Raising the Age of Youth Justice: Should 17 Year Olds Be Included Within New Zealand's Youth Justice System?

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Introduction

"A new paradigm";[1] "an international trendsetter";[2] and "world-class standard"[3] are just some of the ways in which New Zealand's youth justice system has been positively described since the inception of the Children, Young Persons, and Their Families Act 1989 ("CYPTF Act"). This piece of legislation, which governs the operation of youth justice in New Zealand, provided a new approach to youth justice that promoted New Zealand to the position of world leader in the youth justice sphere.[4] However, 17 years later New Zealand is no longer regarded as a youth justice role model to its common law peers, but has somewhat of a negative reputation, being labelled as an "international embarrassment".[5] This fall from grace is due to one highly controversial aspect of the Act: the definition of a 'young person'.[6] Under New Zealand law, as soon as a young person turns 17, he or she is no longer caught within the youth justice system but can be tried as an adult.

The CYPTF Act is twofold in that it covers both youth justice and care and protection. As highlighted by former Principal Youth Court Judge and current Children's Commissioner Andrew Becroft, "There's a really staggering and profoundly concerning link between care and protection issues and adverse life outcomes…in the criminal justice system".[7] Because these two spheres overlap, it is logical that the current definition of a young person applies across the Act. On this basis it could be assumed that if it were ever decided that the age of youth justice or the age of care and protection needed to be raised then the general definition would be amended to ensure consistency across both domains.

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[1] Allison Morris and Gabrielle Maxwell "Juvenile Justice in New Zealand: A New Paradigm" (1993) 26 Aust & NZ J Crim 72.
[2] J Wundersitz "Juvenile Justice in Australia: Towards the New Millenium" in D Chappell and J Wilson (eds) *Crime and the Criminal Justice System in Australia: 2000 and Beyond* (Butterworths, Sydney, 2000) 102 at 110.
[3] Andrew Becroft "Access to Youth Justice in New Zealand: 'The Very Good, the Good, the Bad and the Ugly'" (2012) 18 Auckland U L Rev 23 at 25.
[4] Andrew Becroft "Children and Young People in Conflict with the Law: Asking the Hard Questions" (paper presented at the XVII World Congress of the International Association of Youth and Family Judges and Magistrates, Belfast, 31 August 2006) at 2.
[5] Conan Young "NZ labeled international embarrassment over Youth Court age" (12 September 2016) Radio New Zealand <http://www.radionz.co.nz>.
[6] See Children, Young Persons, and Their Families Act 1989, s 2, definition of "young person". A young person is defined as "a boy or girl of or over the age of 14 years but under 17 years".
[7] Interview with Andrew Becroft, Principal Youth Court Judge (Guyon Espiner, Morning Report, Radio New Zealand, 28 August 2015).

The Children, Young Persons and Their Families (Advocacy, Workforce and Age Settings) Bill 2016 is currently before Parliament which,[8] if passed, will raise the age of statutory care and protection to 18. Despite there being a frequent overlap between youth justice and care and protection, the Government has decided that the age only needs to be raised for care and protection. Perhaps the Government has realised that there is some deficiency in the logic through which they have created this statutory inconsistency. Minister for Social Development Anne Tolley has suggested, in light of the current Bill and comments made in 2015 by Minister for Justice Amy Adams,[9] that consideration will also be given to whether 17 year olds should be included as young persons for the purposes of youth justice.[10]

But the issue goes much further than two Ministers hinting at the possibility for change. For years, individuals, organisations and political parties have recognised that the definition of a young person is an "enduring stain on our otherwise good justice record".[11] In an open letter to the Prime Minister and Cabinet Ministers, JustSpeak, an organisation encouraging change within the criminal justice system, has called for progress to be made. Signed by 35 other interested individuals and representatives of organisations,[12] the letter shows that New Zealand society has a real interest in this particular issue. However, while the National Party Ministers are only considering the age raise now, others have been pushing for change for years. The Labour Government introduced a Bill in 2007 that if passed, would have raised the age of youth justice to 18.[13] However this was never passed into law due to John Key's incoming centre-right National Government, which had promised to toughen up on youth offending.[14] A few years later in July 2013, JustSpeak launched a campaign to include 17 year olds within the youth justice system, writing their first open letter to the Government.[15] Since then, Andrew Becroft has made numerous statements about the age issue in his roles as Principal Youth Court Judge and Children's Commissioner, various academics have commented on the problem, Members of Parliament have expressed their support and

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[8] Children, Young Persons, and Their Families (Advocacy, Workforce and Age Settings) Amendment Bill 2016 (142-1).
[9] See Andrea Vance and Paul Easton "Raise the age of criminal culpability – Justice Minister" (23 August 2015) <http://www.stuff.co.nz>.
[10] Anne Tolley "Radical changes to child protection and care" (press release, 7 April 2016).
[11] Young, above n 5.
[12] JustSpeak "Include all children in our youth justice system: An open letter to PM John Key and Cabinet Ministers" (media release, 12 September 2016). Amongst those who signed the letter are representatives from UNICEF NZ, the Dyslexia Foundation, YouthLaw Aotearoa, Action for Children and Youth Aotearoa, Save the Children New Zealand and the ADHD Association.
[13] Children, Young Persons, and Their Families Amendment Bill (No 6) 2007 (183-2).
[14] John Key "State of the Nation speech" (29 January 2008) <http://www.nzherald.co.nz>. Key also stated, "All offenders over the age of 16 are also referred to the adult courts. This too, should continue to be the case."
[15] JustSpeak "JustSpeak launches open letter calling for youth justice system to include 17-year-olds" (media release, 14 July 2013).

JustSpeak have written their second open letter. An amendment to the youth justice age must be on the horizon, yet all of this raises the question of why it has taken so long for change to come into sight.

This dissertation will examine the issue of age as it currently stands in the wider context of the youth justice system. Firstly, the youth justice system will be detailed and contrasted with the adult justice system to highlight the differences between what the process is for a 17 year old in the adult system and what it could be if the age is raised. Secondly, the reasons for raising the age will be discussed. The brain development of youth, the impact of imprisonment on youth, the opportunity for family involvement, international obligations and the need for consistency across domestic legislation all combine to provide a strong basis on which to argue that 17 year olds should be included within the youth system. This will be followed by discussion of the two main arguments against the age raise, which are accountability and deterrence, and the practical issue of limited resources. Finally, the difficulties with raising the age will be addressed, with reference to wider youth justice issues. The problems with youth justice residences and the age mixing of female prison inmates both create an element of difficulty that may work to counter the reasons for the age raise.

For the purposes of this dissertation the following definitions will be used: 'young person' or 'young offender' is to be interpreted in line with the CYPTF Act definition,[16] meaning persons between the ages of 14 and 16. 'Youth' is more general, referring to persons in the period of adolescence under the age of 20. The phrase 'young people' has been used where it has been taken directly from another source. It should be interpreted in the same way as 'youth'.

[16] CYPTF Act, s 2, definition of "young person".

Chapter One: New Zealand's Youth Justice Framework

A History of youth justice in New Zealand

1 The welfare and justice models

The current theoretical foundation of the youth justice system in New Zealand has been described as "two broad coalitions of competing interests" that "present contradictory claims about youth crime in pursuit of divergent but equally self-serving agendas".[17] The two broad coalitions described are the 'justice' and 'welfare' models of youth justice. Both models have been reflected during the evolution of the youth justice system and discussion of the two can aid in understanding how the system has been shaped over time to be as it is today.

The justice model, as the description suggests, aims to achieve justice. It focuses on the offence rather than the offender and embodies the notion of 'just deserts'. Individuals are regarded as autonomous beings capable of making their own decisions, therefore those who choose to offend must be held accountable for their actions and receive a proportionate punishment to deter future offending.[18] However, a key criticism of the justice model is its failure to take a holistic view of offending. It tends to disregard an individual's personal circumstances due to the primary focus being on the offending. The concern is that by failing to take into account factors such as social inequality, the punishment given to the individual will end up being disproportionately severe.[19]

In contrast, the welfare model takes a care-based approach that focuses on the offender and his or her needs.[20] Under this model, youth who offend are not seen as being entirely responsible for their own actions because they are in a stage of development meaning that they have reduced decision-making capacity compared to adults. Instead, their antisocial behaviour is shaped by environmental factors including the family and peers. Therefore, interventions under this model are based around addressing the problems or needs of the young persons and helping them to overcome these in order to prevent reoffending.[21] However, the welfare model has also been criticised. Because the

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[17] Trevor Bradley, Juan Tauri and Reece Walters "Demythologising Youth Justice in Aotearoa New Zealand" in John Muncie and Barry Goldson (eds) *Comparative Youth Justice: Critical Issues* (Sage Publications, London, 2006) 79 at 79.
[18] Lesley McAra "Models of Youth Justice" in David Smith (ed) *A New Response to Youth Crime* (Routledge, New York, 2010) 287 at 289.
[19] Emily Watt "A History of Youth Justice in New Zealand" (research paper, Department for Courts, January 2003) at 5.
[20] At 3.
[21] McAra, above n 18, at 289.

focus is on the offender, this model can overlook the offence that has been committed, which could be detrimental when dealing with persistent offenders.[22]

These models reflect opposing ideals of care and punishment, with neither model being fully equipped to sufficiently deal with youth offenders. However, a combination of the two models that utilises the strengths of both is likely to be most effective, and this has become the basis for the current legislation governing youth justice.

2 New Zealand's legislative history

New Zealand's approach to youth justice has changed considerably over time. As attitudes towards youth offending have shifted, the justice and welfare models have shaped the governing legislation to match current societal attitudes.

Post-colonisation, the English legal system was adopted in New Zealand. Early legislation, such as the Neglected and Criminal Children Act 1867 focused mainly on neglected children, though there was an attempt to distinguish the neglected and the offenders by establishing industrial schools for the neglected[23] and reformatories for the offenders.[24]

Youth justice underwent drastic change in the twentieth century. A key development was the establishment of separate court hearings for youth under the Juvenile Offenders Act 1906.[25] This Act also included a very early instance of a diversionary approach to youth justice. Alongside the power to charge a young person, the judge also had power to discharge or admonish the young person.[26] Both developments are significant as they show that there was recognition of the different needs of youth and adults.

Almost two decades later, the Child Welfare Act 1925 allowed for the establishment of 'Children's Courts'.[27] These courts were in separate premises from the adult courts, which provided even further separation between youth and adults.[28] This Act also signalled the adoption of the welfare model of youth justice. Young offenders had once been seen as delinquents who should be punished, but the adoption of the welfare

[22] Watt, above n 19, at 4.
[23] Neglected and Criminal Children Act 1867, s 3.
[24] Section 4.
[25] Watt, above n 19, at 7.
[26] Juvenile Offenders Act 1906, s 5.
[27] Child Welfare Act 1925, s 26.
[28] Nessa Lynch *Youth Justice in New Zealand* (Thomson Reuters, Wellington, 2012) at 6.

model changed the focus. Young offenders were instead regarded as being in need of care and rehabilitation.[29]

In 1974 the Children and Young Persons Act replaced the 1925 Act.[30] This Act signified the welfare model "reaching an apotheosis", with the Act being heavily welfarist in nature.[31] It continued a longstanding trend of dealing with both care and protection and youth justice cases in a similar way.[32] However, there were also some significant changes. One key change was the legal distinction established between 'child' and 'young person'. This was the first time that legislation specific to children and young persons had made such a distinction.[33] The age of a 'young person' was set to what it is today; of or over 14 years and under 17 years, and the age of a child was defined as those under 14 years.[34] This distinction was reflected in another key change, which was the reformatting of the Children's Courts to the Children and Young Persons' Courts.[35]

3 The Children, Young Persons, and Their Families Act 1989

Prior to the CYPTF Act 1989, New Zealand's youth justice system closely reflected youth justice systems in comparable jurisdictions.[36] However, rather than following the USA, England and Canada towards a more punitive system at the latter end of the twentieth century,[37] New Zealand took its own path to arrive at the CYPTF Act. This Act has reconceptualised youth justice in New Zealand, incorporating various policy, practical and conceptual strands, which has led to descriptions of the Act as a "cloak woven from many strands"[38] and significantly, the "new paradigm" of youth justice.[39]

The crossover of the justice and welfare models is evident within the principles of the CYPTF Act. The Act codified several sets of principles, which was a legislative feature "unprecedented in the English-speaking world".[40] The Act includes both a set of general principles relating to children and young persons[41] and a set of principles specific to

[29] Nessa Lynch, above n 28, at 7; Emily Watt, above n 19, at 11.
[30] Children and Young Persons Act 1974.
[31] Watt, above n 19, at 11.
[32] Lynch, above n 28, at 25.
[33] Watt, above n 19, at 12.
[34] Children and Young Persons Act, s 2, definitions of "young person" and "child".
[35] Section 20.
[36] Watt, above n 19, at 11.
[37] At 5.
[38] Alison Cleland and Khylee Quince *Youth Justice in Aotearoa New Zealand: Law, Policy and Critique* (Lexis Nexis, Wellington, 2004) at 51.
[39] Morris and Maxwell, above n 1, at 72.
[40] At 72.
[41] CYPTF Act, s 5.

youth justice.[42] These principles, particularly those specific to youth justice, show a shift towards a justice model. Concepts such as accountability, proportionality, formality and the protection of rights are reflected within the principles.[43] However, the principles also reflect welfarist ideals such as addressing the underlying causes of offending,[44] strengthening the family,[45] and allowing the age of a young person to be a mitigating factor.[46] This shows that the legislation is balancing the core aspects of both models.

