

Sarah Croxford

**MEET THE DISASTER: NEW ZEALAND'S YOUTH JUSTICE
JURISDICTION**

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Abstract

This paper critically analyses the current youth justice system and whether the upper age of the system should extend to include 17 year-olds. This paper also analyses care and protection in New Zealand. This is because youth justice issues, and care and protection issues, tend to intertwine as a number of children and young people who are in care are also involved in the youth justice system. The Children, Young Persons and Their Families Act 1989 requires amendment to extend the upper age of youth justice, for reasons such as its failure to adequately provide for vulnerable children and young people in New Zealand, reduce offending and reoffending rates, and support Maori and Pacifica. More changes than one are required, but extending the jurisdiction to include 17 year olds will help to achieve issues such as: New Zealand's international obligations regarding the United Nations Convention of the Rights of the Child, domestic legislative inconsistencies, brain science, community involvement, employment, prevention, high Maori offending rates, recidivism, public attitude, better public service targets, cost, volume in the system, and the perception of the youth justice system being soft on crime. Overall, increasing the upper age of youth justice in New Zealand will be a significant and sufficient long term investment.

Word length

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I Introduction

The definition of a 'young person' in New Zealand is inconsistent. The Child, Young Persons and Their Families Act (CYPF Act) defines a child as someone between the ages of 10 to 14, and young person as someone over the age of 14 but under 17 years, who is not married or in a civil union.¹ Therefore the Youth Justice jurisdiction and care and protection ends on the young person's 17th birthday. The Children, Young Persons, and Their Families (Advocacy, Workforce, and Age Settings) Amendment Bill 2016² (Age Settings Bill) has just passed its first reading in the House of Representatives. One of the amendments in this Bill is to extend the upper age of care to include 17 year olds. The Ministry of Justice has stated that after the Age Settings Bill, there will be a second reform of the Children, Young Persons, and Their Families Act which will propose amending the upper age of youth justice.³

This paper will look at the reasons why the upper age of the youth justice jurisdiction should extend to include at least 17 year olds, why people may reject this change and why the change would be a good investment in the future. Firstly, extending the upper age will bring New Zealand in line with its international obligations such as the United Nations Convention on the Rights of the Child (UNCROC).⁴ The United Nations has asked New Zealand to conform with UNCROC and to change the age of the youth justice jurisdiction. Many others have also requested that the government change its laws to be in line with UNCROC.⁵ The New Zealand government has failed to answer such requests and is out of line with its international obligations.⁶ Domestic legislation within New Zealand is also out of line. Many statutes define an adult as someone over the age of 18 years.⁷ There are inconsistencies such

¹ Child, Young Persons, and Their Families Act 1989, s 2.

² Children, Young Persons, and Their Families (Advocacy, Workforce, and Age Settings) Amendment Bill 2016.

³ Ministry of Justice section 7 *New Zealand Bill of Rights Act advice* (17 May 2016) at 20.

⁴ United Nations Convention on the Rights of the Child 1990.

⁵ Petition 2014/5 of Tracie Shipton on behalf of Dingwall Trust and 186 others.

⁶ Child, Young Persons, and Their Families Act 1989, s 2.

⁷ Electoral Act 1993, Marriage Act 1955, Social Security Act 1964, Care of Children Act 2004, Education Act 1989, Prostitution Reform Act 2003, Sale and Supply of Alcohol Act 2012, Smoke-Free Environment Act 1990, Defence Act 1990, Minors Contracts Act 1969.

as the Vulnerable Children's Act which contains one section defining an adult as 18,⁸ and another section defining an adult as 17.⁹ Scientific research on young people and brain development has produced new evidence providing that the part of a young person's brain that controls logic and judgment are still developing at the age of 17.¹⁰ To be fair, the age of a young person needs to be set at an age which reflects their undeveloped brain, lack of maturity and understanding in the nature of their actions.

The youth justice system allows the community, family and victims to have a role in holding the young person to account.¹¹ Family and/or whanau and victims are involved in the Family Group Conference (FGC) and take part in repairing harm caused by the child or young person. The community also has a part to play in identifying whether a child or young person is being mistreated and/or requires help. The parents of children and/or young people may be inadequate role models. For example, parents who in front of their child and/or young person, steal, assault family members, and/or take illegal drugs. It is therefore important for members of the community to be aware of this, as they can work to be role models for children and/or young people who do not have adequate role models in their home environment.

A formal criminal record at the age of 17 can ruin many opportunities or possibilities for a young person, such as the opportunity to obtain stable successful employment.¹² The New Zealand Government is failing to adequately prevent offending. There are not enough interventions being made on children and/or young people who are suffering from issues of care and are likely to offend. If an intervention is made earlier, such offending may not even occur.¹³

⁸ Vulnerable Children Act 2014, s 5.

⁹ Vulnerable Children Act 2014, s 15.

¹⁰ Theo L. Dawson-Tunik, Michael Commons, Mark Wilson and Kurt W. Fischer "The Shape of Development"(2005) 2 EJDP 163 at 163-195.

¹¹ Children, Young Persons, and Their Families Act 1989, s 4(f)(i).

¹² Human Rights and Equal Opportunity Commission *Human Rights: Discrimination in Employment on Basis of Criminal Record* (Human Rights and Equal Opportunity Commission, Discussion paper, 2004).

¹³ Bush, Douglas, Dunlop, Leahy, Poulton and Rebstock *Expert Panel Final Report: Investing in New Zealand's Children and their Families* (Ministry of Social Development, December 2015) at 7.

There is such a high Maori offending rate. In 2015, 62 percent of those who were charged in the Youth Court were Maori.¹⁴ If the Youth Justice upper age was to extend it would have immediate positive impact on Maori, giving young people an extra year of support and encouragement to live a crime free lifestyle. The restorative justice process incorporates tikanga Maori principles and is very similar to how Maori dealt with conflict and punishment pre-colonisation.¹⁵ This process therefore helps to strengthen Maori cultural identity.¹⁶ The youth justice system is also more effective than the adult system in preventing reoffending.¹⁷ Young people get an evidence-based response which addresses the cause of their offending and helps them to change their behavior.¹⁸

Public attitudes towards criminal justice are saying rehabilitation and restorative justice tools are preferred over punitive measures.¹⁹ It is important to take into account public opinion in the democratic country of New Zealand. The Youth Justice system with such a good recidivism rate is helpful in achieving such a target should the jurisdiction extend.

This paper then looks at the reasons why people tend to reject extending the upper age: the cost, the volume increase and the youth justice system being 'soft' on crime. There may be a cost increase for the Youth Court, but there will be equivalent savings in the District Court.²⁰ The Youth Court has already handled such a high volume of cases in the past within a tighter

¹⁴ Ministry of Justice *Children and young people charged in court - most serious offence calendar year* (Statistics New Zealand, September 2016).

¹⁵ Valmaine Toki "Are Domestic Violence Courts working for indigenous peoples?" (2009) 35 CLB 259 at 270.

¹⁶ Valmaine Toki "Are Domestic Violence Courts working for indigenous peoples?" (2009) 35 CLB 259 at 280.

¹⁷ The Office of the Children's Commissioner "Submission to the Social Services Committee on the Children, Young Persons, and Their Families (Advocacy, Workforce, and Age Settings) Amendment Bill 2016" at 3.

¹⁸ Hon. Anne Tolley *Investing in New Zealand's children's and their families Overview – final report of the modernising CYF Expert Panel: Proposed Blueprint for reform and implementation* (Ministry of Social Development, 2015).

¹⁹ Dr. Ian Lambie and Sarah Miers "Public attitudes toward youth offenders, A national survey of public attitudes toward youth offenders and managing their offending" (Doctoral candidate, University of Auckland, 2014).

²⁰ Letter from Hon. Anne Tolley (Minister of Social Development) to Sarah Croxford regarding extending the youth justice jurisdiction (28 April 2016).

budget,²¹ therefore this can be done again. The youth justice system is not 'soft' on young offenders, in that the tools such as the FGC hold the offender to account.

Lastly, this paper looks at the long term benefits of raising the age of Youth Justice. If a child or young person receives an intervention early enough, they will be kept out of the justice system for the foreseeable future, will not have a formal criminal record, will therefore be able to obtain a successful job, the government will save on unemployment benefits and because the person has a successful job and opportunities available to them, their children will not be brought up in poverty, also helping to prevent their children from offending. It is a significantly future investment that can help break the cycle of crime through generations.²²

II Background

In the Youth Justice jurisdiction, if a young person is alleged to have committed an offence, the police officer may issue a warning,²³ refer the offender to the Police Youth Aid Section,²⁴ or arrest the offender.²⁵ The Police Youth Aid Section may also issue a warning,²⁶ a diversionary plan,²⁷ or refer for a FGC.²⁸ A diversionary plan may consist of an apology, reparations, curfews, or other restrictions.²⁹ A FGC is held with the child or young person, their family and/or whanau, and the victim. They are able to participate in the decision making at these conferences, to ensure accountability on the offender and to repair the harm caused by the offence. Recommendations are made at the FGC as to how this can be achieved.³⁰

²¹ Lambie, Ioane and Best "17 year olds and youth justice" (2013) NZLJ 316 at 319.

²² Bush, Douglas, Dunlop, Leahy, Poulton and Rebstock *Expert Panel Final Report: Investing in New Zealand's Children and their Families* (Ministry of Social Development, December 2015).

²³ Child, Young Persons, and Their Families Act 1989, s 209.

²⁴ Child, Youth and Family *Youth Justice Service Pathway* (Ministry of Social Development, 2016).

²⁵ Child, Young Persons, and Their Families Act 1989, s 214.

²⁶ Child, Young Persons, and Their Families Act 1989, s 209.

²⁷ Child, Young Persons, and Their Families Act 1989, s 258(b).

²⁸ Child, Young Persons, and Their Families Act 1989, s 20.

²⁹ Child, Young Persons, and Their Families Act 1989, s 208.

³⁰ Child, Young Persons, and Their Families Act 1989, s 29.

The Youth Court is equipped with judges who are chosen for their understanding of, and experience with young offenders.³¹ The Youth Court takes into account factors that may not be taken into account in an adult court, such as the response of the offender's family or whanau to both the offending and to the young person as a result of that offending.³² Hearings are private³³ and identifying details cannot be reported in the media.³⁴

When the CYPF Act was passed it was innovative, "world renowned" and, a "new paradigm shift".³⁵ It was designed to develop community alternatives to institutions in order to respond more effectively to the needs of victims, to provide better support for families and their children, to respond to demands from Maori for an increased involvement in decisions about their children, and to reduce the number of minor offenders appearing before the court.³⁶ At first instance the CYPF Act achieved its purpose³⁷ and objects,³⁸ in establishing and promoting services and facilities within the community to advance the wellbeing of children, young persons and their families, assisting families to discharge their responsibilities to prevent children suffering harm, ill-treatment, abuse, neglect or deprivation, and to protect children, ensuring that where children or young person's commit offences they are held accountable and are dealt with in a way that acknowledges their needs and that will give them the opportunity to develop in responsible, beneficial and socially acceptable ways.³⁹ Section 208⁴⁰ contains guiding principles of the youth justice system, such as the principle that a child or young person who commits an offence should be kept in the community so far as that is practicable and consonant with the need to ensure the safety of the public,⁴¹ the child or

³¹ McElrea J "The New Zealand experience of restorative justice legislation" (paper presented to 11th Annual Restorative Justice Conference Fresno Pacific University, California, September 2005).

