**Version**
**as at 23 September 2026**

# Evidence Act 2006

| | |
|---|---|
| Public Act | 2006 No 69 |
| Date of assent | 4 December 2006 |
| Commencement | see section 2 |

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**Note**

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

**This Act is administered by the Ministry of Justice.**

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## 1 Title

This Act is the Evidence Act 2006.

## 2 Commencement

(1) This Act comes into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more Orders in Council may be made appointing different dates for different provisions.

(2) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

| **Legislation Act 2019 requirements for secondary legislation made under this section** | | |
|---|---|---|
| **Publication** | PCO must publish it on the legislation website and notify it in the *Gazette* | LA19 s 69(1)(c) |
| **Presentation** | The Minister must present it to the House of Representatives | LA19 s 114, Sch 1 cl 32(1)(a) |
| **Disallowance** | It may be disallowed by the House of Representatives | LA19 ss 115, 116 |

*This note is not part of the Act.*

Section 2(1): sections 203–214 brought into force, on 18 July 2007, by clause 2(1) of the Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Section 2(1): Evidence Act (except sections 203–214) brought into force, on 1 August 2007, by clause 2(2) of the Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Section 2(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

# Part 1
# Preliminary provisions

*General*

## 3 Act to bind the Crown

This Act binds the Crown.

## 4 Interpretation

(1) In this Act, unless the context otherwise requires,—

**admission**, in relation to a civil proceeding, means a statement that is—

(a) made by a person who is or becomes a party to the proceeding; and

(b) adverse to the person's interest in the outcome of the proceeding

**child** means a person under the age of 18 years

**child complainant**, in relation to any proceeding, means a complainant who is a child when the proceeding commences

**child witness**, in relation to any proceeding, means a witness who is a child when the proceeding commences, and includes a child complainant but does not include a defendant who is a child

**common bundle** means a compilation of documents that the parties to a civil proceeding wish to offer in evidence at the hearing of the proceeding, being a compilation that—

(a) is prepared in accordance with rules of court or the practice of a court; and

(b) is filed in court

**communication assistance** means any assistance (for example, oral or written interpretation of a language, written assistance, or technological assistance) that enables or facilitates communication with a person who for any reason (for

example, insufficient proficiency in the English language, age, or a disability) requires assistance to—

(a) understand court proceedings; or

(b) give evidence

**conviction** means,—

(a) in sections 47 to 49, a subsisting conviction entered before or after the commencement of this Act by—

(i) a New Zealand court or a court-martial conducted under New Zealand law in New Zealand or elsewhere; or

(ii) a court established by, or a court-martial conducted under, the law of Australia, United Kingdom, Canada, or any other foreign country in respect of which an Order in Council has been made under section 140(5); and

(b) in sections 139 and 140, a subsisting conviction entered before or after the commencement of this Act by a New Zealand or foreign court or a court-martial conducted under New Zealand or foreign law

**copy**, in relation to a document, includes a copy of a copy and a copy that is not an exact copy of the document but is identical to the document in all relevant respects

**country** includes a State, territory, province, or other part of a country

**court** includes the Supreme Court, the Court of Appeal, the High Court, and the District Court

**District Court** includes—

(a) the Family Court; and

(b) the Youth Court

**document** means—

(a) any material, whether or not it is signed or otherwise authenticated, that bears symbols (including words and figures), images, or sounds or from which symbols, images, or sounds can be derived, and includes—

(i) a label, marking, or other writing that identifies or describes a thing of which it forms part, or to which it is attached:

(ii) a book, map, plan, graph, or drawing:

(iii) a photograph, film, or negative; and

(b) information electronically recorded or stored, and information derived from that information

**enforcement agency** means the New Zealand Police or any body or organisation that has a statutory responsibility for the enforcement of an enactment

**expert** means a person who has specialised knowledge or skill based on training, study, or experience

**expert evidence** means the evidence of an expert based on the specialised knowledge or skill of that expert and includes evidence given in the form of an opinion

**Family Court proceeding**, in sections 106BA to 106BC, includes a proceeding in the District Court under—

(a) section 15 of the Family Court Act 1980; or

(b) section 151 of the Oranga Tamariki Act 1989

**family violence** has the same meaning as in section 9 of the Family Violence Act 2018

**family violence case**—

(a) means a criminal proceeding in which a person is charged with, or is waiting to be sentenced or otherwise dealt with for, a family violence offence; but

(b) does not include a sexual case

**family violence evidence**, in sections 106BA to 106BC, in relation to a witness, means evidence—

(a) given or to be given by the witness orally in a Family Court proceeding (whether evidence in chief, evidence given in cross-examination, or evidence in re-examination given about matters arising out of evidence given in cross-examination); and

(b) of family violence that the witness experienced as a person against whom the family violence was inflicted; and

(c) that is not a Police video record—

(i) of an interview with the witness; and

(ii) made under regulations made under section 201 to be offered by the prosecution as the witness's evidence in chief in a criminal proceeding under section 106; and

(iii) that a Family Court Judge under those regulations orders access to, or disclosure of, for a Family Court proceeding; and

(d) that is not the wishes or views of a child or young person ascertained by the court or Judge (at, or apart from, any hearing of any application or proceeding) under any Act or rules of court

**family violence offence** means an offence—

(a) against any enactment (including the Family Violence Act 2018); and

(b) involving family violence (as defined in section 9 of that Act)

**foreign country** means a country other than New Zealand

**give evidence** means to give evidence in a proceeding—

(a) in the ordinary way, as described in section 83; or

(b) in an alternative way, as provided for by section 105; or

(c) in any other way provided for under this Act or any other enactment

**harassment** has the same meaning as in section 3 of the Harassment Act 1997

**hearsay rule** means the rule described in section 17

**hearsay statement** means a statement that—

(a) was made by a person other than a witness; and

(b) is offered in evidence at the proceeding to prove the truth of its contents

**hostile**, in relation to a witness, means that the witness—

(a) exhibits, or appears to exhibit, a lack of veracity when giving evidence unfavourable to the party who called the witness on a matter about which the witness may reasonably be supposed to have knowledge; or

(b) gives evidence that is inconsistent with a statement made by that witness in a manner that exhibits, or appears to exhibit, an intention to be unhelpful to the party who called the witness; or

(c) refuses to answer questions or deliberately withholds evidence

**incriminate** means to provide information that is reasonably likely to lead to, or increase the likelihood of, the prosecution of a person for a criminal offence

**international organisation** means an organisation of States or governments of States or an organ or agency of an organisation of that kind, and includes the Commonwealth Secretariat

**interpreter** includes a person who provides communication assistance to a defendant or a witness

**investigative questioning** means questioning in connection with the investigation of an offence or a possible offence by, or in the presence of,—

(a) a member of the Police; or

(b) a person whose functions include the investigation of offences

**Judge** includes a Justice of the Peace, a community magistrate, and any tribunal

**lawyer** means a barrister or solicitor, as those terms are defined in section 6 of the Lawyers and Conveyancers Act 2006

**leading question** means a question that directly or indirectly suggests a particular answer to the question

**offer evidence** includes eliciting evidence by cross-examining a witness called by another party

**opinion**, in relation to a statement offered in evidence, means a statement of opinion that tends to prove or disprove a fact

**opinion rule** means the rule described in section 23

**party** means a party to a proceeding

**Police employee** has the same meaning as in section 4 of the Policing Act 2008

**previous consistent statements rule** means the rule described in section 35

**previous statement** means a statement made by a witness at any time other than at the hearing at which the witness is giving evidence

**proceeding** means—

(a) a proceeding conducted by a court; and

(b) any interlocutory or other application to a court connected with that proceeding

**propensity rule** means the rule described in section 40

**public document**—

(a) means a document that—

(i) forms part of the official records of the legislative, executive, or judicial branch of the Government of New Zealand or of a foreign country or of a person or body holding a public office or exercising a function of a public nature under the law of New Zealand or a foreign country; or

(ii) forms part of the official records of an international organisation; or

(iii) is being kept by, or on behalf of, a branch of any government, person, body, or organisation referred to in subparagraph (i) or (ii), for the purpose of carrying out the official functions of that government, person, body, or organisation; but

(b) in sections 145 to 147, has the meaning set out in section 145

**seal** includes a stamp

**self-incrimination** means the provision by a person of information that could reasonably lead to, or increase the likelihood of, the prosecution of that person for a criminal offence

**sexual case** means—

(a) a criminal proceeding in which a person is charged with, or is waiting to be sentenced or otherwise dealt with for,—

(i) an offence against any of the provisions of sections 128 to 142A or section 144A of the Crimes Act 1961; or

(ii) any other offence against a person of a sexual nature; and

(b) for the purpose of sections 40(3)(b), 44 to 44A, and 95(1) only, a civil proceeding that involves issues in dispute of a sexual nature

**sexual case complainant or propensity witness** means a person of any age who is 1 or both of the following:

(a) a complainant who is to give or is giving evidence in a sexual case:

(b) a witness for the prosecution who is to give or is giving evidence in a sexual case that is or includes propensity evidence (as defined in section 40(1)) related to their personal experience of a sexual nature with any 1 or more defendants

**sexual reputation**, of a complainant, for the purposes of section 44AA,—

(a) means the way in which the complainant is regarded, by others, in sexual matters (including, without limitation, as having a particular sexual disposition or experience); but

(b) excludes any witness's evidence that is derived from the witness's personal sexual experience with, or personal knowledge of the sexual disposition of, the complainant (evidence of which is subject to section 44)

**stalking and harassment** has the same meaning as in section 216O of the Crimes Act 1961

**statement** means—

(a) a spoken or written assertion by a person of any matter; or

(b) non-verbal conduct of a person that is intended by that person as an assertion of any matter

**veracity** has the meaning given in section 37

**veracity rules** means the rules described in section 37

**video record** means a recording on any medium from which a moving image may be produced by any means; and includes an accompanying sound track

**violent case** means a criminal proceeding in which a person is charged with, or is waiting to be sentenced or otherwise dealt with for,—

(a) any of the offences listed in section 87(5)(b) of the Sentencing Act 2002; or

(b) any other offence of a violent nature against a person

**visual identification evidence** means evidence that is—

(a) an assertion by a person, based wholly or partly on what that person saw, to the effect that a defendant was present at or near a place where an act constituting direct or circumstantial evidence of the commission of an offence was done at, or about, the time the act was done; or

(b) an account (whether oral or in writing) of an assertion of the kind described in paragraph (a)

**voice identification evidence** means evidence that is an assertion by a person to the effect that a voice, whether heard first-hand or through mechanical or electronic transmission or recording, is the voice of a defendant or any other

person who was connected with an act constituting direct or circumstantial evidence of the commission of an offence

**witness** means a person who gives evidence and is able to be cross-examined in a proceeding.

(2) A hearing commences for the purposes of this Act when, at the substantive hearing of the issues that are the subject of proceedings, the party having the right to begin commences to state that party's case or, having waived the right to make an opening address, calls that party's first witness.

(3) *[Repealed]*

Section 4(1) **child witness**: inserted, on 8 January 2017, by section 4(1) of the Evidence Amendment Act 2016 (2016 No 44).

Section 4(1) **communication assistance**: replaced, on 21 December 2022, by section 4(1) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 4(1) **court**: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 4(1) **District Court**: replaced, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 4(1) **domestic violence**: repealed, on 3 December 2018, by section 55(1) of the Family Violence (Amendments) Act 2018 (2018 No 47).

Section 4(1) **Family Court proceeding**: inserted, on 26 February 2026, by section 4 of the Evidence (Giving Family Violence Evidence in Family Court Proceedings) Amendment Act 2025 (2025 No 44).

Section 4(1) **family violence**: inserted, on 3 December 2018, by section 55(2) of the Family Violence (Amendments) Act 2018 (2018 No 47).

Section 4(1) **family violence case**: inserted, on 3 December 2018, by section 55(2) of the Family Violence (Amendments) Act 2018 (2018 No 47).

Section 4(1) **family violence evidence**: inserted, on 26 February 2026, by section 4 of the Evidence (Giving Family Violence Evidence in Family Court Proceedings) Amendment Act 2025 (2025 No 44).

Section 4(1) **family violence offence**: inserted, on 3 December 2018, by section 55(2) of the Family Violence (Amendments) Act 2018 (2018 No 47).

Section 4(1) **lawyer**: amended, on 8 January 2017, by section 4(2) of the Evidence Amendment Act 2016 (2016 No 44).

Section 4(1) **Police employee**: inserted, on 3 December 2018, by section 55(2) of the Family Violence (Amendments) Act 2018 (2018 No 47).

Section 4(1) **sexual case**: replaced, on 21 December 2021, by section 4(2) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 4(1) **sexual case complainant or propensity witness**: inserted, on 21 December 2022, by section 4(3) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 4(1) **sexual reputation**: inserted, on 21 December 2021, by section 4(4) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 4(1) **stalking and harassment**: inserted, on 26 May 2026, by section 9 of the Crimes Legislation (Stalking and Harassment) Amendment Act 2025 (2025 No 72).

Section 4(1) **veracity**: inserted, on 8 January 2017, by section 4(1) of the Evidence Amendment Act 2016 (2016 No 44).

Section 4(1) **violent case**: inserted, on 8 January 2017, by section 4(1) of the Evidence Amendment Act 2016 (2016 No 44).

Section 4(3): repealed, on 1 July 2019, by section 55(4) of the Family Violence (Amendments) Act 2018 (2018 No 47).

### 4A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

Section 4A: inserted, on 21 December 2021, by section 5 of the Sexual Violence Legislation Act 2021 (2021 No 60).

### 5 Application

(1) If there is an inconsistency between the provisions of this Act and any other enactment, the provisions of that other enactment prevail, unless this Act provides otherwise.

(2) Despite subsection (1), if there is any inconsistency between rules of court made under any enactment with the concurrence of 2 or more members of the Rules Committee and this Act, the provisions of this Act prevail.

(3) This Act applies to all proceedings commenced before, on, or after the commencement of this section except—

(a) the continuation of a hearing that commenced before the commencement of this section; and

(b) any appeal from, or review of, a determination made at a hearing of that kind.

Section 5(3): amended, on 4 July 2007, by section 4 of the Evidence Amendment Act 2007 (2007 No 24).

Section 5(3)(a): amended, on 4 July 2007, by section 4 of the Evidence Amendment Act 2007 (2007 No 24).

## *Purpose, principles, and matters of general application*

### 6 Purpose

The purpose of this Act is to help secure the just determination of proceedings by—

(a) providing for facts to be established by the application of logical rules; and

(b) providing rules of evidence that recognise the importance of the rights affirmed by the New Zealand Bill of Rights Act 1990; and

(c) promoting fairness to parties and witnesses; and

(d) protecting rights of confidentiality and other important public interests; and

(e) avoiding unjustifiable expense and delay; and

(f) enhancing access to the law of evidence.

### 7 Fundamental principle that relevant evidence admissible

(1) All relevant evidence is admissible in a proceeding except evidence that is—

(a) inadmissible under this Act or any other Act; or

(b) excluded under this Act or any other Act.

(2) Evidence that is not relevant is not admissible in a proceeding.

(3) Evidence is relevant in a proceeding if it has a tendency to prove or disprove anything that is of consequence to the determination of the proceeding.

### 8 General exclusion

(1) In any proceeding, the Judge must exclude evidence if its probative value is outweighed by the risk that the evidence will—

(a) have an unfairly prejudicial effect on the proceeding; or

(b) needlessly prolong the proceeding.

(2) In determining whether the probative value of evidence is outweighed by the risk that the evidence will have an unfairly prejudicial effect on a criminal proceeding, the Judge must take into account the right of the defendant to offer an effective defence.

### 9 Admission by agreement

(1) In any proceeding, the Judge may,—

(a) with the written or oral agreement of all parties, admit evidence that is not otherwise admissible; and

(b) admit evidence offered in any form or way agreed by all parties.

(2) In a criminal proceeding, a defendant may admit any fact alleged against that defendant so as to dispense with proof of that fact.

(3) In a criminal proceeding, the prosecution may admit any fact so as to dispense with proof of that fact.

### 10 Interpretation of Act

(1) This Act—

(a) must be interpreted in a way that promotes its purpose and principles; and

(b) is not subject to any rule that statutes in derogation of the common law should be strictly construed; but

(c) may be interpreted having regard to the common law, but only to the extent that the common law is consistent with—

(i) its provisions; and

(ii) the promotion of its purpose and its principles; and

(iii) the application of the rule in section 12.

(2) Subsection (1) does not affect the application of Part 2 of the Legislation Act 2019 to this Act.

Section 10(2): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

### 11 Inherent and implied powers not affected

(1) The inherent and implied powers of a court are not affected by this Act, except to the extent that this Act provides otherwise.

(2) Despite subsection (1), a court must have regard to the purpose and the principles set out in sections 6, 7, and 8 when exercising its inherent or implied powers.

### 12 Evidential matters not provided for

If there is no provision in this Act or any other enactment regulating the admission of any particular evidence or the relevant provisions deal with that question only in part, decisions about the admission of that evidence—

(a) must be made having regard to the purpose and the principles set out in sections 6, 7, and 8; and

(b) to the extent that the common law is consistent with the promotion of that purpose and those principles and is relevant to the decisions to be taken, must be made having regard to the common law.

### 12A Rules of common law relating to statements of co-conspirators, persons involved in joint criminal enterprises, and certain co-defendants preserved

*[Repealed]*

Section 12A: repealed, on 8 January 2017, by section 5 of the Evidence Amendment Act 2016 (2016 No 44).

### 13 Establishment of relevance of document

If a question arises concerning the relevance of a document, the Judge may examine it and draw any reasonable inference from it, including an inference as to its authenticity and identity.

### 14 Provisional admission of evidence

If a question arises concerning the admissibility of any evidence, the Judge may admit that evidence subject to evidence being later offered that establishes its admissibility.

### 15 Evidence given to establish admissibility

Evidence given by a witness to prove the facts necessary for deciding whether some other evidence should be admitted in a proceeding—

(a) is admissible in the proceeding if the evidence given by the witness is inconsistent with the witness's subsequent testimony in the proceeding (whether or not the other evidence is admitted):

(b) is not otherwise admissible in the proceeding.

# Part 2
# Admissibility rules, privilege, and confidentiality

## Subpart 1—Hearsay evidence

### 16 Interpretation

(1) In this subpart,—

**business**—

(a) means any business, profession, trade, manufacture, occupation, or calling of any kind; and

(b) includes the activities of any department of State, local authority, public body, body corporate, organisation, or society

**business record**—

(a) means a document—

(i) that is made—

(A) to comply with a duty; or

(B) in the course of a business, and as a record or part of a record of that business; and

(ii) that is made from information supplied directly or indirectly by a person who had, or may reasonably be supposed by the court to have had, personal knowledge of the matters dealt with in the information he or she supplied; but

(b) does not include a Police record that contains any statement or interview by or with an eyewitness, or a complainant, or any other person who purports to have knowledge or information about the circumstances of alleged offending or the issues in dispute in a civil proceeding

**circumstances**, in relation to a statement by a person who is not a witness, include—

(a) the nature of the statement; and

(b) the contents of the statement; and

(c) the circumstances that relate to the making of the statement; and

(d) any circumstances that relate to the veracity of the person; and

(e) any circumstances that relate to the accuracy of the observation of the person

**duty** includes any duty imposed by law or arising under any contract, and any duty recognised in carrying on any business practice.

(2) For the purposes of this subpart, a person is **unavailable as a witness** in a proceeding if the person—

(a) is dead; or

(b) is outside New Zealand and it is not reasonably practicable for him or her to be a witness; or

(c) is unfit to be a witness because of age or physical or mental condition; or

(d) cannot with reasonable diligence be identified or found; or

(e) is not compellable to give evidence.

(3) Subsection (2) does not apply to a person whose statement is sought to be offered in evidence by a party who has caused the person to be unavailable in order to prevent the person from attending or giving evidence.

Section 16(1) **business record**: replaced, on 8 January 2017, by section 6 of the Evidence Amendment Act 2016 (2016 No 44).

### 17 Hearsay rule

A hearsay statement is not admissible except—

(a) as provided by this subpart or by the provisions of any other Act; or

(b) in cases where—

(i) this Act provides that this subpart does not apply; and

(ii) the hearsay statement is relevant and not otherwise inadmissible under this Act.

### 18 General admissibility of hearsay

(1) A hearsay statement is admissible in any proceeding if—

(a) the circumstances relating to the statement provide reasonable assurance that the statement is reliable; and

(b) either—

(i) the maker of the statement is unavailable as a witness; or

(ii) the Judge considers that undue expense or delay would be caused if the maker of the statement were required to be a witness.

(2) This section is subject to sections 20 and 22.

### 19 Admissibility of hearsay statements contained in business records

(1) A hearsay statement contained in a business record is admissible if—

(a) the person who supplied the information used for the composition of the record is unavailable as a witness; or

(b) the Judge considers no useful purpose would be served by requiring that person to be a witness as that person cannot reasonably be expected (having regard to the time that has elapsed since he or she supplied the

information and to all the other circumstances of the case) to recollect the matters dealt with in the information he or she supplied; or

(c) the Judge considers that undue expense or delay would be caused if that person were required to be a witness.

(2) This section is subject to sections 20 and 22.

### 20 Admissibility in civil proceedings of hearsay statements in documents related to applications, discovery, or interrogatories

(1) In a civil proceeding, a hearsay statement in an affidavit made to support or oppose an application is admissible for the purposes of that application if, and to the extent that, the applicable rules of court require or permit a statement of that kind to be made in the affidavit.

(2) In a civil proceeding, a hearsay statement in a document by which documents are discovered or interrogatories are answered is admissible in that proceeding if, and to the extent that, the applicable rules of court require or permit the making of a statement of that kind.

Compare: 1908 No 89 Schedule 2 rr 138(5), 248, 249, 283(2)(a)

### 21 Defendant who does not give evidence in criminal proceeding may not offer own statement

(1) If a defendant in a criminal proceeding does not give evidence, the defendant may not offer his or her own hearsay statement in evidence in the proceeding.

(2) To avoid any doubt, this section does not limit the previous consistent statement rule.

### 22 Notice of hearsay in criminal proceedings

(1) In a criminal proceeding, no hearsay statement may be offered in evidence unless—

(a) the party proposing to offer the statement has complied with the requirements of subsections (2), (3), and (4); or

(b) every other party has waived those requirements; or

(c) the Judge dispenses with those requirements.

(2) A party who proposes to offer a hearsay statement in a criminal proceeding, must provide every other party with a written notice stating—

(a) the party's intention to offer the hearsay statement in evidence; and

(b) the name of the maker of the statement, if known (subject to the terms of any witness anonymity order); and

(c) if the hearsay statement was made orally, the contents of the hearsay statement; and

(d) if section 18(1)(a) is relied on, the circumstances relating to the statement that provide reasonable assurance that the statement is reliable; and

(e) if section 19 is relied on, why the document is a business record; and

(f) if section 18(1)(b)(i) or 19(1)(a) is relied on, why the person is unavailable as a witness; and

(g) if section 18(1)(b)(ii) or 19(1)(c) is relied on, why undue expense or delay would be caused if the person were required to be a witness; and

(h) if section 19(1)(b) is relied on, why no useful purpose would be served by requiring the person to be a witness; and

(i) if section 22A is relied on, why the 3 matters comprising the required threshold in that section are satisfied.

(3) If the hearsay statement was made in writing, the notice must be accompanied by a copy of the document in which the statement is contained.

(4) The requirements of subsections (2) and (3) must be complied with in sufficient time before the hearing to provide all other parties to the proceeding with a fair opportunity to respond to the statement.

(5) The Judge may dispense with the requirements of subsections (2), (3), and (4) if,—

(a) having regard to the nature and contents of the statement, no party is substantially prejudiced by the failure to comply with the requirements; or

(b) compliance was not reasonably practicable in the circumstances; or

(c) the interests of justice so require.

Section 22(2)(g): amended, on 8 January 2017, by section 7(1) of the Evidence Amendment Act 2016 (2016 No 44).

Section 22(2)(h): inserted, on 8 January 2017, by section 7(2) of the Evidence Amendment Act 2016 (2016 No 44).

Section 22(2)(i): inserted, on 8 January 2017, by section 7(2) of the Evidence Amendment Act 2016 (2016 No 44).

### 22A Admissibility of hearsay statement against defendant

In a criminal proceeding, a hearsay statement is admissible against a defendant if—

(a) there is reasonable evidence of a conspiracy or joint enterprise; and

(b) there is reasonable evidence that the defendant was a member of the conspiracy or joint enterprise; and

(c) the hearsay statement was made in furtherance of the conspiracy or joint enterprise.

Section 22A: inserted, on 8 January 2017, by section 8 of the Evidence Amendment Act 2016 (2016 No 44).

## Subpart 2—Statements of opinion and expert evidence

### 23 Opinion rule

A statement of an opinion is not admissible in a proceeding, except as provided by section 24 or 25.

### 24 General admissibility of opinions

A witness may state an opinion in evidence in a proceeding if that opinion is necessary to enable the witness to communicate, or the fact-finder to understand, what the witness saw, heard, or otherwise perceived.

### 25 Admissibility of expert opinion evidence

(1) An opinion by an expert that is part of expert evidence offered in a proceeding is admissible if the fact-finder is likely to obtain substantial help from the opinion in understanding other evidence in the proceeding or in ascertaining any fact that is of consequence to the determination of the proceeding.

(2) An opinion by an expert is not inadmissible simply because it is about—

(a) an ultimate issue to be determined in a proceeding; or

(b) a matter of common knowledge.

(3) If an opinion by an expert is based on a fact that is outside the general body of knowledge that makes up the expertise of the expert, the opinion may be relied on by the fact-finder only if that fact is or will be proved or judicially noticed in the proceeding.

(4) If expert evidence about the sanity of a person is based in whole or in part on a statement that the person made to the expert about the person's state of mind, then—

(a) the statement of the person is admissible to establish the facts on which the expert's opinion is based; and

(b) neither the hearsay rule nor the previous consistent statements rule applies to evidence of the statement made by the person.

(5) Subsection (3) is subject to subsection (4).

### 26 Conduct of experts in civil proceedings

(1) In a civil proceeding, experts are to conduct themselves in preparing and giving expert evidence in accordance with the applicable rules of court relating to the conduct of experts.

(2) The expert evidence of an expert who has not complied with rules of court of the kind specified in subsection (1) may be given only with the permission of the Judge.

Compare: 1908 No 89 Schedule 2 r 330A

## Subpart 3—Defendants' statements, improperly obtained evidence, silence of parties in proceedings, and admissions in civil proceedings

### 27 Defendants' statements offered by prosecution

(1) Evidence offered by the prosecution in a criminal proceeding of a statement made by a defendant is admissible against that defendant, and is admissible against a co-defendant in the proceeding only if it is admitted under section 22A.

(2) However, evidence offered under subsection (1) is not admissible against that defendant if it is excluded under section 28, 29, or 30.

(3) Subpart 1 (hearsay evidence) except section 22A, subpart 2 (opinion evidence and expert evidence), and section 35 (previous consistent statements rule) do not apply to evidence offered under subsection (1).

(4) *[Repealed]*

Section 27(1): amended, on 8 January 2017, by section 9(1) of the Evidence Amendment Act 2016 (2016 No 44).

Section 27(3): amended, on 8 January 2017, by section 9(2) of the Evidence Amendment Act 2016 (2016 No 44).

Section 27(4): repealed, on 8 January 2017, by section 9(3) of the Evidence Amendment Act 2016 (2016 No 44).

### 28 Exclusion of unreliable statements

(1) This section applies to a criminal proceeding in which the prosecution offers or proposes to offer a statement of a defendant if—

(a) the defendant or, if applicable, a co-defendant against whom the statement is offered raises, on the basis of an evidential foundation, the issue of the reliability of the statement and informs the Judge and the prosecution of the grounds for raising the issue; or

(b) the Judge raises the issue of the reliability of the statement and informs the prosecution of the grounds for raising the issue.

(2) The Judge must exclude the statement unless satisfied on the balance of probabilities that the circumstances in which the statement was made were not likely to have adversely affected its reliability.

(3) However, subsection (2) does not have effect to exclude a statement made by a defendant if the statement is offered only as evidence of the physical, mental, or psychological condition of the defendant at the time the statement was made or as evidence of whether the statement was made.

(4) Without limiting the matters that a Judge may take into account for the purpose of applying subsection (2), the Judge must, in each case, take into account any of the following matters that are relevant to the case:

(a) any pertinent physical, mental, or psychological condition of the defendant when the statement was made (whether apparent or not):

(b) any pertinent characteristics of the defendant including any mental, intellectual, or physical disability to which the defendant is subject (whether apparent or not):

(c) the nature of any questions put to the defendant and the manner and circumstances in which they were put:

(d) the nature of any threat, promise, or representation made to the defendant or any other person.

Section 28(1)(a): amended, on 4 July 2007, by section 7 of the Evidence Amendment Act 2007 (2007 No 24).

### 29 Exclusion of statements influenced by oppression

(1) This section applies to a criminal proceeding in which the prosecution offers or proposes to offer a statement of a defendant if—

(a) the defendant or, if applicable, a co-defendant against whom the statement is offered raises, on the basis of an evidential foundation, the issue of whether the statement was influenced by oppression and informs the Judge and the prosecution of the grounds for raising the issue; or

(b) the Judge raises the issue of whether the statement was influenced by oppression and informs the prosecution of the grounds for raising the issue.

(2) The Judge must exclude the statement unless satisfied beyond reasonable doubt that the statement was not influenced by oppression.

(3) For the purpose of applying this section, it is irrelevant whether or not the statement is true.

(4) Without limiting the matters that a Judge may take into account for the purpose of applying subsection (2), the Judge must, in each case, take into account any of the following matters that are relevant to the case:

(a) any pertinent physical, mental, or psychological condition of the defendant when the statement was made (whether apparent or not):

(b) any pertinent characteristics of the defendant including any mental, intellectual, or physical disability to which the defendant is subject (whether apparent or not):

(c) the nature of any questions put to the defendant and the manner and circumstances in which they were put:

(d) the nature of any threat, promise, or representation made to the defendant or any other person.

(5) In this section, **oppression** means—

(a) oppressive, violent, inhuman, or degrading conduct towards, or treatment of, the defendant or another person; or

(b) a threat of conduct or treatment of that kind.

Section 29(1)(a): amended, on 4 July 2007, by section 8 of the Evidence Amendment Act 2007 (2007 No 24).

### 30 Improperly obtained evidence

(1) This section applies to a criminal proceeding in which the prosecution offers or proposes to offer evidence if—

(a) the defendant or, if applicable, a co-defendant against whom the evidence is offered raises, on the basis of an evidential foundation, the issue of whether the evidence was improperly obtained and informs the prosecution of the grounds for raising the issue; or

(b) the Judge raises the issue of whether the evidence was improperly obtained and informs the prosecution of the grounds for raising the issue.

(2) The Judge must—

(a) find, on the balance of probabilities, whether or not the evidence was improperly obtained; and

(b) if the Judge finds that the evidence has been improperly obtained, determine whether or not the exclusion of the evidence is proportionate to the impropriety by means of a balancing process that gives appropriate weight to the impropriety and takes proper account of the need for an effective and credible system of justice.

(3) For the purposes of subsection (2), the court may, among any other matters, have regard to the following:

(a) the importance of any right breached by the impropriety and the seriousness of the intrusion on it:

(b) the nature of the impropriety, in particular, whether it was deliberate, reckless, or done in bad faith:

(c) the nature and quality of the improperly obtained evidence:

(d) the seriousness of the offence with which the defendant is charged:

(e) whether there were any other investigatory techniques not involving any breach of the rights that were known to be available but were not used:

(f) whether there are alternative remedies to exclusion of the evidence that can adequately provide redress to the defendant:

(g) whether the impropriety was necessary to avoid apprehended physical danger to the Police or others:

(h) whether there was any urgency in obtaining the improperly obtained evidence.

(4) The Judge must exclude any improperly obtained evidence if, in accordance with subsection (2), the Judge determines that its exclusion is proportionate to the impropriety.

(5) For the purposes of this section, evidence is **improperly obtained** if it is obtained—

(a) in consequence of a breach of any enactment or rule of law by a person to whom section 3 of the New Zealand Bill of Rights Act 1990 applies; or

(b) in consequence of a statement made by a defendant that is or would be inadmissible if it were offered in evidence by the prosecution; or

(c) unfairly.