Additionally, the CYPTF Act includes features that stand outside of the two contrasting models. These are the inclusion of the interests of the indigenous population, the focus on the family in decision-making, the importance of diversion and the adoption of restorative justice processes.[47] Perhaps the most innovative feature of the CYPTF Act is in the inclusion of restorative justice (RJ). This model views individuals as being shaped by their cultural and social environments,[48] thus RJ processes are non-punitive, offer increased potential for effective and meaningful participation in a supportive and family environment and present an opportunity for make amends with the victim.[49]

The main RJ intervention in the youth justice system is the family group conference (FGC). A FGC involves the young person and his or her family working with individuals such as social workers and the police to address the young person's offending. In accordance with the RJ model, the victim and his or her family can also attend a FGC and voice their views about the situation and how the young person should be dealt with. Generally, a FGC can involve helping the young person to take responsibility for his or her offending, finding ways to help the young person to make amends, and figuring out ways in which the young person can move forward positively. Once a plan is formulated in the FGC and agreed upon by all attendees, it becomes legally binding and will be reviewed by Child, Youth and Family (CYF) until the tasks within it have been completed.[50] The FGC is significant in that it allows various individuals to collectively formulate a plan to deal with a young person's offending outside of the formal court system.

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[42] CYPTF Act, s 208.
[43] See Appendix 1 for the s 208 principles. The reference to 'sanctions' and 'dealing with offending' across the principles is reflective of accountability. Proportionality is reflected in principle (d); formality can be seen within principle (a) and the protection of rights is seen within principle (h).
[44] Section 208(fa).
[45] Section 208(c).
[46] Section 208(e).
[47] See Cleland and Quince, above n 38, at 51-81.
[48] McAra, above n 18, at 289.
[49] Lynch, above n 28, at 201.
[50] Child, Youth and Family "Family Group Conferences" <http://www.cyf.govt.nz>.

B The Structure of the Youth Justice System

1 Police

When a young person commits an offence there are generally three options for a police officer to take. The police officer must first consider whether it would be sufficient to give the young person a warning.[51] This option is of benefit to the young person as it means he or she cannot be charged with an offence.[52]

If a warning is insufficient then the police officer may notify the Youth Aid division of the police, which will then commence alternative action with the young person. The objective of alternative action (and Youth Aid generally) is to work informally with young persons through the use of diversion rather than criminal proceedings.[53] This aligns well with the principle under s 208(a) of the CYPTF Act, which is that criminal proceedings should not be instituted against a young person if there is an alternative means of dealing with the matter.[54] The prerequisites for commencing alternative action are that the young person admits to the offending and a parent or guardian of the young person is present. If these are met then the Youth Aid officer will work with the young person and his or her family to create a plan for dealing with the young person's offending.[55] Such plans may include apologising to the victim, reparation, community work, curfews or attending a specific programme. Youth Aid monitors the finalised plan.[56]

If the offending is serious then the third option is to arrest the young person. When a young person is arrested, he or she may either be released without charge or be charged. If the police decide to charge the young person then an 'intention to charge FGC' must first be held.[57] If, following the 'intention to charge FGC', the police decide to charge the young person then the young person will appear before the Youth Court.

2 Youth Court

A young person who appears before the Youth Court has two options in relation to the offence that he or she is charged with. If the charge is 'not denied' then the court will

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[51] CYPTF Act, s 209.
[52] Section 213
[53] Cleland and Quince, above n 38, at 113.
[54] CYPTF Act, s 208(a). See Appendix 1.
[55] Kaye McLaren *Alternative Actions that Work: A review of the research on Police Warnings and Alternative Action* (Police Youth Services Group, New Zealand Police, 2010) at 14.
[56] At 15.
[57] CYPTF Act, s 245(1).

adjourn the proceedings and order a 'court-ordered FGC'.[58] This FGC shall seek to determine whether the young person admits to the offending. Only when the young person does admit to the offending can the FGC formulate a plan.[59] The use of 'not denied' means that the young person can admit to some involvement in the offence without having to admit absolute culpability.[60] If the young person completes the FGC plan to the satisfaction of the Youth Court judge then the judge may discharge the charge against the young person.[61] A discharged charge is treated as never having been filed, thus there will be no charge on record against the young person, which may aid in his or her rehabilitation.[62]

Alternatively, the charge may be 'denied', which means that the case will go to a defended hearing in the Youth Court.[63] Once a charge has been proved there are a number of responses that are open to the Youth Court to take when sentencing a young person. These vary in restrictiveness, with the least restrictive order being discharging the young person from the proceedings without further order or penalty, and the most restrictive order being sentencing a young person to supervision with residence.[64] The Youth Court may also order that a young person be transferred to the District Court or High Court for sentencing depending on the age of the young person and the offence committed.[65] It is important that the Youth Court must impose the least restrictive outcome that is adequate in the circumstances.[66] Significantly, Youth Court judges do not have the power to order a sentence of imprisonment. Therefore, in order for a young person to be sentenced to imprisonment he or she must be sentenced in the District or High Courts.

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[58] CYPTF Act, s 246(b).
[59] Section 259. A young person may not admit to the offending. With any form of FGC, if agreement cannot be reached between the attendees as to the plan formulated in the FGC, then the youth justice coordinator must adjourn the FGC (s 264(1)). Thus, presumably in the case of a young person not admitting to the offending, the same provision will apply and the case will be transferred back to the Youth Court.
[60] See Lynch, above n 28, at 139.
[61] CYPTF Act, s 282.
[62] See Cleland and Quince, above n 38, at 132.
[63] CYPTF Act, s 246(a). This section states that if a young person denies the charge then he or she shall be dealt with in accordance with ss 273-276. At the Youth Court hearing, if the charge is proved then a youth justice coordinator shall convene a FGC, which involves considering the options for sentencing the young person (ss 247(e) and 258(e)). This FGC must happen before the Youth Court can make an order (s 281(1)).
[64] Section 283. Other orders include a fine, reparation, community work and requiring a young person to attend a specified programme.
[65] Section 283(o). A young person can be transferred to the District Court if the young person is either at least 15 years of age, or is 14 years of age and has committed a category 3 or 4 offence for which the maximum penalty is at least 14 years imprisonment. A transfer to the High Court can be made when the young person has committed a category 4 offence for which the maximum penalty is life imprisonment and the Court considers that life imprisonment may be appropriate.
[66] Section 289.

The Youth Court is not available to all young persons who fit the definition of a 'young person'. The Youth Court does not have jurisdiction where the offence is a category 3 or 4 offence and the young person elects trial by jury, where the offence is murder or manslaughter, or where the young person is charged jointly with another person and is to have a jury trial.[67] In these cases, all pre-trial processes must take place in the Youth Court before the young person is transferred to either the District Court or High Court for trial.[68] Thus, for the most serious offending, young persons will be held accountable in the adult courts.

3 Specialist courts

There are several other courts parallel to the Youth Court. Each of the following courts targets a specific characteristic of the young person or the young person's offending.

(i) Rangatahi Courts and Pasifika Courts

Rangatahi Courts provide a cultural response to high rates of offending by Māori youth. The main aim of these courts is to monitor a young person's FGC plan,[69] and the entire process is done with the underlying aim of connecting a young person to his or her Māori culture.[70] The importance of culture is seen from the very beginning, where traditional Māori welcoming customs greet those involved onto the marae, which is where these hearings are held. Young persons are also expected to perform their own *mihi* or speech of greeting, which challenges the young persons to learn Māori phrases, thereby aiding in connecting young persons with their culture.[71] Then, in order to help a young person to complete the FGC plan, whanau, hapu and iwi resources as well as Māori programmes and services are utilised. These are used as tools to help aid young persons to improve their life pathways and they also provide a link between the Rangatahi Court and the community.[72]

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[67] CYPTF Act, s 273. Under subsection (3)(c), the Youth Court also does not have jurisdiction over traffic offences that are not punishable by imprisonment. This can produce the inconsistency that a young person charged with a serious offence such as burglary can be brought before the Youth Court yet a young person charged with a traffic offence not punishable by imprisonment must go before the adult courts. This goes against the idea of having a youth justice system specifically for youth offenders, particularly considering that apart from these traffic offences, the only other offences that are not within the Youth Court's jurisdiction are those in categories 3 and 4. See Becroft, above n 3, at 32.
[68] Section 275.
[69] "Te Kooti Rangatahi Aims" (17 May 2010) 750 Law Talk 10. The Rangatahi and Pasifika Courts are only available to those who have admitted their offending, have elected to appear before the specialist court and the victim has agreed with the transfer to the specialist court.
[70] At 10.
[71] Heemi Taumaunu "Rangatahi Courts of Aotearoa New Zealand: An Update" (paper presented at the International Indigenous Therapeutic Jurisprudence Conference, University of British Columbia, Vancouver, 9-10 October 2014).
[72] District Courts of New Zealand *Annual Report* (2015).

Rangatahi Courts were first trialled in 2008 and now there are 14 across New Zealand.[73] These courts have received a positive evaluation from the Ministry of Justice.[74] Since the introduction of these courts, Pasifika Courts have also been established. They target Pacific Island offending and operate in a similar manner to the Rangatahi Courts but are held in Pasifika churches or community centres.[75] It is significant that these specialist courts are in place to target the issue of overrepresentation of Māori and Pacific Islanders within the current system.

(ii) Intensive Monitoring Group

The Intensive Monitoring Group (IMG) is a specialist court that takes a therapeutic jurisprudence approach to youth offending. Therapeutic jurisprudence is "the use of social science to study the extent to which a legal rule or practice promotes the psychological and physical well-being of the people it affects".[76] Initiatives within the criminal justice system that follow a therapeutic justice model aim to reduce the potentially detrimental effects of the legal system and promote positive, pro-social outcomes for offenders whilst ensuring that offenders are still held accountable for their behaviour.[77] The IMG, as a "solutions-focused" court, also falls within what is coined New Zealand's "solutions-focused" movement. This is a movement described as an approach to offending led by a handful of judges that aims to redirect offenders onto a path that leads away from such offensive behaviour and helps them to initiate positive change in their lives.[78] This fits into the overarching concept of therapeutic jurisprudence, as solutions-focused initiatives tend to incorporate therapeutic elements.[79]

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[73] New Zealand Law Society "Award Honours Rangatahi Courts" (31 May 2016) <https://www.lawsociety.org.nz>.
[74] See Taumaunu, above n 71. The Ministry of Justice contracted an external party to produce a qualitative report evaluating the Rangatahi Court system. Positive findings included high levels of attendance by young persons, young persons demonstrating positive behaviour and accepting responsibility for their actions, improved whanau relationships and appropriate provision of services and programmes to which young persons could be referred to after successfully completing their FGC plans. Unfortunately there are no quantitative statistics available.
[75] Youth Court of New Zealand "Rangatahi Courts & Pasifika Courts" https://youthcourt.govt.nz>.
[76] Christopher Slobogin 'Therapeutic Jurisprudence: Five Dilemmas to Ponder' in Bruce J Winick and David B Wexler (eds) *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence* (Carolina Academic Press, Durham NC, 1996) 761 at 767.
[77] Warren Brookbanks *Therapeutic Jurisprudence: New Zealand Perspectives* (Thomson Reuters, Wellington, 2015) at 164.
[78] At 330.
[79] At 329.

