

## **Te Arotake Tuatoru i te Evidence Act 2006 | The Third Review of the Evidence Act 2006**

### **FREQUENTLY ASKED QUESTIONS**

This document is [published alongside the terms of reference](#) for Te Aka Matua o te Ture | Law Commission's review, Te Arotake Tuatoru i te Evidence Act 2006 | The Third Review of the Evidence Act 2006.

#### **What is this review about?**

This is a review of the Evidence Act 2006. The Evidence Act contains rules that govern what evidence can be admitted in criminal and civil court proceedings and how evidence can be given. Evidence is used to establish the facts on which proceedings are determined, so the rules of evidence are of vital importance to securing the just determination of proceedings.

The Evidence Act is based on the [Evidence Code](#), which the Commission published in 1999 after a decade-long review of the rules of evidence. The Evidence Act transformed the law of evidence in Aotearoa New Zealand by bringing together in one statute most of the previous relevant statutory provisions as well as the relevant common law rules of evidence.

#### **Why is the Commission reviewing the Evidence Act?**

When Parliament enacted the Evidence Act in 2006, it decided that the Commission should review the operation of the Act every five years to make sure it was working well in practice. This requirement for a five-year periodic review was included in section 202 of the Evidence Act.

This is the Commission's third periodic review of the operation of the Evidence Act. The Commission completed its [first review](#) in 2013. It reported that the Act was generally working well and there was widespread acceptance of the value of codification of the law in this area. It made a range of recommendations for reform which resulted in the Evidence Amendment Act 2016.

The Commission completed its [second review](#) in 2019. It reached a similar conclusion to the first review, finding that the Evidence Act was generally working well but that several important further amendments were warranted.

## **What happened to the Commission's recommendations in its second review of the Evidence Act?**

The Commission made 27 recommendations in its second review of the Evidence Act. The [Government Response](#) explains that the Government agreed to progress or accepted the majority of the Commission's recommendations. Some of these recommendations have since been implemented by the Sexual Violence Legislation Act 2021 (discussed below). Other recommendations were intended to be progressed or considered further as part of the development of an Evidence Amendment Bill. At the time of writing, an Evidence Amendment Bill has not been introduced to the House.

## **Will this be the Commission's final review of the Evidence Act?**

In its second review of the Evidence Act the Commission recommended repeal of section 202, noting that no other area of the law is subject to regular statutory review by the Commission in this way. The Government accepted this recommendation and the Statutes Amendment Bill 2021, currently before Parliament, seeks to repeal section 202 from the Evidence Act. If that Bill passes, the Commission will no longer be required to undertake five-year periodic reviews of the Evidence Act.

This would not, however, prevent future reviews of evidence law (or discrete aspects of it). As the Commission observed in the second review, any practical issues that arise in future may be monitored by the Ministry of Justice and could lead to further specific amendments to the Evidence Act. In addition, consideration of broader policy issues could be referred to the Commission as a separate project. For example, in the second review the Commission identified the right to silence as being a broader policy issue that might justify separate examination in future.

## **What are the key stages of the review?**

The Commission will publish an issues paper in mid-2023 and consult widely on how the provisions of the Evidence Act are operating in practice.

The issues paper will summarise the issues the Commission has identified with the operation of the Act and explore possible options for reform. It will provide an opportunity for anyone interested in the review to make submissions. The Commission will take into account feedback received on the issues paper when making its recommendations for reform in its final report.

The Commission must deliver its final report to the Minister of Justice by February 2024. The Government will then decide whether and when it will implement the Commission's recommendations.

## **How will the Commission decide what matters to include in its issues paper and final report?**

The scope of our review is governed by section 202 of the Evidence Act, which requires the Commission to consider:

- the operation of the provisions of the Act since the Commission's last periodic review (completed in 2019); and
- whether repeal or amendment of any provisions of the Act are necessary or desirable.

When considering issues for inclusion in its issues paper and final report, the Commission will be guided by the following questions:

- What issues have been identified with the interpretation and application of the provisions of the Act by the courts, the legal profession, the academic community, government agencies and others?
- Are these issues causing (or do they have the potential to cause) real problems or difficulties in practice?
- Do these issues post-date our last periodic review of the Evidence Act (completed in 2019)? In accordance with section 202 our focus will be on issues that have been identified since the last periodic review, as well as any significant issues that have been identified earlier and are continuing to cause real problems or difficulties in practice.
- Have these issues been comprehensively considered by the Commission in its past periodic reviews (completed in 2013 and 2019)? If the Commission has considered an issue previously, we won't revisit it unless we think there is sufficient new material to warrant reconsideration.

Our [terms of reference](#) highlight some of the key matters this review will examine. We have highlighted these particular matters because they have the potential to raise important questions of policy and have been the subject of a considerable degree of comment in recent years. These and other issues with the Evidence Act's provisions will be explored in the issues paper.

### **Why isn't the Commission reviewing the operation of the Sexual Violence Legislation Act 2021?**

This review will not examine the operation of changes made to the Evidence Act by the Sexual Violence Legislation Act 2021 (SVLA). The SVLA amended several provisions of the Evidence Act in response to two Law Commission reports, *The Justice Response to Victims of Sexual Violence* (NZLC R136, 2015) and *The Second Review of the Evidence Act 2006* (NZLC R142, 2019). Some changes came into force in December 2021 while others won't come into force until December 2022. The changes apply only to proceedings commenced on or after the date the changes take effect. In these circumstances, it would be premature to review how these changes are operating in practice.

### **How can I be involved?**

The Commission will be publishing an issues paper for public consultation in mid-2023. The issues paper will set out issues we have identified with the operation of the Evidence Act and propose some options for reform. You can let us know what you think about the issues and reform options by making a submission on our issues paper.

You can [sign up for updates on this project](#) to stay informed about publication of the issues paper and launch of the consultation period in mid-2023.