



Criminal Cases Review Commission Act 2019

Public Act 2019 No 66
Date of assent 16 November 2019
Commencement see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Criminal Cases Review Commission Act 2019.

2 Commencement

- (1) This Act comes into force on a date appointed by the Governor-General by Order in Council, and 1 or more Orders in Council may be made bringing different provisions into force on different dates.
- (2) To the extent that it is not previously brought into force under subsection (1), the rest of this Act comes into force on 1 July 2020.

Part 1

Preliminary provisions

3 Purpose of this Act

The purpose of this Act is to establish an independent body to investigate and review criminal convictions and sentences and decide whether to refer them under the Act to an appeal court.

4 Interpretation

In this Act, unless the context otherwise requires,—

appeal court means the court specified in section 18 to which the Commission may refer a conviction or sentence

Chief Commissioner means the Chief Commissioner appointed under section 9

Commission means the Criminal Cases Review Commission established by section 7

Deputy Chief Commissioner means the Deputy Chief Commissioner appointed under section 9

eligible person means a living person who has been convicted of an offence **information**, in relation to an investigation, includes matters of opinion based on the specialist knowledge or skill of an expert in relation to those matters, as well as matters of fact

responsible Minister means the Minister who, under the authority of any warrant or with the authority of the Prime Minister, is the person for the time being responsible for the administration of this Act

sentence has the same meaning as in section 212 of the Criminal Procedure Act 2011

specialist adviser means a specialist adviser appointed under section 10.

5 Transitional, savings, and related provisions

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

6 Act binds the Crown

This Act binds the Crown.

Part 2

Criminal Cases Review Commission

Subpart 1—Establishment and appointments

7 Criminal Cases Review Commission established

The Criminal Cases Review Commission is established.

8 Commission is Crown entity

- (1) The Commission is a Crown entity for the purposes of the Crown Entities Act 2004.
- (2) The Crown Entities Act 2004 applies to the Commission except to the extent that this Act expressly provides otherwise.
- (3) *See* subpart 7, which contains provisions relating to how certain provisions of the Crown Entities Act 2004 apply to the Commission.

9 Membership of Commission

- (1) The Commission must have the following members:
 - (a) a Chief Commissioner:
 - (b) a Deputy Chief Commissioner:
 - (c) at least 1 and not more than 5 other Commissioners.
- (2) At least 1 member must have knowledge or understanding of te ao Māori and tikanga Māori.
- (3) At least one-third of the members must be legally qualified.
- (4) At least two-thirds of the members must have experience in working in the criminal justice system or have other knowledge or expertise relevant to the Commission's functions and duties, which may include experience, knowledge, or expertise acquired overseas.
- (5) A person is **legally qualified** for the purposes of subsection (3) if the person—
 - (a) has held a practising certificate as a barrister or as a barrister and solicitor for not less than 7 years; or

- (b) has been admitted as a barrister, solicitor, barrister and solicitor, advocate, or attorney by a senior court in another country and has practised as such in that country for not less than 7 years.

10 Specialist advisers

- (1) The Commission may appoint qualified persons, as required, to assist the Commission with any of its functions or duties by giving advice in relation to cultural, scientific, technical, or other matters involving particular expertise.
- (2) A specialist adviser is subject to the same obligations of confidentiality as members and employees of the Commission under section 35.
- (3) Advice given by a specialist adviser is information provided to the Commission for the purposes of sections 36 and 37 and is subject to those provisions.

Subpart 2—General provisions relating to functions, duties, and powers

11 Primary function

The primary function of the Commission is to investigate and review convictions and sentences and decide whether to refer them to the appeal court under section 17.

12 Commission’s power to initiate and conduct inquiries into general matter

- (1) This section applies if the Commission, in the course of performing its functions and duties under this Act, identifies a practice, policy, procedure, or other matter of a general nature that it considers may be related to cases involving a miscarriage of justice or has the potential to give rise to such cases.
- (2) The Commission may conduct an inquiry into the matter on its own initiative if it is satisfied that an inquiry is in the public interest.
- (3) The Commission must provide a written report on the inquiry, including the Commission’s findings and any recommendations it may wish to make, to the Minister of Justice.
- (4) The Minister of Justice, as soon as practicable after receiving the report, must present it to the House of Representatives.

