
From: Easton, Paul
Sent: Tuesday, 12 March 2024 5:08 pm
To: Handley, Georgie; Denoual, Hayley; Brightwell, Kathy
Cc: Locke, Joe
Subject: RE: RNZ request - ombudsman retirement

Hi Team

Just noting that the Minister's Office has indicated they will respond to both media queries (RNZ and ZB with the following.

“Urgent legislative change would have been required in order for Mr Boshier to remain in his position, which the coalition Government chose not to undertake.”

Ngā mihi,

Paul

From: Easton, Paul
Sent: Tuesday, 12 March 2024 2:30 pm
To: Handley, Georgie <Georgie.Handley@justice.govt.nz>; Denoual, Hayley <Hayley.Denoual@justice.govt.nz>; Brightwell, Kathy <Kathy.Brightwell@justice.govt.nz>
Cc: Locke, Joe <Joe.Locke@justice.govt.nz>
Subject: RE: RNZ request - ombudsman retirement

Thanks Georgie

Do we know if the AM mentioned Boshier's impending retirement or was it more general? IE was it framed around that?

We will progress to the Minister's Office and see if they add some details.



Ngā mihi,

Paul Easton

Principal Media Advisor | Communications Services

Ministry of Justice | Tāhū o te Ture

s9(2)(a) |

paul.easton@justice.govt.nz | justice.govt.nz

From: Handley, Georgie <Georgie.Handley@justice.govt.nz>
Sent: Tuesday, 12 March 2024 2:20 pm
To: Easton, Paul <Paul.Easton@justice.govt.nz>; Denoual, Hayley <Hayley.Denoual@justice.govt.nz>; Brightwell, Kathy <Kathy.Brightwell@justice.govt.nz>

Cc: Locke, Joe <Joe.Locke@justice.govt.nz>

Subject: RE: RNZ request - ombudsman retirement

Hi

Please find below bullet points in response to the request from RNZ. They can be attributed to Kathy

Any questions please let me know

Thanks

Georgie

- Under the Ombudsmen Act 1975 (the Act) ombudsmen are appointed by the Governor-General on the recommendation of the House of Representatives. In practice the Officers of Parliament Committee makes a recommendation to the House.
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- The aide memoire also contained advice on a possible process for amending the Act to amend or remove the compulsory retirement provision, should the Government wish to do so.

It is not clear to us what happened after we provided the AM, and suggest that the MO provide any additional bullets on this point, if required,

From: Easton, Paul <Paul.Easton@justice.govt.nz>

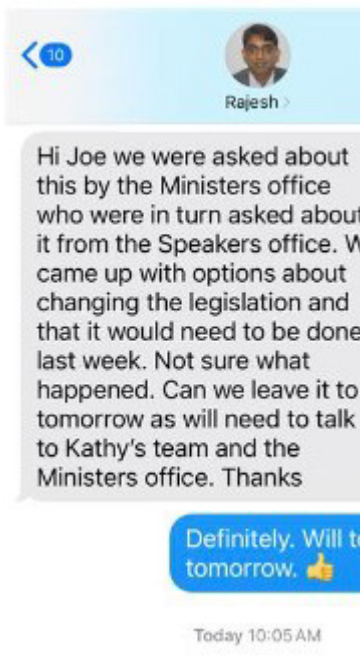
Sent: Tuesday, 12 March 2024 1:22 pm

To: Denoual, Hayley <Hayley.Denoual@justice.govt.nz>; Brightwell, Kathy <Kathy.Brightwell@justice.govt.nz>

Cc: Locke, Joe <Joe.Locke@justice.govt.nz>; Handley, Georgie <Georgie.Handley@justice.govt.nz>

Subject: RE: RNZ request - ombudsman retirement

Hi here is the text from Raj;



Thanks
Paul

From: Denoual, Hayley <Hayley.Denoual@justice.govt.nz>
Sent: Tuesday, 12 March 2024 1:17 pm
To: Easton, Paul <Paul.Easton@justice.govt.nz>; Brightwell, Kathy <Kathy.Brightwell@justice.govt.nz>
Cc: Locke, Joe <Joe.Locke@justice.govt.nz>; Handley, Georgie <Georgie.Handley@justice.govt.nz>
Subject: RE: RNZ request - ombudsman retirement

Thanks Paul – we'll get a couple of lines through to you later this pm.

Can you share please what Rajesh has already sent through, so we can incorporate that into a single response?

Hayley



Hayley Denoual ([she/her](#))
Policy Manager | Kaiwhakahaere Kaupapa
Democracy and Open Government | Civil and Constitutional Unit
Ministry of Justice | Tāhū o te Ture
s9(2)(a)]
Justice Centre | 19 Aitken Street
hayley.denoual@justice.govt.nz | justice.govt.nz
['Chat with me on Teams'](#)

We value and encourage flexible first. While it suits me to send this now, I do not expect a response or action outside of your own working hours.

From: Easton, Paul <Paul.Easton@justice.govt.nz>
Sent: Tuesday, 12 March 2024 1:12 pm
To: Brightwell, Kathy <Kathy.Brightwell@justice.govt.nz>; Denoual, Hayley <Hayley.Denoual@justice.govt.nz>
Cc: Locke, Joe <Joe.Locke@justice.govt.nz>
Subject: FW: RNZ request
Importance: High

Hi both

You may be aware of this query, which came in last night.

The story has now run but we still need to get a response ready.

[Chief Ombudsman Peter Boshier forced to resign due to age-limit law | RNZ News](#)

Rajesh is aware and has briefed Joe by text. Could we please get a brief response ready 4pm, we will then share it with the Minister's Office.

Happy to discuss.



Ngā mihi,

Paul Easton

Principal Media Advisor | Communications Services

Ministry of Justice | Tāhū o te Ture

s9(2)(a) |

paul.easton@justice.govt.nz | justice.govt.nz

From: Giles Dexter <Giles.Dexter@rnz.co.nz>

Sent: Monday, 11 March 2024 7:29 pm

To: Media - Justice <Media@justice.govt.nz>

Subject: RNZ request

Hi Joe,

Giles from RNZ here. Apologies for evening attempts to ring (and evening email), but I was hoping I might be able to get a response from Justice on something.

The Chief Ombudsman is set to retire this weekend because the 1975 Act sets out he must do so upon turning 72.