(6) Without limiting subsection (5)(c), in deciding whether a statement obtained by a member of the Police has been obtained unfairly for the purposes of that provision, the Judge must take into account guidelines set out in practice notes on that subject issued by the Chief Justice.

Section 30(1)(a): amended, on 4 July 2007, by section 9 of the Evidence Amendment Act 2007 (2007 No 24).

Section 30(2)(b): amended, on 8 January 2017, by section 10 of the Evidence Amendment Act 2016 (2016 No 44).

### 31 Prosecution may not rely on certain evidence offered by other parties

Evidence that is liable to be excluded if offered by the prosecution in a criminal proceeding because of section 28 or 29 or 30 may not be relied on by the prosecution if that evidence is offered by any other party.

### 32 Fact-finder not to be invited to infer guilt from defendant's silence before trial

(1) This section applies to a criminal proceeding in which it appears that the defendant failed—

(a) to answer a question put, or respond to a statement made, to the defendant in the course of investigative questioning before the trial; or

(b) to disclose a defence before trial.

(2) If subsection (1) applies,—

(a) no person may invite the fact-finder to draw an inference that the defendant is guilty from a failure of the kind described in subsection (1); and

(b) if the proceeding is with a jury, the Judge must direct the jury that it may not draw that inference from a failure of that kind.

(3) This section does not apply if the fact that the defendant did not answer a question put, or respond to a statement made, before the trial is a fact required to be proved in the proceeding.

### 33 Restrictions on comment on defendant's right of silence at trial

In a criminal proceeding, no person other than the defendant or the defendant's counsel or the Judge may comment on the fact that the defendant did not give evidence at his or her trial.

### 34 Admissions in civil proceedings

(1) Subpart 1 (hearsay evidence), subpart 2 (opinion evidence and expert evidence), and section 35 (the previous consistent statements rule) do not apply to evidence of an admission offered in a civil proceeding that is—

(a) given orally by a person who saw, heard, or otherwise perceived the admission being made; or

(b) contained in a document.

(2) Evidence of an admission that is a hearsay statement may not be used in respect of the case of a third party unless—

(a) the circumstances relating to the making of the admission provide reasonable assurance that the admission is reliable; or

(b) the third party consents.

(3) In this section, **third party** means a party to the proceeding concerned, other than the party who—

(a) made the admission; or

(b) offered the evidence.

## Subpart 4—Previous consistent statements made by witness

### 35 Previous consistent statements rule

(1) A previous statement of a witness that is consistent with the witness's evidence is not admissible unless subsection (2) applies to the statement.

(2) A previous statement of a witness that is consistent with the witness's evidence is admissible if the statement—

(a) responds to a challenge that will be or has been made to the witness's veracity or accuracy, based on a previous inconsistent statement of the witness or on a claim of invention on the part of the witness; or

(b) forms an integral part of the events before the court; or

(c) consists of the mere fact that a complaint has been made in a criminal case.

(3) *[Repealed]*

Section 35(1): amended, on 8 January 2017, by section 11(1) of the Evidence Amendment Act 2016 (2016 No 44).

Section 35(2): replaced, on 8 January 2017, by section 11(2) of the Evidence Amendment Act 2016 (2016 No 44).

Section 35(3): repealed, on 8 January 2017, by section 11(2) of the Evidence Amendment Act 2016 (2016 No 44).

## Subpart 5—Veracity and propensity

### *Application*

### 36 Application of subpart to evidence of veracity and propensity

(1) This subpart does not apply to evidence about a person's veracity if that veracity is an ingredient of the claim in a civil proceeding or one of the elements of the offence for which a person is being tried in a criminal proceeding.

(2) This subpart does not apply so far as a proceeding relates to bail or sentencing.

(3) Subsection (2) is subject to sections 44 to 44A.

Section 36(3): amended, on 21 December 2021, by section 6 of the Sexual Violence Legislation Act 2021 (2021 No 60).

### *Evidence of veracity*

### 37 Veracity rules

(1) A party may not offer evidence in a civil or criminal proceeding about a person's veracity unless the evidence is substantially helpful in assessing that person's veracity.

(2) In a criminal proceeding, evidence about a defendant's veracity must also comply with section 38 or, as the case requires, section 39.

(3) In deciding, for the purposes of subsection (1), whether or not evidence proposed to be offered about the veracity of a person is substantially helpful, the Judge may consider, among any other matters, whether the proposed evidence tends to show 1 or more of the following matters:

(a) lack of veracity on the part of the person when under a legal obligation to tell the truth (for example, in an earlier proceeding or in a signed declaration):

(b) that the person has been convicted of 1 or more offences that indicate a propensity for a lack of veracity:

(c) any previous inconsistent statements made by the person:

(d) bias on the part of the person:

(e) a motive on the part of the person to be untruthful.

(4) A party who calls a witness—

(a) may not offer evidence to challenge that witness's veracity unless the Judge determines the witness to be hostile; but

(b) may offer evidence as to the facts in issue contrary to the evidence of that witness.

(5) For the purposes of this Act, **veracity** means the disposition of a person to refrain from lying.

Section 37(3)(b): replaced, on 8 January 2017, by section 12(1) of the Evidence Amendment Act 2016 (2016 No 44).

Section 37(5): replaced, on 8 January 2017, by section 12(2) of the Evidence Amendment Act 2016 (2016 No 44).

### 38 Evidence of defendant's veracity

(1) A defendant in a criminal proceeding may offer evidence about his or her veracity.

(2) The prosecution in a criminal proceeding may offer evidence about a defendant's veracity only if—

(a) the defendant has, in court, given oral evidence about his or her veracity or challenged the veracity of a prosecution witness by reference to matters other than the facts in issue; and

(b) the Judge permits the prosecution to do so.

(3) In determining whether to give permission under subsection (2)(b), the Judge may take into account any of the following matters:

(a) the extent to which the defendant's veracity or the veracity of a prosecution witness has been put in issue in the defendant's evidence:

(b) the time that has elapsed since any conviction about which the prosecution seeks to give evidence:

(c) whether any evidence given by the defendant about veracity was elicited by the prosecution.

Section 38(2)(a): replaced, on 8 January 2017, by section 13 of the Evidence Amendment Act 2016 (2016 No 44).

### 39 Evidence of co-defendant's veracity

(1) A defendant in a criminal proceeding may offer evidence that challenges the veracity of a co-defendant only if—

(a) the evidence is relevant to a defence raised or proposed to be raised by the defendant; and

(b) the Judge permits the defendant to do so.

(2) A defendant in a criminal proceeding who proposes to offer evidence that challenges the veracity of a co-defendant must give notice in writing to that co-defendant and every other co-defendant of the proposal to offer that evidence unless the requirement to give notice is waived by—

(a) all the co-defendants; or

(b) the Judge in the interests of justice.

(3) A notice must—

(a) include the contents of the proposed evidence; and

(b) be given in sufficient time to provide all the co-defendants with a fair opportunity to respond to that evidence.

*Evidence of propensity*

### 40 Propensity rule

(1) In this section and sections 41 to 43, **propensity evidence**—

(a) means evidence that tends to show a person's propensity to act in a particular way or to have a particular state of mind, being evidence of acts, omissions, events, or circumstances with which a person is alleged to have been involved; but

(b) does not include evidence of an act or omission that is—

(i) one of the elements of the offence for which the person is being tried; or

(ii) the cause of action in the civil proceeding in question.

(2) A party may offer propensity evidence in a civil or criminal proceeding about any person.

(3) However, propensity evidence about—

(a) a defendant in a criminal proceeding may be offered only in accordance with section 41 or 42 or 43, whichever section is applicable; and

(b) a complainant in a sexual case in relation to the complainant's sexual experience, sexual disposition, or sexual reputation may be offered only in accordance with sections 44 to 44A.

(4) Evidence that is solely or mainly relevant to veracity is governed by the veracity rules set out in section 37 and, accordingly, this section does not apply to evidence of that kind.

Section 40(1)(b)(i): amended, on 21 December 2021, by section 7(1) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 40(1)(b)(ii): amended, on 21 December 2021, by section 7(2) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 40(3)(b): replaced, on 21 December 2021, by section 7(3) of the Sexual Violence Legislation Act 2021 (2021 No 60).

### 41 Propensity evidence about defendants

(1) A defendant in a criminal proceeding may offer propensity evidence about himself or herself.

(2) If a defendant offers propensity evidence about himself or herself, the prosecution or another party may, with the permission of the Judge, offer propensity evidence about that defendant.

(3) Section 43 does not apply to propensity evidence offered by the prosecution under subsection (2).

### 42 Propensity evidence about co-defendants

(1) A defendant in a criminal proceeding may offer propensity evidence about a co-defendant only if—

(a) that evidence is relevant to a defence raised or proposed to be raised by the defendant; and

(b) the Judge permits the defendant to do so.

(2) A defendant in a criminal proceeding who proposes to offer propensity evidence about a co-defendant must give notice in writing to that co-defendant and every other co-defendant of the proposal to offer that evidence unless the requirement to give notice is waived—

(a) by all the co-defendants; or

(b) by the Judge in the interests of justice.

(3) A notice must—

(a) include the contents of the proposed evidence; and

(b) be given in sufficient time to provide all the co-defendants with a fair opportunity to respond to that evidence.

### 43 Propensity evidence offered by prosecution about defendants

(1) The prosecution may offer propensity evidence about a defendant in a criminal proceeding only if the evidence has a probative value in relation to an issue in dispute in the proceeding which outweighs the risk that the evidence may have an unfairly prejudicial effect on the defendant.

(2) When assessing the probative value of propensity evidence, the Judge must take into account the nature of the issue in dispute.

(3) When assessing the probative value of propensity evidence, the Judge may consider, among other matters, the following:

(a) the frequency with which the acts, omissions, events, or circumstances that are the subject of the evidence have occurred:

(b) the connection in time between the acts, omissions, events, or circumstances that are the subject of the evidence and the acts, omissions, events, or circumstances which constitute the offence for which the defendant is being tried:

(c) the extent of the similarity between the acts, omissions, events, or circumstances that are the subject of the evidence and the acts, omissions, events, or circumstances which constitute the offence for which the defendant is being tried:

(d) the number of persons making allegations against the defendant that are the same as, or are similar to, the subject of the offence for which the defendant is being tried:

(e) whether the allegations described in paragraph (d) may be the result of collusion or suggestibility:

(f) the extent to which the acts, omissions, events, or circumstances that are the subject of the evidence and the acts, omissions, events, or circumstances which constitute the offence for which the defendant is being tried are unusual.

(4) When assessing the prejudicial effect of evidence on the defendant, the Judge must consider, among any other matters,—

(a) whether the evidence is likely to unfairly predispose the fact-finder against the defendant; and

(b) whether the fact-finder will tend to give disproportionate weight in reaching a verdict to evidence of other acts or omissions.

*Complainants in sexual cases*

### 44 Evidence of sexual experience or sexual disposition of complainants in sexual cases

(1) In a sexual case, unless a Judge gives permission (on an application made under this subsection and in accordance with section 44A), no evidence can be given and no question can be put to a witness that relates directly or indirectly to—

(a) the sexual experience of the complainant with the defendant (except to establish 1 or both of the following:

(i) the mere fact that the complainant has sexual experience with the defendant:

(ii) an act or omission that is one of the elements of the offence for which the defendant is being tried, or that is the cause of action in the civil proceeding in question):

(b) the sexual experience of the complainant with any person other than the defendant:

(c) the sexual disposition of the complainant.

(2) The Judge must not grant permission under subsection (1) to bring the evidence or ask the question unless satisfied that the evidence or question is of such direct relevance to facts in issue in the proceeding, or the issue of the appropriate sentence, that it would be contrary to the interests of justice to exclude it.

(3) The permission of the Judge is not required to rebut or contradict evidence permitted to be given under this section.

(4) In a sexual case in which the defendant is charged as a party and cannot be convicted unless it is shown that another person committed a sexual offence against the complainant, subsection (1)(b) does not apply to any evidence

given, or any question put, that relates directly or indirectly to the sexual experience of the complainant with that other person.

(5) This section does not authorise evidence to be given or any question to be put that could not be given or put apart from this section.

(6) In this section and sections 40(3)(b), 44AA, and 44A, **complainant**, in a civil proceeding that involves issues in dispute of a sexual nature, means the party, or a witness for the party, who seeks to establish a cause of action or, as the case requires, a defence in the civil proceeding.

Section 44: replaced, on 21 December 2021, by section 8 of the Sexual Violence Legislation Act 2021 (2021 No 60).

### 44AA Evidence of sexual reputation of complainants in sexual cases

(1) In a sexual case, no evidence can be given and no question can be put to a witness that relates directly or indirectly to the sexual reputation of the complainant.

(2) However, in a sexual case that is a specified civil proceeding (as defined in subsection (3)), the Judge may give permission (on an application made under this subsection and in accordance with section 44A) for evidence to be given or a question to be put to a witness that relates directly or indirectly to the sexual reputation of the complainant.

(3) A **specified civil proceeding**, in subsection (2), means a civil proceeding in which the complainant's sexual reputation itself is directly relevant to—

(a) a cause of action in the civil proceeding; or

(b) a defence in the civil proceeding.

(4) The Judge must not grant permission under subsection (2) to bring the evidence or ask the question unless satisfied that the evidence or question is of such direct relevance to facts in issue in the proceeding that it would be contrary to the interests of justice to exclude it.

(5) However, evidence (of the sexual reputation of the complainant) permitted to be given under this section cannot be used—

(a) to support a claim of consent, or of reasonable belief in consent, to an act of a sexual nature; or

(b) to prove the accuracy or truth of that reputation.

(6) The permission of the Judge is not required to rebut or contradict evidence permitted to be given under this section.

(7) This section does not authorise evidence to be given or any question to be put that could not be given or put apart from this section.

Section 44AA: inserted, on 21 December 2021, by section 8 of the Sexual Violence Legislation Act 2021 (2021 No 60).

### 44A Application to offer evidence or ask questions about sexual experience or sexual disposition or sexual reputation of complainants in sexual cases

(1) An application made under section 44(1) or 44AA(2) must comply with subsections (2) to (6) (as relevant) unless—

(a) every other party has waived those requirements; or

(b) the Judge dispenses with those requirements.

(2) A party who proposes to offer evidence about the sexual experience or sexual disposition or sexual reputation of a complainant must make a written application to a Judge, which must include—

(a) the name of the person who will give the evidence; and

(b) the subject matter and scope of the evidence; and

(c) the reasons it is claimed that the evidence meets the test in section 44(2) or 44AA(4).

(3) A party who proposes to ask any question about the sexual experience or sexual disposition or sexual reputation of a complainant must make a written application to a Judge, which must include—

(a) the name of the person who will be asked the question; and

(b) the question; and

(c) the scope of the questioning sought to flow from the initial question; and

(d) the reasons it is claimed that the evidence meets the test in section 44(2) or 44AA(4).

(4) If any document is intended to be produced as evidence of the sexual experience or sexual disposition or sexual reputation of a complainant, the application required under subsection (2) must be accompanied by a copy of the document.

(5) In a criminal proceeding, an application must be made, and a copy of the application must be given to all other parties,—

(a) as early as practicable before the trial so that all other parties are provided with a fair opportunity to respond to the evidence or question:

(b) unless a Judge otherwise permits under subsection (7), no later than when a case management memorandum (for a Judge-alone trial) or a trial callover memorandum (for a jury trial) is filed under the Criminal Procedure Act 2011.

(6) In a civil proceeding, an application must be made, and a copy of the application must be given to all other parties,—

(a) as early as practicable before the evidence is to be offered or the question is to be asked so that all other parties are provided with a fair opportunity to respond to the evidence or question; and

(b) unless a Judge permits otherwise under subsection (7), no later than the close of pleadings date.

(7) The Judge may dispense with any of the requirements in subsections (2) to (6) if,—

(a) having regard to the nature of the evidence or question proposed to be offered or asked, no party is substantially prejudiced by the failure to comply with a requirement; and

(b) compliance was not reasonably practicable in the circumstances; and

(c) it is in the interests of justice to do so.

Section 44A: replaced, on 21 December 2021, by section 8 of the Sexual Violence Legislation Act 2021 (2021 No 60).

## Subpart 6—Identification evidence

### 45 Admissibility of visual identification evidence

(1) If a formal procedure is followed by officers of an enforcement agency in obtaining visual identification evidence of a person alleged to have committed an offence or there was a good reason for not following a formal procedure, that evidence is admissible in a criminal proceeding unless the defendant proves on the balance of probabilities that the evidence is unreliable.

(2) If a formal procedure is not followed by officers of an enforcement agency in obtaining visual identification evidence of a person alleged to have committed an offence and there was no good reason for not following a formal procedure, that evidence is inadmissible in a criminal proceeding unless the prosecution proves beyond reasonable doubt that the circumstances in which the identification was made have produced a reliable identification.

(3) For the purposes of this section, a **formal procedure** is a procedure for obtaining visual identification evidence—

(a) that is observed as soon as practicable after the alleged offence is reported to an officer of an enforcement agency; and

(b) in which the suspect is compared to no fewer than 7 other persons who are similar in appearance to the suspect; and

(c) in which no indication is given to the person making the identification as to who among the persons in the procedure is the suspect; and

(d) in which the person making the identification is informed that the suspect may or may not be among the persons in the procedure; and

(e) that is the subject of a written record of the procedure actually followed that is sworn to be true and complete by the officer who conducted the procedure and provided to the Judge and the defendant (but not the jury) at the hearing; and

(f) that is the subject of a pictorial record of what the witness looked at that is prepared and certified to be true and complete by the officer who conducted the procedure and provided to the Judge and the defendant (but not the jury) at the hearing; and

(g) that complies with any further requirements provided for in regulations made under section 201.

(4) The circumstances referred to in the following paragraphs are **good reasons** for not following a formal procedure:

(a) a refusal of the suspect to take part in the procedure (that is, by refusing to take part in a parade or other procedure, or to permit a photograph or video record to be taken, where the enforcement agency does not already have a photo or a video record that shows a true likeness of that person):

(b) the singular appearance of the suspect (being of a nature that cannot be disguised so that the person is similar in appearance to those with whom the person is to be compared):

(c) a substantial change in the appearance of the suspect after the alleged offence occurred and before it was practical to hold a formal procedure:

(d) no officer involved in the investigation or the prosecution of the alleged offence could reasonably anticipate that identification would be an issue at the trial of the defendant:

(e) if an identification of a person alleged to have committed an offence has been made to an officer of an enforcement agency soon after the offence occurred and in the course of that officer's initial investigation:

(f) if an identification of a person alleged to have committed an offence has been made to an officer of an enforcement agency after a chance meeting between the person who made the identification and the person alleged to have committed the offence.

Section 45(3)(b): amended, on 8 January 2017, by section 16(1) of the Evidence Amendment Act 2016 (2016 No 44).

Section 45(3)(c): amended, on 8 January 2017, by section 16(1) of the Evidence Amendment Act 2016 (2016 No 44).

Section 45(3)(d): amended, on 8 January 2017, by section 16(1) of the Evidence Amendment Act 2016 (2016 No 44).

Section 45(4)(a): amended, on 8 January 2017, by section 16(1) of the Evidence Amendment Act 2016 (2016 No 44).

Section 45(4)(b): amended, on 8 January 2017, by section 16(1) of the Evidence Amendment Act 2016 (2016 No 44).

Section 45(4)(c): amended, on 8 January 2017, by section 16(1) of the Evidence Amendment Act 2016 (2016 No 44).

Section 45(4)(e): amended, on 8 January 2017, by section 16(2) of the Evidence Amendment Act 2016 (2016 No 44).

### 46 Admissibility of voice identification evidence

Voice identification evidence offered by the prosecution in a criminal proceeding is inadmissible unless the prosecution proves on the balance of probabilities that the circumstances in which the identification was made have produced a reliable identification.

### 46A Caution regarding reliance on identification evidence

*[Repealed]*

Section 46A: repealed, on 8 January 2017, by section 17 of the Evidence Amendment Act 2016 (2016 No 44).

## Subpart 7—Evidence of convictions and civil judgments

### 47 Conviction as evidence in civil proceedings

(1) When the fact that a person has committed an offence is relevant to an issue in a civil proceeding, proof that the person has been convicted of that offence is conclusive proof that the person committed the offence.

(2) Despite subsection (1), if the conviction of a person is proved under that subsection, the Judge may, in exceptional circumstances,—

(a) permit a party to the proceeding to offer evidence tending to prove that the person convicted did not commit the offence for which the person was convicted; and

(b) if satisfied that it is appropriate to do so, direct that the issue whether the person committed the offence be determined without reference to that subsection.

(3) This section applies—

(a) whether or not the person convicted is a party to the proceeding; and

(b) whether or not the person was convicted on a guilty plea.

(4) This section—

(a) is subject to section 48; and

(b) does not affect a provision in any other enactment to the effect that a conviction or a finding of fact in a criminal proceeding is to constitute conclusive evidence for the purposes of any other proceeding.

### 48 Conviction as evidence in defamation proceedings

In a proceeding for defamation that is based on a statement to the effect that a person has committed an offence, proof that the person has been convicted of the offence is conclusive proof that the person committed the offence if the conviction—

(a) subsisted at the time that the statement was made; or

(b) subsists at the time of the proceeding.

### 49 Conviction as evidence in criminal proceedings

(1) Evidence of the fact that a person has been convicted of an offence is, if not excluded by any other provision of this Act, admissible in a criminal proceeding and proof that the person has been convicted of that offence is conclusive proof that the person committed the offence.

(2) Despite subsection (1), if the conviction of a person is proved under that subsection, the Judge may, in exceptional circumstances,—

(a) permit a party to the proceeding to offer evidence tending to prove that the person convicted did not commit the offence for which the person was convicted; and

(b) if satisfied that it is appropriate to do so, direct that the issue whether the person committed the offence be determined without reference to that subsection.

(3) A party to a criminal proceeding who wishes to offer evidence of the fact that a person has been convicted of an offence must first inform the Judge of the purpose for which the evidence is to be offered.

### 50 Civil judgment as evidence in civil or criminal proceedings

(1) Evidence of a judgment or a finding of fact in a civil proceeding is not admissible in a criminal proceeding or another civil proceeding to prove the existence of a fact that was in issue in the proceeding in which the judgment was given.

(1A) Evidence of a decision or a finding of fact by a tribunal is not admissible in any proceeding to prove the existence of a fact that was in issue in the matter before the tribunal.

(2) This section does not affect the operation of—

(a) a judgment *in rem*; or

(b) the law relating to *res judicata* or issue estoppel; or

(c) the law relating to an action on, or the enforcement of, a judgment.

Section 50(1A): inserted, on 8 January 2017, by section 18 of the Evidence Amendment Act 2016 (2016 No 44).

## Subpart 8—Privilege and confidentiality

*Matters relating to interpretation and procedure*

### 51 Interpretation

(1) In this subpart,—

**lawyer** has the meaning given to it by section 6 of the Lawyers and Conveyancers Act 2006

**legal adviser** means—

(a) a lawyer; or

(b) a registered patent attorney; or

(c) an overseas practitioner

**overseas practitioner** means—

(a) a person who is entitled to practise as a barrister, or a solicitor, or both in the High Court of Australia or in a Supreme Court of a State or a territory of Australia; or

(b) a person who is entitled to practise in Australia as a registered trade marks attorney; or

(c) a person who is, under the laws of a country other than New Zealand or Australia, entitled to undertake work that, in New Zealand, is normally undertaken by a lawyer or a patent attorney

**registered patent attorney** has the meaning given to it by Part 6 of the Patents Act 2013.

(2) A reference in this subpart to a communication or to any information includes a reference to a communication or to information contained in a document.

(3) Despite subsection (2), in sections 60 to 63, **information** means a statement of fact or opinion to be given—

(a) orally; or

(b) in a document that is prepared or created—

(i) after and in response to a requirement to which any of those sections applies; but

(ii) not for the principal purpose of avoiding criminal prosecution under New Zealand law.

(4) A reference in this subpart to a communication made or received by a person or an act carried out by a person includes a reference to a communication made or received or an act carried out by an authorised representative of that person on that person's behalf.

(5) However, subsection (4) does not apply to any of the following sections:

(a) section 58 (privilege for communications with ministers of religion):

(b) section 59 (privilege in criminal proceedings for information obtained by medical practitioners and clinical psychologists):

(c) section 64 (informers).

(6) *[Repealed]*

Section 51(1) **overseas practitioner** paragraph (b): replaced, on 24 February 2017, by section 8 of the Patents (Trans-Tasman Patent Attorneys and Other Matters) Amendment Act 2016 (2016 No 89).

Section 51(1) **overseas practitioner** paragraph (c): replaced, on 8 January 2017, by section 19(1) of the Evidence Amendment Act 2016 (2016 No 44).

Section 51(1) **registered patent attorney**: inserted, on 24 February 2017, by section 8 of the Patents (Trans-Tasman Patent Attorneys and Other Matters) Amendment Act 2016 (2016 No 89).

Section 51(3): amended, on 8 January 2017, by section 19(2) of the Evidence Amendment Act 2016 (2016 No 44).

Section 51(6): repealed, on 8 January 2017, by section 19(3) of the Evidence Amendment Act 2016 (2016 No 44).

### 52 Orders for protection of privileged or confidential material, or material relating to matters of State

(1) A Judge may order that evidence must not be given in a proceeding of a communication, information, opinion, or document in respect of which a person has a privilege conferred by this subpart and may make an order under this subsection—

(a) on the Judge's own initiative; or

(b) on the application of the person who has the privilege; or

(c) on the application of an interested person other than the person who has the privilege.

(2) A Judge may give a direction under section 69 (confidential information) or section 70 (matters of State) on the Judge's own initiative or on the application of an interested person.

(3) An application under subsection (1) or (2) may be made at any time either before or after any relevant proceeding is commenced.

(4) A Judge may give any directions that are necessary to protect the confidentiality of, or limit the use that may be made of,—

(a) any privileged communication, information, opinion, or document that is disclosed to a Judge or other body or person in compliance with a judicial or administrative order; or

(b) any communication or information that is the subject of a direction under section 69 (confidential information) or section 70 (matters of State) but is disclosed to a Judge or other body or person in compliance with a judicial or administrative order.

*Privilege*

### 53 Effect and protection of privilege

(1) A person who has a privilege conferred by any of sections 54 to 59 in respect of a communication or any information has the right to refuse to disclose in a proceeding—

(a) the communication; and

(b) the information, including any information contained in the communication; and

(c) any opinion formed by a person that is based on the communication or information.

(2) A person who has a privilege conferred by section 60 or 64 in respect of information has the right to refuse to disclose in a proceeding the information.

(3) A person who has a privilege conferred by any of sections 54 to 59 and 64 in respect of a communication, information, opinion, or document may require that the communication, information, opinion, or document not be disclosed in a proceeding—

(a) by the person to whom the communication is made or the information is given, or by whom the opinion is given or the information or document is prepared or compiled; or

(b) by any other person who has come into possession of it with the authority of the person who has the privilege, in confidence and for purposes related to the circumstances that have given rise to the privilege.

(4) If a communication, information, opinion, or document, in respect of which a person has a privilege conferred by any of sections 54 to 59 and 64, is in the possession of a person other than a person referred to in subsection (3), a Judge may, on the Judge's own initiative or on the application of the person who has the privilege, order that the communication, information, opinion, or document not be disclosed in a proceeding.

(5) This Act does not affect the general law governing legal professional privilege, so far as it applies to the determination of claims to that privilege that are made neither in the course of, nor for the purpose of, a proceeding.

### 54 Privilege for communications with legal advisers

(1) A person who requests or obtains professional legal services from a legal adviser has a privilege in respect of any communication between the person and the legal adviser if the communication was—

(a) intended to be confidential; and

(b) made in the course of and for the purpose of—

(i) the person requesting or obtaining professional legal services from the legal adviser; or

(ii) the legal adviser giving such services to the person.

(1A) The privilege applies to a person who requests professional legal services from a legal adviser whether or not the person actually obtains such services.

(2) In this section, **professional legal services** means, in the case of a registered patent attorney or an overseas practitioner whose functions wholly or partly correspond to those of a registered patent attorney, requesting or obtaining or giving information or advice concerning intellectual property.

(3) In subsection (2), **intellectual property** means 1 or more of the following matters:

(a) literary, artistic, and scientific works, and copyright:

(b) performances of performing artists, phonograms, and broadcasts:

(c) inventions in all fields of human endeavour:

(d) scientific discoveries:

(e) geographical indications:

(f) patents, plant varieties, registered designs, registered and unregistered trade marks, service marks, commercial names and designations, and industrial designs:

(g) protection against unfair competition:

(h) circuit layouts and semiconductor chip products:

(i) confidential information:

(j) all other rights resulting from intellectual activity in the industrial, scientific, literary, or artistic fields.

Section 54(1): amended, on 8 January 2017, by section 20(1) of the Evidence Amendment Act 2016 (2016 No 44).

Section 54(1)(b)(i): amended, on 8 January 2017, by section 20(2) of the Evidence Amendment Act 2016 (2016 No 44).

Section 54(1A): inserted, on 8 January 2017, by section 20(3) of the Evidence Amendment Act 2016 (2016 No 44).

Section 54(2): amended, on 8 January 2017, by section 20(4) of the Evidence Amendment Act 2016 (2016 No 44).

### 55 Privilege and solicitors' trust accounts

(1) This section applies to documents that are books of account or accounting records kept—

(a) by a solicitor in relation to any trust account money that is subject to section 112 of the Lawyers and Conveyancers Act 2006; or

(b) by a nominee company that—

(i) is subject to practice rules made by the Council of the New Zealand Law Society pursuant to section 96 of the Lawyers and Conveyancers Act 2006; and

(ii) is operated by a barrister and solicitor or an incorporated law firm as a nominee in respect of securities and documents of title held for clients.

(2) Section 54 does not prevent, limit, or affect—

(a) the issue by a District Court Judge of a search warrant under section 198 of the Summary Proceedings Act 1957 in respect of a document to which this section applies; or

(b) the execution of that warrant in respect of a document to which this section applies; or

(c) the admissibility, in a criminal proceeding for an offence described in the warrant, of any evidence that relates to the contents of a document obtained under the warrant.

### 56 Privilege for preparatory materials for proceedings

(1) Subsection (2) applies to a communication or information only if the communication or information is made, received, compiled, or prepared for the dominant purpose of preparing for a proceeding or an apprehended proceeding (the **proceeding**).

(2) A person (the **party**) who is, or on reasonable grounds contemplates becoming, a party to the proceeding has a privilege in respect of—

(a) a communication between the party and any other person:

(b) a communication between the party's legal adviser and any other person:

(c) information compiled or prepared by the party or the party's legal adviser:

(d) information compiled or prepared at the request of the party, or the party's legal adviser, by any other person.

(3) If the proceeding is under, or to be under, Part 2 of the Oranga Tamariki Act 1989 or the Care of Children Act 2004 (other than a criminal proceeding under that Part or that Act), a Judge may, if satisfied that it is in the best interests of the child to do so, determine that subsection (2) does not apply in respect of any communication or information that the Judge specifies.

Section 56(3): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

### 57 Privilege for settlement negotiations, mediation, or plea discussions

(1) A person who is a party to, or a mediator in, a dispute of a kind for which relief may be given in a civil proceeding has a privilege in respect of any communication between that person and any other person who is a party to the dispute if the communication—

(a) was intended to be confidential; and

(b) was made in connection with an attempt to settle or mediate the dispute between the persons.

(2) A person who is a party to a dispute of a kind for which relief may be given in a civil proceeding has a privilege in respect of a confidential document that the person has prepared, or caused to be prepared, in connection with an attempt to mediate the dispute or to negotiate a settlement of the dispute.

(2A) A person who is a party to a criminal proceeding has a privilege in respect of any communication or document made or prepared in connection with plea discussions in the proceeding.

(2B) However, the court may order the disclosure of the whole or any part of a communication or document privileged under subsection (2A) if the court considers that—

(a) the disclosure is necessary for a subsequent prosecution for perjury; or

(b) the disclosure is necessary to clarify the terms of an agreement reached, if the terms are later disputed or are ambiguous; or

(c) after due consideration of the importance of the privilege and of the rights of a defendant in a criminal proceeding, it would be contrary to justice not to disclose the communication or document or part of it.