³² Child, Young Persons, and Their Families Act 1989, s 284(1)(d).

³³ Child, Young Persons, and Their Families Act 1989, s 329.

³⁴ Child, Young Persons, and Their Families Act 1989, s 438.

³⁵ Nessa Lynch *Youth Justice in New Zealand* (2nd ed, Brookers, Wellington, 2013) at 10.

³⁶ Gabrielle M Maxwell and Allison Morris *Family, Victims, and Culture: Youth Justice in New Zealand* (Social Policy Agency and Institute of Criminology, Victoria University of Wellington, Wellington, 1993) at 165.

³⁷ Child, Young Persons, and Their Families Act 1989, s 13.

³⁸ Child, Young Persons, and Their Families Act 1989, s 4.

³⁹ Child, Young Persons, and Their Families Act 1989, s 4.

⁴⁰ Child, Young Persons, and Their Families Act 1989, s 208.

⁴¹ Child, Young Persons, and Their Families Act 1989, s 208(d).

young person's age is a mitigating factor in determining imposing sanctions,⁴² any sanctions imposed should take the form most likely to maintain and promote the development of the child or young person within their family,⁴³ consideration should be given to the interests and views of any victims of the offending,⁴⁴ and that the vulnerability of the child or young person entitles them to special protection during any investigation.⁴⁵

Over time however, the CYPF Act has become outdated due to changes and developments such as in science,⁴⁶ international obligations listing a young person as 18 years old age⁴⁷ and domestic legislation listing a young person at 18 years of age.⁴⁸ Children and young persons are not receiving adequate care and protection to allow them to progress into a loving family and a crime free life.⁴⁹

An Expert Panel was established to oversee the development of a new child-centric operating model for Child, Youth and Family (CYF).⁵⁰ CYF is a government agency within the Ministry of Social Development (MSD). It was established in 1999 from the former Children and Young Persons Service.⁵¹ The agency's statutory role is defined by the Children, Young Persons and Their Families Act 1989,⁵² the Adoption Act 1955,⁵³ the Adult Adoption Act

⁴² Child, Young Persons, and Their Families Act 1989, s 208(e).

⁴³ Child, Young Persons, and Their Families Act 1989, s 208(f)(i).

⁴⁴ Child, Young Persons, and Their Families Act 1989, s 208(g)(i).

⁴⁵ Child, Young Persons, and Their Families Act 1989, s 208(h).

⁴⁶ Kurt W. Fischer, Zachary Stein, and Katie Heikkinen "Narrow Assessments Misrepresent Development and Misguide Policy Comment on Steinberg, Cauffman, Woolard, Graham, and Banich" *American Psychologist* (Harvard Graduate School of Education, October 2009).

⁴⁷ United Nations Convention on the Rights of the Child 1990.

⁴⁸ Electoral Act 1993, Marriage Act 1955, Social Security Act 1964, Care of Children Act 2004, Education Act 1989, Prostitution Reform Act 2003, Sale and Supply of Alcohol Act 2012, Smoke-Free Environment Act 1990, Defence Act 1990, and Minors Contracts Act 1969.

⁴⁹ Bush, Douglas, Dunlop, Leahy, Poulton and Rebstock *Expert Panel Final Report: Investing in New Zealand's Children and their Families* (Ministry of Social Development, December 2015) at 44.

⁵⁰ Bush, Douglas, Dunlop, Leahy, Poulton and Rebstock *Modernising Child, Youth and Family Expert Panel: Interim Report* (Ministry of Social Development, 31 July 2015).

⁵¹ Child, Youth and Family *Youth Justice Service Pathway* (Ministry of Social Development, 2016).

⁵² Children, Young Persons and Their Families Act 1989.

⁵³ Adoption Act 1955.

1985,⁵⁴ the Adoption (Intercountry) Act 1997⁵⁵ and the Guardianship Act 1968.⁵⁶ The government agency is responsible for but not limited to: assisting children and young people in order to prevent them from abuse and neglect,⁵⁷ dealing with complaints or concerns regarding child abuse,⁵⁸ and when issued a warrant, to remove children or young people from their home and into the custody of the chief executive.⁵⁹ The agency is committed to the paramountcy of the welfare and interests of the child or young person.⁶⁰ Both the Interim Report⁶¹ and the Final Report⁶² of the Expert Panel have provided robust evidence that the performance of the current system is clearly well below what New Zealanders want for our most vulnerable children. The system fails to place children at the centre, it fails to provide the earliest opportunities for a loving and stable family, there is a lack of evidence-based approaches to achieve results, more needs to be done to support Maori and Pacifica, it lacks integrated planning for young people as they transition to the adult system, and vulnerable young people require more support in this transition.⁶³ The Expert Panel has recommended a new Ministry be established due to the extent of recommendations made to provide accountability, clear organizational focus and the ability to attract strong leadership.⁶⁴ Social Development Minister Anne Tolley has said that a new Ministry is to be established to focus on the care and protection of vulnerable children and young people. This will have a new operating model and name, the “Ministry for vulnerable children, Oranga Tamariki” and will begin operating by April 2017.⁶⁵

⁵⁴ Adult Adoption Act 1985.

⁵⁵ Adoption (Intercountry) Act 1997.

⁵⁶ Guardianship Act 1968.

⁵⁷ Child, Young Persons, and Their Families Act 1989, s 4(d).

⁵⁸ Child, Young Persons, and Their Families Act 1989, s 17.

⁵⁹ Child, Young Persons, and Their Families Act 1989, s 39(i).

⁶⁰ Child, Young Persons, and Their Families Act 1989, s 13(1).

⁶¹ Bush, Douglas, Dunlop, Leahy, Poulton and Rebstock *Modernising Child, Youth and Family Expert Panel: Interim Report* (Ministry of Social Development, 31 July 2015).

⁶² Bush, Douglas, Dunlop, Leahy, Poulton and Rebstock *Expert Panel Final Report: Investing in New Zealand's Children and their Families* (Ministry of Social Development, December 2015).

⁶³ Hon. Anne Tolley *Investing in New Zealand's children's and their families Overview – final report of the modernising CYF Expert Panel: Proposed Blueprint for reform and implementation* (Ministry of Social Development, 2015).

⁶⁴ Bush, Douglas, Dunlop, Leahy, Poulton and Rebstock *Expert Panel Final Report: Investing in New Zealand's Children and their Families* (Ministry of Social Development, December 2015).

⁶⁵ Anne Tolley “New ministry dedicated to care and protection” (press release, 18 August 2016).

The Youth Justice Jurisdiction allows the community, family and victims to have a role in holding the young person to account through mechanisms such as the FGC. It also recognises that a formal record has long term adverse consequences such as in employment and social engagement. The longer people are prevented from entering the adult system the less likely they are to offend, as the Youth Justice jurisdiction is more effective for recidivism.⁶⁶ The Youth Justice system is culturally appropriate for Maori, which is important if the system is to work for Maori to help reduce such high offending rates, and any subconscious bias or racism that may occur.⁶⁷ With the Police Commissioner, Mike Bush, admitting to unconscious bias against Maori within the police force, new innovative approaches were considered.⁶⁸ One of the ways to combat this unconscious bias was the Policing Excellence Program which incorporates Tikanga principles used to resolve disputes before colonisation and the Eurocentric justice system.⁶⁹

The transition from being a young person to adult is sudden and significant, as on the young person's 17th birthday all care and protection is generally withdrawn.⁷⁰ The Age Settings Bill considers lifting the upper age of care from 17 to 18 years. The submission from the Office of the Children's Commissioner states that:⁷¹

We know from our engagement with key stakeholders and young people themselves that it is common for young people leaving care to swiftly find themselves homeless, jobless and without a caring and supportive adult in their life. Many become parents very young, while others progress from the youth justice to adult criminal systems quickly.

⁶⁶ Jin Chong *Youth Justice Statistics in New Zealand: 1992 to 2006* (Ministry of Justice, Wellington, 2007) at 40.

⁶⁷ Te Puni Kōkiri "Addressing the Drivers of Crime for Māori" (2011) Te Puni Kōkiri <www.tpk.govt.nz>.

⁶⁸ Alison Harley "Commissioner: Police addressing bias in Maori relations" (Podcast, 28 November 2015) Newshub <www.newshub.co.nz>.

⁶⁹ Alison Harley "Commissioner: Police addressing bias in Maori relations" (Podcast, 28 November 2015) Newshub <www.newshub.co.nz>.

⁷⁰ Child, Young Persons, and Their Families Act 1989, s 2.

⁷¹ The Office of the Children's Commissioner "Submission to the Social Services Committee on the Children, Young Persons, and their Families (Advocacy, Workforce, and Age settings) Amendment Bill 2016" at 2.

Although the Age Settings Bill⁷² aims to increase the age of care in New Zealand, it fails to recognize the recommendation made by the Expert Panel to extend the upper age of the Youth Justice jurisdiction.⁷³ Carmel Sepuloni MP expressed this during the Age Setting Bill's first reading:⁷⁴

Our disappointment with this Bill is that the Bill only raises the age for care and protection purposes, which will now mean we have a different age for care and protection that we have for youth justice.. it makes sense to keep these ages linked... especially given the likelihood that offending at a young age is often an indication of wider care and protection issues.

There may be issues such as cost and volume increase⁷⁵ but such an investment approach negates these issues. There is also a perception that the Youth Justice System is 'soft on crime' however the accountability required by the offender in the Youth Court disproves such perception.

III Reasons Why the Youth Justice Jurisdiction Upper Age Should Extend

A Will Bring New Zealand in Line with Its International Obligations and World Leaders

The definition of a young person under the CYPF Act is inconsistent with the definition of a child or young person under the United Nations Convention on the Rights of the Child (UNCROC), which defines adulthood as starting at a young person's 18th birthday.⁷⁶ The United Nations Committee has recommended, on two occasions, that New Zealand should bring its legislation in line with UNCROC by raising the age that an offender can stay within the Courts jurisdiction.⁷⁷ The United Nations Committee reinforced the definition of a child

⁷² Children, Young Persons, and Their Families (Advocacy, Workforce, and Age Settings) Amendment Bill 2016.

⁷³ Bush, Douglas, Dunlop, Leahy, Poulton and Rebstock *Expert Panel Final Report: Investing in New Zealand's Children and their Families* (Ministry of Social Development, December 2015).

⁷⁴ (15 June 2016) 715 NZPD.

⁷⁵ Allen and Clarke Policy and Regulatory Specialists Limited *Safeguarding our children: Updating the Children, Young Persons, and Their Families Act 1989 Overall Summary of Submissions*" (Ministry of Social Development, August 2007).

⁷⁶ United Nations Convention on the Rights of the Child 1990.

⁷⁷ United Nations Convention on the Rights of the Child 2003.

at the 44th session in Geneva, saying that “the Committee also wishes to draw the attention of State parties to the upper age-limit for the application of the rules of juvenile justice”.⁷⁸

Further the Committee elaborated saying:⁷⁹

The Committee, therefore, recommends that those State parties which limit the applicability of their juvenile justice rules to children under the age of 16 (or lower) years, or which allow by way of exception that 16 or 17-year-old children are treated as adult criminals, change their laws with a view to achieving a non-discriminatory full application of their juvenile justice rules to all persons under the age of 18 years.

