

**Reprint  
as at 1 July 2013**



**Evidence Amendment Act 2011**

Public Act    2011 No 89  
Date of assent    17 October 2011  
Commencement    see section 2

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**The Parliament of New Zealand enacts as follows:**

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

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**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

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

**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.

Section 2: this Act brought into force, on 1 July 2013, by the Evidence Amendment Act 2011 Commencement Order 2013 (SR 2013/165).

**3 Principal Act amended**

This Act amends the Evidence Act 2006.

**4 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.

“Compare: 1957 No 87 s 67A”.

**5 Further amendments to principal Act**

The principal Act is amended as set out in the Schedule.

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## Schedule Amendments to principal Act

s 5

### **Section 73(3)(a)**

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

### **Section 95(7)**

Omit “section 354 of the Crimes Act 1961” and substitute “section 11 of the Criminal Procedure Act 2011”.

### **Section 106(1)**

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 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.”

### **Section 108**

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”.

### **Section 109(2)(c)**

Omit “accused” and substitute “defendant”.

### **Section 110**

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

“(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
  - “(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.”

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

**Section 111(b) and (c)**

Repeal and substitute:

- “(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”.

### **Section 112**

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
  - “(b) a category 3 offence that is to be considered by a Judge under section 68 of the Criminal Procedure Act 2011 or is subject to an application under section 70 of that Act.
- “(2) The prosecution or the defendant may apply for a witness anonymity order under this section,—
- “(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 68 or 70 of the Criminal Procedure Act 2011.”

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”.

### **Section 114**

Subsection (1): repeal and substitute:

- “(1) If the Judge is considering transferring the case to the High Court under section 68 or 70 of the Criminal Procedure Act 2011 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.”

Subsection (3): omit “sections 28A and 28J of the District Courts Act 1947” and substitute “the Criminal Procedure Act 2011”.

### **Section 116**

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”.

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

**Section 116**—*continued*

Subsection (3)(a): omit “section 206 of the Summary Proceedings Act 1957” and substitute “section 365 of the Criminal Procedure Act 2011”.

**Section 119**

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

Subsection (3): omit “summary”.

**Section 179(2)**

Omit “summary”.

**Section 189(2)**

Omit “summary”.

**Section 196**

Omit “Summary Proceedings Act 1957” and substitute “Criminal Procedure Act 2011”.

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## **Notes**

### **1 *General***

This is a reprint of the Evidence Amendment Act 2011. The reprint incorporates all the amendments to the Act as at 1 July 2013, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

### **2 *Status of reprints***

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

### **3 *How reprints are prepared***

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and

provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

#### **4 Changes made under section 17C of the Acts and Regulations Publication Act 1989**

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5** *List of amendments incorporated in this reprint  
(most recent first)*

Evidence Amendment Act 2011 Commencement Order 2013 (SR 2013/165)

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