13 Duty to promote public awareness of functions

The Commission must carry out the activities it considers necessary to make its functions known to, and understood by, the public.

14 Powers of Commission

The Commission has and may exercise all powers necessary for performing its functions and duties.

15 Commission may regulate own procedures

- (1) Subject to this Act, the Commission may regulate its own procedures for performing its functions and duties as the Commission considers appropriate including, without limitation, its procedures for—
 - (a) obtaining information:
 - (b) conducting interviews or examinations, or taking evidence by other means, including on oath or affirmation:
 - (c) disclosing information obtained in the course of an investigation:
 - (d) giving its opinion to the Minister of Justice under section 29:
 - (e) notifying and interacting with victims of crime, where appropriate, when considering a conviction or sentence:
 - (f) handling any complaints to the Commission about its actions, processes, or procedures.
- (2) The Commission's powers under this section include, without limitation, the power to specify how a person may make an application to the Commission.
- (3) The Commission's procedures must be consistent with the rules of natural justice and the principles of the Treaty of Waitangi (te Tiriti o Waitangi).
- (4) The Commission must make its procedures publicly available, in the manner it considers appropriate.

16 Manner in which Commission must act

The Commission must act independently, impartially, and fairly in performing its functions and duties and exercising its powers under this Act.

Subpart 3—Commission's primary function*Key provisions***17 Ground for referring conviction or sentence to appeal court**

- (1) The Commission may refer a conviction or sentence to the appeal court if the Commission, after reviewing the conviction or sentence, considers that it is in the interests of justice to do so.
- (2) In deciding whether to refer a conviction or sentence, the Commission must have regard to—
 - (a) whether the eligible person has exercised their rights of appeal against the conviction or sentence; and
 - (b) the extent to which the application relates to argument, evidence, information, or a question of law raised or dealt with in proceedings relating to the conviction or sentence; and
 - (c) the prospects of the court allowing the appeal; and

- (d) any other matter that the Commission considers relevant.

18 Appeal court to which conviction or sentence may be referred

- (1) The appeal court to which a conviction may be referred is—
- (a) the High Court, if the eligible person’s right of first appeal against a conviction under subpart 3 of Part 6 of the Criminal Procedure Act 2011 is to the District Court or the High Court; or
 - (b) otherwise, the Court of Appeal.
- (2) The appeal court to which a sentence may be referred is—
- (a) the High Court, if the eligible person’s right of first appeal against a sentence under subpart 4 of Part 6 of the Criminal Procedure Act 2011 is to the District Court or the High Court; or
 - (b) otherwise, the Court of Appeal.

19 Commission must give appeal court reasons for referral

The Commission, when referring a conviction or a sentence to the appeal court, must give the court a statement of its reasons for the referral.

20 Hearing and determination of appeal

The appeal court to which the Commission refers a conviction or sentence must hear and determine the matter as if it were a first appeal against the conviction or sentence.

Subpart 4—Applications to Commission to refer convictions and sentences

Persons who may apply, etc

21 Who may apply

An eligible person or a representative may apply to the Commission for it to refer a conviction or sentence to the appeal court.

22 How application may be made

An application may be made in the manner required by the Commission.

23 Commission may accept application made in representative capacity

The Commission may accept an application made by a person in a representative capacity if the Commission is satisfied that the person is authorised to act as the eligible person’s representative.

Commission's decision-making powers, etc, relating to applications

24 Commission may decide to take no action in relation to application

The Commission may decide to take no action, or take no further action, in relation to an application if—

- (a) the eligible person no longer wishes the application to proceed; or
- (b) the eligible person dies; or
- (c) in the Commission's opinion, the application is frivolous, vexatious, or otherwise not made in good faith; or
- (d) for any other reason, the Commission believes that it is unnecessary or inappropriate for it to take any action or further action.

25 Commission may decide to investigate

- (1) The Commission may decide to investigate the conviction or sentence to which an application relates.
- (2) *See* subpart 2 (which provides for the Commission's powers and duties concerning investigations) and subpart 6 (which provides for the protection of information gathered as part of the Commission's investigations).

