
Another Brick in the Wall? Parental Education as a Response to Youth Crime

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Introduction

Parental responsibility for youth offending has played a consistent role in New Zealand's youth justice history. The most recent addition to the plethora of ways in which parents may be held accountable is the parenting education programme order ("PEPO") introduced by the "Fresh Start Reforms" in 2010. Principal Youth Court Judge Andrew Becroft has described this expansion as a "failure" so far, a comment to be assessed in great detail.¹ The dissertation focuses on the development of New Zealand's approach to parental responsibility from the colonial past, to the present. The argument throughout is that policy in relation to addressing youth offending through working with parents must be based on evidence, be carefully developed, and not introduced with a "fingers crossed" attitude. This is playing a game of chance with the lives and futures of the most serious young offenders² and directly contradicts the paramountcy principle that guides the Children, Young Persons, and Their Families Act 1989 ("the CYPF Act").³

Parental responsibility is a concept that can be defined in various ways.⁴ For example provisions holding parents financially accountable for the offending of their child have existed intermittently in New Zealand's history, and continue to be present both here and in other jurisdictions.⁵ These hold the parent⁶ accountable but can also be seen as addressing the needs of the victim. Parental responsibility may also be directed at demanding maintenance

¹ In Interview with Judge Becroft, Principal Youth Court Judge (the author, by phone, 29 September 2011). Note this and all other comments made by Judge Becroft in the telephone interview are comments restricted to what the learned Judge has seen and observed in the Youth Court on the basis that the Fresh Start reforms have been passed into legislation, and the Youth Court has to, and wishes to, make them work, and is optimistic that they can.

² In the context of this dissertation the "worst young offenders" (the term used in the Fresh Start Reforms) will be replaced by "serious young offenders." The term incorporates both children and young people who commit serious crimes, such as burglary, and also persistent or recidivist offenders that may not be committing the worst crimes, nevertheless their recidivism brings them under the definition based on the number of victims they create. This definition of the "serious young offenders" reflects that described as the "worst young offenders" provided by the "Regulatory Impact Statement on the Fresh Start Amendments" (2009) Ministry of Social Development <www.msd.govt.nz/about-msd-and-our-work/newsroom/media-releases/2009/pr-2009-02-16.html>, at 2. The writer prefers the term "serious" to "worst." "Serious" implies issues that must be addressed to allow the individual to live a useful and enjoyable life. "Worst" implies that an individual is inherently bad natured. To deal effectively with offending focus must be on issues to be addressed, rather than generalising the young people with the use of a term implying negative connotations. This re-definition of the young people conforms with the objects and principles of the Act by emphasising rehabilitation rather than accusation.

³ CYPF Act 1989, s 6.

⁴ See also Kathryn Hollingsworth "Responsibility and Rights: Children and Their Parents in the Youth Justice System" (2007) 21 IJLPF, at 190–219.

⁵ For example see CYPF Act, s 283(e) and (f). See Chapter Two for a description of these, and Chapter Four for international examples.

⁶ Hereafter any mention of "parent" includes step-parent and any other legal guardian of the child or young person.

payments for a child when he/she is removed from the home and taken into State care.⁷ This dissertation will focus predominantly on parental responsibility within the context of PEPO which were introduced in 2010. Legislators claim that the orders were introduced for the purpose of addressing underlying causes of offending in order to prevent recidivism of New Zealand's "1000 worst young offenders," improve community safety and assist the young offenders to get their lives on track.⁸ Thus in this context parental responsibility is defined as a combination of a punitive reaction to youth offending, by forcing attendance at a programme on the basis of being a "bad parent," and educative through assisting the parent to develop new skills in the expectation of reducing the underlying causes of offending. Regardless of the reasoning behind the orders however, they are simply not the most effective method of dealing with the parents of this target group of young people.⁹

Since 1867 New Zealand legislation has embraced the concept of parental responsibility in both the punitive and educative sense. Chapter One details the developments of youth justice legislation through various justice models based on punishment, welfare, and a combination of both, that led to the current legislation. Rather than giving a general history,¹⁰ Chapter One analyses the focus behind the parental responsibility provisions, and whether they were effective in addressing youth crime. Punishing parents in isolation does not address the causes of youth offending, or stop the "worst" young offenders. In introducing new legislation the emphasis must be on assistance and education as the forums for parental responsibility. Furthermore, approaches must be based on solid evidence as to what works in assisting parents of serious young offenders to develop new and effective skills.

The CYPF Act 1989 forms the subject matter of Chapter Two. This is the current youth justice legislation and exhibits parental responsibility both "directly" and "indirectly."¹¹ There is an underlying theme of parental responsibility flowing through the Act as a result of the objects and principles which stresses the need to support the family/whanau to discharge

⁷ This was an approach common throughout New Zealand's history, see Chapter 1. This form of parental responsibility has continued to be in place in the Northern Territory, Australia, see Youth Justice Act 2005 (NT), s 133. See also Chapter 5.

⁸ "Regulatory Impact Statement on the Fresh Start Amendments" above n? at 2. See also Chapter 3.

⁹ See Chapter Three for an explanation as to why this is and a discussion of evidenced-based interventions and programmes that have been shown to be effective in assisting the families of serious young offenders.

¹⁰ For a general history see Emily Watt "A History of Youth Justice in New Zealand" (Research paper commissioned by Principal Youth Court Judge Andrew Becroft, January 2003).

¹¹ See Chapter Two for an explanation as to the need to distinguish these forms of parental responsibility in the New Zealand context.

their responsibilities and maintain relationships with their children.¹² In addition there are provisions which are specifically directed at the parent of the young offender, illustrating policy intent to hold parents accountable as a catalyst of offending, yet not straying from the objects of the Act.¹³ The introduction of PEPO, however, contradicts the objects and principles of the Act. While the PEPO are, prima facie, based on supporting the family, their implementation has been so flawed that in reality the parents of serious young offenders are expected to take on blame by being sent to parenting education that is not equipped to deal with the severity of the lifestyles and experiences in question. Therefore in effect the PEPO are punitive, contradicting the objects and purposes of the Act, and getting no closer to addressing the factors behind serious youth offending.

The Children, Young Persons, and Their Families (Youth Court Jurisdiction and Orders) Amendment Act (“Amendment Act”) was passed in 2010. It established a series of new orders available to the Youth Court for those considered to be the “1000 worst offenders.”¹⁴ Chapter Three provides a detailed analysis of the implementation of the PEPO,¹⁵ the process involved in making the order, and the various obstacles faced in doing so. Of particular concern is the refusal of policy-makers to take account of the well-reasoned and evidence-based submissions of experts raising doubts as to the effectiveness of the proposed orders for the high-need¹⁶ parents and offenders targeted by the Amendments.¹⁷ By failing to conduct

¹² CYPF Act 1989, ss 4 and 5.

¹³ See for example, CYPF Act 1989, ss 278 and s283(e) and (f).

¹⁴ (10 February 2010) 660 NZPD 8777. See also John Key’s introduction of the legislation at <www.beehive.govt.nz/release/%E2%80%98fresh-start%E2%80%99-legislation-introduced> (16 February 2009).

¹⁵ This order is available to *any* child or young person who has been through a Family Group Conference and had the appropriate recommendation made to the court, as outlined in Chapter Three. However it was introduced in the context of the Fresh Start Amendments which are targeted at the “worst” offenders, thus the dissertation proceeds on the basis that the PEPO does not address the needs of the parents of the “worst” offenders. It is not argued that if used at an earlier point in the offending the PEPO will not be effective. Note also that the PEPO may be ordered against the young offender if they are, or are soon to become, a parent, s 283(ja). This element of the order is not the focus of the dissertation, however it is accepted that in the context of the young offender, parenting education may have a significant impact on the way they are able to parent. In this sense the order has the potential to be a success in preventing the creation of the next generation of young offenders.

¹⁶ “High-need” and “high risk” in the context of this dissertation can be defined as those parents and young offenders who experience a series of “risk factors” including socio-economic adversity, parental change and conflict, lack of supervision, lack of warmth and affection in the family, anti-social behaviours, substance abuse, young mother, unemployment, poor literacy, harsh discipline and abuse, see Cindy Kiro “Children, Parenting and Education: Addressing the causes of offending” in Gabrielle Maxwell (ed) *Addressing the Causes of Offending: What is the Evidence?* (Institute of Policy Studies, Victoria University, Wellington, 2009) 13 at 14. A number of these criteria were also mentioned by Judge Becroft who discussed the families involved as being “highly challenging, abusive and transient,” (in Interview with Judge Becroft, above n1), and by Judge O’Driscoll stating that the young people may have faced “over a decade of abuse, little education, bad friends and parenting.” (in Interview with Judge O’Driscoll, Youth Court Judge (the author, Judges Chambers Dunedin, 14 September 2011).

extensive research and planning needed to be undertaken, to ensure that New Zealand implemented the best possible approach to assisting our most serious young offenders to turn their lives around before entering the adult criminal justice system.

Evidence from the experiences of international jurisdictions in implementing comparable parenting education legislation suggests that interventions with the families of serious young offenders must be intensive and address the wide range of difficulties faced by the offender's family.¹⁸ Chapter Four outlines the approach taken in England and Wales with the implementation of their parenting order in 1998, along with the key issues that rose out of the nationwide evaluation of the orders.¹⁹ Such evidence ought to have been taken into account by New Zealand's legislators to ensure that the "teething problems" of other nations were pre-empted. Instead New Zealand largely lifted the approach taken in England and Wales, but failed to ensure that implementation and design issues experienced there were guarded against. This shortfall in the development of the PEPO results in wasting precious time in finding the most effective approaches to assisting the families most in need of urgent intervention.

Chapter Five analyses the best approach to parental responsibility moving forward. New Zealand has the PEPO; the challenge is to make it work. Punitive action has failed to address parenting issues, and consequently failed to prevent the creation of serious young offenders. In moving forward New Zealand legislators, politicians, social workers and judges must place the emphasis on assisting, educating and supporting parents, rather than punishing them for being a product of their own upbringing. The legislation has failed to dictate the best approach to this, in spite of the opportunity to make the most of other jurisdictions' experiences. What is needed now is a consistent and evidence-based programme or intervention that focuses on parenting skills as one of many areas in need of improvement and support in the daily lives of the high-risk families in question, Chapter Five offers an example of an approach that satisfies these requirements. Developments of the PEPO must be made urgently to facilitate its consistency with the rest of the CYPF Act, and ensure that the

¹⁷This occurred regardless of the Regulatory Impact Statement's assertion that concerns relating to implementation would be addressed through planning and preparation work to be carried out prior to the commencement of the legislation, see "Regulatory Impact Statement," above n2, at 4.

¹⁸ See for example: Advisory Group on Conduct Problems *Best Practice Report* (Ministry of Social Development, Wellington, 2009), and, John Church *The definition, diagnosis and treatment of children and youth with severe behaviour difficulties: A review of research* (Ministry of Education, Wellington, 2003). See Chapter Five for an analysis of this information.

¹⁹ Deborah Ghate and Marco Ramella *Positive Parenting: The National Evaluation of the Youth Justice Board's Parenting Programme* (prepared by the Policy Research Bureau for the Youth Justice Board 2002).

needs of the most desperate young people in New Zealand are met now, and in the long term, to ensure that they do not go on to become the parents²⁰ of the next generation of serious young offenders.

²⁰ Many already are parents, Interview with Judge Becroft, above n 1.

I The History of Parental Responsibility in New Zealand's Youth Justice System

In order to assess the role of parental responsibility in the New Zealand youth justice system today, it is important to first consider the policy movements of the past. Of particular interest is the shifting focus on the method of holding parents accountable. At times this was clearly based on punishment for “allowing” the offending by neglecting or not supervising the child or young person. However a more educative approach also developed during the 20th and 21st centuries that emphasised assisting parents to develop the ability to resolve the offending of their children within the home. This history of parental responsibility allows analysis as to which parental responsibility mechanisms have worked to address the offending, and those that have simply placed blame on the parent without considering the issues underlying the failure to parent adequately.

The first New Zealand statute specifically dealing with youth justice was the Neglected and Criminal Children Act 1867. The Act established Industrial and Reformatory Schools²¹ to take in certain “neglected children.”²² The parents of children detained at the schools were liable to pay for the maintenance of the “inmate,” provided they were sufficiently able to do so. Breaches of this requirement resulted in the issue of a warrant to apprehend the parent,²³ whereby by the Justices of the Peace could raise levy or enforce payment.²⁴ The warrant also acted as a warrant of distress,²⁵ which provided for the seizure of property to compensate for the debt.²⁶ If no such property could be gathered, the parent was liable for imprisonment.²⁷ The punitive intent is clear. Furthermore, once imprisoned a parent had no way of making any maintenance payments, and the child would not be able to leave the State’s care.

Punitive financial provisions for the benefit of the State existed from the outset of parental responsibility in New Zealand. However holding parents accountable for the damage suffered by victims originated in the Juvenile Offenders Act 1906. Pursuant to this a Magistrate had

²¹ Industrial schools were reserved for neglected children; however those convicted of an offence were sent to reformatory schools, see Neglected and Criminal Children Act 1867, ss 3, 4, 15 and 16.

²² “Neglected” children were defined as those children found on the street, children who had committed offences and children whose parents represented that they could not control the child and thus paid a certain amount for the maintenance of the child at either an industrial or reformatory school. See Neglected and Criminal Children Act 1867, s 13. This position survived the repeal of the Act and its replacement with the Industrial Schools Act 1882, ss 16, 17 and 31. This Act added young people associating with prostitutes, drunkards and vagrants to the definition of “neglected,” s 16.

²³ Neglected and Criminal Children Act 1867, ss 24 and 27.

²⁴ Ibid, s 28 and Fourth Schedule.

²⁵ Ibid.

²⁶ Justices of the Peace Act 1866, s 35.

²⁷ Ibid, ss 35 – 39. The author has been unable to find statistics for the regularity with which this occurred.

the discretion to hold parents liable for any costs or damages incurred by or through the offence committed by their child.²⁸ As a result of a summary hearing and conviction²⁹ the Justice was empowered to issue a warrant of distress, and where this was not sufficient to repay the debt, the parent could be imprisoned.³⁰ It is clear that the focus of parental responsibility in this provision continued to be punitive, however the 1906 Act also began to take into account the underlying causes of offending.³¹

In order to ascertain the causes of offending, the Magistrates inquired closely into personal background of the “juvenile offender,” especially as to whether they had been the victim of “bad breeding.”³² Regardless of this novel approach, the focus for the parent continued to be punitive. The Magistrate had the power to look into the offender’s history for the sake of assessing the liability of the young person. No attempt was made to address the “bad breeding” or assist the parent to remedy it. Not only did punishment continue to be the focus for parental responsibility, this Act extended it by imposing financial liability on the parent to both the State and the victim.

This double financial responsibility ended with the commencement of the Industrial Schools Act 1908, whereby reparation to the victim was removed. Parents continued to be liable for maintenance payments to the State.³³ The legislation made no developments in terms of the punitive nature of parental responsibility. However in 1910 the Education Department introduced a new scheme which was the first to move toward an educative approach to dealing with parenting as a cause of youth crime. The “probationary” scheme operated by sending a specially appointed official into the homes of boys³⁴ who showed the first signs of “juvenile delinquency.”³⁵ The task of the official was to observe any poor parenting skills, and then retrain the boy and the parent at the same time, within the home environment.³⁶

²⁸ Juvenile Offenders Act 1906, s 5. The order of costs or damages was to be enforced as a summary matter under the Justices of the Peace Act 1882 (which repealed the 1866 version).

²⁹ For the procedure regarding the summary hearing and conviction see, Justices of the Peace Act 1882, ss 45 – 80.

³⁰ Ibid, ss 91 and 94.

³¹ Bronwyn Dalley *Family Matters: Child Welfare in Twentieth Century New Zealand* (Auckland University Press, Auckland, 1998) at 40.

³² Ibid.

³³ Industrial Schools Act 1908, ss 32 and 37.

³⁴ At this time it was felt that girls could not be dealt with effectively by close supervision within the home, rather they needed institutionalisation, see Dalley, above n 31, at 44.

³⁵ Ibid, 42.

³⁶ Ibid. Where parents or the boy refused to be a part of this scheme the boy could be taken into State care. This is a remarkably similar conclusion as the modern approach to refusal to attend parenting education programme, whereby care and protection proceedings may be brought, which ultimately may result in the removal of the child from the care of his or her parents, see CYPF Act 1989, s 297A. See Chapter Three for further discussion.

