

Te Kāhui Tātari Ture | Criminal Cases Review Commission

Inquiry into eyewitness identification evidence

in Aotearoa | New Zealand

Terms of Reference

Background

[Section 12](#) of the CCRC Act provides that Te Kāhui Tātari Ture | Criminal Cases Review Commission has 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. In the course of our work, Te Kāhui have identified a range of systemic issues which we consider have the potential to contribute to wrongful convictions and miscarriages of justice in Aotearoa | New Zealand. In particular, issues relating to eyewitness identification evidence (otherwise known as visual identification evidence) have been raised in several applications to Te Kāhui. Following feedback and commentary from stakeholders on a preliminary report titled 'Eyewitness identification evidence in Aotearoa', we have identified the need for further work in this field.

Purpose

The purpose of the inquiry is to open discussion on eyewitness identification evidence in Aotearoa and its potential contribution to miscarriages of justice and wrongful conviction in Aotearoa. The inquiry will review and analyse whether current procedures reflect best practice, and if improvements can be made. There will be an examination of cases where eyewitness identification issues have been raised. Additionally, there will be an opportunity to examine the implications of cross-racial identification on eyewitness identification evidence. This will lead to proposing recommendations to enhance the collection of eyewitness identification evidence and influencing change in the system.

Scope

The scope of the inquiry will include examining police practice relating to eyewitness identification of offenders, exploring risks relating to visual identification evidence, identifying best practice, and considering recommendations for change including police practice and procedures, amendments to section 45 of the Evidence Act 2006, and judicial directions relating to visual identification evidence.

During the course of our work a number of key issues have been identified including-

- Police procedures relating to eyewitness identification evidence.
- Cross racial bias.

- Gaps in evidence-based practice.
- Issues relating to judicial directions.
- Social media contamination.
- Current legislation, specifically section 45 of The Evidence Act, 2006.

The inquiry will involve:

- An evidence-led inquiry, where Te Kāhui will liaise with experts in the field of eyewitness identification evidence.
- Collaborating with academics with the necessary skills and expertise in the field of identification evidence.
- Working with a group of advisors to bring knowledge and insight into wider issues which may affect eyewitness identification evidence.
- Working with stakeholders in the justice system, primarily Police, to determine how feasible implementing the proposed recommendations would be.
- Engaging with Te Aka Matua o Te Ture | The Law Commission on matters of common interest arising from their third and final review of the Evidence Act.¹

Commencement and reporting

The inquiry will commence its work in February 2024, with a view to providing a report to the Minister of Justice by 30 June 2025.

¹ Te Kāhui is in contact with the Law Commission regarding this, as the Law Commission is also considering amendments to the definition of visual identification evidence in s4 of the Evidence Act 2006 and other issues relating to visual identification evidence as part of The Third Review of the Evidence Act 2006, 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 180.