The 2007 amendments to the CYPF Act included the proposal of extending the upper age of the Jurisdiction.⁸⁰ The New Zealand Police Association saw no benefit in making the change, regardless of international obligations.⁸¹ It was argued that a United Nations document by its very nature cannot take into account the social, legal and other unique circumstances applying to every signatory country, including alternative ways in which New Zealand might be successful in achieving the objectives and principles.⁸² The high Maori youth offending rates in New Zealand are important in this context. Such high rates sparked the implementation of the Rangatahi Courts,⁸³ a different method to the conventional system. If New Zealand was actually successful in achieving the objectives and principles of the document, the Police Association may have had a reasonable argument. The objectives of UNCROC are: to implement a comprehensive juvenile justice policy taking into account the principles stated in articles 2, 3, 6, 12, 37, and 40.⁸⁴ Article 2 is the principle of non-discrimination, stating that “Particular attention must be paid to... indigenous children”.⁸⁵

⁷⁸ Committee on the Rights of the Child *Children's rights in juvenile justice* LXXV CRC/C/GC/10 (2007) at 36.

⁷⁹ Committee on the Rights of the Child *Children's rights in juvenile justice* LXXV CRC/C/GC/10 (2007) at 38.

⁸⁰ Children, Young Persons and Their Families Amendment Bill (No 6) 2007 (183-2).

⁸¹ New Zealand Police Association “Submission to the Social Services Committee on the Children, Young Persons and Their Families (Youth Court Jurisdiction and Orders) Amendment Bill”.

⁸² The New Zealand Police Association “Submission to the Social Services Committee on the Children, Young Persons and Their Families (Youth Court Jurisdiction and Orders) Amendment Bill”.

⁸³ Judge Heemi Taumaunu “Rangatahi Courts of Aotearoa/New Zealand – An Update” (International Indigenous Therapeutic Jurisprudence Conference: University of British Columbia, Vancouver, 9 October 2014).

⁸⁴ United Nations Convention on the Rights of the Child 1990.

⁸⁵ United Nations Convention on the Rights of the Child 1990, art 27.

Unfortunately, the proportion of Maori youth offenders has increased in the last ten years. In 2006 46 percent of youth offenders were Maori and in 2015 62 percent were Maori.⁸⁶ These statistics show a dramatic increase in Maori youth offending rates, implying that New Zealand is failing to achieve UNCROC's objectives and principles in 'it's on way'.

In accordance with the Constitution Act, Parliament is the Supreme law maker in New Zealand⁸⁷ and therefore can pass laws that conflict with UNCROC. There is no tool available to UNCROC that can be used to force New Zealand to act in accordance with any article. New Zealand recently passed legislation lowering the age of prosecution, allowing criminal proceedings to be brought against some 12 and 13 year olds.⁸⁸ The Committee stated in 2007 that "the Committee urges State parties not to lower their MACR to the age of 12. A higher MACR, for instance 14 or 16 years of age..."⁸⁹ would be better. Former Attorney-General and Prime Minister, Sir Geoffrey Palmer has observed New Zealand's approach to human rights, saying:⁹⁰

New Zealand has always prided itself on respecting fundamental human rights ... the rhetorical political tendency was to say that New Zealand always honoured fundamental human rights without looking to see whether the claim was valid. Too often it was not. Administrative convenience, a tendency to trust the state and the use of its powers, and a homogenous political culture with a unicameral legislature made New Zealand in historical terms rather self-satisfied and uncritical about rights.

It seems New Zealand political and policy debates tend to overlook or override children's interests and rights. Attitudes towards implementing UNCROC in New Zealand legislation must change. Politically there seems to be the opinion that because New Zealand complies on ratification, nothing more needs to be done to implement the obligations undertaken. New Zealand has previously expressed in its reports to the United Nations Committee on the

⁸⁶ Ministry of Justice *Children and young people charged in court - most serious offence calendar year* (Statistics New Zealand, September 2016).

⁸⁷ Constitution Act 1986, s 15(1).

⁸⁸ (Youth Court Jurisdiction and Orders) Amendment Act 2010, s4.

⁸⁹ Committee on the Rights of the Child *Children's rights in juvenile justice* LXXV CRC/C/GC/10 (2007) at 33.

⁹⁰ Palmer, Geoffrey, "Foreword" in Butler and Butler *The New Zealand Bill of Rights Act: A Commentary*, quoted in Krommendijk, J *Can Mr Zaoui freely cross the foreshore and seabed? The effectiveness of UN human rights monitoring mechanisms in New Zealand* (2012) 43 VUWLR 579, at 609.

Rights of the Child that it “takes its obligations seriously”, and has a “strong commitment to ensuring that the rights of the children are protected”.⁹¹ I encourage New Zealand to “take its obligations seriously” and extend the upper age of the Youth Justice jurisdiction.

In 1989 New Zealand took pride on being a world leader rather than a follower on youth justice issues.⁹² Disappointingly, New Zealand's Youth Justice System has since dropped, falling out of line with international obligations such as UNCROC.⁹³ New Zealand usually compares itself to other jurisdictions such as Australia, England, Canada, and Wales. Each of these nations, except for Queensland,⁹⁴ define a child or a young person as including 17 year olds.⁹⁵ New Zealand is out of step with the Western World. Connecticut is working towards including 18 year olds in their Youth Justice System by July 2017, then 19 year olds and then 21 year olds within three years.⁹⁶ It is disconcerting that New Zealand's Youth Justice System has not only fallen out of line with international law, but also the commonwealth countries who New Zealand usually look to. Populist politics may also be a factor as to why the New Zealand Government is failing to adhere to UNCROC. There is pressure on political parties to keep voters happy to ensure re-election. A lot of politicians may be worried that if extending the upper age of the Youth Justice jurisdiction is implemented, they may lose support. This paper will elaborate this issue further below when discussing whether the Youth Justice System is ‘soft on crime’.

Although not in line with UNCROC's definition of a child, New Zealand's Youth Justice principles are consistent with the minimum standards under international human rights law,

⁹¹ New Zealand Government, *Initial Report of New Zealand to the Committee on the Rights of the Child*, (1997 CRC/C/28/Add. 3) at 7.

⁹² Gabrielle M Maxwell and Allison Morris *Family, Victims, and Culture: Youth Justice in New Zealand* (Social Policy Agency and Institute of Criminology, Victoria University of Wellington, Wellington, 1993).

⁹³ United Nations Convention on the Rights of the Child 1990.

⁹⁴ Criminal Code Act 1899, ss 208 and 215.

⁹⁵ Child and Young People Act 1999, Part 1.3 ss7 and 8 and s69, Children (Criminal Proceedings) Act 1987, s 3, Juvenile Justice Act, s 3, Young Offenders Act 1993, s 4, Youth Justice Act 1997, s 3, Children and Young Persons Act 1989, s 3, Young Offenders Act 1994, s 3, Youth Criminal Justice Act 2003, s 2, Crime and Disorder Act 1998, s 51(12).

⁹⁶ James Campbell “Governor Malloy meets with JJPOC to Announce Major Youth Justice Reform Legislation” TOW Youth Justice Institute Newsletter (United States of America, Spring 2016) at 1.

such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (the Beijing Rules).⁹⁷ For example, the New Zealand Youth Justice principle that ‘a child or young person should, where possible, be kept in the community’⁹⁸ is in accordance with clause 1.2 of the Beijing Rules which states that “member States shall endeavor to develop conditions that will ensure for the juvenile a meaningful life in the community...”.⁹⁹ The Beijing Rules require that: efforts shall be made to establish in each national jurisdiction a set of laws, rules and provisions specifically available to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed: to meet the varying needs of juvenile offenders, while protecting their rights and to meet the need of society.¹⁰⁰ New Zealand may have a youth jurisdiction which is specifically available to youth offenders, however it would be a stretch if I were to agree that New Zealand was meeting the “needs of juvenile offenders”. The institution and bodies entrusted with the functions of the administration of juvenile justice fail to either intervene early enough when it is shown that a child or young person is in need of help, or if they do intervene, poor measures are taken which fail to adequately provide the child or young person with the best opportunities the system can offer. New Zealand needs to act now in extending the Youth Justice age, before the country is too outdated that it becomes regarded as one of the worst country’s lagging in fundamental youth justice principles. New Zealand must endeavor to be world leading again.

B Legislative Inconsistencies

New Zealand domestic legislation contains many inconsistencies concerning the definition of a young person. The following statutes define a young person as under the age of 18 years or an adult as over the age of 18 years:

The Electoral Act;¹⁰¹

The Marriage Act;¹⁰²

⁹⁷ United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985.

⁹⁸ Child, Young Persons, and Their Families Act 1989, s 208(d).

⁹⁹ United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985, r 1.2.

¹⁰⁰ United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985, r 2.3.

¹⁰¹ Electoral Act 1993.

¹⁰² Marriage Act 1955.

The Social Security Act;¹⁰³
The Care of Children Act;¹⁰⁴
The Education Act;¹⁰⁵
The Prostitution Reform Act;¹⁰⁶
The Sale and Supply of Alcohol Act;¹⁰⁷
The Smoke-Free Environment Act;¹⁰⁸
The Defence Act;¹⁰⁹ and
The Minors Contracts Act.¹¹⁰

Presumably the basis for these laws is that until the age of 18, it is not appropriate to treat young people as adults and they need guidance and protection. There are also inconsistencies contained in the CYPF Act itself, such as a court appointed guardianship order. This remains in place until the young person to whom it relates attains the age of 20 years old.¹¹¹ Increasing the age of the Youth Justice jurisdiction and care and protection will resolve such significant inconsistencies.

Section 5 of the Vulnerable Children Act (VCA) defines a child as a person who is under the age of 18 years.¹¹² It is necessary to question how this fits in with the youth justice jurisdiction. The Care of Children Act provides that parenting orders generally cease when the child turns 16.¹¹³ Guardianship obligations end at 18 years of age, or sooner if a child aged 16 to 17 marries, enters a civil union or recognised de facto relationship.¹¹⁴ Legislation is stating that a person at the age of 17 is vulnerable as under the VCA,¹¹⁵ but is an adult

¹⁰³ Social Security Act 1964.

¹⁰⁴ Care of Children Act 2004.

¹⁰⁵ Education Act 1989.

¹⁰⁶ Prostitution Reform Act 2003.

¹⁰⁷ Sale and Supply of Alcohol Act 2012.

¹⁰⁸ Smoke-Free Environment Act 1990.

¹⁰⁹ Defence Act 1990.

¹¹⁰ Minors Contracts Act 1969.

¹¹¹ Child, Young Persons, and Their Families Act 1989, s 117.

¹¹² Vulnerable Children Act 2014, s 5.

¹¹³ Care of Children Act 2004, s 50.

¹¹⁴ Care of Children Act 2004, s 28.

¹¹⁵ Vulnerable Children Act 2014.

under the CYPF Act. Assumedly such obligations apply until the age of 18 as they are not ready to be treated as an adult because they are still young.

It is not just the VCA¹¹⁶ that would require amendment. Changing the Youth age within the CYPF Act¹¹⁷ may also require amendment to the definitions in legislation such as the Social Security Act 1964,¹¹⁸ Income Tax Act 2007,¹¹⁹ Policing Act 2008,¹²⁰ Criminal Disclosure Act 2008,¹²¹ and the Families Commission Act 2003.¹²² It has been argued by the New Zealand Police Association that the wider implications for the justice system are undesirable as it will require change to many statutes.¹²³ However, such changes would only be mere wording alterations to reflect the change in age of a young person. If the major concern is the amendment of definitions in other legislation, something is seriously wrong with the justice system. Firstly, there are already many inconsistencies within legislation so if the system is to be of a competent standard, amendment is required no matter the change. Secondly it is the interests of the children that should be of concern, and whether the children and young people of New Zealand are receiving sufficient love, support and help to live crime free successful lives. The scale and nature of such reforms are actually consistent with the intentions and existing framework of the CYPF Act.¹²⁴ Therefore, the Act will not require entire repeal, just updates to simplify and clarify the intent behind some existing provisions.