Can you please let me know whether Justice officials were asked to look at changing the Act, and if so, what was the conclusion they reached?

Many thanks,

Giles.

Giles Dexter | Political Reporter, Press Gallery

RNZ, PO Box 123, Wellington, New Zealand, 6140

s9(2)(a)

]

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From: Denoual, Hayley
Sent: Tuesday, 12 March 2024 3:41 pm
To: Easton, Paul; Handley, Georgie; Brightwell, Kathy
Cc: Locke, Joe; Media - Justice
Subject: RE: RNZ request - ombudsman retirement
Attachments: Under the Ombudsmen Act 1975 (the Act) ombudsmen are appoint.docx

Thanks Paul

Fine with me, if Kathy's okay with these changes.

Hayley



Hayley Denoual ([she/her](#))
Policy Manager | Kaiwhakahaere Kaupapa
Democracy and Open Government | Civil and Constitutional Unit
Ministry of Justice | Tāhū o te Ture
s9(2)(a)]
Justice Centre | 19 Aitken Street
hayley.denoual@justice.govt.nz | [justice.govt.nz](https://www.justice.govt.nz)
['Chat with me on Teams'](#)

We value and encourage flexible first. While it suits me to send this now, I do not expect a response or action outside of your own working hours.

From: Easton, Paul <Paul.Easton@justice.govt.nz>
Sent: Tuesday, 12 March 2024 3:40 pm
To: Handley, Georgie <Georgie.Handley@justice.govt.nz>; Denoual, Hayley <Hayley.Denoual@justice.govt.nz>; Brightwell, Kathy <Kathy.Brightwell@justice.govt.nz>
Cc: Locke, Joe <Joe.Locke@justice.govt.nz>; Media - Justice <Media@justice.govt.nz>
Subject: RE: RNZ request - ombudsman retirement

Hi All

The Minister's Office requested that we make the lines a bit more high level. Can you please have a look.

Kathy can we attribute them to you?

We've suggested we stick to the advice given by MOJ. Questions about what happened next can be referred to the MO.

Ngā mihi,

Paul

From: Handley, Georgie <Georgie.Handley@justice.govt.nz>
Sent: Tuesday, 12 March 2024 2:35 pm

To: Easton, Paul <Paul.Easton@justice.govt.nz>; Denoual, Hayley <Hayley.Denoual@justice.govt.nz>; Brightwell, Kathy <Kathy.Brightwell@justice.govt.nz>
Cc: Locke, Joe <Joe.Locke@justice.govt.nz>
Subject: RE: RNZ request - ombudsman retirement

Hi

Yes the AM specifically mentions Mr Boshier. Here are the relevant paras FYI

1. Section 5(1) of the Act provides that the term of office for an ombudsman is five years. They may be re-appointed for further terms without limit. However, under section 5(3) an ombudsman must resign from office on attaining the age of 72 years (unless they are on a temporary appointment).
2. There is currently only one ombudsman appointed by the Governor-General under the Ombudsmen Act 1975, the Chief Ombudsman, Peter Boshier.
3. Mr Boshier was re-appointed for a second five-year term by the Governor-General with effect from 10 December 2020. He will turn 72 on 16 March 2024, and under the Act is required to resign by this date.

Let me know if you want anything more, including a full copy of the AM

Thanks

Georgie

From: Easton, Paul <Paul.Easton@justice.govt.nz>
Sent: Tuesday, 12 March 2024 2:30 pm
To: Handley, Georgie <Georgie.Handley@justice.govt.nz>; Denoual, Hayley <Hayley.Denoual@justice.govt.nz>; Brightwell, Kathy <Kathy.Brightwell@justice.govt.nz>
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Paul Easton

Principal Media Advisor | Communications Services

Ministry of Justice | Tāhū o te Ture

s9(2)(a) |

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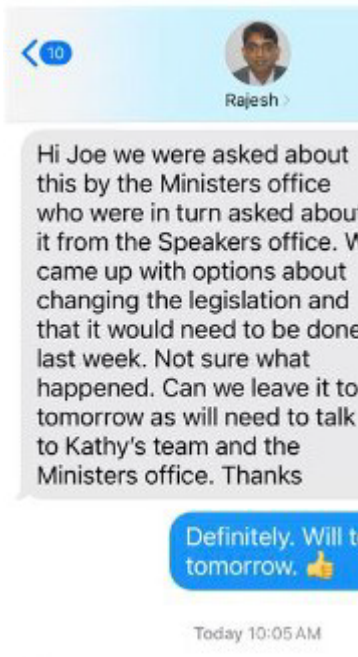
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Cc: Locke, Joe <Joe.Locke@justice.govt.nz>; Handley, Georgie <Georgie.Handley@justice.govt.nz>

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Hayley



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Policy Manager | Kaiwhakahaere Kaupapa
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s9(2)(a)]
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Subject: FW: RNZ request
Importance: High

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You may be aware of this query, which came in last night.

The story has now run but we still need to get a response ready.

[Chief Ombudsman Peter Boshier forced to resign due to age-limit law | RNZ News](#)

Rajesh is aware and has briefed Joe by text. Could we please get a brief response ready 4pm, we will then share it with the Minister's Office.

Happy to discuss.



Ngā mihi,

Paul Easton

Principal Media Advisor | Communications Services

Ministry of Justice | Tāhū o te Ture

s9(2)(a) |

paul.easton@justice.govt.nz | justice.govt.nz

From: Giles Dexter <Giles.Dexter@rnz.co.nz>

Sent: Monday, 11 March 2024 7:29 pm

To: Media - Justice <Media@justice.govt.nz>

Subject: RNZ request

Hi Joe,

Giles from RNZ here. Apologies for evening attempts to ring (and evening email), but I was hoping I might be able to get a response from Justice on something.

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Can you please let me know whether Justice officials were asked to look at changing the Act, and if so, what was the conclusion they reached?

Many thanks,

Giles.