There is evidence that this was an effective approach to reducing youth crime as only three of the 22 boys involved were later sent to industrial schools.³⁷

The probationary scheme continued to gather momentum.³⁸ By 1919 parents were able to seek private assistance with the probation officers before “juvenile delinquency” instigated the scheme officially.³⁹ Around the same time the then Minister of Education, Josiah Hanan, provided Parliament with a special report, stating that future policy should be “guided by the adage that prevention is better than the cure,” and that influencing parents was an integral part of this strategy.⁴⁰ By 1925 Hanan, among other policy drivers, had influenced consolidation of probationary (and boarding out⁴¹) schemes into the Child Welfare Act 1925.⁴² Thus what was initially a Departmental scheme made the first recorded impact on lowering the recidivism of offenders at the first sign of trouble.⁴³

The Child Welfare Act 1925, and its amendments, continued to be the guiding statute on youth justice for the next 50 years. During this time the quality of parenting continued to be discussed as fundamental amongst the driving factors of youth crime. However as times changed parents were not only criticised for lack of control over their children, but also the quantity of pocket money, the choice in friends and lack of sex and religious instruction, and “dares” between youngsters.⁴⁴

Inherent in the 1925 Act, and its successor the Children and Young Persons Act 1974, was the understanding that where a parent failed in raising, controlling or protecting their child,

³⁷ Dalley, above n 31, at 44. See Chapter 5 for discussion over the need to revive this approach within a Functional Family Therapy model of intervention with high-risk families.

³⁸ Ibid, at 78. Dalley further notes that the probationary scheme signalled a new level of state intervention into the private sphere, an argument that has also been made in relation to England and Wales introduction of parenting orders in 1998, see Elizabeth Gurney and Loraine Gelsthorpe “Do We Need a ‘Naughty Step’? Rethinking the Parenting Order After Ten Years” (2008) 47 *How.L.J* 470, at 473.

³⁹ Dalley, above n 31, at 81.

⁴⁰ *New Zealand Gazette* (16 June, 1902), at 1303-4.

⁴¹ Boarding out was essentially fostering.

⁴² The Child Welfare Act 1925 was the first to embrace the “welfare model” of justice grounded upon the philosophy that young offenders were the product of their environment, see Watt, above n 10, at 11. Thus the focus shifted to helping “children in need” rather than punishing them, see J. A Seymour *Dealing with Youth Offenders in New Zealand – the System in Evolution* Occasional Pamphlet Number Eleven (Legal Research Foundation, School of Law, Auckland, 1976), at 55. See also Dalley, above n 31, at 17.

⁴³ The ability for social work staff to make a success of a scheme not detailed by Statute is encouraging for the PEPO moving forward. As the PEPO does not specify a particular approach to parenting education it is necessary for the providers to develop an effective method (one is suggested in Chapters 3 and 5), if this is successful, the result may be a change in the legislation to codify the proven approach as best practice.

⁴⁴ Wanganui Education Board Report, 1944, as discussed in Dalley, above n 31, at 113-116. Also coming under fire were the cinema and radio programmes of the time.

the State would step in.⁴⁵ The 1974 Act also widened the scope of parental responsibility, reintroducing the power to hold parents liable for the damages and loss suffered as a result of the behaviour of their child.⁴⁶ Moreover the 1974 Act introduced what can be conceived as the predecessor provision to the PEPO. Where a complaint was proven against a child, the Children's Board could take action by ordering the parent or guardian of the child to undergo counselling or receive psychiatric or psychological assistance, although this order could only be made with that parent or guardian's consent.⁴⁷ The purpose of the order was to discuss with the parent the issues they were having in raising their child, and assist them by means of counsel or advice to overcome those problems.⁴⁸

In the process of receiving the assistance it is possible that parents were able to discuss other challenges they were facing which led to inadequate parenting. Thus not only was there an educative function to the new approach, it also represented an attempt to understand the parent and assist with overcoming underlying problems. The need to gain the parents consent removed any punitive component. Moreover the assistance was provided in a one-on-one setting, allowing for an individualised approach to be developed for each parent. Individual work with parents of serious young offenders was seen to be effective in overcoming feelings of resentment and nervousness in research conducted in England and Wales.⁴⁹ Today's legislators and programme providers would not go amiss in looking back to this 1974 provision, arguably ahead of its time, as an indication of moving forward with the PEPO.

In addition to orders requiring counselling, the power was conferred upon the court to require the attendance of parents at proceedings with their child, to be examined on their approach to parenting.⁵⁰ If the parent refused to appear they became liable on summary conviction to a fine of \$500.⁵¹ The statistics in relation to this are only available from 1980, however between 1980 and the repeal of the Act in 1989, the fining of a non-attending parent did not

⁴⁵ Mike Doolan, "Understanding the Purpose of Youth Justice in New Zealand" (appendix to the Aotearoa/New Zealand Social Workers Association submission on the Children, Young Persons, and Their Families (Youth Court Jurisdiction and Orders) Amendment Bill 2009), at 3.

⁴⁶ The 1974 Act distinguished between behaviour that resulted in a complaint, and actual offending, however in either case the parent could be financially liable for the results pursuant to Children and Young Persons Act 1974, ss 31(10)(e) and s 36(1)(e) respectively.

⁴⁷ *Ibid*, s 15(7)(b). Counselling of parents was also an order available under s 31(1)(h). Before the order was made the parent must be given the opportunity to make representations to the Court, s 36(5). It also became an offence to leave a child (defined as under the age of 14, s 2) without reasonable supervision and care, s 9.

⁴⁸ *Ibid*, s 33(2).

⁴⁹ Ghate, above n 19, at 37 – 39. See Chapter Four for an in depth discussion of this report and the impact it had on the introduction of PEPO.

⁵⁰ Children and Young Persons Act 1974, s 39. In particular the parents were questioned on their ability to control the child or young person.

⁵¹ *Ibid*.

occur once.⁵² It is difficult to determine whether this provision was aimed at sanctioning the parent, or assisting their understanding of the seriousness of the situation facing their child. Either way this order continues to be within the power of the Youth Court, and utilised in the interests of the parent and child.⁵³

As with the previous legislation, the parents of children taken into State care were expected to pay maintenance of the child.⁵⁴ However the court had the discretion to lessen the amount, or remove the responsibility if it would cause the parent or any other children under their care to suffer hardship, or prejudice their interests.⁵⁵ This discretion of the court to decide where certain orders are appropriate continues to be of fundamental importance in current legislation and a factor in distinguishing New Zealand's approach to parental responsibility from that of other jurisdictions.⁵⁶

Parental responsibility under the 1974 Act was ground-breaking in the sense that it approached parental responsibility with both punitive and educative/supportive provisions. Nevertheless the 1974 Act was also the subject of much criticism regarding the "sweeping intervention in a manner increasingly challenged as contrary to contemporary values of least possible interference with freedom and rights of due process."⁵⁷ The Act, while embracing a welfare model based on care and protection of young offenders, did not have a significant impact of the levels of offending.⁵⁸ Furthermore there was concern that young offenders were not being held to account, families and communities were cut out of the process, sentences were overly open-ended, and the needs of Maori were not being addressed.⁵⁹ It is in this context that the drive for significant change occurred, resulting in the CYPF Act 1989.

The history of parental responsibility in New Zealand is one of gradual evolution from purely punitive in 1867, to a mixture of punitive, educative and supportive by 1974. Some provisions, such as contributing to the cost of detained children, maintained a steady

⁵² Email from Dean Rutherford (Manager of Ministry of Justice Data Warehouse Holdings) to author, regarding a series of statistical information requested by the author (15 September 2011). If there had been any such orders the parent would have had a right of appeal over any order placed on them or their child (s 54) which would occur at the High Court where the parent could once again be examined on their parenting skills (s 61).

⁵³ CYPF Act 1989, s 278. See Chapter Three, Part E.

⁵⁴ Children and Young Persons Act 1974, s 96.

⁵⁵ Ibid.

⁵⁶ See Chapter Four.

⁵⁷ Mike Doolan *From Welfare to Justice: Towards new social work practice with young offenders* (Department of Social Welfare, Wellington, 1988), at 1.

⁵⁸ Watt, above n 10, at 11 – 15.

⁵⁹ Ibid, at 13 – 14. See also Judge Becroft "Are There Lessons to be Learnt From The Youth Justice System?" in Maxwell (ed) above n 16, at 25.

presence. On the other hand being liable for the damage caused by offending appeared sporadically. Overall the provisions were not related to a specific group of young offenders. Nevertheless the probationary scheme of 1910 and the 1974 parent counselling provisions provide a foundation for current legislation to build upon in relation to serious young offenders. These supportive approaches to dealing with the enhancement of parenting skills must form the way forward in parental responsibility. Punitive action has not prevented offending in the past, and will not be sufficient into the future. While there is certainly room for ensuring that reparations are paid in the interest of justice to victims, punitive approaches to not address the underlying causes of bad parenting and thus will not assist in reducing serious and recidivist crime in New Zealand's youth.

II Parental responsibility under the CYPF Act 1989

The Act heralded a shift from a “welfare-based” mentality where the State imposed generalised solutions on young people and their families in the interests of “curing” young offenders, to a hybrid justice/welfare system where young people, their families, victims, the community and the State are involved in taking responsibility for offending and its consequences.⁶⁰

The CYPF Act has been considered the “most enlightened and innovative piece of social legislation passed in New Zealand in the last 20 years.”⁶¹ In terms of parental responsibility this allowed the opening of a new avenue of accountability. Suddenly the wider family, the victim, the police and other community members were able to assess the parenting of the child or young person, and determine to what extent this contributed to the offending. Following on from the 1974 Act, there is a combination of punitive and supportive mechanisms in the current legislation. However the CYPF Act developed an underlying theme to draw these together: the focus on enabling the family to deal with problems within the home wherever possible, along with the paramountcy of the interests of the child.⁶² It is within this framework that the PEPO must fit and develop.

This chapter discusses the provisions that relate to parental responsibility in the CYPF Act, prior to the addition of the PEPO. The approaches of these provisions can be distinguished as “indirect” or “direct.” The “indirect” sections provide for an underlying purpose of holding parents accountable within the framework of the objects and purposes of the Act, and through Family Group Conferencing (“FGC”).⁶³ More “direct” examples are the orders relating to financial liability and attendance of the parent at Court; however these must always take account of the wider interests of the child, family and victim.⁶⁴ Thus provisions that, *prima facie*, appear to be punitive, are in fact acting predominantly to provide justice for victims, and encourage parents to take some responsibility for the sake of the child.

⁶⁰ Principal Youth Court Judge Andrew Becroft “Putting Youth Justice Under the Microscope: What is the Diagnosis? A Quick Nip and Tuck or Radical Surgery?” (presented at the Conference on the Rehabilitation of Young Offenders, Singapore, November 2007) at 11.

⁶¹ Robert Ludbrook “New Zealand’s Obligations Under International Law: What Influence Have They Had on Our Youth Justice System?” in Maxwell (ed) above n 16, at 93.

⁶² CYPF Act 1989, ss 4, 5, 6. See Appendix 1

⁶³ *Ibid.*

⁶⁴ *Ibid.*, ss 283 (e) and (f), 278, 4, 5, 208.

A The Objects of the Act⁶⁵

The objects of the Act are an example of “indirect” parental responsibility. Section 4 requires that the interests of the child, young person and their families are promoted.⁶⁶ More specifically, parents are to be assisted with discharging their responsibilities.⁶⁷ No sanction is imposed for omitting to carry out parental responsibilities. However the implication is that where parents are able to successfully perform their role, this will have a positive effect on the lives and actions of their children. To take the analysis further, the objects require parents to exercise responsibility, yet at the same time recognising that some parents need assistance in fulfilling their role.

B Section 5 Principles⁶⁸

Section 5 governs the application of the Act as a whole, including Part 4 (Youth Justice). Although Part 4 has a specified set of principles,⁶⁹ these are subject to those listed in the general principles. In particular s 5 requires that where possible, the support of the parent should be sought out in regard to the exercise or proposed exercise of any power under the Act.⁷⁰ This stresses the ability of parents to play a fundamental role in the solution to offending behaviours, by supporting their child to perform tasks or refrain from particular activities as ordered by the judge. As such it acts as an empowering mechanism, which accordingly is less likely to create resentment on the part of parent.⁷¹

The combination of the objects and principles of the Act emphasise the need to support and collaborate with parents. In order to achieve this programmes and interventions must be based on the most up to date evidence indicating effective responses to the challenges faced by each individual, high-need, family. Where programmes are not able to do this, regardless of the best intentions, the parents most in need of urgent assistance are not catered for, thus their “best interests” are not protected. If a parent is not receiving appropriate assistance the

⁶⁵ See Appendix 1.

⁶⁶ Ibid, s 4.

⁶⁷ Ibid, s 4(b).

⁶⁸ See Appendix 1.

⁶⁹ CYPF Act 1989, s 208. See below.

⁷⁰ Ibid, s 5(e)(i).

⁷¹ The empowerment of a parent is a fundamental factor in addressing any parenting issues. Where a parent feels empowered and supported they are more likely to support an action plan. Interview with the Dunedin Child, Youth and Family Youth Justice Team (the author, Youth Justice House “Will Street,” Tuesday 20th September).

chances of them being able to helpfully support any orders placed on their child are decreased.

C Section 208 Principles⁷²

The principles outlined in s 208 are specific to the Youth Justice part of the Act.⁷³ As such they are of particular importance in ascertaining the extent of the emphasis placed on parental responsibility in the decisions of the Court.⁷⁴ In particular, s 208 requires that any measures for dealing with offending should be designed to strengthen the family group concerned and foster their ability to develop their own means of addressing the offending.⁷⁵

This is not an example of “direct” parental responsibility. Nevertheless the parent or guardian is certainly a significant part of the family group. As with section 5, the focus is placed on the ability of the parents (as a crucial element of the wider group) to become involved in resolving the issues that have resulted in proceedings under the Act.⁷⁶

D Family Group Conference (“FGC”)

The FGC is the “statutory decision making forum in which the child or young person, their family, state officials and possibly the victim of the offence meet under the auspices of Child, Youth and Family to decide on a plan to deal with [offending behaviour].”⁷⁷ It “lies at the heart of New Zealand procedures” by playing a fundamental role in the decision making surrounding the future of the child or young person involved.⁷⁸ Judges will almost always follow the recommendations of the FGC plan, as it is the social worker, rather than the judge, who has spent time with the family and discussed with them the best options moving forward.⁷⁹

⁷² See Appendix 1.

⁷³ CYPF Act 1989, Part 4.

⁷⁴ Ibid, s 208.

⁷⁵ Ibid, s 208(c).

⁷⁶ The decision of legislators not to impose fines for non-compliance with PEPO, but provide for the initiation of care and protection proceedings pursuant to s 297A, is consistent with this principle, it does not add tension to the family by creating further financial stress, and it provides for the wider family group to address the issue. See Chapter Three.

⁷⁷ Nessa Lynch, “Rights of the Young Person in the New Zealand Youth Justice Family Group Conference” (PHD Thesis, University of Otago, 2008), at 92.

⁷⁸ Gabrielle Maxwell and others *Achieving Effective Outcomes in Youth Justice: final report* (Ministry of Social Development, Wellington, 2004), at 17.

⁷⁹ The Judge is required to consider the recommendations pursuant to s 279. This demonstrates the centrality of social workers in ensuring that a parenting education programme is considered and encouraged at the FGC where it may be appropriate. Where a parent refuses to attend voluntarily it is fundamental that a

An FGC can be convened in a series of instances; those in relation to the Youth Court⁸⁰ are:⁸¹

*1 Intention to Charge FGC*⁸²

This FGC occurs as a result of offending for which the police intend to lay charges. If the FGC can come up with a satisfactory plan, which is complied with, the police will agree not to charge the young person.

2 Court Referred FGC

This occurs after a charge has been laid, regardless of whether the child or young person denies or does not deny the charge. Both situations involve the Youth Court Judge adjourning proceedings so that a FGC can be held.

(a) Charge not denied⁸³

If a charge is not-denied the Court is required to adjourn the case for the purposes of holding a FGC. The result of the FGC will be recommendations to the Youth Court on the appropriate actions and sanctions moving forward.

(b) Charge denied⁸⁴

The FGC occurs once a defended hearing has taken place in the Youth Court and been proven. At this point the Judge must adjourn the proceedings to allow for a FGC to decide how to deal with the offending of the child or young person and then make recommendations.

3 The Centrality of the FGC in Parental Responsibility

The FGC provides a forum for the wider family/whanau to question parents on their approaches to parenting, in essence holding them accountable, but doing so in a more supportive and less intimidating environment than the court-room.⁸⁵ As a result of the

recommendation for an order is provided in the FGC plan. See Chapter Three for a discussion of the issues with allowing the social worker to have the final word over whether a parenting education programme is appropriate.

