Judicial College of Victoria
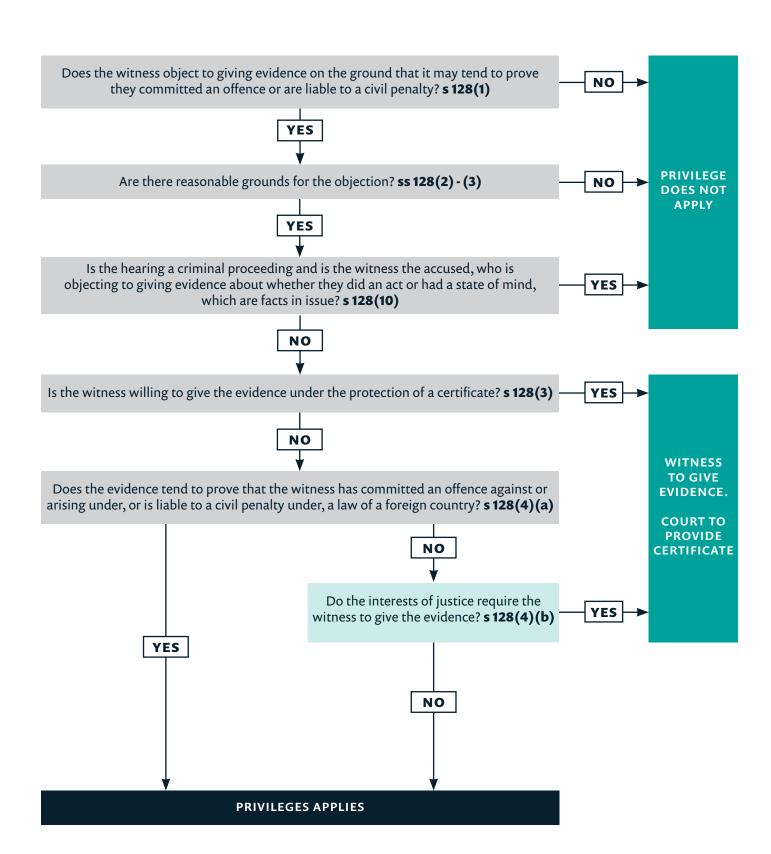
Privilege against self-incrimination.

Does the witness object to giving evidence on the ground that it may tend to prove they committed an offence or are liable to a civil penalty? **s 128(1)** — **NO** →

YES ↓

Are there reasonable grounds for the objection? **ss 128(2) - (3)** — **NO** →

YES ↓

Is the hearing a criminal proceeding and is the witness the accused, who is objecting to giving evidence about whether they did an act or had a state of mind, which are facts in issue? **s 128(10)** — **YES** →

PRIVILEGE DOES NOT APPLY

NO ↓

Is the witness willing to give the evidence under the protection of a certificate? **s 128(3)** — **YES** →

NO ↓

Does the evidence tend to prove that the witness has committed an offence against or arising under, or is liable to a civil penalty under, a law of a foreign country? **s 128(4)(a)**

NO ↓

Do the interests of justice require the witness to give the evidence? **s 128(4)(b)** — **YES** →

WITNESS TO GIVE EVIDENCE.

COURT TO PROVIDE CERTIFICATE

YES ↓   **NO** ↓

PRIVILEGES APPLIES

Note:

See **s 128A** (exceptions to the privilege with respect to disclosure orders)

See also discretionary and mandatory exclusions **Part 3.11**