

MEDIA RELEASE

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Douglas White
President
Law Commission

Law Commission proposes changes to evidence law

The Law Commission today publishes its report *The Second Review of the Evidence Act 2006 – Te Arotake Tuarua i te Evidence Act 2006*. The report considers a range of issues with the Evidence Act, the legislation governing evidence in criminal and civil cases, and makes 27 recommendations for reform. These include reforms designed to improve the court process for victims of sexual and family violence, while at the same time ensuring defendants' rights to a fair trial are preserved.

“Our review showed the Evidence Act is generally working well but that it could go further to assist victims of sexual and family violence” said Law Commission President, the Hon Sir Douglas White. “Our consultation highlighted that the process of giving evidence can be particularly stressful for complainants in sexual and family violence cases. Our review has also shown there is a risk of jurors being affected by myths and misconceptions about sexual and family violence. We are therefore recommending a number of improvements to the rules of evidence in sexual and family violence cases.” These recommendations include:

- There should be tighter controls on admitting evidence of a complainant's previous sexual experience with the defendant and evidence of a complainant's sexual disposition.
- Family violence complainants should be entitled to record their evidence (including evidence-in-chief and cross-examination) in advance of the trial and have the video played at the hearing. The Commission has previously made similar recommendations in relation to sexual violence complainants.
- Judges should be required to intervene when questioning of a witness is unacceptable.
- Judicial directions should be developed to address myths and misconceptions that jurors might hold in sexual and family violence cases.

The Commission has also recommended a new provision to clarify that a court may regulate its



procedures for giving evidence in a manner that recognises tikanga Māori. “While some judges already take steps to recognise tikanga where appropriate, such as allowing karakia to be given when evidence is of a sensitive nature, we think an express provision in the Act would encourage consistent consideration of Māori values and practices when evidence is given”, said Sir Douglas.

The Commission’s report also recommends a number of reforms to address practical problems with the operation of the Act. These include:

- Evidence of a conviction should be admissible as presumptive proof (rather than conclusive proof) that the person convicted committed that offence.
- The Act should clarify that judges may not draw an inference of guilt from a defendant’s pre-trial silence.
- The restrictions on defence counsel access to video interviews of complainants in sexual and violent cases should be removed from the Act.
- Expert witnesses should comply with a code of conduct when giving evidence in criminal proceedings (as they are required to do in civil proceedings).
- A statement made by a defendant in furtherance of a conspiracy or joint enterprise should be admissible against a co-defendant, regardless of whether the statement is hearsay.
- The Evidence Regulations 2007 should be the subject of a separate review.

The Law Commission formally submitted its report to the Minister of Justice, the Hon Andrew Little, on 28 February 2019. The report includes a draft Evidence Amendment Bill, which reflects the Commission’s recommended amendments to the Act.

Background:

For nearly 30 years the Law Commission has been engaged in reforming the law of evidence to ensure it is clear, simple and accessible and that it facilitates the fair, just and speedy resolution of disputes. The Evidence Act 2006 arose out of an Evidence Code produced by the Law Commission in 1999 after a decade of research and consultation. The Act requires the Law Commission to review the operation of the Act every five years and report to the Minister of Justice on whether any provisions should be amended or repealed. This is the second such review. During the two year review, the Commission consulted widely with practitioners, academics, the judiciary, community groups and other interested people.

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For further information and comment, contact: The Hon Sir Douglas White, Law Commission President, tel (04) 914 4839

This media release and a copy of the publication is available from our website at <https://www.lawcom.govt.nz/publication/report/second-review-evidence-act-2006-%E2%80%93-te-arotake-i-te-evidence-act-2006>