(3) This section does not apply to—

(a) the terms of an agreement settling the dispute; or

(b) evidence necessary to prove the existence of such an agreement in a proceeding in which the conclusion of such an agreement is in issue; or

(c) the use in a proceeding, solely for the purposes of an award of costs, of a written offer that—

(i) is expressly stated to be without prejudice except as to costs; and

(ii) relates to an issue in the proceeding; or

(d) the use in a proceeding of a communication or document made or prepared in connection with any settlement negotiations or mediation if the court considers that, in the interests of justice, the need for the communication or document to be disclosed in the proceeding outweighs the need for the privilege, taking into account the particular nature and benefit of the settlement negotiations or mediation.

Compare: 1908 No 89 Schedule 2 r 48G

Section 57 heading: amended, on 8 January 2017, by section 21(1) of the Evidence Amendment Act 2016 (2016 No 44).

Section 57(2A): inserted, on 8 January 2017, by section 21(2) of the Evidence Amendment Act 2016 (2016 No 44).

Section 57(2B): inserted, on 8 January 2017, by section 21(2) of the Evidence Amendment Act 2016 (2016 No 44).

Section 57(3)(c)(ii): amended, on 8 January 2017, by section 21(3) of the Evidence Amendment Act 2016 (2016 No 44).

Section 57(3)(d): inserted, on 8 January 2017, by section 21(4) of the Evidence Amendment Act 2016 (2016 No 44).

### 58 Privilege for communications with ministers of religion

(1) A person has a privilege in respect of any communication between that person and a minister of religion if the communication was—

(a) made in confidence to or by the minister in the minister's capacity as a minister of religion; and

(b) made for the purpose of the person obtaining or receiving from the minister religious or spiritual advice, benefit, or comfort.

(2) A person is a **minister of religion** for the purposes of this section if the person has a status within a church or other religious or spiritual community that requires or calls for that person—

(a) to receive confidential communications of the kind described in subsection (1); and

(b) to respond with religious or spiritual advice, benefit, or comfort.

### 59 Privilege in criminal proceedings for information obtained by medical practitioners and clinical psychologists

(1) This section—

(a) applies to a person who consults or is examined by a medical practitioner or a clinical psychologist for drug dependency or any other condition or behaviour that may manifest itself in criminal conduct; but

(b) does not apply in the case of a person who has been required by an order of a Judge, or by other lawful authority, to submit himself or herself to the medical practitioner or clinical psychologist for any examination, test, or for any other purpose.

(1A) For the purpose of applying subsection (1)(b), there is no privilege under this section in relation to any communication or information (other than any previous medical record or other previous medical information about the person) that is made or obtained for the purpose of the examination or test or for the other purpose concerned.

(2) A person has a privilege in a criminal proceeding in respect of any communication made by the person to a medical practitioner or clinical psychologist that the person believes is necessary to enable the medical practitioner or clinical psychologist to examine, treat, or care for the person for drug dependency or any other condition or behaviour that may manifest itself in criminal conduct.

(3) A person has a privilege in a criminal proceeding in respect of information obtained by a medical practitioner or clinical psychologist as a result of consulting with or examining the person to enable the medical practitioner or clinical psychologist to examine, treat, or care for the person for drug dependency or any other condition or behaviour that may manifest itself in criminal conduct.

(4) A person has a privilege in a criminal proceeding in respect of information consisting of a prescription, or notes of a prescription, for treatment prescribed by a medical practitioner or clinical psychologist as a result of consulting with or examining the person to enable the medical practitioner or clinical psychologist to treat or care for the person for drug dependency or any other condition or behaviour that may manifest itself in criminal conduct.

(5) A reference in this section to a communication to, or information obtained by, a medical practitioner or a clinical psychologist is to be taken to include a reference to a communication to, or information obtained by, a person acting in a

professional capacity on behalf of a medical practitioner or clinical psychologist in the course of the examination or treatment of, or care for, the person by that medical practitioner or clinical psychologist.

(6) In this section,—

**clinical psychologist** means a health practitioner—

(a) who is, or is deemed to be, registered with the Psychologists Board continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of psychology; and

(b) who is by his or her scope of practice permitted to diagnose and treat persons suffering from mental and emotional problems

**drug dependency** means the state of periodic or chronic intoxication produced by the repeated consumption, smoking, or other use of a controlled drug (as defined in section 2(1) of the Misuse of Drugs Act 1975) detrimental to the user, and involving a compulsive desire to continue consuming, smoking, or otherwise using the drug or a tendency to increase the dose of the drug.

Section 59(1A): inserted, on 8 January 2017, by section 22 of the Evidence Amendment Act 2016 (2016 No 44).

### 60 Privilege against self-incrimination

(1) This section applies if—

(a) a person is (apart from this section) required to provide specific information—

(i) in the course of a proceeding; or

(ii) by a person exercising a statutory power or duty; or

(iii) by a Police officer or other person holding a public office in the course of an investigation into a criminal offence or possible criminal offence; and

(b) the information would, if so provided, be likely to incriminate the person under New Zealand law for an offence punishable by a fine or imprisonment.

(2) The person—

(a) has a privilege in respect of the information and cannot be required to provide it; and

(b) cannot be prosecuted or penalised for refusing or failing to provide the information, whether or not the person claimed the privilege when the person refused or failed to provide the information.

(3) Subsection (2) has effect—

(a) unless an enactment removes the privilege against self-incrimination either expressly or by necessary implication; and

(b) to the extent that an enactment does not expressly or by necessary implication remove the privilege against self-incrimination.

(4) Subsection (2) does not enable a claim of privilege to be made—

(a) on behalf of a body corporate; or

(b) on behalf of any person other than the person required to provide the information (except by a legal adviser on behalf of a client who is so required); or

(c) by a defendant in a criminal proceeding when giving evidence about the matter for which the defendant is being tried.

(5) This section is subject to section 63.

### 61 Discretion as to incrimination under foreign law

(1) This section applies to any specific information—

(a) that a person is (apart from this section) required to provide—

(i) in the course of a proceeding; or

(ii) by a person exercising a statutory power or duty; or

(iii) by a Police officer or other person holding a public office in the course of an investigation into a criminal offence or possible criminal offence; and

(b) that would, if so provided, be likely to incriminate the person under foreign law for an offence punishable by—

(i) capital punishment; or

(ii) corporal punishment or imprisonment, or both.

(2) A Judge may direct that the person cannot be required to provide the information if the Judge, after having regard to the likelihood of extradition and other relevant matters, thinks that it would be unreasonable to require the person to incriminate himself or herself by providing the information.

(3) Subsection (2) does not enable a Judge to give a direction in respect of—

(a) a body corporate; or

(b) any person other than the person required to provide the information (except by a legal adviser on behalf of a client who is so required); or

(c) a defendant in a criminal proceeding when giving evidence about the matter for which the defendant is being tried.

### 62 Claiming privilege against self-incrimination in court proceedings

(1) If in a court proceeding it appears to the Judge that a party or witness may have grounds to claim a privilege against self-incrimination in respect of specific information required to be provided by that person, the Judge must satisfy himself or herself that the person is aware of the privilege and its effect.

(2) A person who claims a privilege against self-incrimination in a court proceeding must offer sufficient evidence to enable the Judge to assess whether self-incrimination is reasonably likely if the person provides the required information.

### 63 Replacement of privilege with respect to disclosure requirements in civil proceedings

(1) This section applies to a person who is required by an order of the court made for the purposes of a civil proceeding—

(a) to disclose information; or

(b) to permit premises to be searched; or

(c) to permit documents or things to be inspected, recorded, copied, or removed; or

(d) to secure or produce documents or things.

(2) The person does not have the privilege provided for by section 60 and must comply with the terms of the order.

(3) No evidence of any information that has directly or indirectly been obtained as a result of the person's compliance with the order may be used against the person in any criminal proceeding, except in a criminal proceeding that concerns the falsity of the information.

### 64 Informers

(1) An informer has a privilege in respect of information that would disclose, or is likely to disclose, the informer's identity.

(2) A person is an **informer** for the purposes of this section if the person—

(a) has supplied, gratuitously or for reward, information to an enforcement agency, or to a representative of an enforcement agency, concerning the possible or actual commission of an offence in circumstances in which the person has a reasonable expectation that his or her identity will not be disclosed; and

(b) is not called as a witness by the prosecution to give evidence relating to that information.

(3) An informer may be a member of the Police working undercover.

### 65 Waiver

(1) A person who has a privilege conferred by any of sections 54 to 60 and 64 may waive that privilege either expressly or impliedly.

(2) A person who has a privilege waives the privilege if that person, or anyone with the authority of that person, voluntarily produces or discloses, or consents to the production or disclosure of, any significant part of the privileged com-

munication, information, opinion, or document in circumstances that are inconsistent with a claim of confidentiality.

(3) A person who has a privilege waives the privilege if the person—

(a) acts so as to put the privileged communication, information, opinion, or document in issue in a proceeding; or

(b) institutes a civil proceeding against a person who is in possession of the privileged communication, information, opinion, or document the effect of which is to put the privileged matter in issue in the proceeding.

(4) A person who has a privilege in respect of a communication, information, opinion, or document that has been disclosed to another person does not waive the privilege if the disclosure occurred involuntarily or mistakenly or otherwise without the consent of the person who has the privilege.

(5) A privilege conferred by section 57 (which relates to settlement negotiations or mediation) may be waived only by all the persons who have that privilege.

### 66 Joint and successive interests in privileged material

(1) A person who jointly with some other person or persons has a privilege conferred by any of sections 54 to 60 and 64 in respect of a communication, information, opinion, or document—

(a) is entitled to assert the privilege against third parties; and

(b) is not restricted by any of sections 54 to 60 and 64 from having access or seeking access to the privileged matter; and

(c) may, on the application of a person who has a legitimate interest in maintaining the privilege (including another holder of the privilege), be ordered by a Judge not to disclose the privileged matter in a proceeding.

(2) On or after the death of a person who has a privilege conferred by any of sections 54 to 57 in respect of a communication, information, opinion, or document, the personal representative of the deceased person or other successor in title to property of the deceased person—

(a) is entitled to assert the privilege against third parties; and

(b) is not restricted by any of sections 54 to 57 from having access or seeking access to the privileged matter.

(3) However, subsection (2) applies only to the extent that a Judge is satisfied that the personal representative or other successor in title to property has a justifiable interest in maintaining the privilege in respect of the communication, information, opinion, or document.

(4) A personal representative of a deceased person who has a privilege conferred by any of sections 54 to 57 in respect of a communication, information, opinion, or document and any other successor in title to property of a person who has such a privilege, may, on the application of a person who has a legitimate

interest in maintaining the privilege (including another holder of the privilege), be ordered by a Judge not to disclose the privileged matter in a proceeding.

Section 66(2): replaced, on 8 January 2017, by section 23 of the Evidence Amendment Act 2016 (2016 No 44).

### 67 Powers of Judge to disallow privilege

(1) A Judge must disallow a claim of privilege conferred by any of sections 54 to 59 and 64 in respect of a communication or information if satisfied there is a prima facie case that the communication was made or received, or the information was compiled or prepared, for a dishonest purpose or to enable or aid anyone to commit or plan to commit what the person claiming the privilege knew, or reasonably should have known, to be an offence.

(2) A Judge may disallow a claim of privilege conferred by any of sections 54 to 59 and 64 in respect of a communication or information if the Judge is of the opinion that evidence of the communication or information is necessary to enable the defendant in a criminal proceeding to present an effective defence.

(3) Any communication or information disclosed as the result of the disallowance of a claim of privilege under subsection (2) and any information derived from that disclosure cannot be used against the holder of the privilege in a proceeding in New Zealand.

*Confidentiality*

### 68 Protection of journalists' sources

(1) If a journalist has promised an informant not to disclose the informant's identity, neither the journalist nor his or her employer is compellable in a civil or criminal proceeding to answer any question or produce any document that would disclose the identity of the informant or enable that identity to be discovered.

(2) A Judge of the High Court may order that subsection (1) is not to apply if satisfied by a party to a civil or criminal proceeding that, having regard to the issues to be determined in that proceeding, the public interest in the disclosure of evidence of the identity of the informant outweighs—

(a) any likely adverse effect of the disclosure on the informant or any other person; and

(b) the public interest in the communication of facts and opinion to the public by the news media and, accordingly also, in the ability of the news media to access sources of facts.

(3) The Judge may make the order subject to any terms and conditions that the Judge thinks appropriate.

(4) This section does not affect the power or authority of the House of Representatives.

(5) In this section,—

**informant** means a person who gives information to a journalist in the normal course of the journalist's work in the expectation that the information may be published in a news medium

**journalist** means a person who in the normal course of that person's work may be given information by an informant in the expectation that the information may be published in a news medium

**news medium** means a medium for the dissemination to the public or a section of the public of news and observations on news

**public interest in the disclosure of evidence** includes, in a criminal proceeding, the defendant's right to present an effective defence.

### 69 Overriding discretion as to confidential information

(1) A **direction under this section** is a direction that any 1 or more of the following not be disclosed in a proceeding:

(a) a confidential communication:

(b) any confidential information:

(c) any information that would or might reveal a confidential source of information.

(2) A Judge may give a direction under this section if the Judge considers that the public interest in the disclosure in the proceeding of the communication or information is outweighed by the public interest in—

(a) preventing harm to a person by whom, about whom, or on whose behalf the confidential information was obtained, recorded, or prepared or to whom it was communicated; or

(b) preventing harm to—

(i) the particular relationship in the course of which the confidential communication or confidential information was made, obtained, recorded, or prepared; or

(ii) relationships that are of the same kind as, or of a kind similar to, the relationship referred to in subparagraph (i); or

(c) maintaining activities that contribute to or rely on the free flow of information.

(3) When considering whether to give a direction under this section, the Judge must have regard to—

(a) the likely extent of harm that may result from the disclosure of the communication or information; and

(b) the nature of the communication or information and its likely importance in the proceeding; and

(c) the nature of the proceeding; and

(d) the availability or possible availability of other means of obtaining evidence of the communication or information; and

(e) the availability of means of preventing or restricting public disclosure of the evidence if the evidence is given; and

(f) the sensitivity of the evidence, having regard to—

(i) the time that has elapsed since the communication was made or the information was compiled or prepared; and

(ii) the extent to which the information has already been disclosed to other persons; and

(g) society's interest in protecting the privacy of victims of offences and, in particular, victims of sexual offences.

(4) The Judge may, in addition to the matters stated in subsection (3), have regard to any other matters that the Judge considers relevant.

(5) A Judge may give a direction under this section that a communication or information not be disclosed whether or not the communication or information is privileged by another provision of this subpart or would, except for a limitation or restriction imposed by this subpart, be privileged.

### 70 Discretion as to matters of State

(1) A Judge may direct that a communication or information that relates to matters of State must not be disclosed in a proceeding if the Judge considers that the public interest in the communication or information being disclosed in the proceeding is outweighed by the public interest in withholding the communication or information.

(2) A communication or information that relates to matters of State includes a communication or information—

(a) in respect of which the reason advanced in support of an application for a direction under this section is one of those set out in sections 6 and 7 of the Official Information Act 1982; or

(b) that is official information as defined in section 2(1) of the Official Information Act 1982 and in respect of which the reason advanced in support of the application for a direction under this section is one of those set out in section 9(2)(b) to (k) of that Act.

(3) A Judge may give a direction under this section that a communication or information not be disclosed whether or not the communication or information is privileged by another provision of this subpart or would, except for a limitation or restriction imposed by this subpart, be privileged.

(4) This section does not apply if an application may be made under section 32 of the Security Information in Proceedings Act 2022 in relation to the communication or information concerned (*see also* section 33 of that Act).

Section 70(4): inserted, on 28 November 2023, by section 93 of the Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72).

# Part 3
# Trial process

## Subpart 1—Eligibility and compellability

### 71 Eligibility and compellability generally

(1) In a civil or criminal proceeding,—

(a) any person is eligible to give evidence; and

(b) a person who is eligible to give evidence is compellable to give that evidence.

(2) Subsection (1) is subject to sections 72 to 75.

### 72 Eligibility of Judges, jurors, and counsel

(1) A person who is acting as a Judge in a proceeding is not eligible to give evidence in that proceeding.

(2) A person who is acting as a juror or counsel in a proceeding is not eligible to give evidence in that proceeding except with the permission of the Judge.

(3) In this section, **counsel** includes an employment advocate.

### 73 Compellability of defendants and associated defendants in criminal proceedings

(1) A defendant in a criminal proceeding is not a compellable witness for the prosecution or the defence in that proceeding.

(2) An associated defendant is not compellable to give evidence for or against a defendant in a criminal proceeding unless—

(a) the associated defendant is being tried separately from the defendant; or

(b) the proceeding against the associated defendant has been determined.

(3) A proceeding has been determined for the purposes of subsection (2) if—

(a) the proceeding has been stayed or the charge against the associated defendant has been withdrawn or dismissed; or

(b) the associated defendant has been acquitted of the offence; or

(c) the associated defendant, having pleaded guilty to, or having been found guilty of, the offence, has been sentenced or otherwise dealt with for that offence.

(4) In this section, **associated defendant**, in relation to a defendant in a criminal proceeding, means a person against whom a prosecution has been instituted for—

(a) an offence that arose in relation to the same events as did the offence for which the defendant is being prosecuted; or

(b) an offence that relates to, or is connected with, the offence for which the defendant is being prosecuted.

Section 73(3)(a): amended, on 1 July 2013, by section 5 of the Evidence Amendment Act 2011 (2011 No 89).

### 74 Compellability of Sovereign and certain other persons

None of the following persons is compellable to give evidence:

(a) the Sovereign:

(b) the Governor-General:

(c) a Sovereign or Head of State of a foreign country:

(d) a Judge, in respect of the Judge's conduct as a Judge.

### 75 Bank officer not compellable to produce banking records

(1) In any proceedings to which a bank is not a party, no officer of the bank is compellable—

(a) to produce any banking record of the bank, the contents of which can be proved under section 19; or

(b) to appear as a witness to prove the matters, transactions, and amounts recorded in those records.

(2) Subsection (1) is subject to any contrary order of a Judge made for a special reason.

(3) In this section, **bank** means—

(a) a registered bank within the meaning of section 2 of the Banking (Prudential Supervision) Act 1989:

(b) the Reserve Bank of New Zealand:

(c) any other person carrying on in New Zealand the business of banking.

Section 75(3)(a): amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

### 76 Evidence of jury deliberations

(1) A person must not give evidence about the deliberations of a jury.

(2) Subsection (1) does not prevent the giving of evidence about matters that do not form part of the deliberations of a jury, including (without limitation)—

(a) the competency or capacity of a juror; or

(b) any conduct of, or knowledge gained by, a juror that is believed to disqualify that juror from holding that position.

(3) Subsection (1) does not prevent a person from giving evidence about the deliberations of a jury if the Judge is satisfied that the particular circumstances are

so exceptional that there is a sufficiently compelling reason to allow that evidence to be given.

(4) In determining, under subsection (3), whether to allow evidence to be given in any proceedings, the Judge must weigh—

(a) the public interest in protecting the confidentiality of jury deliberations generally:

(b) the public interest in ensuring that justice is done in those proceedings.

## Subpart 2—Oaths and affirmations

### 77 Witnesses to give evidence on oath or affirmation

(1) A witness in a proceeding who is of or over the age of 12 years must take an oath or make an affirmation before giving evidence.

(2) A witness in a proceeding who is under the age of 12 years—

(a) must be informed by the Judge of the importance of telling the truth and not telling lies; and

(b) must, after being given that information, make a promise to tell the truth, before giving evidence.

(3) Evidence given by a witness to whom subsection (2) applies must be treated in the same manner as if that evidence had been given on oath.

(4) Despite subsections (1) and (2), a witness—

(a) to whom either of those subsections applies may give evidence without taking an oath, or making an affirmation, or making a promise to tell the truth, with the permission of the Judge; and

(b) if the Judge gives permission under paragraph (a), must be informed by the Judge of the importance of telling the truth and not telling lies, before the witness gives evidence; and

(c) after being given the information referred to in paragraph (b), may give evidence that must be treated in the same manner as if that evidence had been given on oath.

### 78 Interpreters to act on oath or affirmation

A person must either take an oath or make an affirmation before acting as an interpreter in a proceeding.

## Subpart 3—Support, communication assistance, and views

### 79 Support persons

(1) A complainant, when giving evidence in a criminal proceeding, is entitled to have 1 person, and may, with the permission of the Judge, have more than 1 person, near him or her to give support.

(1A) A child witness, when giving evidence in a criminal proceeding, is entitled to have 1 person, and may, with the permission of the Judge, have more than 1 person, near him or her to give support.

(2) Any other witness, when giving evidence in any proceeding, may with the permission of the Judge, have 1 or more support persons near him or her to give support.

(2A) Subsections (1), (1A), and (2) apply whether the witness or complainant gives evidence in an alternative way or in the ordinary way.

(3) Despite subsections (1), (1A), and (2), the Judge may, in the interests of justice, direct that support may not be given to a complainant or a child witness or other witness by—

(a) any person; or

(b) a particular person.

(4) A complainant or a child witness or other witness who is to have a support person near him or her while giving evidence must, unless the Judge orders otherwise, disclose to all parties as soon as practicable the name of each person who is to provide that support.

(5) The Judge may give directions regulating the conduct of a person providing or receiving support under this section.

Section 79(1A): inserted, on 8 January 2017, by section 24(1) of the Evidence Amendment Act 2016 (2016 No 44).

Section 79(2A): inserted, on 8 January 2017, by section 24(2) of the Evidence Amendment Act 2016 (2016 No 44).

Section 79(3): replaced, on 8 January 2017, by section 24(3) of the Evidence Amendment Act 2016 (2016 No 44).

Section 79(4): amended, on 8 January 2017, by section 24(4) of the Evidence Amendment Act 2016 (2016 No 44).

### 80 Communication assistance

(1) A defendant in a criminal proceeding is entitled to communication assistance, in accordance with this section and any regulations made under this Act, to—

(a) enable the defendant to understand the proceeding; and

(b) give evidence if the defendant elects to do so.

(2) Communication assistance may be provided to a defendant in a criminal proceeding on the application of the defendant in the proceeding or on the initiative of the Judge.

(3) A witness in a civil or criminal proceeding is entitled to communication assistance in accordance with this section and any regulations made under this Act to enable that witness to give evidence.

(4) Communication assistance may be provided to a witness on the application of the witness or any party to the proceeding or on the initiative of the Judge.

(5) Any statement made in court to a Judge or a witness by a person providing communication assistance must, if known by the person making that statement to be false and intended by that person to be misleading, be treated as perjury for the purposes of sections 108 and 109 of the Crimes Act 1961.

### 81 Communication assistance need not be provided in certain circumstances

(1) Communication assistance need not be provided to a defendant in a criminal proceeding if the Judge considers that the defendant—

(a) can sufficiently understand the proceeding; and

(b) if the defendant elects to give evidence, can sufficiently understand questions put orally and can adequately respond to them.

(2) Communication assistance need not be provided to a witness in a civil or a criminal proceeding if the Judge considers that the witness can sufficiently understand questions put orally and can adequately respond to them.

(3) The Judge may direct what kind of communication assistance is to be provided to a defendant or a witness.

### 82 Views

(1) If, in any proceeding, the Judge considers that a view is in the interests of justice, the Judge may—

(a) hold a view; or

(b) if there is a jury, order a view.

(2) A view may be held or ordered on the application of any party or on the Judge's own initiative.

(3) If there is a jury, a view may be ordered to be held at any time before the jury retires, and the Judge may order a further view of the same place or thing during the jury's deliberations.

(4) If there is not a jury, the Judge may hold a view at any time before judgment is delivered.

(5) Information obtained at a view may be used as though that information had been given in evidence.

(6) Every party, including the defendant in a criminal proceeding, and lawyers for the parties, is entitled to attend a view, but any party, or that party's lawyer, may waive that entitlement.

(7) In this section, **view** means an inspection by the Judge or, if there is a jury, by the Judge and jury, of a place or thing that is not in the courtroom.

## Subpart 4—Questioning of witnesses

### 83 Ordinary way of giving evidence

(1) The ordinary way for a witness to give evidence is,—

(a) in a criminal or civil proceeding, orally in a courtroom in the presence of—

(i) the Judge or, if there is a jury, the Judge and jury; and

(ii) the parties to the proceeding and their counsel; and

(iii) any member of the public who wishes to be present, unless excluded by order of the Judge; or

(b) in a criminal proceeding, in an affidavit filed in the court or by reading a written statement in a courtroom, if both the prosecution and the defendant consent to the giving of evidence in this form; or

(c) in a civil proceeding, in an affidavit filed in the court or by reading a written statement in a courtroom, if—

(i) rules of court permit or require the giving of evidence in this form; or

(ii) both parties consent to the giving of evidence in this form.

(2) An affidavit or a written statement referred to in subsection (1)(b) or (c) may be given in evidence only if it—

(a) is the personal statement of the deponent or maker; and

(b) does not contain a statement that is otherwise inadmissible under this Act.

### 84 Examination of witnesses

(1) Unless this Act or any other enactment provides otherwise, or the Judge directs to the contrary, in any proceeding—

(a) a witness first gives evidence in chief; and

(b) after giving evidence in chief, the witness may be cross-examined by all parties, other than the party calling the witness, who wish to do so; and

(c) after all parties who wish to do so have cross-examined the witness, the witness may be re-examined.

(2) If a witness gives evidence in an affidavit or by reading a written statement in a courtroom, it is to be treated for the purposes of this Act as evidence given in chief.

### 85 Unacceptable questions

(1) In any proceeding, if the Judge considers a question, or the way in which it is asked, is improper, unfair, misleading, needlessly repetitive, or expressed in language that is too complicated for the witness to understand, the Judge must disallow the question or direct that the witness is not obliged to answer it.

(2) Without limiting the matters that the Judge may take into account for the purposes of subsection (1), the Judge may have regard to—

(a) the age, maturity, or vulnerability of the witness; and

(b) any physical, intellectual, psychological, or psychiatric impairment of the witness; and

(c) the linguistic or cultural background or religious beliefs of the witness; and

(d) the nature of the proceeding; and

(e) in the case of a hypothetical question, whether the hypothesis has been or will be proved by other evidence in the proceeding; and

(f) the nature of previous questions and any cumulative impact the questioning may have on the witness.

Section 85(1): replaced, on 21 December 2021, by section 9(1) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 85(2)(a): replaced, on 21 December 2021, by section 9(2) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 85(2)(f): inserted, on 21 December 2021, by section 9(3) of the Sexual Violence Legislation Act 2021 (2021 No 60).

### 86 Restriction of publication

A person commits a contempt of court who prints or publishes,—

(a) without the express permission of the Judge, any question that is disallowed by the Judge, or any evidence given in response to a question of that kind; or

(b) any question, or any evidence given in response to a question, that the Judge has informed a witness he or she is not obliged to answer and has ordered must not be published.

### 87 Privacy as to witness's precise address

(1) In any proceeding, the precise particulars of a witness's address (for example, details of the street and number) may not, without the permission of the Judge, be—

(a) the subject of any question to a witness or included in any evidence given; or

(b) included in any statement or remark made by a witness, lawyer, officer of the court, or any other person.

(2) The Judge must not grant permission under subsection (1) unless satisfied that the question to be put, the evidence to be given, or the statement or remark to be made, is of sufficient direct relevance to the facts in issue that to exclude it would be contrary to the interests of justice.

(3) An application for permission under subsection (1) may be made before or after the commencement of any hearing, and is, where practicable, to be made and dealt with in chambers.

(4) Nothing in subsection (1) applies in a criminal proceeding if it is necessary to disclose the particulars in the charge in order to ensure that the defendant is fully and fairly informed of the charge.

### 88 Restriction on disclosure of complainant's occupation in sexual cases

(1) In a sexual case, except with the permission of the Judge,—

(a) no question may be put to the complainant or any other witness, and no evidence may be given, concerning the complainant's occupation; and

(b) no statement or remark may be made in court by a witness, lawyer, officer of the court, or any other person involved in the proceeding concerning the complainant's occupation.

(2) The Judge must not grant permission under subsection (1) unless satisfied that the question to be put, the evidence to be given, or the statement or remark to be made, is of sufficient direct relevance to the facts in issue that to exclude it would be contrary to the interests of justice.

(3) An application for permission under subsection (1) may be made before or after the commencement of any hearing, and is, where practicable, to be made and dealt with in chambers.

### 89 Leading questions in examination in chief and re-examination

(1) In any proceeding, a leading question must not be put to a witness in examination in chief or re-examination unless—

(a) the question relates to introductory or undisputed matters; or

(b) the question is put with the consent of all other parties; or

(c) the Judge, in exercise of the Judge's discretion, allows the question.

(2) Subsection (1) does not prevent a Judge, if permitted by rules of court, from allowing a written statement or report of a witness to be tendered or treated as the evidence in chief of that person.

### 90 Use of documents in questioning witness or refreshing memory

(1) A party must not, for the purpose of questioning a witness in a proceeding, use a document that has been excluded under section 28, 29, or 30.

(2) A witness must not consult a document that has been excluded under section 28, 29, or 30 while giving evidence.

(3) If when questioning a witness a party proposes to use a document or to show a document to the witness, that document must be shown to every other party to the proceeding.

(4) If a witness proposes to consult a document while giving evidence,—

(a) that document must be shown to every other party to the proceeding; and

(b) that document may not be consulted by that witness—

(i) without the prior leave of the Judge or the consent of the other parties; or

(ii) if the purpose of consulting that document is to refresh his or her memory while giving evidence, except in accordance with subsection (5).

(5) For the purposes of refreshing his or her memory while giving evidence, a witness may, with the prior leave of the Judge, consult a document made or adopted at a time when his or her memory was fresh.

(6) Subsection (5) is subject to subsection (2).

(7) A previous statement of a witness that is consistent with a witness's evidence is admissible if—

(a) the circumstances relating to the statement provide reasonable assurance that the statement is reliable; and

(b) the statement provides the court with information that the witness is unable to recall.

Section 90(1): amended, on 8 January 2017, by section 25(1) of the Evidence Amendment Act 2016 (2016 No 44).

Section 90(2): amended, on 8 January 2017, by section 25(1) of the Evidence Amendment Act 2016 (2016 No 44).

Section 90(7): inserted, on 8 January 2017, by section 25(2) of the Evidence Amendment Act 2016 (2016 No 44).

### 91 Editing of inadmissible statements

(1) If a statement is determined by the Judge to be inadmissible in part in a proceeding, a party who wishes to use an admissible part of the statement may, subject to the direction of the Judge, edit the statement by excluding any part of it that is inadmissible.

(2) A party may not edit a statement under subsection (1) unless, in the opinion of the Judge, the inadmissible parts of the statement can be excluded without obscuring or confusing the meaning of the admissible part of the statement.

### 92 Cross-examination duties

(1) In any proceeding, a party must cross-examine a witness on significant matters that are relevant and in issue and that contradict the evidence of the witness, if the witness could reasonably be expected to be in a position to give admissible evidence on those matters.

(2) If a party fails to comply with this section, the Judge may—

(a) grant permission for the witness to be recalled and questioned about the contradictory evidence; or

(b) admit the contradictory evidence on the basis that the weight to be given to it may be affected by the fact that the witness, who may have been

able to explain the contradiction, was not questioned about the evidence; or

(c) exclude the contradictory evidence; or

(d) make any other order that the Judge considers just.

### 93 Limits on cross-examination

If a party in any proceeding cross-examines a witness who has the same, or substantially the same, interest in the proceeding as the cross-examining party, the Judge may, in the interests of justice, limit the extent to which leading questions may be asked in that cross-examination.

### 94 Cross-examination by party of own witness

In any proceeding, the party who calls a witness may, if the Judge determines that the witness is hostile and gives permission, cross-examine the witness to the extent authorised by the Judge.

### 95 Restrictions on cross-examination by parties in person

(1) A defendant in or a party to a sexual case, or a defendant in or a party to a criminal or civil proceeding concerning family violence, stalking and harassment, or harassment, is not entitled to personally cross-examine—

(a) a complainant; or

(b) any other witness (for example, a propensity witness) who has made an allegation against that defendant or party (as applicable),—

(i) in a criminal proceeding, of an offence of a sexual nature, or of an offence of family violence, or of an offence of stalking and harassment; or

(ii) in a civil proceeding, of a sexual nature, or of family violence or harassment; or

(c) a child who is a witness of a kind not described in paragraph (a) or (b), unless the Judge gives permission.