⁸⁰ As opposed to the Family Court.

⁸¹ Lynch, above n 77, at 92 -96. Note that the Youth Court Judge is not to make any order unless a FGC has been held (s 281) and has the residual discretion to order a FGC at any point in the proceedings (s 281B).

⁸² CYPF Act 1989, s 245.

⁸³ Ibid, ss 258(d) and 259(1).

⁸⁴ Ibid, ss 247(e) and 258(d).

⁸⁵ B J Brown and F W M McElrea (ed), *The Youth Court in New Zealand: A New Model of Justice: four papers* (Legal Research Foundation, Auckland, 1993) at 6. Where a group decision is made that a parent should attend parenting education this will be recorded along with all other decisions. This is the FGC plan and is binding once all present at the FGC have agreed to the terms. Therefore any who attended the conference will be provided with a plan, and will be aware of a recommendation to order a PEPO if they do not agree to attend

Amendment Act, FGC's are now required to consider recommending a parent attend a parenting education programme.⁸⁶ Consequently additional scrutiny will be placed on the parent; whereas in the past the inspection of the parents occurred more as a coincidence.

If the agreement of a parent can be achieved, there is no need for a PEPO. Thus the concern of having the order documented on the child or young person's record is removed.⁸⁷ It is through the FGC that a number of parenting education referrals have been made, this is demonstrative of both social workers and judges' determination to ensure that the process avoids the formal order.⁸⁸

Also positive is the recent agreement to extend funding to FGC referred parents.⁸⁹ Funding voluntary attendance removes any punitive element from the referral to parenting education. In addition it removes financial obstacles that may have led to resentment, and continues the theme of supporting parents in their relationships with children, and assisting them to take responsibility. The funding also allows for a referral in the first instance of trouble, before recidivism creeps in, and the need arises to make a PEPO.⁹⁰ The sooner the parent is able to enter a programme, the better the results.⁹¹

voluntarily. There is no provision relating to providing this information to a parent who does not attend the FGC, see Maxwell, *Achieving Effective Outcomes in Youth Justice*, above n 78, at 19.

⁸⁶ CYPF Act 1989, s 259A. Note that s 270 provides for a FGC to reconvene. As this new conference would have all of its original options available to it, it may be presumed that where a parent has not complied with the FGC plan to attend parent education, the FGC may decide that the child or young person is in need of care and protection, consequently the FGC is deemed to be one under Part 2 of the Act. This is a process not outlined by the statute but does appear to be the logical process if non-compliance is an issue. Such a process is very similar to that prescribed by the Act where attendance at parenting education programmes is ordered by the Youth Court, see Chapter Three.

⁸⁷ This concern is explained in Chapter Three, essentially the placement of the PEPO as a Group Three response in s 283 means that it will be recorded on the child or young person's criminal record, and cannot be ordered in conjunction with a s 282 discharge (this combination can only occur with s 283 (e) – (j), see s 282(3)).

⁸⁸ At present this is the best use of the PEPO based on the injustices of recording it against the child or young person, and not having the ability to order it in conjunction with a s 282 discharge. However if the PEPO is to develop effectively it must be utilised, and have results recorded, thus it is imperative that these drafting issues are resolved so that social workers and judges do not have to avoid recommending and ordering the PEPO at all costs. See Chapters Three and Five.

⁸⁹ Interview with Dunedin Child, Youth and Family Youth Justice Team, above n 71.

⁹⁰ Email from Stephen Hill, Supervisor Dunedin Child, Youth and Family Youth Justice Team, in response to questions via email as to funding for voluntary attendance at a parenting education programme (23 September 2011).

⁹¹ Email from Sue Whyte, Catholic Social Services ("CSS") programme facilitator, in response to questions asked via email regarding the CSS parenting education programme (7 October 2011). See also Judge Becroft, "Are There Lessons to Be Learnt from the Youth Justice System?" above n 59, at 32; and Kiro, above n 16, at 18 – 19. The FGC has been utilised by one Dunedin Youth Justice Social Worker twice since the Amendments to achieve voluntary attendance parenting education programme (Interview with the Dunedin Child, Youth and Family Youth Justice Team, above n 71). Regardless of some resistance at the outset both parents have reported enthusiastically about the process and the positive impact on the relationship with their child. A similar response was found in England and Wales with parents who displayed initial hostility to attending a parenting education

The use of FGC as the predominant avenue for accessing parenting education will result in far fewer orders being made. Pursuant to s 320 of the Act, any PEPO must be reported on once concluded in respect to the effect on the parent, child or young person concerned, and any other children in the parent's care. This will provide evidence for improvements to be made within the parenting education services. Yet if the majority of referrals are coming from a FGC, this requirement to report on effectiveness will not be triggered. Consequently the ability to develop and ensure the services provided are of the utmost standard will be based on very little evidence over a far greater time than if the predominant avenue was through PEPOs, or the FGC referrals were included in the s 320 requirements.⁹²

E Attendance of Parent required at Court

The first example of "direct" parental responsibility is the power of the judge to summon the parent of the child to Court.⁹³ As pointed out by Judge Becroft, it is vital that the parent be present for the sake of supporting their child, but also so that they can take a meaningful part in the process.⁹⁴ This provision is not often required, as most young offenders are accompanied voluntarily.⁹⁵ However where a parent has not attended, and has no clear reason for this, the order may be utilised.⁹⁶ This provision goes to the heart of the Act by ensuring that every effort is made to have the parent involved in the youth justice process.

The principles and objects of the Act point toward the importance of family involvement in decision making processes regarding the child or young person, but also in the rehabilitation of the family as a whole. By requiring a parent to attend court the judge is able to facilitate communication and accountability between the families and discover the best option moving forward with regard to the wishes of the whole family.

This section is not simply based on assisting the families to strengthen and support each other. A punitive element is available where the order alone is not sufficient to gain the cooperation of the parent. Non-compliance can result in a parent being liable for arrest, and

programme; however this attitude had changed to one of positivity at the end of the sessions. See Ghate, above n 19, at 36 – 39. It must be noted that in Dunedin in both instances the children were first time offenders.

⁹² See Chapter Five for further discussion.

⁹³ CYPF Act 1989, s 278.

⁹⁴ Interview with Judge Becroft, above n 1.

⁹⁵ The Ministry of Justice Data Warehouse has two recorded instances in which a charge has been laid under s 278, one in 1995 and one in 1999. However both of these were withdrawn, thus to date no one has been subject to the fine on summary conviction. Email from Sarah Davey, Data Analyst, Justice Sector Strategy, in response to statistical queries (30 September 2011).

⁹⁶ Interview with Judge Becroft, above n 1.

can be fined up to \$1000 on a summary conviction.⁹⁷ Thus s 278 provides an example of a combined supportive/punitive approach to parental responsibility. The initial requirement of attendance can be seen as supporting the best interests of both parent and child to be involved in the process together. However as the child's best interests are paramount, a sanction is available to ensure that a parent cannot simply walk away from their responsibilities.⁹⁸

F Financial Responsibility⁹⁹

“Direct” responsibility is also exemplified by the Court’s discretion to order payment of reparation for property loss and emotional harm to victims, or contribute to their legal costs, upon the parent of the young offender.¹⁰⁰ Reparation must be limited to direct loss as a result of the offence.¹⁰¹ Where it is imposed on a parent; the parent must first have the opportunity to make representations to the Court.¹⁰² The Court has the discretion over the amount to be paid, which is a far broader power than that enjoyed by the English Youth Court equivalent which is limited to a maximum of £1000.¹⁰³

The discretionary element is a common distinguishing feature between the youth justice systems of New Zealand and England. It allows the New Zealand judge to take into account the social worker’s reports and the plans from the FGCs. It also provides the opportunity to the young person and parent to express their opinions on where the financial liability should fall. Nevertheless when faced with a resistant parent, the judge is able to order payment by them, effectively forcing home the accountability, and ordering it in whatever quantum deemed appropriate.

⁹⁷ CYPF Act 1989, s 278.

⁹⁸ CYPF Act 1989, s 6.

⁹⁹ See Appendix 1. Note that this dissertation only considers parental responsibility in the criminal sense; parents may also be civilly liable to third parties for damage caused by their child. “There is no general duty arising simply from parenthood to prevent a child from causing damage to third parties and a parent is not vicariously liable for his child.” However where a parent is aware of a propensity of a child to cause harm, and does not take reasonable care in warning the child against causing the harm, they may be liable. For example where a child was allowed to buy a shotgun by his father then accidentally shot another child, the father was liable because he had not forbidden his son to use it, or instructed his son in safe use of it (*Newton v Ederly* [1959] 1 W.L.R 1031), see *Clerk and Lindsell on Torts* (London, Sweet & Maxwell, 19th ed, ed Anthony Dugdale, 2006), at 8—173, p 513. This is supported by Stephen Todd (ed) *The Law of Torts in New Zealand* (5th ed, Brookers, Wellington, 2009), at 5.6.07. Furthermore in *A v Roman Catholic Archdiocese of Wellington* [2008] 3 NZLR 289 (CA), William Young P stated that damages would not be awarded for “bad parenting” due to the legal importance of parental autonomy, at [95].

¹⁰⁰ CYPF Act 1989, s 283 (e) and (f). Provided the young offender is under the age of 16 years.

¹⁰¹ CYPF Act 1989, s 287. Note that pursuant to the CYPF Act there is no report required as to the quantum of damages appropriate in the case. Yet under the Sentencing Act all adult criminal reparation orders will be furnished with such a report, by way of Sentencing Act 2000, s 33.

¹⁰² CYPF Act 1989, s 288.

¹⁰³ Powers of the Criminal Courts (Sentencing) Act 2000 (UK), s 135(1), see Chapter Four.

Pursuant to s 208 of the Act, any measures imposed to deal with the offending should have regard to the interests of the victim of the offence and the impact on them.¹⁰⁴ Thus s 283 (e) and (f) serve the purpose of ensuring that damage or loss suffered is addressed. In that sense it is less punitive than it appears at first glance. Nevertheless where a parent is made liable for the reparation or costs caused by their child's offending this will most likely be perceived by them as a punishment, as one Dunedin social worker stated "it hits people when it is in the pocket."¹⁰⁵ Accordingly, regardless of the intent of the provision, it may still be deemed punitive based on a subjective reaction to the order as experienced by a parent.

Judge Becroft has indicated that he utilises this provision in approximately 20-25% of cases that come before him.¹⁰⁶ Furthermore the Judge believes this to be commonplace throughout the country.¹⁰⁷ In respect to reparation payments, there have been 19,317 orders made between 1992 and 2011.¹⁰⁸ The Ministry of Justice data does not specify when the payment of the order has been directed at the parent, however if Judge Becroft's approach is an accurate indication, there would be approximately 4,800 orders made against parents in this period of time.

G Conditions of Bail

A Court may decide to release a child or young person appearing before them on bail.¹⁰⁹ The Court may impose conditions on this bail such as the child may not be absent from home at certain times, or engage in particular activities without the consent of the parent.¹¹⁰ This provision assumes a certain level of parental responsibility. The presumption is that the parents are willing and *able* to ensure their child's compliance with the conditions, and thus prevent the child or young person entering a situation deemed by the Court to be likely to induce further offending.

¹⁰⁴ CYPF Act, s 208.

¹⁰⁵ Interview with Dunedin Child, Youth and Family Youth Justice Team, above n 71.

¹⁰⁶ Interview with Judge Becroft, above n 1.

¹⁰⁷ Ibid.

¹⁰⁸ Note, however, that the number of people who have been the subject of these orders between the same years is 5,977. Thus there are a number of people who have had multiple reparation orders made against them. In terms of costs orders under s 283(e), there have been 1,721 orders made between 1992 and 2010, in respect of 1,474 people, once again the number of these who are parents is not available. (Email from Sarah Davey, above n 95).

¹⁰⁹ CYPF Act 1989, s 238(1)(b).

¹¹⁰ CYPF Act 1989, s 240.

H Concluding comment

As evidenced by this discussion, the CYPF Act has, from the outset, emphasised parental responsibility for youth offending both “directly” and “indirectly.” Thus the addition of the PEPO cannot be perceived as a sudden shift in youth justice policy. Nevertheless it certainly illustrates a new level of accountability and State intrusion into the private home,¹¹¹ and the parenting skills of those in charge of serious young offenders.¹¹² The provisions considered in this chapter are consistent with the objects and principles of the CYPF Act, thus it is imperative that the PEPO continues this trend. However, as it stands, the provision acts as a punishment, forcing attendance at a programme which cannot provide sufficient assistance for the wide-ranging issues experienced by the families, placing the blame, without offering a system to improve.¹¹³

¹¹¹ Gurney, above n 38, at 471.

¹¹² In 2010/2011 (until June), of 39,000 children and young person’s apprehended, only 611 made it to the court-room (of these 28 were transferred to the District Court), These figures demonstrate that only the most serious of the young people who get on the wrong side of the law are becoming subject to court orders. See “Fresh Start Reforms in Operation Report,” at <http://www.msd.govt.nz/about-msd-and-our-work/newsroom/media-releases/2011/fresh-start-reforms-in-operation.html>, at 2.

¹¹³ This assertion is based on the fact that current education programmes are loosely based on a model of “parent effectiveness training” which is aimed at parents of “normal” teenage behaviour, and parents of children and young people with behavioural problems. They focus on communication, and their effectiveness is mainly centred upon increasing the parents knowledge, see Patricia Moran, Deborah Ghate and Amelia van der Merwe *What Works in Parenting Support? A Review of the International Evidence* (prepared for the Department for Education and Skills, United Kingdom, 2004), at 151 - 152. See also David M Fergusson “Prevention, Treatment and Management of Conduct Problems in Childhood and Adolescence” in Gabrielle Maxwell (ed), above n 16, 103 at 105.

III The Amendment Act and the introduction of the PEPO

In 2005 Principal Youth Court Judge Andrew Becroft spoke at the Commonwealth Law Conference in London. Upon his return Judge Becroft outlined ten ideas and innovations, observed in the English Youth Justice system, which the Judge believed New Zealand could learn from. Among these were the Parenting Orders issued by the English Youth Court to direct parents to attend counselling to improve their parenting skills.¹¹⁴

Since then the Government has introduced and implemented its policy amendment entitled the “Fresh Start Reforms” which are aimed at protecting New Zealand communities, holding children and young people accountable for their offending, and addressing the underlying causes of their offending.¹¹⁵ The Ministry of Justice stated that the reforms were designed with a view to “what works to stop offending and reoffending by our most at risk children and young people.”¹¹⁶ The rationale behind their introduction was that:¹¹⁷

Providing parents of serious young offenders with training and support in parenting skills, and information about the diagnosis and treatment of key risk factors (such as drug involvement, school failure, anti-social peers and abuse at home) can work to reduce youth offending. Making attendance compulsory also ensures that parents are held to account for their role in their children's offending.

It is clear from this statement that the intention behind the PEPO was sound. However while outlining that parents must be provided with training and support and be given information about other key risk factors, the Amendments did nothing to ensure that this would occur. Therein lies the issue. Advice that new programmes ought to be “piloted and shown to be effective in sound research studies before being rolled out across New Zealand” was disregarded.¹¹⁸ No specific programmes were developed to meet the needs of the key risk factors, and no individuals trained to ensure that this objective would be met.¹¹⁹

¹¹⁴ Judge Becroft “Reflections on the English Youth Justice System” *Court in the Act* 2005 Issue 19, see <www.justice.govt.nz/courts/youth/publications-and-media/principal-youth-court-newsletter/issue-19#9> See Chapter Four for a detailed analysis of these orders and contracts.

¹¹⁵ “Fresh Start Reforms in Operation” above n 111, at 4.

¹¹⁶ *Ibid.*, at 1.

¹¹⁷ “Ministry of Social Development Initial Briefing to the Social Services Committee on the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill,” see www.parliament.nz/en-NZ/PB/SC/Documents/Advice/, at 18.

¹¹⁸ Judge Becroft “Are There Lessons to Be Learnt from the Youth Justice System?” above n 59, at 33.

¹¹⁹ A concern raised by the Aotearoa/New Zealand Social Workers Association “Submission to the Children, Youth Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill 2009” at 12.