The IMG is available to young persons who meet three criteria:[80] are in need of care and protection; have drug, alcohol or mental health issues; and have a moderate to high risk of reoffending.[81] The IMG works in a therapeutic manner by addressing a young person's background and circumstances as well as incorporating the family in order to create a treatment plan to address the young person's offending.[82] Numerous professional individuals and programmes are linked with the IMG and can provide specialist support and assistance. The Judge personally monitors the treatment plan and the young person must appear before the judge every two weeks, which promotes accountability.[83] This is only one short initiative and ongoing work will often be required for these young persons. However, there have been positive reports of reduced reoffending by the young persons who have attended the IMG,[84] indicating that the IMG does have potential to make a positive impact.

(iii) Christchurch Youth Drug Court

The Christchurch Youth Drug Court (YDC) is another court operating under a therapeutic model.[85] A young person can be referred to the YDC from a FGC if he or she has a moderate to serious drug dependency and is a recidivist offender. The drug dependency must be linked to the offending.[86] The idea is that these young persons will receive help for the drug dependency that contributes to their recidivism.[87]

The therapeutic jurisprudence element of the YDC is seen through the role of the presiding judge. The young person is required to complete his or her FGC plan, which includes measures specific to their drug dependency. The plan is initially monitored every fortnight, then is monitored monthly provided that the young person is showing progress.[88] The Judge will praise or sanction the young person depending on whether he or she shows progress or failure in relation to this plan.[89] As with the IMG, the Judge is directly involved in the intervention.

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[80] Apart from the three entry criteria, these young persons also must have entered 'not denied' in relation to the offence for which they have been charged, have admitted the offending and have been to a FGC to formulate a plan. See Barrie Evans "The Intensive Monitoring Group (IMG) and Youth Justice" (Master of Philosophy Thesis, Auckland University of Technology, 2012) at 49.
[81] Andrew Becroft "The Youth Courts of New Zealand in Ten Years Time: Crystal Ball Gazing or Some Realistic Goals for the Future?" (paper presented at the National Youth Advocates/Lay Advocates Conference, Auckland, 13-14 July 2015) at 14.
[82] At 4.
[83] At 4.
[84] Barrie Evans, above n 80, at 51.
[85] Wendy Searle and Philip Spier *Christchurch Youth Drug Court Pilot: One year follow up study* (Ministry of Justice, February 2006).
[86] Warren Brookbanks, above n 77, at 333.
[87] Brookbanks, above n 77, at 332; Becroft, above n 81, at 12.
[88] Searle and Spier, above n 85, at 22.
[89] Becroft, above n 81, at 12.

4 Youth justice residences

The youth justice system provides facilities specifically for young persons, with the main facility being CYF-run youth justice residences. There are four instances in which a young person may be placed in a residence: where the young person is arrested and put into CYF care until he or she appears in the Youth Court; where the court has remanded the young person and he or she needs to stay at a youth justice residence until the court deals with the case; where the young person is sentenced to imprisonment and it is decided that some or all of this time will be served in a residence; or where the young person is sentenced to supervision with residence.[90]

There are four mixed-sex youth justice residences in New Zealand, located in South Auckland, Rotorua, Palmerston North and Christchurch.[91] These facilities are designed to provide a secure, safe place for young persons, particularly because young persons are vulnerable to self-harm and suicide attempts.[92] These residences also provide education, life skill training and support for overcoming problems such as alcohol, drug or anger issues.[93]

5 Imprisonment

For the most serious youth offenders, imprisonment may be the only option. The Youth Court however cannot impose a sentence of imprisonment upon a young person. In the adult courts, a young person can only be sentenced to imprisonment if the offence was a category 4 offence or a category 3 offence that carries a maximum penalty of life or at least 14 years imprisonment.[94]

A young person sentenced to imprisonment may serve the time in prison or in a youth justice residence.[95] Those who go to prison are housed in specialist youth units attached to the adult prisons. At present there are only two specialist youth units, located at Christchurch Prison and Hawke's Bay Regional Prison.[96] In contrast with the definition of a 'young person', these units also house 17 year olds and can house 18 and 19 year

[90] Child, Youth and Family "Youth Justice Residences" <http://www.cyf.govt.nz>.
[91] Child, Youth and Family, above n 90.
[92] Kathy Foster "Making a difference for young people in prison" *Practice: The New Zealand Corrections Journal* (online ed, New Zealand, December 2015).
[93] Child, Youth and Family, above n 90.
[94] Sentencing Act 2002, s 18.
[95] Department of Corrections "Prison Operation Manual" <http://www.corrections.govt.nz> at M.03.01.
[96] Department of Corrections "Our Locations" <http://www.corrections.govt.nz>.

olds who have been identified as vulnerable.[97] As these prisons are all for male prisoners, these youth units only cater for young male offenders.

Young female offenders do not receive the same treatment as young males. They are placed into New Zealand's three women's prisons[98] or alternatively, they can be placed into the Korowai Manaaki Youth Justice Residence in Auckland. There are no designated specialist youth units for females, which means that young female offenders are placed directly into women's prisons.[99]

C Contrast with the adult justice system

The youth justice system provides a wide range of youth-specific measures for dealing with youth offending. As this section will highlight, there are similarities and differences with the adult system, as the two are separate but interlinking.

1 Diversion

Adult offenders can also go through diversion rather than formal court proceedings. Diversion is an option initiated by the Police Prosecution Service. An offender must first be deemed eligible for diversion,[100] and if the conditions of the diversion are completed then the charge can be withdrawn.[101] This operates in the same way as the youth diversion processes in that once conditions are met, the offender is able to avoid conviction.

2 Sentencing

The range of sentences that a judge can impose upon adult offenders differs to an extent from those available in the Youth Court. The Sentencing Act 2002 provides a

[97] Department of Corrections, above n 95, at M.03.01.
[98] These are Auckland Region Women's Corrections Facility, Arohata Women's Prison and Christchurch Women's Prison.
[99] Department of Corrections, above n 95, at M.03.02.
[100] See New Zealand Police "Adult Diversion Scheme" <http://www.police.govt.nz>. Diversion is considered where the offence is not serious (serious offences include burglary, dishonesty offence, sexual offences, serious drug offences, traffic offences carrying a mandatory minimum disqualification and offences for breaching a court order), the offender has accepted full responsibility for the offences as described in the summary of facts, the offender has been explained their legal rights and the offender agrees to the conditions of diversion. Generally, it will be the offender's first offence but this is not a requirement.
[101] New Zealand Police, above n 100. Conditions of a diversion agreement may include attending a specific programme or counselling, making reparation or writing a letter of apology to the victim, or undergoing a restorative justice conference.

hierarchical list of available sentences for adults.[102] These range in restrictiveness, with the least restrictive being an order for discharge without conviction and the most restrictive being imprisonment.[103] One of the main differences with the adult system is that anyone who is convicted will be left with the burden of a conviction on his or her criminal record.[104]

3 Imprisonment

The potential for adults to be imprisoned is one of the main differences between the youth and adult criminal justice systems. Imprisonment has become somewhat of a popular sentence in New Zealand, with the prison population having risen significantly over recent years. In 2003, there were 5,891 people in prison.[105] This increased to 8,223 a decade later in 2013[106] and it has risen in the last three years to 9,945 (as at 30 June 2016).[107] In order for imprisonment to be effective, there must be appropriate measures and processes in place for dealing with offenders.

In contrast with youth, adults go straight into mainstream prisons, although there are specialist units available. Across the New Zealand prisons, there are units specifically for Māori, Pacific Islanders, self-care (to encourage reintegration back into the community), violence prevention, drug treatment, special treatment (those at high risk of violent or sexual reoffending) and mothers with babies. All of these units are intended to help offenders in the rehabilitation process.[108] There are also rehabilitative programmes designed to help offenders deter from offending by assessing their risks and needs. As with the units, these programmes target either specific problems or characteristics of offenders. For example, there are programmes specifically for child sex offenders, for improving motivation, for Māori and Pacific Islanders, and for high-risk violent or sexual offenders.[109]

Rehabilitation is also encouraged through programmes that enhance skills. Prison inmates can undergo training in certain industries, which can also include gaining

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[102] These sentences also apply to young persons dealt with in the adult courts.
[103] Sentencing Act, s 10A. Other sentences under this section are fine, reparation, community work, supervision, intensive supervision, community detention and home detention.
[104] Ministry of Justice "What is a criminal record" <https://www.justice.govt.nz>. Anyone who has not yet been charged or who is found not guilty will not have a conviction for the offence in issue on his or her record.
[105] Department of Corrections "Annual update of forecasts of the prison population" (2003) <www.corrections.govt.nz>.
[106] Department of Corrections "Prison facts and statistics - December 2013" <www.corrections.govt.nz>.
[107] Department of Corrections "Prison facts and statistics – June 2016" <www.corrections.govt.nz>.
[108] Department of Corrections "Specialist units" <http://www.corrections.govt.nz>.
[109] Department of Corrections 'Rehabilitation programmes" < http://www.corrections.govt.nz>.

national-level qualifications.[110] For inmates who have demonstrated good behaviour, are nearing release and are minimum security, there is the possibility of being able to engage in paid work through the release to work programme. This programme allows prison inmates to work for employers in the community, be paid market wages and develop employable skills.[111] All of these various programmes will aid in offenders' rehabilitation as well as their reintegration back into the community following release.

Despite these benefits of imprisonment for offenders, there are also major downfalls. What the adult criminal justice system does show is that there are comparisons that can be drawn with the youth justice system, particularly in the areas of diversion and rehabilitation. However, the sentences that can be imposed are often harsher, particularly imprisonment. Chapter Two will incorporate the core aspects of these two systems in arguing that 17 year olds should be included within the youth justice system.

[110] Department of Corrections "Employment activities" <http://www.corrections.govt.nz>. The industries that inmates can be trained in include timber processing, construction, textiles, catering, engineering and farming.
[111] Department of Corrections "Release to work" <http://www.corrections.govt.nz>.

Chapter Two: Why the Age of Youth Justice Should be Raised

> "A 'good' youth justice system is a specialised system, created with the understanding that young people are not just 'junior adults' but developmentally, almost a 'different species of human being' with markedly different characteristics and responses than adults. A good system recognises their vulnerability and includes protections that enable them to desist from offending in the future."[112]

The main premise for raising the age of youth justice is that youth and adults are different. An individual does not instantly mature into an adult upon his or her 17th birthday. Other jurisdictions have recognised that 17 year olds need the protection of the youth justice system. The United Kingdom,[113] Canada[114] and 42 states within the USA[115] all include 17 year olds within their respective youth justice systems. In Australia, all states and territories other than Queensland currently treat 17 year olds as young persons.[116] However, the Queensland Premier announced in early September 2016 that a Bill would be introduced into Parliament that if passed, will allow 17 year olds to be moved to the youth justice system.[117] Therefore, New Zealand is lagging behind its common law counterparts by leaving 17 year olds within the ambit of the adult justice system.

The differences between adults and young persons that justify the presence of two distinct criminal justice systems have been discussed in New Zealand's case law. The Court of Appeal in *Churchward v R*[118] highlighted a range of these differences. Although the offender was 17 years old at the time of offending, meaning that she was dealt with in the adult courts rather than the Youth Court, the case is significant for two main reasons. Firstly, it discusses available research on the brain development of youth, which is one of the proposed reasons for raising the age of the Youth Court jurisdiction. Secondly, it highlights five ways in which age is both relevant to sentencing and a mitigating factor. This case shows explicit judicial recognition that youth are different to adults.

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[112] Andrew Becroft "10 Suggested Characteristics of a Good Youth Justice System" (paper presented at the Pacific Justices' Conference, Auckland, 5-8 March 2014).
[113] Crime and Disorder Act 1998 (UK) c 37, s 117.
[114] Youth Criminal Justice Act SC 2002 c 1, s 2.
[115] National Conference of State Legislatures "Juvenile Age of Jurisdiction and Transfer to Adult Court Laws" <http://www.ncsl.org>.
[116] Chris Cunneen and RD White *Juvenile Justice: Youth and Crime in Australia* (4th ed, Oxford University Press, Melbourne, 2011) at 262.
[117] Queensland Government "17 year olds to be moved to youth justice" (7 September 2016) <http://statements.qld.gov.au>.
[118] *Churchward v R* [2011] NZCA 531, (2011) 25 CRNZ 446.

