

Evidence Amendment Bill

Government Bill

As reported from the committee of the whole
House

This bill was formerly part of the Criminal Procedure (Reform and Modernisation) Bill as reported from the Justice and Electoral Committee. The committee of the whole House has further amended the bill and divided it into the following bills:

- the Criminal Procedure Bill comprising clauses 1 and 2, Parts 1 to 8, the Part 9 heading, clause 416, clause 417, clause 442, and Schedules 1, 1A, and 6
- the Bail Amendment Bill (No 3) comprising clauses 401 to 407A, and Schedule 2
- the Children, Young Persons, and Their Families Amendment Bill (No 3) comprising clauses 407B to 407D, and Schedule 3
- the Corrections Amendment Bill comprising clauses 408 to 410A, and Schedule 3A
- the Crimes Amendment Bill (No 5) comprising clauses 410B to 411B, and Schedule 3B
- the Criminal Disclosure Amendment Bill comprising clauses 412 to 415B, and Schedule 3C
- the Criminal Procedure (Mentally Impaired Persons) Amendment Bill comprising clauses 417A to 417C, and Schedule 4

- the District Courts Amendment Bill (No 2) comprising clauses 418 to 420A, and Schedule 4A
 - this bill comprising clauses 421 to 423A, and Schedule 4B
 - the Juries Amendment Bill comprising clauses 424 to 427A, and Schedule 4C
 - the Justices of the Peace Amendment Bill comprising clauses 427B to 428
 - the New Zealand Bill of Rights Amendment Bill comprising clauses 428B and 429
 - the Sentencing Amendment Bill (No 6) comprising clauses 430 to 433A, and Schedule 4D
 - the Summary Proceedings Amendment Bill (No 4) comprising clauses 434 to 437B, and Schedule 5
 - the Victims' Rights Amendment Bill comprising clauses 438 to 441B, and Schedule 5A.
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Key to symbols used in reprinted bill

**As reported from the committee of the whole
House**

text inserted

~~text deleted~~

Hon Simon Power

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Evidence Amendment Act **2011**.

2 Commencement

This Act comes into force on the day that is 2 years after the date on which this Act receives the Royal assent unless it is brought into force on an earlier date appointed by the Governor-General by Order in Council.

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3 Principal Act amended

This Act amends the Evidence Act 2006.

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422 ~~Fact-finder not to be invited to infer guilt from defendant’s silence before trial~~

Section 32 is amended by repealing subsection (1) and substituting:

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“(1) This section applies to a criminal proceeding in which it appears that the defendant failed to answer a question put, or respond to a statement made, to the defendant in the course of investigative questioning before the trial.”

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423 New section 46A inserted

The following section is inserted after section 46:

“46A Caution regarding reliance on identification evidence

If evidence of identity is given against the defendant 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, the possibility that the witness may be mistaken.

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“Compare: 1957 No 87 s 67A”.

423A Further amendments to Evidence Act 2006

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The Evidence Act 2006 is amended as set out in **Schedule 4B**.

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Schedule 4B
Amendments to Evidence Act 2006

s 423A

Section 73(3)(a)

Omit “, in a summary proceeding, the information” and substitute “the charge”.

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Section 95(7)

Omit “section 354 of the Crimes Act 1961” and substitute “**section 11 of the Criminal Procedure (Reform and Modernisation) Act 2010**”.

Section 106(1)

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Repeal and substitute:

“(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 at the trial must, if a video record of that witness’s evidence was filed as a formal statement under the **Criminal Procedure (Reform and Modernisation) Act 2010** 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.”

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Section 108

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Subsection (1): omit “by indictment”.

Subsection (1)(b): omit “, except sections 7 and 13” and substitute “punishable by imprisonment for life or for a term of at least 5 years”.

Subsection (2): omit “at any time before an indictment is presented” and substitute “as soon as is reasonably practicable after a defendant has pleaded not guilty”.