The Fresh Start Reforms as a total package will cost \$72.4 million over four years.¹²⁰ Per year the cost of parenting education programme orders, mentoring orders, and alcohol and drug rehabilitation orders is set at \$9.4 million.¹²¹ Of this there have been 700 places budgeted for parents attending education programmes.¹²² To date Judge Becroft has described the introduction of parenting orders as a “failure.”¹²³ Yet this could have been pre-empted by addressing obvious issues raised during the Select Committee process. Irrespective of this the legislation is now in force, with the operative provision being s 283(ja).¹²⁴ In the words of Judge Becroft; “It has been passed and now the Youth Court must make it work.”¹²⁵

A number of obstacles must be overcome in order for a judge to implement a PEPO. The following outlines this procedure:

A Step One – the FGC

A FGC is convened which is required to discuss the possibility of the parent attending an education programme.¹²⁶ Where a parent refuses to attend a parenting education programme on a voluntary basis, the social worker may make a recommendation to the Court that a PEPO be made within their s 334 report. This report must be accompanied by a plan of how it will be implemented.¹²⁷

This initial requirement of a report and plan exemplifies the first substantial obstacle in making a PEPO. The Court has no power to make the order without this recommendation.¹²⁸ The recommendation cannot be obtained orally in Court, thus even where a judge feels it may be an appropriate option, this cannot be investigated at the time.¹²⁹ Nevertheless the positive aspect of this requirement must be noted, in that it is representative of the centrality of the FGC in dealing with youth offending.

FGC attendees and the social worker are the people who have had contact with the family and child or young person. They have had the opportunity to look at the appropriate options

¹²⁰“Fresh Start Reforms Factsheet” at www.parliament.nz/en-NZ/PB/SC/Documents/Advice/d/5/5/49SCSS_ADV_00DBHOH_BILL9041_1_A17326-Fresh-Start-Package-for-Young.

¹²¹ Ibid.

¹²² Ibid.

¹²³ Interview with Judge Becroft, above n 1.

¹²⁴ See Appendix 1.

¹²⁵ Interview with Judge Becroft, above n 1.

¹²⁶ CYPF Act 1989, s 259A. See Chapter Two for discussion.

¹²⁷ Ibid, s 335.

¹²⁸ Ibid, s 334(2).

¹²⁹ Ibid, s 337.

moving forward with the family. If they do not feel that a PEPO is required, they will not recommend it. It must be trusted that the social worker will bring this opportunity to the consciousness of the FGC.¹³⁰ This approach goes to the heart of the principles and objects of the Act which aim to give the entire family/whanau the opportunity to be involved in the decision making process, and have their perspective taken into account.¹³¹

The centrality of the social worker's report and recommendation results in the social worker effectively controlling the implementation of the order. This is a sensible approach as the social worker facilitates the attendance at any programmes and is well informed in terms of insight into the family situation. Yet there is concern that cases may arise in which the philosophical resistance of some social workers to the PEPO will prevent recommendations in situations where it may be beneficial.¹³²

An example of this resistance is evidenced by the Aotearoa/New Zealand Association of Social Workers submission on the Amendment Bill to the Select Committee:¹³³

I can see no point in putting parents into parenting programmes. This has been done before and it has proven extremely difficult to get the parent to even attend, let alone change the way they parent their child. Most of these parents have been badly parented themselves, consequentially, intellectually and emotionally, they will never be able to parent much better than they are already. A parent struggling financially may need a job more than a parenting programme

This perspective is not representative of the Association as whole; rather it was one of many statements made by its members.¹³⁴ Nevertheless it is illustrative of the fact that there is certainly one, and likely a number, of social workers who see no merit in the programmes, and are thus unlikely to suggest them as an option to the families of young offenders.

Judge Becroft commented upon a situation where the resistance of a social worker to encourage parenting education led to a family missing out.¹³⁵ The Judge inquired as to why a

¹³⁰ Regardless of the statutory requirement to consider parenting education, there is at present no way of ensuring that this occurs at every FGC, an issue raised in Interview with Judge O'Driscoll, above n 16.

¹³¹ Ibid. This was also highlighted by the Advisory Group on Conduct Problems in "Submission to the Children, Youth Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill 2009" at 7.

¹³² Interview with Judge Becroft, above n 1.

¹³³ Aotearoa/New Zealand Social Workers Association, above n 119, at 12.

¹³⁴ Members of the Dunedin CYF YJ team were shocked by this perspective, and felt that it was overly pessimistic. Yet they also agreed that in some cases the parents are more in need of employment than parenting education, in Interview with Dunedin Child, Youth and Family Youth Justice Team, above n 71.

¹³⁵ In that situation the young lady before the Court was involved with serious offending who was going to have orders made against her. She had younger siblings who the Judge felt may benefit from the order. However it

PEPO recommendation was not made, the response was that the parent was not interested.¹³⁶ It is imperative that social workers endeavour to gain the acquiescence of the parent, and where this is not possible a PEPO recommendation should be made. This ensures that the best interests of younger siblings, if not the offender in question, are paramount.¹³⁷ It is for this reason alone that, provided appropriate programmes exist, it is argued judges should have the discretion to impose the order.¹³⁸

In the vast majority of cases judges will follow the recommendations of the social worker.¹³⁹ Therefore, introducing a discretionary element would not result in over-use of the PEPO, especially as judges consider the order to be an absolute last resort if every attempt to obtain the agreement of the parent has failed.¹⁴⁰ Yet if the discretion was available it would allow the judge to catch any families where a philosophical resistance or under-emphasis of the benefits on the part of the social worker has resulted in parents missing out on funded parenting education assistance. Such a situation would not conform with the paramountcy of the child, or the best interests of assisting the family. Consequently as it stands, leaving all power to the social workers, s 283(ja) is contrary to the purpose of the Act.

1 Resistance of the parent

Demonstrated by the anecdote provided by Judge Becroft above, parental resistance to attending parenting education has the potential to be a significant obstacle for the PEPO. The coercive nature of the order was raised by a number of submissions to the Select Committee.¹⁴¹ However there is some evidence from England and Wales,¹⁴² and Catholic

was not recommended on the basis that when asked whether they were interested, the parent was resistant, so the social worker left it alone. See Interview with Judge Becroft, above n 1.

¹³⁶ Interview with Judge Becroft, above n 1.

¹³⁷ See discussion Resistance of the Parent. See also Chapter 5 for a discussion of the benefit of making use of existing parenting education programmes for younger children, and introducing a branch of more intensive programmes for the parents of serious young offenders.

¹³⁸ Or at the very least be able to challenge the decision not to make the order in Court on the day of proceedings. One issue with allowing the judge discretion, indicated by Judge O’Driscoll (Interview with Judge O’Driscoll, above 16), was the fact that the judges do not know the availability details of the programmes. However it is proposed that this issue could be resolved by allowing the Judge to ask for an oral recommendation, or even adjourn proceedings for the time it would take to discover availability. See Chapter Five.

¹³⁹ Interview with Judge Becroft, above n 1, and Interview with Judge O’Driscoll, above n 16.

¹⁴⁰ Ibid.

¹⁴¹ Advisory Group on Conduct Problems, above n 131, at 7; Barnados New Zealand “Submission to the Children, Youth Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill 2009” at 4.9; Gabrielle Maxwell “Submission to the Children, Youth Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill 2009” at 4.

¹⁴² Ghate, above n 19, at 36 – 39. Also Email from Sue Whyte, above n 91.

Social Services that once a parent attends the programme, initial resistance does not prevent a positive outcome.¹⁴³

B Step Two – consent of the provider

Following the social worker report and plan the judge may order attendance at a parenting education programme for a period no longer than six months.¹⁴⁴ However this may only occur where the programme provider has first agreed to provide the programme to the specific individual/s in question.¹⁴⁵ Once the consent of the provider has been obtained the Court may impose any other conditions upon the order as it sees fit.¹⁴⁶ The parent must also have been made aware of the intention to make the order.¹⁴⁷

The issue here is the need to gain the consent of the provider. The order has not been sufficiently utilised to ascertain whether this is truly an obstacle.¹⁴⁸ Nevertheless there is certainly room to argue that if a provider did not feel equipped to deal with the particular situation of a family, the parent/s would miss out on the programme.¹⁴⁹

This introduces a further fundamental oversight in the legislation. The parenting education programme providers vary in the content and approaches of their parental education.¹⁵⁰ Furthermore no new programmes were introduced as a result of the Amendments.¹⁵¹ Yet the families targeted by the reforms will frequently have extremely high-needs, involving issues such as domestic violence and substance abuse.¹⁵² In developing the legislation it is nonsensical that no effort was made to formulate a specific, evidence-based, programme

¹⁴³ Email from Sue Whyte, above n 91.

¹⁴⁴ Ibid, s 283(ja).

¹⁴⁵ Ibid, s 286A(2).

¹⁴⁶ Ibid, s 286A(3). In the Northern Territory of Australia one of the additional conditions on a parenting order is the requirement to be tested and treated for alcohol or drug abuse. As the PEPO does not specify what such conditions may be, this approach to treating another issue in tandem with the parenting is an approach that may be incorporated into the PEPO where the Judge sees fit, see Youth Justice Act 2005 (NT), s 133. See also Chapter 5. .

¹⁴⁷ CYPF Act 1989, s 288.

¹⁴⁸ Only 7 PEPO have been made from November 2010 until September 2011, in Email from Sarah Davey, above n 95.

¹⁴⁹ The inability to deal with the seriousness of issues faced by some parents is a sentiment that has been expressed to Dunedin Child, Youth and Family Youth Justice social workers, Interview, above n 71.

¹⁵⁰ Ibid. See Part C of this Chapter for an example of one providers approach.

¹⁵¹ Interview with Dunedin Child, Youth and Family Youth Justice Team, above n 71.

¹⁵² Cindy Kiro “Children, Parenting and Education: Addressing the causes of offending” in Gabrielle Maxwell (ed) *Addressing the Causes of Offending: What is the Evidence?* (Institute of Policy Studies, Victoria University, Wellington, 2009) 13 at 14. A number of these criteria were also mentioned by Judge Becroft who discussed the families involved as being “highly challenging, abusive and transient” (in Interview with Judge Becroft, above n 1.

designed to be effective and take account of high-need families with various issues leading to the offending.¹⁵³

The obvious question is whether the current programmes are capable of dealing with the families targeted. One Dunedin Child, youth and family Youth Justice social worker mentioned recent meeting of various agencies involved in facilitating parenting education, where it was indicated that current programmes are not equipped to deal with parents of serious offenders.¹⁵⁴ Instead they are aimed at assisting with “normal” teenage behaviour.¹⁵⁵

If parents of serious young offenders are to be sent to parenting education programmes, it is fundamental that the programme is capable of educating them in dealing with serious misbehaviour and offending. Existing programmes focus on positive communication and setting boundaries.¹⁵⁶ This is a start, and of course may assist in developing a more positive relationship between the parent and young person.¹⁵⁷ However, the fact remains that for serious young offenders, a basic parental education programme is unlikely to make an impact on the range of issues leading to reoffending.¹⁵⁸

C An Example of a Parenting Education Programme¹⁵⁹

Ascertaining the approved providers of parenting education programmes nationwide was problematic. Nevertheless the list of preferred providers was eventually received. A number of the providers said to offer parenting education on the list have no information as to any

¹⁵³ This point is especially pertinent based on the number of submissions that raised this as an issue, see: Advisory Group on Conduct Problems, above n 131, at 6 – 7; Mahia Mai A Whai Tara Trust “Submission to the Children, Youth Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill 2009” at 5; Rethinking Crime and Punishment “Submission to the Children, Youth Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill 2009” at 24; Southland Youth Offending Team “Submission to the Children, Youth Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill 2009” at 5.2 – 5.3; Youth Horizons “Submission to the Children, Youth Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill 2009” at 3 – 5. See discussion of Functional Family Therapy and Multi-systemic Therapy below, and at Chapter 5.

¹⁵⁴ Interview with Child, Youth and Family Youth Justice Team, above n 71.

¹⁵⁵ Ibid. See also above, n 113.

¹⁵⁶ See for example www.theparentingplace.co.nz which provides a programme to Catholic Social Services, Email from Sue Whyte, above n 91.

¹⁵⁷ Along with benefiting any younger siblings of the offender, see Interview with Judge Becroft, above n 1.

¹⁵⁸ Interview with Judge O’Driscoll, above n 16. See also Advisory Group on Conduct Problems *Best Practice Report* (Ministry of Social Development, Wellington, 2009) at 20 - 26.

¹⁵⁹ For another example see Kendra Beri “Parenting Support as a Youth Justice initiative – a Sydenham Youth Justice example” in *Court in the Act* (Youth Court of New Zealand, 2010) at 6. It describes the Parenting Support Programme in Sydenham, Christchurch. This provides a total of 12 hours assistance, which can be at the home or a community venue. Only parents who agree to the referral are accepted. It found that parents were suffering with a number of issues beyond parenting. The programme was not able to determine whether there was any effect in regard to reducing the children and young people offending.

such programmes on their websites. Fortunately the Child, Youth and Family Dunedin Youth Justice Team was able to direct the writer to the two providers they recommend, one of whom (Mirror Counselling Services) is listed as a alcohol and drug programme provider, the other is not listed (Catholic Social Services).

Catholic Social Services offers the “Parents Inc toolbox” programme.¹⁶⁰ This offers different programmes for 0-6 years, 6-12 years, and “tweens and teens” for 12+.¹⁶¹ Sue Whyte, a programme facilitator, identified that the aim was to get parents started at the first course, and have them continue throughout the age groups as their child matures.¹⁶² The programme was “definitely better directed at an earlier intervention stage” based on the theory that the ambulance is better placed at the top of the cliff than the bottom.¹⁶³ This illustrates the thesis point; parenting education in isolation is best suited to early intervention. As the child develops and offending begins, simply sending a parent to, in this programme six sessions, cannot hope to address the plethora of issues within the family.

Based on the session outlines, it is difficult to imagine that a session based on “what is my teens love language?” or “should I expect my teen to do household chores?” or even “what about sex and dating?” can even scratch the surface for high-need parents.¹⁶⁴ On a positive note Catholic Social Services provide childcare, parking and courses in morning, afternoon and evening, and are also able to work with families within the home.¹⁶⁵ They also make an effort to provide accessible material for different cultures and literacy levels.¹⁶⁶

Nevertheless the fact remains that this content may not be best directed at parents of serious young offenders. Judge Becroft felt that parenting education programmes were a “middle-class concept” and that “lecture styles” are not suited to high-need families.¹⁶⁷ The Judge emphasised the perspective that the PEPO are a good start, however the content of the

¹⁶⁰ See <www.theparentingplace.com>.

¹⁶¹ Ibid.

¹⁶² Email from Sue Whyte, above n 91.

¹⁶³ Ibid.

¹⁶⁴ See <www.theparentingplace.com> This is also reflected by both Judge O’Driscoll and Judge Becroft who believed that the PEPO were a start in the right direction, and able to assist younger siblings, however may not have a significant impact in terms of parenting of adolescent serious and recidivist offenders, see Interview with Judge Becroft, above n 1; and Interview with Judge O’Driscoll, above n 16. See also Interview with Dunedin Child, Youth and Family Youth Justice Team, above n 71.

¹⁶⁵ Email from Sue Whyte, above n 91.

¹⁶⁶ Ibid.

¹⁶⁷ Interview with Judge Becroft, above n 1.

programmes must take account of the particular needs of each family.¹⁶⁸ A Functional Family Therapy approach is proposed in Chapter 5 as the most effective way of ensuring this.

D Step Three and Bill of Rights implications

The Court must provide a written statement to any parent subject to a PEPO detailing the terms and conditions of the order, possible consequences for failing to comply, provisions for variation of the order and rights of appeal against the order.¹⁶⁹ This statement must be provided “as soon as is reasonably practicable.”¹⁷⁰

The imposition of criminal responsibility by way of a penalty on a parent as a result of a trial or sentencing of their child introduces potential issues regarding the right to a fair trial under the New Zealand Bill of Rights Act 1990 (“NZBORA”).¹⁷¹ While it is accepted that the ability of the parent to make representations to the Court, the right to appeal, and allowing for variations of the order all work to off-set this prima facie breach, it is nevertheless important to assess the rights implications. This discussion also relates to the awarding of financial responsibility for reparation and costs of the parent at the Courts discretion.¹⁷²

The House of Lords have commented in obiter that parenting orders do not breach a parent’s right to a fair trial, if based on the breach of rights criteria set out in *Engel v Netherlands (No 1)*.¹⁷³ Leng argues that this comment was based on another House of Lords decision involving a determination of whether Anti-Social Behaviour Orders (“ASBO”) constitute a criminal charge, in which case they require a separate trial.¹⁷⁴ It was held that they do not, in particular because they do not involve an imposition of an immediate penalty.¹⁷⁵ Leng continues that this is a significant distinguishing point in the case of parenting orders, which

¹⁶⁸ Ibid.

¹⁶⁹ CYPF Act 1989, s 297A(2).

¹⁷⁰ Ibid.