26 Commission must notify its decision on application for referral

- (1) The Commission must, as soon as practicable after making a decision under section 17 or 24, give written notice of the decision, with the reasons or a summary of the reasons for the decision, to—
 - (a) the eligible person; and
 - (b) if the application was made by a representative on behalf of the eligible person, the representative.
- (2) The Commission must, as soon as practicable after notifying those persons, make its decision, and the reasons or a summary of the reasons, publicly available in the manner that the Commission considers appropriate.

Commission's power to act on own initiative

27 Commission's power to make initial inquiries on its own initiative

- (1) The Commission may make initial inquiries into a conviction or sentence on its own initiative if it is satisfied that those inquiries are in the public interest.
- (2) As soon as practicable after starting to make any initial inquiries under this section, the Commission must—
 - (a) notify the eligible person that the Commission has started making those inquiries; and

- (b) ask that person if they consent to the Commission investigating the conviction or sentence as if they had applied to the Commission to refer the conviction or sentence to the appeal court.
- (3) If the eligible person does not consent, the Commission must not investigate further and cannot exercise its power to refer the conviction or sentence to the appeal court under section 17.
- (4) In this section, **initial inquiries** means investigative actions that do not involve the Commission exercising any of its powers under sections 32 and 33.

Subpart 5—Commission’s functions relating to Royal prerogative of mercy

28 Governor-General may transfer applications for exercise of Royal prerogative to Commission

- (1) The Governor-General may transfer an application for the exercise of the Royal prerogative of mercy to the Commission if the Governor-General considers that the application is sufficiently connected with the Commission’s primary function or would more appropriately be dealt with as part of that function.
- (2) The Commission must treat an application transferred to it under this section as if it were an application to the Commission made under subpart 4.
- (3) The provisions of this Act apply accordingly.

29 Advisory function in relation to applications for exercise of Royal prerogative of mercy

- (1) The Minister of Justice may ask the Commission to provide an opinion on any matter arising in relation to the Royal prerogative of mercy.
- (2) The Commission must provide that opinion, in writing, to the Minister of Justice.
- (3) The Commission may exercise its powers under this Act, including its investigative powers under subpart 6, in relation to the request.

30 Exercise of Royal prerogative of mercy not affected

Nothing in this Act limits or affects the Royal prerogative of mercy.

Subpart 6—Commission’s investigative powers, protection of information gathered, privileged or confidential information, etc

Investigative powers

31 Powers of investigation: general

- (1) The Commission may investigate a conviction or sentence under this Act as it considers appropriate.

- (2) In investigating a matter, the Commission may obtain from any person, under sections 32 and 33, any information that the Commission considers relevant to an investigation if the Commission—
 - (a) has taken reasonable steps to obtain the information by consent; and
 - (b) considers that the information is unlikely to be obtained by the Commission through any means other than under those sections.
- (3) Subsection (2) does not affect the ability of the Commission to access court documents in accordance with the rules of practice and procedure applying to the relevant court.

32 Commission may require person to give information

- (1) The Commission may, by written notice, require a person to—
 - (a) produce documents or things that the person may hold and that may be relevant to the investigation;
 - (b) provide information in writing.
- (2) The Commission may examine and make copies, take photographs, or create other records of documents or things produced or information provided under subsection (1).
- (3) Subject to sections 38 to 45, a person must comply with a notice given under this section.

33 Commission may require person to give evidence on oath or affirmation

- (1) The Commission may take evidence from a person by—
 - (a) requiring the person, by written notice, to appear before the Commission to be examined on oath or affirmation;
 - (b) requiring the person, on appearing before the Commission, to answer questions on oath or affirmation;
 - (c) permitting the person to give the evidence by any other means approved by the Commission and requiring the person to verify that evidence on oath or affirmation.
- (2) Subject to sections 38 to 45, a person must comply with a requirement to—
 - (a) appear before the Commission under subsection (1)(a);
 - (b) answer questions under subsection (1)(b);
 - (c) verify evidence given to the Commission under subsection (1)(c).

