

## 29. Defendant's Right to Silence

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### 29.1 Legislation

[Last reviewed: March 2025]

*Police Powers and Responsibilities Act 2000*

[Section 397](#) – Right to remain silent not affected

*Police Powers and Responsibilities Regulation 2012*

[Schedule 9, Section 26](#) - Cautioning relevant persons about the right to silence

### 29.2 Commentary

[Last reviewed: March 2025]

The right of a Defendant to remain silent when questioned is a fundamental common law rule (*Petty v The Queen* [\(1991\) 173 CLR 95](#), [97]; *R v Coyne* [\[1996\] 1 Qd R 512](#), [519]; *R v Vannatter* [\[1999\] QCA 104](#)).

In *Petty v The Queen* [\(1991\) 173 CLR 95](#), the High Court held that no adverse inference can be drawn against a Defendant by reason of the Defendant's failure to answer questions or supply information. To draw such an inference would erode the right.

In Queensland, a Defendant's right to silence when being questioned by police has been given legislative effect by s 397 of the *Police Powers and Responsibilities Act 2000* (Qld). Where a person is to be questioned in relation to an indictable offence, a police officer must caution them in terms set out in s 26 of Schedule 9 of the *Police Powers and Responsibilities Regulation 2012* (Qld), as required by s 431 of the *Police Powers and Responsibilities Act 2000* (Qld).

Evidence that a Defendant exercised their right to silence when questioned by police should not be led. But if it is, a direction that a Defendant has properly exercised their right to silence should be given when the evidence is given (*Sanchez v R* (2009) [196 A Crim R 472](#), [486]; [\[2009\] NSWCCA 171](#), [57]). The direction may also bear repeating in the summing-up.

### 29.3 Suggested Direction

[Last reviewed: March 2025]

**Some reference has been made to the Defendant being silent when asked by the police about things. It is a fundamental rule of our criminal law that a person**

accused of an offence is not obliged to answer police questions. A person accused of an offence has a *right to silence* – that is, a right to say nothing in the face of police questioning.

Therefore, the Defendant's silence is not evidence against [him/her]. Indeed, the warning given by the police to the Defendant expressly advised [him/her] that [he/she] was entitled to remain silent.

It would be quite wrong to reason that because the Defendant was silent or refused to answer questions that [he/she] must have something to hide or be guilty of some offence. Therefore, you cannot use against the Defendant in any way the fact that [he/she] took notice of the police caution and chose to remain silent.