The age of care and protection must be modified to provide for those suffering from situations of poverty and poor parenting, to remain in care until they are stable and ready for independence. The age of care and protection, children and young person's offending, and

¹¹⁶ Vulnerable Children Act 2014.

¹¹⁷ Children, Young Persons and Their Families Act 1989.

¹¹⁸ Social Security Act 1964.

¹¹⁹ Income Tax Act 2007.

¹²⁰ Policing Act 2008.

¹²¹ Criminal Disclosure Act 2008.

¹²² Families Commission Act 2003.

¹²³ The New Zealand Police Association "Submission to the Social Services Committee on the Children, Young Persons and Their Families (Youth Court Jurisdiction and Orders) Amendment Bill".

¹²⁴ Bush, Douglas, Dunlop, Leahy, Poulton and Rebstock *Expert Panel Final Report: Investing in New Zealand's Children and their Families* (Ministry of Social Development, December 2015).

early interventions all intertwine. In their submission the Office of the Children's Commissioner wrote:¹²⁵

We cannot stress enough how important it is to raise the age for youth justice alongside the age for care and protection. It is both illogical and impractical to function with two different ages under the CYP&F Act. After the passage of this bill, young people who are in the care and protection and youth justice systems at the same time, of whom there are more than 300 at any given time, will be placed in the untenable position of having to effectively cut themselves in half to receive services they are entitled to under the CYP&F Act. This, in our view, is counterproductive and contrary to the objective of a child-centred system.

However the Ministry of Justice has noted that extending the upper age of the Youth Justice System will be considered during the second stage of the reform.¹²⁶ It is necessary to question the likelihood of this happening. It might be proposed, but John Key's government has a reputation for caving to public pressure.¹²⁷ Should there be press releases and/or petitions from groups criticising the National Party, threatening a loss of voters if change were to be made to extend to 18 year olds, the government may choose to oppose this amendment. Therefore, I am doubtful as to whether the amendment will pass its first or second reading, even if it is introduced. It is embarrassing that the law makers of our country have allowed and caused such ludicrous inconsistencies, and they are now considering the Age Settings Bill which will create yet another inconsistency. Unfortunately, many politicians do not understand the law or even have a law degree. A new standard should be set on who should be entitled to partake in passing the laws of New Zealand.

Changing the jurisdiction will recognise that young people should be treated first and foremost as young people who are still growing and developing. Young people should be encouraged to stay with their family until they are ready to take the next step. The Youth

¹²⁵ The Office of the Children's Commissioner "Submission to the Social Services Committee on the Children, Young Persons, and their Families (Advocacy, Workforce, and Age settings) Amendment Bill 2016".

¹²⁶ Ministry of Justice section 7 *New Zealand Bill of Rights Act advice* (17 May 2016) at 20.

¹²⁷ Andrea Vance "Prime Minister bows to pressure to accept more refugees" *Stuff* (New Zealand, 7 September 2015).

System needs to acknowledge that each young person is different, with different needs and different levels of independence and maturity.¹²⁸

C Brain Science

There has been significant scientific research and progress made around adolescent brain development since the definition of a young person was set at 14 – 17 years of age.¹²⁹ In particular, the role of the prefrontal cortex in impulse control, and its subsequent impact on risk taking behaviour in young people.¹³⁰ Parts of the brain that control logic and judgment are still developing at 17, meaning at this age, young people's ability to control impulses and rationally assess consequences of their actions is poor. However, because the adolescent brain is still developing, young people at this age respond well to interventions and learn to make responsible choices.¹³¹ Evidence shows that cognitive development continues for years beyond the ages of 15 or 16,¹³² and likewise brain development continues well into adulthood.¹³³ Cognitive maturity varies depending on what and how it is measured. Measuring for basic skills such as a memory for words or numbers has found to peak by adolescence, but the complex conceptual skills such as reflective judgment, understanding the

¹²⁸ Bush, Douglas, Dunlop, Leahy, Poulton and Rebstock *Expert Panel Final Report: Investing in New Zealand's Children and their Families* (Ministry of Social Development, December 2015).

¹²⁹ Child, Young Persons, and Their Families Act 1989, s 2.

¹³⁰ Kurt W. Fischer, Zachary Stein, and Katie Heikkinen "Narrow Assessments Misrepresent Development and Misguide Policy Comment on Steinberg, Cauffman, Woolard, Graham, and Banich" *American Psychologist* (Harvard Graduate School of Education, October 2009).

¹³¹ The Office of the Children's Commissioner "Submission to the Social Services Committee on the Children, Young Persons, and their Families (Advocacy, Workforce, and Age settings) Amendment Bill 2016".

¹³² Kurt W. Fischer, Zachary Stein, and Katie Heikkinen "Narrow Assessments Misrepresent Development and Misguide Policy Comment on Steinberg, Cauffman, Woolard, Graham, and Banich" *American Psychologist* (Harvard Graduate School of Education, October 2009).

¹³³Theo L. Dawson-Tunik, Michael Commons, Mark Wilson and Kurt W. Fischer "The Shape of Development"(2005) 2 EJD 163 at 163-195.

law and its purpose within society, have been found not to peak until the 20s, 30s, or later and even then only in the context of optimal contextual support and education.¹³⁴

Laurence Steinburg of Temple University in 2009 collected self-report questionnaires on risk perception, sensation seeking, impulsivity, peer influence, and future orientation.¹³⁵ The areas assessed were self-descriptions, not self-regulation, understanding about legal processes, moral judgment, or other capabilities relevant to abortion and murder. It was observed that there is essentially no change in psychosocial scores, on average, between the ages of 10 and 17 years and then significant growth to ages 18–21 and age 26 and beyond.¹³⁶ Research also suggests that there is likely to be a high percentage of neuro-disability in young people who commit more serious offences.¹³⁷ Children and/or young people suffering from neuro-disability's require help and support to behave and act in accordance with the law and social norms.

The age of a “young person” needs to be set at an age which reflects their undeveloped brain, lack of maturity and understanding in the nature of their actions. Currently, the New Zealand Youth Justice System is expecting a person whose brain has not yet fully developed or matured, to be capable in an adult jurisdiction. Many scientists believe that full cognitive maturity is not achieved until at least age 25 years.¹³⁸ The New Zealand Court of Appeal has acknowledged that developmental immaturity does exist, stating that “it is widely accepted

¹³⁴ Kurt W. Fischer, Zachary Stein, and Katie Heikkinen “Narrow Assessments Misrepresent Development and Misguide Policy Comment on Steinberg, Cauffman, Woolard, Graham, and Banich” *American Psychologist* (Harvard Graduate School of Education, October 2009).

¹³⁵ Cauffman, Monahan, Mulvey and Steinburg “Trajectories of antisocial behavior and psychological maturity from adolescence to young adulthood” (2009) 45 *Dev Psychol* 1654.

¹³⁶ Kurt W. Fischer, Zachary Stein, and Katie Heikkinen “Narrow Assessments Misrepresent Development and Misguide Policy Comment on Steinberg, Cauffman, Woolard, Graham, and Banich” *American Psychologist* (Harvard Graduate School of Education, October 2009).

¹³⁷ Chitsabesan, Davies, Hughes, Mounce and Williams *Nobody made a connection: The prevalence of neurodisability in young people who offend* (United Kingdom Children's Commissioner, 2012).

¹³⁸ Kurt W. Fischer, Zachary Stein, and Katie Heikkinen “Narrow Assessments Misrepresent Development and Misguide Policy Comment on Steinberg, Cauffman, Woolard, Graham, and Banich” *American Psychologist* (Harvard Graduate School of Education, October 2009).

that adolescents do not possess either the same developmental level of cognitive or psychological maturity as adults”.¹³⁹

The New Zealand Police Association in their submission on the Children, Young Persons and Their Families (Youth Court Jurisdiction and Orders) Amendment Bill argued that; 17 year olds are generally physically mature, they are generally associating with other adults and engaging in adult conduct. This extends to their engaging in criminal offending that cannot be distinguished in terms of circumstances or severity from any other adult offending. Lastly, that 17 year olds are able to make their own decisions about personal behaviour, including bad decisions, and should be held accountable for those decisions like any other adult would.¹⁴⁰ With all due respect to this submission, it is imperative that the focus is on the particular functions of the brain that are relevant to the policy in question. As the US Supreme Court said “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds”.¹⁴¹ New Zealand's current Youth Justice jurisdiction excludes some young people who cannot be considered to have reached full adulthood. This cannot be called a fair or reasonable system.

D Holding the Young Person to Account

All New Zealanders have an important role to play in the youth justice system. As the Final Expert Panel report states; people in the community, as well as members of whanau and families can be vigilant to early signs of offending behaviour and offer support to parents and other family members, as well as opportunities and experiences to young people that can help build their resilience and positive behaviours.¹⁴² When young people have offended, New Zealanders can help stop reoffending by offering support for services, acting as role models and continuing to have high aspirations for these young people. These public attitudes are vital to supporting a system that enables children and young people who offend to learn from

¹³⁹ *R v Slade & Ors* [2005] 2 NZLR 526 at [43].

¹⁴⁰ New Zealand Police Association “Submission to the Social Services Committee on the Children, Young Persons and Their Families (Youth Court Jurisdiction and Orders) Amendment Bill”.

¹⁴¹ *Graham v Florida* (2010) 560 US at 17.

their mistakes and reduce their likelihood of further offending.¹⁴³ The public should be educated to understand that if the community actually offers support or act as role models, and continue to have high aspirations for young people, the likelihood of vulnerable children or young people reoffending reduces significantly. There is potential for such information to be portrayed by the media, by the local mayor or MP. It is rather bizarre that such action has not yet been taken, yet another flaw in our incompetent and inadequate youth justice system.

Community involvement is also important in identifying when a child or young person may need help, care or support. Also, if the upper age of the jurisdiction is extended, members of the community who are concerned a 17-year-old is being abused or neglected, would be able to seek support for that young person. To achieve earlier intervention, the system should also work closely with schools as they are well placed to identify any behavioral problems early.

FGC's stress the importance of family or whanau involvement, and give "proper regard" to the interest of the victim(s) of the offence.¹⁴⁴ The voices of these people need to be heard in order to effect positive change in that person's life and to make them feel accountable for their actions. During the FGC the victim is able to participate in decision making, providing a forum for reintegration and reconciliation. In contrast, the adult system excludes victims. As McElrea J expressed; "justice is primarily not about the punishment of the perpetrator but rather about the vindication of the victim".¹⁴⁵

The Evaluation of Family Group Conference Practice and Outcomes was released in 2014.¹⁴⁶ This Evaluation provided that although FGC's are useful and can be a successful tool, there is still a lot of work to be done, particularly in preparation and organization. Several interviewed for this Evaluation said that they did not remember the FGC being explained to them or being asked about what they wanted to happen and they felt that CYF were not

¹⁴³ Bush, Douglas, Dunlop, Leahy, Poulton and Rebstock *Expert Panel Final Report: Investing in New Zealand's Children and their Families* (Ministry of Social Development, December 2015) at 9.