The following are the five ways in which the Court of Appeal has deemed age to be relevant:

1. There are age-related neurological differences between young people and adults, including that young people may be more vulnerable or susceptible to negative influences and outside pressures (including peer pressure), and may be more impulsive than adults;
2. The effect of imprisonment on young people, including the fact that long sentences may be crushing on them;
3. Young people have greater capacity for rehabilitation, particularly given that the character of a juvenile is not as well formed as that of an adult;
4. Offending by a young person is frequently a phase which passes fairly rapidly, and thus a well-balanced reaction is required in order to avoid alienating them from society; and
5. Criminal convictions at that stage of a person's life may have a disproportionate impact on the ability of a young person to gain meaningful employment and play a worthwhile role in society.[119]

These five reasons can be reduced down to two main reasons why the age of youth justice should be raised to include 17 year olds: the differences in brain development between youth and adults, and the impact of imprisonment on youth. As will be discussed, 17 year olds are closer in a developmental sense to CYPTF Act-defined 'young persons' than adults. These two reasons will also be supported by three further reasons: family involvement, international obligations and the need to ensure consistency across domestic legislation.

A Brain development of youth

Youth and adults differ significantly in terms of brain development. Certain parts of the brain, in particular the prefrontal cortex, continue to develop throughout adolescence and into adulthood.[120] As the brain develops, individuals develop cognitively. This means that adolescents gain enhanced understanding and reasoning, enabling them to process information and logically approach tasks. Youth are also developing psychosocially, and it is this form of development that means youth and adults require different treatment within the criminal justice system. Psychosocial development occurs

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[119] *Churchward*, above n 118, at [77-78].

[120] Sarah-Jayne Blakemore and Suparna Choudhury "Development of the adolescent brain: Implications for executive function and social cognition" (2006) 47(3) Journal of Child Psychology and Psychiatry 296 at 296; Kathryn C Monahan and others "Psychosocial (im)maturity from adolescence to early adulthood: Distinguishing between adolescence-limited and persisting antisocial behaviour" (2013) 25 Development and Psychopathology 1093 at 1103.

at a slower rate than cognitive development and results in key social and emotional differences between youth and adults. Cognitive development levels off around the mid-teens, although adolescents may not be thoroughly effective at using their cognitive abilities due to lower maturity. In contrast, psychosocial development continues into early adulthood. As an individual psychosocially matures, he or she will demonstrate changes in areas such as susceptibility to peer pressure, sensitivity to rewards, ability to understand the consequences of one's actions and the ability to regulate oneself.[121] Because 17 year olds are still developing psychosocially, they should be treated differently to adults by being included with their like-minded peers in the youth justice system.

The Court of Appeal in *Churchward* drew upon the US case *Roper v Simmons*,[122] which set out features of adolescence that are linked to psychosocial brain development. The first characteristic is the reduced capacity to make decisions.[123] In a cognitive sense, youth are considerably well developed. However, this does not equate to being able to utilise this brain capacity effectively. Youth have less experience and maturity than adults and are not as efficient at processing information, thus are more likely to make uninformed decisions.[124] Contributing to the problem of uninformed decision-making is the fact that adolescence tends to be characterised by risk taking behaviour. A primary reason for this is that youth are more concerned with the present rather than "future orientation", which involves considering the potential long-term consequences of an action.[125] This is due to the way that youth attribute values to risks and rewards compared to adults. Youth may put value on the thrill of taking a risk, considering it to be a reward. In contrast, adults may weigh up the consequences of the possible action and attach more value to the consequences rather than the thrill.[126] It is not that youth are unaware of the possible risks; they simply have a higher propensity to either not consider the risks or disregard them in favour of other factors that they attribute higher priority.[127] The fact that youth are inclined to take risks can mean that the decisions that they make are based on immediate reward rather than long term benefit, which contributes to their reduced ability to make well-informed decisions.

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[121] Elizabeth Cauffman and Laurence Steinberg "Emerging Findings from Research on Adolescent Development and Juvenile Justice" (2012) 7 Developmental Research and Juvenile Justice 428 at 435.
[122] *Roper v Simmons* 543 US 551 (2005).
[123] *Churchward*, above n 118, at [50].
[124] At [51]. For example, in a situation where a young person feels threatened, he or she is more likely than an adult to make an ill-considered, rash decision.
[125] Elizabeth Scott and Laurence Steinberg "Adolescent Development and the Regulation of Youth Crime" (2008) 18(2) The Future of Children 15 at 20.
[126] *Churchward*, above n 118, at [53].
[127] Scott and Steinberg, above n 125, at 21.

The second characteristic of adolescence is susceptibility to external pressures.[128] Youth and their developing brains are easily influenced by social factors such as their families, but particularly their peers. Peer influence is the most coercive for youth compared to any other age group. Youth have transitioned away from the influence of their parents yet still lack the sense of self that can allow an individual to avoid acting under peer influence.[129]

Peers can have both direct and indirect influence. Indirect influence can involve a youth subconsciously seeking approval from his or her peers. This could include acting in ways that the young person thinks is expected by his or her peers in order to feel accepted. Direct influence is more visible. A youth may verbally encourage another to perform a particular action, such as aiding in the commission of a crime.[130] The lower level of brain development that results in youth having greater susceptibility to influence means that both of these forms are likely to contribute to how youth offend. The reason for this is that crimes committed by youth generally tend to be both unpremeditated and committed with peers.[131] As youth mature, the influence of peers decreases, so peer co-offending also tends to decrease with age.[132] Understanding how significant peer influence is on youth is important because an individual may be more likely to offend in this time due to the influence of their peers, suggesting that their behaviour is not due to intrinsic characteristics but general developmental vulnerability.

A primary feature of the period of adolescence and of psychosocial maturity is developing a sense of personal identity. This forms the third characteristic of adolescence.[133] Adolescence tends to involve experimentation with different choices and values as youth try to figure out 'who' they are. Consequently, this can also result in engagement with risk taking behaviours which, as highlighted above, is a common feature of adolescence.[134] Because this is a period of personal development where the brain is still changing, it is arguable that youth offending stems from this developmental

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[128] *Churchward*, above n 118, at [50].
[129] See Scott and Steinberg, above n 125, at 20. Adults are described as more psychosocially mature because they have had time to develop a sense of self. Children are also less easily influenced by their peers because parents tend to have the most influence in a child's life. As a child enters adolescence, he or she becomes more distanced from his or her parents and peers gain a higher degree of influence.
[130] At 21.
[131] David P Farrington "Developmental and Life-Course Criminology: Key Theoretical and Empirical Issues" (2003) 41(2) Criminology 221 at 221. This is due to youth tending to focus on the present rather than the possible consequences of an action, as well as the fact that youth tend to spend considerable time with their friends.
[132] Franklin E Zimring "Kids, Groups and Crime: Some Implications of a Well Known Secret" (1981) 72(3) J Crim L & Criminology 867 at 867.
[133] *Churchward*, above n 118, at [50].
[134] See discussion of risk taking at page 19.

period rather than from any established bad character.[135]In that sense, it is logical to allow youth to be a mitigating factor because to treat young persons the same as adults would be to inaccurately assume that youth and adults are at the same stage of psychosocial maturity.

1 Adolescence limited and life course persistent offenders

A common theme throughout the available literature on youth justice tying into the third characteristic is that there are two different types of offender. Psychologist Terrie Moffitt first promulgated this idea in the early 1990s. She describes the two types as 'adolescence limited' ("AL") and 'life course persistent' ("LCP").[136] This concept links into the idea that a lot of youth offending is related to development rather than negative personal characteristics.

The majority of offenders are AL offenders. These are individuals who are temporarily involved in antisocial behaviour but as offending tends to peak around age 17, they grow out of this behaviour as they enter adulthood.[137] AL offenders often offend due to developmental influences in adolescence and the inconsistency of their offending is reflective of how they weigh up values and rewards. An AL offender may engage in antisocial behaviour where he or she considers the reward of this behaviour to be worthwhile. However, the same youth may, in another situation, choose not to engage in antisocial behaviour where prosocial behaviour offers greater reward.[138] Because the criminal justice system becomes the framework within which these youth continue to develop, it is important that they are not influenced in a detrimental way. The diversion process in the youth justice system is significant because it allows youth to remain in the community but encourages accountability and provides them with additional support to help them to deal with their behaviour.[139] Subjecting an AL offender to an environment such as prison or even a youth justice residence where they will mix with other youth offenders could risk solidifying behavioural characteristics that an AL offender is inevitably likely to grow out of if the right measures are taken.

In contrast, LCP offenders are those who continue to offend into adulthood. These are youth who have demonstrated persistent antisocial behaviour throughout their adolescent years, and adolescence is only one section of a long-term period of antisocial

[135] Scott and Steinberg, above n 125, at 24.
[136] Terrie Moffitt "Adolescence-Limited and Life-Course-Persistent Antisocial Behaviour: A Developmental Taxonomy" (1993) 100(4) Psychological Review 674.
[137] At 674-676.
[138] At 686.
[139] See discussion of alternative action and Youth Aid at page 8.

behaviour.[140] Thus, the characteristics that they possess are not so much transitory characteristics of the development period, but are fixed characteristics of that particular person.[141] As with AL offenders, exposing LCP offenders to the adult system where they may end up in prison is potentially harmful. The behaviour of an LCP offender who is imprisoned may worsen in such an environment that is characterised by antisocial peers.[142] If a 17 year old has the opportunity to go through alternative action with the police or receive a non-residential sentence, then this is more likely to improve their rehabilitative prospects in relation to antisocial behaviour than what would be achieved through a sentence imposed in the adult courts.

The research on brain development shows that "the immaturity of adolescent offenders causes them to differ from their adult counterparts in ways that mitigate culpability."[143] Youth have diminished decision-making ability, are prone to risk taking, are susceptible to external influence and have an undeveloped character. AL offenders will likely grow out of these behaviours, so exposing 17 year olds to the adult system could negatively hamper their rehabilitative prospects more so than if they were in the youth justice system.[144] LCP offenders could also benefit from certain aspects of the youth justice system, such as the opportunity to admit involvement through the use of 'not denied', the specialist courts, the rehabilitative youth justice residences and the involvement of the family and services in the FGC process. These offenders should have a chance to deter from offending behaviour before being labelled negatively in the adult system. It is important to recognise that this inclusion would not mean that all youth offenders would be treated more leniently than adults, as the Youth Court still has the ability to impose restrictive sentences, and the most serious offences will still be transferred to the adult courts.[145]

B The impact of imprisonment on youth

The impact of imprisonment on youth is the second main reason for raising the age of youth justice. The harshest sanction that can be imposed in the Youth Court is supervision with residence for a maximum of six months.[146] Imprisonment however,

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[140] Moffitt, above n 136, at 674-676
[141] At 679.
[142] At 684. Imprisonment is not the only possible sentence for an LCP offender. However, as these youth are persistent offenders, imprisonment may be a likely possibility. If these youth were to go through the Youth Court instead, they could receive sentences that require them to participate and own up to their actions, including community work and attending specific programmes. See discussion of the orders that the Youth Court can make at page 9.
[143] Scott and Steinberg, above n 125, at 25.
[144] This will be discussed further in the next section on the impact of imprisonment.
[145] See discussion of which sentences are transferred to the adult courts at page 10.
[146] CYPTF Act, s 311.

carries much more significance in terms of sentence length. The maximum sentence that can be imposed is life imprisonment without parole,[147] which essentially means that an individual can spend the rest of his or her life in prison. It is not guaranteed that a 17 year old sentenced in the adult courts will receive a sentence of imprisonment. However, raising the age of youth justice would lessen the potential for imprisonment for the majority of 17 year olds,[148] allowing them to avoid the more potentially damaging adult criminal justice system in favour of the benefits of the youth justice system.[149] This part will highlight the dangers of imprisonment to youth and why this should justify leaving imprisonment as an option for only the most serious 17-year-old offenders.

1 Peer influence and recidivism

Prison is a heavily structured environment in which youth have everyday decisions made for them.[150] One of the most artificial aspects is the way in which interaction is controlled. In the prison setting, individuals are restricted in how, when, and with whom they can interact. The opportunity to interact with prosocial peers in the community is replaced by interaction with other antisocial peers in a controlled environment.[151] Youth justice residences are similar in that an individual's peers will be other offenders, however in adult prisons there is likely to be more variety amongst peers due to the wide range of available imprisonment sentences. Youth could be housed amongst adults serving life sentences as well as recidivist adult offenders, which can increase the chance that youth will become involved in further antisocial behaviour through peer influence.

