Provision	Covers
s 119	Confidential communications and documents prepared for the **dominant purpose** of a client being provided with professional legal services relating to an Australian or overseas **proceeding** — including anticipated or pending proceedings.

Do not collapse the statutory and common law questions into each other. In *Esso* the High Court was considering the common law test in the context of discovery — but the existence of the Evidence Act formed part of the legal landscape.

The holding

The Court held that the **common law should also use the dominant purpose test**. *Esso* displaced the sole purpose test from *Grant v Downs*. That is the headline: the correct common law test became the dominant purpose test.

Purpose is objectively determined

The Court also made clear that purpose is to be **objectively determined** — although evidence of a person's subjective purpose can be highly relevant and may be decisive. In practice, organisations establish purpose through evidence about why a document was commissioned, who requested it, what instructions were given, who received it, and what was happening at the time.

PART 4 — THE TWO CASES SIDE BY SIDE

	Grant v Downs (1976)	Esso (1999)
Court	High Court of Australia	High Court of Australia
Test adopted	**Sole purpose** (majority)	**Dominant purpose**
Effect of other purposes	Multiple material purposes can **defeat** privilege — the legal purpose must be the only one.	Other purposes **can exist** — but the legal purpose must be the ruling or prevailing one.
Minority note	Barwick CJ favoured a dominant purpose approach — anticipating what the Court later adopted.	—
Status today	Explains the **earlier** position; still important for the historical development.	The authority for the **current** common law test.

For a contemporary Australian common law problem, Esso is the authority for the test. Bring in *Grant v Downs* to show the historical change.

PART 5 — WHAT "DOMINANT PURPOSE" REQUIRES

The legal purpose does not have to be the only purpose. There can be others. But the purpose of obtaining legal advice, or legal services in relation to litigation, must be the **ruling, prevailing or dominant** purpose.

Labels are not magic

- Writing "privileged and confidential" at the top of a document does **not** itself create privilege.