Enforcement orders

34 Court may make orders for failure to comply with requirements

- (1) The Commission may apply to the District Court for orders against a person on the grounds that they have failed to comply with a requirement under section 32 or 33.

- (2) The court may, on the application of the Commission, make either or both of the following orders if the court is satisfied that the person has failed to comply with the requirement:
 - (a) an order directing the person to comply with the requirement specified in the notice:
 - (b) any other order that the court considers appropriate.
- (3) The court may require a person to produce documents or provide other information to the court for the purposes of determining an application under this section.
- (4) The court may make an order under this section subject to any conditions the court thinks appropriate.

Protection of information gathered

35 Prohibition on disclosure of information unless authorised

- (1) A person who is, or has been, a member or an employee of the Commission, or a person appointed as a specialist adviser to the Commission, must not disclose any information obtained by the Commission unless the disclosure is authorised under section 36.
- (2) A person who wilfully contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$20,000.
- (3) This section does not affect an individual's entitlement to request access to information under information privacy principle 6 of the Privacy Act 1993.

36 Authorised disclosures of information

- (1) The disclosures specified in subsections (2) and (3) are authorised and may be made at the discretion of the Commission and other persons as specified in those provisions.
- (2) The Commission may disclose information, or a member of the Commission may authorise the disclosure of information, if satisfied that the disclosure is reasonably necessary—
 - (a) for the purposes of a criminal, disciplinary, or civil proceeding; or
 - (b) in order to assist in dealing with any matter relating to the exercise of the Royal prerogative of mercy; or
 - (c) in order to assist in dealing with any official inquiry or review relating to a person's conviction or sentence or with any official assessment of whether such an inquiry or review is desirable; or
 - (d) as part of a statement or report required to be made or provided under this Act; or
 - (e) in connection with the performance or exercise of the Commission's functions, duties, or powers; or

- (f) for the purposes of the Police or any other enforcement authority investigating an offence or deciding whether to prosecute an offence, provided that the disclosure is not, or would not be, prevented by some obligation of secrecy or limitation on disclosure (including an obligation or limitation imposed by an enactment) other than the obligation imposed by section 35; or
 - (g) in order to prevent or lessen a serious threat (as defined in section 2(1) of the Privacy Act 1993) to—
 - (i) public health or public safety; or
 - (ii) the life or health of any individual.
- (3) The Commission may disclose information, or a member of the Commission may authorise the disclosure of information, if a person with the right to consent to disclosure of that information gives that consent.
- (4) A member or an employee of the Commission, or a specialist adviser to the Commission, may disclose information to any other member or employee of, or specialist adviser to, the Commission, for the purpose of performing their functions or duties or exercising their powers in that capacity.

37 Application of Official Information Act 1982

Nothing in the Official Information Act 1982 applies to any communication that has taken place between a member or an employee of the Commission and any person in relation to an investigation by the Commission.

Privileged and confidential communications and information

38 Privileged information

- (1) Nothing in this Act requires a person to disclose to the Commission any communication or information—
- (a) to which any of the protections of privilege recognised in sections 54 to 60 or 64 of the Evidence Act 2006 would apply in a proceeding; or
 - (b) where such disclosure is prevented by an enactment, a rule of law, or an order of a court prohibiting or restricting disclosure or the manner of disclosure.
- (2) Subsection (1) is subject to section 40.
- (3) If a person claims that a communication or information is protected or prevented from disclosure under subsection (1), the Commission may apply to a District Court Judge for any 1 or more of the following orders:
- (a) an order determining whether the person's claim is valid;
 - (b) an order for disclosure under section 39;
 - (c) an order disallowing the person's claim under section 40.

39 Order for disclosure

If the Judge determines that a communication or information is not protected or prevented from disclosure under section 38(1), the Judge may make an order for disclosure and any further order the Judge thinks necessary to ensure that the communication or information is disclosed to the Commission.