¹⁷¹ NZBORA, s 25. See also Roger Leng “Parental Responsibility for Juvenile Offending” in Rebecca Probert, Stephen Gilmore and Jonathan Herring (eds) *Responsible Parents and Parental Responsibility* (Hart Publishing, Portland (USA), 2009) 315 at 324.

¹⁷² CYPF Act 1989, s 283(e) and (f). See Chapter 2.

¹⁷³ *R(M) v Inner London Crown Court* [2003] (EWHC 301 Admin) and *Engel v Netherlands (No 1)* [1976] 1 EHR 647, as discussed in Leng, above n 171, at 325.

¹⁷⁴ ASBOs are governed by the Crime and Disorder Act 1998 (UK), s 1. These and provide for an order against any person over the age of 10 to stop behaviour that “caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself.”

¹⁷⁵ *Clingham v Royal Borough of Kensington and Chelsea; R v Crown Court at Manchester, ex p McCann* [2002] UKHL 39, as discussed in Leng, above n 171, at 325.

involve a “burdensome obligation to attend counselling” unlike an ASBO which only requires that a person refrain from certain behaviours.¹⁷⁶

If the imposition of a PEPO in New Zealand represents the imposition of criminal responsibility, and a penalty is imposed, the lack of a separate trial prima facie breaches the parent’s right to a fair trial. Even more convincing is the argument that parental liability to pay the reparation and costs awarded against their child may be a breach of s 25 of the NZBORA. However in order for an ascription of criminal responsibility there must be a penalty imposed. Financial liability is an evident penalty, thus the main issue arises as to the classification of the PEPO.

The Crown Law advice to the Attorney-General on this point stated that the order did not constitute a penalty; it did not substantiate this position in any way.¹⁷⁷ It is strongly argued that the concept of a “penalty” should be assessed subjectively, in order to account for the perspective of a parent in this situation. If ordered to attend a parenting education programme, the clear message is one’s parenting skills are inadequate. This is a personal affront (regardless of whether it is true) and is likely to be perceived by the parent as a punishment. Furthermore the parent may need to organise and pay for transport and childcare, and if employed, obtain leave.¹⁷⁸ Taking a subjective approach, the combination of these factors would be perceived as a penalty by a parent on a PEPO.¹⁷⁹

Furthermore the Crown Law advice indicated that there “is no penalty for non-compliance.”¹⁸⁰ This is a contentious point. The instigation of care and protection proceedings represents a “penalty” on the basis that the result of this may well be the removal of the child (and any other children)¹⁸¹ from the care of the parent. Judge Becroft indicated that while this may not initially seem like a sanction per se, the Judge has since recognised that for the families involved this is “scary” and a deterrent.¹⁸² The Judge drew the distinction

¹⁷⁶ Ibid, 324.

¹⁷⁷ Crown Law Advice to the Attorney-General, see <www.courts.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights> at [9].

¹⁷⁸ In England and Wales the ability of a programme to offer childcare and be easily and cheaply accessible were found to be key points in their success, see Ghate, above n 19, at 72. This is an approach taken by Catholic Social Services, Email from Sue Whyte, above n 91.

¹⁷⁹ It is thus important that were possible a provider offers child care and other assistance to remove the punitive element of attendance.

¹⁸⁰ Crown Law Advice, above n 177, at [9].

¹⁸¹ CYPF Act 1989, s 297A(4).

¹⁸² Interview with Judge Becroft, above n 1.

between most “middle-class” parents to whom this would simply feel like an unfounded threat; and the high-risk parents concerned, who realise the threat is real.¹⁸³

Proceeding upon the argument that PEPO, the non-compliance provision, and shifting the financial responsibility for reparation and costs to the parent, may all be conceived as “penalties” and thus prima facie breaching an individual’s right to a fair trial, the next question is whether the breach can be demonstrably justified in a free and democratic society.¹⁸⁴ It is here that the right to make representations to the court, and the right to appeal these orders become particularly relevant.

Any parent against whom an order is made has the right to make representation to the court.¹⁸⁵ This provision allows for a form of defence to a presumption (based on the social worker report) of incompetent parenting. Furthermore the representations may be made by a barrister or solicitor on behalf of the parent.¹⁸⁶ The English Court of Appeal overturned the imposition of a fine on a mother who managed to convince the Court that she had done all that was available to her to prevent the offending of her child.¹⁸⁷ Thus, it is probable that if faced with a convincing representation showing good parenting and no fault, a judge would be willing to reconsider the recommendation. This is further assisted by the fact that a parent has a right of appeal.

The best interests of the child and the public may also substantiate the position that the prima facie breach is demonstrably justifiable. In terms of the child the argument exists that any parenting assistance is better than no parenting assistance. The interests of the public in receiving reparation and having parents set clear boundaries for their children are considerable. Thus if this was ever challenged, it is probable that a Court would determine any potential breach is demonstrably justified under s 5 of the NZBORA.

Regardless of this conclusion, the NZBORA implication ought to have been addressed and considered in the passing of the Amendments. This oversight represents yet another example of lack of thought and research into the implementation of the Amendments. The current

¹⁸³ Ibid.

¹⁸⁴ Note that one must first interpret parliament’s intended meaning from the statute, however it is argued that the any interpretation involves some punitive element onto the parent, thus I will move directly to analyse whether such a breach is justified. The process of determining a breach of a right is set out by the majority in *R v Hansen* [2007] NZSC 7, at [89].

¹⁸⁵ CYPF Act 1989, s 330

¹⁸⁶ Ibid, s 330(2).

¹⁸⁷ *R v Sheffield Crown Court, ex p Clarkson* [1986] Cr App R (S) 454.

oversight represents a rights issue for parents.¹⁸⁸ Furthermore as the Amendments were largely directed at orders against children and young people, their rights and interests in evidence-based interventions are also not sufficiently protected.

E Step Four – Non-compliance

Non-compliance with a PEPO may result in the Court directing a FGC under Part 2 of the Act be convened for the purpose of considering the care and protection of every child or young person in the care of the non-compliant individual.¹⁸⁹ New Zealand does not impose fines for non-compliance, however it is argued that this provision in effect imposes a higher emotional tariff; the potential to lose the child or young person into State care. As outlined above the approach of threatening further FGC and care and protection proceedings does represent a penalty to these families.

Neither Judge Becroft nor Judge O’Driscoll felt that imposing a fine would be an appropriate mechanism for non-compliance in New Zealand.¹⁹⁰ Judge Becroft believed it would be imposing a criminal sanction without a charge which would be “conceptually difficult.”¹⁹¹ Judge O’Driscoll opined that many of the parents concerned would not be able to pay, or would “not care about unpaid fines.”¹⁹² Both of these perspectives have relevance, and to take the colonial approach of imprisoning non-paying parents would result in an inability to make any payments, and additional strife for the child and thus absolutely contradict the Act.

Interestingly a number of social workers interviewed felt that a fine for non-compliance would be a worthy consideration. While they agreed that some parents with a number of unpaid fines may not be fazed by another one, for most “it hits people when it’s in the pocket.”¹⁹³ As the social workers have daily interaction with these families, it is certainly arguable that they are the best informed, and thus their perspective must be taken into account.

¹⁸⁸ Or the young person if they are or are soon to be a parent.

¹⁸⁹ Ibid, s 297A(4). It is interesting to note that the care of all children involved is considered by this compliance approach. Rather than introducing the parenting education programme order to target the “1000 worst offenders,” this implies that the PEPO is in actual fact looking at the younger siblings of the offenders in the hopes of addressing the parenting which may lead them into a life of crime.

¹⁹⁰ In England and Wales the fine for non-compliance is summary conviction and fine of up to £1000, see Crime and Disorder Act 1998 (UK), s 9(7). See Chapter Four for discussion.

¹⁹¹ Interview with Judge Becroft, above n 1.

¹⁹² Interview with Judge O’Driscoll, above n 16.

¹⁹³ Interview with Dunedin Child, Youth and Family Youth Justice Team, above n 71.

The reasoning behind not imposing a fine for non-compliance is one of very few lessons learnt from the experience of England and Wales. Phil Dinham,¹⁹⁴ stated that:¹⁹⁵

In England and Wales the time taken for breach [proceedings] was considerable...orders had often expired by the time any action could be taken, making enforcement doubly difficult. We had a policy intent that parents who were reluctant to take up their responsibility should be held to account, but that the proper mechanism would be to convene a Care and Protection FGC

In the Northern Territory of Australia, parents can be required to contribute to the costs of the detention of their child.¹⁹⁶ For a non-compliant parent in New Zealand, the idea that they may be required to pay the State to care for the child or young person if they are removed through care and protection proceedings may act as an incentive to agree to give parenting education another attempt. This would be a punitive approach, yet if the threat of losing the child alone proves not to be an effective penalty (only time will tell), this may give the PEPO more “teeth,” while still avoiding a fine.

F Step Five – report of effectiveness

On the expiry of the order, a report must be provided to the Court detailing the effectiveness of the order.¹⁹⁷ The report must contain information regarding; the responses of the parent or guardian to the programme, responses of the young person in respect of whom the order was made and, where reasonably practicable to ascertain, the responses of every other child or young person affected by the order.¹⁹⁸ This report will also detail the compliance of the parent or guardian with the order.¹⁹⁹

¹⁹⁴ Manager of the Youth Policy Group, Ministry of Social Development.

¹⁹⁵ In relation to the Ghate Report, above n 19, which was taken into consideration in the policy drafting process, (Email with Phil Dinham, in response to questions regarding the evidence base for the PEPO, 24 August 2011). The fact that the report was taken into consideration was not mentioned in any Parliament documents until the release of the “Responses to Questions from the Social Services Committee” at 18-22 above n(at www.parliament.nz/en-NZ/PB/SC/Documents/Advice/> the correct link on the website is the “Courts/Various Programmes/Background Information tab). Thus is it of no wonder that a common concern raised by submissions to the Select Committee was the lack of evidence supporting the Amendments. In the case of the Ghate Report, the evidence was taken selectively; incorporating the positives, but largely over-looking the negatives, see Chapter Four.

¹⁹⁶ Youth Justice Act 2005 (NT), s 133.

¹⁹⁷ CYPF Act 1989, s 320(1A)

¹⁹⁸ Ibid, s 320(4). This focus on the other children in the parent’s care is an area in which the existing approach to parenting education has its greatest potential, see Chapter Five.

¹⁹⁹ Ibid, s 320(4)(c).

This requirement will provide evidence as to whether existing programmes are effective in dealing with the parents of New Zealand’s serious young offenders.²⁰⁰ Results will offer a foundation upon which to develop existing programmes, and introduce new ones. Integral to any research, however, is the need to record all FGC-referred parents’ experiences of the programmes, as opposed to solely Court-ordered attendance.²⁰¹ This is an area in which immediate amendment is required.

G Other obstacles to implementation or success

A series of other concerns were raised in the submission process that are worthy of discussion. These were; the placement of the order in the hierarchy of s 283 meaning that the order will go onto the child or young person’s criminal record,²⁰² a lack of evidence that this approach to parenting education is effective for serious young offenders,²⁰³ and problems surrounding availability of programmes especially in rural areas and for parents who wish to seek assistance without a FGC or order.²⁰⁴ Resolving these issues moving forward is fundamental to addressing the fact that, to date, PEPO have been “almost a complete failure.”²⁰⁵

1 The placement of the PEPO in s 283

A significant issue in regard to the current s 283(ja) is its placement as a Group Three response in sentencing.²⁰⁶ This places it directly above orders of fines and reparation, and under supervision and community work. This placement is too high as any order made in Group Three and above results in a criminal record for the child, which is manifestly unjust

²⁰⁰ This would have been discovered already if a pilot programme had been run with the parents of serious young offenders rather than existing participants. This approach was indicated as correct by Judge Becroft “Are There Lessons to be Learnt from the Youth Justice System” above n 59, at 33, see also David M Fergusson, above n 113, at 108.

²⁰¹ An issue elucidated by the NZ/Aotearoa Youth Health and Development “Submission on the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill 2009” at [3.3]. See Chapter Five for discussion.

²⁰² Gabrielle Maxell “Submission” above n 141, at 4.

²⁰³ Advisory Group on Conduct Problems, above n 131; Rethinking Crime and Punishment, above n 153; Southland Youth Offending Team, above n 153; Te Ora Hou Aotearoa Inc. “Submission to the Children, Youth Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill 2009”.

²⁰⁴ Juanita Condor “Submission to the Children, Youth Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill 2009”; Tairawhiti Community Law Trust “Submission to the Children, Youth Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill 2009”; New Zealand Council of Christian Social Services “Submission to the Children, Youth Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill 2009”.

²⁰⁵ Interview with Judge Becroft, above n 1.

²⁰⁶ Ibid. See also Interview with Judge O’Driscoll, above n 16; Interview with Dunedin Child, Youth and Family Youth Justice Team, above n 71; Gabrielle Maxwell “Submission,” above n 141, at 4.

where the sanction is directed at the parent as an underlying cause of the offending.²⁰⁷ Effectively the child or young person is sanctioned for the inadequate skills of his or her parent; this does not promote the interests of the child as the paramount.

Furthermore the order cannot be made in conjunction with a s282 discharge.²⁰⁸ The effect of this is that Courts will not make a PEPO unless there are other serious orders being made in relation to the child or young person at the same time.²⁰⁹ It would be nonsensical to have a criminal history where the sole order relates to the need for a parent to address their skills. It is proposed that if the s 282 discharge was available in conjunction with a PEPO the order would be utilised more regularly.²¹⁰

These statutory framework issues have the effect of making the PEPO an absolute last resort. Social workers²¹¹ will only recommend the order if they have failed to gain the agreement of the parent to attend on a voluntary basis, and they believe that a parenting education programme may work. However if this situation was rectified by allowing the order to be made in conjunction with a s 282 discharge, and removing the need to record the order on the child or young person's record, this would significantly address a main obstacle to making a PEPO. Judge O'Driscoll indicated that steps were underway to achieve this.²¹² In the meantime PEPO will continue to be under-utilised.

2 Where is the evidence for this approach?

A number of submissions raised the point that there was a complete lack of evidential basis for the implementation of the vague and untested PEPO in any of the documents relating to the Fresh Start legislation.²¹³ The writer absolutely concurs with this point. The Amendments were promoted as a “design and implementation...undertaken with full reference to the

²⁰⁷ Ibid.

²⁰⁸ CYPF Act 1989, s 282, only allows for a discharge in conjunction with responses from s 283 (e) – (j).

²⁰⁹ Interview with Judge Becroft, above n 1.

²¹⁰ And more effectively as those children and young people being discharged are less likely to be the “serious young offenders,” and thus their parents are more likely to benefit from the existing parenting education programmes.

²¹¹ At least those in the Dunedin Team.

²¹² Interview with Judge O'Driscoll, above n 16.

²¹³ Advisory Group on Conduct Problems, above n 131, at 4; Rethinking Crime and Punishment, above n 153, at [23]; Southland Youth Offending Team, above 153, at [5.2]; Te Ora Hou Aotearoa Inc. “Submission to the Children, Youth Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill 2009” at 2.

evidence base around what works to stop offending and re-offending by our most at risk children and young people.”²¹⁴ However the substantiation for this statement was absent.

The Advisory Group on Conduct Problems stated the issue as follows:²¹⁵

at no point in the Bill or supporting documentation is any reference made to evidence, reviews, and meta-analysis about the likely effectiveness of any of the provisions of the Amendment Bill

This Group is particularly entitled to make this point as they have conducted research, published by the Ministry of Social Development, on the best approaches for addressing youth behavioural and conduct issues that lead to offending.²¹⁶ The *Best Practice Report* sets out the most effective approaches for dealing with behavioural issues based on age groups. In terms of the 13+ age group the evidence points toward a combination of Multi-Systemic Therapy (“MST”)²¹⁷ and Functional Family Therapy (“FFT”)²¹⁸ approaches

(a) Multi-Systemic Therapy (“MST”)

MST takes a wide view of adolescent behaviour, observing that factors such as parenting, school, peer groups and the community have a role in youth offending, and thus must all be addressed.²¹⁹ Intervention with the family occurs as one branch of this approach addressing elements such as supervision, boundaries, communication and discipline.²²⁰ However the effectiveness of MST lies in the combination of the parenting skills work with interventions relating to the young person (social, academic and self-management skills), and the peer group (reducing contact with deviant peers and increasing contact with others).²²¹ This multi-faceted approach addresses the wide range of issues in relation to the young person. It is provided by master’s level therapists supervised by doctoral level clinicians, and will last for approximately four months, with more than one meeting per week.²²² The progress of each family is tracked on a weekly basis and assistance is available all hours, every day.²²³

(b) Functional Family Therapy (“FFT”)

²¹⁴ “Fresh Start Reforms in Operation,” above n 111, at 1.