(2) In a civil or criminal proceeding, a Judge may, on the application of a witness, or a party calling a witness, or on the Judge's own initiative, order that a party to the proceeding must not personally cross-examine the witness.

(3) An order under subsection (2) may be made on 1 or more of the following grounds:

(a) the age or maturity of the witness:

(b) the physical, intellectual, psychological, or psychiatric impairment of the witness:

(c) the linguistic or cultural background or religious beliefs of the witness:

(d) the nature of the proceeding:

(e) the relationship of the witness to the unrepresented party:

(f) any other grounds likely to promote the purpose of the Act.

(4) When considering whether or not to make an order under subsection (2), the Judge must have regard to—

(a) the need to ensure the fairness of the proceeding and, in a criminal proceeding, that the defendant has a fair trial; and

(b) the need to minimise the stress on the complainant or witness; and

(c) any other factor that is relevant to the just determination of the proceeding.

(5) A defendant in or party to a proceeding who, under this section, is precluded from personally cross-examining a witness may have that defendant's or party's questions put to the witness by—

(a) a lawyer engaged by the defendant or the party; or

(b) if the defendant or the party is unrepresented and fails or refuses to engage a lawyer for the purpose within a reasonable time specified by the Judge, a person appointed by the Judge for the purpose.

(6) In respect of each such question, the Judge may—

(a) allow the question to be put to the witness; or

(b) require the question to be put to the witness in a form rephrased by the Judge; or

(c) refuse to allow the question to be put to the witness.

(7) Subsection (1) overrides section 11 of the Criminal Procedure Act 2011.

Section 95(1): replaced, on 21 December 2021, by section 10(1) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 95(1): amended, on 26 May 2026, by section 10(1) of the Crimes Legislation (Stalking and Harassment) Amendment Act 2025 (2026 No 72).

Section 95(1)(b)(i): amended, on 26 May 2026, by section 10(2) of the Crimes Legislation (Stalking and Harassment) Amendment Act 2025 (2026 No 72).

Section 95(5): amended, on 21 December 2021, by section 10(2)(a) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 95(5): amended, on 21 December 2021, by section 10(2)(b) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 95(5)(a): amended, on 21 December 2021, by section 10(3) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 95(5)(b): amended, on 21 December 2021, by section 10(3) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 95(7): amended, on 1 July 2013, by section 5 of the Evidence Amendment Act 2011 (2011 No 89).

## 96 Cross-examination on previous statements of witnesses

(1) A party who cross-examines a witness may question the witness about a previous statement made by that witness without showing it or disclosing its con-

tents to the witness if the time, place, and other circumstances concerning the making of the statement are adequately identified to the witness.

(2) If a witness does not expressly admit making the statement and the party wishes to prove that the witness did make the statement,—

(a) the party must show the statement to the witness if it is in writing, or disclose its contents to the witness if the statement was not in writing; and

(b) the witness must be given an opportunity to deny making the statement or to explain any inconsistency between the statement and the witness's testimony.

(3) If a document is used by a defendant for the purpose of cross-examining a witness but is not offered as evidence by that defendant, the following rights of the defendant are not affected:

(a) the defendant's right to make a no-case application; and

(b) the defendant's rights in relation to the order of addressing the court.

### 97 Re-examination

(1) On re-examination, a witness—

(a) may be questioned about matters arising out of evidence given by the witness in cross-examination, including any qualification in cross-examination of evidence given by the witness in examination in chief; but

(b) may not be questioned about any other matter, except with the permission of the Judge.

(2) If permission is given by the Judge under subsection (1), the Judge—

(a) must allow other parties to cross-examine the witness on the additional evidence given; and

(b) may allow further re-examination on matters arising out of that cross-examination.

### 98 Further evidence after closure of case

(1) In any proceeding, a party may not offer further evidence after closing that party's case, except with the permission of the Judge.

(2) In a civil proceeding, the Judge may not grant permission under subsection (1) if any unfairness caused to any other party by the granting of permission cannot be remedied by an adjournment or an award of costs, or both.

(3) In a criminal proceeding, the Judge may grant permission to the prosecution under subsection (1) if—

(a) the further evidence relates to a purely formal matter; or

(b) the further evidence relates to a matter arising out of the conduct of the defence, the relevance of which could not reasonably have been foreseen; or

(c) the further evidence was not available or admissible before the prosecution's case was closed; or

(d) for any other reason the interests of justice require the further evidence to be admitted.

(4) In a criminal proceeding, the Judge may grant permission to a defendant under subsection (1) if the interests of justice require the further evidence to be admitted.

(5) The Judge may grant permission under subsection (1),—

(a) if there is a jury, at any time until the jury retires to consider its verdict:

(b) in any other proceeding, at any time until judgment is delivered.

### 99 Witnesses recalled by Judge

(1) In any proceeding, the Judge may recall a witness who has given evidence if the Judge considers that it is in the interests of justice to do so.

(2) The Judge may recall a witness under subsection (1),—

(a) if there is a jury, at any time until the jury retires to consider its verdict:

(b) in any other proceeding, at any time until judgment is delivered.

(3) This section is subject to section 106H (further cross-examination if all evidence of sexual case complainant or propensity witness has been or is to be given by video record made before trial).

Section 99(3): inserted, on 21 December 2022, by section 11 of the Sexual Violence Legislation Act 2021 (2021 No 60).

### 100 Questioning of witnesses by Judge

(1) In any proceeding, the Judge may ask a witness any questions that, in the opinion of the Judge, justice requires.

(2) If the Judge questions a witness,—

(a) every party, other than the party who called the witness, may cross-examine the witness on any matter raised by the Judge's questions; and

(b) the party who called the witness may re-examine the witness.

### 101 Jury questions

(1) If a jury wishes to put a question to a witness in a proceeding,—

(a) the jury must first inform the Judge of the question; and

(b) the Judge must determine—

(i) whether and how the question should be put to the witness; and

(ii) if the question is to be put to the witness, whether the parties may question the witness about matters raised by the question.

(2) If a question from the jury is put to a witness, then, subject to any determination made by the Judge under subsection (1)(b)(ii),—

(a) every party, other than the party who called the witness, may cross-examine the witness on any matter raised by the jury's question; and

(b) the party who called the witness may re-examine the witness.

## Subpart 5—Alternative ways of giving evidence

### 102 General provisions are subject to provisions for specific situations

Sections 103 to 106 (which provide for alternative ways of giving evidence) are subject to the following provisions (which deal with specific situations):

(a) sections 106AA to 106B (which relate to family violence complainants):

(aa) sections 106BA to 106BC (which relate to witnesses giving family violence evidence in Family Court proceedings):

(b) sections 106C to 106J (which relate to sexual case complainants or propensity witnesses):

(ba) sections 109A and 109B (which relate to intelligence officers and intelligence sources):

(c) sections 107AA to 107B (which relate to child witnesses in criminal proceedings):

(d) sections 108 and 109 (which relate to undercover Police officers):

(e) sections 110 to 118 (which relate to anonymous witnesses).

Section 102: replaced, on 21 December 2022, by section 12 of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 102(aa): inserted, on 26 February 2026, by section 5 of the Evidence (Giving Family Violence Evidence in Family Court Proceedings) Amendment Act 2025 (2025 No 44).

Section 102(ba): inserted, on 28 November 2023, by section 94 of the Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72).

### 102A Relationship of Courts (Remote Participation) Act 2010 to this subpart

Nothing in the Courts (Remote Participation) Act 2010 affects or limits the ability of—

(a) a witness to give evidence, or a party to apply for evidence to be given, under a provision of this subpart; or

(b) a Judge to make directions under a provision of this subpart.

Section 102A: replaced, on 21 December 2022, by section 13 of the Sexual Violence Legislation Act 2021 (2021 No 60).

#### *General*

### 103 Directions about alternative ways of giving evidence

(1) In any proceeding, the Judge may, either on the application of a party or on the Judge's own initiative, direct that a witness is to give evidence in chief and be

cross-examined in the ordinary way or in an alternative way as provided in section 105.

(2) An application for directions under subsection (1) must be made to the Judge as early as practicable before the proceeding is to be heard, or at any later time permitted by the court.

(3) A direction under subsection (1) that a witness is to give evidence in an alternative way, may be made on the grounds of—

(a) the age or maturity of the witness:

(b) the physical, intellectual, psychological, or psychiatric impairment of the witness:

(c) the trauma suffered by the witness:

(d) the witness's fear of intimidation:

(e) the linguistic or cultural background or religious beliefs of the witness:

(f) the nature of the proceeding:

(g) the nature of the evidence that the witness is expected to give:

(h) the relationship of the witness to any party to the proceeding:

(i) the absence or likely absence of the witness from New Zealand:

(j) any other ground likely to promote the purpose of the Act.

(4) In giving directions under subsection (1), the Judge must have regard to—

(a) the need to ensure—

(i) the fairness of the proceeding; and

(ii) in a criminal proceeding, that there is a fair trial; and

(b) the views of the witness and—

(i) the need to minimise the stress on the witness; and

(ii) in a criminal proceeding, the need to promote the recovery of a complainant from the alleged offence; and

(c) any other factor that is relevant to the just determination of the proceeding.

(5) *[Repealed]*

Section 103(5): repealed, on 3 December 2018, by section 58 of the Family Violence (Amendments) Act 2018 (2018 No 47).

### 104 Chambers hearing before directions for alternative ways of giving evidence

If an application for directions is made under section 103, before giving any directions about the way in which a witness is to give evidence in chief and be cross-examined, the Judge—

(a) must give each party an opportunity to be heard in chambers; and

(b) may call for and receive a report, from any person considered by the Judge to be qualified to advise, on the effect on the witness of giving evidence in the ordinary way or any alternative way.

### 105 Alternative ways of giving evidence

(1) A Judge may direct, under section 103, that the evidence of a witness is to be given in an alternative way so that—

(a) the witness gives evidence—

(i) while in the courtroom but unable to see the defendant or some other specified person; or

(ii) from an appropriate place outside the courtroom, either in New Zealand or elsewhere; or

(iii) by a video record made before the hearing of the proceeding:

(b) any appropriate practical and technical means may be used to enable the Judge, the jury (if any), and any lawyers to see and hear the witness giving evidence, in accordance with any regulations made under section 201:

(c) in a criminal proceeding, the defendant is able to see and hear the witness, except where the Judge directs otherwise:

(d) in a proceeding in which a witness anonymity order has been made, effect is given to the terms of that order.

(2) If a video record of the witness's evidence is to be shown at the hearing of the proceeding, the Judge must give directions under section 103 as to the manner in which cross-examination and re-examination of the witness is to be conducted.

(3) The Judge may admit evidence that is given substantially in accordance with the terms of a direction under section 103, despite a failure to observe strictly all of those terms.

### 106 Video record evidence

(1) Without limiting section 105(1)(a)(iii), in a criminal proceeding, the video record evidence of a witness that is to be offered as an alternative way of giving evidence in chief at the trial must, if a video record of that witness's evidence was filed as a formal statement under the Criminal Procedure Act 2011 or the witness gave oral evidence by way of a video record in accordance with an oral evidence order made under that Act, include that video record.

(2) A video record offered by the prosecution as an alternative way of giving evidence in chief must be recorded and dealt with in compliance with any regulations made under this Act.

(3) A video record that is to be offered by the prosecution as an alternative way of giving evidence in chief must be offered for viewing by a defendant or his or

her lawyer before it is offered in evidence (including prior to any pre-trial consideration of admissibility), unless the Judge directs otherwise.

(4) A copy of a video record that is to be offered by the prosecution as an alternative way of giving evidence in chief must be given to a defendant's lawyer, subject to compliance with any conditions the Judge directs, unless subsection (4A) applies, or, if subsection (4A) does not apply, the Judge directs otherwise.

(4A) Subject to subsections (4B) and (4C), a defendant's lawyer is not entitled to be given a copy of a video record under subsection (4) of—

(a) any child complainant; or

(b) any witness (including an adult complainant) in a sexual case or a violent case.

(4B) On the application of a defendant, a Judge may order that a copy of a video record or a part of a video record to which subsection (4A) applies be given to the defendant's lawyer before it is offered in evidence.

(4C) When considering an application under subsection (4B), the Judge must have regard to—

(a) whether the interests of justice require departure from the usual procedure under subsection (4A) in the particular case; and

(b) the nature of the evidence contained on the video record; and

(c) the ability of the defendant or his or her lawyer to view the video record under subsection (3) and to otherwise access the content of the video record, including by way of a transcript of the video record.

(5) All parties must be given the opportunity to make submissions about the admissibility of all or any part of a video record that is to be offered as an alternative way of giving evidence.

(6) If the defendant indicates he or she wishes to object to the admissibility of all or any part of a video record that is to be offered by the prosecution as an alternative way of giving evidence in chief, that video record must be viewed by the Judge.

(7) The Judge may order to be excised from a video record offered as evidence any material that, if the evidence were given in the ordinary way, would or could be excluded in accordance with this Act.

(8) The Judge may admit a video record that is recorded and offered as evidence substantially in accordance with the terms of any direction under this subpart and the terms of regulations referred to in subsection (2), despite a failure to observe strictly all of those terms.

(9) To avoid doubt, subsections (3) to (4C) do not apply to any lawyer representing the Crown who may be given a copy of a video record (which may or may not be offered by the prosecution as an alternative way of giving evidence) at any time for the purpose of providing legal advice to the Police before a charging

document is filed and for conducting the prosecution once proceedings have commenced.

(10) In this section, a reference to a person being given a video record includes a reference to the person being given access to the video record, for example, being given access to an electronic copy of the video record through an Internet site.

Section 106(1): replaced, on 1 July 2013, by section 5 of the Evidence Amendment Act 2011 (2011 No 89).

Section 106(1): amended, on 21 December 2022, by section 14(1) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 106(2): replaced, on 8 January 2017, by section 29(1) of the Evidence Amendment Act 2016 (2016 No 44).

Section 106(2): amended, on 21 December 2022, by section 14(2) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 106(3): replaced, on 8 January 2017, by section 29(2) of the Evidence Amendment Act 2016 (2016 No 44).

Section 106(3): amended, on 21 December 2022, by section 14(3) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 106(4): replaced, on 8 January 2017, by section 29(3) of the Evidence Amendment Act 2016 (2016 No 44).

Section 106(4): amended, on 21 December 2022, by section 14(3) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 106(4): amended, on 21 December 2022, by section 14(4) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 106(4A): inserted, on 8 January 2017, by section 29(4) of the Evidence Amendment Act 2016 (2016 No 44).

Section 106(4B): inserted, on 8 January 2017, by section 29(4) of the Evidence Amendment Act 2016 (2016 No 44).

Section 106(4C): inserted, on 8 January 2017, by section 29(4) of the Evidence Amendment Act 2016 (2016 No 44).

Section 106(6): amended, on 21 December 2022, by section 14(3) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 106(6): amended, on 21 December 2022, by section 14(5) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 106(6): amended, on 8 January 2017, by section 29(5) of the Evidence Amendment Act 2016 (2016 No 44).

Section 106(9): inserted, on 8 January 2017, by section 29(6) of the Evidence Amendment Act 2016 (2016 No 44).

Section 106(9): amended, on 21 December 2022, by section 14(6) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 106(10): inserted, on 3 December 2018, by section 59 of the Family Violence (Amendments) Act 2018 (2018 No 47).

*Giving of evidence by family violence complainants*

Heading: inserted, on 3 December 2018, by section 60 of the Family Violence (Amendments) Act 2018 (2018 No 48).

### 106AA Sections 106A and 106B apply to family violence complainants

Sections 106A and 106B apply to a complainant (a **family violence complainant**) who is not a child and who is to give or is giving evidence in a family violence case (which does not include a sexual case).

Section 106AA: inserted, on 21 December 2022, by section 15 of the Sexual Violence Legislation Act 2021 (2021 No 60).

### 106A Giving of evidence by family violence complainants

(1) A family violence complainant is entitled to give their evidence in chief by a video record made before the hearing.

(2) The video record must be one recorded—

(a) by a Police employee; and

(b) no later than 2 weeks after the incident in which it is alleged a family violence offence occurred.

(3) If a video record is to be or has been used as the complainant's evidence in chief, a Judge must give a direction under section 103 about how the complainant will give the other parts of their evidence, including any further evidence in chief.

(4) Section 106 applies to a video record offered as the complainant's evidence in chief under this section.

(5) If the prosecution intends to use a video record as a complainant's evidence in chief, the prosecution must provide the defendant and the court with a written notice stating that intention to do so.

(6) Unless a Judge permits otherwise, the notice must be given no later than when a case management memorandum (for a Judge-alone trial) or a trial callover memorandum (for a jury trial) is filed under the Criminal Procedure Act 2011.

Section 106A: replaced, on 21 December 2022, by section 15 of the Sexual Violence Legislation Act 2021 (2021 No 60).

### 106B Application by defendant for family violence complainant to give evidence in ordinary way or different alternative way

(1) Despite section 106A, a defendant may apply to a Judge for a direction that a family violence complainant give evidence or any part of his or her evidence in the ordinary way under section 83 or in a different alternative way under section 105.

(2) Unless a Judge permits otherwise, the application must be made no later than when a case management memorandum (for a Judge-alone trial) or a trial call-

over memorandum (for a jury trial) is filed under the Criminal Procedure Act 2011.

(3) Before giving a direction under this section, the Judge—

(a) must give each party an opportunity to be heard in chambers; and

(b) may call for and receive a report, from any person considered by the Judge to be qualified to advise, on the effect on the complainant of giving evidence in the ordinary way or any alternative way.

(4) When considering whether to give a direction under this section, the Judge must have regard to—

(a) whether the interests of justice require a departure from the usual procedure under section 106A in the particular case; and

(b) the matters in section 103(3) and (4).

Section 106B: inserted, on 3 December 2018, by section 60 of the Family Violence (Amendments) Act 2018 (2018 No 48).

*Giving of family violence evidence by witnesses in Family Court proceedings*

Heading: inserted, on 26 February 2026, by section 6 of the Evidence (Giving Family Violence Evidence in Family Court Proceedings) Amendment Act 2025 (2025 No 44).

### 106BA Sections 106BB and 106BC apply to witnesses giving family violence evidence in Family Court proceedings

Sections 106BB and 106BC apply to a witness who is to give or is giving family violence evidence in a Family Court proceeding.

Section 106BA: inserted, on 26 February 2026, by section 6 of the Evidence (Giving Family Violence Evidence in Family Court Proceedings) Amendment Act 2025 (2025 No 44).

### 106BB Giving family violence evidence in Family Court proceedings

(1) A witness in a Family Court proceeding who is to give or is giving family violence evidence is entitled to give evidence in 1 or more alternative ways so that—

(a) the witness gives evidence in either or both of the following ways:

(i) while in the courtroom but unable to see 1 or more other persons to whom the evidence relates (for example, another witness, a party or another party to the proceeding, or both):

(ii) from an appropriate place outside the courtroom, either in New Zealand or elsewhere:

(b) by use of any appropriate practical and technical means the Judge and any lawyers can see and hear the witness giving evidence, in accordance with any regulations made under section 201:

(c) the parties can see and hear the witness, unless the Judge directs otherwise.

(2) A witness who gives evidence of any kind in one way is entitled to give the other parts of their evidence in 1 or more other ways.

(3) Any party intending to call a witness in a Family Court proceeding who will give family violence evidence must provide every other party and the court with a written notice stating the 1 or more ways in which the witness will give their evidence (which may be or include the ordinary way).

(4) Unless a Judge permits otherwise, the notice required under subsection (3) must be given—

(a) as early as practicable; and

(b) in any event, no later than 28 days before the hearing.

(5) If a party has given notice under subsection (3) and it is no longer possible or desirable for the witness to give evidence by the means stated in the notice, the party—

(a) may file an amended notice; but

(b) must do so as early as practicable.

Section 106BB: inserted, on 26 February 2026, by section 6 of the Evidence (Giving Family Violence Evidence in Family Court Proceedings) Amendment Act 2025 (2025 No 44).

### 106BC Direction that family violence evidence be given in ordinary way or different alternative way

(1) Despite section 106BB, if a notice given under section 106BB(3) states that a witness is to give all or any part of their evidence in an alternative way, the Judge may give a direction that the witness give evidence or that part of their evidence—

(a) in the ordinary way under section 83; or

(b) in a different alternative way under section 106BB.

(2) A direction under subsection (1) may be made—

(a) on an application made by any other party; or

(b) on the Judge's own initiative.

(3) An application for a direction under subsection (1) must be made—

(a) as early as practicable before the hearing; or

(b) at a later time permitted by a Judge.

(4) Before giving a direction under this section, the Judge—

(a) must give each party an opportunity to be heard in chambers; and

(b) may call for and receive a report, from any person considered by the Judge to be qualified to advise, on the effect on the witness of giving evidence in the ordinary way or any alternative way.

(5) When considering whether to give a direction under this section, the Judge must, in addition to any other matter that the Judge considers relevant, have regard to—

(a) whether the interests of justice require a departure from the usual procedure under section 106BB(1) in the particular case; and

(b) the matters in section 103(3) and (4).

Section 106BC: inserted, on 26 February 2026, by section 6 of the Evidence (Giving Family Violence Evidence in Family Court Proceedings) Amendment Act 2025 (2025 No 44).

### *Giving of evidence by sexual case complainants or propensity witnesses*

Heading: inserted, on 21 December 2022, by section 16 of the Sexual Violence Legislation Act 2021 (2021 No 60).

### 106C Sections 106D to 106J apply to sexual case complainants or propensity witnesses

Sections 106D to 106J apply to a sexual case complainant or propensity witness of any age.

Section 106C: inserted, on 21 December 2022, by section 16 of the Sexual Violence Legislation Act 2021 (2021 No 60).

### 106D Giving of evidence by sexual case complainants or propensity witnesses

(1) A sexual case complainant or propensity witness is entitled to give evidence in 1 or more alternative ways so that—

(a) the complainant or witness gives evidence in 1 or more of the following ways:

(i) by a video record made before the trial:

(ii) while in the courtroom but unable to see the defendant or some other specified person:

(iii) from an appropriate place outside the courtroom, either in New Zealand or elsewhere:

(b) by use of any appropriate practical and technical means the Judge, the jury (if any), and any lawyers can see and hear the complainant or witness giving evidence, in accordance with any regulations made under section 201:

(c) the defendant can see and hear the complainant or witness, unless the Judge directs otherwise.

(2) A sexual case complainant or propensity witness who gives evidence of any kind in one way is entitled to give the other parts of their evidence, including any further evidence in chief, in 1 or more other ways.

(3) A prosecutor intending to call a sexual case complainant or propensity witness must provide every other party and the court with a written notice stating—

(a) the 1 or more ways in which the complainant or witness will give their evidence (which may, unless the complainant or witness is a child, be or include the ordinary way); and

(b) if the complainant's or witness's cross-examination evidence (as defined in subsection (7)) is to be given by a video record made before the trial, any 1 or more other alternative ways in which their evidence is to be given during the recording.

(4) However, no notice is required under subsection (3) if—

(a) the complainant or witness is a child who indicates their wish to give evidence or any part of their evidence in the ordinary way under section 83; and

(b) the prosecutor applies under section 106E to a Judge for a direction that the complainant or witness be permitted to do so.

(5) Unless a Judge permits otherwise, the notice required under subsection (3) must be given,—

(a) if the notice states that the complainant or witness will give all or any of their cross-examination evidence (as defined in subsection (7)) by a video record made before the trial, as early as practicable; and

(b) in every case, no later than when a case management memorandum (for a Judge-alone trial) or a trial callover memorandum (for a jury trial) is filed under the Criminal Procedure Act 2011.

(6) If a prosecutor has given notice under subsection (3) and it is no longer possible or desirable for the complainant or witness to give evidence by the means stated in the notice, the prosecutor may file an amended notice but must do so as early as practicable.

(7) In this section and sections 106G to 106IA, **cross-examination evidence**, for a complainant or witness, includes the following evidence (if any) that they give with their evidence given in cross-examination:

(a) evidence in chief given by them further to their evidence recorded and offered under section 106:

(b) evidence in re-examination given by them about matters arising out of their evidence given in cross-examination.

(8) This section is subject to sections 106E to 106I.

Section 106D: inserted, on 21 December 2022, by section 16 of the Sexual Violence Legislation Act 2021 (2021 No 60).

### 106E Application by prosecutor for sexual case complainant or propensity witness who is child to give evidence in ordinary way

(1) If a sexual case complainant or propensity witness who is a child indicates their wish to give evidence or any part of their evidence in the ordinary way under

section 83, the prosecutor may apply to a Judge for a direction that the complainant or witness be permitted to do so.

(2) Unless a Judge permits otherwise, an application under subsection (1) must be made no later than when a case management memorandum (for a Judge-alone trial) or a trial callover memorandum (for a jury trial) is filed under the Criminal Procedure Act 2011.

(3) The Judge—

(a) may direct that the complainant or witness give evidence or any part of their evidence in the ordinary way, if satisfied that the complainant or witness fully appreciates the likely effect on the complainant or witness of doing so; and

(b) before giving a direction, may call for and receive a report, from any person considered by the Judge to be qualified to advise, on the effect on the complainant or witness of giving evidence in the ordinary way or any alternative way.

(4) When considering whether to give a direction under this section, the Judge must have regard to—

(a) whether the interests of justice require a departure from the usual procedure under section 106D(3) in the particular case; and

(b) the matters in section 103(3) and (4).

Section 106E: inserted, on 21 December 2022, by section 16 of the Sexual Violence Legislation Act 2021 (2021 No 60).

### 106F Application by any other party for sexual case complainant or propensity witness to give evidence in ordinary way or different alternative way

(1) Despite section 106D, if a notice given under section 106D(3) states that a sexual case complainant or propensity witness is to give all or any part of their evidence in an alternative way, any other party may apply to a Judge for a direction that the complainant or witness give evidence or that part of their evidence in the ordinary way under section 83, or in a different alternative way under section 106D.

(2) An application for a direction under subsection (1) must be made as early as practicable before the trial, or at a later time permitted by a Judge.

(3) Before giving a direction under this section, the Judge—

(a) must give each party an opportunity to be heard in chambers; and

(b) may call for and receive a report, from any person considered by the Judge to be qualified to advise, on the effect on the complainant or witness of giving evidence in the ordinary way or any alternative way.

(4) When considering whether to give a direction under this section, the Judge must, in addition to any other matter that the Judge considers relevant, have regard to—

(a) whether the interests of justice require a departure from the usual procedure under section 106D(3) in the particular case; and

(b) the matters in section 103(3) and (4).

Section 106F: inserted, on 21 December 2022, by section 16 of the Sexual Violence Legislation Act 2021 (2021 No 60).

### 106G Direction that sexual case complainant's or propensity witness's cross-examination evidence not be given by video record made before trial

(1) Despite section 106F(4), the Judge may give a direction under section 106F that all or any of the complainant's or witness's cross-examination evidence (as defined in section 106D(7)) not be given by a video record made before the trial only if the Judge considers that—

(a) the giving of that evidence in that way would present a real risk to the fairness of the trial; and

(b) that risk cannot be mitigated adequately in any other way.

(2) A direction referred to in subsection (1) may be made—

(a) on an application made under section 106F; or

(b) on the Judge's own initiative.

(3) For the purposes of subsection (1), the Judge must, in addition to any other matter that the Judge considers relevant, have regard to whether the witness is likely to need to give further evidence (including cross-examination evidence) after the making of a video record (for example, due to further disclosure).

(4) For the purposes of subsection (1), it must not be presumed, and must be shown clearly in the circumstances of the case, that the following consequences of cross-examination before trial would present a real risk to the fairness of the trial:

(a) the making of a video record will require the defence to disclose all or any of its strategy earlier than if all of the evidence of the complainant or witness were given in the ordinary way or in a different alternative way:

(b) the defence will be unable to tailor its cross-examination to a jury's reaction:

(c) the making of a video record before the trial will involve preparation and other effort extra to that required for the trial:

(d) complying with or using any appropriate practical and technical means for the making of a video record will involve more difficulty for all or any parties than if all of the complainant's or witness's evidence were given at the trial.

Section 106G: inserted, on 21 December 2022, by section 16 of the Sexual Violence Legislation Act 2021 (2021 No 60).

### 106H Further cross-examination if all evidence of sexual case complainant or propensity witness has been or is to be given by video record made before trial

(1) This section applies to a sexual case complainant or propensity witness only if all of their evidence (except any further cross-examination evidence they give under this section) has been or is to be given by video record made before the trial.

(2) The defence may apply to a Judge for a direction that the defence be permitted to further cross-examine the complainant or propensity witness after a video record is made of their cross-examination evidence.

(3) The Judge may give the direction,—

(a) if all parties agree that a recall of the complainant or propensity witness is necessary or desirable, under section 99 of this Act; and

(b) in any other case, only if the Judge considers it would be contrary to the interests of justice not to do so (despite section 99 of this Act).

(4) For the purposes of subsection (3), the Judge must, in addition to any other matter that the Judge considers relevant, have regard to—

(a) whether further evidence, or an additional matter, has been disclosed, or has otherwise come to light, that is directly relevant to the determination of the case:

(b) whether that further evidence, or that additional matter, can be adequately addressed without requiring the complainant to be further cross-examined.

(5) If the Judge gives the direction, the complainant or propensity witness must give the further cross-examination evidence at trial (and so not by video record made before the trial).

(6) However, the Judge may, if satisfied that exceptional circumstances make it impossible or impracticable for the further cross-examination evidence to be given at trial, amend the direction so that the complainant or propensity witness must give the further cross-examination evidence by video record made before the trial.

Section 106H: inserted, on 21 December 2022, by section 16 of the Sexual Violence Legislation Act 2021 (2021 No 60).

### 106I Video record evidence: sexual case complainant's or propensity witness's cross-examination evidence given by video record made before trial

(1) A sexual case complainant's or propensity witness's cross-examination evidence given by video record made before trial must comply with all applicable enactments in or made under this Act and any other relevant Act (and those enactments apply with all necessary modifications) as if that evidence were being given at trial.

(2) A video record made before trial of the complainant's or propensity witness's cross-examination evidence must be recorded and dealt with in compliance with any regulations made under this Act.

(3) All parties must be given secure access to the recording, including a version edited under subsection (5), subject to compliance with any conditions the Judge directs, unless a Judge directs otherwise.

(4) All parties must be given the opportunity to make submissions about the admissibility of all or any part of the complainant's or propensity witness's cross-examination evidence that is given by a video record made before the trial.

(5) The Judge may, on an application for the purpose made by any party or on the Judge's own initiative, order to be excised from a video record made before the trial of the complainant's or propensity witness's cross-examination evidence all or any of the following material:

(a) any material that, if the evidence were given in the ordinary way, would or could be excluded in accordance with this Act:

(b) procedural content that is irrelevant to the determination of the proceeding (for example, witness breaks):

(c) any other material that the parties agree is not to form part of the evidence.

(6) After edits to a video record are ordered under subsection (5), further edits to the video record may be made (on an application for the purpose made by any party or on the Judge's own initiative) only if any new relevant issues have arisen and the interests of justice require the edited version to be revisited.

(7) The Judge may admit a video record made before the trial of evidence, and that is recorded and dealt with substantially in accordance with the terms of any direction under this subpart and the terms of regulations referred to in subsection (2), despite a failure to observe strictly all of those terms.

Section 106I: inserted, on 21 December 2022, by section 16 of the Sexual Violence Legislation Act 2021 (2021 No 60).

### 106IA Procedure if video record evidence under section 106 not offered, or not admitted, as evidence in chief

(1) This section applies if,—

(a) a prosecutor gives a notice under section 106D(3) stating that a sexual case complainant or propensity witness is to give all of their evidence by a video record made before trial; and

(b) for any reason, video record evidence under section 106 is not offered as an alternative way of the complainant or witness giving, or is not admitted as, evidence in chief (for example, because the record is of poor quality, or it contains inadmissible, or other non-complying, material).

(2) The complainant or witness may give both their evidence in chief and their cross-examination evidence by a video record made before the trial.

(3) The making and use of that video record must comply with—

(a) the process, and requirements, specified in sections 106D to 106I for a sexual case complainant's or propensity witness's cross-examination evidence given by video record made before trial (and that process, and those requirements, apply with any necessary modifications); and

(b) the process, and requirements, specified in regulations made under this Act that apply to a video record made under this section.