40 Power of Judge to disallow privilege, etc

- (1) The Judge may, despite determining that a communication or information is protected or prevented from disclosure under section 38(1), order that the communication or information be disclosed to the Commission if the Judge is satisfied—
 - (a) that section 67(1) of the Evidence Act 2006 would apply were the claim to privilege to have been made in a proceeding; or
 - (b) the following criteria apply:
 - (i) evidence of the communication or information is necessary to enable the Commission to decide whether to refer a person's conviction or sentence to the appeal court under section 17; and
 - (ii) the importance of the communication or information to the Commission's decision outweighs the interests that are protected by withholding the communication or information.
- (2) This section does not apply to a communication or information to which a protection of privilege under section 60 of the Evidence Act 2006 (privilege against self-incrimination) applies.

*Confidentiality***41 Protection of journalists' sources**

Section 68 of the Evidence Act 2006 applies in respect of a journalist and their employer—

- (a) as if every reference in that section to—
 - (i) a civil or criminal proceeding were a reference to an investigation under this Act; and
 - (ii) a party were a reference to the Commission; and
 - (iii) the Judge were a reference to a Judge of the High Court; and
- (b) with any other necessary modifications.

42 Overriding discretion as to confidential information

Section 69 of the Evidence Act 2006 applies in respect of a communication and the information identified in subsection (1) of that section—

- (a) as if every reference in that section to—

- (i) a proceeding were a reference to an investigation under this Act; and
 - (ii) the Judge were a reference to a Judge of the District Court; and
- (b) with any other necessary modifications.

43 Discretion as to matters of State

Section 70 of the Evidence Act 2006 applies in respect of a communication or information relating to matters of State—

- (a) as if every reference in that section to—
- (i) a proceeding were a reference to an investigation under this Act; and
 - (ii) the Judge were a reference to a Judge of the District Court; and
- (b) with any other necessary modifications.

44 Who may apply for orders or directions under sections 41 to 43

An application for an order under section 41 or directions under sections 42 or 43 may be made by the Commission or by the person claiming that they are not compellable to disclose the relevant communication or information to the Commission.

45 General powers of Judge for purposes of provisions concerning privilege and confidentiality

- (1) A Judge may, for the purposes of considering an application or otherwise exercising a power under sections 38 to 43, require a person to produce documents or provide other information to the Judge.
- (2) An order, direction, or requirement made or given under subsection (1) or the sections referred to in that provision may be subject to any conditions the Judge thinks appropriate.

Protections for holders of privilege and persons required to disclose

46 Claims of privilege disallowed: protection for holder of privilege against use of information, etc, in proceedings

Any communication or information disclosed as a result of disallowance of a claim of privilege conferred by any sections 54 to 59 and 64 of the Evidence Act 2006, and any information derived from that disclosure, cannot be used against the holder of the privilege in a proceeding in New Zealand.

47 Protection for persons required to disclose information, etc

Where a person discloses a communication or information in compliance with an order of a Judge and any of sections 38 to 43, the person does not breach the relevant obligation of non-disclosure that would otherwise apply in respect of that communication or information.

*Status of proceeding***48 Applications for orders under this subpart are civil proceedings for purposes of District Court Act 2016, Senior Courts Act 2016, etc**

- (1) An application to a District Court Judge for an order under this subpart is a civil proceeding for the purposes of the District Court Act 2016 and rules made under that Act.
- (2) An application to a High Court Judge under section 41 is a civil proceeding for the purposes of the Senior Courts Act 2016 and the High Court Rules 2016.

Subpart 7—Miscellaneous provisions*Provisions relating to application of Crown Entities Act 2004***49 Commission members' legal status for purposes of Crown Entities Act 2004**

- (1) The members of the Commission are the board for the purposes of the Crown Entities Act 2004.
- (2) The Chief Commissioner holds office as chairperson of the board for the purposes of the Crown Entities Act 2004, for the same term as that person holds office as Chief Commissioner.
- (3) The Deputy Chief Commissioner holds office as deputy chairperson of the board for the purposes of the Crown Entities Act 2004 for the same term as that person holds office as Deputy Chief Commissioner.

50 Limitation on power to delegate

Despite section 73 of the Crown Entities Act 2004 (ability to delegate), the Commission must not delegate the performance of its function of referring a conviction or sentence to the appeal court under section 17 of this Act.

51 Immunities

- (1) Sections 120 to 126 of the Crown Entities Act 2004 apply to the Commission and the Commission's members, employees, and specialist advisers.
- (2) This section is for the avoidance of doubt.

