

First print



New South Wales

# Evidence Amendment (Evidence of Silence) Bill 2013

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

The *Criminal Procedure Amendment (Mandatory Pre-trial Defence Disclosure) Bill 2013* is cognate with this Bill.

## Overview of Bill

The object of this Bill is to amend the *Evidence Act 1995* so that in proceedings for a serious indictable offence an unfavourable inference may be drawn from the defendant's failure or refusal to mention a fact during official questioning that the defendant could reasonably have been expected to mention and that is later relied on by the defence in the proceedings.

Such an inference will not be able to be drawn unless, before the questioning, a special caution was given to the defendant in the presence of a legal practitioner acting for the defendant.

Such an inference will also not be able to be drawn if it is the only evidence that the defendant is guilty of the offence.

The Bill will not apply to a defendant who, at the time of the questioning, is under 18 years of age or incapable of understanding the general nature and effect of a special caution.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be proclaimed.

### **Schedule 1      Amendment of Evidence Act 1995 No 25**

**Schedule 1 [2]** inserts proposed section 89A into the *Evidence Act 1995* (the *Principal Act*) to achieve the object described in the Overview above.

**Schedule 1 [1]** makes a consequential amendment to section 89 of the Principal Act.

**Schedule 1 [3]** enables the making of regulations of a savings and transitional nature consequent on the enactment of the proposed Act.

**Schedule 1 [4]** inserts savings and transitional provisions into Schedule 2 to the Principal Act.