Section 106IA: inserted, on 21 December 2022, by section 16 of the Sexual Violence Legislation Act 2021 (2021 No 60).

### 106J Making of video record of sexual case complainant's or propensity witness's evidence given at trial and not given by video record made before trial

(1) A video record must be made, in accordance with any applicable regulations made under section 201, of evidence (of any kind)—

(a) given at trial by a sexual case complainant or propensity witness; and

(b) not given by video record made before trial.

(2) That video record may be used by the complainant or witness to give evidence in an alternative way under this Act (for example, in or for a retrial)—

(a) in a sexual case, and under section 106D(1)(a)(i); or

(b) in any other proceeding, and under any other provisions of this subpart.

(3) Section 106 (except section 106(4A) to (4C)) applies, with any necessary modifications, to the video record.

(4) This section does not limit or affect a video record of a witness's evidence being filed as a formal statement under the Criminal Procedure Act 2011, or section 99 (Oral evidence must be recorded) of that Act, or a witness giving oral evidence by way of a video record in accordance with an oral evidence order made under that Act.

Section 106J: inserted, on 21 December 2022, by section 16 of the Sexual Violence Legislation Act 2021 (2021 No 60).

## *Giving of evidence by child witnesses*

Heading: replaced, on 8 January 2017, by section 30 of the Evidence Amendment Act 2016 (2016 No 44).

### 107AA Sections 107 to 107B apply to child witnesses

Sections 107 to 107B apply to a child witness when giving evidence in a criminal proceeding unless the witness is a defendant who is a child or a sexual case complainant or propensity witness who is a child.

Section 107AA: inserted, on 21 December 2022, by section 17 of the Sexual Violence Legislation Act 2021 (2021 No 60).

### 107 Alternative ways of giving evidence by child witnesses in criminal proceedings

(1) A child witness, when giving evidence in a criminal proceeding, is entitled to give evidence in 1 or more alternative ways so that—

(a) the witness gives evidence in 1 or more of the following ways:

(i) by a video record made before the hearing of the proceeding:

(ii) while in the courtroom but unable to see the defendant or some other specified person:

(iii) from an appropriate place outside the courtroom, either in New Zealand or elsewhere:

(b) by use of any appropriate practical and technical means the Judge, the jury (if any), and any lawyers can see and hear the witness giving evidence, in accordance with any regulations made under section 201:

(c) the defendant can see and hear the witness, unless the Judge directs otherwise.

(2) If a video record is shown as a child witness's evidence in chief, the witness is entitled to give the other parts of his or her evidence, including any further evidence in chief, in 1 or more other alternative ways.

(3) To avoid doubt, section 106 applies to a video record offered as an alternative way of giving evidence under this section.

(4) Any party intending to call a child witness must provide every other party and the court with a written notice stating the 1 or more alternative ways in which the witness will give his or her evidence.

(5) Unless a Judge permits otherwise, the notice required under subsection (4) must be given no later than when a case management memorandum (for a judge-alone trial) or a trial callover memorandum (for a jury trial) is filed under the Criminal Procedure Act 2011.

(6) If a party has given notice under subsection (4) and it is no longer possible or desirable for the witness to give evidence by the means stated in the notice, the party may file an amended notice but must do so as early as practicable before the case is to be tried.

(7) This section is subject to sections 107A and 107B.

Section 107: replaced, on 8 January 2017, by section 31 of the Evidence Amendment Act 2016 (2016 No 44).

### 107A Application by party calling child witness for witness to give evidence in ordinary way

(1) Despite section 107, if a child witness indicates his or her wish to give evidence or any part of his or her evidence in the ordinary way under section 83,

the party calling the witness may apply to a Judge for a direction that the witness be permitted to do so.

(2) Unless a Judge permits otherwise, an application under subsection (1) must be made no later than when a case management memorandum (for a judge-alone trial) or a trial callover memorandum (for a jury trial) is filed under the Criminal Procedure Act 2011.

(3) The Judge—

(a) may direct that the witness give evidence or any part of his or her evidence in the ordinary way, if satisfied that the witness fully appreciates the likely effect on him or her of doing so; and

(b) before giving a direction, may call for and receive a report, from any person considered by the Judge to be qualified to advise, on the effect on the witness of giving evidence in the ordinary way or any alternative way.

(4) When considering whether to give a direction under this section, the Judge must have regard to—

(a) whether the interests of justice require a departure from the usual procedure under section 107 in the particular case; and

(b) the matters in section 103(3) and (4).

Section 107A: inserted, on 8 January 2017, by section 31 of the Evidence Amendment Act 2016 (2016 No 44).

### 107B Application by any other party for child witness to give evidence in ordinary way or different alternative way

(1) Despite section 107, if a party is calling a child witness to give evidence, any other party may apply to a Judge for a direction that the witness give evidence or any part of his or her evidence in the ordinary way under section 83 or in a different alternative way under section 107.

(2) An application for a direction under subsection (1) must be made as early as practicable before the case is to be tried, or at a later time permitted by a Judge.

(3) Before giving a direction under this section, the Judge—

(a) must give each party an opportunity to be heard in chambers; and

(b) may call for and receive a report, from any person considered by the Judge to be qualified to advise, on the effect on the witness of giving evidence in the ordinary way or any alternative way.

(4) When considering whether to give a direction under this section, the Judge must have regard to—

(a) whether the interests of justice require a departure from the usual procedure under section 107 in the particular case; and

(b) the matters in section 103(3) and (4).

Section 107B: inserted, on 8 January 2017, by section 31 of the Evidence Amendment Act 2016 (2016 No 44).

*Giving of evidence by undercover Police officers*

### 108 Undercover Police officers

(1) This section and section 109 apply in any case where a person is being, or is to be, proceeded against—

(a) for any offence that is punishable by imprisonment for life or for a term of at least 7 years; or

(b) for any other offence against any provisions of the Misuse of Drugs Act 1975 punishable by imprisonment for life or for a term of at least 5 years; or

(c) for an offence against section 98A of the Crimes Act 1961; or

(ca) for an offence against section 301 or 302 of the Arms Act 2026; or

(d) for conspiracy to commit, or for attempting to commit, an offence described in paragraph (a) or (b).

(2) If, in any proceeding to which this section applies, it is intended to call an undercover Police officer as a witness for the prosecution, the Commissioner of Police may, as soon as is reasonably practicable after a defendant has pleaded not guilty, file in the court in which the proceedings are to be held a certificate signed by the Commissioner stating, in respect of that witness, the following particulars:

(a) that during the period specified in the certificate the witness was a member of the Police and acted as an undercover Police officer:

(b) that the witness has not been convicted of any offence or (as the case may require) that the witness has not been convicted of any offence other than the offence, or offences, described in the certificate:

(c) that the witness has not been found guilty of a breach of the code of conduct prescribed under section 20 of the Policing Act 2008, or (as the case may require) that the witness has not been found guilty of any breach of that kind, other than a breach described in the certificate.

(3) If, to the knowledge of the Commissioner of Police, the credibility of the witness in giving evidence in any other proceeding has been the subject of adverse comment by the Judge, the Commissioner must also include in the certificate a statement of the relevant particulars.

(4) It is sufficient for the purposes of subsections (2) and (3) if the certificate includes a statement of the nature of any offence or comment referred to in the certificate and the year in which the offence was committed or the comment was made, and it is not necessary to include the venue or precise date of the proceedings or any other particulars that might enable the true name or true address of the witness to be discovered.

(5) In this section and in section 109, **undercover Police officer**, in relation to any proceeding to which this section applies, means a member of the Police whose identity was concealed for the purpose of any investigation relevant to the proceedings.

(6) This section also applies, with any necessary modifications, in any case where a person is being, or is to be, proceeded against under—

(a) the Criminal Proceeds (Recovery) Act 2009; or

(b) sections 142A to 142Q of the Sentencing Act 2002.

Compare: 1908 No 56 s 13A(1)–(5)

Section 108(1): amended, on 1 July 2013, by section 5 of the Evidence Amendment Act 2011 (2011 No 89).

Section 108(1)(b): amended, on 1 July 2013, by section 5 of the Evidence Amendment Act 2011 (2011 No 89).

Section 108(1)(ca): inserted, on 15 November 2022, by section 14 of the Firearms Prohibition Orders Legislation Act 2022 (2022 No 41).

Section 108(1)(ca): amended, on 23 September 2026, by section 394 of the Arms Act 2026 (2026 No 47).

Section 108(2): amended, on 1 July 2013, by section 5 of the Evidence Amendment Act 2011 (2011 No 89).

Section 108(2)(c): substituted, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

Section 108(6): added, on 1 December 2009, by section 184 of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

### 109 Effect of certificate under section 108

(1) If, in any proceeding to which section 108 applies, the Commissioner of Police files a certificate under section 108 relating to any witness, the following provisions apply:

(a) if a witness is subsequently called for the prosecution and states that, during the period specified in the certificate, he or she was a member of the Police and acted as an undercover Police officer under the name specified in the certificate, it must be presumed, in the absence of proof to the contrary, that the certificate has been given in respect of that witness:

(b) it is sufficient if the witness is identified by the name by which the witness was known while acting as an undercover Police officer, and, except if leave is given under paragraph (d), the witness must not be required to state his or her true name or address, or to give any particulars likely to lead to the discovery of that name or address:

(c) except if leave is given under paragraph (d), no lawyer, officer of the court, or other person involved in the proceeding may state in court the true name or the address of the witness, or give any particulars likely to lead to the discovery of that name or address:

(d) no evidence may be given, and no question may be put to the witness, or to any other witness, relating directly or indirectly to the true name or the address of the witness, except by leave of the Judge:

(e) on an application for leave under paragraph (d), the certificate is, in the absence of evidence to the contrary, sufficient evidence of the particulars stated in it.

(2) The Judge may not grant leave under subsection (1)(d) unless the Judge is satisfied—

(a) that there is some evidence before the Judge that, if believed by the jury, could call into question the credibility of the witness; and

(b) that it is necessary in the interests of justice that the defendant be enabled to test properly the credibility of the witness; and

(c) that it would be impracticable for the defendant to test properly the credibility of the witness if the defendant were not informed of the true name or the true address of the witness.

(3) An application for leave under subsection (1)(d)—

(a) may be made from time to time and at any stage of the proceeding; and

(b) must, where practicable, be made and dealt with in chambers; and

(c) if the application is made during the trial before a jury, must be dealt with and determined by the Judge in the absence of the jury.

(4) If the Commissioner of Police gives a certificate under section 108 in respect of any witness, the Commissioner must serve a copy of the certificate on the defendant, or on any lawyer acting for the defendant, at least 14 days before the witness is to give evidence.

Compare: 1908 No 56 s 13A(6)–(9)

Section 109(2)(c): amended, on 1 July 2013, by section 5 of the Evidence Amendment Act 2011 (2011 No 89).

### *Giving of evidence by intelligence officers and intelligence sources*

Heading: inserted, on 28 November 2023, by section 95 of the Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72).

### 109A Certificates relating to intelligence officers and intelligence sources

(1) This section and section 109B apply—

(a) to a civil proceeding; or

(b) to a criminal proceeding for a category 3 or 4 offence.

(2) If a party to the proceeding intends to call an intelligence officer or an intelligence source as a witness, a Director-General of an intelligence and security agency may file in the court in which the proceeding is to be held a certificate, signed by the Director-General, stating that,—

(a) during the period specified in the certificate, the witness was—

(i) an intelligence officer of the intelligence and security agency or of a foreign intelligence agency; or

(ii) an intelligence source of the intelligence and security agency; and

(b) the identity of the witness must not be disclosed because that disclosure would adversely affect the ability of the intelligence and security agency or (if applicable) the foreign intelligence agency to carry out its activities while maintaining the secrecy of its activities; and

(c) the witness has not been convicted of any offence or (as the case may require) the witness has not been convicted of any offence other than the offence, or offences, described in the certificate.

(3) The Director-General must file the certificate,—

(a) in the case of a civil proceeding, in accordance with rules of court; or

(b) in the case of a criminal proceeding, as soon as is reasonably practicable after a defendant has pleaded not guilty.

(4) If the Director-General knows that the credibility of the witness in giving evidence in any other proceeding has been the subject of adverse comment by the Judge in that proceeding, the Director-General must also include in the certificate a statement of the relevant particulars.

(5) For the purposes of subsections (2)(c) and (4),—

(a) it is sufficient that the certificate includes—

(i) a statement of the nature of any offence or comment referred to in the certificate; and

(ii) the year in which the offence was committed or the comment was made; and

(b) it is not necessary to include the venue or precise date of the proceeding or any other particulars that might enable the true name or address of the witness to be discovered.

(6) In this section and in section 109B,—

**Director-General of an intelligence and security agency** has the same meaning as in section 4 of the Intelligence and Security Act 2017

**foreign intelligence agency** means an agency that has responsibility for intelligence gathering for a country with which New Zealand has an intelligence sharing arrangement

**intelligence and security agency** has the same meaning as in section 4 of the Intelligence and Security Act 2017

**intelligence officer** means—

(a) an employee of an intelligence and security agency; or

(b) an individual employed or engaged in a foreign intelligence agency

**intelligence source** means any individual who has provided intelligence to an intelligence and security agency on a confidential basis.

(7) This section also applies, with any necessary modification, in any case where a person is being, or is to be, proceeded against under—

(a) the Criminal Proceeds (Recovery) Act 2009; or

(b) sections 142A to 142Q of the Sentencing Act 2002.

Section 109A: inserted, on 28 November 2023, by section 95 of the Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72).

### 109B Effect of certificate under section 109A

*Effect*

(1) In any proceeding in which a Director-General of an intelligence and security agency has filed a certificate under section 109A(2) relating to a party's witness,—

(a) if the witness states that, during the period specified in the certificate, the witness acted as an intelligence officer or intelligence source as specified in the certificate, it must be presumed, in the absence of proof to the contrary, that the certificate has been given in respect of that witness; and

(b) it is sufficient if the witness is referred to in the way specified by the Director-General in the certificate, and, except if leave is given under subsection (2), the witness must not be required to state the true name or address of the witness or to give any particulars likely to lead to the discovery of that name or address; and

(c) except if leave is given under subsection (2), no lawyer, officer of the court, or other person involved in the proceeding may state in court the true name or address of the witness or give any particulars likely to lead to the discovery of that name or address.

*Leave to give evidence or ask question about name or address*

(2) No evidence may be given, and no question may be put to the witness, or to any other witness, that relates directly or indirectly to the true name or address of the witness except by leave of the Judge.

(3) On an application for that leave, the certificate is, in the absence of evidence to the contrary, sufficient evidence of the particulars stated in it.

(4) If there is a jury, the Judge must not grant the leave unless the Judge is satisfied that—

(a) there is some evidence before the Judge that, if believed by the jury, could call into question the credibility of the party's witness; and

(b) it is necessary in the interests of justice that other parties be enabled to test properly the credibility of the witness; and

(c) it would be impracticable for other parties to test properly the credibility of the witness if those parties were not informed of the true name or address of the witness.

(5) An application for leave under subsection (2)—

(a) may be made from time to time and at any stage of the proceeding; and

(b) must, where practicable, be made and dealt with in chambers; and

(c) if the application is made during a trial before a jury, must be dealt with and determined by the Judge in the absence of the jury.

*Service of certificate*

(6) If a Director-General of an intelligence and security agency files a certificate under section 109A(2) in respect of any party's witness, the Director-General must serve a copy of the certificate on the other parties, or on any lawyer acting for another party, at least 14 days before the witness is to give evidence.

Section 109B: inserted, on 28 November 2023, by section 95 of the Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72).

## *Giving of evidence by anonymous witnesses*

### 110 Pre-trial witness anonymity order

(1) This section and section 111 apply if a person is charged with a category 3 or 4 offence.

(2) At any time after the person is charged, the prosecution or the defendant may apply to a Judge for an order—

(a) excusing the applicant from disclosing to the other party before the trial the name, address, and occupation of any witness, and (except with the leave of the Judge) any other particulars likely to lead to the witness's identification; and

(b) excusing the witness from stating in any formal statement, or in giving oral evidence in accordance with an oral evidence order, his or her name, address, and occupation, and (except with leave of the Judge) any other particulars likely to lead to the witness's identification.

(3) The Judge must hear and determine the application in chambers, and—

(a) the Judge must give each party an opportunity to be heard on the application; and

(b) neither the party supporting the application nor the witness need disclose any information that might disclose the witness's identity to any person (other than the Judge) before the application is dealt with.

(4) The Judge may make the order if he or she believes on reasonable grounds that—

(a) the safety of the witness or of any other person is likely to be endangered, or there is likely to be serious damage to property, if the witness's identity is disclosed before the trial; and

(b) withholding the witness's identity until the trial would not be contrary to the interests of justice.

(5) Without limiting subsection (4), in considering the application, the Judge must have regard to—

(a) the general right of a defendant to know the identity of witnesses; and

(b) the principle that witness anonymity orders are justified only in exceptional circumstances; and

(c) the gravity of the offence; and

(d) the importance of the witness's evidence to the case of the party who wishes to call the witness; and

(e) whether it is practical for the witness to be protected prior to the trial by any other means; and

(f) whether there is other evidence that corroborates the witness's evidence.

(6) A pre-trial witness anonymity order may be made—

(a) by a District Court Judge who holds a warrant under the District Court Act 2016 to conduct jury trials:

(b) if the preliminary hearing is held in the Youth Court, by a Judge referred to in section 274(2)(a) of the Oranga Tamariki Act 1989:

(c) by a High Court Judge.

Compare: 1908 No 56 s 13B(1)–(5), (7)

Section 110(1): replaced, on 1 July 2013, by section 5 of the Evidence Amendment Act 2011 (2011 No 89).

Section 110(2): replaced, on 1 July 2013, by section 5 of the Evidence Amendment Act 2011 (2011 No 89).

Section 110(6)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 110(6)(a): amended, on 1 July 2013, by section 5 of the Evidence Amendment Act 2011 (2011 No 89).

Section 110(6)(b): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 110(6)(b): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

### 111 Effect of pre-trial witness anonymity order

If a pre-trial witness anonymity order is made under section 110,—

(a) the party who applied for the order must give the Judge the name, address, and occupation of the witness; and

(b) no formal statement filed under the Criminal Procedure Act 2011 may disclose the name, address, or occupation of the witness, or any other particulars likely to lead to the witness's identification; and

(c) during the giving of oral evidence before the trial,—

(i) no lawyer, officer of the court, or other person involved in that process may disclose the name, address, or occupation of the witness, or any other particular likely to lead to the witness's identification; and

(ii) no oral evidence may be given, and no question put to any witness, if the evidence or question relates to the name, address, or occupation of the witness who is subject to the order; and

(iii) except with the leave of the Judge, no oral evidence may be given, and no question put to any witness, if the evidence or question relates to any other particulars likely to lead to the identification of the witness who is subject to the order; and

(d) no person may publish, in any report or account relating to the proceeding, the name, address, or occupation of the witness, or any other particulars likely to lead to the witness's identification.

Compare: 1908 No 56 s 13B(6)

Section 111(b): replaced, on 1 July 2013, by section 5 of the Evidence Amendment Act 2011 (2011 No 89).

Section 111(c): replaced, on 1 July 2013, by section 5 of the Evidence Amendment Act 2011 (2011 No 89).

### 112 Witness anonymity order for purpose of High Court trial

(1) This section and section 113 apply if a person is charged with a category 3 or 4 offence.

(2) The prosecution or the defendant may apply to a High Court Judge for a witness anonymity order under this section.

(3) The Judge must hear and determine the application in chambers, and—

(a) the Judge must give each party an opportunity to be heard on the application; and

(b) neither the party supporting the application nor the witness need disclose any information that might disclose the witness's identity to any person (other than the Judge) before the application is dealt with.

(4) The Judge may make a witness anonymity order if satisfied that—

(a) the safety of the witness or of any other person is likely to be endangered, or there is likely to be serious damage to property, if the witness's identity is disclosed; and

(b) either—

(i) there is no reason to believe that the witness has a motive or tendency to be dishonest, having regard (where applicable) to the witness's previous convictions or the witness's relationship with the defendant or any associates of the defendant; or

(ii) the witness's credibility can be tested properly without disclosure of the witness's identity; and

(c) the making of the order would not deprive the defendant of a fair trial.

(5) Without limiting subsection (4), in considering the application, the Judge must have regard to—

(a) the general right of a defendant to know the identity of witnesses; and

(b) the principle that witness anonymity orders are justified only in exceptional circumstances; and

(c) the gravity of the offence; and

(d) the importance of the witness's evidence to the case of the party who wishes to call the witness; and

(e) whether it is practical for the witness to be protected by any means other than an anonymity order; and

(f) whether there is other evidence that corroborates the witness's evidence.

Compare: 1908 No 56 s 13C(1)–(5)

Section 112(1): replaced, on 1 July 2013, by section 4 of the Evidence Amendment Act 2013 (2013 No 29).

Section 112(2): replaced, on 1 July 2013, by section 4 of the Evidence Amendment Act 2013 (2013 No 29).

Section 112(4)(b)(i): amended, on 1 July 2013, by section 5 of the Evidence Amendment Act 2011 (2011 No 89).

Section 112(4)(c): amended, on 1 July 2013, by section 5 of the Evidence Amendment Act 2011 (2011 No 89).

### 113 Effect of witness anonymity under section 112

If a witness anonymity order is made under section 112,—

(a) the party who applied for the order must give the Judge the name, address, and occupation of the witness; and

(b) the witness may not be required to state in court his or her name, address, or occupation; and

(c) during the course of the trial no lawyer, officer of the court, or other person involved in the proceeding may disclose—

(i) the name, address, or occupation of the witness; or

(ii) except with leave of the Judge, any other particulars likely to lead to the witness's identification; and

(d) during the course of the trial—

(i) no oral evidence may be given, and no question may be put to any witness, if the evidence or question relates to the name, address, or occupation of the witness who is subject to the order; and

(ii) except with leave of the Judge, no oral evidence may be given, and no question may be put to any witness, if the evidence or question relates to any other particulars likely to lead to the identification of the witness who is subject to the order; and

(e) no person may publish, in any report or account relating to the proceedings, the name, address, or occupation of the witness, or any other particulars likely to lead to the witness's identification.

Compare: 1908 No 56 s 13C(6)

### 114 Trial to be held in High Court if witness anonymity order made

(1) In any case where a witness who may be called to give evidence in a criminal trial is the subject of a witness anonymity order made under section 112, the trial must be held in the High Court.

(2) *[Repealed]*

(3) This section has effect despite anything in the Criminal Procedure Act 2011.

Compare: 1908 No 56 s 13A

Section 114(1): replaced, on 1 July 2013, by section 5(1) of the Evidence Amendment Act 2013 (2013 No 29).

Section 114(2): repealed, on 1 July 2013, by section 5(2) of the Evidence Amendment Act 2013 (2013 No 29).

Section 114(3): amended, on 1 July 2013, by section 5 of the Evidence Amendment Act 2011 (2011 No 89).

### 115 Judge may appoint independent counsel to assist

(1) For the purposes of considering an application for a witness anonymity order under section 112, the Judge may appoint an independent counsel to assist the Judge and, without limiting the directions the Judge may give, the Judge may direct the independent counsel to—

(a) inquire into the matters referred to in section 112(4)(a) and (b) and any other matters the Judge thinks relevant; and

(b) report the counsel's findings to the Judge.

(2) The party who applied for the witness anonymity order must make available to the independent counsel all information relating to the proceeding that is in the party's possession.

(3) Fees for professional services provided by counsel appointed under this section, and reasonable expenses incurred,—

(a) may be determined in accordance with regulations made under section 201; and

(b) are payable from money appropriated by Parliament for the purpose.

(4) The bill of costs submitted by a counsel appointed under this section must be given to the Registrar of the High Court in which the proceeding was heard, and the Registrar may tax the bill of costs.

(5) If the counsel is dissatisfied with the decision of the Registrar as to the amount of the bill, the counsel may, within 14 days after the date of the decision, apply to a Judge of the court to review the decision, and the Judge may make any order varying or confirming the decision that the Judge considers fair and reasonable.

Compare: 1908 No 56 s 13E

### 116 Judge may make orders and give directions to preserve anonymity of witness

(1) A Judge who makes an order under section 110 or 112 may, for the purposes of the giving of oral evidence in accordance with an oral evidence order or the trial (as the case may be), also make any orders and give any directions that the Judge considers necessary to preserve the anonymity of the witness, including (without limitation) 1 or more of the following directions:

(a) that the court be cleared of members of the public:

(b) that the witness be screened from the defendant:

(c) that the witness give evidence by closed-circuit television or by video link.

(2) In considering whether to give directions concerning the mode in which the witness is to give his or her evidence in accordance with an oral evidence order or at the trial, the Judge must have regard to the need to protect the witness while at the same time ensuring a fair hearing for the defendant.

(3) This section does not limit—

(a) section 365 of the Criminal Procedure Act 2011 (which confers power to deal with contempt of court); or

(b) section 197 of the Criminal Procedure Act 2011 (which confers power to clear the court); or

(c) any power of the court to direct that evidence be given, or to permit evidence to be given, by a particular mode.

Compare: 1908 No 56 s 13G

Section 116(1): amended, on 1 July 2013, by section 5 of the Evidence Amendment Act 2011 (2011 No 89).

Section 116(2): amended, on 1 July 2013, by section 5 of the Evidence Amendment Act 2011 (2011 No 89).

Section 116(3)(a): amended, on 1 July 2013, by section 5 of the Evidence Amendment Act 2011 (2011 No 89).

Section 116(3)(b): amended, on 5 March 2012 (applying in relation to a proceeding for an offence that was commenced before that date), by section 393 of the Criminal Procedure Act 2011 (2011 No 81).

### 117 Variation or discharge of witness anonymity order during trial

At any time before a witness gives evidence during a trial, a High Court Judge may, on his or her own motion or on the application of either party, vary or discharge a witness anonymity order made for the purposes of the proceeding under section 112.

Compare: 1908 No 56 s 13H

### 118 Witness in Police witness protection programme

If, at any time after the events that are the subject of a charge, a witness under a Police witness protection programme assumes a new identity, the witness may not be required in any proceeding concerning the charge to disclose his or her assumed name or any particulars likely to disclose his or her new identity.

Compare: 1908 No 56 s 13I

## *Offences and requirements for disclosure of video records in proceedings that are not criminal proceedings or Family Court proceedings*

Heading: inserted, on 8 January 2017, by section 32 of the Evidence Amendment Act 2016 (2016 No 44).

Heading: amended, on 21 December 2022, by section 18 of the Sexual Violence Legislation Act 2021 (2021 No 60).

### 119 Offences

*Unauthorised possession of, or dealing with, any video record*

(1AA) A person who is in possession of, or who deals with, a video record (whether a video record made under section 106, or a video record made before or at the hearing or the trial under any of sections 106AA to 106J), other than as permitted by legislation or court order, commits an offence and is liable on conviction,—

(a) if the person is an individual, to a fine not exceeding $2,000:

(b) if the person is a body corporate, to a fine not exceeding $10,000.

*Video records to which offences in subsections (1AB) and (1AC) apply*

(1ABA) The offences in subsections (1AB) and (1AC) apply to a video record (whether a video record made under section 106, or a video record made before or at the hearing or the trial under any of sections 106AA to 106J) of—

(a) any child complainant; or

(b) any witness (including an adult complainant) in a sexual case or a violent case.

*Possession of video record with intention of unauthorised copying, supplying, or showing*

(1AB) A person who is in possession of a video record of a type specified in subsection (1ABA), with the intention of copying, supplying, or showing the video

record, other than as permitted by legislation or court order, commits an offence and is liable on conviction,—

(a) if the person is an individual, to a term of imprisonment not exceeding 6 months:

(b) if the person is a body corporate, to a fine not exceeding $10,000.

*Unauthorised copying, supplying, or showing of video record*

(1AC) A person who copies, supplies, or shows a video record of a type specified in subsection (1ABA), other than as permitted by legislation or court order, commits an offence and is liable on conviction,—

(a) if the person is an individual, to a term of imprisonment not exceeding 6 months:

(b) if the person is a body corporate, to a fine not exceeding $10,000.

*Contravention of witness anonymity order*

(1) A person commits an offence and is liable on conviction to a term of imprisonment not exceeding 7 years who, with knowledge of a pre-trial witness anonymity order made under section 110, intentionally contravenes section 111(b) or (d).

(2) A person commits an offence and is liable on conviction to a term of imprisonment not exceeding 7 years who, with knowledge of a witness anonymity order made under section 112, intentionally contravenes section 113(c) or (e).

(3) If a person contravenes section 111(b) or (d) or 113(c) or (e), and that contravention does not constitute an offence against subsection (1) or (2), the person commits an offence and is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $2,000:

(b) in the case of a body corporate, to a fine not exceeding $10,000.

*Contempt of court*

(4) Nothing in this section limits the power of any court to punish any contempt of court.

Compare: 1908 No 56 s 13J

Section 119(1AA) heading: inserted, on 21 December 2022, by section 19(1) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 119(1AA): replaced, on 21 December 2022, by section 19(1) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 119(1ABA) heading: inserted, on 21 December 2022, by section 19(1) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 119(1ABA): inserted, on 21 December 2022, by section 19(1) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 119(1AB) heading: inserted, on 21 December 2022, by section 19(1) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 119(1AB): replaced, on 21 December 2022, by section 19(1) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 119(1AC) heading: inserted, on 21 December 2022, by section 19(1) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 119(1AC): replaced, on 21 December 2022, by section 19(1) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 119(1) heading: inserted, on 21 December 2022, by section 19(1) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 119(1): amended, on 1 July 2013, by section 5 of the Evidence Amendment Act 2011 (2011 No 89).

Section 119(2): amended, on 1 July 2013, by section 5 of the Evidence Amendment Act 2011 (2011 No 89).

Section 119(3): amended, on 1 July 2013, by section 5 of the Evidence Amendment Act 2011 (2011 No 89).

Section 119(4) heading: inserted, on 21 December 2022, by section 19(2) of the Sexual Violence Legislation Act 2021 (2021 No 60).

### 119A Requirements for disclosure of video records in proceedings that are not criminal proceedings or Family Court proceedings

*Definitions of disclose, proceedings, and video record*

(1A) In this section,—

**disclose**, in relation to a video record, means to disclose or produce the video record under an order—

(a) made by a Judge or judicial officer; and

(b) made under a power existing under legislation other than this section

**proceedings** means proceedings that are not—

(a) criminal proceedings; or

(b) Family Court proceedings

**video record** means all, or any extract from or part, of—

(a) any video record (whether a video record made under section 106, or a video record made before or at the hearing or the trial under any of sections 106AA to 106J); or

(b) any copy, transcript, or summary of any video record referred to in paragraph (a).

*Police must not disclose video record unless order for disclosure complies*

(1) The Police must not disclose a video record to all or any parties to proceedings unless the order for disclosure is made in compliance with subsection (2).

*Restriction on Judge or judicial officer making order for disclosure*

(2) A Judge or judicial officer may make an order for disclosure of a video record to all or any parties to proceedings only if satisfied—

(a) that the disclosure will not prejudice any criminal proceedings for which the video record may be offered as evidence; and

(b) that, after considering the matters in section 119B, it is in the interests of justice to do so.

*Directions for how video record to be disclosed under order for disclosure*

(3) A Judge or judicial officer who makes an order for disclosure must, subject to subsection (4), give directions for the way in which the video record is to be disclosed, which may include the Police or court providing all or any parties to proceedings with—

(a) the video record, or a transcript or a summary of the video record:

(b) an opportunity to view the video record:

(c) access to 1 or more extracts or parts of the video record by any of the means in paragraphs (a) and (b).

(4) A Judge or judicial officer may make a particular direction for the way in which the video record is to be disclosed if satisfied that, after considering the matters in section 119B, the direction is in the interests of justice.

*Disclosed video record must be dealt with in compliance with regulations made under section 201*

(5) A video record disclosed under this section to all or any parties to proceedings must be dealt with in compliance with any regulations made under section 201.

Section 119A: replaced, on 21 December 2022, by section 20 of the Sexual Violence Legislation Act 2021 (2021 No 60).

