

## PRIVILEGE QUESTION

SECTION/CASE	ACTION
<b>STEP ONE</b>	<b>Relevance</b>
S55	Relevant if assist trier of fact
PAPAKOSMOS + SMITH	Low threshold
S56	Admissible if relevant – subject to exceptions
<b>STEP TWO</b>	<b>Witness objects to evidence</b>
S126B	Identify the type of privilege <ul style="list-style-type: none"> <li>• Professional relationship privilege</li> </ul>
<b>STEP THREE</b>	<b>Address the law</b>
S126B(1)(a-c)	Prosecution cannot force evidence if there is a <b>protected confidence</b>
S126B(1)(a)	Onus is on the witness to show there is a protected confidence
S126B(3)	Apply a balancing act <ol style="list-style-type: none"> <li>1. Nature + gravity of offence</li> <li>2. Severity of situation</li> <li>3. Availability of evidence</li> </ol>
S126C	Has the privilege been lost = adduce <ol style="list-style-type: none"> <li>1. Consent by the witness</li> <li>2. Fraud by the witness</li> </ol>
Statement	Provide the witness with a certificate of immunity

## COMPETANCE (UNSWORN EVIDENCE) QUESTION

SECTION/CASE	ACTION
<b>STEP ONE</b>	<b>Relevance</b>
S55	Relevant if assist trier of fact
PAPAKOSMOS + SMITH	Low threshold
S56	Admissible if relevant – subject to exceptions
<b>STEP TWO</b>	<b>Compellability</b>
S12	Presumption of competence = If competent, most likely compellable to give evidence – subject to exceptions
S13(1)	Not competent if disabled = can be heard voire dire to understand competence
<b>STEP THREE</b>	<b>Rules</b>
S13(3)	Not competent = No sworn evidence
S13(4)	Can give unsworn evidence subject to s13(5) If the court tells the witness: <ol style="list-style-type: none"> <li>1. That it is important to tell the truth</li> <li>2. That you do not have to answer things you do not know</li> <li>3. Don't feel pressured to answer something</li> </ol>