



Te Kāhui Tātari Ture | Criminal Cases Review Commission

Frequently asked questions for inquiry into eyewitness identification evidence in Aotearoa

Background to Te Kāhui Tātari Ture | Criminal Cases Review Commission

Te Kāhui Tātari Ture | Criminal Cases Review Commission (Te Kāhui) is an Independent Crown Entity for the purposes of the Crown Entities Act 2004. We have our own governing statute: the [Criminal Cases Review Commission Act 2019](#) (“the CCRC Act”). Te Kāhui was established in 2020 following concerns from various groups in Aotearoa regarding the independence, timeliness, and quality of investigations into miscarriages of justice.

The primary role of Te Kāhui is to review potential miscarriage of justice cases and where it is in the interests of justice, refer cases back to an appeal court.¹ In addition, [section 12](#) of the CCRC Act provides Te Kahui with the power to initiate and conduct inquiries into general matters identified in the course of performing our primary role that may be related to cases involving a miscarriage of justice, or that may have the potential to give rise to such cases.

What is the purpose of the inquiry into eyewitness identification evidence in Aotearoa?

The purpose of the inquiry will be to examine eyewitness identification procedures in Aotearoa and open discussion on the need for reform and development, to prevent or reduce the likelihood of wrongful convictions and miscarriages of justice in Aotearoa.

Who will be leading the inquiry?

The inquiry will be led by Colin Carruthers KC, Kaikōmihana Matua | Chief Commissioner and Parekawhia McLean, Tumu Whakarae | Chief Executive.

Commissioners Professor Tracey McIntosh and Associate-Professor Tamasailau Suaalii-Sauni will provide direction and guidance on the inquiry, including co-chairing the Expert Panel.

Day to day work on the inquiry will be undertaken by Shanza Mahmood (Kairangahau | Researcher), and Maggie McIver (Kaitātari Kaupapa | Analyst), with oversight from Jennifer Braithwaite (Pou Ture | Legal Manager), and Kerri Fergusson (Pou Tātari | Investigation and Review Manager).

¹ Criminal Cases Review Commission Act 2019, ss 11 & 17.

How do you define 'eyewitness identification evidence' in Aotearoa?

Eyewitness identification evidence is also known as visual identification evidence. Visual identification evidence is defined in section 4 of the Evidence Act 2006 as:

- (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).

Te Aka Matua o Te Ture | the Law Commission is currently undertaking its third review of the Evidence Act, which includes considering whether the definition of visual identification evidence should be expanded to include evidence of a person asserting that they observed the defendant act in the commission of an offence.²

For the purposes of this inquiry, Te Kāhui will use this expanded definition. The inquiry may also give consideration to whether the definition should be further expanded or amended.

Why are we focussing on eyewitness identification evidence in Aotearoa?

Prior to the establishment of Te Kāhui, research literature and number of case studies have highlighted a wide-ranging variety of issues that have contributed to wrongful convictions and miscarriages of justice. During our first three years of operation, Te Kāhui has also kept track of any issues arising in our work which we consider have the potential to contribute to miscarriages of justice in Aotearoa New Zealand.

Issues relating to eyewitness identification evidence have been raised in several applications to Te Kāhui and in December 2023 and January 2024, Te Kāhui made two relevant referrals to the appellate courts; one concerning the rape and murder convictions of Mikaere Oketopa and the second in relation to indecent acts that took place in 2015. A key issue in both of these referrals was the reliability of eyewitness identification evidence. Further details on the referrals can be found [here](#).

There are many other well-known miscarriage of justice cases involving eyewitness identification evidence within Aotearoa and internationally, such as the George Moulden,³ David Dougherty,⁴ Teina Pora,⁵ Ronald

² Te Aka Matua o Te Ture | Law Commission *Te Arotake Tuatoru i te Evidence Act 2006 | The Third Review of the Evidence Act 2006* (NZLC IP50, 2023) at 185.

³ *Moulden v R* [2017] NZCA 433.

⁴ *R v Dougherty* [1996] NZLR 257.

⁵ *Pora v R* [2015] UKPC 9, [2016] 1 NZLR 277.

Cotton,⁶ Luis Diaz,⁷ William Mills⁸ and most recently the Alan Hall case.⁹ Scientific research related to eyewitness identification and the reliability of memory has grown significantly in recent years creating opportunities for meaningful change.

What has been done so far?

In April 2023, a preliminary scoping report '*Eyewitness Identification evidence in Aotearoa*' was sent to over 90 stakeholders for commentary and feedback. These stakeholders included government agencies, academic institutions, and professional bodies. The feedback and commentary received supported the need for further examination of, and consultation on, eyewitness identification evidence procedures in Aotearoa.

Who are you working with?

The inquiry will be supported by a range of experts, including a panel with extensive academic and professional expertise. Te Kāhui will also engage with relevant stakeholders and an issues paper will be released in the next few months for consultation and feedback.

What are the key stages of the inquiry?

There will be varying stages to the inquiry into eyewitness identification evidence in Aotearoa. The initial phase will involve gathering information and engaging with experts and advisors.

There will also be an opportunity for public consultation with an issues paper being released in mid-2024. The issues paper will summarise the issues Te Kāhui has identified in relation to eyewitness identification evidence and explore possible options for reform. It will also provide an opportunity for anyone interested in the inquiry to make submissions.

Te Kāhui will take into account feedback received on the issues paper and information obtained during the course of the inquiry to develop findings and any recommendations for reform. We will present our findings and recommendations in a final report to the Minister of Justice for tabling in Parliament in mid-2025.

Regular updates will be provided on the Te Kāhui website.

How can we get involved?

Te Kāhui will release an issues paper for consultation with stakeholders and the public in mid-2024.

We will also provide regular updates on the Te Kāhui website to keep the public informed.

⁶ Innocence Project, *Ronald Cotton*. <https://innocenceproject.org/cases/ronald-cotton/>

⁷ Innocence Project, *Luis Diaz*, <https://innocenceproject.org/cases/luis-diaz/>

⁸ Evidence-based justice, *William Mills*, Exeter University, <https://evidencebasedjustice.exeter.ac.uk/case/william-mills/>

⁹ *Hall v R* [2022] NZSC 51.

When will the findings of the inquiry be made available?

Te Kāhui intends to present our final report to the Minister of Justice in mid-2025. We hope to make our report publicly available after it has been tabled in Parliament by the Minister of Justice.