

**Legislative Council Panel on
Administration of Justice and Legal Services**

Meeting on 23 March 2026

Agenda Item III:

**“Implementation of the Law Reform Commission of Hong Kong Report on
Hearsay in Criminal Proceedings – Evidence (Amendment) Bill 2026”**

Supplementary Information

In the captioned meeting, the Administration was requested to provide a tabulated comparison of any significant developments or updates in the reform of the rules on hearsay evidence in criminal proceedings in the common law jurisdictions referenced by the Administration since the Law Reform Commission of Hong Kong (“**LRC**”) published the Report on Hearsay in Criminal Proceedings (“**Report**”) in November 2009.

2. The Report examined reforms adopted in a number of common law jurisdictions, namely, England and Wales, New Zealand, United States, Scotland, Australia, and Canada.¹ In particular, the LRC focused on three principal models of reform – the English model, the United States model and the New Zealand model. Having compared these three options, the LRC ultimately recommended a modified version of the New Zealand model as the preferred basis for reform.²

3. Against this background, the table at the **Annex** sets out, for each of the common law jurisdictions examined in the Report, the significant legislative developments since November 2009 concerning the admissibility of hearsay evidence in criminal proceedings. It shows that there has been no substantive shift in the overall direction of reform of the hearsay rule in these common law jurisdictions. Their core policy choice remains to permit the admission of hearsay evidence in criminal proceedings through defined statutory or principled exceptions, typically structured around necessity and/or reliability and subject to judicial safeguards. Where some legislative

¹ Chapter 5 of the Report

² Chapter 8 of the Report

amendments have been made subsequent to the publication of the Report, they are largely technical or clarificatory in nature and do not alter the essence of the underlying models.

Department of Justice
April 2026

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**Post-2009 Legislative Developments on the Admissibility of Hearsay Evidence
in Criminal Proceedings in Selected Common Law Jurisdictions**

	Position as at 2009	LRC's view	Post-2009 significant³ legislative change
England	<p>-Governed by Criminal Justice Act 2003 and hearsay evidence can be admitted through defined statutory gateways.</p> <p>-s.114(1) provides that hearsay may be admitted if: (a) it falls within one of the statutory exceptions (e.g. unavailable witnesses); (b) it falls within preserved common law exceptions; (c) all parties agree; or (d) the court admits it under the “interests of justice” residual discretion if reliable.</p> <p>-s.116 treats a witness as unavailable if they are dead, unfit due to bodily or mental condition, outside the UK and cannot reasonably be brought to court, cannot be found despite reasonable efforts, through fear they do not give evidence, and the court permits their statement to be admitted in the interests of justice.</p> <p>-The Act also includes a set of safeguards, such as: powers to exclude hearsay where necessary to ensure fairness, and</p>	<p>- LRC recommended that the English model be rejected for two main reasons: its categories of automatic admissibility provide insufficient assurances of reliability and the terms of the residual discretion to admit hearsay in the interests of justice are too open-ended and vague.⁴</p>	<p>- No significant legislative change noted</p>

³ When assessing whether a subsequent legislative change is significant, the focus is on amendments to those specific provisions that were expressly considered by the LRC in the Report.

⁴ Recommendation 7, Report

	Position as at 2009	LRC’s view	Post-2009 significant ³ legislative change
	to stop the trial and order retrial if the hearsay evidence is unconvincing.		
New Zealand	<p>-Governed by Evidence Act 2006, which retains a general exclusionary rule but allows hearsay evidence to be admitted through a single, principled statutory discretion based on necessity and reliability.</p> <p>-Under s.18, the necessity condition is only fulfilled where the maker of the statement is “unavailable as a witness” (as defined in s 16 as being, dead, outside New Zealand and not reasonably practicable to be a witness, unfit because of age or physical or mental condition, cannot with reasonable diligence be identified or found, not compellable to give evidence) or where calling the maker would cause undue expense or delay.</p> <p>-s.18 further requires that “the circumstances relating to the statement provide reasonable assurance that the statement is reliable”.</p> <p>-Even if the conditions of necessity and reliability are both</p>	<p>- LRC recommended a modified version of the New Zealand model as the proposed model of reform. The admission of hearsay evidence should be based on a single statutory discretionary power to admit hearsay evidence if it is both necessary and reliable.⁵</p>	<p>- s.22A of the Evidence Act 2006, which creates a specific hearsay exception for statements made in furtherance of a conspiracy or joint enterprise (preserving the former co-conspirators’ rule), was inserted by s.8 of the Evidence Amendment Act 2016.⁶</p>

⁵ Recommendation 9A, Report

⁶ The New Zealand Law Commission completed its third statutory review of the Evidence Act 2006 in 2024. The New Zealand Government has acknowledged the report but indicated that further policy work is required to analyse the recommendations and assess their operational impacts before deciding which reforms to implement. In light of this, there remains uncertainty as to which recommendations will ultimately be adopted, and they are therefore not reflected here.