### 119B Matters Judge or judicial officer must consider before ordering disclosure of video record or giving direction for disclosure

The matters that a Judge or judicial officer must consider for the purposes of section 119A(2)(b) and (4) are—

(a) the extent to which the video record is relevant to the proceedings before them; and

(b) the likely extent of harm to the witness whose evidence is contained in the video record from disclosure of that record; and

(c) the nature of the criminal proceedings for which the video record may be or has been offered as evidence; and

(d) the availability of other means of obtaining the evidence; and

(e) the public interest in protecting the privacy of witnesses; and

(f) any other matter that the Judge or judicial officer considers relevant.

Section 119B: inserted, on 8 January 2017, by section 34 of the Evidence Amendment Act 2016 (2016 No 44).

*Signature of statements by assumed name*

### 120 Persons who may sign statements by assumed name or anonymously

(1) A deposition or other written statement of evidence given by an undercover Police officer may be given and signed in the name by which the officer was known during the relevant investigation.

(1A) A deposition or other written statement of evidence given by an intelligence officer or intelligence source (within the meaning of section 109A) may be given and signed,—

(a) in the case of an intelligence officer who has acquired an assumed name under subpart 1 of Part 3 of the Intelligence and Security Act 2017, in that name; or

(b) in any other case, using the term "witness" followed by an initial or a mark.

(2) A deposition or other written statement given by a witness who is the subject of an application for an anonymity order made under section 112, or who is the subject of an anonymity order made under section 110 or 112, may be given and signed by the witness using the term "witness" followed by an initial or mark.

(3) This section overrides any contrary provision in this Act or any other enactment.

Compare: 1957 No 87 s 178A

Section 120 heading: amended, on 28 November 2023, by section 96(1) of the Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72).

Section 120(1A): inserted, on 28 November 2023, by section 96(2) of the Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72).

## Subpart 6—Corroboration, judicial directions, and judicial warnings

### 121 Corroboration

(1) It is not necessary in a criminal proceeding for the evidence on which the prosecution relies to be corroborated, except with respect to the offences of—

(a) perjury (section 108 of the Crimes Act 1961); and

(b) false oaths (section 110 of the Crimes Act 1961); and

(c) false statements or declarations (section 111 of the Crimes Act 1961); and

(d) treason (section 73 of the Crimes Act 1961).

(2) Subject to subsection (1) and section 122, if in a criminal proceeding there is a jury, it is not necessary for the Judge to—

(a) warn the jury that it is dangerous to act on uncorroborated evidence or to give a warning to the same or similar effect; or

(b) give a direction relating to the absence of corroboration.

### 122 Judicial directions about evidence which may be unreliable

(1) If, in a criminal proceeding tried with a jury, the Judge is of the opinion that any evidence given in that proceeding that is admissible may nevertheless be unreliable, the Judge may warn the jury of the need for caution in deciding—

(a) whether to accept the evidence:

(b) the weight to be given to the evidence.

(2) In a criminal proceeding tried with a jury the Judge must consider whether to give a warning under subsection (1) whenever the following evidence is given:

(a) hearsay evidence:

(b) evidence of a statement by the defendant, if that evidence is the only evidence implicating the defendant:

(c) evidence given by a witness who may have a motive to give false evidence that is prejudicial to a defendant:

(d) evidence of a statement by the defendant to another person made while both the defendant and the other person were detained in prison, a Police station, or another place of detention:

(e) evidence about the conduct of the defendant if that conduct is alleged to have occurred more than 10 years previously.

(3) In a criminal proceeding tried with a jury, a party may request the Judge to give a warning under subsection (1) but the Judge need not comply with that request—

(a) if the Judge is of the opinion that to do so might unnecessarily emphasise evidence; or

(b) if the Judge is of the opinion that there is any other good reason not to comply with the request.

(4) It is not necessary for a Judge to use a particular form of words in giving the warning.

(5) If there is no jury, the Judge must bear in mind the need for caution before convicting a defendant in reliance on evidence of a kind that may be unreliable.

(6) This section does not affect any other power of the Judge to warn or inform the jury.

### 123 Judicial directions about certain ways of offering evidence

(1) The Judge must give the direction referred to in subsection (2) if, in a criminal proceeding tried with a jury,—

(a) a witness offers evidence in an alternative way under this Part; or

(b) the defendant is not permitted to personally cross-examine a witness; or

(c) a witness offers evidence in accordance with a witness anonymity order.

(2) The direction required by subsection (1) is a direction to the jury that—

(a) the law makes special provision for the manner in which evidence is to be given, or questions are to be asked, in certain circumstances; and

(b) the jury must not draw any adverse inference against the defendant because of that manner of giving evidence or questioning.

### 124 Judicial warnings about lies

(1) This section applies if evidence offered in a criminal proceeding suggests that a defendant has lied either before or during the proceeding.

(2) If evidence of a defendant's lie is offered in a criminal proceeding tried with a jury, the Judge is not obliged to give a specific direction as to what inference the jury may draw from that evidence.

(3) Despite subsection (2), if, in a criminal proceeding tried with a jury, the Judge is of the opinion that the jury may place undue weight on evidence of a defendant's lie, or if the defendant so requests, the Judge must warn the jury that—

(a) the jury must be satisfied before using the evidence that the defendant did lie; and

(b) people lie for various reasons; and

(c) the jury should not necessarily conclude that, just because the defendant lied, the defendant is guilty of the offence for which the defendant is being tried.

(4) In a criminal proceeding tried without a jury, the Judge must have regard to the matters set out in paragraphs (a) to (c) of subsection (3) before placing any weight on evidence of a defendant's lie.

### 125 Judicial directions about children's evidence

(1) In a criminal proceeding tried with a jury in which the complainant is a child at the time when the proceeding commences, the Judge must not give any warning to the jury about the absence of corroboration of the evidence of the complainant if the Judge would not have given that kind of a warning had the complainant been an adult.

(2) In a proceeding tried with a jury in which a witness is a child, the Judge must not, unless expert evidence is given in that proceeding supporting the giving of the following direction or the making of the following comment:

(a) instruct the jury that there is a need to scrutinise the evidence of children generally with special care; or

(b) suggest to the jury that children generally have tendencies to invent or distort.

(3) This section does not affect any other power of the Judge to warn or inform the jury about children's evidence exercised in accordance with the requirements of regulations made under section 201.

### 126 Judicial warnings about identification evidence

(1) In a criminal proceeding tried with a jury in which the case against the defendant depends wholly or substantially on the correctness of 1 or more visual or voice identifications of the defendant or any other person, the Judge must warn the jury of the special need for caution before finding the defendant guilty in reliance on the correctness of any such identification.

(2) The warning need not be in any particular words but must—

(a) warn the jury that a mistaken identification can result in a serious miscarriage of justice; and

(b) alert the jury to the possibility that a mistaken witness may be convincing; and

(c) where there is more than 1 identification witness, refer to the possibility that all of them may be mistaken.

(3) If evidence of identity is given against the defendant in any criminal proceeding and the defendant disputes that evidence, the court must bear in mind the need for caution before convicting the defendant in reliance on the correctness of any such identification and, in particular, must bear in mind the possibility that the witness may be mistaken.

Section 126(3): inserted, on 8 January 2017, by section 35 of the Evidence Amendment Act 2016 (2016 No 44).

### 126A Judicial directions about misconceptions arising in sexual cases

(1) In a sexual case tried before a jury, the Judge must give the jury any direction the Judge considers necessary or desirable to address any relevant misconception relating to sexual cases.

(2) Misconceptions relating to sexual cases (all or any of which the Judge may consider relevant in the case) include, but are not limited to, misconceptions—

(a) about the prevalence or features of false complaints in sexual cases:

(b) that a victim or an offender in a sexual case has, or does not have, particular stereotypical characteristics:

(c) that sexual offending is committed only by strangers, or is less serious when committed by a family member (including, but not limited to, a spouse, civil union partner, or de facto partner) or by an acquaintance:

(d) that sexual offending always involves force or the infliction of physical injuries:

(e) that, in a sexual case, a complainant is less credible or more likely to have consented, or a defendant's belief in consent is reasonable, based solely on the complainant—

(i) dressing provocatively, acting flirtatiously, or drinking alcohol or taking drugs:

(ii) being in a relationship with a defendant, including a sexual relationship:

(iii) maintaining contact with a defendant, or showing a lack of visible distress, after the alleged offending.

(3) This section does not limit or affect—

(a) section 127 (delayed complaints or failure to complain in sexual cases):

(b) any regulations made under section 201(1)(m) (warning or informing jury about very young children's evidence).

Compare: 1961 No 43 s 128A; SR 2007/204 r 49

Section 126A: inserted, on 21 December 2022, by section 21 of the Sexual Violence Legislation Act 2021 (2021 No 60).

### 127 Delayed complaints or failure to complain in sexual cases

(1) Subsection (2) applies if, in a sexual case tried before a jury, evidence is given or a question is asked or a comment is made that tends to suggest that the person against whom the offence is alleged to have been committed either delayed making or failed to make a complaint in respect of the offence.

(2) If this subsection applies, the Judge may tell the jury that there can be good reasons for the victim of an offence of that kind to delay making or fail to make a complaint in respect of the offence.

## Subpart 7—Notice of uncontroverted facts and reference to reliable public documents

### 128 Notice of uncontroverted facts

(1) A Judge or jury may take notice of facts so known and accepted either generally or in the locality in which the proceeding is being held that they cannot reasonably be questioned.

(2) A Judge may take notice of facts capable of accurate and ready determination by reference to sources whose accuracy cannot reasonably be questioned and, if the proceedings involve a jury, may direct the jury in relation to this matter.

### 129 Admission of reliable published documents

(1) A Judge may, in matters of public history, literature, science, or art, admit as evidence any published documents that the Judge considers to be reliable sources of information on the subjects to which they respectively relate.

(2) Subpart 1 of Part 2 (which relates to hearsay evidence) and subpart 2 of Part 2 (which relates to opinion evidence and expert evidence) do not apply to evidence referred to under subsection (1).

## Subpart 8—Documentary evidence and evidence produced by machine, device, or technical process

*General and special rules*

### 130 Offering documents in evidence without calling witness

(1) A party may give notice in writing to every other party that the party proposes to offer a document (whether or not a public document), a copy of which is attached to the notice, as evidence in the proceeding without calling a witness to produce the document.

(2) A party who on receiving a notice wishes to object to the authenticity of the document to which the notice refers, or to the fact that it is to be offered in evidence without being produced by a witness, must give a notice of objection in writing to every other party.

(3) If no party objects to a proposal to offer a document as evidence without calling a witness to produce it, or if the Judge dismisses an objection to the proposal on the ground that no useful purpose would be served by requiring the party concerned to call a witness to produce the document,—

(a) the document, if otherwise admissible, may be admitted in evidence; and

(b) it will be presumed, in the absence of evidence to the contrary, that the nature, origin, and contents of the document are as shown on its face.

(4) A party must give notice of a proposal to offer a document without calling a witness to produce it—

(a) in sufficient time before the hearing to provide all the other parties with a fair opportunity to consider the proposal; or

(b) within the time, whether before or after the commencement of the hearing, that the Judge allows and subject to any conditions that the Judge imposes.

(5) A party must give notice of objection to a proposal to offer a document without calling a witness to produce it—

(a) in sufficient time before the hearing to provide all the other parties with a fair opportunity to consider the notice; or

(b) within the time, whether before or after the commencement of the hearing, that the Judge allows and subject to any conditions that the Judge imposes.

(6) The Judge may dispense with the requirement for a party to give notice under subsection (1) or (2) subject to any conditions that the Judge imposes.

(7) This section is subject to sections 131 and 132.

### 131 Admission of depositions

In a civil proceeding a party may, on any terms that the Judge directs and subject to any exclusion that the Judge considers just, give in evidence any depositions that have been taken—

(a) in New Zealand under the direction of a Judge; or

(b) overseas in accordance with the provisions of this Act and any rules of court.

### 132 Documents required to be discovered or included in common bundle

(1) This section applies only to a civil proceeding.

(2) A document in a common bundle is received in evidence when the relevant conditions set out in rules of court have been complied with.

(3) A document required by rules of court to be included in a party's affidavit or list made for the purposes of discovery but which has not been so included, may be produced in evidence at the hearing only with—

(a) the consent of the other party; or

(b) the leave of the Judge.

(4) Each document contained in the common bundle is subject to presumptions as to nature and origin that—

(a) are specified in rules of court; and

(b) are rebuttable in circumstances and in the manner set out in those rules.

### 133 Summary of voluminous documents

(1) A party may, if notice is given to all other parties in sufficient time before the hearing and with the permission of the Judge, give evidence of the contents of a voluminous document or a voluminous compilation of documents by means of a summary or chart.

(2) A party offering evidence by means of a summary or chart must, if the Judge so directs on the request of another party or on the Judge's own initiative, either—

(a) produce the voluminous document or voluminous compilation of documents for examination in court during the hearing; or

(b) make it available for examination and copying by other parties at a reasonable time and place.

### 134 Admission of documents discovered in civil proceedings

In a civil proceeding, wherever a party is permitted under rules of court to inspect a document,—

(a) the requirement to prove the authenticity of the document may be dispensed with in circumstances described in those rules; and

(b) the procedure to be adopted by a party seeking to require proof of the authenticity of the document is that set out in those rules; and

(c) the production of secondary evidence to prove the authenticity of the document may be permitted in circumstances described in those rules.

Compare: 1908 No 89 Schedule 2 r 314

### 135 Translations and transcripts

(1) A party may offer a document that purports to be a translation into English of a document in a language other than English, or a translation into Māori of a document in a language other than Māori, if—

(a) notice is given to all other parties in sufficient time before the hearing to provide those other parties with a fair opportunity to scrutinise the translation; and

(b) all other requirements prescribed in regulations made under section 201 concerning that document are satisfied.

(2) The translation is presumed to be an accurate translation, in the absence of evidence to the contrary.

(3) A party, if notice is given to all other parties in sufficient time before the hearing to provide those other parties with a fair opportunity to scrutinise the transcript and all other prescribed requirements referred to in subsection (1)(b) are satisfied, may offer a document that purports to be a transcript of information or other matter that is recorded—

(a) in a code (including shorthand writing or programming code); or

(b) in a way that is capable of being reproduced as sound or script.

(4) A party who offers a transcript of information or other matter in a sound recording under subsection (3) must play all or part of the sound recording in court during the hearing if—

(a) the sound recording is available; and

(b) the Judge so directs, either on the application of another party or on the Judge's own initiative.

### 136 Proof of signatures on attested documents

(1) The signature, execution, or attestation of a document (including a testamentary document) that is required by law to be attested may be proved by any satisfactory means.

(2) An attesting witness need not be called to prove that the document was signed, executed, or attested (whether by handwriting, digital means, or otherwise) as it purports to have been signed, executed, or attested.

### 137 Evidence produced by machine, device, or technical process

(1) If a party offers evidence that was produced wholly or partly by a machine, device, or technical process (for example, scanning) and the machine, device, or technical process is of a kind that ordinarily does what a party asserts it to have done, it is presumed that on a particular occasion the machine, device, or technical process did what that party asserts it to have done, in the absence of evidence to the contrary.

(2) If information or other matter is stored in such a way that it cannot be used by the court unless a machine, device, or technical process is used to display, retrieve, produce, or collate it, a party may offer a document that was or purports to have been displayed, retrieved, or collated by use of the machine, device, or technical process.

### 138 Authenticity of public documents

(1) Subsection (2) applies to a document that purports to be a public document, or a copy of or an extract from or a summary of a public document, and to have been—

(a) sealed with the seal of a person or a body that might reasonably be supposed to have the custody of that public document; or

(b) certified to be such a copy, extract, or summary by a person who might reasonably be supposed to have the custody of that public document.

(2) If this subsection applies, the document is presumed, unless the Judge decides otherwise, to be a public document or a copy of the public document or an extract from or summary of the public document and may be offered in evidence to prove the truth of its contents.

(3) Subpart 1 of Part 2 (which relates to hearsay evidence) does not apply to evidence offered under this section.

### 139 Evidence of convictions, acquittals, and other judicial proceedings

(1) Evidence of the following facts, if admissible, may be given by a certificate purporting to be signed by a Judge, a registrar, or other officer having custody of the relevant court records:

(a) the conviction or acquittal of a person charged with an offence and the particulars of the offence charged and of the person (including the name and date of birth of the person if the person is an individual, and the name and date and place of incorporation of the person if the person is a body corporate):

(b) the sentencing by a court of a person to any penalty or other disposition of the case following a plea or finding of guilt, and the particulars of the offence for which that person was sentenced or otherwise dealt with and of the person (including the name and date of birth of the person if the

person is an individual, and the name and date and place of incorporation of the person if the person is a body corporate):

(ba) *[Repealed]*

(ba) a record of first warning or a record of subsequent warning (as those terms are defined in section 86J of the Sentencing Act 2002) made in respect of a person:

(c) an order or judgment of a court and the nature, parties, and particulars of the proceeding to which the order or judgment relates:

(d) the existence of a criminal or civil proceeding, whether or not the proceeding has been concluded, and the nature of the proceeding.

(2) A certificate under this section is sufficient evidence of the facts stated in it without proof of the signature or office of the person appearing to have signed the certificate.

(3) The manner of proving the facts referred to in subsection (1) authorised by this section is in addition to any other manner of proving any of those facts authorised by law.

(4) Subsection (5) applies if—

(a) a certificate under this section is offered in evidence in a proceeding for the purpose of proving the conviction or acquittal of a person, or the sentence by a court of a person to a penalty, or an order made by a court concerning a person; and

(b) the name of the person stated in the certificate is substantially similar to the name of the person concerning whom the evidence is offered.

(5) If this subsection applies, it is presumed, in the absence of evidence to the contrary, that the person whose name is stated in the certificate is the person concerning whom the evidence is offered.

(6) Subpart 1 of Part 2 (which relates to hearsay evidence) does not apply to evidence offered under this section.

Section 139(1)(ba): repealed, on 16 August 2022, by section 16 of the Three Strikes Legislation Repeal Act 2022 (2022 No 40).

Section 139(1)(ba): inserted, on 17 June 2025, by section 19 of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

### 140 Proof of conviction by fingerprints

(1) A certificate is admissible in evidence to prove the identity of a person alleged to have been convicted in a country of an offence if—

(a) the certificate purports to be signed by a fingerprint examiner; and

(b) copies of the fingerprints of the person are exhibited or shown on the certificate; and

(c) the certificate certifies that those copies are copies of the fingerprints of a person who was convicted in the fingerprint examiner's country of the offence of which particulars are given.

(2) Subsection (3) applies to a certificate that—

(a) purports to be signed by a fingerprint examiner; and

(b) certifies that the copies of the fingerprints that are exhibited or shown on the certificate made under subsection (1) and the fingerprints of the person in respect of whom a conviction is sought to be proved (a copy of which is exhibited or shown on the certificate made under this subsection) are the fingerprints of the same person.

(3) A certificate to which this subsection applies is, unless the Judge decides otherwise, evidence that the person in respect of whom the conviction is sought to be proved was convicted of the offence of which particulars were given in the certificate made under subsection (1).

(4) The manner of proving a conviction authorised by this section is in addition to any other manner of proving the conviction authorised by law.

(5) The Governor-General may, by Order in Council, declare that certificates purporting to be made by specified persons or classes of persons in any country other than New Zealand, Australia, United Kingdom, or Canada in respect of convictions for offences committed in that country and to the same effect as certificates under subsection (1) are evidence as if they had been made under subsection (1).

(6) In this section, **fingerprint examiner** means a fingerprint examiner who is—

(a) a member or employee of the Police; or

(b) a member or employee of a Police force in the United Kingdom; or

(c) a member or employee of a Police force of Australia or the Police force of a State or territory of Australia; or

(d) a member or employee of a Police force of Canada or the Police force of a Province or territory of Canada.

(7) Subpart 1 of Part 2 (which relates to hearsay evidence) and subpart 2 of Part 2 (which relates to opinion and expert evidence) do not apply to evidence offered under this section.

(8) An order under subsection (5) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

| Legislation Act 2019 requirements for secondary legislation made under this section | | |
|---|---|---|
| **Publication** | PCO must publish it on the legislation website and notify it in the *Gazette* | LA19 s 69(1)(c) |
| **Presentation** | The Minister must present it to the House of Representatives | LA19 s 114, Sch 1 cl 32(1)(a) |
| **Disallowance** | It may be disallowed by the House of Representatives | LA19 ss 115, 116 |

*This note is not part of the Act.*

Section 140(8): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

## 141 New Zealand and foreign official documents

(1) Subsection (2) applies to a document that purports—

(a) to have been printed in the *Gazette*; or

(b) to have been printed or published by authority of the New Zealand Government; or

(c) to have been printed or published by the Government Printer; or

(d) to have been printed or published by order of or under the authority of the House of Representatives.

(2) If this subsection applies, the document is presumed, unless the Judge decides otherwise, to be what it purports to be and to have been so printed and published and to have been published on the date on which it purports to have been published.

(3) Subsection (4) applies to a document that purports—

(a) to have been printed or published in a government or official gazette (by whatever name called) of a foreign country; or

(b) to have been printed or published by the government or official printer of a foreign country; or

(c) to have been printed or published by the authority of the legislative, executive, or judicial branch of the government of a foreign country; or

(d) to have been printed or published by an international organisation.

(4) If this subsection applies, the document is presumed, unless the contrary is proved, to be what it purports to be and to have been printed or published in the manner provided in subsection (3) and to have been published on the date on which it purports to have been published.

(5) Subpart 1 of Part 2 (which relates to hearsay evidence) does not apply to evidence offered under this section.

## 142 Notification of acts in official documents

(1) Subsection (2) applies if the doing of an act by the Governor-General or the House of Representatives, or by a person authorised to do the act by the law of New Zealand, is notified or published in—

(a) the *Gazette*; or

(b) a document that was printed or published by authority of the New Zealand Government; or

(c) a document that was printed or published by the Government Printer; or

(d) a document that was printed or published by order of or under the authority of the House of Representatives.

(2) If this subsection applies, it is presumed, unless the Judge decides otherwise, that the act was done and that it was done on the date (if any) that appears in the *Gazette* or document.

(3) Subsection (4) applies if the doing of an act by a foreign legislature or a person authorised to do the act by the law of a foreign country is notified or published in—

(a) a government or official gazette (by whatever name called) of a foreign country; or

(b) a document that was printed or published by the government or official printer of a foreign country; or

(c) a document that was printed or published by the authority of the legislative, executive, or judicial branch of the government of a foreign country.

(4) If this subsection applies, it is presumed, unless the contrary is proved, that the act was done and that it was done on the date (if any) that appears in the government or official gazette (however described) or other document.

(5) If the doing of an act by an international organisation is notified or published in a document that was printed or published by the international organisation, it is presumed, unless the contrary is proved, that the act was done and that it was done on the date (if any) that appears in the document.

(6) Subpart 1 of Part 2 (which relates to hearsay evidence) does not apply to evidence offered under this section.

### 143 Presumptions as to New Zealand and foreign official seals and signatures

(1) Subsection (4) applies to the imprint of a seal that appears on a document and purports to be the imprint of the Seal of New Zealand, or the former Public Seal of New Zealand, or 1 of the seals of the United Kingdom on a document relating to New Zealand, or the seal of a foreign country.

(2) Subsection (4) applies to the imprint of a seal that appears on a document and purports to be the imprint of the seal of a body (including a court or tribunal) exercising a function of a public nature under the law of New Zealand or the law of a foreign country.

(3) Subsection (4) applies to the imprint of a seal that appears on a document and purports to be the imprint of the seal of a person holding a public office or

exercising a function of a public nature under the law of New Zealand or the law of a foreign country.

(4) If this subsection applies to the imprint of a seal that appears on a document, the imprint is presumed, unless the Judge decides otherwise, to be the imprint of that seal and the document is presumed, unless the contrary is proved, to have been sealed as it purports to have been sealed.

(5) A document that purports to have been signed by a person as the holder of a public office or in the exercise of a function of a public nature under the law of New Zealand, or the law of a foreign country, is presumed, unless the contrary is proved, to have been signed by that person acting in an official capacity.

### 144 Evidence of foreign law

(1) A party may offer as evidence of a statute or other written law, proclamation, treaty, or act of State, of a foreign country—

(a) evidence given by an expert; or

(b) a copy of the statute or other written law, proclamation, treaty, or act of State that is certified as a true copy by a person who might reasonably be supposed to have the custody of the statute or other written law, proclamation, treaty, or act of State; or

(c) any document containing the statute or other written law, proclamation, treaty, or act of State that purports to have been issued by the government or official printer of the country or by authority of the government or administration of the country; or

(d) any document containing the statute or other written law, proclamation, treaty, or act of State that appears to the Judge to be a reliable source of information.

(2) In addition, or as an alternative, to the evidence of an expert, a party may offer as evidence of the unwritten or common law of a foreign country, or as evidence of the interpretation of a statute or other written law or a proclamation of a foreign country, a document—

(a) containing reports of judgments of the courts of the country; and

(b) that appears to the Judge to be a reliable source of information about the law of that country.

(3) A party may offer as evidence of a statute or other written law of a foreign country, or of the unwritten or common law of a foreign country, any publication—

(a) that describes or explains the law of that country; and

(b) that appears to the Judge to be a reliable source of information about the law of that country.

(4) A Judge is not bound to accept or act on a statement in any document as evidence of the law of a foreign country.

(5) A reference in this section to a statute of a foreign country includes a reference to a regulation, rule, bylaw, or other instrument of subordinate legislation of the country.

(6) Subpart 1 of Part 2 (which relates to hearsay evidence) does not apply to evidence offered under this section.

*Special rules applying where no requirement for legalisation of foreign public document*

### 145 Interpretation

In this section and sections 146 and 147,—

**Convention** means the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, done at the Hague on 5 October 1961

**Convention certificate** means a certificate issued under the Convention in relation to a foreign public document by the competent authority of the State from which the foreign public document emanates

**foreign public document** means a public document that—

(a) has to be produced in New Zealand; and

(b) was executed in a foreign country that—

(i) is a contracting State under the Convention; and

(ii) did not raise an objection to New Zealand's accession to the Convention

**legalisation** means the formality by which New Zealand's diplomatic or consular agents certify, in relation to a public document that has to be produced in New Zealand and that was executed in a foreign country,—

(a) the authenticity of the signature on the public document; and

(b) the capacity in which the person signing the public document has acted; and

(c) where appropriate, the identity of the stamp or seal that the public document bears

**New Zealand authority** means any person in New Zealand (including any court, any person acting judicially, and any person exercising a power or performing a function under a New Zealand law) to whom a foreign public document has to be produced

**public document**—

(a) includes any of the following documents:

(i) a document emanating from an authority or from an official connected with the courts or tribunals of a State, including a docu-

ment emanating from a public prosecutor, a clerk of a court, or a process server; and

(ii) an administrative document (other than an administrative document dealing directly with commercial or customs operations); and

(iii) a notarial act; and

(iv) an official certificate that is placed on a document signed by a person in the person's private capacity (for example, an official certificate recording the registration of a document or the fact that the document was in existence on a certain date, or an official or notarial authentication of a signature); but

(b) does not include a document executed by a diplomatic or consular agent.

Compare: 1908 No 56 s 45A; 2000 No 62 s 3

### 146 Foreign public documents: certificates as to contracting States under Convention

A certificate purporting to be signed by the Secretary of Foreign Affairs and Trade, and stating that a country is a contracting State under the Convention that did not raise an objection to New Zealand's accession to the Convention, is sufficient evidence of those matters, unless the contrary is proved.

Compare: 1908 No 56 s 45B; 2000 No 62 s 3

### 147 Foreign public documents: Convention certificates sufficient authentication of certain matters

(1) A Convention certificate placed on, or attached to, a foreign public document is the only formality that a New Zealand authority may require, in relation to the document, as evidence or certification of—

(a) the authenticity of the signature on the document; and

(b) the capacity in which the person signing the document has acted; and

(c) where appropriate, the identity of the seal or stamp that the document bears.

(2) If a foreign public document is not subject to a requirement of legalisation, no New Zealand authority may require, in relation to the document, a Convention certificate as evidence or certification of the matters referred to in paragraphs (a) to (c) of subsection (1).

(3) A New Zealand authority must accept, in relation to a foreign public document, a Convention certificate placed on, or attached to, the document as sufficient evidence or certification of the matters referred to in paragraphs (a) to (c) of subsection (1), unless the contrary is proved.

(4) Subsection (3) does not prevent a New Zealand authority from accepting, in relation to a foreign public document, a lesser formality than a Convention cer-

tificate placed on, or attached to, the document as evidence or certification of the matters referred to in paragraphs (a) to (c) of subsection (1).

Compare: 1908 No 56 s 45C; 2000 No 62 s 3; Foreign Evidence Act 1994 ss 37–39 (Aust)

*Special rules relating to public documents admissible under Australian law*

### 148 Evidence of public documents by reference to Australian law

(1) A public document that is admissible in evidence under an Australian Act is admissible in evidence to the same extent and for the same purpose if it appears to be sealed, stamped, signed, signed and sealed, or signed and stamped in accordance with that Act.

(2) A certified copy of, or a certified extract from, a public document that is admissible in evidence under subsection (1) is also admissible in evidence.

(3) Despite subsection (1), a public document that is admissible in evidence under Australian law, to any extent or for any purpose, without proof of—

(a) the seal, stamp, or signature that authenticates it; or

(b) the judicial or official character of the person who appears to have signed it—

is admissible in evidence to the same extent and for the same purpose without such proof.

(4) In this section, **public document** means an official or public document; and includes a certificate, an entry in a register, and a record of any proceedings.

Compare: 1990 No 46 s 9

### 149 Evidence of other public documents

A copy of, or an extract from, an Australian document that is, by reason of its public nature, admissible in evidence in Australia merely on its production from the proper custody, is admissible in evidence if—

(a) the copy or extract is proved to be an examined copy or extract; or

(b) the copy or extract appears to be signed or certified as a true copy or extract by the person who has custody of the document and that person also certifies that he or she has custody of it.

Compare: 1990 No 46 s 10

# Part 4
# Evidence from overseas or to be used overseas

## Subpart 1—Proceedings in Australia and New Zealand

*Interpretation and application*

### 150 Interpretation

In this subpart, unless the context otherwise requires,—

**audio link** means facilities (for example, telephone facilities) that enable audio communication between people in different places

**audiovisual link** means facilities that enable audio and visual communication between people in different places

**Australian court** includes a tribunal declared by the Minister of Justice under section 152 to be an Australian court

**Australian subpoena** means a subpoena issued by an Australian court in a proceeding other than a specified proceeding

**document** has the meaning given to it by section 4

**examination** of a person giving evidence means the examination-in-chief, cross-examination, or re-examination of the person

**expenses**, in relation to a subpoena, includes the reasonable costs, necessary for the purposes of complying with the subpoena, of—

(a) travel to and from, and accommodation at, the place at which compliance with the subpoena is required; and

(b) finding, collating, and producing a document or thing

**Federal Court** means the Federal Court of Australia

**High Court** means the High Court of New Zealand

**Judge**, in relation to an Australian court, includes a Judicial Registrar, Magistrate, Master, and a member of a tribunal

**New Zealand court** includes a tribunal declared by the Minister of Justice under section 152 to be a New Zealand court

**New Zealand subpoena** means a subpoena issued by a New Zealand court in a proceeding other than a specified proceeding

**prescribed** means prescribed by rules or regulations made under section 199 or 200

**relevant court**, in relation to leave to serve a New Zealand subpoena on a witness in Australia, or an application under section 154 for leave of that kind, means—

(a) the District Court, if the New Zealand subpoena is issued by a tribunal declared by the Minister of Justice under section 152 to be a New Zealand court; and

(b) the New Zealand court that issued the subpoena, in every other case

**remote appearance medium** means—

(a) an audio link; or

(b) an audiovisual link

**remote evidence** means evidence given or to be given under section 168 or 173

**submissions** does not include submissions that are not—

(a) submissions on whether, and if so in what way or ways, remote evidence may or must be given; or

(b) submissions on whether remote evidence is admitted or admissible; or

(c) other submissions in relation to remote evidence

**subpoena**—

(a) means a process that requires a person to do 1 or both of the following:

(i) give evidence; or

(ii) produce a document or thing; but

(b) does not include a process that requires a person to produce a document in connection with discovery and inspection of documents

**tribunal**—

(a) means a person or body authorised under New Zealand law or a law of the Commonwealth of Australia or a State or territory of Australia, as the case may be, to take evidence on oath or affirmation; but

(b) does not include a court or a person exercising a power conferred on the person as a Judge, Magistrate, or officer of a court

**witness**, in relation to a subpoena, means the person to whom the subpoena is addressed.

Compare: 1994 No 31 s 2

Section 150 **audio link**: inserted, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

Section 150 **audiovisual link**: inserted, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

Section 150 **examination**: inserted, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

Section 150 **expenses**: amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

Section 150 **expenses** paragraph (b): amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

Section 150 **relevant court**: inserted, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

Section 150 **relevant court** paragraph (a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 150 **remote appearance medium**: inserted, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

Section 150 **remote evidence**: inserted, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

Section 150 **submissions**: inserted, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

### 151 Meaning of specified proceeding

In this subpart, **specified proceeding** means a proceeding—

(a) in respect of which a person is seeking an order under the Convention on the Civil Aspects of International Child Abduction signed at The Hague on 25 October 1980; or

(b) relating to the guardianship or care of a person who is incapable of managing his or her personal affairs; or

(c) relating to the management of the property of a person who is incapable of managing that property.