Giles Dexter | Political Reporter, Press Gallery

RNZ, PO Box 123, Wellington, New Zealand, 6140

s9(2)(a)

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- ~~Under the Ombudsmen Act 1975 (the Act) ombudsmen are appointed by the Governor General on the recommendation of the House of Representatives. In practice the Officers of Parliament Committee makes a recommendation to the House.~~
- Please attribute to Kathy Brightwell, Ministry of Justice General Manager, Civil and Constitutional Policy;
- The Ministry of Justice administers the Ombudsmen Act 1975 but has no role in appointing ombudsmen.
- Under the Act, ombudsmen must retire upon reaching the age of 72.
- The Minister of Justice asked the Ministry ~~as administrators of the Act,~~ for information on the retirement age provisions in the Act, and initial advice on any possible amendment to the Act to amend the retirement age provision.
- ~~The Ministry provided advice an aide memoire to the Minister on 23 February 2024.~~
- This provided information on the relevant sections in the Act, and also how the compulsory retirement provision for the ombudsman compared with the rules for other Officers of Parliament and the judiciary.
- It also contained advice on a possible process for amending the Act to amend or remove the compulsory retirement provision, should the Government wish to do so.
-

Formatted: Normal, No bullets or numbering

From: Brightwell, Kathy
Sent: Tuesday, 12 March 2024 2:17 pm
To: Handley, Georgie
Cc: Denoual, Hayley
Subject: RE: RNZ request - due to MO at 4pm today

And yes you can attribute to me

From: Handley, Georgie <Georgie.Handley@justice.govt.nz>
Sent: Tuesday, 12 March 2024 2:13 pm
To: Brightwell, Kathy <Kathy.Brightwell@justice.govt.nz>
Cc: Denoual, Hayley <Hayley.Denoual@justice.govt.nz>
Subject: FW: RNZ request - due to MO at 4pm today

Hi Kathy

We have been asked to provide some bullets on the work we did on a possible amendment to the Ombudsmen Act to remove the compulsory retirement age. The bullets are in response to a request from RNZ (see request below), and are due at the MO at 4pm today.

Please find these bullets below for your review. Media has also asked that they are attributed to someone. Could you let me know if you are happy to have them attributed to you? Or perhaps Rajesh?

- Under the Ombudsmen Act 1975 (the Act) ombudsmen are appointed by the Governor-General on the recommendation of the House of Representatives. In practice the Officers of Parliament Committee makes a recommendation to the House.
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It is not clear to us what happened after we provided the AM, and suggest that the MO provide any additional bullets on this point, if required,

Thanks

Georgie

From: Easton, Paul <Paul.Easton@justice.govt.nz>
Sent: Tuesday, 12 March 2024 1:23 pm

To: Handley, Georgie <Georgie.Handley@justice.govt.nz>
Subject: RE: RNZ request

Hey

Just email bullets outlining what MOJ was asked to do and what happened with it. Attributed to someone, maybe Kathy?

Cheers
Paul

From: Handley, Georgie <Georgie.Handley@justice.govt.nz>
Sent: Tuesday, 12 March 2024 1:16 pm
To: Easton, Paul <Paul.Easton@justice.govt.nz>
Subject: FW: RNZ request
Importance: High

Hey

I will be working on this media request – are you just looking for email bullets? Or something more formal?

Thanks

Georgie

From: Denoual, Hayley <Hayley.Denoual@justice.govt.nz>
Sent: Tuesday, 12 March 2024 1:14 pm
To: Handley, Georgie <Georgie.Handley@justice.govt.nz>
Subject: FW: RNZ request
Importance: High

Hey – sos but could you draft some quick lines on this?

From: Easton, Paul <Paul.Easton@justice.govt.nz>
Sent: Tuesday, 12 March 2024 1:12 pm
To: Brightwell, Kathy <Kathy.Brightwell@justice.govt.nz>; Denoual, Hayley <Hayley.Denoual@justice.govt.nz>
Cc: Locke, Joe <Joe.Locke@justice.govt.nz>
Subject: FW: RNZ request
Importance: High

Hi both

You may be aware of this query, which came in last night.

The story has now run but we still need to get a response ready.

[Chief Ombudsman Peter Boshier forced to resign due to age-limit law | RNZ News](#)

Rajesh is aware and has briefed Joe by text. Could we please get a brief response ready 4pm, we will then share it with the Minister's Office.

Happy to discuss.



Ngā mihi,

Paul Easton

Principal Media Advisor | Communications Services

Ministry of Justice | Tāhū o te Ture

s9(2)(a) |

paul.easton@justice.govt.nz | justice.govt.nz

From: Giles Dexter <Giles.Dexter@rnz.co.nz>

Sent: Monday, 11 March 2024 7:29 pm

To: Media - Justice <Media@justice.govt.nz>

Subject: RNZ request

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Many thanks,

Giles.

Giles Dexter | Political Reporter, Press Gallery

RNZ, PO Box 123, Wellington, New Zealand, 6140

s9(2)(a)

|

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From: Denoual, Hayley
Sent: Friday, 9 February 2024 5:03 pm
To: Chhana, Rajesh; Bradey, Paige
Cc: Lynn, Sarah; Brightwell, Kathy
Subject: RE: Call from Peter Boshier
Attachments: Notes on possible Ombudsman Amendment Bill.docx

Kia ora

Further to the exchange below, I've attached a draft plan/timeframe for if this work needs to progress urgently. It will need Minister/PMO and Business Committee support to truncate several Cabinet or House processes.

Action	Timeframes
Letter from Speaker/OPC	Wed 14 Feb
Cabinet - oral item (policy approval)	Mon 19 Feb (*permission needed from Cab Office)
Issue drafting instructions	Tue 20 Feb
Drafting bill	20-23 Feb
BORA vetting	26-29 Feb
Min consult on draft bill/LEG paper (inc. with OPC/x-party?)	26 -28 Feb
Lodge	Thur 29 Feb
Cabinet	Mon 4 Mar
Intro	Between 5 – 7 March (all sessions under urgency?)
1R	
COWH	
3R	
Royal assent	Mon 11 March

Kathy and I propose to have an initial heads-up conversation with ^{s9(2)(a)} about this on Monday, and we can start prepping the necessary deliverables next week, s9(2)(g)(i) ↓

Nga mihi

Hayley



Hayley Denoual ([she/her](#))
 Policy Manager | Kaiwhakahaere Kaupapa
 Electoral and Constitutional Policy | Civil and Constitutional Unit
 Ministry of Justice | Tāhū o te Ture
 s9(2)(a) ↓
 Justice Centre | 19 Aitken Street
hayley.denoual@justice.govt.nz | [justice.govt.nz](https://www.justice.govt.nz)
[‘Chat with me on Teams’](#)

We value and encourage flexible first. While it suits me to send this now, I do not expect a response or action outside of your own working hours.

