

# **What is the Privilege against Self-Incrimination? How can it Protect me in Court?**

Imagine you are on the witness stand in court.

You have been asked a question, the answer to which might lead to criminal charges being pressed against you.

But you are required to answer the question.

And you know that lying in court is very serious offence also.

What should you do?

The right to silence is probably one of the most well-known rights in the Australian criminal justice system.

It is often associated with your right to refuse to participate in a police interview at the station if you have been accused of a crime.

However, this is not the only situation in which your right to silence might apply.

One aspect of the right to silence is what's known as the 'privilege against self-incrimination'.

That privilege applies if you are giving evidence at a defended hearing or trial, but are worried that your own testimony might end up implicating you in a crime.

If you are concerned, you may be able to benefit from witness immunity.

**When does the protection against self-incrimination apply?**

In Australia, the right against self-incrimination is an

important feature of our criminal justice system and protected in many ways.

It has been a part of our common law heritage since 1641, although it has changed in form since then.

However, the right is not absolute: which means that it does not apply in all situations.

You may sometimes be required to answer questions even if they tend to prove you committed an offence.

But by the same token, the privilege against self incrimination is not to be removed lightly.

And that is why section 128 of the Evidence Act exists.

The section says that a witness can object to answering a question/s on the ground that the answer/s may tend to prove that he or she committed a crime, or that he or she is liable to a civil penalty.

If the witness does object, the court will then decide whether there are reasonable grounds for the objection.

If there are reasonable grounds, the court can then either:

- Inform the witness that they don't need to answer the question/s, or
- Grant the witness a 'certificate' that prohibits the use of their testimony in any future proceedings, and require that the witness answers the question/s.

The rationale behind the use of the certificate is to ensure that witnesses can give truthful answers in court and that the court receives as much relevant evidence as possible in a criminal case.

If a 'certificate' is granted by the court, nothing that incriminates the witness can be used against them in future

court proceedings.

Rights against self-crimination can also be invoked at coronial inquests.

Witnesses at those inquests can object to answering questions if they believe that an answer might incriminate them in some way, according to section 61 of the NSW Coroners Act 2009.

The privilege against self-incrimination can also apply to defendants themselves, where answering questions while on trial for one offence could potentially bring up evidence which may tend to prove the commission of another crime.

In this case, the provision will still have effect in regard to separate offences to the ones on trial; but the defendant cannot use the privilege in relation to a fact in issue in the present trial.

### **How does a court determine whether or not to grant a person's right to immunity?**

You have the right to object to any question that, if you answered truthfully, may tend to prove that you committed an offence, either in Australia or overseas.

The court will examine the grounds for granting immunity against self-incrimination.

If the court decides that there are reasonable grounds for the objection and that the interests of justice require that the evidence be given, the court will issue a certificate and require the answers to be given.

The exception to this rule is if you give false evidence: which is an offence itself.

If you have been called to appear as a witness and are worried about what questions you might be asked, or have any concerns about the process, get in touch with an [experienced criminal](#)

[lawyer](#) in order to make sure that your interests are protected.