Section 151: replaced, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

### 152 Power of Minister of Justice in relation to certain tribunals

(1) For the purposes of this subpart, the Minister of Justice may declare—

(a) any New Zealand tribunal to be a New Zealand court:

(b) any tribunal of the Commonwealth of Australia or of a State or a territory of Australia to be an Australian court.

(2) A declaration under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1994 No 31 s 3

| Legislation Act 2019 requirements for secondary legislation made under this section | | |
|---|---|---|
| **Publication** | PCO must publish it on the legislation website and notify it in the *Gazette* | LA19 s 69(1)(c) |
| **Presentation** | The Minister must present it to the House of Representatives | LA19 s 114, Sch 1 cl 32(1)(a) |
| **Disallowance** | It may be disallowed by the House of Representatives | LA19 ss 115, 116 |

*This note is not part of the Act.*

Section 152(1): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 152(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

### 153 Act not to apply to certain proceedings in High Court of New Zealand and Federal Court of Australia

Nothing in this subpart applies in relation to any proceedings to which Part 3 of the Trans-Tasman Proceedings Act 2010 applies.

Compare: 1994 No 31 s 4

Section 153: amended, on 1 March 2017, by section 9(2) of the Trans-Tasman Proceedings Amendment Act 2016 (2016 No 70).

### 153A Courts (Remote Participation) Act 2010 does not apply to remote appearances under this subpart

Nothing in the Courts (Remote Participation) Act 2010 applies to the giving or taking of evidence, examination of a person giving evidence, or making or receipt of examination or submissions, by audio link or audiovisual link in accordance with sections 168 to 172 or 173 to 180.

Compare: 2010 No 108 s 36

Section 153A: inserted, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

### 153B Mutual Assistance in Criminal Matters Act 1992 operates in parallel with this subpart

This subpart is not subject to, and does not override, the Mutual Assistance in Criminal Matters Act 1992.

Compare: Trans-Tasman Proceedings Act 2010 s 108 (Aust)

Section 153B: inserted, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

*Service of and compliance with New Zealand subpoenas in Australia*

### 154 Service of New Zealand subpoenas in Australia

(1) A New Zealand subpoena may, with the leave of a Judge of the relevant court, be served on a witness in Australia.

(2) In determining whether to grant leave the Judge must, in addition to any other matter that the Judge considers relevant, have regard to—

(a) the significance of the oral evidence to be given, or the document or thing to be produced, or both; and

(b) whether the oral evidence to be given, the document or thing to be produced, or both could be obtained without significantly greater expense by other means and with less inconvenience to the witness.

(3) The Judge may grant leave subject to any conditions that the Judge thinks fit, and must impose a condition that the New Zealand subpoena is not to be served after a specified date.

(4) The Judge must not grant leave if the subpoena is addressed to a witness who has not attained the age of 18 years.

(5) The Judge may give directions as to service.

(6) This section is subject to the applicable rules of court.

Compare: 1994 No 31 s 5

Section 154(1): amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

### 155 New Zealand subpoena may require evidence to be given in New Zealand or Australia

A New Zealand subpoena served on a witness in Australia may require the witness to give evidence or produce a document or thing or both at a place in New Zealand or Australia.

Compare: 1994 No 31 s 6

### 156 Service of subpoena

(1) A New Zealand subpoena served on a witness in Australia must be served in accordance with New Zealand law.

(2) The subpoena must not be served in Australia unless it is accompanied by—

(a) a copy of the order granting leave to serve the subpoena; and

(b) a statement in the prescribed form that—

(i) sets out the rights and obligations of the witness in relation to the subpoena; and

(ii) includes information about the way in which an application may be made to have the subpoena set aside.

(3) Subsection (1) is subject to any directions as to service imposed under section 154(5).

Compare: 1994 No 31 s 7

### 157 Expenses

(1) A witness on whom a New Zealand subpoena has been served in Australia is not required to comply with the subpoena unless, at the appropriate time, allowances and travelling expenses or vouchers in substitution for allowances

and travelling expenses sufficient to meet the witness's reasonable expenses of complying with the subpoena are paid or given to the witness.

(2) Subsection (3) applies to a witness on whom a New Zealand subpoena has been served in Australia that requires the witness to produce documents or things, but does not require the witness to give oral evidence.

(3) A witness to whom this subsection applies who elects to comply with the subpoena by producing the documents or things at an Australian court, is not required to comply with the subpoena unless, at the appropriate time, expenses sufficient to meet the witness's reasonable expenses of producing the documents or things to an Australian court and the expenses of transmitting the documents or things to the New Zealand court that issued the subpoena are paid or given to the witness.

(4) In this section, the **appropriate time** means the time of service of the subpoena or at some other reasonable time before the witness is required to comply with it.

Compare: 1994 No 31 s 8

### 158 Payment of additional amounts to witness

(1) A witness who has complied with a New Zealand subpoena that was served on the witness in Australia is entitled to be paid any reasonable expenses incurred by the witness in complying with the subpoena in addition to any expenses paid or given to the witness under section 157.

(2) The expenses must be paid by the person who obtained the subpoena or, if the subpoena was issued under a direction of a New Zealand court, by the Crown.

(3) Any money required to be paid by the Crown under subsection (2) must be paid out of the Crown Bank Account.

(4) The court which issued the subpoena may, on the application of the person by whom the subpoena was obtained or the witness, make an order—

(a) specifying the amount to which the witness is entitled under this section; and

(b) requiring the person who obtained the subpoena or the Crown, as the case may be, to pay the amount to the witness.

(5) An order made under subsection (4) by a court which does not have the power to enforce its orders may be filed in the District Court and when filed, is enforceable as a judgment of the District Court.

Compare: 1994 No 31 s 9

Section 158(5): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

### 159 Subpoenas for production

(1) A New Zealand subpoena that requires a witness in Australia to produce documents or things, but does not require the witness to give oral evidence, must

state that the witness may comply with the subpoena by producing the documents or things at any registry of an Australian court not later than 10 days before the date specified in the subpoena as the date on which the documents or things are required for production in the New Zealand court.

(2) For the purposes of subsection (1), **registry**, in relation to an Australian court, means a registry of an Australian court authorised by a law of the Commonwealth of Australia to receive such documents or things.

Compare: 1994 No 31 s 10

### 160 Setting aside of subpoena served in Australia

(1) A witness on whom a New Zealand subpoena is served in Australia may apply to the relevant court to set the subpoena aside.

(2) The relevant court must set the subpoena aside if—

(a) the subpoena requires the witness to attend at a sitting of a New Zealand court and the relevant court is satisfied that—

(i) the witness does not have, and cannot by the exercise of reasonable diligence within the time required for compliance obtain, the necessary travel documents; or

(ii) the witness is liable to be detained in New Zealand for the purpose of serving a sentence; or

(iii) the witness is liable to prosecution for an offence, or is being prosecuted for an offence, in New Zealand; or

(iv) the witness is liable to the imposition of a civil penalty in civil proceedings in New Zealand, not being proceedings for a pecuniary penalty under the Commerce Act 1986; or

(b) the witness is subject to a restriction on his or her movements, imposed by law or by order of a court, that would prevent the witness complying with the subpoena.

(3) Without limiting subsection (1), the relevant court may set the subpoena aside if it is satisfied that—

(a) the evidence of the witness could be obtained satisfactorily without significantly greater expense by other means; or

(b) compliance with the subpoena would cause hardship or serious inconvenience to the witness; or

(c) in the case of a subpoena that requires a witness to produce documents or things, whether or not it also requires the witness to give oral evidence,—

(i) the documents or things should not be taken out of Australia; and

(ii) satisfactory evidence of the contents of the documents or evidence of the things can be given by other means.

(4) An application to set aside a subpoena under subsection (1) must be filed in the office of the relevant court in which leave to serve the subpoena was given, together with any affidavit setting out facts on which the applicant relies.

(5) The Registrar of the relevant court in which the application is filed must ensure that a copy of the application and any affidavit setting out facts on which the applicant relies is served on the solicitor on the record for the person who obtained leave to serve the subpoena, or if there is no solicitor on the record, on that person.

Compare: 1994 No 31 s 11

Section 160(1): amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

Section 160(2): amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

Section 160(2)(a): amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

Section 160(3): amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

Section 160(4): amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

Section 160(5): amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

### 161 Failure to comply with subpoena

If a witness fails to comply with a New Zealand subpoena served in Australia, the court which issued the subpoena may, on the application of a party to the proceedings in which the subpoena was obtained, or of its own motion, give a certificate in the prescribed form stating that—

(a) a Judge of the relevant court has given leave to serve the subpoena issued by the court giving the certificate; and

(b) the witness failed to comply with the subpoena.

Compare: 1994 No 31 s 12

Section 161(a): amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

### 162 Other powers not affected

Nothing in sections 154 to 161 limits or affects any other powers of a New Zealand court.

Compare: 1994 No 31 s 13

*Service of and compliance with Australian subpoenas in New Zealand*

### 163 Service of Australian subpoenas in New Zealand

(1) An Australian subpoena may be served on a witness in New Zealand.

(2) The subpoena must be accompanied by—

(a) a copy of the order of the Judge of the court of judicature within Australia by whom leave was granted to serve the subpoena in New Zealand; and

(b) a statement setting out the rights and obligations of the witness, including information about the way in which an application may be made to the appropriate Australian court to have the subpoena set aside.

Compare: 1994 No 31 s 14

Section 163(2)(a): amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

### 164 Compliance with Australian subpoena

(1) A witness served with an Australian subpoena must comply with the subpoena.

(2) Despite subsection (1), a witness served with an Australian subpoena is not required to comply with the subpoena if—

(a) the subpoena is not served on the witness in accordance with section 163 and the law and rules that apply to the issue and service of the subpoena in the Australian court that issued it; or

(b) allowances and travelling expenses or vouchers in substitution for allowances and travelling expenses sufficient to meet the witness's reasonable expenses of complying with the subpoena are not given or paid to the witness at the appropriate time; or

(c) the witness is under the age of 18 years.

(3) In this section, the **appropriate time** means the time of service of the subpoena or at some other reasonable time before the witness is required to comply with it.

Compare: 1994 No 31 s 15

### 165 Failure of witness to comply with Australian subpoena

(1) The High Court may, on receiving from the Australian court which issued the Australian subpoena a certificate stating that the witness has failed to comply with the subpoena, issue a warrant requiring any member of the Police to arrest the witness and to bring him or her before the High Court.

(2) The High Court may, on the appearance of the witness before the court, impose a fine not exceeding $10,000 unless the court is satisfied that the failure to comply with the subpoena should be excused.

(3) In determining whether the failure to comply with the subpoena should be excused, the High Court may have regard to—

(a) any matters that were not brought to the attention of the Australian court that granted leave to serve the subpoena, if the High Court is satisfied that—

(i) the Australian court would have been likely to have set aside the subpoena if those matters had been brought to the attention of that court; and

(ii) the failure to bring those matters to the attention of the Australian court was not due to any fault on the part of the witness or was due to an omission of the witness that should be excused; and

(b) any matters to which the High Court would have regard if the subpoena had been issued by the High Court.

(4) For the purposes of this section, a certificate under the seal of an Australian court stating—

(a) that leave to serve the subpoena was granted by a Judge of a court of judicature within Australia; and

(b) that the witness failed to comply with the subpoena—

is sufficient evidence of the matters stated in it unless the witness establishes to the satisfaction of the High Court that the witness did in fact comply with the subpoena.

(5) Without limiting subsection (3), no finding of fact made by the court of judicature within Australia referred to in subsection (4)(a) on an application to have the subpoena set aside may be challenged by any person alleged to have failed to comply with the subpoena unless the court was deliberately misled in making those findings of fact.

Compare: 1994 No 31 s 16

Section 165(4)(a): amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

Section 165(5): amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

### 166 Transmission of documents or things to Australian court

(1) The Registrar holding office at the registry of the High Court at which a document or thing is produced in compliance with an Australian subpoena must, on payment of the appropriate sum, accept the document or thing, and,—

(a) as soon as practicable, inform the Registrar of the Australian court that issued the subpoena, by facsimile or similar means of communication, that the document or thing has been produced; and

(b) send the document or thing, without delay, to the Australian court before the date on which it is required to be produced to that court.

(2) In this section, **the appropriate sum** in relation to a document or thing required to be produced in compliance with an Australian subpoena, means a sum that is sufficient to send the document or thing to the Australian court that issued the subpoena by a means that will ensure it is received by the court before the date on which it is required to be produced.

Compare: 1994 No 31 s 17

### 167 Other powers to serve subpoenas not affected

Nothing in this Act limits or affects any right or power conferred by or under a law of the Commonwealth or a State or a territory of Australia to serve a subpoena in New Zealand on an Australian citizen.

Compare: 1994 No 31 s 18

*Audio links and audiovisual links in New Zealand proceedings*

Heading: amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

### 168 New Zealand court may receive evidence, and related examination and submissions, by audio link and audiovisual link from Australia

(1) A New Zealand court may, on application by a party to a proceeding before it, direct that all or any of the following be done by remote appearance medium from Australia:

(a) the giving of evidence:

(b) the examination of a person giving evidence under paragraph (a):

(c) the making of submissions.

(2) The remote appearance medium used must be—

(a) the remote appearance medium specified by the court; or

(b) if the court does not specify a remote appearance medium—either remote appearance medium.

(3) The court must not give the direction unless it is satisfied that—

(a) the evidence, examination, or submission can more conveniently be given or made from Australia; and

(b) if the court intends to specify a remote appearance medium—that remote appearance medium is, or can reasonably be made, available; and

(c) if the court does not intend to specify a remote appearance medium—both remote appearance mediums are, or can reasonably be made, available; and

(d) it is appropriate to give the direction.

Compare: 1994 No 31 s 19(1)

Section 168: replaced, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

### 168A Costs of giving evidence, and making examination and submissions, from Australia

(1) Unless the New Zealand court otherwise orders, the costs incurred in giving evidence, or making an examination or submissions, by audio link or audiovisual link, and transmitting the evidence, examination, or submissions, under a direction under section 168(1), must be paid by the applicant.

(2) The New Zealand court may make an order specifying the amount payable by a party under subsection (1), and requiring the party to pay that amount.

(3) An order made under subsection (2) by a New Zealand court that does not have the power to enforce its orders—

(a) may be filed in the District Court; and

(b) when so filed, is enforceable as a judgment of the District Court.

Compare: 1994 No 31 s 19(2)–(4)

Section 168A: inserted, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

Section 168A(3)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 168A(3)(b): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

### 169 Powers of New Zealand court in Australia

For the purposes of the taking of evidence or the receiving of examination or submissions by audio link or audiovisual link from Australia under section 168, the New Zealand court may exercise in Australia all its powers that it is permitted to exercise in Australia under Australian law.

Compare: 1994 No 31 s 20

Section 169: amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

### 170 Evidence, examination, and submissions by audiovisual link

Evidence must not be given, or examination or submissions made, by audiovisual link from Australia unless the courtroom or other place where the New Zealand court is sitting in New Zealand and the place where the evidence is to be given, or the examination is to be made, or the submissions are to be made, in Australia are equipped with facilities that—

(a) enable persons present at the place where the court is sitting in New Zealand to see and hear the person giving evidence or making the examination or submissions in Australia; and

(b) enable persons present at the place where the evidence is given, the examination is made, or the submissions are made, in Australia to see and hear persons at the place where the court is sitting in New Zealand.

Compare: 1994 No 31 s 21

Section 170 heading: amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

Section 170: amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

Section 170(a): amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

Section 170(b): amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

### 171 Evidence, examination, and submissions by audio link

Evidence must not be given, or examination or submissions made, by audio link from Australia unless the courtroom or other place where the New Zealand court is sitting in New Zealand and the place where the evidence is to be given, or the examination is to be made, or the submissions are to be made, in Australia are equipped with facilities that—

(a) enable persons present at the place where the court is sitting in New Zealand to hear the person giving evidence or making the examination or submissions in Australia; and

(b) enable persons present at the place where the evidence is given, the examination is made, or the submissions are made, in Australia to hear persons at the place where the court is sitting in New Zealand.

Compare: 1994 No 31 s 22

Section 171 heading: amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

Section 171: amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

Section 171(a): amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

Section 171(b): amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

### 172 Rights of Australian counsel

(1) This section applies to a person who—

(a) is entitled to practise as a barrister, or a solicitor, or both in a Supreme Court of a State or a territory of Australia from which evidence is to be given or examination or submissions made under a direction under section 168; but

(b) is not entitled otherwise than under this section to appear before the New Zealand court to examine a person giving evidence, or to make submissions, under that direction.

(2) The person is entitled to practise as a barrister, a solicitor, or both in relation to each appearance for the examination or submissions to which the direction relates, and each appearance of that kind is for the purposes of section 27(1)(b)(i) of the Lawyers and Conveyancers Act 2006 an appearance allowed by this Act.

Compare: 1994 No 31 s 23

Section 172: replaced, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

*Audio links and audiovisual links in Australian proceedings*

Heading: amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

### 173 Australian court may take evidence, and receive related examination and submissions, by audio link or audiovisual link from New Zealand

The taking of evidence, or receipt of an examination or submissions, from New Zealand in a proceeding in an Australian court is authorised if it is in accordance with the Trans-Tasman Proceedings Act 2010 (Aust).

Compare: 1994 No 31 s 24

Section 173: replaced, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

### 174 Powers of Australian court

(1) For the purposes of taking evidence from a witness in New Zealand or hearing examination or submissions from a person in New Zealand, an Australian court may exercise in New Zealand any of its powers, except its powers to—

(a) punish for contempt; and

(b) enforce or execute its judgments or process.

(2) Subject to subsection (1), the Australian law that applies to the proceeding in Australia also applies to the practice and procedure of the Australian court in taking evidence or receiving examination or submissions from a person in New Zealand.

Compare: 1994 No 31 s 25

Section 174(1): amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

Section 174(2): amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

### 175 Orders of Australian court

(1) Without limiting section 174, the Australian court may, by order,—

(a) direct that the hearing or any part of the hearing be held in private; or

(b) require any person to leave the place where the evidence is or is to be given, the examination is or is to be made, or the submissions are or are to be made; or

(c) prohibit or restrict the publication of evidence or the name of any party or of any witness.

(2) An order made under subsection (1) may be enforced by a Judge of the High Court who, for that purpose, has and may exercise the powers, including the power to punish for contempt, that would have been available to enforce the order if it had been made by that Judge.

Compare: 1994 No 31 s 26

Section 175(1)(b): amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

### 176 Place where evidence given or examination or submissions made part of Australian court

For the purposes of sections 174 and 175, the place in New Zealand where the evidence is given, the examination is made, or the submissions are made in a proceeding before an Australian court are deemed to be part of that court.

Compare: 1994 No 31 s 27

Section 176 heading: amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

Section 176: amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

### 177 Privileges, protections, and immunities of Judges, counsel, and witnesses in Australian proceedings

(1) A Judge of an Australian court has, in relation to the taking of evidence or the making of an examination or submissions by audio link or audiovisual link from a person in New Zealand, all the privileges, protections, and immunities of a Judge of the High Court.

(2) A person appearing as a barrister, a solicitor, or both has, in relation to the taking of the evidence or the making of the examination or submissions, all the privileges and immunities of counsel in the High Court.

(3) Every witness who gives evidence in a proceeding before an Australian court by audio link or audiovisual link from New Zealand has all the privileges and immunities of a witness in the High Court.

Compare: 1994 No 31 s 28

Section 177(1): amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

Section 177(2): amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

Section 177(3): amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

### 178 Power of Australian court to administer oaths in New Zealand

(1) An Australian court may, for the purpose of obtaining the evidence of a person in New Zealand by audio link or audiovisual link, administer an oath or affirmation in accordance with the practice and procedure of that court.

(2) Evidence given by a person on oath or affirmation administered by the Australian court under subsection (1) is, for the purposes of section 108 of the Crimes Act 1961 (which relates to perjury), deemed to have been given as evidence in a judicial proceeding on oath.

Compare: 1994 No 31 s 29

Section 178(1): amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

### 179 Contempt of Australian court

(1) Every person commits an offence who, in New Zealand, at a place where evidence is being given, an examination is being made, or submissions are being made by audio link or audiovisual link in a proceeding before an Australian court,—

(a) assaults—

(i) a person appearing as a barrister, or solicitor, or both in the proceeding; or

(ii) a witness in the proceeding; or

(iii) an officer of a New Zealand court giving assistance under section 180; or

(b) threatens or intimidates or wilfully insults—

(i) a Judge of the Australian court taking part in the proceeding; or

(ii) a Registrar or officer of the Australian court taking part in, or assisting with, the proceeding; or

(iii) a person appearing as a barrister, or solicitor, or both in the proceeding; or

(iv) a witness in the proceeding; or

(c) wilfully interrupts or obstructs the proceeding; or

(d) wilfully and without lawful excuse, disobeys any order or direction of the Australian court in the course of the proceeding.

(2) Every person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding $1,000, or to both.

Compare: 1994 No 31 s 30

Section 179(1): amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

Section 179(2): amended, on 1 July 2013, by section 5 of the Evidence Amendment Act 2011 (2011 No 89).

### 180 Assistance to Australian court

An officer of a New Zealand court may, at the request of an Australian court,—

(a) attend at the place in New Zealand where evidence is being or will be given, an examination is being or will be made, or submissions are being or will be made by audio link or audiovisual link in a proceeding before the Australian court; and

(b) take any action that the Australian court directs to facilitate the proceeding; and

(c) assist with the administering by the Australian court of an oath or affirmation.

Compare: 1994 No 31 s 31

Section 180(a): amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

*Enforcement of Australian orders*

*[Repealed]*

Heading: repealed, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

### 181 Enforcement of certain orders made by Australian court

*[Repealed]*

Section 181: repealed, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

## Subpart 2—Evidence for use in civil proceedings overseas and evidence for use in civil proceedings in High Court

### 182 Interpretation

In this subpart, unless the context otherwise requires,—

**civil proceeding** means any proceeding other than a criminal proceeding

**Hague Convention on Evidence Abroad** means the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters signed at the Hague on 18 March 1970

**High Court** means the High Court of New Zealand

**Judge** means a Judge of the High Court

**request** includes any commission, order, or other process issued by or on behalf of the requesting court

**requesting court** means any court or tribunal exercising jurisdiction in a country or territory outside New Zealand.

### 183 Relationship with subpart 1

This subpart does not affect the application or operation of subpart 1.

*Evidence for use in civil proceedings overseas*

### 184 Application to High Court for assistance in obtaining evidence for civil proceedings in another court

The High Court or a Judge may exercise the powers conferred by section 185(1) if an application is made to the High Court or a Judge for an order for evidence to be obtained in New Zealand and the court or Judge is satisfied—

(a) that the application is made to implement a request issued by or on behalf of a requesting court; and

(b) that any requirements prescribed in rules or regulations made under section 200 as to the form of the application and the manner in which it must be made are satisfied; and

(c) that the evidence to which the application relates is to be obtained for the purposes of civil proceedings which either have been instituted before the requesting court or whose institution before that court is contemplated.

### 185 Power of High Court to give effect to application for assistance

(1) If this section applies, the High Court or a Judge may—

(a) order that any provision for the taking of evidence in New Zealand that the High Court or the Judge considers appropriate for giving effect to the request to which the application relates, be made:

(b) include in that order a requirement for any specified person to do any specified thing that the High Court or the Judge considers appropriate for that purpose.

(2) An order under subsection (1) may include, without limitation, provision—

(a) for the examination of witnesses, either orally or in writing at any agreed time or at any specified time and place:

(b) for the production of documents:

(c) for the inspection, photographing, preservation, custody, or detention of any property:

(d) for the taking of samples of any property and the carrying out of any experiments on or with any property:

(e) for the medical examination of any person:

(f) without limiting paragraph (e), for the taking and testing of samples of blood from any person.

(3) An order under subsection (1) may not require any particular steps to be taken unless they are steps that can be required to be taken by way of obtaining evidence for the purposes of civil proceedings in the High Court (whether or not proceedings of the same description as those to which the application for the order relates).

(4) Subsection (3) does not preclude the making of an order requiring a person to give evidence (either orally or in writing) otherwise than on oath if this is asked for by the requesting court.

(5) An order under subsection (1) may not require a person—

(a) to state what documents relevant to the proceedings to which the application for the order relates are or have been in the person's possession, custody, or power:

(b) to produce any documents other than particular documents specified in the order as being documents appearing to the court making the order to be, or to be likely to be, in the person's possession, custody, or power and relevant to the proceedings.

(6) A person who, pursuant to an order under subsection (1), is required to attend at any place, is entitled to the same conduct money and payment for expenses and loss of time as on attendance as a witness in civil proceedings before the High Court.

(7) An order made under subsection (1) may be enforced in the same manner as if it were an order made by the High Court or Judge in proceedings pending in the High Court or before the Judge.

### 186 Privileges of witnesses

(1) A person may not be compelled by an order under section 185(1) to give any evidence that the person could not be compelled to give—

(a) in civil proceedings in New Zealand; or

(b) in civil proceedings in the country or territory in which the requesting court exercises jurisdiction.

(2) Subsection (1)(b) does not apply unless the person in question claims to be exempt from giving the evidence and the claim is either—

(a) supported by a statement contained in the request (whether unconditionally or subject to conditions that are fulfilled); or

(b) conceded by the applicant for the order under section 185(1).

(3) If a claim is made by a person for exemption under subsection (2) but the High Court or a Judge is not satisfied that subsection (2) applies, the person may be required to give the evidence to which the claim relates but that evidence must not be transmitted to the requesting court if—

(a) the High Court or a Judge refers the claim to the requesting court for consideration and determination; and

(b) that court upholds the claim for exemption.

(4) A person may not be compelled by an order under section 185(1) to give any evidence if the giving of that evidence would be prejudicial to the security of New Zealand and a certificate signed by the Attorney-General to the effect that it would be so prejudicial for that person to do so is conclusive evidence of that fact.

(5) In this section, **giving evidence** includes—

(a) answering any question:

(b) producing any document.

### 187 Orders not to bind the Crown or Crown servants

No order may be made under this subpart that is binding on the Crown or on any person in his or her capacity as an officer or servant of the Crown.

*Procedure for taking evidence overseas for use in civil proceedings in High Court*

### 188 Procedure for taking evidence outside New Zealand in civil proceedings in High Court

(1) If at any stage of any civil proceeding in the High Court it appears necessary or desirable in the interests of justice, the High Court or a Judge may order that—

(a) any person named in the order be examined on oath, by interrogatories or otherwise, at any place outside New Zealand before any officer of the High Court, any overseas representative, or any other person named in the order by name or designation; and

(b) any deposition so taken be filed in the High Court; and

(c) any party to the proceeding be empowered to give that deposition in evidence in the proceeding, on any terms as the High Court or Judge may direct.

(2) In any civil proceeding in the High Court, if the High Court or a Judge thinks fit, instead of making an order for the examination of a witness or person under subsection (1), the High Court or Judge may order that a letter of request be issued directed to any overseas court of competent jurisdiction for the examination of a witness or person named in the order.

(3) If an order is made under subsection (2), a letter of request must be issued accordingly, and signed by a Judge or Registrar, and sealed with the seal of the High Court in a form—

(a) that the High Court or Judge approves or that is prescribed by rules of court or regulations made under section 200; or

(b) that is consistent with the requirements of any convention to which the country in which the overseas court is, is a party to (for example, the Hague Convention on Evidence Abroad).

(4) Letters of request must be transmitted to and from an overseas court through any channels—

(a) that are prescribed by rules of court or regulations made under section 200; or

(b) that are consistent with the requirements of any convention to which the country in which the overseas court is, is a party to (for example, the Hague Convention on Evidence Abroad).

(5) On the application of any opposite party, and on being satisfied that the party for whose benefit an order under subsection (1) or (2) was made is not proceeding with due diligence to implement the order and the delay is not the responsibility of any other person, the Judge may—

(a) rescind the order; or

(b) make any other order the Judge considers to be in the interests of justice.

(6) This section does not limit sections 103 to 106.

Compare: 1980 No 27 s 46

*Offences*

### 189 False statements

(1) Every person commits an offence who, being required under section 185(1) to give evidence (either orally or in writing) otherwise than on oath, makes a statement—

(a) that he or she knows to be false in a material particular; or

(b) that is false in a material particular and that he or she does not believe to be true.

(2) Every person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 3 years.

Section 189(1): amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

Section 189(2): amended, on 1 July 2013, by section 5 of the Evidence Amendment Act 2011 (2011 No 89).

## Subpart 3—Evidence for use in overseas criminal proceedings

### 190 Interpretation

In this subpart,—

**High Court** means the High Court of New Zealand

**Judge** means a Judge of the High Court

**overseas court** means a court or tribunal exercising jurisdiction in any country outside New Zealand

**overseas representative**—

(a) means any Ambassador, High Commissioner, Commissioner, Minister, Counsellor, Chargé d'Affaires, Head of Mission, Consular Officer, or Pro-consul of any country other than New Zealand exercising jurisdiction in New Zealand; and

(b) includes any person lawfully acting for any of those officers and also includes any Diplomatic Secretary on the staff of any such Ambassador,

High Commissioner, Commissioner, Minister, Counsellor, Chargé d'Affaires, or Head of Mission.

Compare: 1908 No 56 s 48A

### 191 Relationship with subpart 1

This subpart does not affect the application or operation of subpart 1.

### 192 Examination of witness at request of overseas court

(1) If any criminal proceedings (not being criminal proceedings of a political character) are pending before any overseas court of competent jurisdiction, and that court wishes to obtain the evidence of any witness in New Zealand for the purposes of those proceedings, the High Court or a Judge of that court may order the examination of the witness on oath, by interrogatories, or otherwise, before any person named in the order.

(2) An order under subsection (1) may be made on the application of the parties to the proceeding before the overseas court or on the application of the Solicitor-General.

(3) Despite subsection (2),—

(a) an application for an order under subsection (1) must be made in accordance with any requirements prescribed in regulations made under section 200:

(b) the right of the Solicitor-General to make an application of that kind is subject to any restrictions set out in regulations made under section 200.

(4) An order made under subsection (1) may be enforced in the same manner as if it were an order made by the High Court or the Judge in proceedings pending in the High Court or before the Judge.

Compare: 1908 No 56 s 48A

### 193 Powers may be exercised by Registrar

(1) A Judge may authorise a Registrar of the High Court to exercise the powers of the High Court or the Judge under section 192, either—

(a) generally; or

(b) in respect of a particular case or class of case.

(2) An authorisation under subsection (1) may be revoked at any time by any Judge.

(3) If, in the opinion of the Registrar, any matter that he or she has jurisdiction to deal with under an authorisation under subsection (1) is of special difficulty, the Registrar may refer the matter to a Judge who may—

(a) dispose of it; or

(b) refer it back to the Registrar with any directions that he or she considers appropriate.

(4) Nothing in this section prevents the exercise by the High Court or any Judge of any powers conferred on a Registrar under this section.

Compare: 1908 No 56 s 48B

### 194 Evidence in support of application

(1) Evidence that any criminal proceedings are pending in an overseas court and that the court wishes to obtain the evidence of the witness to whom the application relates for the purposes of those proceedings, may be given by—

(a) letter of request; or

(b) another document issued by that court; or

(c) the certificate of an overseas representative given under subsection (3); or

(d) any other process that the High Court or a Judge may accept.