	Position as at 2009	LRC's view	Post-2009 significant ³ legislative change
	met, the court must still apply the general safeguard in s.8, and must exclude the hearsay if its probative value is outweighed by the risk of unfairly prejudicial effect (or needless prolongation of the proceeding), expressly taking into account the defendant's right to offer an effective defence.		
United States	<p>-Governed by the Federal Rules of Evidence, which retains a blanket exclusionary rule (with all common law exceptions abolished) and codifies 28 specific statutory exceptions.</p> <p>-Under Rule 807, there is a residual exception that allows admission of hearsay outside the exceptions if the statement has "equivalent circumstantial guarantees of trustworthiness" and: (1) is offered as evidence of a material fact; (2) is more probative on that point than any other evidence reasonably obtainable; and (3) admitting it would best serve the general purposes of the Rules and the interests of justice.</p>	<p>- LRC recommended that the United States model be rejected because full codification of the existing exceptions cannot cater for all justifiable situations.⁷</p>	<p>- With effect from 1 December 2019, Rule 807 was amended so that the residual hearsay exception now requires only that the statement be "supported by sufficient guarantees of trustworthiness", assessed by reference to the totality of the circumstances in which the statement was made and any corroborating evidence, instead of the previous, stricter requirement of "equivalent circumstantial guarantees of trustworthiness".</p>

⁷ Recommendation 8, Report

	Position as at 2009	LRC's view	Post-2009 significant ³ legislative change
			- The rule is also simplified by removing the former requirements that the hearsay relate to a “material fact” and that admission serve the “interests of justice” and the “general purposes” of the Rules, while retaining the requirement that the statement be more probative than other reasonably obtainable evidence.
South Africa	- Governed by s.3 of the Law of Evidence Amendment Act 1988, which gives courts a wide discretion to admit hearsay evidence in the interests of justice	- LRC recommended that the South African model, which admits hearsay on an entirely discretionary basis in the interests of justice, be rejected because of concerns with the open-endedness of the discretion. ⁸	- No significant legislative change noted

⁸ Recommendation 6, Report

	Position as at 2009	LRC's view	Post-2009 significant ³ legislative change
<p>Australia</p>	<p>- Governed by the Evidence Act (Commonwealth) 1995, which retains a statutory hearsay rule (s.59) but codifies a wide range of exceptions.</p> <p>- Where the maker of a previous representation is unavailable, s.65(2) disappplies the hearsay rule to evidence from someone who perceived the representation being made, if it was made under a duty, contemporaneously or shortly after the event in circumstances unlikely to involve fabrication, in circumstances making it highly probable the statement is reliable, or against the maker's interest.</p> <p>- "Unavailability" is defined broadly in clause 4(1), Part 2, of the Dictionary to cover death, incompetence, unlawfulness or statutory prohibition on giving evidence, and situations where all reasonable steps to find, secure, or compel the witness have been taken without success.</p> <p>- Judicial safeguards include: a general discretion in s.135 to refuse otherwise-admissible evidence where probative value is substantially outweighed by unfair prejudice, risk of misleading or confusing, or undue waste of time and a mandatory rule in s.137 requiring exclusion of prosecution</p>	<p>- LRC did not express specific views on this model.</p>	<p>- The hearsay rule was amended⁹ to clarify the test for intention and it now provides that: "Evidence of a previous representation made by a person is not admissible to prove the existence of a fact that it can reasonably be supposed that the person intended to assert by the representation."¹⁰</p> <p>- The definition of "unavailability of persons" was amended¹¹ to add a further condition, so that a person is "unavailable to give evidence about a fact" if, among other things, "the person is mentally or physically unable to give</p>

⁹ Pursuant to Recommendation 7-1 made in ALRC Report 102 by the Australia Law Reform Commission

¹⁰ S.59(1) of the Evidence Act 1995 (Commonwealth) of Australia

¹¹ Recommendation 8-2, ALRC Report 102

	Position as at 2009	LRC’s view	Post-2009 significant³ legislative change
	evidence in criminal proceedings where its probative value is outweighed by unfair prejudice to the accused.		the evidence and it is not reasonably practicable to overcome that inability” ¹²
Scotland	<p>-Governed by the Criminal Procedure (Scotland) Act 1995, which allows hearsay evidence to be admitted under new statutory exceptions.</p> <p>-s.259 provides that the statement must either be in a document or proved by a witness with direct personal knowledge of the making of the statement.</p> <p>-A hearsay statement is admissible only if the maker is, for specified reasons, unavailable (e.g. dead; unfit because of bodily or mental condition; outside the UK and cannot practically attend; cannot be found despite reasonable steps; entitled to refuse on self-incrimination grounds; or refuses to take the oath or to answer despite direction).</p>	- LRC did not express specific views on this model.	- s.261ZA of the Criminal Procedure (Scotland) was inserted by s.109 of the Criminal Justice (Scotland) Act 2016 and provides that any statement made by an accused in the course of being questioned by a constable or other official investigating an offence is not inadmissible on the ground of hearsay.
Canada	-No single, comprehensive statutory code on criminal hearsay.	- LRC did not express specific views on this model.	-No substantive change to the principled approach at common law ¹³

¹² Clause 4, Part 2, Dictionary, Evidence Act (Commonwealth) 1995 of Australia

¹³ For a recent application of such principled approach, please refer to the judgment handed down by the Canadian Supreme Court on 25 September 2024 in *R v Charles*, 2024 SCC 29.

	Position as at 2009	LRC's view	Post-2009 significant³ legislative change
	-Hearsay evidence is inadmissible unless it is necessary and reliable, under a principled approach in common law.		