



Hon Greg Smith SC MP

Attorney General
Minister for Justice

MEDIA RELEASE

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CALL TO SUPPORT CHANGES TO RIGHT TO SILENCE

The Attorney General Greg Smith, SC, today challenged the Opposition to back the State's police by supporting action to break criminals' code of silence.

Mr Smith said a draft Bill outlining proposed changes to the "right to silence" law will be posted on the website of the Department of Attorney General & Justice today and encouraged stakeholders to comment on the planned changes.

"The NSW Government is closing a legal loophole to stop criminals exploiting the system to avoid prosecution," Mr Smith said.

"This is a common sense reform that will have widespread community support - it's time the Opposition backed police whose efforts in dealing with recent criminal activity have been frustrated by suspects using silence as a shield against the criminal justice system."

Last month, the Government announced plans to allow juries and judges to draw adverse inferences against alleged criminals who refused to speak to police but later produce "evidence" at trial.

Under the plan, designed to tilt the scales of justice towards common sense, police will issue people suspected of serious crimes with a new caution, warning them that it could harm their defence if they fail to tell police about something they later rely on in their defence.

The Bill would give police the power they need when confronted with suspects who use silence as a shield against the criminal justice system, Mr Smith said.

"A jury will be able to draw adverse inferences against an accused who failed to mention something to investigating police they could, given the circumstances, reasonably have been expected to mention," Mr Smith said.

The new law would apply only to adult defendants (over 18 years); would not apply to people with cognitive impairments; and would only apply to people who had had the chance to consult a lawyer about the implications of remaining silent.

The Government is committed to trialling a telephone advice line staffed by lawyers to provide advice to suspects held for questioning by police.

“The proposal will safeguard vulnerable people including juveniles and those with a mental illness, but ensure that hardened criminals will face the full force of the law, and do not hide behind a wall of silence,” said Mr Smith.

The law reflect reforms made in Britain and Wales in 1994, and will apply to serious indictable offences.

Interested parties can comment on the draft bill until September 28.

The draft bill and details of the consultation process are available at the following website: http://www.lpcld.lawlink.nsw.gov.au/lpcld/lpcld_index.html