52 Certain provisions relating to statement of intent and statement of performance expectations do not apply

- (1) Sections 145(d) and 147 of the Crown Entities Act 2004 do not apply in relation to the Commission's statement of intent.
- (2) Section 149H(d) and 149J of the Crown Entities Act 2004 do not apply in relation to the Commission's final statement of performance expectations.

53 Report on additional matter to be included in annual report

The Commission's annual report under section 150 of the Crown Entities Act 2004 must include a report on how, and the extent to which, the Commission in performing its functions and duties has engaged with groups that appear to be disproportionately affected by the criminal justice system, including information on any initiatives it has undertaken with respect to such groups.

*Amendments to other Acts***54 Amendments to other enactments**

The enactments referred to in Schedule 2 are amended as set out in that schedule.

Schedule 1

Transitional, savings, and related provisions

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Part 1

Provisions relating to this Act as enacted

1 Interpretation

In this Part, **commencement date** means the date on which section 21 comes into force.

2 Application of Act to past convictions and sentences

To avoid doubt, this Act applies to convictions entered and sentences imposed before, on, or after the commencement date.

3 Existing applications for exercise of Royal prerogative of mercy

- (1) This clause applies if, before the commencement date, the Governor-General has received, but not determined, an application for the exercise of the Royal prerogative of mercy.
- (2) The Governor-General may exercise the powers under section 406 of the Crimes Act 1961, and that section and section 406A of that Act apply accordingly as if they had not been repealed by this Act.
- (3) The Minister of Justice may ask the Commission for its opinion on a matter arising in relation to the application, and the Commission must treat that request as if it were a request for an opinion under section 29(1).
- (4) The Governor-General may transfer the application to the Commission to be dealt with as an application for referral to the appeal court under this Act.
- (5) The Commission must treat an application transferred to it under subclause (4) as if it were an application for a referral under section 21.

4 Existing references of matters to appeal court under section 406(1) of Crimes Act 1961

- (1) This clause applies if, before the commencement date, the Governor-General has—
 - (a) referred the question of a conviction or sentence to the Court of Appeal or to the High Court for hearing and determination under section 406(1)(a) of the Crimes Act 1961; or
 - (b) referred a point arising in the case to the Court of Appeal for its opinion under section 406(1)(b) of the Crimes Act 1961.

- (2) The court to which a matter has been referred may hear and determine the question or give its opinion (as the case may be) as if section 406 of the Crimes Act 1961 had not been repealed by this Act.
- (3) Section 12(2)(f) of the Victims' Rights Act 2002 as in force immediately before the commencement date applies in relation to the question of a conviction or sentence referred to the court under section 406(1)(a) of the Crimes Act 1961.
- (4) Section 406A of the Crimes Act 1961 applies in relation to the court's determination on a referral as if that section had not been repealed.

Schedule 2

Amendments to other enactments

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Crimes Act 1961 (1961 No 43)

Repeal sections 406 and 406A.

Crown Entities Act 2004 (2004 No 115)

In Schedule 1, Part 3, insert in its appropriate alphabetical order:

Criminal Cases Review Commission

Legal Services Act 2011 (2011 No 4)

After section 6(d), insert:

- (e) applications to the Criminal Cases Review Commission under section 21 of the Criminal Cases Review Commission Act 2019.

Official Information Act 1982 (1982 No 156)

In Schedule 1, insert in its appropriate alphabetical order:

Criminal Cases Review Commission

Victims' Rights Act 2002 (2002 No 39)

Replace section 12(2)(f) with:

- (f) any referral of the conviction or sentence by the Criminal Cases Review Commission under section 17 of the Criminal Cases Review Commission Act 2019.

Legislative history

27 September 2018	Introduction (Bill 106–1)
25 October 2018	First reading and referral to Justice Committee
3 October 2019	Reported from Justice Committee (Bill 106–2)
22 October 2019	Second reading
6 November 2019	Committee of the whole House (Bill 106–3)
12 November 2019	Third reading
16 November 2019	Royal assent

This Act is administered by the Ministry of Justice.