

13A. Privilege against self-incrimination

13A.1 Legislation

[Last reviewed: January 2025]

Nil.

13A.2 Commentary

[Last reviewed: January 2025]

Witnesses are entitled to the privilege against self-incrimination.

A witness (but not a Defendant) may refuse to answer a question on the ground that to do so would incriminate him or her.

An answer which may 'incriminate' is one which would tend to prove that the witness had committed a criminal offence or was liable to pay a penalty.

This issue may arise during the cross examination of a witness as to the facts or as to their credit, when they might be asked about, for example, their drug use, previous violence, social security fraud, or tax evasion.

If the trial judge is concerned that an answer to a question asked of a witness might tend to incriminate the witness, the witness must be informed that they do not need to answer the question.

Sometimes, the party questioning the witness may raise the issue with the trial judge before asking the question.

If a witness is permitted to refuse to answer a question on the ground that the answer would tend to incriminate him or her, then the trial judge must warn the jury that they are to draw no adverse inference against the witness because they have claimed the privilege.

13A.3 Suggested Direction

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Before you answer that question, I must inform you that you are entitled to the privilege against self-incrimination. What that means is that you are not obliged to answer a question if the answer to the question tends to prove that you were guilty of a criminal offence or liable to pay a penalty. You may only refuse to answer the question on that ground. You *may* answer the question – even

though the answer tends to show that you have been guilty of a criminal offence or liable to penalty – but you do not have to.

If you wish to claim the privilege, it is for me to decide whether you may validly claim it.