²¹⁵ Advisory Group on Conduct Problems “Submission,” above 131, at 4.

²¹⁶ Advisory Group on Conduct Problems, *Best Practice Report*, above n 18.

²¹⁷ *Ibid.*, at [2.5.4] See below for further discussion.

²¹⁸ *Ibid.*, at [2.5.6]. See below for further discussion.

²¹⁹ Church, above n 18, at 123.

²²⁰ *Ibid.*

²²¹ *Ibid.*,

²²² *ibid.*

²²³ *Ibid.*, 124. In the United States this model costs approximately \$4, 700 per case.

FFT occurs within the family home with the aim of changing patterns of family communication and interaction.²²⁴ The entire family attends the sessions which work to change the communication, reinforcement, and family management patterns that lead to the behaviour.²²⁵ After identifying these issues the therapist works to shift away from blame and “to help parents move from viewing the adolescent as intrinsically deviant to someone whose deviant behaviour is being maintained by situational factors.”²²⁶ Training is then provided to deal with the issues within the particular family.²²⁷

Both MST and FFT have been proven to be effective in terms of reducing reoffending, reconviction and long term cost benefits.²²⁸ In the context of the PEPO as it stands, the FFT model would be the more simple to incorporate without over-hauling the legislation. It would require the approval of a series of providers with highly trained staff who could be mobile and able to take on the highest need families. This would of course require additional funding, however as results have been shown to be cost effective in the long run, and the most successful in terms of reducing recidivism, this would be a far more appropriate use of resources.²²⁹ It is time for legislators to extend their vision beyond short-term fixes (which will not actually fix) and execute research and funding of initiatives proven to have effect with families experiencing a number of serious issues. If these can be addressed New Zealand will save millions in future prison costs, not to mention provide for the best interests of the child to turn their lives around and facilitate healthy family relationships.

3 Availability

The issue of availability is one which it is argued should have been addressed before “rolling out” the Amendments.²³⁰ A number of submissions to the Select Committee demonstrate concern over availability of programmes in rural areas and for parents who wish to attend before any offending has occurred.²³¹

²²⁴ Ibid, 125.

²²⁵ Ibid.

²²⁶ Ibid.

²²⁷ Ibid.

²²⁸ Ibid, at 123-125. See also Advisory Group on Conduct Problems, *Best Practice Report*, above n 18, at [2.21] – [2.4.11].

²²⁹ Church, above n 18, at 125 – 126.

²³⁰ Quoting Stephen Hill, Supervisor Dunedin Child, Youth and Family Youth Justice Team in Interview with Dunedin Child, Youth and Family Youth Justice Team, above n 71.

²³¹ Juanita Condor, above n 204, at 1; Tairawhiti Community Law Trust, above n 203, at 6; New Zealand Council of Christian Social Services, above n 204, at 3.

The obvious solution to this issue would have been a pre-emptive inspection of availability as soon as concerns were raised. Yet this was not the case.²³² Instead the legislation was passed, at which point providers began applying.²³³ This highlights the obvious flaws in process that lacked any consideration of the availability of programmes or their content or appropriateness for the target group. The Amendments were literally passed into law with no prospect of how or where they would work.

Availability has still not been addressed. In Dunedin the CYF Youth Justice Team have a memorandum of understanding with their providers that referrals from them will go to the top of the waiting list.²³⁴ This is efficient for those who need to be referred; however parents who are seeking help on their own will be lose their place on the list, regardless of the fact that the content of programmes such as CCS are designed for self-directed parents.

This issue leads onto the concern raised that programmes need to be “suitably tailored and extensive.”²³⁵ Yet this was not taken into consideration. As mentioned above programme providers were not sought out until after the Amendments were passed. There was clearly no consideration of setting up an advisory group to determine the best approaches and programme styles for addressing high-risk young people and their parents, as suggested by the Expert Advisory Group on Conduct Problems.²³⁶ The favoured approach was to offer the funding first, discovering availability as a result; an approach that is absolutely inappropriate when dealing with the lives of families urgently in need of appropriate and well-thought-out interventions.

A number of issues highlighted in this chapter could have been pre-empted with careful consideration of available research and international experience. Such heavy criticism would not have been legitimate if New Zealand was breaking ground in the use of the PEPO. However this is simply not the case. The next chapter will detail the experience of England and Wales, in particular focusing on the research undertaken in relation to their parenting orders, the lessons that ought to have been learnt, and the areas where a unique New Zealand approach conforms with the Act.

²³² Interview with Dunedin Child, Youth and Family Youth Justice Team, above n 71.

²³³ Ibid.

²³⁴ Ibid.

²³⁵ Youth Justice Independent Advisory Group “Submission to the Children, Youth Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill 2009” at [28].

²³⁶ Advisory Group on Conduct Problems “Submission” above n 131, at 11.

IV England and Wales' Approach to Parental Responsibility

New Zealand has been a pioneer in many ways in the youth justice realm, with the CYPF Act 1989 being “studied, praised and adopted or adapted in many overseas jurisdictions.”²³⁷ However in the use of parental responsibility laws, we are a decade behind England and Wales. In the sense of parenting education programmes it is proposed that not being the jurisdiction to break new ground is in fact an advantage. By watching the introductions of parenting programmes into England and Wales it has been possible to observe the successes, failures and “teething problems” experienced.

Furthermore large-scale evaluation and research of the parenting orders of England and Wales has been conducted. This research was taken into account by New Zealand legislators in the development of the Amendment Act.²³⁸ Yet the lessons that ought to have been learnt as a result of this evaluation were largely disregarded. The result is a provision that fails to fit within the framework and purposes of the CYPF Act on the basis that it has not incorporated the most useful international evidence in order to pre-empt implementation issues internally.

Before entering into a discussion of the parenting orders and evaluation, it is first useful to outline the other main areas of parental responsibility that are relevant to New Zealand.

A Financial Penalties

1 General financial penalties

In England and Wales, the parents (or guardian) of a young offender may be held liable to pay any fine, compensation or costs order imposed as a result of the commission of an offence by the young person.²³⁹ Not only may the parent be liable to pay, if the offender is under the age of 16 at the time of the offence, the Court *must* order that the financial penalty be paid by the parent or guardian.²⁴⁰ This requirement may be displaced if the parent or guardian cannot be found, or it would be unreasonable²⁴¹ having regard to the circumstances

²³⁷ Robert Ludbrook, above n 61, at 93.

²³⁸ “Responses to Questions from the Social Services Committee,” above n 195, at [72]. Also Email from Phil Dinham, above n 195.

²³⁹ Powers of the Criminal Courts (Sentencing) Act 2000 (UK), s 137.

²⁴⁰ *Ibid*, s 137(1) and (2).

²⁴¹ The term “unreasonable” has been interpreted in two different ways in the English courts. In *R(M) v Inner London Crown Court* [2003] (EWHC 301 Admin) a compensation order was challenged on the basis the mother was not at fault and the behaviour of her daughter was out of character, not the result of bad parenting. Irrespective of this the Court held that the purpose of the Act was in compensating the victim, thus no causal element between parenting and offending was required. However in *R v J-B* [2004] EWCA Crim 14 the

of the case to order that the parent be liable for the payment.²⁴² If the offender is aged between 16 and 18 years, the Court has a discretionary power to order that the parents pay.²⁴³

As in New Zealand, the parent must be given the opportunity to be heard before this order is made, provided they have attended the proceedings on the day.²⁴⁴ Furthermore any parent made subject to the order has a right of appeal.²⁴⁵ Regardless of these similarities there is one key difference between the jurisdictions. In England and Wales the order is mandatory²⁴⁶ for an offender under the age of 16, whereas in New Zealand the ability to transfer the financial liability to the parent is wholly discretionary, with no maximum sums set.²⁴⁷

The introduction of a mandatory element into New Zealand's legislation would assist in reinforcing Parliament's message that parenting skills can be an underlying cause of youth offending, which implies that a level of accountability needs to be accepted by them.²⁴⁸ This was a clear message in the recent amendments.²⁴⁹ Another strong point in the Amendments was the need to hold the child or young person accountable for their actions,²⁵⁰ thus the mandatory imposition of financial penalties upon the parent may take away from this. Ultimately the Court is in the best position to assess whether it is the parent or child who is most in need of a firm reality check. Furthermore, the discretionary element removes the need

compensation order imposed as a result of burglary was quashed as the father had done all that he could and was not "at fault" this it would be unreasonable to hold him liable. See Hollingsworth, above n 4, at 202-203 for further discussion.

²⁴² Ibid, s 137(2).

²⁴³ Ibid, s 137(3). Any fine or other sum imposed on a young person is capped depending their age, see Roger Leng, "Parental Responsibility for Juvenile Offending" in Rebecca Probert (ed), above n 171, at 317-318. For young offenders aged 14 – 18 the maximum sum is set at £1,000, and those under the age of 14, the maximum is set at £250 (Powers of the Criminal Courts (Sentencing) Act 2000, s135(1) and (2). The Court may have regard to the financial status of the parent or guardian as an element of determining the reasonableness in the circumstances of ordering them to pay (s 138). The Court may require details of the financial status of the parents for this purpose (s 136).

²⁴⁴ Ibid, s 137(4) and (5).

²⁴⁵ Ibid, s 137(6) and (7).

²⁴⁶ The introduction of the mandatory element in 1991 (Criminal Justice Act 1991 (UK), s 57) in England and Wales occurred as the result of low usage of the previously discretionary power. The explanation for the low usage under the previous legislation was deemed to be a presumption that parents would end up paying their children's fines regardless of whether they were ordered to do so. The introduction of the mandatory element can be seen as a reflection of Government intent that parents be held responsible through law, and that having them literally pay the consequences would "bring home the reality of the child's behaviour." (see Home Office, *Crime, Justice and Protecting the Public* (HMSO, London, 1990) at [8.8])

²⁴⁷ CYPF Act 1989, s 283(e) and (f). Note that s 287 limits the reparation to the cost of replacement, or repair, and shall not include any loss or damage of a consequential nature. It is not mentioned how the direct loss is to be determined, but the implication seems to be that a victim must have provided details of this prior to the hearing, perhaps at the FGC.

²⁴⁸ "Fresh Start Reforms in Operation," above n 111, at 6.

²⁴⁹ "Regulatory Impact Statement," above n 2, at 4.

²⁵⁰ "Fresh Start Reforms in Operation," above n 111, at 4.

to have an exception to the mandatory requirement, for example “reasonableness,” which has caused considerable confusion in the English courts.

2 Financial penalties for actions of children under the age of 10

A parent is liable to pay compensation for damage or loss caused by a child under the age of 10.²⁵¹ When making a parental compensation order the court must be satisfied that this action would be in the interests of preventing future “offending” or anti social behaviour.²⁵² Before implementing a parental compensation order the court must first take into account the views of the parent regarding whether such an order should be made.²⁵³ As with the financial penalties detailed above, there is a right of appeal.²⁵⁴

This provision has come under criticism in England and Wales for criminalising the behaviour of children under 10, who have in the past been considered *doli incapax* and thus not open to action through the courts.²⁵⁵ However, a combination of this compensation order and the introduction of Child Safety Orders²⁵⁶ provides an avenue for the court to address what would have been offending behaviour were the child over the age of 10. These orders were expected to be complemented by a parenting order.²⁵⁷

Regardless of fact that these provisions, particularly in the way that they have essentially reduced the “criminal age to zero”²⁵⁸ have been the subject of criticism, they pose an interesting option for New Zealand parental responsibility moving forward. If the focus of youth justice needs to be on early intervention, it is possible that implementing compensation orders for “crime” committed by those under the age of criminal responsibility, the parents would be held accountable at the first sign of trouble, and more likely to be able to utilise

²⁵¹ Serious Organised Crime and Police Act 2005 (UK), s 144. The Magistrates Court must be satisfied that the conduct occurred based on a civil standard of proof. See Explanatory Note to the Act, Schedule 10, at <www.legislation.govt.nz>

²⁵² Serious Organised Crime and Police Act 2005 (UK), s 144. The maximum sum under a parental compensation order is set at £5,000, and the court can require financial statements from the parents, a failure to supply this will result in a fine.

²⁵³ Ibid.

²⁵⁴ Ibid.

²⁵⁵ Leng, above n 171, at 323.

²⁵⁶ Crime and Disorder Act 1998 (UK), s 11. These impose conditions for the care and protection of the child in the interests of preventing further offending.

²⁵⁷ Leng, above n 171, at 324.

²⁵⁸ National Association of Probation Officers, “Briefing on the Crime and Disorder Bill” (February 1998), as quoted in Leng, above n 171, at 324.

parenting skills while the child was still impressionable. It is at this very early stage that evidence has shown parenting education has a greater chance of success.²⁵⁹

B Parental Bind Overs

Parental Bind Overs allow a court to require a parent to enter into a recognisance for £1,000 to exercise better control over, and prevent the offending of, their child.²⁶⁰ The court is required to consider a parental bind over in every case involving a young person under the age of 18, and must explain any decision not to impose the bind over.²⁶¹ While the parent must consent to being bound over, an “unreasonable” refusal will be met with a fine of up to £1,000.²⁶² Both the European Court of Human Rights and the British Law Commission consider the parental bind over to be a breach of the right to a fair trial.²⁶³ There is no doubt that the introduction of this approach into New Zealand would raise concern, based on the aforementioned dubious position of existing parental responsibility provisions in relation to the NZBORA.²⁶⁴

C Parenting Orders and Parenting Contracts

According to the English Ministry of Justice, research has shown that there is a strong link between inadequate parental supervision of children and young people, and young people who offend.²⁶⁵ Other studies have shown that educating parents with skills around negotiation and rule enforcement can have a significant impact on offending rates of children and young people.²⁶⁶ This reasoning formed the basis for the introduction of these methods into current legislation. However the *Guidance Paper* points out that parenting programmes need to occur in conjunction with other interventions.²⁶⁷ The contracts and orders will be discussed separately below, as will the results of the national evaluation conducted in 2002²⁶⁸ which was instrumental in the design of New Zealand’s PEPO. First, however, it is important to

²⁵⁹ Graham Allen MP and Rt Hon Iain Duncan Smith MP *Early Intervention: Good Parents, Great Kids, Better Citizens* (2nd ed, Centre for Social Justice and Smith Institute, London, 2009) at 74.

²⁶⁰ Powers of the Criminal Courts (Sentencing) Act 2000 (UK), s 150.

²⁶¹ *Ibid.*

²⁶² *Ibid.*, s 150(2)(a) and (b).

²⁶³ See discussion by Leng, above n 171, at 18-19.

²⁶⁴ See Chapter Three.

²⁶⁵ *Parenting Contracts and Parenting Orders Guidance* (Ministry of Justice/Department for Children, Schools and Families/Youth Justice Board, October 2007), at [2.1]-[2.3]

²⁶⁶ *Ibid.*

²⁶⁷ *Ibid.*, [2.4].

²⁶⁸ Ghate, above n 19.

note the way in which the contracts and orders collaborate as differing approaches to working with families depending on the level of cooperation from the parents.

It is expected that in most cases a parent will want help thus the first step in working with parents will be providing avenues for assistance on a voluntary basis with no need for a formal agreement.²⁶⁹ Where this wholly voluntary approach has failed, Youth Offending Teams (“YOT”) may discuss a parenting contract with the parent where there is evidence that the parenting of a young offender has contributed significantly to the offending, and the parent is willing to work with the YOT.²⁷⁰ If the parent refuses to enter a contract, this refusal may be used as evidence to support an application or recommendation for a parenting order.²⁷¹ Parenting orders are to be reserved for situations where the voluntary approach has not worked and the parents have refused to cooperate.²⁷² For both the contracts and orders the evidence suggests that the programmes work best to reduce reoffending where both parents are involved.²⁷³

*1 Parenting Contract*²⁷⁴

Parenting Contracts were introduced in 2003 as a result of criticism that parenting orders were coercive, and that offering contracts rather than enforcing orders may produce better results for some families.²⁷⁵ “A parenting contract is a voluntary written agreement between a YOT and the parents or guardians of a child or young person.”²⁷⁶ The test to be met before entering into the contract is whether the YOT has reason to believe that the young person has or is likely to engage in criminal or anti-social behaviour.²⁷⁷ The contract involves the parents agreeing to comply with the contract requirements, and the YOT agreeing to support the parent/s in achieving this.²⁷⁸ The contract is not legally binding; rather it represents certain “undertakings” including parenting education and any other measures that may assist in

²⁶⁹ *Parenting Contracts and Parenting Orders Guidance*, above n 265, at 8, see diagram.

²⁷⁰ *Ibid*, [2.13] and [2.21].

²⁷¹ *Ibid*, [2.22] and [3.27].