From: Brightwell, Kathy <Kathy.Brightwell@justice.govt.nz>
Sent: Friday, 9 February 2024 3:21 pm
To: Kibblewhite, Andrew <Andrew.Kibblewhite@justice.govt.nz>
Cc: Chhana, Rajesh <Rajesh.Chhana@justice.govt.nz>; Bradey, Paige <Paige.Bradey@justice.govt.nz>; Lynn, Sarah <Sarah.Lynn@justice.govt.nz>; Denoual, Hayley <Hayley.Denoual@justice.govt.nz>
Subject: Re: Call from Peter Boshier

Yes we have a plan and a timeline ready that I can send to you if you would like

Kathy
Sent from my iPhone

On 9/02/2024, at 8:54 AM, Kibblewhite, Andrew <Andrew.Kibblewhite@justice.govt.nz> wrote:

Kia ora kōrua. Peter B called to update me on progress with the possible legislative change to the provisions surrounding the term of the ombudsman. He emphasised Bridget Hewson (Dep Omb) is handling to avoid that obvious conflict. **s9(2)(g)(i)**

Do either of you see problems with where we are at? Have we thought through the legislative amendment options?

Ngā mihi

Andrew



Andrew Kibblewhite (he/him) | Secretary for Justice and Chief Executive
Ministry of Justice | Tāhū o te Ture
Justice Centre, 19 Aitken Street, Wellington
www.justice.govt.nz

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Notes on possible Ombudsman Amendment Bill

Legislative Background

- Ombudsmen are appointed by the Governor-General on the recommendation of the House of Representatives (section 7(2)). In practice, the Officers of Parliament Committee (OPC) leads the appointment process and makes a recommendation to the House; the Office of the Clerk is responsible for supporting this process (and they have advised that it is usually undertaken by an executive recruitment agency).
- Section 5(1) of the Ombudsmen Act 1975¹ (the Act) provides that the term of office for an ombudsman is 5 years. They may be re-appointed for further terms without limit.
- Section 5(2) provides that, despite this 5 year term, an ombudsman may continue to hold office until their successor is appointed – unless their office becomes vacant sooner (e.g. due to death, resignation, or removal from office).
- Section 5(3) provides that an ombudsman may resign by giving notice to the speaker. The section further provides that an ombudsman must resign from office on attaining the age of 72 years (unless they are on a temporary appointment).
- This retirement age limit appears to have been inserted when the 1975 Act was introduced; it was not part of the original 1962 Act that established the office of Ombudsman as a Parliamentary Commissioner. There is no retirement age limit for the other two Officers of Parliament – viz. the Parliamentary Commissioner for the Environment² or the Auditor-General.³
- Section 8 provides for the temporary appointment of ombudsman to cover for any illness or absence of another ombudsman, or for “any other temporary purpose”. Before such an appointment, the Chief Ombudsman must certify his opinion that it is necessary for the due conduct of business that an additional ombudsman be temporarily appointed.
- A temporary appointment made due to illness or absence of another ombudsman is held during the Governor-General’s pleasure; temporary appointments for any other reason can be for no longer than 2 years. The process for appointment of a temporary ombudsman is the same as for any ombudsman, e.g. appointment by the Governor-General on the recommendation of the House of Representatives.

Current situation

- There is currently only one ombudsman appointed by the Governor-General under the Act – the Chief Ombudsman, Peter Boshier.

¹ [Ombudsmen Act 1975](#)

² [Environment Act 1986](#) – section 6

³ [Public Audit Act 2001](#) – clause 1, schedule 3

NOT GOVERNMENT POLICY: INTERNAL USE ONLY

- Mr Boshier was re-appointed for his second five-year by the Governor-General with effect from 10 December 2020⁴.
- Mr Boshier will turn 72 on 16 March 2024, and so under section 5(3) of the Act, is required to resign his office.

Possible options

Non-legislative

- Officers of Parliament Committee (OPC) and the House to recommend one or more new ombudsman be appointed under section 7. Ideally they would assume office on or before 16 March 2024; otherwise there would be a period with no ombudsman. It is unclear what happens at this point as the Act doesn't contemplate no ombudsman being in place). The new ombudsman would have a five-year term.
- It is possible the Officers of Parliament Committee/House could appoint a temporary ombudsman under section 8 while they undertake a longer-term recruitment process. This may, however, create an issue after 16 March when Mr Boshier resigns as the "temporary" ombudsman would no longer be an "additional" ombudsman. Furthermore, under section 3(4) one of the ombudsmen must be appointed Chief Ombudsman – so if there is only one temporary ombudsman they would, by default, become the Chief Ombudsman.

Legislative

- Amend the Act to remove the requirement to retire at a particular age **s9(2)(g)(i)**
s9(2)(g)(i)
- Amend the Act to remove the requirement to retire at a particular age, but also provide that the House could choose a term of appointment that is less than 5 years (say 3-5 years) so that if it chooses to appoint someone older it doesn't have to be for 5 years **s9(2)(g)(i)**
s9(2)(g)(i)
- Amend the Act to provide that the incumbent must resign, but can remain in office, notwithstanding the retirement age, until a new appointment is made **s9(2)(g)(i)**
s9(2)(g)(i)

⁴ [Reappointment of Ombudsman - 2020-ps2488 - New Zealand Gazette](#) and Hansard – 7 May 2020: [Appointments - New Zealand Parliament \(www.parliament.nz\)](http://www.parliament.nz)

Deliverables and timing for legislative options

Assumptions:

- Bill must be enacted/commence by 15 March 2024 - so must complete 3R by 7 March.
- Min consult will include all parties (maybe via OPC) so cross-party support for bill is obtained before intro
- Cabinet oral decisions for policy approvals and approval to draft - item straight to Cabinet
- Bill will need urgency for one or more stages - likely approach will be to afford urgency and complete all stages in one session.
 - This therefore assumes no Select Committee stage (and so no 2R)

Action	Timeframes
Letter from Speaker/OPC	Wed 14 Feb
Cabinet - oral item (policy approval)	Mon 19 Feb (*permission needed from Cab Office)
Issue drafting instructions	Tue 20 Feb
Drafting bill	20-23 Feb
BORA vetting	26-29 Feb
Min consult on draft bill/LEG paper (inc. with OPC/x-party?)	26 -28 Feb
Lodge	Thur 29 Feb
Cabinet	Mon 4 Mar
Intro	Between 5 – 7 March (all sessions under urgency?)
1R	
COWH	
3R	
Royal assent	Mon 11 March

