

Defendant's Right to Silence

Commentary

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

In *Petty v R* (1991) 173 CLR 95, the High Court held that no adverse inference can be drawn against a defendant by reason of his or her failure to answer questions or supply information. To draw such an inference would erode the right: *Petty v R* (1991) 173 CLR 95.

In Queensland, a defendant's right to silence when being questioned by police has been given legislative effect by ss 26 and 397 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](#) at [58].

The direction may also bear repeating in the summing-up: *Sanchez v R* at [58].

Suggested Direction

Some reference has been made to the defendant's 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, his/her 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 he/she 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 him/her in any way the fact that he/she took notice of the police caution and chose to remain silent.