

Action for Children and Youth Aotearoa

Incorporated



Submission to the Law and Order Committee
On the
Young Offenders (Serious Crimes) Bill 2006

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Submission Prepared on Behalf of ACYA by

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1. This submission is made by Action for Children and Youth Aotearoa (ACYA). ACYA also intends to make an oral submission to the Law and Order Committee on the Young Offenders (Serious Crimes) Bill 2006.

2. ACYA is a coalition of non-governmental organizations, families and individuals whose purpose is to promote the well-being of children and young people in Aotearoa New Zealand through:

- education and advocacy on the rights of children and young people;
- encouraging the government to act on the recommendations of the United Nations Committee on the Rights of the Child; and
- promoting opportunities for the voice and participation of children and young people.

3. In 2003, ACYA produced and published *Children and Youth in Aotearoa 2003*, the New Zealand NGO Report on New Zealand's implementation of the UN Convention on the Rights of the Child (NGO Report). The NGO Report was presented to the UN Committee on the Rights of the Child (the UN Committee) in Geneva in June 2003, accompanied by a video funded by ACYA and produced by New Zealand children called *Whakarongo Mai / Listen Up*. In addition, ACYA produced and published a further report entitled *Some Aspects of New Zealand's Compliance with the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* which was presented to the UN Committee Against Torture in 2004. Both reports sought to draw the Committees' attention to the system of youth justice in New Zealand.

4. ACYA firmly opposes the proposed changes to the youth justice system as contained in the Young Offenders (Serious Crimes) Bill 2006 on the following grounds:

(a) The proposed changes run counter to the widely accepted and long-held principle of rehabilitation that underpins youth justice in general and which, in Aotearoa/New Zealand, has also incorporated the principle of restorative justice. They also run counter to the standard of the best interests of the child which forms the cornerstone of child law in Aotearoa/New Zealand and international law relating to children.

(b) The proposed changes run contrary to Aotearoa/New Zealand's national and international human rights obligations. These changes would not only result in the violation of such standards not only relating to the treatment of youth offenders, but also with regards to fundamental human rights principles governing the administration of justice.

(c) In connection with the above points, the proposed changes would have a disproportionately negative effect on youth offenders by effectively disestablishing the youth justice system. These proposals would subject children/young people to punitive measures that would be in excess to those facing adult offenders who may have committed the same crime. The proposed measures would also result in indirect discrimination against Maori youth and would most likely further exacerbate the problem of overrepresentation of Maori youth in the youth justice system.

(d) Finally, the Bill states that it is prompted by a recent spate of very serious, and shocking, crimes perpetrated, in some cases, by children. However, recent statistical data shows that, in fact, the levels of youth offending has remained stable and has tended to be confined to offences that are less serious in nature. As such, ACYA rejects the Young Offender's (Serious Crimes) Bill 2006 as a baseless attempt to portray young people in an excessively negative light in order to garner support for proposals that would dismantle a youth justice system that protects effectively the interests of society, victims of youth offending, as well as youth offenders themselves.

5. *The Bases of Youth Justice in Aotearoa/New Zealand: The Best Interests of the Child – Rehabilitation and Restorative Justice.*

Historically, the aim of the youth justice system was to place youth offenders in an individualised system of their own which focused on rehabilitation and emphasised the offender and the circumstances that surrounded the offence committed. Rehabilitation required the court to look at both the social and economic background, in addition to the individual needs of each youth in order to determine the best treatment for him or her. In order to emphasise rehabilitation, the youth justice system focused on the offender and on external circumstances, such as the child/young person's background, thereby including both social and psychological factors. In Aotearoa/New Zealand, children and young people who offend have been brought before a separate Children's Court or Youth Court since at least the Child Welfare Act 1925.

There are a number of legislative provisions governing the age of criminal responsibility which recognise that with increasing age (and its associated increased levels of capacity and intellectual and social maturity) comes increased levels of responsibility for various types of offending as follows:

- Under 10 years: No criminal responsibility (s 21 Crimes Act 1961) but child protection legislation may come into play where a child commits numerous or serious offences [s 14(1) Children, Young Persons and Their Families Act (CYPF Act) 1989];
- 10-13 years: No criminal responsibility unless it can be proven that he/she knew his/her act or omission was wrong or unlawful or unless offence is that of murder or manslaughter in which case the youth offender will be subject to the adult jurisdiction [s 22(1) Crimes Act];

- 14-16 years: criminal responsibility for any offence which will be tried in the Youth Court (excludes murder, manslaughter, or minor traffic offences which are dealt with in the adult Courts) [s 272(3) CYPF Act];
- 17 years +: adult criminal responsibility.