*Min Goldsmith away 22 and 23 Feb; Min Mitchell acting

Deliverables

- Cabinet paper – oral item and approval to draft
- RIA - may be able to get exemption?
- Drafting Instructions
- BORA vet
- LEG paper
- AM for LEG
- Disclosure statement
- Legislative statement
- House Pack – 1R, Q&As and 3R speeches

From: Chhana, Rajesh
Sent: Wednesday, 24 January 2024 5:12 pm
To: Brightwell, Kathy; Kibblewhite, Andrew
Cc: Bradey, Paige; Wilkie, Ruth; Denoual, Hayley
Subject: RE: Ombudsman term of appointment: –

s9(2)(h)

Also, this is one where formality is our friend.

While we have had informal heads up from PCO and the Chief Ombudsman, the Speaker and Officers of Parliament Committee are responsible for the appointment and operation of the Ombudsman while the Minister is responsible for the administration of the Act.

s9(2)(g)(i)

From: Brightwell, Kathy <Kathy.Brightwell@justice.govt.nz>
Sent: Wednesday, 24 January 2024 2:01 pm
To: Kibblewhite, Andrew <Andrew.Kibblewhite@justice.govt.nz>; Chhana, Rajesh <Rajesh.Chhana@justice.govt.nz>
Cc: Bradey, Paige <Paige.Bradey@justice.govt.nz>; Wilkie, Ruth <Ruth.Wilkie@justice.govt.nz>; Denoual, Hayley <Hayley.Denoual@justice.govt.nz>
Subject: RE: Ombudsman term of appointment: –

s9(2)(h)

Thanks Andrew, we are aware of the issue as the Speaker has been in touch with PCO (who then gave us an informal heads up last Wednesday). This would be a relatively straightforward change and we could do it within the required by 16 March. But one or more stages would need to be done under urgency and there wouldn't be a select committee process. PCO would need to prioritise it so could affect drafting of other legislation (eg 100 day plan)

Would you like some talking points for your discussion with the Minister?

Ngā mihi
Kathy

From: Kibblewhite, Andrew <Andrew.Kibblewhite@justice.govt.nz>
Sent: Wednesday, 24 January 2024 1:45 pm
To: Chhana, Rajesh <Rajesh.Chhana@justice.govt.nz>; Brightwell, Kathy <Kathy.Brightwell@justice.govt.nz>
Cc: Bradey, Paige <Paige.Bradey@justice.govt.nz>; Wilkie, Ruth <Ruth.Wilkie@justice.govt.nz>
Subject: FW: Ombudsman term of appointment: –

s9(2)(g)(i)

So this is an interesting one, please keep confidential. Peter rang me yesterday to give me a heads up and then forwarded through this email

Ngā mihi
Andrew

From: Peter Boshier <pfboshier@ombudsman.parliament.nz>
Sent: Tuesday, 23 January 2024 1:49 pm
To: Kibblewhite, Andrew <Andrew.Kibblewhite@justice.govt.nz>
Cc: David Cochrane <david@cochraneadvisory.com>; Bridget Hewson <Bridget.Hewson@ombudsman.parliament.nz>
Subject: Ombudsman term of appointment: – s9(2)(h)]

You don't often get email from pfboshier@ombudsman.parliament.nz. [Learn why this is important](#)

Good afternoon Andrew

I turn 72 on 16 March 2024. By statute I must then resign. After last year's election and the appointment of a Speaker I consulted the Deputy clerk and then saw the Speaker (along with my deputy ombudsman) in late December. My object was to alert the Speaker to the situation so that recruitment of a replacement Chief ombudsman would be on his radar.

s9(2)(g)(i) |]

As it is the Ministry of Justice which administers the act I felt it was courteous for me to raise with you, as Secretary for Justice some issues and some solutions. s9(2)(g)(i) |]

s9(2)(g)(i)

s9(2)(h)

I aim to contact the Speaker later this week just in order to ensure that things are moving. There is not a great deal of time.

Best regards

Peter

Peter Boshier

Chief Ombudsman

Office of the Ombudsman | Tari o te Kaitiaki Mana Tangata

s9(2)(a)

]

Email pfboshier@ombudsman.parliament.nz | www.ombudsman.parliament.nz

PO Box 10152, Level 7, SolNet House, 70 The Terrace, Wellington

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Connell, Elisha

From: Denoual, Hayley
Sent: Friday, 23 February 2024 2:57 pm
To: s9(2)(a)
Cc: s9(2)(a) OCE@justice.govt.nz; Chhana, Rajesh; Brightwell, Kathy; Crooke, David; Handley, Georgie; Connell, Elisha; Kibblewhite, Andrew
Subject: RE: Ombudsmen Act 1975 - retirement provisions
Attachments: AM - Potential Amendment to the Ombudsmen Act 1975.pdf

Kir ora ^{s9(2)(a)}

Slightly update AM, as requested

Thanks

Hayley



Hayley Denoual ([she/her](#))
 Policy Manager | Kaiwhakahaere Kaupapa
 Electoral and Constitutional Policy | Civil and Constitutional Unit
 Ministry of Justice | Tāhū o te Ture
 s9(2)(a)]
 Justice Centre | 19 Aitken Street
hayley.denoual@justice.govt.nz | justice.govt.nz
[‘Chat with me on Teams’](#)

We value and encourage flexible first. While it suits me to send this now, I do not expect a response or action outside of your own working hours.

From: s9(2)(a)
Sent: Friday, 23 February 2024 2:20 pm
To: Denoual, Hayley <Hayley.Denoual@justice.govt.nz>
Cc: s9(2)(a) OCE@justice.govt.nz; Chhana, Rajesh <Rajesh.Chhana@justice.govt.nz>; Brightwell, Kathy <Kathy.Brightwell@justice.govt.nz>; Crooke, David <David.Crooke@justice.govt.nz>; Handley, Georgie <Georgie.Handley@justice.govt.nz>; Connell, Elisha <Elisha.CConnell@justice.govt.nz>; Kibblewhite, Andrew <Andrew.Kibblewhite@justice.govt.nz>
Subject: RE: Ombudsmen Act 1975 - retirement provisions

Hi Hayley

We require 2 small changes to this paper urgently

1. Can it make it clear that the paper is going direct to Cabinet (not committee)
2. Can we please add in a short section about how this compares to judges retirement and whether this sets any kind of precedent – i.e. is this likely to influence future conversations about whether the 72 limit should remain for judges.