²⁷² *Ibid*, [2.22].

²⁷³ *Ibid*, [2.23] – [2.27]. This is on the premise that there are no concerns relating to domestic violence or abuse, and orders may also include grandparents, step parents and other carers.

²⁷⁴ Anti-Social Behaviour Act 2003 (UK), s 25.

²⁷⁵ Leng, above n 171, at 321.

²⁷⁶ *Parenting Contracts and Parenting Orders Guidance*, above n 265, at [3.1].

²⁷⁷ Anti-Social Behaviour Act 2003 (UK), s 25(2).

²⁷⁸ Leng, above 171, at 321.

preventing further offending.²⁷⁹ This provides a gentle mechanism for parents who are cooperating with the YOT's efforts to assist them in their parenting.

This is comparable to the voluntary agreement of a parent to attend parenting education as the result of a FGC. Section 270 of the CYPF Act provides for a FGC to reconvene to review the plan and check with compliance. This new conference has all of its original options available to it, thus it may be presumed that where a parent has not complied with the FGC plan to attend parent education, the FGC may decide that the child or young person is in need of care or protection, consequently the FGC is deemed to be one under Part 2 of the Act. This is a process not outlined by the statute but does appear to be the logical process if non-compliance is an issue.

Furthermore, Child, Youth and Family also utilise a non-statutory agreement called a Family/Whanau Agreement.²⁸⁰ This is non-binding and provides for Child, Youth and Family to discuss the future of the child or young person on an informal basis, and create a plan to deal with the issues. The Dunedin Youth Justice Team explained that this was an excellent mechanism for trying to sort out issues before a FGC was needed, and even after a FGC plan was completed to keep in touch with the family. It can last for up to 3 months. While it is a voluntary agreement and thus requires "a big buy in" from the family, it offers an opportunity to make contact with a family in the least threatening way possible, and attempt to attain agreement to enter parenting education at this point. The flexible nature of the agreement allows it to be adapted to each family.

2 Parenting Orders

The parenting orders of England and Wales have played a significant role in the design and introduction of New Zealand's own parenting education programme orders.²⁸¹ The orders of England and Wales were implemented to facilitate the principle that parents need to be accountable for children's offending, whilst at the same time recognising that the parents may need some support in dealing with difficult adolescent behaviour.²⁸²

The orders are available in circumstances where the child under 10 has been made the subject of a child safety order which occurs where an action has been taken by that child that would

²⁷⁹ Anti-Social Behaviour Act 2003 (UK), s 25(7), see also Leng, above n 171, at 321.

²⁸⁰ See <www.cyf.govt.nz>

²⁸¹ Email from Phil Dinham, above n 195.

²⁸² Leng, above n 171, at 320-321.

have been an offence were they over the age of 10.²⁸³ Also covered is any situation involving a child or young person who has been convicted of an offence, or is the subject of an ASBO,²⁸⁴ or following a caution for a sex offence may also result in a parenting order.²⁸⁵ If one of these circumstances applies then the order may be made providing it will meet the statutory test of being desirable in the interests of preventing repetition of the behaviour, or the commission of further offences.²⁸⁶

Where an offender is under the age of 16 a parenting order is mandatory, provided the statutory test has been met.²⁸⁷ If the offender is aged between 16 and 18 years old the court has the discretion to make the order based on the same test.²⁸⁸ A parenting order is limited in length to up to 12 months and includes the requirement to attend a parenting programme for up to three months, usually once a week.²⁸⁹ The parenting order may also require additional action from the parents.²⁹⁰ As with the financial penalties there is a right of appeal provided specifically for parenting orders.²⁹¹ Non-compliance of an order results in a summary conviction and a fine not exceeding £1000.²⁹²

There are two fundamental distinguishing factors of the orders of England and Wales, and those introduced in New Zealand.

First, the legislation of England and Wales provides that the parenting orders are mandatory, while in New Zealand the orders cannot be made unless first recommended by a social worker. As discussed in Chapter Three, the obstacles to making a parenting order reflects the nature of New Zealand's youth justice system placing emphasis on family and community finding the appropriate way to address crime. Furthermore as pointed out by Judge O'Driscoll, New Zealand simply does not have the resources or facilities to introduce a mandatory element.²⁹³

²⁸³ Crime and Disorder Act 1998 (UK), s 8(1)(a).

²⁸⁴ See footnote 174.

²⁸⁵ Crime and Disorder Act 1998 (UK), s 8(1)(b) and (c). Note there is also provision for making parenting orders as a result of non-attendance of school pursuant to the Education Act 1996 (UK) (s 8(1)(d)).

²⁸⁶ Crime and Disorder Act 1998 (UK), s 8(6).

²⁸⁷ *Ibid.*, s 9(1).

²⁸⁸ *Ibid.*, s 9(2).

²⁸⁹ *Ibid.*, s 8(4).

²⁹⁰ *Ibid.*

²⁹¹ *Ibid.*, s 10.

²⁹² *Ibid.*, s 9(7).

²⁹³ Interview with Judge O'Driscoll, above n 16.

Secondly, the approaches to addressing non-compliance are poles apart. New Zealand chose not to incorporate fines for non-compliance on the basis that the process for implementing this in England and Wales was inefficient.²⁹⁴ It is argued that the approach in New Zealand of providing for care and protection proceedings has the potential to be effective in ensuring compliance. Whilst it may not appear to be overly deterrent, the sanction has more “teeth” than expected. As Judge Becroft pointed out, no parent looks forward to the idea of a FGC being held focused on them rather than the child.²⁹⁵

D Positive Parenting: the National Evaluation of the Youth Justice Board’s Parenting Programme²⁹⁶

Prior to discussing the details of the Report, it is first important to note the limitations in relying on the evidence in this report.²⁹⁷ Of the 2,911 parents that were involved in one of the 34 studied programmes, only 200 completed “before and after” questionnaires. Thus it is likely that disaffected parents would have been within the 2,700 parents not inclined to take part in the evaluation process.²⁹⁸ The authors accepted that the significant reduction of offending of the children and young people may have been a result of interventions aimed at them, rather than the parenting orders alone.²⁹⁹ The research lacks a control group of parents and young people, who would have assisted to determine the actual impact of the parenting order. As a result, in the words of the authors; “a certain amount of caution in interpretation of the results is warranted.”³⁰⁰

The results

The research claimed that as a result of parenting orders, parents reported improved communication, supervision, relationships, influence over children, and coping in relation to their parenting skills.³⁰¹ Furthermore, and an encouraging point in relation to New Zealand, the levels of satisfaction by the end of the programme did not differ between parents who attended voluntarily, and those who were ordered (although at the outset there were high

²⁹⁴ See Chapter Three.

²⁹⁵ Interview with Judge Becroft, above n 1.

²⁹⁶ Ghate, above n 19.

²⁹⁷ This was noted by the authors Deborah Ghate and Marco Ramella, at 6. Also pointed out by *Parenting Contracts and Parenting Orders Guidance*, above n 265, at [2.7]. Unfortunately it does not appear that New Zealand’s legislators heeded this warning.

²⁹⁸ Ghate, above , 19, at 6. Also Elizabeth Burney and Loraine Gelsthorpe “Do We Need a Naughty Step? Rethinking the Parenting Order After Ten Years” (2008) 47 How.L.J 470 at 478.

²⁹⁹ Ibid, at 478.

³⁰⁰ Ghate, above n 19, at 6.

³⁰¹ Ibid, at 28-36.

levels of hostility from court ordered parents).³⁰² On average, parents attended 6.4 sessions, out of an expected attendance of 9.³⁰³ Those on orders were more likely to attend.³⁰⁴ While the authors' view this as a success, it is argued that the failure to attend such a short-term programme significantly limits the benefit to be gained from it.

In relation to the young offenders, the results were limited to 78 matched "before and after" questionnaires returned by the children.³⁰⁵ These were a very high-need group, 70%³⁰⁶ of whom were also subject to interventions directed at them, concurrently with their parent/s attending the parenting programme.³⁰⁷ Some reported that they had a better relationship with their parents after the programme.³⁰⁸ In terms of re-offending there was no change in the self-reported offences before and after the programme.³⁰⁹ The official re-offending statistics show that in the follow up period of one year, 56%³¹⁰ of the all of the young people involved³¹¹ had been reconvicted. In terms of crime per offender in comparison to the previous year, this was a 50% reduction.³¹²

These results are of little benefit to New Zealand. Regardless of the improvement in the parent-child relationship, this cannot be related solely to parenting education. The numbers of responses were not great enough to determine this on a wide scale, and it is probable that young people who had not noticed improvement would not have been willing to respond to a questionnaire when asked to by their parent/s. Furthermore, the positive change in relationship did not change the self-reported offending rates, and re-conviction levels continued to be significant.

2 Lessons

The fundamental guiding information from the report was not the statistics, but instead the issues that occurred in the implementation process. If Parliament relied on the dubious statistical backing, it is incredible that they did not also follow the report's guidance in terms

³⁰² Ibid, at 36 – 38, 69. This point is debated in Amanda Holt, "Managing Spoilt Identities: Parents' Experiences of Compulsory Parenting Support Programmes," (2010) 24 *Children and Society* 413-423.

³⁰³ Ghate, above n 19, at 28.

³⁰⁴ Ibid, at 29.

³⁰⁵ Ibid, at 43.

³⁰⁶ Ibid, at 46.

³⁰⁷ Ibid.

³⁰⁸ Ibid, at 43.

³⁰⁹ The young people were asked to report the number of offences they committed, regardless of whether they were caught, in the questionnaire.

³¹⁰ Ghate, above n 19, at 47.

³¹¹ Including those who had not filled out the surveys, in Ghate, above n 19, at 46.

³¹² Ibid, at 47.

of implications for practise and policy. The following outlines the key lessons that should have been learnt by New Zealand *before* introducing the PEPO.

First, difficulties were experienced in the recruitment and training of staff, in some areas where one staff member was sick or resigned, entire programmes were put on hold.³¹³ Furthermore, the success of a programme often depended more on the people than the methodology.³¹⁴ Yet at the time of the Amendments in New Zealand a list of approved providers was non-existent. Moreover, staff needed to be experienced with working with the high-needs families in question, especially where they may have been hostile to the programme initially as a result of an order to attend.³¹⁵ Not only did New Zealand need to address this in terms of accounting for providers, it ought to have ensured that providers attend a training programme in dealing with high-needs groups. This would have safeguarded against parents feeling misunderstood, and providers feeling ineffective. The result is a clear contradiction of the object of the CYPF Act to support and assist parents with their responsibilities and relationships with their children.³¹⁶

Second, there was a significant inconsistency in the mode and medium of delivery. The programmes in England and Wales were very diverse; some only took parents on court orders, while others would only provide their programmes to voluntary attendees.³¹⁷ Furthermore, there was a combination of group work and one to one programmes, some visiting in the home, and some requiring attendance at a centre.³¹⁸ Programmes also developed a “mix-and-match” approach to content on the basis that no “off the shelf” programme was equipped to deal with high-needs families.³¹⁹ Regardless of the approach to delivering the programme, the content was largely similar; dealing with conflict and avoiding harsh responses, positive supervision, setting boundaries, improving communication, and tackling family conflict more generally.³²⁰ This approach was best suited to “middle-class”

³¹³ Ibid, at 59.

³¹⁴ Ibid.

³¹⁵ Ibid, at 59-61. Fundamental skills were those that allowed a provider to respond to parents in a non-judgmental manner, along with the ability to recognise and deal with domestic violence and substance abuse issues

³¹⁶ CYPF Act 1989, s 5.

³¹⁷ Ghate, above n 19, at 8.

³¹⁸ Ibid, at 12, 62 – 63.

³¹⁹ Ibid, at 12 - 13.

³²⁰ Ibid, at 13.

parents with children under ten, who were not facing the extreme difficulties experienced by those attending the programmes for youth justice purposes.³²¹

Third, time lengths of interventions were not sufficient to deal with parents with “very entrenched problems.”³²² These were generally the group interventions which would last for up to 8 weeks, with one session per week.³²³ Not only were the programmes too short, but they lacked follow-up resulting in parents feeling “abandoned.”³²⁴ This is another area where legislators could have made a difference, by requiring an extended time-frame for high-need parents. Most importantly the Act should contain a provision for follow up after attendance at a programme to ensure that the parent continues to implement new skills, and to offer voluntary attendance at another course if desired. As it stands, the legislation provides for referral to a programme, but fails to ensure that the parents are supported afterward.³²⁵

Essentially, New Zealand legislators ought to have heeded the advice of the authors:³²⁶

Some focused effort is now required to draw together and document what seems to be the ‘most successful’ elements of each course and combine these into a useable, manualised programme

Clearly this point was missed; however the idea was also raised by the Advisory Group on Conduct Problems.³²⁷ The result would have been a clear set of guidelines as to what works, not just in dealing with young people or early intervention, but what works in dealing with parents of serious young offenders. Instead, the opportunity to maximise the chances of success was lost, in preference of a “trial and error” approach. Accordingly New Zealand’s most at risk families will become “guinea pigs” for no reason other than the legislators disregard of the lessons to be learnt by observing England and Wales.

³²¹ Ibid, at 65. The ability of parents to make the most of the programmes depended on the way in which it was presented to them. Many had literacy issues, thus workbooks and computer games were difficult. The best approaches were interactive talking based programmes that allowed parents to explain their situation and be listened to.

³²² Ghate, above n 19, at 63.

³²³ Ibid.

³²⁴ Ibid, at 64.

³²⁵ This may be a good use of the Whanau/Family Agreement, see Chapter Three. Catholic Social Services ensure that a follow up occurs, however this is a programme policy. This approach should be legislated.

³²⁶ Ghate, above n 19, at 65.

³²⁷ Advisory Group on Conduct Problems “Submissions,” above n 131, at 11.

E Concluding Comment

New Zealand differs in its approach to parenting education from England and Wales in relation to non-compliance and discretion. These distinguishing points are appropriate in the context of the CYPF Act on the basis that they provide an extensive opportunity for the family group to determine the outcome for the young person and their parent.³²⁸ Furthermore, the sanctions for non-compliance continue to encourage parents to take responsibility, without adding financial stress to the family. Yet these encouraging factors are promptly outweighed by the failure of the Amendments to learn from the implementation mistakes of England and Wales, and thus save valuable time in the lives of serious young offenders and their families.

³²⁸ A further distinguishing element, not the focus of this dissertation but worth noting regardless, is that the PEPO can be ordered in relation to the young person themselves where they are, or are soon to become a parent. This is a very positive element of the PEPO as it seeks to prevent the young offender from making the same parenting mistakes experienced by them.

V Moving forward with the PEPO

My analysis of the emphasis placed on parental responsibility in New Zealand's youth justice history has shown that both punitive and supportive/educative mechanisms have found their way into the legislation, with the former holding the most weight in century prior to the CYPF Act. However, incorporated within the disciplinary approach, existed the 1910 probationary scheme; the first educative and supportive parental responsibility mechanism with proven success. Thus the realisation that sanction alone does not create "good" parents crossed into the 1974 Act and the CYPF Act 1989. The CYPF Act changed the face of youth justice in New Zealand ensuring that the entire family, community and victim have a say in the outcome for young offenders. It embodies a combination of punishment and support; however the underlying principles and objects ensure that any punitive order is made as a last resort and where the paramountcy of the child demands it.

At present the PEPO does not conform comfortably within this framework. It instigates blame, without providing an effective mechanism to manage the wide-ranging issues experienced by the parent. Rather than addressing the causes of the offending, a simple parenting education programme is suited to early intervention and "normal" teenage issues.³²⁹ Irrespective of the experience of England and Wales pointing toward the need to develop specific and intensive programmes to assist the parents of serious young offenders, the PEPO was introduced on a foundation of dubious statistics and an absolute lack of understanding as to the numbers and expertise of appropriate providers in New Zealand. Both the design and implementation process have been flawed. Yet the parents and young people targeted by the Fresh Start Reforms desperately need assistance, and they need it now. The more time wasted on relearning lessons of England and Wales, the more young people enter the adult criminal justice system. The following proposes a framework for a realistic and appropriate dual approach to parenting education, catering to the needs of parents of "normal" teenagers, and serious young offenders.

A Statutory Framework

³²⁹ This raises the question of whether the PEPO ought to be repealed. However this would put New Zealand back to step one in terms of parenting education and intervention. A new section would need to be drafted and an Amendment Act make its way through Parliament. Furthermore the PEPO does have positive aspects in that if used as an early intervention mechanism it is likely to have greater success, and that it can be applied to the young offenders. It is proposed that instead of removing the PEPO, what is required is urgent development of a FFT branch to address the needs of the serious young offenders for whom "normal" teenage behaviour has come and gone.

