.

If a witness does claim the privilege against self-incrimination, section 38(3) requires them to inform the Tribunal of their objection and the grounds for it. The Tribunal will then determine whether the privilege is valid and whether the witness is required to answer the question or produce the document.

In determining whether the privilege against self-incrimination applies, the Tribunal will consider the same factors outlined in section 128 of the Evidence Act 1995 (NSW). The Tribunal will assess whether there is a real and appreciable risk that the evidence given by the witness could be used to incriminate them, and whether the public interest in the administration of justice outweighs the public interest in protecting the witness.

Overall, section 38 of the Civil and Administrative Tribunal Act 2013 (NSW) provides an important safeguard for witnesses who are concerned about self-incrimination. It recognises the fundamental right of individuals to protect themselves from self-incrimination while balancing the public interest in the administration of justice.

Legal Advice

If you are concerned about self-incrimination when giving evidence at the NCAT, it is important to seek legal advice and to raise your concerns with the tribunal as early as possible. With the right understanding and protections in place, you can give evidence with confidence, knowing that your rights are being respected. Our office advises homeowners in NCAT building disputes. We offer a free 15-minute consultation if the amount in dispute exceeds \$30,000.

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