Sorry we need this ASAP – ideally by 3pm

s9(2)(a)
 Private Secretary – Justice | Office of Hon Paul Goldsmith
 Minister for Arts Culture and Heritage | Minister of Justice
 Minister for State Owned Enterprises | Minister for Treaty of Waitangi Negotiations



s9(2)(a)
s9(2)(a) | www.beehive.govt.nz
Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand

Authorised by Hon Paul Goldsmith, Parliament Buildings, Wellington

From: s9(2)(a)
Sent: Friday, 23 February 2024 2:09 PM
To: Denoual, Hayley <Hayley.Denoual@justice.govt.nz>
Cc: s9(2)(a) OCE@justice.govt.nz; Chhana, Rajesh <Rajesh.Chhana@justice.govt.nz>; Brightwell, Kathy <Kathy.Brightwell@justice.govt.nz>; Crooke, David <David.Crooke@justice.govt.nz>; Handley, Georgie <Georgie.Handley@justice.govt.nz>; Connell, Elisha <Elisha.Connell@justice.govt.nz>; Kibblewhite, Andrew <Andrew.Kibblewhite@justice.govt.nz>
Subject: RE: Ombudsmen Act 1975 - retirement provisions

Thanks so much! This is extremely helpful



s9(2)(a)
Private Secretary – Justice | Office of Hon Paul Goldsmith
Minister for Arts Culture and Heritage | Minister of Justice
Minister for State Owned Enterprises | Minister for Treaty of Waitangi Negotiations
s9(2)(a) | www.beehive.govt.nz
Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand

Authorised by Hon Paul Goldsmith, Parliament Buildings, Wellington

From: Denoual, Hayley [<mailto:Hayley.Denoual@justice.govt.nz>]
Sent: Friday, 23 February 2024 2:03 PM
To: s9(2)(a)
Cc: s9(2)(a) OCE@justice.govt.nz; Chhana, Rajesh <Rajesh.Chhana@justice.govt.nz>; Brightwell, Kathy <Kathy.Brightwell@justice.govt.nz>; Crooke, David <David.Crooke@justice.govt.nz>; Handley, Georgie <Georgie.Handley@justice.govt.nz>; Connell, Elisha <Elisha.Connell@justice.govt.nz>; Kibblewhite, Andrew <Andrew.Kibblewhite@justice.govt.nz>
Subject: Ombudsmen Act 1975 - retirement provisions

Kia ora ^{s9(2)(a)}

Further to our telephone call this morning, please find attached a short AM with information on the retirement age provisions in the Ombudsmen Act 1975 (the Act), which require an ombudsman to resign upon reaching the age of 72.

Please call me if you need anything further at this stage

Nga mihi

Hayley



Hayley Denoual ([she/her](#))
Policy Manager | Kaiwhakahaere Kaupapa
Electoral and Constitutional Policy | Civil and Constitutional Unit
Ministry of Justice | Tāhū o te Ture
s9(2)(a) |

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Potential Amendment to Ombudsmen Act 1975

Hon Paul Goldsmith, Minister of Justice

23 February 2024

Purpose

1. You have asked for information on the retirement age provisions in the Ombudsmen Act 1975 (the Act), which require an ombudsman to resign upon reaching the age of 72. This note provides information on a possible amendment to the Act to remove the retirement age provision, and the potential situation if no such amendment is made.

Background context

2. The Act provides that ombudsmen are appointed by the Governor-General on the recommendation of the House of Representatives. In practice, the Officers of Parliament Committee leads the appointment process and makes a recommendation to the House; the Office of the Clerk is responsible for this process.
3. Section 5(1) of the Act provides that the term of office for an ombudsman is five years. They may be re-appointed for further terms without limit. However, under section 5(3) an ombudsman must resign from office on attaining the age of 72 years (unless they are on a temporary appointment).
4. There is currently only one ombudsman appointed by the Governor-General under the Ombudsmen Act 1975, the Chief Ombudsman, Peter Boshier.
5. Mr Boshier was re-appointed for a second five-year term by the Governor-General with effect from 10 December 2020. He will turn 72 on 16 March 2024, and under the Act is required to resign by this date.

Progressing an amendment to the Act

6. An urgent amendment could be made to the Act to remove the requirement to retire at a particular age. This would be consistent with other Officers of Parliament and is likely to be the most BORA-compliant approach.¹
7. Removing the mandatory retirement age for an ombudsman may raise the question of the mandatory retirement age for Judges, which is currently set at the age of 70 under section 28 of the District Court Act 2016. However, in our view the respective situations are not entirely analogous. Once appointed, a judge holds office until they resign, retire, or are removed from office by the Governor-General on grounds of inability or misbehaviour. There is, therefore, a justification for having a statutory retirement age in these circumstances.
8. An ombudsman is an Officer of Parliament, and so derives their status indirectly from Parliament. The term of office for an ombudsman is five years. Parliament may choose to recommend re-appointment for one or more further five-year terms. The rigorous appointment process provides Parliament with an opportunity to regularly consider their expectations from an ombudsman serving as an Officer of Parliament.

¹ There is no retirement age limit for the other two Officers of Parliament – viz. the Parliamentary Commissioner for the Environment or the Auditor-General

9. An alternative approach could be to amend the Act to provide that an ombudsman must still resign at age 72, but can remain in office, notwithstanding the retirement age, until a new appointment is made. This option is similar to other provisions in the Act (for example, when an ombudsman’s warrant expires). However, it could create an oddity that the Act would require resignation at a particular age, but the incumbent could then continue in office for an unspecified amount of time. Given the constrained timeframes, and the additional policy and drafting complexities of this option, we do not recommend this approach.