It is well known that peers are a key factor in one's socialisation, with recognition of strong links between crime and affiliation with antisocial peers.[152] Whilst still in a stage

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[147] Sentencing Act, s 103(2A).
[148] This is because firstly, youth cases are only transferred to the adult courts in certain circumstances which means that imprisonment will not be a possible sentence for the majority of youth and secondly, most youth are AL offenders who are likely to be dealt with through diversion. See pages 10 and 21 for discussion of these two points respectively.
[149] See Ian Lambie and Isabel Randell "The Impact of Incarceration on Juvenile Offenders" (2013) 33 Clinical Psychology Review 448 at 452.
[150] See Department of Corrections, above n 95. The Corrections manual sets out extensive rules. The following are examples of rules that remove the liberty of decision-making from inmates to various degrees: rule M.01.01.02 lists the hours that different types of prison units must operate an unlock regime; rule V.02 entitles inmates to at least one approved visit for 30 minutes per week; and rule P.02 states that only an inmate's court or release clothes and small valuables will be stored at the prison, and any personal property to be kept in one's cell must fit within a specified container.
[151] Lambie and Randell, above n 149, at 451.
[152] David Fergusson, Nicola Swain-Campbell and John Horwood "Deviant peer affiliations, crime and substance use: A fixed effects regression analysis" (2002) 30(4) Journal of Abnormal Child Psychology 419 at 429.

of development, youth are highly influenced by their peers, especially as they have a strong desire to belong.[153] Thus, being subsumed within an environment of fellow antisocial peers is undoubtedly going to have some impact upon a youth's behaviour. Further, the removal of youth from their communities can pose a further risk, with the disruption of family and community relationships leaving youth without persons upon whom they can model prosocial behaviour. This is a prime opportunity for youth to engage in further antisocial behaviour, which heightens the risk of recidivism upon release.[154]

Statistics produced in 2009 showed that 88% of imprisoned persons under the age of 20 would be reconvicted within 60 months and 71% would be reimprisoned within 60 months.[155] When compared to imprisoned persons aged over 40,[156] these statistics show that those under 20 are more than twice as likely to be reimprisoned. These statistics highlight that imprisonment does not help youth to deter from offending. There is no benefit to anyone, whether the youth themselves or wider society, by exposing youth to an environment that produces such high reoffending rates. Putting 17 year olds in prison where their risk of reoffending is so significant goes against youth justice ideals, particularly considering that these youth are still in the same stage of development as their 14 to 16 year old peers.

2 *Mental wellbeing*

Imprisonment also affects mental wellbeing to a significant degree. This was discussed, albeit briefly, in *Churchward v R*.[157] The Court referred to *R v Slade*,[158] in which the Court of Appeal accepted that prison affects youth differently to adults. In that case, clinical psychologist Ian Lambie presented a report that was accepted by the Court, which detailed that the literature on adolescent imprisonment shows that youth who are imprisoned experience significant degrees of self-harm, victimisation, depression, anxiety and suicidal ideas.[159]

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[153] Kearney Healy and Ross Green *Tough on Kids: Rethinking Approaches to Youth Justice* (Purich Publishing, Saskatoon (Canada), 2003) at 142.
[154] Lambie and Randell, above n 149, at 451.
[155] Arul Nadesu *Reconviction patterns of released prisoners: A 60 months follow up analysis* (Department of Corrections, March 2009) at 7. This study was conducted by the Principal Strategic Advisor for the Department of Corrections. It used a cohort of 5000 offenders who were released from prison between 1 April 2002 and 31 March 2003 and looked at reoffending and reimprisonment rates that occurred within 60 months of an individual's release date (up to 31 March 2008). The study provided statistics for reoffending and reimprisonment across a range of characteristics: age, ethnicity, gender, sentence length, offence type, risk score and previously imprisoned versus first timers.
[156] Those 40 and above had a 35% rate of reimprisonment.
[157] *Churchward*, above n 118, at [85-87].
[158] *R v Slade* [2005] 2 NZLR 526, (2005) 21 CRNZ 600 (CA) at [45].
[159] At [45].

Imprisonment tends to exacerbate underlying mental health issues of youth, which heightens the negative prison experience. This occurs through the placement of stressors upon individuals that are generated by the prison environment. A common stressor amongst youth imprisoned with adults is victimisation. Adults are often stronger, of greater maturity, have more extensive criminal histories and more prison experience. As youth are more developmentally vulnerable than adults,[160] they are at more risk of victimisation in adult prisons where there is unequal standing between them and their adult peers.[161]

Further stressors include boredom, isolation and the removal from one's family and community environment, which weakens youth's support networks whilst in prison. The combination of various stressors can detrimentally affect a youth's mental health and cause long-term harm on one's sense of self-worth. The consequence is that a high proportion of youth develop serious mental illnesses. Many also resort to drugs and alcohol, self-harm and even suicide, as highlighted by Lambie's report.[162] Often this does not happen until one has left prison, emphasising that imprisonment has ongoing, long-term impacts on mental health.[163] To subject youth to such risks to their mental health is inconsistent when considering that the majority of youth will grow out of their offending as they enter adulthood provided that they are not subjected to such a detrimental environment.

3 Education and employment

The scope of long-term negative effects on youth who have been imprisoned reaches far beyond mental wellbeing. Imprisonment restricts educational opportunities, which in turn can limit employment prospects. A recent New Zealand study involved assessing 60 male youth between the ages of 16 and 19 imprisoned in youth units at Rimutaka and Christchurch prisons. The average school dropout age of the participants was 14.56 years,[164] highlighting that many youth who are within the criminal justice system have left school before their offending occurs and so have a limited level of education. Educational opportunities have essentially ended for these youth.[165]

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[160] See discussion of the brain development of youth starting at page 18.
[161] Lambie and Randell, above n 149, at 449.
[162] See Lambie's report mentioned at page 24. See *R v Slade*, above n 158, for further information.
[163] Lambie and Randell, above n 149, at 453.
[164] Julia Rucklidge, Anthony McLean and Paula Bateup "Criminal Offending and Youth Disabilities in New Zealand Youth: Does Reading Comprehension Predict Recidivism?" (2009) 59(8) Crime & Delinquency 1263 at 1269.
[165] For those who are engaged in the formal school system when they are imprisoned, the majority of those who do return to school following release are likely to drop out early. See Lambie and Randell, above n 149, at 455.

The same study identified that 91.67% of those assessed demonstrated a lower than expected score on a test of achievement, which was equated to having a learning disability. These learning disabilities can be attributed to a lack of engagement with formal education, which links the average dropout age with the high percentage of learning disabilities.[166] Youth justice residences can aid in providing youth with further opportunity for education as they provide education to all young persons housed in the residences, regardless of age.[167] The focus of youth justice residences is on therapeutic, child-centred care that will aid in rehabilitating young persons and reducing their reoffending.[168] Education fits into this by helping youth to develop lifelong skills.

With regards to prison, Corrections only has to provide free education for those under 16.[169] Corrections has confirmed that mandatory education is provided for those in this age group.[170] Educational and training opportunities, including foundation skills programmes, trade and technical training, and self-directed study are all provided in Corrections' prisons,[171] but the legislation indicates that these services are not compulsory for anyone aged 16 and over. 17 year olds (as well as 16 year olds) with learning disabilities may not receive any assistance to help them to improve the degree of their disabilities. Since education in prison appears to be the problem, raising the youth justice age to 18 could enhance the opportunity for 17 year olds to further their education. The youth justice residences provide education services and there is also the opportunity for youth to undergo educational programmes as part of alternative action or their FGC plans. Considering that many youth offenders drop out of school at a young age, depriving themselves of the opportunity to improve their education, allowing these youth to go through the youth justice system could help them to gain further educational opportunities than what they could receive in the adult system.

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[166] Rucklidge, McLean and Bateup, above n 164, at 1270. A learning disability was described as a problem in an academic area, such as reading, mathematics and comprehension.

[167] Child, Youth and Family, above n 90. There is no definite information on whether 16 year olds receive exactly the same education as their peers.

[168] Office of the Children's Commissioner *State of Care 2016: What We Learnt from Monitoring Child, Youth and Family* (June 2016) at 30.

[169] The Education Act 1989 provides for free education for those between the ages of five and 19 years (s 3). However, the legal duty to be enrolled at a registered school only applies to those between the ages of six and 16 (s 20(1)). The Corrections Act 2004 is in line with this, stating that the Crown does not have to provide free education to a prisoner unless they are entitled to receive free education under the Education Act or they have poor literacy skills and the education is being provided to improve those skills (s 78).

[170] "Information about prison youth units" (25 August 2016, obtained under Official Information Act request to the Department of Corrections). There are no female youth units but based on the legislation, education would have to be mandatory for female youth under the age of 16 who are housed in women's prisons.

[171] Department of Corrections "Education and Training" <http://www.corrections.govt.nz>.

Education is directly related to employment in that a lower level of education can increase the difficulty of gaining meaningful employment. It also means that one is likely to earn considerably less than someone with a higher level of education.[172] Thus, youth whose education has been affected by dropping out early or by being imprisoned are at a disadvantage in competing for employment opportunities when they are released from prison, which could have an impact on the rest of their lives. However, as discussed in Chapter One, New Zealand prisons do provide opportunities for inmates to develop skills in certain industries.[173] If youth have dropped out of school and are unlikely to return to education, then prison may provide them with enhanced training opportunities as they are in a setting in which they are forced to develop life skills. Thus, prison may actually increase a youth's chances of gaining meaningful employment compared to the chances he or she would have had if they remained in the community. But even with this training, it has been shown that imprisonment does not tend to reduce recidivism.[174] The opportunity to develop skills is a positive aspect of imprisonment but it will not necessarily result all in youth being successfully rehabilitated to the extent that they will seek meaningful employment upon release, as that is a step requiring individual self-motivation.

4 Conclusion

Imprisonment is always a last resort option.[175] But to be a truly last resort option for youth, the age of youth justice needs to be raised so that the likelihood of being imprisoned is further reduced. Leaving youth at risk of harm and limiting their future opportunities by exposing them to the risk of imprisonment does not align with rehabilitating and reducing reoffending. Youth justice residences are also controlled places where youth will mix with like-minded peers. Similar issues are guaranteed to occur within these residences, however not to the same extent due to the rehabilitative, therapeutic focus and the maximum placement length of six months. All of identified impacts of imprisonment on youth support the separation of youth and adults by way of two separate but interacting justice systems. Having these two different systems reduces the risk of harm to youth in terms of their holistic health as well as to their prospects of rehabilitation. The discussion of brain development indicated that 17 year olds' brains are not drastically different from the brains of those that fall within the CYPTF Act definition of a 'young person'. In addition, the literature on how prison

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[172] Barry Holman and Jason Zeidenberg *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* (Justice Policy Institute, November 2006) at 10.
[173] See discussion on the imprisonment of adults at page 15.
[174] See the statistics about recidivism at page 24.
[175] Under the Sentencing Act, imprisonment is listed as the most restrictive sentence (s 10A). Section s 16 states that imprisonment can only be imposed where the purposes cannot be achieved by any sentence other than imprisonment.

affects youth tends to be in relation to those under 18 years of age.[176] The vulnerability of 17 year olds to the same imprisonment impacts as their younger peers provides a persuasive reason to raise the youth justice age to allow for the best possible outcome for all youth.

C Family involvement

The involvement of the family within the youth justice system is a key feature that is excluded from the adult system. The importance of the family is shown within the youth justice principles of the CYPTF Act, which emphasise the need to make decisions regarding young persons in the context of the young person's family.[177] Including the family emphasises the role that the family plays in a young person's life. The main aspect of the youth justice system that encourages family involvement is the FGC. From the charging stage onwards all young persons must undergo a FGC.[178] The inclusion of the family in the FGC not only allows the family to explain their perspective of the young person's offending and have a voice in how the young person should be dealt with,[179] but it can also involve a degree of accountability being placed on the family, particularly the parents.