¹⁴⁴ Children, Young Persons and Their Families Act 1989, s 280(g).

¹⁴⁵ McElrea J "The New Zealand experience of restorative justice legislation" (paper presented to 11th Annual Restorative Justice Conference Fresno Pacific University, California, September 2005).

¹⁴⁶ Carswell, S.L o-Hinerangi, M. Gray & A Taylor *Evaluation of Family Group Conference Practice and Outcomes – Scoping Phase* (Child, Youth and Family, October 2013).

listening to what they wanted.¹⁴⁷ However, there was a record of some social workers and coordinators being well prepared and organized. One caregiver said every effort was made to get the young person's views as they had a very good social worker who was very experienced and had a relationship with the whanau and young person.¹⁴⁸ In terms of organizing participants, in one case whanau from the paternal side were not even contacted and they would have liked to have been involved and had options to offer.¹⁴⁹ To ensure that FGC's are used to their maximum potential and to get the best results in holding the child or young person to account, the organizational and preparation aspects must be improved. The FGC is the tool in the Youth Justice System that gives children and young people an advantage over the adult system, in that children and young people get the opportunity to talk through and make a plan that will ensure a better future. If the conference is lacking in the right family members, or communication, it is a lost opportunity for children or young people who may have been able to change to a crime free lifestyle. Families have been strengthened by FGC's and more children have remained in kinship placements than was the situation previously,¹⁵⁰ and all children and young people should have this chance. The Youth Justice System looks to the future of the child or young person in how they can live a crime free life. Many who have been in state care and/or the youth justice system become parents very young.¹⁵¹ If these young parents were able to remain in touch with state care and the youth justice system, it would be a significant advantage as it would allow for a chance of early intervention for both the parent(s) and the child.

E Formal Record Has Long Term Adverse Consequences: Employment

¹⁴⁷ Carswell, S.L o-Hinerangi, M. Gray & A Taylor *Evaluation of Family Group Conference Practice and Outcomes – Scoping Phase* (Child, Youth and Family, October 2013) at 26.

¹⁴⁸ Carswell, S.L o-Hinerangi, M. Gray & A Taylor *Evaluation of Family Group Conference Practice and Outcomes – Scoping Phase* (Child, Youth and Family, October 2013) at 25.

¹⁴⁹ Carswell, S.L o-Hinerangi, M. Gray & A Taylor *Evaluation of Family Group Conference Practice and Outcomes – Scoping Phase* (Child, Youth and Family, October 2013) at 27.

¹⁵⁰ Marie Connolly "Child and family welfare: Statutory response to children at risk" *Te Awatea Press* (Christchurch, 2004).

¹⁵¹ The Office of the Children's Commissioner "Submission to the Social Services Committee on the Children, Young Persons, and their Families (Advocacy, Workforce, and Age settings) Amendment Bill 2016" at 2.

Extending the upper age jurisdiction of Youth Justice and care and protection will improve long-term social, educational, health, criminal justice and employment outcomes of young people. The Christchurch Health and Development Study established that the early years of a child and/or young person's life and the environment these years are spent, are crucial to the social, economic, educational and health outcomes experienced by that child and/or young person later in life.¹⁵² David Clendon MP in June 2016 said "we are calling on the National Government to change the law to ensure better outcomes for victims, for young people, and for their families".¹⁵³ Hopefully unlike before, the government acknowledges and implements such request.

Having a formal record with a conviction(s) at such a young age (17 years and above) can have extremely long term and adverse effects on that person for the rest of their life. At such a young age that young person is given an immediate detrimental disadvantage. Being labelled as 'criminal' can easily become a self-fulfilling prophecy, rather than holding out the expectation for changed behavior and a crime-free life.¹⁵⁴ In 1989 Link and others stated that the "deviant labeling, official labeling in particular, is seen as a transitional event that can substantially alter the life course by reducing opportunities for a conventional life"¹⁵⁵. Jon Gunnar states that when an official intervention is made on an individual, that individual is then excluded and 'labeled' as a criminal and they are in a structural disadvantage. This labeling has been proven to result in negative outcomes in areas such as education and employment. Such exclusion is effectively 'labelling' that child or young person as a criminal, and is seen as being indirectly related to subsequent behavior through its negative impact on conventional opportunities.¹⁵⁶

¹⁵² D.M. Fergusson "The Christchurch Health and Development Study: An Overview of Some Key Findings" (1998) 10 SPJNZ 158.

¹⁵³ Green Party "Government must raise the age of youth justice" (press release, 15 June 2016).

¹⁵⁴ Hon. Anne Tolley *Investing in New Zealand's children's and their families Overview – final report of the modernising CYF Expert Panel: Proposed Blueprint for reform and implementation* (Ministry of Social Development, 2015).

¹⁵⁵ Link, Bruce G.; Cullen, Francis T.; Struening, Elmer; Shrout, Patrick E.; Dohrenwend, Bruce P "A Modified Labeling Theory Approach to Mental Disorders: An Empirical Assessment" (1989) 54 *American Sociological Review* 400 at 420.

¹⁵⁶ Jon Gunnar Bernburg, Marvin D Khron "Labeling, life changes, and adult crime: the direct and indirect effects of official intervention in adolescence on crime in early adulthood" (2003) 41 *Journal of Research on Crime and Delinquency* 1287 at 1288.

Having a formal record makes it impossible to find a job that you are able to grow and prosper in. At best, having a formal record may give you a minimum wage job, say at McDonalds, for the rest of your life. You will not have opportunities available to you where you can earn more and work harder for a better life style. How are young people to have any hope of getting out of a cycle of poverty and offending, if they do not have the opportunity to obtain a job and work hard? There is also a general misunderstanding by child and/or youth offenders that traffic offences are actually serious offences, which stick with you for life. A traffic conviction is still a conviction having the potential to ruin many, if not all, future job prospects. As Governor Dannel Malloy of Connecticut said; “to permanently scar someone and make them unemployable, unhouseable and not even qualify for a student loan doesn’t make a whole lot of sense”.¹⁵⁷ It is also necessary to mention why the name of the new Ministry intending to replace CYF is important. Judge Andrew Becroft has requested a change in the name ‘Ministry for Vulnerable Children’ saying:¹⁵⁸

The name of any organisation is important. It reveals underlying assumptions, goals and philosophies. That is why a recently proposed name for the replacement organisation for Child, Youth and Family is unfortunate. The suggested "Ministry for Vulnerable Children" is stigmatising and labelling.

Minister Tolley expressed that “the inclusion of an aspirational Maori name as part of the title reinforces our clear expectation that much more needs to be done to address the fact that 6 out of ten kids in care are Maori”.¹⁵⁹ Judge Andrew Becroft will only use the Maori name which in English translate to “the wellbeing of our young”, saying:¹⁶⁰

To be immediately confronted with a badged official – someone from the Ministry for Vulnerable Children – it’s a big load to place on families that struggle and it’s a big label to put on children.

¹⁵⁷ Mary O’Leary “Malloy aims to extend Connecticut justice reforms to offenders though age 20” New Haven Register News (Conneticut, 20 February 2016).

¹⁵⁸ Judge Andrew Becroft “Ministry for Vulnerable Children name ‘stigmatising and labelling” (press release, 2 August 2016).

¹⁵⁹ Anne Tolley “New ministry dedicated to care and protection” (press release, 18 August 2016).

¹⁶⁰ Newshub digital staff “Children's Commissioner won't call it the 'Ministry for Vulnerable Children'” (19 August 2016) Newshub <www.newshub.co.nz>.

The name 'Ministry for Vulnerable Children' fails to consider that in New Zealand the definition of a 'child' and the definition of a 'young person' are different. Therefore, the English name is in a state of despair, failing to include young people. It is necessary to recognise that some may remain in state care or support until the age of 21 or 25.

F Failing to Adequately Preventing Offending

The Youth Justice system in New Zealand at present is failing to prevent offending and failing intervene early enough. Almost 60 percent of young people referred to Child, Youth and Family by the Police for youth offending behaviours had previously been notified to Child Youth and Family as a result of care and protection concerns.¹⁶¹ It is no secret that young people who regularly appear in the Youth Court almost always present with care and protection issues.¹⁶² It is estimated that around 230,000 children and young people currently under 18 may experience vulnerability at some point during their childhood.¹⁶³

Withdrawing support and guidance on a young persons 17th birthday creates an adverse pathway for that person to reoffend. Negative influences from exposures or their peers still exist. In an adverse childhood event study, a key finding was that their events which occur in their childhood, effect their adult outcomes.¹⁶⁴ These 'events' are known as 'exposures'. An exposure occurs when a child or young person suffers harm as they are exposed to harmful situations, such as but not limited to violence, mental illness, addiction, poverty, poor parenting. It has been found that it is the number of exposures a child or young person

¹⁶¹ Ministry of Social Development *Outcomes for children in care: initial data-match between Child, Youth and Family, the Ministry of Education and the Ministry of Health* (Ministry of Social Development, 2004).

¹⁶² Becroft J "It's All Relative: the Absolute Importance of the Family in Youth Justice (a New Zealand Perspective)" (paper presented to the World Congress on Juvenile Justice Geneva, Switzerland, 26 – 30 January 2015).

¹⁶³ Centre for Social Research and Evaluation *Children's Contact with Ministry of Social Development Services* (Ministry of Social Development, 2012).

¹⁶⁴ Child, Youth and Family "What did we find? Recording findings in child and family assessments and investigations" (22 September 2013) Practice Centre a practice resource for Child, Youth and Family <www.practicecentre.cyf.govt.nz>.

suffers from, rather than the type of exposures, that is relevant.¹⁶⁵ After about three exposures the child or young person's risk of becoming a perpetrator of violence, offending, suicide, has significantly increased. Therefore, the aim in reducing and preventing crime in young people should be to reduce and/or prevent such exposures. This can be done and is currently working towards being done, by interventions of the State (Child, Youth and Family). For this reason, the issue of offending and the issue of exposures suffered by a child, overlap and intertwine and therefore should be approached as one whole issue. If the amount of exposures a child or young person suffers from are reduced, offending will decrease. The New Zealand Adult System runs on the basis that adults who offend are autonomous and individually responsible human beings. Whereas for these types of offenders, all pathways usually lead back to family based risk factors, drawing in the changes of adverse life outcomes.

Child, Youth and Family is failing to recognise factors which cause offending before it is too late. Such high rates of offending by young people who have a history of maltreatment, suggests that there is insufficient investment in preventing and addressing the consequences of maltreatment in children and young people. The new Ministry replacing Child, Youth and Family; Ministry for Vulnerable Children, Oranga Tamariki, is intended to focus on five core services: prevention, intensive intervention, care support services, transition support and a youth justice service aimed at preventing offending and reoffending and will have the ability to directly purchase vital services such as trauma counselling as soon as they are needed by children. I am sceptical as to how these core services will differ enough from CYF to provide the significant development and advancement the Youth Justice system is demanding.