Timeframes for progressing a bill under urgency:

10. In order to make the amendment in time, any Bill will need to be enacted before 15 March 2024. This will likely mean that the Bill will need to progress through all necessary House stages under urgency, with no select committee consideration. A proposed timeline is set out below:

Action	Timeframes
Bill drafted by PCO	Monday 26 February 2024
BORA vetting by Crown Law	Tuesday 27 to Thursday 29 February
Draft Bill and LEG paper to Minister	Tuesday 27 February
Ministerial consultation on draft Bill and LEG paper	Wednesday 28 – Thursday 29 February
Lodge LEG paper	Friday 1 March <i>*Need permission for late lodgement</i>
Cabinet	Mon 4 March <i>*straight to Cabinet; no LEG Committee</i>
Introduction	Between Tuesday 5 and Thursday 7 March <i>*no select commit or second reading; all sessions under urgency</i>
First Reading	
Committee of the whole House	
Third Reading	
Royal assent	Mon 11 March

Potential situation if no legislative amendment is made

11. If the Act is not amended Mr Boshier will have to resign by 16 March 2024.
12. It is the responsibility of the Officers of Parliament Committee and the House to recommend new appointments under section 7 of the Act. It seems unlikely that this could now occur before 16 March 2024. The Act does not anticipate there being no ombudsman in place, so it is unclear what would happen at this stage.
13. We note that section 8 of the Act provides for the temporary appointment of an ombudsman to cover for any illness or absence of another ombudsman, or for “any other temporary purpose”. Before such an appointment, the Chief Ombudsman must certify his opinion that it is necessary for the due conduct of business that an additional ombudsman be temporarily appointed.

14. A temporary appointment made due to illness or absence of another ombudsman is held during the Governor-General's pleasure; temporary appointments for any other reason can be for no longer than 2 years. The process for appointment of a temporary ombudsman is the same as for any ombudsman, that is, appointment by the Governor-General on the recommendation of the House of Representatives.
15. It is possible the Officers of Parliament Committee/House could appoint a temporary ombudsman under section 8 of the Act while they undertake a longer-term recruitment process. This may, however, create an issue after 16 March when Mr Boshier resigns, as the "temporary" ombudsman would no longer be an "additional" ombudsman.
16. It is not clear that the Act contemplated this provision being used to appoint the only ombudsman. Furthermore, under section 3(4) of the Act, an ombudsman must be appointed Chief Ombudsman, meaning that if there is only one temporary ombudsman they might, by default, become the Chief Ombudsman. However, they could only be remunerated at the rate established for an ombudsman. The Speaker may wish to seek advice on legal efficacy of using this provision in this way, prior to any appointment being made.

From: Denoual, Hayley
Sent: Monday, 12 February 2024 11:57 am
To: s9(2)(a)
Cc: s9(2)(a) ; Handley, Georgie; Brightwell, Kathy; Chhana, Rajesh
Subject: Timetable for potential bill re: ombudsman retirement age

Kia ora ^{s9(2)(a)}

Further to our tele-con earlier, this is a draft plan/timeframe for any work that may be required to pass a bill re: the ombudsman retirement age, if this work needs to progress urgently. Mr Boshier will turn 72 on 16 March 2024, and so under section 5(3) of the Ombudsman Act, is required to resign his office at that point.

Action	Timeframes
Letter from Speaker/OPC	Wed 14 Feb
Draft LEG bid to MO	Thur 15 Feb
Cabinet - oral item (policy approval)	Mon 19 Feb (*permission needed from Cab Office)
Issue drafting instructions	Tue 20 Feb
Drafting bill	20-23 Feb
BORA vetting	26-29 Feb
Min consult on draft bill/LEG paper (inc. with OPC/x-party?)	26 -28 Feb
Lodge	Thur 29 Feb
Cabinet	Mon 4 Mar
Intro	Between 5 – 7 March (all sessions under urgency?)
1R	
COWH	
3R	
Royal assent**	Mon 11 March

**Bill must be enacted/commence by 15 March 2024 - so must complete 3R by 7 March.

We can start prepping the necessary deliverables this week, including a LEG bid in anticipation of any s9(2)(g)(i)]
s9(2)(g)(i)]

Nga mihi

Hayley



Hayley Denoual ([she/her](#))
Policy Manager | Kaiwhakahaere Kaupapa
Electoral and Constitutional Policy | Civil and Constitutional Unit
Ministry of Justice | Tāhū o te Ture
s9(2)(a)]
Justice Centre | 19 Aitken Street
hayley.denoual@justice.govt.nz | justice.govt.nz
'[Chat with me on Teams](#)'

We value and encourage flexible first. While it suits me to send this now, I do not expect a response or action outside of your own working hours.

Connell, Elisha

From: Handley, Georgie
Sent: Tuesday, 13 February 2024 1:06 pm
To: Connell, Elisha
Subject: FW: Proposal 912: Exemption Requested

Importance: Low

Follow Up Flag: Follow up
Flag Status: Flagged

FYI

From: RIA Online <RIA.Onlxxx@xxxxxxxx.xxxx.xx>
Sent: Tuesday, 13 February 2024 1:05 pm
To: Handley, Georgie <Georgie.Handley@justice.govt.nz>
Subject: Proposal 912: Exemption Requested
Importance: Low

You have successfully requested an exemption for your proposal: Amendments to the Ombudsmen Act - Retirement Age.

You will be notified when the RIA team has responded to your exemption request. To view or amend your exemption request in the meantime, click the link to you proposal below.

https://cass.sharepoint.com/sites/riaonline/_layouts/15/listform.aspx?PageType=4&ListId=c5470469%2Dcbf9%2D4

[a56%2Daccd%2D20a990fa3656&ID=912&ContentTypeID=0x0100802DE4B32DBB5F43A1C01B8BBB7F42730010751AEE4992154481D0B53C55FB969E](https://cass.sharepoint.com/sites/riaonline/_layouts/15/listform.aspx?PageType=4&ListId=c5470469%2Dcbf9%2D4a56%2Daccd%2D20a990fa3656&ID=912&ContentTypeID=0x0100802DE4B32DBB5F43A1C01B8BBB7F42730010751AEE4992154481D0B53C55FB969E)

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From: Handley, Georgie
Sent: Tuesday, 13 February 2024 1:22 pm
To: Connell, Elisha
Subject: FW: Proposal 912: Exemption granted

Importance: Low

Follow Up Flag: Follow up
Flag Status: Flagged

FYI – exemption granted

From: RIA Online <RIA.Online@treasury.govt.nz>
Sent: Tuesday, 13 February 2024 1:21 pm
To: Handley, Georgie <Georgie.Handley@justice.govt.nz>
Subject: Proposal 912: Exemption granted
Importance: Low

A response has now been provided for the exemption request relating to your proposal: Amendments to the Ombudsmen Act - Retirement Age

Thank you for submitting this exemption application. Based on the information provided, the RIA team considers that this proposal is exempt from Cabinet's impact analysis requirements.

