

**Government Response to the Law Commission report  
The Third Review of the Evidence Act 2006  
Te Arotake Tuatoru i te Evidence Act 2006**

**Presented to the House of Representatives**

# Government Response to the Law Commission report

## The Third Review of the Evidence Act 2006

### Te Arotake Tuatoru i te Evidence Act 2006

#### Introduction

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The Government has carefully considered the Law Commission report, *The Third Review of the Evidence Act 2006 Te Arotake Tuatoru i te Evidence Act 2006* (the report).

The Government thanks Te Aka Matua o te Ture Law Commission for their comprehensive review of the Evidence Act 2006 (the Act). This is the third and final five-yearly statutory operational review of the Act by the Law Commission.

The report was presented to the House of Representatives on 22 March 2024, and the Government responds to the report in accordance with Cabinet Office circular CO (09) 1.

The Government has carefully considered the Law Commission's recommendations and has identified the need for further policy work and analysis of the operational and implementation concerns that flow from the issues raised.

#### The Law Commission's recommendations

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In its report, the Law Commission makes 27 recommendations relating to the Act. The report concludes that the Act is generally working well in practice, however there are some areas where reform is necessary or desirable.

The issues addressed in the report are broad-ranging, and almost all of the recommendations involve amendments to the Act. This is a result of the operational nature of the review. The topics canvassed include hearsay evidence, prison informant evidence, veracity evidence, improperly obtained evidence, propensity evidence, evidence of mātauranga and tikanga, legal and litigation privilege, medical privilege in criminal proceedings, and cross-examination.

Some recommendations are relatively minor and technical, such as the amendments relating to legal and litigation privilege that correct apparent drafting errors or clarify ambiguity in the wording of those provisions in line with the underlying policy intent.

However, some recommendations represent a significant shift in current law and policy; particularly those relating to hearsay statements from fearful witnesses (recommendations 3 and 4), improperly obtained evidence (recommendations 8-10), prison informant evidence (recommendation 11), and the circumstances in which a defendant may put their veracity in issue (recommendation 13). The recommendations relating to improperly obtained evidence and prison informant evidence were the result of the Commission being directed to examine these issues in the terms of the reference for the review from the then Minister of Justice. The Government will need to take time to work through these proposals in greater detail.

Other notable proposals include a recommendation to change the process for admitting evidence of tikanga and mātauranga by introducing a new exception to the hearsay rule (recommendation 1) and clarifying the way that prior acquittal evidence is assessed (recommendation 14).

The Commission also recommends that the Ministry of Justice should examine protections for counselling notes, and other personal records of complainants in sexual and family violence cases and of parties and children in civil cases. Similar concerns were also raised in submissions to Parliament on the Sexual Violence Legislation Bill 2019. Submitters described victims being distressed by the disclosure of such information during the court process, causing re-traumatisation.

## **Government response**

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The Government thanks the Law Commission for its thorough work in this third review of the Act, and acknowledges the substantial work done on the two previous reviews in 2013 and 2019.

The Government acknowledges the Law Commission's finding that the Act is generally working well in practice although there are still some areas of the Act which may benefit from reform.

The Government considers that further policy work is required to carefully analyse the report's recommendations and assess the potential operational impacts of the proposals, particularly in relation to the more substantial recommendations. Evidence law is a complex area with considerable potential for unintended consequences and adverse effects. Due to this complexity, and the need for legislative reform to give effect to the majority of the recommendations, advancing this work is likely to take some time. Resourcing this work will need to be balanced against other Government priorities.