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Chairman  
Legislation Review Committee  
Parliament of NSW  
Macquarie Street  
Sydney NSW 2000

13<sup>th</sup> October 2005

Dear Sir/Madam,

I would like to submit my thoughts regarding the committee's review of the Right To Silence.

I have no formal legal training and so please excuse my laypersons way of writing. These answers are my own beliefs and do not represent any organization.

Question 1

None. If someone has committed an offence then they need to face the consequences of those actions. If the incriminating information was obtained illegally then the person(s) who collected that information should face the appropriate charges but don't exclude the information obtained. If it is information that leads to a better understanding of the truth then let it stand.

Question 2

None. Same reason as question 1.

Question 3

Any person being questioned should be informed of all legal rights that they have. I don't believe that the right to silence should be one of them. Somebody being questioned should have the right to enough time to gather their thoughts so that they can properly answer the questions being asked.

Question 4

A person should not have the right to refuse to answer a question if it means the adding of information so that the truth of an enquiry can be established. The right to object to answering a question seems to suggest that we as a community condone the deliberate hiding of the truth. I believe that society would always be better served by everybody just telling the truth.

Question 5

All interviews of this nature should be videorecorded with both parties given a copy.

Question 6

Nature of the right to silence

- (1) The state should always have the right to compel people to answer questions that will assist in determining the truth of a given situation. Our society would only benefit if telling the truth, whether it meant then accepting punishment, was a basic tenant. This

follows the laws of cause and effect. The right to silence appears as an attempt to circumvent this law of nature.

- (2) If someone has done the wrong thing then they should accept the appropriate punishment. Hiding behind an artificially constructed right seems rather childish and sends a very poor message to the younger members of the community. It's saying if you do the wrong thing then keep quiet and hope that there is no other evidence around to incriminate you.
- (3) Same principle can be applied to this question. Is the focus on determining the truth or on encouraging people to hide it. Another poor lesson for young Australians.
- (4) Same principle.
- (5) Same principle.
- (6) A jury should be allowed to make up their own mind as to the accused persons unwillingness to answer questions. If the accused was actually there at the time of the crime then who better to describe what actually happened. Failure to do this shows nothing but contempt and obstruction of the court case.

#### Justification for abrogation

- (a) The questions being asked must be related to determining the truth of a particular matter. If the person asking the question cannot explain how a particular question will assist the court/commission in arriving at the truth of the matter then it should not be asked. There is no place for irrelevant questions.
  - (b) Not answered
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- (a) Irrelevant. If the principle is based on arriving at the truth then all lawful means should be used, including direct questioning of the person.

- (b) Since the truth is the truth, then all means are of value. All pieces of evidence, including testimony, should point to the one thing, the truth.
- (c) People need to accept responsibility for their actions. If being forced (NOT physically) to answer questions reveals that someone has done the wrong thing then so be it. They should accept it and not try to avoid their responsibilities. Rights should not exist to encourage people to deny their actions.
- (d) All interviews should be videotaped with each party receiving a copy. All documents need to be copied for both parties.
- (e) Yes. The questions or requests for documents must be relevant to the investigation.

#### Future Use of Information

- (a) Information and more importantly the truth is just that. The truth is not something that has a use by date. If by telling the truth the person has committed a number of offences then they should have to face the consequences of all of them, whatever the time frame.
- (b) (i) The person can be informed however it should not make any difference. If they are going to tell the truth then whether there is the possibility that they may have committed an offence or not makes absolutely no difference as to what is the truth. The truth is the truth.
  - (ii) There should not be a provision against using the truth in future investigations.
  - (iii) People should not be immune from the consequences of their actions.

Yours faithfully,

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S. Cashman