In the Youth Court, parents and caregivers can also be held accountable to some extent. For example, under s 283(ja) of the CYPTF Act the Court can order than the parents of a young person undergo a parenting education programme.[180] This differs immensely from the adult system. Judge Pippa Sinclair, in sentencing 17 year old Hendrix Hauwai in the North Shore District Court, stated that Hauwai's parents should have been standing beside him in the dock,[181] inferring that they had some responsibility in Hauwai's offending behaviour. However, because Hauwai was 17, he was within the adult system and there was no opportunity to bring him together with his parents in a FGC.[182] If he had been 16, a FGC would have been mandatory. This key difference between the two systems highlights that youth within the adult system are excluded from an opportunity to have their families involved and held to a degree of responsibility. Allowing 17 year olds within the youth justice system would allow for greater consideration of their circumstances and recognition of the role that the family

[176] See Lambie and Randell, above n 149 as an example.
[177] See Appendix 1. Principles (c) and (f) are the most directly relevant to the family.
[178] This includes young persons whose cases are transferred to the adult courts as all pre-trial processes occur in the Youth Court. See discussion of the structure of the youth justice system at page 8.
[179] Child, Youth and Family, above n 50.
[180] CYPTF Act, 283(ja).
[181] Donna Chisholm "Branded for life: New Zealand's youth justice system" *New Zealand Listener* (online ed, New Zealand, 9 April 2015).
[182] Chisholm, above n 181.

may play in youth offending; a welfare-based privilege already granted to their younger yet similarly developed peers.

D International obligations

New Zealand has international obligations in relation to youth justice. The main covenant to which New Zealand is a party is the United Nations Convention on the Rights of the Child (UNCROC). This document sets out international standards for children's rights.[183] New Zealand's ratification of this Convention thereby signified New Zealand's commitment to complying with the standards for children's rights set out by this document. Thus, it could be expected that New Zealand would reflect these rights within domestic legislation.

New Zealand is currently not complying with all articles of the UNCROC. The UNCROC defines a 'child' as a "human being below the age of eighteen years",[184] which differs from the definition of a 'young person' under the CYPTF Act. Under the UNCROC, every 'child' has specific rights in relation to youth justice,[185] thus every human being under 18 years is entitled to these rights. However, because New Zealand's upper age limit for youth justice is 17, this means that 17 year olds in New Zealand are not guaranteed the rights that they are entitled to under the UNCROC. As the UNCROC is not binding upon New Zealand's domestic law, New Zealand technically does not have to comply with the UNCROC and is not breaching any legally binding obligation to 17 year olds.

In order to provide further guidance in specific areas relating to children and young persons, the UN has implemented various sets of rules, three of which directly relate to youth justice. The Guidelines for the Prevention of Juvenile Delinquency ("Riyadh Guidelines") do not provide any form of definition of a young person[186] and the Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules") refer to a 'child' or 'juvenile' being defined by the particular country.[187] However, the Rules for the Protection of Juveniles Deprived of their Liberty ("Havana Rules") specifically state that a 'juvenile' means "every person under the age of 18".[188] The effect of this is that regardless of what each set of rules states, 17 year olds in New Zealand are

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[183] United Nations Convention on the Rights of the Child (opened for signature 20 November 1989, adopted 20 November 1989, entered into force 2 September 1990).
[184] UNCROC, art 1.
[185] Art 40.
[186] United Nations Guidelines for the Prevention of Juvenile Delinquency GA Res 45/112, A/RES/45/112 (1990), cl 2.2(a). These guidelines will be referred to as the "Riyadh Guidelines".
[187] United Nations Standard Minimum Rules for the Administration of Juvenile Justice GA Res 40/33, A/RES/40/33 (1985), cl 2.2(a). These rules will be referred to as the "Beijing Rules".
[188] United Nations Rules for the Protection of Juveniles Deprived of their Liberty GA Res 45/113, A/RES/45/113 (1990), cl 11(a). These rules will be referred to as the "Havana Rules".

not guaranteed any protection by these rules, as with the UNCROC. Until the age is raised, 17 year olds will continue to be excluded.

New Zealand has faced extensive criticism from the UN for the inconsistency between domestic legislation and the UNCROC. As a signatory, New Zealand is obliged to produce a periodic report detailing the measures that the nation has adopted in order to give effect to the rights under the UNCROC.[189] Upon reviewing New Zealand's third and fourth reports in 2011,[190] the Committee on the Rights of the Child recommended that all domestic legislation be made consistent with the UNCROC. The Committee highlighted its disapproval with the maximum age of youth justice being 17, recommending that New Zealand raise the age in accordance with the Committee's general comment No. 10.[191] However, this criticism was disregarded, with New Zealand's fifth periodic report (released in 2015) stating that the Government is not considering raising the age to 18, noting that such a raise would involve considerable financial cost.[192]

The UNCROC has been in existence for 27 years. Yet even with the time that has passed and the criticism from the Committee, there has been no change in the youth justice age. The fact that New Zealand chose to ratify this covenant should demonstrate a commitment to ensuring that domestic legislation is consistent with international standards. The failure to comply with the UNCROC provides a strong reason why New Zealand should raise the age of to 18, as it would ensure that New Zealand would finally be meeting the obligation that the Government willingly agreed to.

E Consistency across domestic legislation

New Zealand's domestic legislation provides a mismatched array of definitions relating to age. All of the following definitions are inconsistent with the definition of a 'young person' under the CYPTF Act:

- The Sale and Supply of Alcohol Act 2012 defines a 'minor' as a person who is under the age of 18 years.[193] It is an offence for a minor to purchase alcohol,[194]

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[189] UNCROC, art 44.
[190] Committee on the Rights of the Child *Consideration of reports submitted by States parties under article 44 of the Convention* CRC/C/NZL/CO/3-4 (2011).
[191] Committee on the Rights of the Child *General Comment No. 10: Children's rights in juvenile Justice* CRC/C/GC/10 (2007) at [36-37].
[192] Ministry of Social Development *United Nations Convention on the Rights of the Child: Fifth Periodic Report by the Government of New Zealand* (2015).
[193] Sale and Supply of Alcohol Act 2012, s 5(1).
[194] Section 243.

for licensed premises to sell alcohol to a minor,[195] and for a minor to be supplied alcohol.[196]

- The Smoke-free Environments Act 1990 makes it an offence to sell tobacco products to anyone under the age of 18.[197]
- The Electoral Act 1993 restricts voting to adults, who are those of or over the age of 18.[198]
- The Care of Children Act 2004 defines a 'child' as a person under the age of 18.[199]
- The Vulnerable Children Act 2014 defines a 'child' as a person who is under the age of 18.[200]
- The Crimes Act 1961 places a legal duty upon parents who have care or charge of a child under the age of 18 to provide the child with necessities and take reasonable steps to protect from injury.[201]
- The Prostitution Reform Act 2003 lists prohibitions on the use of those under 18 in prostitution.[202]

A common theme across this domestic legislation is that 18 is the age at which a distinction between youth and adult is drawn. There are different protections and rights given to individuals based on whether or not they fit the specific definition in each statute. 17 year olds are excluded from many of the rights and protections that are associated to adulthood. A 17 year old cannot vote, or purchase alcohol or tobacco, and are owed a legal duty by their parents. The anomaly is that 17 year olds are treated as being different to adults in these areas, yet when it comes to the CYPTF Act, 17 year olds are treated as being equivalent to adults.

In the Introduction, it was explained that the age of care and protection is in the process of being raised to 18.[203] The shared definition of a 'young person' under the CYPTF Act for youth justice and care and protection cases indicates that if the age of care is raised, so too should the age for youth justice. If 17 year olds are deemed to lack the maturity required to vote or buy alcohol, then not only should these youth be entitled to receive state care, but they should also be treated as youth for the purposes of criminal justice. In the words of Children's Commissioner Andrew Becroft, if the age of youth justice is not raised in conjunction with the age for care and protection, "…we would be having in

[195] Sale and Supply of Alcohol Act, s 239.
[196] Section 241.
[197] Smoke-free Environments Act 1990, s 30AA.
[198] Electoral Act 1993, s 3.
[199] Care of Children Act 2008, s 8.
[200] Vulnerable Children Act 2012, s 5.
[201] Crimes Act 1961, s 209A.
[202] Prostitution Reform Act 2003, ss 20-23.
[203] See Introduction at pages 1-2.

the adult District Court people who are still only children in the care and protection system. It's going to be a complete organisational shambles."[204] For the purposes of widespread consistency in the domestic sphere and even within the CYPTF Act itself, the age of youth justice should be raised to 18.

F Conclusion

The five main reasons in favour of raising the age of youth justice to include 17 year olds span both personal characteristics of youth that increase their vulnerability as well as international and domestic legal considerations. It is evident from the research that has been conducted on adolescent brains that youth, including 17 year olds, are considerably less developed than adults. This alone could be a sufficient reason, but it is further supported by the impact of imprisonment as the less developed state of youth heightens the detrimental effect that imprisonment can have. Therefore, prison should become even less of a potential option for 17 year old offenders. In addition, the family has a significant role in a youth's life, thus 17 year olds should have their families involved in the justice process. Further, the obligations under the UNCROC, as well as numerous pieces of domestic legislation, all support the idea that a young person should be someone under the age of 18 years. If New Zealand has signed up to a Convention that gives under 18 year olds age-specific rights, and domestic law provides certain protections to those under 18, then it is logical than the CYPTF Act should match.

[204] Simon Collins "Youth Court age limit campaign" *The New Zealand Herald* (online ed, New Zealand, 27 July 2016).

Chapter Three: Arguments Against Raising the Age of Youth Justice

The differences between youth and adults provide the basis upon which it can be argued that the age of the Youth Court jurisdiction should be raised.[205] Such an attitude towards youth offending reflects the underlying notion of the CYPTF Act. The Act aims to deter youth offenders by having them go through the youth justice system, but doing so in a way that takes into account their characteristics and provides them with measures appropriate to their level of development for dealing with their offending behaviour. However, despite the arguments in favour, and all of the numerous individuals and bodies pushing for an age raise, there are those who regard an age raise negatively. In order to balance what is a highly contentious issue, this next chapter will discuss the arguments opposing the inclusion of 17 year olds within the youth justice system.

A Accountability and deterrence

Punitive-based concepts such as accountability and deterrence can be used to favour the continued exclusion of 17 year olds from the youth justice system. Accountability in relation to offending is about "understanding what you did and taking responsibility for it".[206] If individuals offend then they need to be held accountable for their actions. Deterrence comes in two main forms and co-exists with accountability. Specific deterrence is about punishing an offender to deter him or her from reoffending in the future. General deterrence is about encouraging other people not to offend by making an example of the offender.[207] Both accountability and deterrence fit the idea of 'just deserts', where those who choose to commit crime deserve proportionate punishment in order to be held accountable and deterred from future offending.[208] Therefore, in relation to offending by 17 year olds, those who prioritise accountability and deterrence are likely to be those who favour a more punitive approach being taken to youth offending, where youth offenders are dealt with under the adult system.

The Sensible Sentencing Trust (SST) is one group who advocates for harsher treatment of youth offenders, embodying a punitive, justice-based approach to youth justice. They

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[205] These differences are discussed in the 'Brain Development of Youth' and 'The Impact of Imprisonment on Youth' sections starting at pages 18 and 22 respectively.
[206] Howard Zehr *Changing lenses: A new focus for crime and justice* (Herald Press, Scottsdale (Philadelphia), 1990) at 31.
[207] Patricia A Brennan and Sarnoff A Mednick "Learning Theory Approach to the Deterrence of Criminal Recidivism" (1994) 103(3) Journal of Abnormal Psychology 430 at 430.
[208] McAra, above n 18, at 289.

advocate for victims' rights and encourage more punitive sentences for offenders.[209] The SST opposes a raise in the age of youth justice but they also oppose the existence of the youth justice system.[210] The SST considers that the only instances where adult and youth offenders should be treated differently are within the prison and probation systems for the purposes of reducing potential harm to youth offenders from adults. The SST's reasoning against having two different justice systems is that the current youth justice system has contributed to the current state of youth crime. Garth McVicar, founder and spokesperson for the SST, has criticised the youth justice system for not being hard enough on youth offenders. He said, "I blame my generation who have allowed the youth justice system to become so liberal and so politically correct that we have removed all consequences for the offenders".[211] In the eyes of the SST, the youth justice system has favoured welfare-based features at the expense of accountability and deterrence. To include 17 year olds within the youth justice system would, from the SST's perspective, be to remove the consequences of offending for another cohort of offenders.