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Section 109(2)(c)

Omit “accused” and substitute “defendant”.

Section 110

Subsection (1) and (2): repeal and substitute:

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“(1) This section and section 111 apply if a person is charged with a category 3 or 4 offence.

Section 110—*continued*

“(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 5

“(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.” 10

Subsection (6)(a): omit “trials on indictment” and substitute “jury trials”.

Section 111(b) and (c)

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Repeal and substitute:

“(b) no formal statement filed under the **Criminal Procedure (Reform and Modernisation) Act 2010** may disclose the name, address, or occupation of the witness, or any other particulars likely to lead to the witness’s identification; and 20

“(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 25

“(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 30

“(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 identifica- 35

Section 111(b) and (c)—*continued*

tion of the witness who is subject to the order;
and”.

Section 112

Subsection (1) and (2): repeal and substitute:

“(1) This section and section 113 apply if an offence is to be tried
in the High Court. 5

“(2) At any time after it has been determined that a proceeding is
to be tried in the High Court, the prosecution or the defen-
dant may apply to a High Court Judge for a witness anonymity
order under this section.” 10

Subsections (1) and (2): repeal and substitute:

“(1) This section and section 113 apply if a person is charged
with—

“(a) a category 3 or 4 offence that has been transferred to the
High Court for trial; or 15

“(b) a category 3 offence that is to be considered by a Judge
under **section 70** of the **Criminal Procedure (Re-
form and Modernisation) Act 2010** or is subject to
an application under **section 72** of that Act.

“(2) The prosecution or the defendant may apply for a witness
anonymity order under this section,— 20

“(a) in the case of a category 3 or 4 offence, after the case
has been transferred to the High Court for trial; or

“(b) in the case of a category 3 offence, at any time before
a determination of the level of trial court for the case is
made under **section 70 or 72** of the **Criminal Proce-
dure (Reform and Modernisation) Act 2010**.” 25

Subsection (4)(b)(i): omit “accused” in each place where it appears
and substitute in each case “defendant”.

Subsection (4)(c): omit “accused” and substitute “defendant”. 30

Section 114

Subsection (1): omit “section 28J of the District Courts Act 1947”
and substitute “**section 72** of the **Criminal Procedure (Reform
and Modernisation) Act 2010**”.

Section 114—*continued*

Subsection (1): repeal and substitute:

“(1) If the Judge is considering transferring the case to the High Court under **section 70 or 72** of the **Criminal Procedure (Reform and Modernisation) Act 2010** and a witness anonymity order is made under section 112 in that case before the application is dealt with, the Judge considering the application must transfer the proceeding to the High Court.” 5

Subsection (3): omit “sections 28A and 28J of the District Courts Act 1947” and substitute “the **Criminal Procedure (Reform and Modernisation) Act 2010**”. 10

Section 116

Subsection (1): omit “any committal hearing or”.

Subsection (1): omit “(as the case may be)”.

Subsection (1): omit “any committal hearing or the trial” and substitute “the giving of oral evidence in accordance with an oral evidence order or the trial”. 15

Subsection (2): omit “at any committal hearing or” and substitute “in accordance with an oral evidence order or at”.

Subsection (3)(a): omit “section 206 of the Summary Proceedings Act 1957” and substitute “**section 362** of the **Criminal Procedure (Reform and Modernisation) Act 2010**”. 20

Section 119

Subsections (1) and (2): omit “on indictment”.

Subsection (3): omit “summary”.

Section 179(2)

Omit “summary”. 25

Section 189(2)

Omit “summary”.

Evidence Amendment Bill

Section 196

Omit “Summary Proceedings Act 1957” and substitute “**Criminal Procedure (Reform and Modernisation) Act 2010**”.

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Legislative history

29 September 2011

Divided from Criminal Procedure (Reform and Modernisation) Bill (Bill 243–2) by committee of the whole House as Bill 243–3I