A fundamental issue with the implementation of the PEPO is its placement in s 283. This order is directed at parents. Thus it is manifestly unjust that it must be documented on the criminal history of the child or young person. Furthermore, the PEPO cannot be combined with a s 282 discharge. It is nonsensical that where a judge feels the only order necessary is a PEPO, the sole order on the history of a child will be one intended for the parent. The combination of these factors creates an obstacle to recommendation of the PEPO in a social worker report, and an order by a judge.³³⁰ While it is appropriate for any order to be reserved as a last resort,³³¹ this ought to be on the basis that another, less restrictive, option is available, not the undeserved consequences for the child or young person as a result of flawed drafting.

Furthermore, the report of effectiveness required on the completion of a PEPO³³² must be extended to include referrals made through the FGC. This is the predominant means by which parents are assigned to classes, and it will continue as such until amendments are made to the statutory framework. Such feedback can ensure that the staff providing parenting programmes are suited to the task, and highlight areas in which compulsory training should be established.³³³ In order to develop and improve the standard and content of New Zealand's basic parenting programmes, evidence of experiences and results is required.

B Judicial discretion

Social workers effectively control the implementation of the PEPO, in spite of evidence that some social workers have a philosophical resistance to parenting education for the parents of serious young offenders. This creates an obstacle that contradicts the best interests of the child, young person and family. Some families will benefit from a basic parenting education programme. As evidenced in Dunedin; these will often be families who have only recently entered the youth justice system. However if those families are assisted by a social worker who does not believe in parenting education, they may miss out on the opportunity for funded parenting assistance.

Judicial discretion would offer a safe-guard against families "slipping through the gaps." It would protect the interests of any younger siblings, if not the more serious young offender in

³³⁰ Interview with Judge Becroft, above n 1; Interview with Judge O'Driscoll, above n 16; Interview with Dunedin Child, Youth and Family Youth Justice Team, above n 71.

³³¹ CYPF Act 1989, s 208(f).

³³² CYPF Act, s 320.

³³³ The importance of staff is discussed in Chapter Four. See also Moran et al, who describe the staff as a "vital component" of a successful programme, above n 113, at 97.

question.³³⁴ Such discretion must be used sparingly so as not to defeat the centrality of the FGC, yet it would be consistent with the other parental responsibility provisions, namely orders for reparation, costs and attendance at Court.³³⁵

It is imperative that these initial obstacles to making the PEPO are remedied for the development and improvement of services. The sooner this can occur, the sooner more parents and young offenders can hope to benefit from the experience. Yet the fact remains that basic parenting education is unlikely to address the high-needs of families targeted by the Amendments. The parents and young people most in need of urgent attention continue to be placed in the “too hard basket,” and will soon move beyond the jurisdiction of the Youth Court. However if the PEPO can be expanded into a dual approach with a programme type for parents of both early offenders and those who are more serious, there is potential for it to become a resounding success.

C Combining FFT and “normal” parenting education

Under the proposed approach, existing parenting programmes will continue to operate as the first port of call for families experiencing issues with child offending, or adolescents who have entered the youth justice system for the first time. It is at these stages that communication and boundary setting skills will have the greatest impact.³³⁶ Furthermore for offenders who are also parents, this education may assist in preventing the “intergenerational transmission of disadvantage.”³³⁷

However along with maintaining the current programmes, it is proposed that a FFT programme be developed as a last resort where existing parenting education has failed to impact upon parents of serious young offenders. The FFT would act as another branch of the PEPO emphasising the relationship within the home and developing more positive communication and perspectives in an intensive manner. Traditionally sessions last for 12 –

³³⁴ For whom a FFT programme is more likely to result in success, see Part C.

³³⁵ See Chapter 2. It may be necessary to stay proceedings to ascertain the availability of a programme, yet this delay is preferable to the alternative; preventing a family from accessing assistance that may improve the lives of an entire family.

³³⁶ See Kiro, above n 152, at 13 – 18, Judge Becroft, “Are there Lessons to be Learnt From the Youth Justice System,” above n 59, at 32, *The Next Generation: A Policy Report from the Early Years Commission* (The Centre for Social Justice (England), 2008) at 40 – 57, note that this Report focuses closely on the ages of 0 – 3.

³³⁷ *The Next Generation*, above n 336, at 40.

24 hours³³⁸ thus the provider is able to get a true sense of the atmosphere in the home, and build a relationship with the family members.³³⁹

In New Zealand a significant barrier to this approach may be the need for highly qualified individuals to provide every intervention. However if the Government is serious about addressing the “1000 worst young offenders” then this is the required approach. Scholarships may be offered for providers who wish to up-skill. Certain professions run advertisements on the television detailing incentives to pursue a career in their area. This is an idea that could be adapted by the Ministry of Social Development. Regardless of the method and whether a FFT programme was to be adopted, a fundamental success factor in any programme is highly-skilled providers.

It is accepted that in order to achieve this, numerous years and significant funds would need to be dedicated. Of course had research been undertaken prior to rolling out the legislation, and a pilot programme run as suggested by Judge Becroft,³⁴⁰ a better estimation could be offered as to the necessary financial input. Yet regardless of the initial cost, the long term benefit would far outweigh the initial expenditure. Evidence on FFT programmes has indicated that the programmes cost approximately \$2,160 (US) per family, the result was an avoidance of future arrests of 0.25% and a return of \$29 (US) for every dollar spent.³⁴¹

Clearly there is a long term benefit to be had economically in investing now in the lives of already serious young offenders. However the economic benefit is overshadowed by the potential benefit for the child, young person, their parents and wider family. This approach offers the best that research and evidence can provide, and thus conforms to the CYPF Act in relation to the paramountcy of the child and assisting families to deal with issues themselves within the home. For many young people this will be the last chance to address their behaviour before entering the adult criminal justice system. Government expenditure must give priority to the lives of young New Zealanders, no matter how deviant. The \$1.5million additional expenditure on providing a larger “party central” in Auckland for the Rugby World

³³⁸ Church, above n 18, at 125.

³³⁹ FFT may also be a “brief multi-systemic family intervention typically consisting of 12 one – two hour sessions extending over a three month period” see Moran et al, above n 113, at 142- 143. Regardless of these differing descriptions of the approach, it is argued that an intensive investigation, design and pilot of a FFT programme suited to New Zealand’s unique culture and identity would need to occur before implementation. An appropriate pilot process is outlined by Fergusson, above n 113, at 108.

³⁴⁰ Judge Becroft “Are there lessons to be learnt from the Youth Justice System?” above n 59.

³⁴¹ This was based on an evaluation of seven programmes using this approach in the United States, see Church, above n 18, at 126. Note this is also significantly cheaper than the MST (\$4700, with a return of 0.3% avoidance of future arrests and \$28 per dollar spent), see Church at 124

Cup³⁴² would have funded approximately 690 families to undergo FFT, if the costs in the United States are indicative of potential costing in New Zealand. The long term benefits for Auckland, a city that has plenty of young people in need of effective programmes,³⁴³ may well be equal to those that may come from additional tourism; however the more important benefit is turning around the lives of young offenders.

If the proposed approach was to be incorporated into the PEPO the chances of success with families of serious young offenders will be significantly elevated. It is difficult to imagine any argument based on budgeting outweighing the importance of offering young people every possible opportunity to live productive and enjoyable lives. Less serious young offenders results in less victims and safer communities. To date the Government has failed to offer appropriate assistance and support to parents of serious young offenders; consequently these discontented individuals become the parents of the next generation of troubled youth. It is time to put a stop to this cycle. The PEPO lays the blame, but fails to provide a realistic solution. However if it is developed into a dual approach to parental education it will provide the foundation for addressing the “1,000 worst offenders” once and for all.

³⁴² See <www.nzherald.co.nz/rugby-world-cup-2011/news/article.cfm?c_id=522&objectid=10756577>

³⁴³ Ian Lambie, “Solutions to Youth Offending in New Zealand,” in Maxwell (ed), above n 16, at 64.

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Appendix 1

Key Provisions of the Children, Young Persons, and Their Families Act 1989

4 Objects

The object of this Act is to promote the well-being of children, young persons, and their families and family groups by—

- (a) Establishing and promoting, and assisting in the establishment and promotion, of services and facilities within the community that will advance the wellbeing of children, young persons, and their families and family groups and that are—
 - (i) Appropriate having regard to the needs, values, and beliefs of particular cultural and ethnic groups; and
 - (ii) Accessible to and understood by children and young persons and their families and family groups; and
 - (iii) Provided by persons and organisations sensitive to the cultural perspectives and aspirations of different racial groups in the community:
- (b) Assisting parents, families, whanau, hapu, iwi, and family groups to discharge their responsibilities to prevent their children and young persons suffering harm, ill-treatment, abuse, neglect, or deprivation:
- (c) Assisting children and young persons and their parents, family, whanau, hapu, iwi, and family group where the relationship between a child or young person and his or her parents, family, whanau, hapu, iwi, or family group is disrupted:
- (d) Assisting children and young persons in order to prevent them from suffering harm, ill-treatment, abuse, neglect, and deprivation:
- (e) Providing for the protection of children and young persons from harm, ill-treatment, abuse, neglect, and deprivation:
- (f) Ensuring that where children or young persons commit offences,—
 - (i) They are held accountable, and encouraged to accept responsibility, for their behaviour; and
 - (ii) They 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:

5 Principles to be applied in exercise of powers conferred by this Act

Subject to section 6 of this Act, any Court which, or person who, exercises any power conferred by or under this Act shall be guided by the following principles:

- (a) The principle that, wherever possible, a child's or young person's family, whanau, hapu, iwi, and family group should participate in the making of decisions affecting that child or young person, and accordingly that, wherever possible, regard should be had to the views of that family, whanau, hapu, iwi, and family group:
- (b) The principle that, wherever possible, the relationship between a child or young person and his or her family, whanau, hapu, iwi, and family group should be maintained and strengthened:
- (c) The principle that consideration must always be given to how a decision affecting a child or young person will affect—

- (i) The welfare of that child or young person; and
 - (ii) The stability of that child's or young person's family, whanau, hapu, iwi, and family group:
- (d) The principle that consideration should be given to the wishes of the child or young person, so far as those wishes can reasonably be ascertained, and that those wishes should be given such weight as is appropriate in the circumstances, having regard to the age, maturity, and culture of the child or young person:
- (e) The principle that endeavours should be made to obtain the support of—
 - (i) The parents or guardians or other persons having the care of a child or young person; and
 - (ii) The child or young person himself or herself— to the exercise or proposed exercise, in relation to that child or young person, of any power conferred by or under this Act:
- (f) The principle that decisions affecting a child or young person should, wherever practicable, be made and implemented within a timeframe appropriate to the child's or young person's sense of time.

6 Welfare and interests of child or young person paramount

In all matters relating to the administration or application of this Act (other than Parts 4 and 5 and sections 351 to 360), the welfare and interests of the child or young person shall be the first and paramount consideration, having regard to the principles set out in sections 5 and 13 of this Act.

208 Principles

Subject to section 5 of this Act, any Court which, or person who, exercises any powers conferred by or under this Part or Part 5 or sections

351 to 360 of this Act shall be guided by the following principles:

- (a) The principle that, unless the public interest requires otherwise, criminal proceedings should not be instituted against a child or young person if there is an alternative means of dealing with the matter:
- (b) The principle that criminal proceedings should not be instituted against a child or young person solely in order to provide any assistance or services needed to advance the welfare of the child or young person, or his or her family, whanau, or family group:
- (c) The principle that any measures for dealing with offending by children or young persons should be designed—
 - (i) To strengthen the family, whanau, hapu, iwi, and family group of the child or young person concerned; and
 - (ii) To foster the ability of families, whanau, hapu, iwi, and family groups to develop their own means of dealing with offending by their children and young persons:
- (d) 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:
- (e) The principle that a child's or young person's age is a mitigating factor in determining—
 - (i) Whether or not to impose sanctions in respect of offending by a child or young person; and

- (ii) The nature of any such sanctions:
- (f) The principle that any sanctions imposed on a child or young person who commits an offence should—
 - (i) Take the form most likely to maintain and promote the development of the child or young person within his or her family, whanau, hapu, and family group; and
 - (ii) Take the least restrictive form that is appropriate in the circumstances:
- (fa) The principle that any measures for dealing with offending by a child or young person should so far as it is practicable to do so address the causes underlying the child's or young person's offending
- (g) the principle that—
 - (i) in the determination of measures for dealing with offending by children or young persons, consideration should be given to the interests and views of any victims of the offending (for example, by encouraging the victims to participate in the processes under this Part for dealing with offending); and
 - (ii) any measures should have proper regard for the interests of any victims of the offending and the impact of the offending on them
- (h) The principle that the vulnerability of children and young persons entitles a child or young person to special protection during any investigation relating to the commission or possible commission of an offence by that child or young person.

282 Power of Court to discharge information

- (1) Where an information is laid charging a young person with a summary offence or with an indictable offence (other than a purely indictable offence), a Youth Court, after inquiry into the circumstances of the case, may discharge the information.
- (2) An information discharged under subsection (1) of this section shall be deemed never to have been laid.
- (3) If it is satisfied that the charge against the young person is proved, the Court may make an order under any of the provisions of paragraphs (e) to (j) of section 283—
 - (a) when it discharges the information; or
 - (b) at any earlier time after it completes the inquiry referred to in subsection (1)
- (4) The Court must not exercise the power in subsection (3)(b) unless section 281(1) is complied with.

283 Hierarchy of Court's responses if charge against young person proved

A Youth Court before which a charge against a young person is proved may, subject to sections 284 to 290, make 1 or more of the following responses (grouped in levels of equal restrictiveness, the groups ranging from least restrictive to most restrictive):

Group 1 responses

- (a) discharge the young person from the proceedings without further order or penalty:
- (b) admonish the young person:

Group 2 responses

- (c) order that the young person come before the Court, if called upon within 12 months after the order is made, so that the Court may take further action under this section:
- (d) impose a fine that could have been imposed by a District Court if the young person were an adult and had been convicted of the offence following a summary hearing in a District Court, and exercise any of the powers conferred on a District Court by sections 81 and 83 of the Summary Proceedings Act 1957 (other than the power to impose a period of imprisonment in default of payment):
- (e) order the young person or, in the case of a young person who is under the age of 16 years, any parent or guardian of the young person to pay a sum towards the cost of the prosecution:
- (f) order the young person or, in the case of a young person who is under the age of 16 years, any parent or guardian of the young person to pay to the person who suffered the emotional harm or the loss of, or damage to, property such sum as it thinks fit by way of reparation if the Court is satisfied that any person (other than the young person) suffered, through or by means of the offence, either or both of the following:
 - (i) emotional harm:
 - (ii) loss of, or damage to, property:
- (g) order the young person or, in the case of a young person who is under the age of 16 years, a parent or guardian of the young person to make restitution in accordance with section 404 of the Crimes Act 1961:
- (h) make an order for the forfeiture of property to the Crown if the forfeiture of that property would have been obligatory or could have been ordered under an enactment applicable to the offence if the young person were an adult and had been convicted of that offence by a District Court:
- (i) make an order under section 293A (which relates to disqualification from driving):
- (j) make an order that could have been made by a court other than a Youth Court under section 128 or 129 of the Sentencing Act 2002 (which relate to confiscation of motor vehicles) if the young person were an adult and had been convicted of the offence in a court other than a Youth Court; and if the Court makes such an order, the following sections of that Act apply accordingly:
 - (i) sections 127 and 130 to 142:
 - (ii) section 128 or 129 (as the case may be):

Group 3 responses

- (ja) make an order requiring the young person (if he or she is, or is soon to be, a parent or guardian or other person having the care of a child), or a parent or guardian or other person having the care of the young person, or both, to attend, in a manner specified by the Court, and for a specified period of not more than 6 months, a specified parenting education programme:
- (jb) make an order requiring the young person to attend, in a manner specified by the Court, and for a specified period of not more than 12 months, a specified mentoring programme:
- (jc) make an order requiring the young person to attend, in a manner specified by the Court, and for a specified period of not more than 12 months, a specified alcohol or drug rehabilitation programme:

Group 4 responses

(k) make an order placing the young person under the supervision of the chief executive, or any person or organisation specified in the order, for a period not exceeding 6 months:

(l) make a community work order under section 298:

Group 5 response

(m) make a supervision with activity order under section 307:

Group 6 response

(n) make a supervision with residence order under section 311:

Group 7 response

(o) enter a conviction and order that the young person be brought before a District Court for sentence or decision, in which case the Sentencing Act 2002 applies accordingly if—

(i) the young person is of or over the age of 15 years; or

(ii) the young person is of or over the age of 14 years and