(2) Any letter of request or other document purporting to be sealed with the seal of any overseas court or signed by a Judge or other judicial officer or by a Registrar or other officer of the court must, for the purpose of this section and section 192, be received in evidence without proof of—

(a) the seal of the court; or

(b) the signature of the Judge or other person; or

(c) the judicial or official character of the Judge or other person.

(3) A certificate purporting to be signed by an overseas representative to the effect that any matter in relation to which an application is made under section 192 is a criminal proceeding pending in a court having jurisdiction in the proceeding in the country of which he or she is a representative and that the court having that jurisdiction wishes to obtain the testimony of the witness to whom the application relates, is sufficient evidence of the matters set out in the certificate.

(4) A certificate given under subsection (3) must be received in evidence without proof of—

(a) the signature of the person who signed the certificate; and

(b) the official character of that person.

Compare: 1908 No 56 s 48C

### 195 Protection of witnesses

(1) A person may not be compelled by an order under section 192 to give evidence that the person could not be compelled to give in criminal proceedings in New Zealand.

(2) A person may not be compelled by an order under section 192 to give any evidence if the giving of that evidence would infringe the jurisdiction of New Zealand or would otherwise be prejudicial to the security or sovereignty of New Zealand or would be likely to be prejudicial to the trading, commercial, or eco-

nomic interests of New Zealand; and a certificate signed by the Attorney-General to the effect that it would be or, as the case requires, is likely to be so prejudicial for that person to do so is conclusive evidence of that fact.

(3) In this section, **giving evidence** includes—

(a) answering any question:

(b) producing any document.

Compare: 1908 No 56 s 48D

### 196 Witnesses' expenses

Every witness required to attend for examination by an order made under section 192 is entitled to a sum for his or her allowances and travelling expenses and loss of time in accordance with the scale prescribed for the time being by regulations made under the Criminal Procedure Act 2011.

Compare: 1908 No 56 s 48E

Section 196: amended, on 1 July 2013, by section 5 of the Evidence Amendment Act 2011 (2011 No 89).

### 197 Solicitor may take affidavit or declaration

(1) It is lawful for any solicitor of the High Court to take the affidavit or declaration of any person in relation to any criminal proceedings that are certified in accordance with this section to be pending in any overseas court.

(2) An affidavit or declaration referred to in subsection (1) must be intituled "In the matter of section 197 of the Evidence Act 2006", and a declaration referred to in subsection (1) may be expressed to be made under the provisions of this section.

(3) No affidavit or declaration referred to in subsection (1) may be taken unless the solicitor taking it has received a written certificate—

(a) from the overseas court that the affidavit or declaration is required for the purpose of criminal proceedings pending in the court; or

(b) from an overseas representative of the country in which the overseas court exercises jurisdiction that he or she believes the affidavit or declaration to be required for the purpose of criminal proceedings pending in the overseas court.

(4) A certificate for the purposes of subsection (3)(a) may be given by any Judge or judicial officer of the overseas court, or by any Registrar or other officer of that court.

(5) If a certificate is given under subsection (3)(b), the jurat or attestation of the affidavit or declaration must state the name and official designation of the overseas representative on whose certificate the affidavit or declaration has been taken.

(6) In this section,—

**affidavit** means any affidavit or affirmation made before a solicitor of the High Court

**declaration** means any written statement declared by the maker of the statement to be true in the presence of a solicitor of the High Court.

Compare: 1908 No 56 s 48F(1)–(6)

### 198 False affidavit or declaration

(1) Every affidavit or declaration taken under section 197 is deemed to have been made in a judicial proceeding within the meaning of the Crimes Act 1961, and any person who falsely makes an affidavit or declaration of that kind is guilty of perjury or of making a false declaration accordingly.

(2) In any prosecution in respect of an affidavit or declaration taken under section 197 it must be conclusively presumed that criminal proceedings were actually pending in the overseas court and that a certificate was given in accordance with section 194(3).

Compare: 1908 No 56 s 47F(7), (8)

## Subpart 4—Rules and regulations

### 199 Rules

(1) In the case of the High Court and the Court of Appeal, rules may be made for the purposes of subpart 1 of this Part under section 148 of the Senior Courts Act 2016 that make provision for or relate to—

(a) the issuing of New Zealand subpoenas and the service of those subpoenas:

(b) the hearing or disposal of applications for orders under any specified provisions in this Part:

(c) the lodging of documents or things with an Australian court in compliance with a New Zealand subpoena that requires only the production of documents or things by a witness:

(d) the transmission of documents or things lodged with a New Zealand court in compliance with an Australian subpoena to the Australian court that issued the subpoena:

(e) the giving of evidence and the making of examinations and submissions by audio link or audiovisual link in connection with proceedings before a New Zealand court or an Australian court:

(f) the receiving of facsimiles of documents or things:

(g) the form of New Zealand subpoenas and other documents:

(h) such other matters as are contemplated by or necessary for giving full effect to subpart 1 of this Part.

(2) In the case of any other New Zealand court, rules or, as the case may be, regulations may be made under the authority of any enactment that provides for the making of rules or regulations governing the practice and procedure of the court that make provision for or relate to any of the matters referred to in paragraphs (a), (c), and (e) to (h) of subsection (1).

Section 199(1): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

Section 199(1)(e): amended, on 11 October 2013, by section 10(1) of the Trans-Tasman Proceedings Act 2010 (2010 No 108).

### 200 Rules and regulations

(1) Without limiting section 199 or the power to make rules of procedure conferred by the Senior Courts Act 2016, the District Court Act 2016, and the Family Court Act 1980,—

(a) rules may be made under those Acts prescribing anything that is required to be prescribed or necessary for carrying this Part into effect:

(b) the Governor-General may, by Order in Council, make regulations prescribing anything that is required to be prescribed or necessary for carrying this Part into effect.

(2) The Governor-General may, by Order in Council, make regulations—

(a) fixing, and requiring the payment of, fees and expenses for or incurred in taking evidence under this Part:

(b) prescribing the matters in respect of which fees are payable under this Part and the amounts of those fees:

(c) regulating the payment of expenses in respect of expenses incurred in complying with New Zealand subpoenas.

(3) Regulations under subsection (1)(b) or (2) are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1980 No 27 s 47

| **Legislation Act 2019 requirements for secondary legislation made under this section** | | |
|---|---|---|
| **Publication** | PCO must publish it on the legislation website and notify it in the *Gazette* | LA19 s 69(1)(c) |
| **Presentation** | The Minister must present it to the House of Representatives | LA19 s 114, Sch 1 cl 32(1)(a) |
| **Disallowance** | It may be disallowed by the House of Representatives | LA19 ss 115, 116 |

*This note is not part of the Act.*

Section 200(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 200(1): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

Section 200(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

# Part 5
# Miscellaneous

*Regulations*

## 201 Regulations

(1) The Governor-General may, by Order in Council, make regulations—

(a) prescribing the procedure to be followed (*see also* section 201A), the type of equipment to be used, and the arrangements to be made where a person's evidence is to be video recorded:

(b) providing for the approval of interviewers, or classes of interviewers, for child complainants, and providing for such approvals to be proved by production of certificates in the prescribed form:

(c) regulating the way in which evidence of a witness may be given in an alternative way:

(d) prescribing the form of certificate by which an interviewer is to formally identify a video record:

(e) regulating the video recording of evidence:

(f) providing for the consent of persons to be video recorded and specifying who may give consent on behalf of children who are to be video recorded:

(g) prescribing the uses to which any video records may be put and prohibiting their use for other purposes:

(ga) prescribing the ways in which video records may be dealt with, including access to or the disclosure or sharing of video records, or the custody or return of video records, or prohibiting or restricting their copying:

(h) providing for the safe custody of video records intended to be offered as evidence:

(ha) prescribing requirements for viewing video records of evidence by defendants, their lawyers, and expert witnesses, including where and when viewing can take place:

(i) providing for the preparation of transcripts of video records and for their uses and safe custody:

(ia) regulating the destruction of video records or of transcripts of video records (including the destruction of copies or summaries of, or of extracts or parts of, video records or transcripts of video records):

(ib) *[Repealed]*

(j) regulating the provision of communication assistance to defendants and witnesses:

(k) providing for requirements, in addition to those set out in section 45(3), for formal procedures that are held to obtain visual identification evidence:

(l) providing for the determination of the amount of fees and expenses, including minimum and maximum amounts, payable in respect of professional services provided by counsel appointed under section 115:

(m) regulating the form of warnings or information that can be given by a Judge in relation to evidence given by children under the age of 6 years in a proceeding tried by a jury:

(n) regulating the translation of documents into English or Māori:

(o) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

(2) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

| **Legislation Act 2019 requirements for secondary legislation made under this section** | | |
|---|---|---|
| **Publication** | PCO must publish it on the legislation website and notify it in the *Gazette* | LA19 s 69(1)(c) |
| **Presentation** | The Minister must present it to the House of Representatives | LA19 s 114, Sch 1 cl 32(1)(a) |
| **Disallowance** | It may be disallowed by the House of Representatives | LA19 ss 115, 116 |

*This note is not part of the Act.*

Section 201(1)(a): amended, on 21 December 2022, by section 22(1) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 201(1)(ga): inserted, on 8 January 2017, by section 36(1) of the Evidence Amendment Act 2016 (2016 No 44).

Section 201(1)(ga): amended, on 21 December 2022, by section 22(2) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 201(1)(ha): inserted, on 8 January 2017, by section 36(2) of the Evidence Amendment Act 2016 (2016 No 44).

Section 201(1)(ia): inserted, on 8 January 2017, by section 36(3) of the Evidence Amendment Act 2016 (2016 No 44).

Section 201(1)(ia): amended, on 21 December 2022, by section 22(3) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 201(1)(ib): repealed, on 21 December 2022, by section 22(4) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Section 201(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

### *Periodic review of operation of Act*

### *[Repealed]*

Heading: repealed, on 30 November 2022, by section 38 of the Statutes Amendment Act 2022 (2022 No 75).

## 201A Regulations made under section 201(1)(a) may authorise Judge to make order restricting attendance by, or excluding, members of media at

**making, before trial, of video record of sexual case complainant's or propensity witness's evidence**

(1) Regulations made under section 201(1)(a) may authorise a Judge to make an order restricting attendance by, or excluding, any member of the media at any making, before trial, of a video record of a sexual case complainant's or propensity witness's evidence.

(2) In this section, **member of the media** has the same meaning as in section 198(2) of the Criminal Procedure Act 2011.

(3) This section does not limit the generality of section 201(1)(a), and applies despite anything to the contrary in the Criminal Procedure Act 2011.

Section 201A: inserted, on 21 December 2022, by section 23 of the Sexual Violence Legislation Act 2021 (2021 No 60).

### 202 Periodic review of operation of Act

*[Repealed]*

Section 202: repealed, on 30 November 2022, by section 38 of the Statutes Amendment Act 2022 (2022 No 75).

*Transitional provisions*

### 203 Notice of hearsay before commencement

The requirements of section 22(2) may be complied with before the commencement of that provision, for the purpose of ensuring that compliance with those requirements occurs in sufficient time before a hearing that may or will take place after the commencement of that provision.

### 204 Notice before commencement relating to co-defendants' veracity

A notice under section 39(2) may be given, before the commencement of that provision, for the purpose of ensuring that it is given in sufficient time before a hearing that may or will take place after the commencement of that provision.

### 205 Notice before commencement concerning propensity evidence about co-defendants

A notice under section 42(2) may be given, before the commencement of that provision, for the purpose of ensuring that it is given in sufficient time before a hearing that may or will take place after the commencement of that provision.

### 206 Identification already carried out

Subpart 6 of Part 2 (identification evidence) does not apply in relation to an identification made before the commencement of that subpart.

### 207 Transitional provisions relating to Law Practitioners Act 1982

(1) Until the commencement of section 6 of the Lawyers and Conveyancers Act 2006, section 51(1) must be read as if for the definition of lawyer there were substituted the following definition:

> **lawyer** means a barrister or solicitor, as those terms are defined in section 2 of the Law Practitioners Act 1982

(2) Until the commencement of section 112 of the Lawyers and Conveyancers Act 2006, section 55(1)(a) must be read as if the reference to section 112 of the Lawyers and Conveyancers Act 2006 were a reference to section 89 of the Law Practitioners Act 1982.

(3) Until the commencement of section 96 of the Lawyers and Conveyancers Act 2006, section 55(1) must be read as if for paragraph (b) there were substituted the following paragraph:

> (b) by any solicitors' nominee company operated by a solicitor with the consent of the relevant District Law Society as a nominee in respect of securities and documents of title held for clients.

### 208 Transitional provision relating to communication assistance

(1) A defendant may apply under section 80(2), before the commencement of that provision, for communication assistance after the commencement of that provision in criminal proceedings.

(2) A witness or a party to civil proceedings may apply under section 80(4), before the commencement of that provision, for communication assistance after the commencement of that provision in civil proceedings.

### 209 Transitional provision relating to cross-examination by unrepresented parties

A witness, or a party calling a witness, may apply under section 95(2), before the commencement of that provision, for an order under that provision, restricting any cross-examination that is to take place after the commencement of that provision.

### 210 Transitional provision concerning alternative ways of giving evidence

A party may make an application for directions under section 103(1), before the commencement of that provision, for the purpose of ensuring that the application for directions permitted under that provision in respect of the giving of evidence in chief by a witness and his or her cross-examination after the commencement of that provision in any proceedings, is made as early as practicable before the proceeding is to be heard.

### 211 Transitional provision concerning giving of evidence by child complainants

The prosecution may make an application for directions under section 107(1), before the commencement of that provision, for the purpose of ensuring that the application required under that section in respect of the giving of evidence in chief by the complainant and his or her cross-examination after the commencement of that provision, is made as early as practicable before the case is to be tried.

### 212 Transitional provision relating to offering documents in evidence without calling witness

(1) A party may give notice under section 130(4), before the commencement of that provision, for the purpose of ensuring that the notice is given in sufficient time before a hearing that will or may take place after the commencement of that provision.

(2) A party may give notice of objection under section 130(5), before the commencement of that provision, for the purpose of ensuring that the notice is given in sufficient time before a hearing that will or may take place after the commencement of that provision.

### 213 Transitional provision relating to translation and transcripts

A party may give notice under section 135(1) or 135(3) of the translation of the document or the offer of a transcript, before the commencement of those provisions, for the purpose of ensuring that the notice is given in sufficient time before a hearing that will or may take place after the commencement of those provisions.

### 214 General

If, under any of sections 203 to 213, any person is empowered to apply to a Judge under any provision before its commencement for any order or directions, the Judge also has power, before the commencement of the provision, to exercise any of the powers conferred by that provision on a Judge.

*Repeals and amendments*

### 215 Repeals

The enactments specified in Schedule 1 are repealed.

### 216 Consequential amendments

The enactments specified in Schedule 2 are amended in the manner set out in that schedule.

# Schedule 1AA
# Transitional, savings, and related provisions

s 4A

Schedule 1AA: inserted, on 21 December 2021, by section 24 of the Sexual Violence Legislation Act 2021 (2021 No 60).

## Part 1
## Provision relating to Part 1 of Sexual Violence Legislation Act 2021

Schedule 1AA Part 1: inserted, on 21 December 2021, by section 24 of the Sexual Violence Legislation Act 2021 (2021 No 60).

### 1 Proceedings affected by Part

(1) Amendments made by a provision of Part 1 of the Sexual Violence Legislation Act 2021 (except for this clause) apply only to proceedings commenced on or after the commencement of that provision.

(2) Proceedings commenced before that commencement, and not finally determined (including any rehearing, retrial, or appeal) before that commencement, continue as if those amendments had not been enacted.

Schedule 1AA clause 1: inserted, on 21 December 2021, by section 24 of the Sexual Violence Legislation Act 2021 (2021 No 60).

## Part 2
## Provisions relating to Security Information in Proceedings (Repeals and Amendments) Act 2022

Schedule 1AA Part 2: inserted, on 28 November 2023, by section 97(a) of the Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72).

### 2 Interpretation

In this Part, unless the context otherwise requires,—

**2022 Act** means sections 92 to 97 of the Security Information in Proceedings (Repeals and Amendments) Act 2022

**commencement date** means the date on which the 2022 Act comes into force.

Schedule 1AA clause 2: inserted, on 28 November 2023, by section 97(a) of the Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72).

### 3 Proceedings involving classified security information

(1) The amendments made to this Act by the 2022 Act (except for this clause) apply to proceedings commenced on or after the commencement date.

(2) To avoid doubt, subclause (1) applies to proceedings that commence on or after the commencement date, but that relate to circumstances, events, or decisions that occurred before, on, or after the commencement date.

(3) Proceedings commenced before the commencement date, and not finally determined before the commencement date (including any rehearing, retrial, or appeal), continue as if the amendments made to this Act by the 2022 Act had not been enacted.

Schedule 1AA clause 3: inserted, on 28 November 2023, by section 97(a) of the Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72).

## Part 3
## Provision relating to Evidence (Giving Family Violence Evidence in Family Court Proceedings) Amendment Act 2025

Schedule 1AA Part 3: inserted, on 26 February 2026, by section 7(a) of the Evidence (Giving Family Violence Evidence in Family Court Proceedings) Amendment Act 2025 (2025 No 44).

### 4 Proceedings affected by Evidence (Giving Family Violence Evidence in Family Court Proceedings) Amendment Act 2025

(1) Amendments made by a provision of the Evidence (Giving Family Violence Evidence in Family Court Proceedings) Amendment Act 2025 (except for this clause) apply only to proceedings commenced on or after the commencement of that provision.

(2) Proceedings commenced before that commencement, and not finally determined (including any rehearing or appeal) before that commencement, continue as if those amendments had not been enacted.

Schedule 1AA clause 4: inserted, on 26 February 2026, by section 7(a) of the Evidence (Giving Family Violence Evidence in Family Court Proceedings) Amendment Act 2025 (2025 No 44).

# Schedule 1
# Enactments repealed

s 215

**Evidence Act 1908 (1908 No 56)**

**Crimes Act 1961 (1961 No 43)**

Sections 344D, 366(1), and 369.

**Juries Act 1981 (1981 No 23)**

Section 28.

**Summary Proceedings Act 1957 (1957 No 87)**

Sections 3(1)(k), 60, and 178A.

# Schedule 2
# Amendments to other enactments

s 216

## Part 1
## Amendments to other Acts

### Acts and Regulations Publication Act 1989 (1989 No 142)

Insert, after section 16:

*Judicial notice and evidence of New Zealand legislation*

**16A Judicial notice of Acts of Parliament**

Judicial notice must be taken by all courts and persons acting judicially of all Acts of Parliament.

**16B Judicial notice of regulations**

(1) Judicial notice must be taken by all courts and persons acting judicially of all regulations.

(2) In subsection (1) and sections 16C and 16D, **regulations**—

(a) has the same meaning as in section 2; and

(b) includes any instrument that, under section 14, has been printed and published as if it were a regulation.

**16C Copy of Act of Parliament, Imperial legislation, and regulations printed as prescribed to be evidence**

(1) Every copy of any Act of Parliament or of any Imperial enactment or any Imperial subordinate legislation (as defined in section 2 of the Imperial Laws Application Act 1988) being a copy purporting to be printed or published (whether before or after the commencement of this section) under the authority of the New Zealand Government is, unless the contrary is shown, deemed—

(a) to be a correct copy of that Act of Parliament, enactment, or legislation; and

(b) to have been so printed or published.

(2) Every copy of any Imperial enactment or Imperial subordinate legislation (as so defined), being a copy purporting to be printed (whether before or after the commencement of this section) by the Queen's or King's Printer or under the superintendence or authority of Her Majesty's Stationery Office in the United Kingdom, is, unless the contrary is shown, deemed—

(a) to be a correct copy of that enactment or legislation; and

(b) to have been so printed.

**Acts and Regulations Publication Act 1989 (1989 No 142)**—*continued*

(3) Every copy of any regulations (as defined in section 16B(2)) purporting to be printed, whether before or after the commencement of this section, under the authority of the New Zealand Government is, unless the contrary is shown, deemed—

(a) to be a correct copy of those regulations; and

(b) to have been so printed or published; and

(c) to be evidence that the regulations were notified in the *Gazette* on the date printed on that copy as the date of their notification in the *Gazette*.

### 16D Copy of reprint of Act, Imperial legislation, or regulations to be evidence

(1) This section applies to any copy of a reprint of any legislation, where that copy purports to be printed or published (whether before or after the commencement of this section) under the authority of the New Zealand Government.

(2) Unless the contrary is shown, every copy of a reprint to which this section applies is to be taken—

(a) to be a copy of a reprint that correctly states, as at the date at which it is stated to be reprinted, the law enacted or made by the legislation reprinted and by the amendments (if any) to that legislation; and

(b) to have been printed or published under the authority of the New Zealand Government.

(3) To avoid any doubt, the presumption contained in subsection (2) applies to a copy of a reprint in which changes authorised by section 17C have been made.

(4) The presumption contained in subsection (2) may be rebutted by the production of the official volume in which the relevant legislation or any amendment to that legislation, as the case requires, is contained.

(5) Subsection (4) does not limit any other means of rebutting the presumption contained in subsection (2).

(6) In this section, unless the context otherwise requires,—

**Imperial enactment** and **Imperial subordinate legislation** have the meanings given to them by section 2 of the Imperial Laws Application Act 1988

**legislation** means any Act, Imperial enactment, Imperial subordinate legislation, or regulations

**official volume** means any volume containing copies of legislation that are deemed, by section 16C, to be correct copies of that legislation.

### 16E Copies of parliamentary Journals to be evidence

All copies of the Journals of the Legislative Council or the House of Representatives, purporting to be printed by the Government Printer or published by order of the House of Representatives, must be admitted as evidence of those

**Acts and Regulations Publication Act 1989 (1989 No 142)**—*continued*

matters by all courts and persons acting judicially without proof being given that those copies were so printed or published.

Omit from the definition of **reprint** in section 17A "section 29A of the Evidence Act 1908" and substitute "section 16D".

**Armed Forces Discipline Act 1971 (1971 No 53)**

Section 147(1): omit "Evidence Act 1908" and substitute "Evidence Act 2006".

**Commonwealth Countries Act 1977 (1977 No 31)**

Repeal section 2(5) and substitute:

(5) For the purposes of this section,—

**court** includes the Supreme Court, the Court of Appeal, the High Court, and any District Court

**District Court** includes—

(a) a Family Court; and

(b) a Youth Court

**person acting judicially** means any person having in New Zealand by law authority to hear, receive, and examine evidence

**proceeding** means—

(a) a proceeding conducted by a court; and

(b) any interlocutory or other application to a court connected with a proceeding.

**Companies (Bondholders Incorporation) Act 1934–35 (1934–35 No 39)**

Section 13(2): omit "Evidence Act 1908" and substitute "Evidence Act 2006".

**Copyright Act 1994 (1994 No 143)**

Section 215(4): omit "Evidence Act 1908" and substitute "Evidence Act 2006".

**Crimes Act 1961 (1961 No 43)**

Section 216C(2)(iii): omit "Evidence Act 1908" and substitute "Evidence Act 2006".

Section 369A(1): omit "section 13A(6)(d) of the Evidence Act 1908" and substitute "section 109(1)(d) of the Evidence Act 2006".

Section 379A(1)(e): omit "section 13A(6)(d) of the Evidence Act 1908" and substitute "section 109(1)(d) of the Evidence Act 2006".

Section 379A(1)(f): omit "section 13C of the Evidence Act 1908" and substitute "sections 112 and 113 of the Evidence Act 2006".

Section 379A(1)(g): omit "section 23A of the Evidence Act 1908" and substitute "section 44 of the Evidence Act 2006".

### Customs and Excise Act 1996 (1996 No 27)

Section 161(2): omit ", despite section 47B or 47C of the Evidence Act 1908," and substitute ", despite section 75 of the Evidence Act 2006,".

### Hawke's Bay Earthquake Act 1931 (1931 No 6)

Section 23(2): omit "Evidence Act 1908" and substitute "Evidence Act 2006".

### Human Rights Act 1993 (1993 No 82)

Omit from section 106(4) "Evidence Act 1908" and substitute "Evidence Act 2006".

### Immigration Act 1987 (1987 No 74)

Omit from clause 11(2) of Schedule 2 and clause 9(2) of Schedule 3C "Evidence Act 1908" and substitute in each case "Evidence Act 2006".

### Judicature Act 1908 (1908 No 89)

Repeal section 51A(2) and substitute:

(2) Sections 16B, 16C(3), and 16D of the Acts and Regulations Publication Act 1989 apply accordingly.

### Land Transport Act 1998 (1998 No 110)

Section 209(2): omit "(as defined in section 2 of the Evidence Act 1908)".

Add to section 209:

(4) For the purposes of this section, a **person acting judicially** means any person having in New Zealand by law authority to hear, receive, and examine evidence.

### Lawyers and Conveyancers Act 2006 (2006 No 1)

Section 151(4): omit "Evidence Act 1908" and substitute "Evidence Act 2006".

Section 239(4): omit "Evidence Act 1908" and substitute "Evidence Act 2006".

### Local Government Act 2002 (2002 No 84)

Section 35(1): omit "Evidence Act 1908" and substitute "Evidence Act 2006".

### Maori Fisheries Act 2004 (2004 No 78)

Section 203(2): omit "section 48G of the Evidence Act 1908" and substitute "section 4 of the Evidence Act 2006".

### Maritime Transport Act 1994 (1994 No 104)

Clause 9 of Schedule 2: omit "Evidence Act 1908" and substitute "Evidence Act 2006".

### Mortgagors and Lessees Rehabilitation Act 1936 (1936 No 33)

Section 18(2): omit "Evidence Act 1908" and substitute "Evidence Act 2006".

### Mutual Assistance in Criminal Matters Act 1992 (1992 No 86)

Repeal section 36 and substitute:

**36 Evidence Act 2006 not affected**

Nothing in this Act limits or affects the Evidence Act 2006.

### Oaths and Declarations Act 1957 (1957 No 88)

Section 13(1): repeal and substitute:

(1) A witness under the age of 12 years who is required, under section 77(2) of the Evidence Act 2006, to make a promise to tell the truth, must, before being examined make the promise:

'I promise to speak the truth, the whole truth, and nothing but the truth'.

(1A) That promise has the same force and effect as if the witness had taken an oath.

### Plant Variety Rights Act 1987 (1987 No 5)

Repeal section 29(3) and substitute:

(3) For the purposes of subsection (2),—

**court** includes the Supreme Court, the Court of Appeal, the High Court, and any District Court

**District Court** includes—

(a) a Family Court; and

(b) a Youth Court

**person acting judicially** means any person having in New Zealand by law authority to hear, receive, and examine evidence.

### Reprint of Statutes Act 1931 (1931 No 13)

Section 4: omit "section 29 of the Evidence Act 1908" and substitute "section 16C of the Acts and Regulations Publication Act 1989".

### Reserve Bank of New Zealand Act 1989 (1989 No 157)

Section 156A(4)(b): omit "section 47B of the Evidence Act 1908" and substitute "the Evidence Act 2006".

### Sale of Liquor Act 1989 (1989 No 63)

Section 109(2): omit "Evidence Act 1908" and substitute "Evidence Act 2006".

### Social Workers Registration Act 2003 (2003 No 17)

Clause 6(4) of Schedule 2: omit "Evidence Act 1908" and substitute "Evidence Act 2006".

### Status of Children Act 1969 (1969 No 18)

Section 8(1): omit "section 44A of the Evidence Act 1908" in both places and substitute in each case "section 141, or any of sections 145 to 149 of the Evidence Act 2006".

### Summary Proceedings Act 1957 (1957 No 87)

Omit from sections 157(1A) and 161A "section 13A(6)(d) of the Evidence Act 1908" and substitute in each case "section 109(1)(d) of the Evidence Act 2006".

Section 168AA(5): omit "section 13C of the Evidence Act 1908" and substitute "section 112 of the Evidence Act 2006".

Section 178A(1): omit "section 13A(2) of the Evidence Act 1908" and substitute "section 108(5) of the Evidence Act 2006".

Section 178A(2): omit "section 13B or section 13C of the Evidence Act 1908" and substitute "sections 110 to 112 of the Evidence Act 2006".

Section 182(1): omit "section 13A(2) of the Evidence Act 1908" and substitute "section 108(2) of the Evidence Act 2006".

### Tariff Act 1988 (1988 No 155)

Repeal section 7(1C) and substitute:

(1C) For the purposes of this section,—

**court** includes the Supreme Court, the Court of Appeal, the High Court, and any District Court

**District Court** includes—

(a) a Family Court; and

(b) a Youth Court

**person acting judicially** means any person having in New Zealand by law authority to hear, receive, and examine evidence

**proceeding** means—

(a) a proceeding conducted by a court; and

(b) any interlocutory or other application to a court connected with a proceeding.

### Taxation Review Authorities Act 1994 (1994 No 165)

Section 17(3): omit "Evidence Act 1908" and substitute "Evidence Act 2006".

### Te Ture Whenua Maori Act 1993 (Maori Land Act 1993) (1993 No 4)

Section 69(3): omit "Evidence Act 1908" and substitute "Evidence Act 2006".

### Trans-Tasman Mutual Recognition Act 1997 (1997 No 60)

Section 63(4): omit "Evidence Act 1908" and substitute "Evidence Act 2006".

### Treaty of Waitangi Act 1975 (1975 No 114)

Clause 6(3) of Schedule 2: omit "Evidence Act 1908" and substitute "Evidence Act 2006".

### United Nations Convention on the Law of the Sea Act 1996 (1996 No 69)

Repeal section 3(5) and substitute:

(5) For the purposes of subsection (4),—

**court** includes the Supreme Court, the Court of Appeal, the High Court, and any District Court

**person acting judicially** means any person having in New Zealand by law authority to hear, receive, and examine evidence

**proceeding** means—

(a) a proceeding conducted by a court; and

(b) any interlocutory or other application to a court connected with a proceeding.

## Part 2
## Regulations amended

### Designs Regulations 1954 (SR 1954/224)

Regulation 73(1)(a): omit "prescribed by the Justices of the Peace Act 1927 or by the Evidence Act 1908, as the case may be" and substitute "required by the Oaths and Declarations Act 1957".

### Patents Regulations 1954 (SR 1954/211)

Regulation 143(1)(a): omit "prescribed by the Justices of the Peace Act 1927 or by the Evidence Act 1908, as the case may be" and substitute "required by the Oaths and Declarations Act 1957".

## Notes

### *1 General*

This is a consolidation of the Evidence Act 2006 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

### *2 Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

### *3 Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

### *4 Amendments incorporated in this consolidation*

Arms Act 2026 (2026 No 47): section 394

Crimes Legislation (Stalking and Harassment) Amendment Act 2025 (2025 No 72): Part 2 subpart 2

Evidence (Giving Family Violence Evidence in Family Court Proceedings) Amendment Act 2025 (2025 No 44): Part 1

Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54): Part 2 subpart 3

Statutes Amendment Act 2022 (2022 No 75): Part 15

Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72): sections 93–97

Firearms Prohibition Orders Legislation Act 2022 (2022 No 41): section 14

Three Strikes Legislation Repeal Act 2022 (2022 No 40): section 16

Sexual Violence Legislation Act 2021 (2021 No 60): Part 1

Reserve Bank of New Zealand Act 2021 (2021 No 31): section 300(1)

Secondary Legislation Act 2021 (2021 No 7): section 3

Family Violence (Amendments) Act 2018 (2018 No 47): Part 5

Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31): section 149

Patents (Trans-Tasman Patent Attorneys and Other Matters) Amendment Act 2016 (2016 No 89): section 8

Trans-Tasman Proceedings Amendment Act 2016 (2016 No 70): section 9

District Court Act 2016 (2016 No 49): section 261

Senior Courts Act 2016 (2016 No 48): section 183(b)

Evidence Amendment Act 2016 (2016 No 44)

Evidence Amendment Act 2013 (2013 No 29)

Evidence Amendment Act 2011 (2011 No 89)

Criminal Procedure Act 2011 (2011 No 81): section 393

Trans-Tasman Proceedings Act 2010 (2010 No 108): section 10(1)

Courts (Remote Participation) Act 2010 (2010 No 94): section 19

Criminal Proceeds (Recovery) Act 2009 (2009 No 8): section 184

Policing Act 2008 (2008 No 72): section 130(1)

Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41): section 18

Evidence Amendment Act 2007 (2007 No 24)

Evidence Act 2006 Commencement Order 2007 (SR 2007/190): clause 2

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