The Expert Panel report states that how the Ministry for Vulnerable Children, Oranga Tamariki performs will be significantly different to CYF, with a complete new model to address the short and long term wellbeing of at-risk children. It is critical that this new Ministry is improved and innovative in comparison to what is currently in place. The children and young people of New Zealand deserve better. International research confirms that there is

¹⁶⁵ Child, Youth and Family "What did we find? Recording findings in child and family assessments and investigations" (22 September 2013) Practice Centre a practice resource for Child, Youth and Family <www.practicecentre.cyf.govt.nz>.

a causal connection between children and youth offending and maltreatment.¹⁶⁶ Although it is a much smaller group, approximately 15 percent, of young offenders do come from fractured and disadvantaged backgrounds who have many ongoing interrelated problems.¹⁶⁷ Becroft J expressed how he “wants to catch the children before they fall”.¹⁶⁸ When he first became a Youth Court judge a friend mentioned to him that youth offending is only 5 percent of the District Courts work when another judge responded “ah yes, 5 percent of today’s work and 100 percent of tomorrows”.¹⁶⁹

At present, a young person will only receive social work support where there is an intention to lay charges¹⁷⁰. There are warning signs of conduct disorder but opportunities are missed. If New Zealand’s system improved on early intervention, care and protection and youth justice, such warning signs would be picked up a lot more frequently. It is distressing and shameful to observe such situations where children and/or young people who are portraying warning signs are not being dealt with until it is well overdue. How can New Zealand have faith in its Youth Justice system when New Zealand’s children and young people do not? A young 16-year-old male stated in the Expert report that:¹⁷¹

“[it would be better if CYF was] working alongside us instead of telling us what to do. [CYF should] find out what the problem is and try to solve the problem – not ‘Oh no, he has offended... lock him up – just work with that [one] problem.’ [Understand] why he’s offended, and he might change”.

¹⁶⁶ Susan Dennison, Anna Stewart and Elissa Waterson “*Pathways from Child Maltreatment to Juvenile Offending* (Australian Institute of Criminology, Canberra, 2002).

¹⁶⁷ Becroft J “It’s All Relative: the Absolute Importance of the Family in Youth Justice (a New Zealand Perspective)” (paper presented to the World Congress on Juvenile Justice Geneva, Switzerland, 26 – 30 January 2015) at 3.

¹⁶⁸ Nikki MacDonald “Children’s Commissioner Andrew Becroft on catching children before they fall” *Stuff* (New Zealand, 23 July 2016).

¹⁶⁹ Nikki MacDonald “Children’s Commissioner Andrew Becroft on catching children before they fall” *Stuff* (New Zealand, 23 July 2016).

¹⁷⁰ Child, Youth and Family “What did we find? Recording findings in child and family assessments and investigations” (22 September 2013) Practice Centre a practice resource for Child, Youth and Family <www.practicecentre.cyf.govt.nz>.

¹⁷¹ Bush, Douglas, Dunlop, Leahy, Poulton and Rebstock *Expert Panel Final Report: Investing in New Zealand’s Children and their Families* (Ministry of Social Development, December 2015) at 73.

It has been proven that imprisonment as a deterrence and punitiveness is not successful in preventing young people from reoffending. The system is failing 17 year olds in removing care and protection and restorative justice, when they may still be suffering maltreatment, poverty or bad parenting.

G Culturally Appropriate for Maori

Statistics from 2006 show that Maori comprise approximately 17 percent of the Youth Court age range, yet account for nearly 50 percent of total apprehensions.¹⁷² Maori children and young people have the highest offending rate and the proportion in the Youth Court who are Maori are increasing. In 2005 48 percent were Maori, in 2015 62 percent were Maori.¹⁷³ The number of young Maori before the Youth Court is 1,161, young European is 435, and young pacific people is 204. Maori youth will therefore be most affected by any change.

Unconscious bias and other methods used within the New Zealand Police Force is unfortunately a huge contributor to such statistics. Police Commissioner Mike Bush has publically recognized that there is unconscious bias within the system, which sparked change in the system. It was also recognized that police were acting as traditional police officers in arresting and charging young people, rather than using diversionary mechanisms.¹⁷⁴ The Policing Excellence programme was introduced in 2010 which emphasizes alternative resolutions and rehabilitation services.¹⁷⁵ It is built on principles of preventing offending, shifting the orientation of the Police towards crime prevention and meeting the needs of the victims as well, rather than working to punish and arrest offenders post the criminal

¹⁷² Jin Chong *Youth Justice Statistics in New Zealand: 1992 to 2006* (Ministry of Justice, Wellington, 2007) at 50.

¹⁷³ Ministry of Justice "Trends in Child and Youth Prosecutions: (December 2015) Ministry of Justice <www.justice.govt.nz>.

¹⁷⁴ Allison Morris and Warren Young *Juvenile Justice in New Zealand: Policy and Practice* (Institute of Criminology, Wellington, 1987).

¹⁷⁵ Ministry of Justice "Better Public Services: Reducing Crime" (7 September 2016) <www.justice.govt.nz>.

offence¹⁷⁶. The Policing Excellence programme is a programme that New Zealand's Youth Justice System should build off. It is innovative and looks at the causes of offending and how the system can work to turn the offender life around, rather than looking after the fact.

The Youth Justice System is culturally appropriate for Maori due to FGC's and the Rangatahi Courts. The Rangatahi Courts were created to monitor FGC plans on a marae, in an attempt to reconnect young offenders with their culture. Utilizing the marae as a venue and the inclusion of whanau in decision making processes through the FGC allows tikanga to play a greater role in the justice system. Clinical psychologist Ian Lambie believes that including 17 year olds in the youth justice system would have the most immediate impact on reducing the number of Maori people entering the criminal justice system, then other government action.¹⁷⁷

The FGC is an amalgamation of traditional Maori and European approaches to criminal justice¹⁷⁸. Maori custom is based on collective responsibility, rather than placing all responsibility on an individual. FGC's also strengthen Maori cultural identity and enhances their connection to their whānau, hapū, iwi and whakapapa.¹⁷⁹ If legislation is modified, the Government must work closely with Māori organisations, iwi, whānau and hapū, and work together to develop approaches to both prevent Maori offending and reduce the likelihood of reoffending. This also creates more of an opportunity to identify where there may be gaps in a young person's connection to their culture and steps that can be taken to mend this. Successful initiatives, such as Te Kooti Rangatahi and Oho Ake, have also been developed and led with Māori and the support of government.¹⁸⁰

H Recidivism

¹⁷⁶ Hon Anne Tolley *Investing in New Zealand's Children and Their Families Paper One – Final Report of the Modernising CYF Expert Panel: The New Operating Model* (Ministry of Social Development, 2015).

¹⁷⁷ Letter from Dr. Ian Lambie (Associate Professor in Clinical Psychology) to the University of Auckland Department of Clinical Psychology regarding the age of criminal majority (24 February 2015).

¹⁷⁸ Valmaine Toki "Are Domestic Violence Courts working for indigenous peoples?" (2009) 35 CLB 259.

¹⁷⁹ Te Puni Kōkiri "Addressing the Drivers of Crime for Māori" (2011) Te Puni Kōkiri <www.tpk.govt.nz>.

¹⁸⁰ Bush, Douglas, Dunlop, Leahy, Poulton and Rebstock *Expert Panel Final Report: Investing in New Zealand's Children and their Families* (Ministry of Social Development, December 2015).

Reoffending rates have decreased by 6.8 percent from the years 2011 to 2015.¹⁸¹ This is due to factors such as family group conferences and the Policing Excellence programme. The youth system has proved to be more effective at reducing reoffending than the adult system. Young people get an evidence-based response which addresses the causes of their offending and helps them to change their behavior.¹⁸² A large proportion of youth crime in New Zealand are property offences.¹⁸³ Thomas Lounghran and others found that transferring young people to the adult system was less effective for those who committed a property offence.¹⁸⁴ The impact of labelling young people as criminals has been linked to adult reoffending and the more extreme and constrictive approaches toward youth justice have been linked to young people self-identifying as delinquents, and subsequently interacting with other delinquents, engaging in further criminal offending.¹⁸⁵ New Zealand is effectively labelling a young person as a criminal to encourage such behaviour.

Evidence suggests that dealing with young people in the youth jurisdiction rather than transferring them to the adult system is likely to reduce reoffending and reduce the number of victims of crime.¹⁸⁶ Lower Recidivism rates would create additional savings to victims of crime, members of the public, and correctional facilities.¹⁸⁷ Allowing 17 year olds in the youth justice jurisdiction would result in a reduction in re-offending rates for youth offenders, reduction in the over-representation of Maori, and improved transition to adulthood. International evidence and indicative New Zealand evidence suggest that the benefits of

¹⁸¹ Ministry of Justice *Children and young people charged in court - most serious offence calendar year* (Statistics New Zealand, September 2016).

¹⁸² The Office of the Children's Commissioner "Submission to the Social Services Committee on the Children, Young Persons, and Their Families (Advocacy, Workforce, and Age Settings) Amendment Bill 2016" at 3.

¹⁸³ Jin Chong *Youth Justice Statistics in New Zealand: 1992 to 2006* (Ministry of Justice, Wellington, 2007) at 40.

¹⁸⁴ Kurt W. Fischer, Zachary Stein, and Katie Heikkinen "Narrow Assessments Misrepresent Development and Misguide Policy Comment on Steinberg, Cauffman, Woolard, Graham, and Banich" *American Psychologist* (Harvard Graduate School of Education, October 2009).

¹⁸⁵ J Bernburg and M Khron "Labelling, Life Chances and Adult Crime: effects of Official Intervention in Adolescence on Crime in Early Adulthood" (2003) *Criminology* 2187.

¹⁸⁶ Lambie, Ioane, and Best "17 year olds and youth justice" (2014) *New Zealand Law Journal* 316.

¹⁸⁷ Emily Tombs "Extending the Youth Court Jurisdiction" (4 March 2016) Just Speak <www.justspeak.org.nz>.

dealing with young people in the youth jurisdiction would include: reduced reoffending by around 15 percent, with associated savings to victims of crime and the justice system, reduced expenditure on benefits and enhanced earnings opportunities for young people who avoid a conviction. Several overseas studies have concluded that dealing with 17 year olds in the youth system reduces recidivism.¹⁸⁸ Prison is not the place for a 17-year-old to spend their life. It is where that person gets better at their crime, rebels further, and suffers immense maltreatment. With science proving that a young person's brain is still undeveloped at the age of 17 years and with such high Maori offending rates, New Zealand should recognise that actually the Youth Justice System extending its upper age jurisdiction would reduce offending and reoffending rates in New Zealand in the short and long term.

I Public Attitudes towards Criminal Justice

A survey of public attitudes toward youth offenders was done in 2014, examining public perceptions of youth offenders and attitudes towards management options in New Zealand. Three key findings were made from the survey. Firstly, rehabilitation and restorative justice were ranked as the first and second most important in managing youth offenders, rather than punishment or community protection.¹⁸⁹ Rehabilitation was ranked significantly most important and punishment significantly least important.¹⁹⁰ Lastly, the majority of people do not believe there is an age at which it is too late to help a youth offender.¹⁹¹ Together, these results indicate that the New Zealand public is more supportive of restorative and rehabilitation options as opposed to punishment, including those respondents who had been the victim of crime. In the Youth Justice FGC when a victim can tell the group about their

¹⁸⁸ Henrichson and Levshin "Juvenile Offenders and Adult Felony Recidivism: The Impact of Transfer" (2005) 28 J of Crim and J 59.

¹⁸⁹ Dr. Ian Lambie and Sarah Miers "Public attitudes toward youth offenders, A national survey of public attitudes toward youth offenders and managing their offending" (Doctoral candidate, University of Auckland, 2014).