It is undoubtedly important to hold youth offenders to account. However, the youth justice system already incorporates accountability and both forms of deterrence. Part 4 of the CYPTF Act provides a set of principles specific to youth justice. These principles refer to dealing with a young person's offending, having measures for dealing with offending and sanctioning a young person.[212] Although none of the principles explicitly refer to accountability or deterrence, the fact that the principles refer to consequences of a young person's offending indicates that these concepts are included within the overall framework. Procedurally, the police are able to hold youth offenders accountable by arranging for alternative action or charging a young person.[213] The Youth Court and FGC processes also incorporate accountability through the use of 'denied' and 'not denied' and the opportunity for a young person to admit to the offending.[214] All of these procedural steps show that specific deterrence can be encouraged through the youth justice system even before any formal punishment is ordered by way of requiring an offender to go through processes that are initiated by their offending. General deterrence is more likely to be produced through the sentence imposed upon an offender, though the punishing of an individual through a sentence

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[209] Sensible Sentencing Trust "About Us" <http://sst.org.nz>.
[210] The NZ First political party and the New Zealand Indian Association are two other groups that oppose a raise in the age of the Youth Court. See Darroch Ball "17 Year Olds Must be Held Accountable in Adult Court System" (23 May 2016) NZ First <http://nzfirst.org.nz> and Stuff "NZ Indian Association: Raising youth justice age asking for trouble" (13 June 2016) <http://www.stuff.co.nz>.
[211] Jonathan Howe "Backlash as youth crime escalates" *Manawatu Standard* (online ed, New Zealand, 23 February 2010).
[212] CYPTF Act, s 208. See Appendix 1.
[213] See discussion on alternative action and police charges at page 8.
[214] See discussion of the Youth Court at pages 8-9.

will also work specifically to deter that individual. In contrast to what has been stated by Garth McVicar, the youth justice system does impose consequences upon youth offenders, whether it is through diversionary process or the Youth Court, thus these consequences would also apply to 17 year olds.

If there are concerns about the worst 17 year old offenders being dealt with under the youth justice system, those concerns could be alleviated by the fact that the justice processes for these youth would not differ from the processes that they would go through today. As Children's Commissioner Andrew Becroft has made clear, "…if public safety is the concern, you can almost guarantee that every 17-year-old who goes to prison now, would still go to prison".[215] The youth justice system does not remove the possibility of a young person being sentenced to imprisonment. 17 year olds who commit the most serious offences would still go through the adult criminal justice system, and could still be sentenced to imprisonment, because these crimes fall outside of the Youth Court's jurisdiction.[216] Therefore, it cannot be accurately be said that the youth justice system is too soft. Due to the inclusion of accountability and deterrence within the system, if an offender needs to be held to account to a higher degree than what the youth system can provide, or increased deterrence needs to be promoted, the offender will be passed on to the adult courts. This would not change by including 17 year olds within the youth justice system.

In addition, statistics show that accountability and deterrence are likely to already be having an impact within both the youth and adult systems. At present, the number of young persons who are charged in court is at the lowest that it has been in over 20 years. The number of young persons who receive adult sentences has also decreased, from 162 in 2006 to 36 in 2015.[217] Furthermore, the number of adults charged in court has also decreased, dropping by 7% since 2014 and 36% since 2010.[218] The pre-existing concepts of accountability and deterrence within both systems are likely to have a role in this drop in crime. Therefore, if the statistics are showing that crime is reducing, arguing that 17 year olds need to remain within the adult system is illogical. The youth justice system promotes accountability and deterrence just as the adult system does.

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[215] Young, above n 5.
[216] See discussion of which cases fall outside of the Youth Court jurisdiction at 10.
[217] Ministry of Justice "Trends in Child and Youth Prosecutions" (December 2015) <http://www.justice.govt.nz>.
[218] Ministry of Justice "Trends in Conviction and Sentencing" (December 2015) <http://www.justice.govt.nz>.

B Lack of resources

When looking at the age issue from a philosophical basis, it is easy to overlook the pragmatic implications of such a major change. Resources are needed to turn philosophical ideas into reality. For this reason, the New Zealand police have expressed opposition to an age raise. Greg O'Connor, President of the Police Association, has stated that after surveying all members of the Police, 75% are against the age raise. Of Police Youth Aid officers, 55% are against the raise.[219] He estimates that 75 more Youth Aid officers would be required if 17 year olds were included, and the current system is already struggling with the amount of young persons that it deals with now.[220] It is a real practical concern because the police are responsible for dealing with youth offending at the front line. If they do not have the resources to support an age raise, the effectiveness of the system from this lowest level could be reduced for not just the new additions but for all youth involved in the system.

The Police are an underfunded, under resourced body. Reports from 2014 show the police budget had hardly increased in the five years to 2014, with concern being raised that police officers were struggling with the resources they were provided. Some improvement is seen in the 2016 Government budget, with the police being allocated $299.2 million in additional funding. Yet $279.9 million of this (93.55%) is to fund pay increases.[221] If the police are so clearly underfunded, it follows that they would be opposed to the age raise in a pragmatic sense. For the youth justice system to viably be able to carry this additional cohort of youth, the police will require specifically allocated funding for purposes such as getting more Youth Aid officers. Philosophically, reasons for raising the age could justify an amendment being made. But in order for this idea to work practically, the Government needs to ensure that they can provide the financial resources to make this a feasible decision.

C Conclusion

When compared with the reasons in favour of the raise in age, the reasons against carry relatively lower weight. Accountability and deterrence are essential aspects of preventing reoffending but their essential nature means that they are already included

[219] Interview with Greg O'Connor, President of the Police Association and Nessa Lynch, Victoria University law lecturer (Lisa Owen, The Nation, MediaWorks, 24 September 2016).
[220] Interview with Greg O'Connor and Nessa Lynch, above n 219.
[221] Judith Collins "$299.2m in additional funding for Police" (press release, 26 May 2016).
The remainder of the funding has been allocated to development and operation of the child protection offenders register, to ensuring that police comply with the Anti-Money laundering and Countering Financing of Terrorism Act 2009, and to aid in the operation of the Christchurch Justice and Emergency Services Precinct.

within the youth justice system. Including 17 year olds would not remove accountability and deterrence from the processes that they undergo post-offending. It has been said by some that more of these punitive-based concepts should be seen within the system,[222] but the statistics highlighting the decline in offending show that the conceptual framework we currently have in place is working.

The pragmatic argument of resourcing limitations is highly relevant, because a lack of resources may limit the quality of the service provided. The resourcing issue exists as the police are already underfunded and have been for some time. Although the age raise would not be the cause of the issue, it could definitely result in the resourcing shortage reach an apotheosis. Provided that the Government can provide the required resources to support the age raise, on a long-term scale the age raise would be likely to see considerable effect even if the initial cost seems significant.

[222] See discussion of the SST's perspective at pages 33-34.

Chapter Four: Difficulties With Raising the Age in the Wider Context of the Youth Justice System

Raising the age would not solve all issues with youth justice. There are currently issues subsumed within the youth justice system that may limit the effectiveness of the age raise. The state of youth justice residences and the age mixing of female youth and adults are two main difficulties that would require further changes to be made.

A Quantity and quality of youth justice residences

The provision of youth justice residences is a positive aspect of the youth justice system.[223] Yet despite this, there are issues around the quantity and quality of the current residences. In terms of quantity, CYF provides only four youth justice residences across the entirety of New Zealand, with only one in the South Island.[224] Young persons placed in youth justice residences who are not from the four locations (Auckland, Rotorua, Palmerston North or Christchurch) or the vicinity of these cities can be separated by considerable geographical distance from their families and communities. Furthermore, spaces in these youth justice residences tend to be taken up by young persons who are sentenced to either imprisonment or supervision with residence. This means that young persons who are remanded and need to be housed somewhere often get put in police cells.[225] Police cells are not designed to house young persons; rather they are designed to house adults for short periods of time. In Dunedin, young persons who are remanded often get placed in police custody until they appear in court or can be transported to the youth justice residence in Christchurch.[226] The absurdity with the situation in Dunedin is that there is a CYF residence that is currently available but is not being used.[227] There is an opportunity to use this residence for young persons, which could reduce the distance that some young persons have to be from their families and could lower the frequency of young persons being remanded to police cells.

Amongst the reports portraying the residences in a positive light, there have been reports that the quality of these facilities is not conducive to improving the behaviour of young persons. The Office of the Children's Commissioner's 2016 report on the state of the services provided for children and young persons by CYF highlighted numerous

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[223] See discussion of youth justice residences in Chapter One from page 13 and Chapter Two from page 23.
[224] Child, Youth and Family, above n 90.
[225] Nessa Lynch "Youth Justice in New Zealand: A Children's Rights Perspective" (2008) 8(3) Youth Justice 215 at 223
[226] Interview with Rene Aarsen, Sergeant, Dunedin Police Youth Aid (the author, Dunedin, 4 May 2016).
[227] Timothy Brown "Youth in cells as home idle" *Otago Daily Times* (online ed, New Zealand, 22 September 2016).

problems with the quality of the services provided. Overall, it was found that the residences were moving towards a child-oriented approach and were providing therapeutic care. The residences provide plenty of programmes and activities that encourage young persons to develop skills as well as deterring them from undesirable behaviours.[228] But of the two youth justice residences that were visited, one was given a rating of 'detrimental' for safety due to numerous incident reports, a lack of engaging activities and staff having difficulty controlling the young persons.[229] Both residences were also regarded as feeling institutional due to damage and graffiti.[230] It is problematic that young persons are remanded to police cells when there are a lack of spaces in youth justice residences but it is also very concerning that these youth justice residences are considered to be a more desirable option when they have been reported as being unsafe.

Youth justice residences are provided for those who, amongst other reasons,[231] are sentenced to supervision with residence. As this is the most serious sanction that can be placed upon a young person under the CYPTF Act, it could be assumed that these residences would be both sufficient in number and condition to ensure that the young persons placed in them would be safe within a positive environment. Including 17 year olds within the youth justice system would mean that an additional cohort of youth offenders could potentially be placed within these residences, whether through supervision with residence or by another path. This is problematic for two main reasons. Firstly, it could be argued that 17 year olds could negatively influence younger peers in the residences. Although this argument can be somewhat displaced by the fact that 17 year olds mix with younger peers in schools on an everyday basis. Youth justice residences are potentially the only place where 17 year olds and younger peers would frequently mix within the youth justice system. Even now, 17 year olds are included within the residences where they turn 17 at some point between being charged and being placed in the residence.[232] More importantly, if the number of residences is currently insufficient, then this number would be even more problematic with more youth being included within the system. This could increase the prevalence of youth being remanded to police cells, which has already been identified as undesirable.

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[228] Office of the Children's Commissioner, above n 168, at 28.

[229] The residence, Te Puna Wai o Tuhinapo in Christchurch, was also in the media for having had more than 600 incidents in 2014-2015 relating to self harm, substance use and serious assaults. See Jacinda Ardern "Dangerous environment supports Commissioner's report" (5 September 2015) Labour <http://www.labour.org.nz>.

[230] Office of the Children's Commissioner, above n 168, at 29.

[231] See discussion on the four instances in which a young person can be placed in a residence at page 13.

[232] "Information about youth justice residences" (7 September 2016, obtained under Official Information Act 1982 request to the Ministry of Social Development). See Appendix 2. As at 31 March 2016, there were 60 16-17 year olds housed in youth justice residences across New Zealand (19 at Korowai Manaaki, 14 at Te Au rere a te Tonga, 13 at Te Maioha o Parekarangi and 14 at Te Puna Wai o Tuhinapo). The information provided does not identify how many of these youth are 16 and how many are 17.

B Age mixing of females in adult prisons

A raise in the age of youth justice is unlikely to benefit the new cohort of 17-year-old females who are sentenced to imprisonment because the youth justice system is currently not providing for female young persons who are imprisoned. New Zealand is a signatory to the UNCROC so is expected to comply with the UNCROC and corresponding rules. However, the UNCROC provides opportunity for signatories to make reservations against specific articles at the time of ratifying.[233] Upon signing, New Zealand made a reservation against Article 37(c),[234] which states that children deprived of their liberty should be separated from adults unless it is in their best interests not to do so.[235] This is supported by the Havana Rules, which states that youth should be separated from adults unless brought together as part of a programme that has been shown to benefit young persons.[236] The main point of issue in relation to the article 37(c) reservation is that New Zealand is allowing for the age mixing of female youth and adults due to there not being any youth units for females.

