

5 July 2018

Ross Francis
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Dear Mr Francis

Official Information Act 1982 Request

I refer to your FYI request of 2 June 2018, which was received by the Ministry on 13 June 2018, requesting the following information under the Official Information Act 1982 ('the Act'):

In 2005, the Justice and Electoral Select Committee, with reference to the Peter Ellis case, recommended "that section 340 of the Crimes Act 1961 be amended so that, in an adversarial environment, multiple allegations of sexual crimes substantially based on the evidence of more than one complainant should not be included in an indictment without very close consideration of the risk of the jury drawing a conclusion from the totality of the charges rather than the necessary detailed examination of each allegation". Has section 340 of the Crimes Act been so amended? If so, when was it amended?

On 1 August 2007, section 49 of the Evidence Regulations came into effect. This section allows a judge to warn or inform a jury where a witness is a child under 6 years of age. Does this section remain in effect and what was the reasoning for or background to its introduction? Prior to the introduction of this section, what warnings or information were judges able to give juries in regards to child witnesses, and what legislation enabled such warnings of information to be given? Of the twenty complainants involved in the prosecution of Peter Ellis, how many were aged under 6 when Ellis' trial began?

I have divided your request into three parts, which I have addressed below.

1. *In 2005, the Justice and Electoral Select Committee, with reference to the Peter Ellis case, recommended "that section 340 of the Crimes Act 1961 be amended so that, in an adversarial environment, multiple allegations of sexual crimes substantially based on the evidence of more than one complainant should not be included in an indictment without very close consideration of the risk of the jury drawing a conclusion from the totality of the charges rather than the necessary detailed examination of each allegation". Has section 340 of the Crimes Act been so amended? If so, when was it amended?*

Section 340 of the Crimes Act was repealed on 1 July 2013. The trial of different charges together is now dealt with in section 138 of the Criminal Procedure Act 2011.

2. *On 1 August 2007, Section 49 of the Evidence Regulations came into effect. This section allows a judge to warn or inform a jury where a witness is a child under 6 years of age. Does this section remain in effect and what was the reasoning for or background to its introduction? Prior to the introduction of this section, what warnings or information were able to give juries in regards to child witnesses, and what legislation enabled such warnings or information to be given?*

Regulation 49 of the Evidence Regulations 2007 is still in effect.

The regulation is based on the Law Commission's 1999 report on evidence (NZLC R55). This report ultimately resulted in the Evidence Act 2006, and associated regulations. I have reproduced below an extract from the Law Commission's report which summarises the reasoning and background to the regulation.

As a result of the Law Commission's research, and in consultation with child psychologists and academics with relevant clinical experience, the [regulation] contains a judicial direction that incorporates the most recent research on the reliability of very young children's evidence. Commentators strongly supported this standardised direction which gives positive assistance to judges in directing juries about the way to approach the evidence of very young children and allows juries to focus on how young children are questioned ... research indicates this is a better predictor of reliability than age alone. NZLC R55 – volume 1, para 489.

Prior to the Evidence Act 2006, judicial warnings about children's evidence were dealt with by section 23H of the Evidence Act 1908.

3. *Of the twenty complainants involved in the prosecution of Peter Ellis, how many were aged under 6 when Ellis' trial began?*

The indictment that proceeded to trial for Mr Ellis contained 28 charges relating to 13 complainants. The trial opened on 26 April 1993. Following the trial Judge dismissing 3 counts in relation to 2 complainants on 5 and 6 May 1992, 25 counts relating to 11 complainants went to the jury. Mr Ellis was convicted on 16 counts in relation to 7 complainants. At his first appeal, the Court of Appeal quashed the convictions arising out of one of the complainant's evidence.

Mr Ellis applied for the Royal prerogative of mercy in relation to the remaining 13 convictions relating to 6 complainants. None of these children were under the age of 6 when Mr Ellis' trial began. We do not hold this information in respect of the other complainants.

If you are dissatisfied with this response, you may complain to the Ombudsman under section 28(3) of the Act. The contact details for the Office of the Ombudsman are:

Office of the Ombudsman
PO Box 10152
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Yours sincerely



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