



**Te Tari Ture
o te Karauna**
Crown Law

Inmate admissions

Ngā whāki ā-mauhere

As at 1 January 2025

Summary | Te whakarāpopotanga

1. Evidence of admissions obtained from someone in custody with a defendant can be unreliable. The law recognises, however, that subject to certain safeguards, such evidence can reliably be put before a jury. The decision to call inmate admissions evidence is significant. It requires the prosecutor to be satisfied that the evidence is reliable. Relevant matters in assessing reliability include the proposed witness's motive; circumstances of the interaction between the defendant and the proposed witness; evidence that confirms the proposed witness's account; whether there may have been an opportunity for the proposed witness to concoct the evidence; the character of the proposed witness; and whether they have offered such evidence in the past.
2. Inmate admissions evidence should be accompanied by appropriate directions to the jury explaining the risks of such evidence. The reasons for the decision to call inmate admissions evidence should be recorded in writing.

Introduction | Ngā kupu whakataki

3. Inmate admissions evidence can be unreliable. Such evidence has been linked to miscarriages of justice and wrongful convictions in overseas jurisdictions and in New Zealand. Some inmate witnesses have demonstrated remarkable ingenuity in obtaining what appears to be compelling information to support false evidence.
4. At the same time, defendants can and do make incriminating statements while in custody that can, in the right circumstances, constitute valuable and reliable evidence. People in custody can be honest and reliable witnesses, but careful scrutiny of their evidence is always required. This guideline provides guidance to prosecutors about processes to follow, and relevant considerations, when deciding whether or not to call inmate admissions evidence. It also identifies matters the prosecutor should consider seeking judicial directions about, if such evidence is to be called at a jury trial.

Scope | Te korahi

5. These guidelines apply where a proposed witness has provided information about admissions allegedly made by a defendant while they were in custody with the proposed witness.
6. It does not cover incriminating comments made by defendants to those who can be expected to have direct knowledge of the offending independent of the defendant's admissions, such as co-defendants, accomplices, undercover operatives and some confidential informants.

Glossary | Kuputaka

7. In this guideline:
 - 7.1 *Proposed witness* means a witness that the prosecution proposes to call to give inmate admissions evidence, who would not be expected to have knowledge of the offending beyond the admissions allegedly made to them.

7.2 *Inmate admissions evidence* means evidence of incriminating statements by a defendant to a proposed witness that:

7.2.1 were made while they were in custody together; and

7.2.2 relate to offences occurring outside the prison or place of custody.

Guidelines | Te aratohu

8. The general scheme of the Evidence Act 2006 is that concerns about the reliability of evidence can be met by s 8 (which requires a case-by-case assessment of probative value against prejudicial effect); the testing that occurs in the trial process itself; and the availability of a warning to a jury that evidence could be unreliable.¹
9. However, given the risks associated with inmate admissions evidence, prosecutors should take great care when deciding whether to call it. The considerations and processes outlined below are intended to respect the role of the fact-finder at trial while mitigating the risks of unreliable inmate admissions evidence.

Overall public interest assessment – guiding principles

10. Prosecutors should carefully review proposed inmate admissions evidence to determine whether it is in the interests of justice to call it, having regard to the known dangers associated with such evidence.
11. Prosecutors should only call inmate admissions evidence if they are satisfied it is more likely than not to be reliable. This assessment should involve consideration of the factors outlined at paragraphs 14-18 below.
12. Prosecutors should generally only call inmate admissions evidence in serious cases.

Factors prosecutors should consider when assessing reliability

13. The following are non-exhaustive factors that prosecutors should consider in assessing the reliability of inmate admissions evidence.

Motive

14. Prosecutors should take a broad view of possible motivations for a proposed witness to lie about admissions made by a defendant. Factors relevant to motive include the following:
 - 14.1 Whether the information was solicited from, or volunteered by, the proposed witness.
 - 14.2 Any offers or promises made to the proposed witness.
 - 14.3 Other inducements for the proposed witness (such as support for a sentence reduction, withdrawal of charges, a plea arrangement, bail, changes to conditions of imprisonment or safety measures).
 - 14.4 Any prior interactions between the proposed witness and investigating officers.

¹ Evidence Act 2006, s 122.

- 14.5 The circumstances in which the proposed witness came to be speaking to the authorities, and whether and how their statement has been recorded (for example, audio/visual recording, written statement).
- 14.6 Whether the proposed witness has made any requests to authorities that may relate to their willingness to give evidence (whether or not the request was agreed to).
- 14.7 The proposed witness's explanation for coming forward.
- 14.8 Other motivations the proposed witness may have (for example, a grudge against the defendant or other gang allegiance).
- 14.9 Whether any ulterior motive or inducement is likely still to apply when the proposed witness may give evidence.
- 14.10 Any threats against, or safety concerns of or for, the proposed witness.

Circumstances of alleged interactions

- 15. Factors relevant to the circumstances of the proposed witness's alleged interactions with the defendant include the following:
 - 15.1 The plausibility of the proposed witness's account of the alleged interaction with the inmate.
 - 15.2 Any records related to the alleged interaction, and whether they were contemporaneous.
 - 15.3 Whether the alleged interaction is supported by records of the Department of Corrections | Ara Poutama Aotearoa or by other inmates.
 - 15.4 Any delay in the proposed witness coming forward with the evidence and the reasons given for that delay.