¹⁹⁰ Dr. Ian Lambie and Sarah Miers "Public attitudes toward youth offenders, A national survey of public attitudes toward youth offenders and managing their offending" (Doctoral candidate, University of Auckland, 2014).

¹⁹¹ Dr. Ian Lambie and Sarah Miers "Public attitudes toward youth offenders, A national survey of public attitudes toward youth offenders and managing their offending" (Doctoral candidate, University of Auckland, 2014).

feelings and emotions, 9 times out of 10 they back the offender.¹⁹² These are the results the government and political parties should consider as opposed to getting caught up in populist politics and one or two people who may seem to have a loud voice in the media.

IV Why People Reject Extending the Upper Age

Not one of the submissions received by the Social Services Committee on the Children, Young Persons, and their Families (Advocacy, Workforce, and Age settings) Amendment Bill 2016, opposed extending the age of care, although a few did comment on how the Youth Justice age should also be extended at the same time to mirror such changes.

NZ First Darroch Ball MP opposes raising the upper age of the youth justice jurisdiction, asking the Minister of Justice, Hon Amy Adams:¹⁹³

How can this Government consider extending the youth justice system to include 17-year-olds when the Minister knows that 50 percent of youth who are dealt with by an alternative action reoffend within 12 months, that more than half of the current adult prison population has been convicted in the Youth Court, and that 80 percent of all youth convicted in the Youth Court reoffend within 2 years, demonstrably showing that the youth justice system is failing?

These statistics are inaccurate. For example, the Ministry of Justice statistics provide that in 2015 actually only 28 percent who are dealt with by an alternative action reoffend within 12 months¹⁹⁴. As Hon Amy Adams responded:¹⁹⁵

The evidence is quite clear that the youth justice system is far more effective at reducing reoffending. We are not saying that every young person who appears in the youth justice system will not reoffend; we are saying that it is a very effective way. In terms of extending it, those decisions have not been made.

¹⁹² Maxwell, Kingi, Robertson and Morris *Achieving Effective Outcomes in Youth Justice* (Ministry of Social Development, February 2004) at 161.

¹⁹³ (13 September 2016) 717 NZPD 8.

¹⁹⁴ Ministry of Justice "Better Public Services: Reducing Crime" (7 September 2016) <www.justice.govt.nz>.

¹⁹⁵ (13 September 2016) 717 NZPD 8.

The New Zealand Indian Central Association disagrees with increasing the upper age of the youth justice jurisdiction to include 17 year olds, saying it will only exacerbate issues at hand. President Bhikhu Bhana says that the “youth committing these crimes need to realise that these crimes can turn into habits which can lead to serious offending at later stages in life”.¹⁹⁶ The Association requests that the government increases the police force numbers further.¹⁹⁷

From the submissions received regarding the Children, Young Persons and Their Families Amendment Bill in 2007,¹⁹⁸ only 22 percent opposed extending the upper age. The reasons for rejecting the proposal were: the considerable cost increase, increase in the volume of cases and that the Youth Justice System is ‘soft on crime’.

A Cost Increase

In 2007 an extension of the Youth Justice jurisdiction to 17 year olds was costed and judged to be acceptable by the cabinet business committee, subject to availability, funding, and appropriate youth justice programmes and services to support the increase¹⁹⁹. It has been found that including 17 year olds in the Youth Justice System would cost an estimated \$55 million per annum by the 2019/20 financial year, due do 2,893 additional referrals from New Zealand Police²⁰⁰. However, evidence suggests that the benefits could include a reduction in reoffending by around 15 percent and reduced expenditure on benefits and enhanced earning

¹⁹⁶ Stuff “NZ Indian Association: Raising youth justice age asking for trouble” *Stuff* (New Zealand, 13 June 2016).

¹⁹⁷ Stuff “NZ Indian Association: Raising youth justice age asking for trouble” *Stuff* (New Zealand, 13 June 2016).

¹⁹⁸ Children, Young Persons and Their Families Amendment Bill in 2007.

¹⁹⁹ Office of the Ministry of Justice “Briefing paper” Meeting with the Principal Youth Court Judge” (28 November 2007) (Obtained under Official Information Act 1982 Request to the Ministry of Justice) at 9.

²⁰⁰ Bush, Douglas, Dunlop, Leahy, Poulton and Rebstock *Expert Panel Final Report: Investing in New Zealand's Children and their Families* (Ministry of Social Development, December 2015).

opportunities for those young people who avoid conviction²⁰¹. The District Court will also be saving approximately 10,000 cases per year²⁰².

Lower recidivism rates would create additional savings to victims of crime, members of the public and correctional facilities. Even where considering significant initial operational costs, comparative cost-benefit analyses by other jurisdictions have shown that although youth justice systems have high upfront costs than the criminal justice system, the “economic destruction” of convicting 17 year olds as adults alongside the ripping impact across communities significantly outweigh worst case scenario initial costs²⁰³. Other jurisdictions that have implemented similar policies have not incurred significant additional costs. In Victoria, fewer 17 year olds than 15 or 16 year olds have appeared in the youth court jurisdiction since the decision to include 17 year olds. In 2013 those ages 17-19 only constituted 12.67 per cent of those appearing before court across New Zealand.

The New Zealand Youth Courts have increased capacity available due to the decrease in youth offending, newly extended length of supervision orders and alcohol and drug programmes,²⁰⁴ making it equipped and ready to deal with 17-year-old offenders. It is therefore an ideal time to make such an amendment.

B Increase in Volume in the System

A 50 percent increase in volume in the Youth Justice System has been predicted.²⁰⁵ In 2007 approximately 1.6 percent of the Corrections' community sentences were served by 17 year

²⁰¹ Letter from Hon. Anne Tolley (Minister of Social Development) to Sarah Croxford regarding extending the youth justice jurisdiction (28 April 2016).

²⁰² Emily Tombs “Extending the Youth Court Jurisdiction” (4 March 2016) Just Speak <www.justspeak.org.nz>.

²⁰³ State of Illinois Department of Human Services *Raising the age of juvenile court jurisdiction: the future of 17 year olds in Illinois' justice system* (2013) at 26.

²⁰⁴ Ministry of Social Development *The Fresh Start Reforms in Operation* (Ministry of Social Development, July 2011).

²⁰⁵ Bush, Douglas, Dunlop, Leahy, Poulton and Rebstock *Expert Panel Final Report: Investing in New Zealand's Children and their Families* (Ministry of Social Development, December 2015) at 56.

olds. The majority of the impact was on the Court's case management system. The number going through the Youth Court specifically would increase from approximately 2,800²⁰⁶ cases to 3,366 cases, with a 46 percent decrease in the District Court workload by 13,970 cases, saving 1 District Court Judge, no impact on registry staff numbers, youth advocate costs \$2.3 million and youth court ordered report costs \$0.2 million.²⁰⁷ It may appear that actually the Youth Court could cope with these extra cases as it already has in the past. In 2011 the amount of cases going through the Youth Court was approximately 3,600.²⁰⁸ The Youth Court could manage the resources available then, the Youth Court can do it now. The most significant implications will be for other members in the sector such as the Police, social workers and youth advocates who may require further training dealing with the older group.²⁰⁹ Youth Justice proceedings are typically more resource intensive than adult proceedings, however having a positive impact on life outcomes for young people outweighs such impacts.²¹⁰

C Soft on Crime?

Rodney Hide MP has said that New Zealand is soft on early offending, "we need zero-tolerance approach so we send the message ... crime doesn't pay." The public tend to perceive the Youth Justice System as a 'soft option' for children or young offenders in assuming that because it is different to the adult system it is soft. The concept; 'populist politics', tends to blur how the Youth Justice System really works. Politicians are pressured to portray a 'tough on crime' approach to satisfy the general population. A lay person fails to understand that crime deterrence, being the use of harsh sentencing and penalties, actually has a very low

²⁰⁶ Ministry of Justice "Trends in Child and Youth Prosecutions: (December 2015) Ministry of Justice <www.justice.govt.nz>.

²⁰⁷ Emily Tombs "Extending the Youth Court Jurisdiction" (4 March 2016) Just Speak <www.justspeak.org.nz>.

²⁰⁸ Lambie, Ioane and Best "17 year olds and youth justice" (2013) NZLJ 316 at 319.

²⁰⁹ Bush, Douglas, Dunlop, Leahy, Poulton and Rebstock *Expert Panel Final Report: Investing in New Zealand's Children and their Families* (Ministry of Social Development, December 2015).

²¹⁰ New Zealand Police Association "Submission to the Social Services Committee on the Children, Young Persons and Their Families (Youth Court Jurisdiction and Orders) Amendment Bill".

success rate.²¹¹ As Cunneen and White argue “empirical evidence and calls for reasoned debate on youth justice are lost when populist politics are in control”.²¹² Rather than being soft on crime this is about being smart on crime and working to effectively intervene early when offending behaviour starts.²¹³ The Children, Young Persons and Their Families Amendment Bill (No 6) was introduced in 2007, containing the proposal to include 17 year olds within the Youth Justice Jurisdiction.²¹⁴ It seems cabinet resisted this change due to the pressure of populist politics. In October 2010 the Government introduced Military Activity Camps commonly known as boot camps and the doubling of youth court sentences. The boot camps were intended to be a youth justice long term intervention for young offenders²¹⁵. Out of the two boot camps that have been held, only two out of the thirty-four young people have not reoffended²¹⁶. Here the government, falling for populist politics, has implemented a policy that is not successfully preventing reoffending, but rather portraying an image to the public that the government is tough on crime, with the intention of collecting further supporting voters.

There are many more cases of such actions relating to populist politics. A petition signed during 2014 and 2015 was considered by the Social Services Committee. The Petition was of Tracie Shipton on behalf of Dingwall Trust and 186 others, requesting that Parliament pass legislation to extend the upper age of the youth justice jurisdiction²¹⁷. This was rejected. In 2011 the Children's Commissioner, Dr John Angus wrote to the Justice and Electoral Select Committee on the Criminal Procedure (Reform and modernization) Bill. He stated

²¹¹ C Cunneen and R White *Juvenile Justice: Youth and Crime in Australia* (3rd ed, Oxford University Press, Melbourne, 2007).

²¹² C Cunneen and R White *Juvenile Justice: Youth and Crime in Australia* (3rd ed, Oxford University Press, Melbourne, 2007) at 82.

²¹³ Letter from Hon. Anne Tolley (Minister of Social Development) to Sarah Croxford regarding extending the youth justice jurisdiction (28 April 2016).

²¹⁴ Children, Young Persons and Their Families Amendment Bill (No 6) 2007.

²¹⁵ Ministry of Social Development *Evaluation Report for the Military-style Activity Camp (MAC) Programme* (Ministry of Social Development, 2013) at 9.

²¹⁶ Maggie Tait “Most boot camp youths have reoffended” *NZ Herald* (New Zealand, 20 July 2011).

²¹⁷ Petition 2014/5 of Tracie Shipton on behalf of Dingwall Trust and 186 others.