The United Nations reviewed New Zealand's third and fourth periodic reports in 2011. The UNCROC commented that New Zealand had taken steps towards the removal of the reservation to Article 37(c) but that in the interim, no young persons who are detained should be mixed with adults unless it is in their best interests.[237] Almost six years later, the reservation to Article 37(c) still stands. The fifth periodic report, produced in 2015, shows that New Zealand is unwilling to withdraw this reservation until legislation and policy match the requirements of the Article.[238]

New Zealand has justified this age mixing on two main grounds, both of which can ironically be found within Article 37(c) itself. Age mixing has been justified on the basis that there are generally very few female offenders and therefore there are no specialist facilities available for young female offenders.[239] However, by not having the available

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[233] UNCROC, art 51. This is provided that these reservations do not go against the purpose of the UNCROC.
[234] Art 37(c). This Article states "Every person deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances".
[235] New Zealand's reservation to s 37 is as quoted: "New Zealand reserves the right not to apply article 37(c) in circumstances where the shortage of suitable facilities makes the mixing of juveniles and adults unavoidable; and further reserves the right not to apply article 37(c) where the interests of other juveniles in an establishment require the removal of a particular juvenile offender or where mixing is considered to be of benefit to the persons concerned." See United Nations "Convention on the Rights of the Child – Reservations and Declarations" <https://treaties.un.org>.
[236] Havana Rules, above n 188, cl 29.
[237] Committee on the Rights of the Child, above n 190, at 11.
[238] Ministry of Social Development, above n 192, at 4.
[239] Ministry of Social Development, above n 192, at 58.

facilities, female young persons and female adults are then placed into the same prisons. Based on the UNCROC, in order to mix these two age groups, it must be in the best interests of the young persons to be mixed with adults.[240] The best interests test provides the second justification for age mixing. The fifth periodic report states that if a young female offender is deemed to be vulnerable then she will be kept separate from adult inmates. However, if she is not deemed vulnerable then she is mixed in with adult inmates. Whether an individual is vulnerable is assessed using a checklist to determine whether it is in one's best interests to be mixed.[241] It is not clear what the checklist contains, however what is evident is that New Zealand is able to get around the separation requirement by simply saying that it is in a young person's best interests to be mixed.

The harm of age mixing of young persons and adults was addressed following the murder of 17-year-old inmate Liam Ashley by an adult inmate in the back of a van whilst being transported.[242] This incident led to an amendment to the Corrections Regulations 2005 to make it unlawful for persons under the age of 18 to be transported in the same vehicle compartment as persons over the age of 18.[243] As well as highlighting that 17 year olds are at risk of harm from adult inmates just as young persons are, this regulatory change raises questions as to why the age mixing of females has continued when there are blatant risks to youth by being mixed with adults.

One of the main reasons for having separate youth and adult justice systems are the differences in development between these two groups. To mix female young persons and adults is to put youth at risk of negative peer influence and the possible consequential effects that this can have. Further, there seems to be no valid reason for treating males and females differently by providing facilities for male young persons but not for female young persons. If youth are at such risk during transportation that an amendment to the Corrections Regulations is necessary then it is almost unconscionable that young female prisoners should continue to be mixed with older female inmates in prison. The Committee on the Rights of the Child has specifically stated that provision must be made for the specific needs of females because of the fact that they often make up a small proportion of overall offenders.[244] Therefore, regardless of the number of young female offenders, New Zealand should provide for females in the same way that they do for males, as females are currently being overlooked.

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[240] UNCROC, art 37(c).
[241] Department of Corrections, above n 95, at M.03.02.
[242] John Belgrave and Mel Smith *Ombudsman's Investigation into the Department of Corrections in Relation to the Transport of Prisoners* (June 2017) at 17.
[243] Corrections Regulations 2005, s 179A.
[244] Committee on the Rights of the Child, above n 191.

Tying into the age raise, the effect of age mixing is that if 17 year olds were to be included within the definition of a young person, any females sentenced to imprisonment would not be treated as young persons whilst imprisoned. The youth justice system does of course provide other youth-specific elements that 17-year-old females would benefit from. The age mixing is not in itself a reason against the age raise but recognition of this issue is important because females in the youth justice system will only be able to receive equal treatment to males if youth-specific facilities are available to house imprisoned females.

C Alleviating the difficulties within the youth justice system

1 *Youth justice residences*

To accommodate more youth within the youth justice system, more youth justice residences would need to be provided. As highlighted, there is a CYF residence currently sitting unused in Dunedin.[245] Opening this residence could contribute to improving the low quantity of residences, particularly in the South Island, though further residences would also be required. In relation to the age mixing of 14 to 17 year old youth in residences, this too could be avoided if it does raise significant concern. Having residences specifically for 14 and 15 year olds and other residences specifically for 16-17 year olds would be a relatively straightforward way of avoiding age mixing. Whether this is practically feasible would depend on how many youth there are in each age group. A thorough assessment should be conducted by the Ministry of Social Development to determine whether it would be feasible to establish more residences and whether residences could house specific age groups.

The quality of the residences would also require improvement to provide the best possible environment for these individuals. Housing young offenders in unsafe environments means that the residences are not fulfilling their role, which is to provide a therapeutic and rehabilitative care. The State of Care report has highlighted the issues,[246] so it will be up to the Ministry of Social Development to again ensure that these observations are followed through into tangible improvements.

2 *Age mixing of females*

A possible solution to the age mixing issue could be found in an existing establishment. Corrections currently provides six beds in Korowai Manaaki, the South Auckland youth

[245] See discussion of the unused residence in Dunedin at page 38.
[246] See discussion of the issues raised in the State of Care report at pages 38-39.

justice residence, for young persons sentenced to imprisonment who are deemed to be too vulnerable to be housed in a prison youth unit.[247] Rather than housing female youth in women's prisons, or having to build a female youth unit at a women's prison, an option could be to have a specified section within a youth justice residence for female youth sentenced to imprisonment. This would eliminate a small number of available beds for youth who are sentenced to supervision with residence or who need to be remanded to a residence. However, the quantity of youth justice residences is currently insufficient for the group of young persons that exist today, so even without adding an extra cohort of youth, more youth justice residences are required. Whether this type of solution was pursued, or whether another option would be preferable, what is clear is that some provision needs to be made for female youth sentenced to imprisonment.

3 Conclusion

There are current difficulties within the youth justice system that could hinder the positive effect of a raise in the age. The youth justice residences pose a significant problem. They are the places where young persons go when sentenced to the most serious sanction available in the Youth Court. But as there are already an insufficient number of residences, these residences would struggle to cope with an additional group of youth. In addition, poor reports about the quality of these residences can raise doubts as to how effective these facilities are in rehabilitating young persons.

Age mixing is also problematic because young females are being directly mixed in with older women. Compared to the residences however, the problem with age mixing is unlikely to change at all with the age raise because both young persons and older youth already mix with adults. This issue would require assessment independent of the age raise. Overall, the reality is that problems will still exist if the age is raised. Thus, whilst it is important to focus on the issue of age, it is also important to recognise that the age raise would not solve all issues for the youth justice system, as it would bring with it other aspects that demand change.

[247] Department of Corrections, above n 95, at M.03.01.02.

Conclusion

The obvious and undeniable differences between youth and adults have justified having two parallel but interacting criminal justice systems since the twentieth century. Those below the age of 17 have been regarded as so developmentally different to adults that they are afforded a diversion-focused, welfare and justice based, rehabilitative youth justice system designed to provide for their level of development. The system focuses on diversion, involves the young person's family, allows for victims and families to have a voice through FGCs and has specialist police officers to work with youth. For cases that make it to the Youth Court, there are specific Youth Court judges, mandatory FGCs, numerous available orders, specialist courts and importantly, no jurisdiction to sentence a young person to imprisonment.[248] These youth-specific elements of the youth justice system are what make high praises of the system well deserved.

The anomaly of the youth justice system is, and if not fixed will continue to be, the age at which a young person becomes an adult and enters the jurisdiction of the adult justice system. If the justification for making such a distinction between 16 year olds and adults is the difference in development, then it must follow that 17 year olds are considerably more developed than their younger peers. But research shows that such a distinction is inaccurate, unfounded and arbitrary. The brains of youth continue to develop well into their twenties.[249] This lower level of development hinders the ability of young persons to make informed decisions, heightens their desire to take risks, increases the influence that peers can have and is representative of an unformed character. With a developmental level closer to that of their younger peers than adults, 17 year olds exposed to a prison environment can be put in a position where their mental wellbeing is put at risk, their risk of recidivism is enhanced, and their opportunities for education and meaningful employment are reduced.[250] In contrast, if these youth were to be included within the youth justice system, even the most serious sanction of supervision with residence offers more valuable rehabilitative opportunities.

The reality is that 17 year olds are not adults yet are treated as adults. They are denied the rights granted to adults under domestic legislation[251] yet are considered to be mature enough to make autonomous, informed decisions to commit crime. It goes without saying that holding offenders to account and deterring both them and others from future offending is an essential part of addressing offending. There are concerns that raising the age of youth justice would allow 17 year olds to be treated too 'softly'

[248] See discussion of the youth justice system structure at page 8.
[249] See discussion of brain development from page 18.
[250] See discussion of the impacts of imprisonment from page 22.
[251] See discussion of domestic legislation from page 30.

and so they should remain where they are, being treated as adults.[252] However, such concerns arise from an uninformed basis that disregards the reality of the justice measures included within the youth justice system. With adult and youth crime falling, indicating that the conceptual framework of both justice systems is working, there is no evidential need for further punitive measures. Yet despite this, and even when criticised by the United Nations and overtaken by other countries who have decided to include 17 year olds within their respective youth justice systems, New Zealand has retained a stubborn and dated attitude towards 17 year old offenders.

New Zealand's youth justice system, if assisted by increased funding, could accommodate 17 year olds. Philosophically, there are too many reasons that push for the age raise to justify keeping 17 year olds in the adult system. Preferably, in order for the age raise to have the most beneficial results possible, the aspects of the system that raise issues of difficulty should be addressed at the same time. New Zealand needs more youth justice residences to ensure that enough beds are available and needs the quality of these residences to improve in order to ensure that the rehabilitative environment that is promised can actually be delivered. The age mixing of females also needs to be addressed to provide consistency across males and females and reduce the potential harm to young female offenders by adults.[253] In the end it could come down to cost – whether New Zealand can afford to open more residences, provide for females and move 17 year olds into the youth justice system. But the question of cost inevitably goes deeper than the resources that the Government can provide. The real question is, can we afford to keep treating 17 year olds as adults on the basis of the knowledge that we have and the social environment in which we are currently situated in this ever-developing world?

New Zealand, the nation that was once a world leader in youth justice, has essentially toppled from its dominant perch over one small but highly important definition. The Government is only now beginning to recognise how important this definition is, as well as all of the numerous factors that demand change. Labour tried to make the change, but National removed the possibility back in 2008.[254] Now that the next election is merely a year away, and there has been considerable political lobbying on this youth justice issue, National MPs have conveniently adjusted their stance to the age raise.[255] But even if it is an issue of political pressure, what is important is that the age raise might finally happen. It has been a long time coming and it may even still be slightly out of reach, but

[252] See discussion of accountability and deterrence from page 33.
[253] See discussion of the problems with youth justice residences and age mixing from page 38.
[254] See Introduction at page 2.
[255] See Introduction at page 2.

the right time has arrived for the issue of age to be dealt with properly. Raising the age of youth justice is simply the right thing to do.

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Appendices

Appendix 1

Children, Young Persons, and Their Families Act 1989, Part 4 – Youth Justice, s 208:

208 Principles

Subject to section 5, any court which, or person who, exercises any powers conferred by or under this Part or Part 5 or sections 351 to 360 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 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.

Appendix 2

Information obtained under Official Information Act 1982 request to the Ministry of Social Development, 7 September 2016.

The number of young people residing at Youth Justice residences as at 31 March 2016, broken down by age group.

Youth Justice Residence	Age group (years)		
	13 to 15	**16-17**	**Total**
Korowai Manaaki (YJ North)	18	19	37
Te Au rere a te Tonga	14	14	28
Te Maioha o Parekarangi	13	13	26
Te Puna Wai o Tuhinapo (YJ South)	13	14	27
Total	**58**	**60**	**118**