Wording to insert in the Impact Analysis Section of the Cabinet paper

The Treasury's Regulatory Impact Analysis team has determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

Conditions on the exemption:

N/A

If you requested an exemption for the entire proposal, it will now be marked as complete. Otherwise, click the link below to continue to the next step of the RIA process.

https://cass.sharepoint.com/sites/riaonline/_layouts/15/listform.aspx?PageType=4&ListId=c5470469%2Dcbf9%2D4a56%2Daccd%2D20a990fa3656&ID=912&ContentTypeID=0x0100802DE4B32DBB5F43A1C01B88BB7F42730010751AEE4992154481D0B53C55FB969E

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Connell, Elisha

From: Connell, Elisha
Sent: Wednesday, 14 February 2024 10:28 am
To: Denoual, Hayley
Cc: Handley, Georgie
Subject: Ombudsmen Amendment Bill - LEG Bid

Hi Hayley,

As discussed, here is the draft LEG Bid for the Ombudsmen Amendment Bill. I've added some comments where further edits might be needed. I was a little unsure of the format in a few places for a bid that falls outside of the annual request for bids.

 [LEG Bid - Ombudsmen Amendment Bill.docx](#)

Ngā mihi,
Elisha

From: Denoual, Hayley
Sent: Monday, 26 February 2024 7:11 am
To: s9(2)(a)
Cc: s9(2)(a) Handley, Georgie; Connell, Elisha
Subject: RE: Ombudsmen Act 1975 - retirement provisions
Attachments: Letter from Minister Goldsmith to AG.docx

Morena ^{s9(2)(a)}

Draft letter seeking approval to issue drafting instructions attached.

Please let us know if you need anything further.

Nga mihi

Hayley



Hayley Denoual ([she/her](#))

Policy Manager | Kaiwhakahaere Kaupapa
Democracy and Open Government | Civil and Constitutional Unit
Ministry of Justice | Tāhū o te Ture

Mob 027 200 9277

Justice Centre | 19 Aitken Street

hayley.denoual@justice.govt.nz | justice.govt.nz

[‘Chat with me on Teams’](#)

We value and encourage flexible first. While it suits me to send this now, I do not expect a response or action outside of your own working hours.

From: s9(2)(a)
Sent: Friday, 23 February 2024 2:13 pm
To: Denoual, Hayley <Hayley.Denoual@justice.govt.nz>
Cc: s9(2)(a); OCE@justice.govt.nz; Chhana, Rajesh <Rajesh.Chhana@justice.govt.nz>; Brightwell, Kathy <Kathy.Brightwell@justice.govt.nz>; Crooke, David <David.Crooke@justice.govt.nz>; Handley, Georgie <Georgie.Handley@justice.govt.nz>; Connell, Elisha <Elisha.CConnell@justice.govt.nz>; Kibblewhite, Andrew <Andrew.Kibblewhite@justice.govt.nz>
Subject: RE: Ombudsmen Act 1975 - retirement provisions

Can we please get a letter drafted to the AG seeking approval to issue drafting instructions ahead of a Cabinet decision? We'd just need this by midday Monday

Thanks again

s9(2)(a)



s9(2)(a)

Private Secretary – Justice | Office of Hon Paul Goldsmith

Minister for Arts Culture and Heritage | Minister of Justice

Minister for State Owned Enterprises | Minister for Treaty of Waitangi Negotiations

DDI: +64 817 9041 M: 027 237 0710

s9(2)(a)

www.beehive.govt.nz

Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand

From: Denoual, Hayley [<mailto:Hayley.Denoual@justice.govt.nz>]

Sent: Friday, 23 February 2024 2:03 PM

To: s9(2)(a)

Cc: s9(2)(a)

OCE@justice.govt.nz; Chhana, Rajesh

<Rajesh.Chhana@justice.govt.nz>; Brightwell, Kathy <Kathy.Brightwell@justice.govt.nz>; Crooke, David

<David.Crooke@justice.govt.nz>; Handley, Georgie <Georgie.Handley@justice.govt.nz>; Connell, Elisha

<Elisha.Connell@justice.govt.nz>; Kibblewhite, Andrew <Andrew.Kibblewhite@justice.govt.nz>

Subject: Ombudsmen Act 1975 - retirement provisions

Kia ora ^{s9(2)(a)}

Further to our telephone call this morning, please find attached a short AM with information on the retirement age provisions in the Ombudsmen Act 1975 (the Act), which require an ombudsman to resign upon reaching the age of 72.

Please call me if you need anything further at this stage

Nga mihi

Hayley



Hayley Denoual ([she/her](#))

Policy Manager | Kaiwhakahaere Kaupapa

Electoral and Constitutional Policy | Civil and Constitutional Unit

Ministry of Justice | Tāhū o te Ture

Mob 027 200 9277

Justice Centre | 19 Aitken Street

hayley.denoual@justice.govt.nz | justice.govt.nz

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We value and encourage flexible first. While it suits me to send this now, I do not expect a response or action outside of your own working hours.

From: Handley, Georgie
Sent: Monday, 26 February 2024 4:27 pm
To: Connell, Elisha
Subject: RE: Cabinet paper - Ombudsmen Amendment Bill

Follow Up Flag: Follow up
Flag Status: Flagged


Thanks Elisha I will have a look when I have a moment.

It would be really useful to have a chat about this work. How about you put in some time for a chat in our diaries when I am down in Wellington either Wednesday or Thursday this week?

From: Connell, Elisha <Elisha.CConnell@justice.govt.nz>
Sent: Monday, 26 February 2024 4:21 pm
To: Handley, Georgie <Georgie.Handley@justice.govt.nz>
Subject: Cabinet paper - Ombudsmen Amendment Bill

Kia ora Georgie,

Here's the draft cabinet paper for the Ombudsmen Amendment Bill. Thanks in advance for reviewing this and maybe we could have a quick chat once you've had a look as I'm sure there are a few things I can improve for next time.

 [Cabinet paper - Ombudsmen Amendment Bill.docx](#)

Thanks,
Elisha