Confirmatory evidence

- 16. Factors that may confirm a proposed witness's evidence include the following:
 - 16.1 The level of detail and specificity of the evidence.
 - 16.2 Consistency of the evidence with known facts and with other statements made by the proposed witness.
 - 16.3 Whether the proposed witness's evidence led to the discovery of other evidence.
 - 16.4 Whether the proposed witness's evidence contains information that is not in the public domain.

Opportunity to concoct

17. Prosecutors should consider whether the proposed witness's evidence could be constructed based on facts and information gained from sources other than the defendant. Relevant factors include:
 - 17.1 the proposed witness's potential access to alternative sources of information (such as media reports, articles and editorials; disclosure documents; other people (such as witnesses, co-defendants, family or criminal associates); and information from the New Zealand Police); and
 - 17.2 the timing of the proposed witness's evidence relative to media reports, articles or editorials.

Character and circumstances of the proposed witness

18. Factors relevant to the character and circumstances of the proposed witness include:
 - 18.1 The proposed witness's conviction history (especially any offences of fraud, dishonesty, perjury or perverting the course of justice).
 - 18.2 Whether the proposed witness has any other record of dishonesty.
 - 18.3 Material from Police databases (such as the National Intelligence Application (NIA)) about the proposed witness.
 - 18.4 Whether the proposed witness has given inmate admissions evidence in the past. Prosecutors should consult any inmate witness register or any other records maintained by Police and other government agencies. If the witness has given inmate admissions evidence in the past, prosecutors should seek details as to the reliability of this past evidence. This will likely require consideration of any transcript or recording of the proposed witness's past evidence.
 - 18.5 Any other issues or matters that may go to reliability.

Commentary

This could include, for example any court-ordered assessment and/or treatment or that the proposed witness has previously provided information as a confidential informant and whether that information was considered reliable.

Information prosecutors should consider when assessing reliability

19. Prosecutors should ensure they are provided with the following (to the extent it is available) so they have sufficient information to assess the reliability of the inmate admissions evidence:
 - 19.1 the proposed witness's previous convictions;
 - 19.2 the sentence(s) the proposed witness is currently serving and the length of term remaining;

- 19.3 the number of times (if any) that the proposed witness has previously offered, disclosed or given evidence of this type, and if they have previously offered, disclosed or given such evidence:
- 19.3.1 how their evidence was treated and the reason for that treatment;
 - 19.3.2 the significance (if any) of their evidence to the matter(s) then at issue; and
 - 19.3.3 any benefit or other preference offered to, or received by, the proposed witness in connection with giving this evidence.
20. The prosecutor should consider whether they require additional material to assess the reliability of the inmate admissions evidence. This may require the prosecutor to ask the investigator to undertake additional investigation or preparatory work. Whether and to what extent further material is required is a judgement call for the prosecutor.
21. The prosecutor is not obliged to seek further information about inmate admissions evidence if, based on the material initially provided by the investigator, the prosecutor decides not to call the evidence.
22. If information comes to light that affects the prosecutor's original view of the inmate admissions evidence (particularly its reliability), the prosecutor should review their decision about whether or not to call the evidence.

Directions to juries

23. Where inmate admissions evidence is given in a jury trial, the prosecutor should ensure the jury is given appropriate directions about it.² The exact form of direction will be a matter for the judge, and should be tailored to the circumstances of the case, but prosecutors could suggest the following should be included:
- 23.1 The reasons why such evidence should be treated with care (because of the risk of incentivised evidence leading to a miscarriage of justice).
 - 23.2 The possible incentives for a witness to give such evidence. Even where there has been no inducement by the authorities, the witness may have been influenced by the possibility of future benefits.
 - 23.3 The possibility that the evidence may have been motivated by animosity.
 - 23.4 The possibility that the witness obtained the information from third parties, including media sources, other prisoners or from interactions with Police, rather than from the defendant.
 - 23.5 The possibility that the statement is not an admission but a demonstration of bravado by the defendant, or simply a recounting of the evidence against them (without necessarily accepting its truth).

² This may include a direction under s 122(2)(d) of the Evidence Act 2006.

23.6 The usual cautions about disputed evidence that is not independently verified.

24. Where the judge does not address these matters in their summing up to the jury, and the prosecutor considers the judge should have done so in the circumstances of the case, the prosecutor should alert the judge to the omission immediately after the jury has left the courtroom, and invite the judge to bring the jury back so that suitable directions may be given.

Disclosure

25. Responsibilities for disclosure are set out in the guideline on Disclosure | Te tūhura. Inmate admissions evidence will almost certainly be contentious and may give rise to procedural difficulties. If the prosecution is a Crown prosecution, such evidence should be discussed between the Crown prosecutor and person managing disclosure at an early stage, including what information should be disclosed.
26. Information about the reliability of inmate admissions evidence may engage the reasons for withholding information under the Criminal Disclosure Act 2008. This type of information should be disclosed unless it is in the public interest to withhold it (for example, for safety reasons). If the information is to be withheld, the fact of its existence (but not the content) should be disclosed so that the defendant can consider whether to seek an order for disclosure.

Process | Te tukanga

27. In Crown prosecutions, a decision to call inmate admissions evidence should be approved by the Crown Solicitor personally.
28. In non-Crown prosecutions, the decision should be approved by a senior manager in the prosecuting agency. If approval is given, the agency should consider instructing the local Crown Solicitor, who will have expertise in assessing and leading such evidence, to conduct the prosecution.
29. Any decision to call inmate admissions evidence, and the reasons for that decision, should be recorded in writing.

Other relevant guidelines | Ētahi atu aratohu e whai pānga ana

Decisions to prosecute | Te whakatau ki te aru
Disclosure | Te tūhura