



Barry O'Farrell MP

Premier of NSW

Minister for Western Sydney

MEDIA RELEASE

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CRIME CRACKDOWN: "RIGHT TO SILENCE" LAW TOUGHENED

The scales of justice will be tilted towards common sense when the "right to silence" law is toughened, NSW Premier Barry O'Farrell announced today.

Mr O'Farrell said the Evidence Act would be amended to allow juries and the judiciary to draw an adverse inference against an alleged criminal who refuses to speak to investigating police, but later produces "evidence" at trial in a bid to be found not guilty.

The current law sees juries explicitly instructed by trial judges not to draw an adverse inference from such behaviour.

"It's been too easy to say: 'I have nothing to say'," Mr O'Farrell said.

"Jurors are smart enough to know if there is something suspicious about evidence which suddenly appears at a trial and is designed to get the accused off."

Attorney General Greg Smith said the right to silence was an important legal principle but it was too easily exploited.

"There are many occasions where it is just sensible to conclude there is something a bit suspicious about an accused who fails to co-operate with police during an investigation, only to later reveal something which they claim proves their innocence," Mr Smith said.

"On the other hand, juries are smart enough to be able to apply common sense if it's clear someone has been wrongly accused of a crime.

"For example, an innocent accused may fail to provide relevant evidence to police because they panicked, or were trying to conceal a shameful act or minor crime.

"But it is not common sense for us to keep a law which means juries are actively instructed not to draw an adverse inference in such circumstances."

The caution now given by police:

“You are not obliged to say or do anything unless you wish to do so, but whatever you say or do may be used in evidence. Do you understand?”

will be changed to:

“You are not obliged to say or do anything unless you wish to do so. But it may harm your defence if you do not mention when questioned something you later rely on in court. Anything you do say and do may be given in evidence. Do you understand?”

The proposed change reflects reforms made in Britain and Wales in 1994, and will apply to serious indictable offences.

Police Minister Mike Gallacher said the change would be welcomed by police and the community.

“The right to silence can be exploited by criminals and failing to answer police can impede investigations,” Mr Gallacher said.

“They won’t be able to hide behind their vow of silence anymore.”

The NSW Police Commissioner Andrew Scipione welcomed the change to the right to silence law.

“This is a welcome aid to what is traditionally a difficult area in policing,” Mr Scipione said.

“This is a common sense approach which should see a decrease in the use of silence by suspects during police questioning.

“The NSW Police welcomes anything that helps us break down this wall of silence.”

Mr O’Farrell said a draft bill would be finalised by the end of August with legislation to be introduced into Parliament in October.