“consideration ought to be given by the Committee to the fundamental issue of raising the upper age of our juvenile justice jurisdiction to include all persons under age 18”.²¹⁸ This was also rejected. Ron Mark MP thinks that the “Youth justice system too soft” and wants the age of criminal responsibility cut with tougher sentencing”.²¹⁹

The public should not be distressed as if the child or young person has committed a top-end offence then the Youth Court has the power to convict the young person and transfer them to the adult jurisdiction for sentencing under s 283(o) of the CYPA.²²⁰ Section 283 lists a hierarchy of orders, stating that the offence must be category 4 or category 3 for which the maximum penalty available is or include imprisonment for life or for at least 14 years²²¹. The Court of Appeal in *Pouwhare v R* held that when a young person is transferred from the Youth Court to the District Court or other, the Sentencing Act applies and although the young person's age is still a mitigating factor, youth alone does not justify radically reducing otherwise proper sentence. When a young person is sentenced in the District Court or High Court having been transferred from the Youth Court, the sentencing judge is not required to take into account youth justice principles provided for the CYPF Act.²²² If the upper age of the Youth Justice Jurisdiction is extended, children and young people who have committed a serious offence will still be transferred to the Adult System and subject to adult sentences.²²³

V *Investing in the Future*

The Expert Panel Report looks at expanding the focus of the department from statutory concerns to a full set of prevention activities that will allow for earlier intervention and

²¹⁸ Children's Commissioner Dr. John Angus “Submission to: Justice and Electoral Select Committee on the Criminal Procedure (Reform and modernization) Bill” at 16.

²¹⁹ The Dominion Post “Residents live in fear as police hunt killers” *Stuff* (New Zealand, 18 June 2008).

²²⁰ Children, Young Persons, and Their Families Act 1989, s 283(o).

²²¹ Children, Young Persons, and Their Families Act 1989, s 283(o)(b).

²²² *Pouwhare v R* [2010] NZCA 268.

²²³ Social Services Committee “Children, Young Persons and Their Families Amendment Bill (No 6): Initial Briefing” (14 April 2008) at 38.

reduce statutory demand in the long run.²²⁴ It proposes a reform package in creating a child-centred system, adopting a formal social investment approach to funding, having high aspirations and achieving better life outcomes for Maori children and young people. It aims to intervene earlier through prevention, extending support in the transition to adulthood,²²⁵ and recognising and addressing the trauma that this group of children and young people experience.²²⁶ Hence the Report must be implemented.

The issues I have discussed above, such as failing to prevent crime and intervene early enough, are the focus of the Expert Report. The new system would focus much more strongly on the prevention of offending. Rather than considering offending for some children to be unavoidable, it will actively assess and provide offending-focused services and support at the earliest possible point. The department will no longer just wait until a child or young person has been apprehended by the Police or a care and protection concern arises²²⁷. This is a key intervention point for improving long-term outcomes. In total the report estimates that about 230,000 children and young people currently under 18 years might experience vulnerability at some point during their childhood and would fall within the future definition of vulnerability. The draft results from the 2015 valuation of the benefit system were used to provide an illustration of one component of childhood and future lifetime costs.²²⁸ This valuation showed that out of 10,000 people aged 16-25, one third had a history of contact with CYF. Also that half the total lifetime benefit system cost associated with this group is

²²⁴ Bush, Douglas, Dunlop, Leahy, Poulton and Rebstock *Expert Panel Final Report: Investing in New Zealand's Children and their Families* (Ministry of Social Development, December 2015).

²²⁵ Bush, Douglas, Dunlop, Leahy, Poulton and Rebstock *Expert Panel Final Report: Investing in New Zealand's Children and their Families* (Ministry of Social Development, December 2015).

²²⁶ Anne Tolley *Investing in New Zealand's children's and their families Overview – final report of the modernising CYF Expert Panel: Proposed Blueprint for reform and implementation* (Ministry of Social Development, 2015) at 2.

²²⁷ Bush, Douglas, Dunlop, Leahy, Poulton and Rebstock *Expert Panel Final Report: Investing in New Zealand's Children and their Families* (Ministry of Social Development, December 2015).

²²⁸ Taylor Fry *Actuarial Valuation of the Benefit System for Working-age Adults* (Ministry of Social Development, June 2015).

attributable to people with a CYF history.²²⁹ This valuation therefore presents the fact that children who have contact with CYF's are more likely to depend on a benefit as adults. In addition, those already depending on a benefit are at high risk of long-term dependency. This shows that the current system is causing future costings as well. If that child or young person receives adequate justice services and care and protection up to an age where they are stable and are looking at a bright future, the more unlikely it will be for that child or young person to have to rely on a benefit due to lack of employment. If New Zealand's Youth Justice and care and protection system can ensure that young people have the necessary skills and support to provide for a successful lifestyle, the government will save on benefit expenditure. This means that the government must take on a long term view of the costs and benefits in order to reduce costs, while maintaining or improving effective services. In contrast, the current method is narrow, unbalanced and flawed. If people can get into work and stay at work, the government will incur a lower welfare cost, and will improve the life chances for the individual. The Welfare Working Group (WWG) identified that "compared to other OECD countries New Zealand has a relatively high proportion of young people [aged under 18] who end up not participating in either education or employment".²³⁰ It noted that such young people were at high risk of very long periods of receiving a benefit. It would be more rewarding and efficient for both the government and the people of New Zealand if the government were to dedicate its resources towards an investment that will improve the life chances of children and/or young people, rather than having to dedicate its resources to those children and/or young people who will be receiving a benefit in ten or twenty years' time.

The average benefit cost for people who have a history of contact with CYF is 40 percent or \$47,000 higher than those with no history of contact with CYF. This equates to approximately half of the estimated lifetime cost for this age group, at approximately \$6

²²⁹ Bush, Douglas, Dunlop, Leahy, Poulton and Rebstock *Expert Panel Final Report: Investing in New Zealand's Children and their Families* (Ministry of Social Development, December 2015).

²³⁰ Paula Rebstock "Welfare Working Group reducing long-term benefit dependency recommendations" (February 2011) Victoria University < www.igps.victoria.ac.nz > at 47.

billion²³¹. Although, this figure of \$6 billion is limited to the future cost of young people in the benefit system receiving employment services, income support and supplementary assistance; but currently excludes all other government costs across CYF, Corrections, Education, Health and Social Housing²³².

An American study showed some of the benefits in extending care beyond age 18 are: delayed pregnancy into late adolescence, delayed homelessness, reduced criminal behaviour and justice system involvement among women in early adulthood, and, among young fathers, greater involvement with their children²³³. In this way, it is about having cost efficient system that is successfully preventing offending and/or reoffending.

If the entire Expert Panel Report is implemented, long term outcomes for vulnerable children will be improved, there will be a reduction in future social, economic and fiscal costs, improved stability of care, increased prevention and intensive support for children and their families and whanau, reduction of re-offending rates for youth offenders, and reduction in the over-representation of Māori children and young people in the care and protection and youth justice system.

VI Conclusion

As presented, there are many substantial reasons as to why the youth justice jurisdiction and care and protection age should extend to at least the age of 17 years. Scientific evidence provides that a young person is not psychologically capable of being an adult at the age of 17 as their brain has not yet fully developed. Some scientists have argued that such maturity and brain development required to be an adult is not developed until the age of 25 years. The Youth Justice System would be positive for 17 year olds as it allows the community, family and victims to have a role in holding the young person to account. The System looks at the

²³¹ Bush, Douglas, Dunlop, Leahy, Poulton and Rebstock *Expert Panel Final Report: Investing in New Zealand's Children and their Families* (Ministry of Social Development, December 2015).

²³² Taylor Fry *Actuarial Valuation of the Benefit System for Working-age Adults* (Ministry of Social Development, June 2015).

²³³ Courtney, M "Do the Benefits of Extending Foster Care to Age 21 Outweigh the Costs? Evidence from Illinois, Iowa, and Wisconsin" (Paper presented to Wisconsin Family Impact Seminar Number 33, 2015).

circumstances that could have caused that child or young person to offend, and works to mend such issues. The FGC can be helpful in determining whether the child or young person is suffering maltreatment and may require care and protection, or that the child or young person needs to take account for their actions and the importance of this is stressed to the offender in a forum where they would be disappointing their family if they did not.

Obtaining a conviction at the age of 17 can destroy a person's life, in that it can or will most likely prevent that person from obtaining a successful job. This can also create a cycle down through generations where a child suffers maltreatment and poverty as their parents have convictions and lack a job with a good income, the child and the grandchild follow in such steps. This 'cycle' is such a huge problem in New Zealand, it is ridiculous that the upper age of the youth justice jurisdiction is still at 17 when amending it to 18 would have such a significant impact on breaking such a 'cycle'. There also fails to be a proper awareness by 17 year olds that traffic offences or property offences are actually serious offences that can ruin job prospects.

Coming in line with UNCROC is very important and will significantly improve New Zealand's relationship with the United Nations if adhered to, as well as New Zealand's international reputation. New Zealand has gone from being world leading in Youth Justice to lagging behind and it is time this changed. There is a vast line of inconsistencies within New Zealand legislation concerning the definition of a young person. The CYPF Act defines someone as an adult at 17 years, yet they cannot vote, sign a contract, enlist in the defence force, smoke tobacco or drink alcohol. It is unrealistic to expect a person at the age of 17 years to be an adult in an adult justice system when they cannot carry out such actions.

The Youth Justice System is failing to intervene early enough. Early intervention is important as it has been proven that many young people who offend have care and protection issues. If the State can intervene early enough and for long enough, offending rates will drop. Therefore, successful early intervention will also lead to successful crime prevention. The methods used within the Youth Justice jurisdiction are also tools proven to help prevent reoffending such as FGC's. It is built on principles of preventing offending rather than punishment post offence.

If the jurisdiction for the Youth Justice System and Care and Protection does extend, Maori

children and young people will benefit the most. The high rate of Maori in the Youth Justice System is alarming and the statistics show that the system is failing Maori. Still having access to FGC's and other practical assistance which the adult system does not offer will equip young people to achieve their aspirations for the future and support their families to enable them to continue to love and care for them. If the age for care and protection is also extended, the young person will be able to study or work with the security of having supportive carers to return to for support as they grow up and transition to adulthood²³⁴. Care would no longer be compartmentalised into an artificial relationship, changing as you progress from childhood through adolescence to adulthood.

The Youth Justice System is more effective than the adult system in regards to recidivism. Placing a 17-year-old in the adult system is said to be leading the offender on a pathway to reoffending, rather than the Youth Justice System which works to turn the offender's life around to have a crime free future. According to the public survey, rehabilitation and restorative justice are the most important mechanisms to deal with young offenders.²³⁵

As well as the change required to the jurisdiction, change also must be made as to the efficiency and quality of the Youth Justice System, such as the organization and preparedness of FGC's, other inconsistent statute definitions that will require minor wording alterations in accordance with the jurisdiction change such as in the Social Security Act.

This paper has presented many of the barriers that are stopping this change from passing, such as populist politics, parliamentary sovereignty, the cost, volume increase, public perception that the Youth Justice System is 'soft' on crime. It is time that the New Zealand Government overcome such barriers and stop falling for petty party politics. It must be understood that extending the upper age of the Youth Justice jurisdiction will bring many long term benefits, not only to the New Zealand citizens but also the Justice System and the government in saving costs. With offending rates currently down, there is extra capacity

²³⁴ Bush, Douglas, Dunlop, Leahy, Poulton and Rebstock *Expert Panel Final Report: Investing in New Zealand's Children and their Families* (Ministry of Social Development, December 2015).

²³⁵ Dr. Ian Lambie and Sarah Miers "Public attitudes toward youth offenders, A national survey of public attitudes toward youth offenders and managing their offending" (Doctoral candidate, University of Auckland, 2014).

available for such an increase in volume. Most of all, making this change will improve life chances for all children and young people.

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