It is against this background that Aotearoa/New Zealand currently employs a hybrid model of youth justice. The Children, Young Persons and Their Families Act 1989 pioneered statutory diversion, de-institutionalisation and the involvement of victims. While aiming to hold children and young people accountable for their actions, any sanctions imposed must aim to enhance the wellbeing of children and young people who offend. In spite of the exclusion of the principle that the welfare and interests of the child are to be *paramount* (s 6 CYPF Act) from the youth justice provisions contained in Part 4 of the CYPF Act, nevertheless, by its very existence Part 4 implies that the current system of youth justice in Aotearoa/New Zealand recognises the special protection that is to be accorded to youth offenders. Furthermore, s 208 outlines the guiding principles governing the administration of youth justice and states that it is subject to the principles contained in s 5 of the Act which resonate with those contained in s 208. Specifically, Section 5(c) provides:

The principle that consideration must always be given to how a decision affecting a child or young person will affect—

(i) The welfare of that child or young person; and

*(ii) The stability of that child's or young person's family, whanau, hapu, iwi, and family group:...*¹

¹ In addition, Section 5 also states:

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

(a) The principle that, wherever possible, a child's or young person's family, whanau, hapu, iwi, and family group should participate in the making of decisions affecting that child or young

Furthermore, s 208 of the Act contains detailed principles governing the administration of youth justice which are designed to promote alternatives to criminal proceedings which must be balanced with the need to ensure the safety of the public (s 208(a) and (d)), the interests of any victims of the offending (s 208(g), the strengthening of both the family, whanau, hapu, iwi, and family group and its ability to deal with the child/young person's offending (s 208 (b) and (c)). Other indicators of the impact of the welfare of the child include s 208(e)'s provision that:

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:

Section 208(f) provides that:

The principle that any sanctions imposed on a child or young person who commits an offence should—

person, and accordingly that, wherever possible, regard should be had to the views of that family, whanau, hapu, iwi, and family group:

(b) The principle that, wherever possible, the relationship between a child or young person and his or her family, whanau, hapu, iwi, and family group should be maintained and strengthened:

...

(d) The principle that consideration should be given to the wishes of the child or young person, so far as those wishes can reasonably be ascertained, and that those wishes should be given such weight as is appropriate in the circumstances, having regard to the age, maturity, and culture of the child or young person:

(e) The principle that endeavours should be made to obtain the support of—

(i) The parents or guardians or other persons having the care of a child or young person; and

(ii) The child or young person himself or herself—

to the exercise or proposed exercise, in relation to that child or young person, of any power conferred by or under this Act:

(f) The principle that decisions affecting a child or young person should, wherever practicable, be made and implemented within a time-frame appropriate to the child's or young person's sense of time.

- (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:*

Finally, s 208(h) provides:

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.

There is widespread agreement among key agencies and practitioners that the framework for youth justice in Aotearoa/New Zealand is ‘fundamentally sound’ (Ministry of Justice Youth Offending Strategy 2002). Both Family Group Conferences (FGCs) and the Youth Court aim to provide individualised response to the particular child or young person and the nature of their offence. Both ‘deeds’ and ‘needs’ must be addressed in order to hold the child or young person accountable and also to reduce the risk of re-offending. The New Zealand system has a multifaceted approach depending on the seriousness of the offending and the age of the child or young person.

Although there is no express mention of restorative justice in the CYPF Act 1989, the practice of youth justice in Aotearoa/New Zealand is recognised as restorative in nature. The criminal act is seen not as an act against the state but as an act against the community in general and the victim in particular. The offending behaviour is seen as damaging human relationships; therefore these breaches should be remedied by active participation by families, victims and the

community. The focus is on creating positive obligations for the offender rather than imposing negative consequences.²

In contrast to the retributive model of justice, a restorative approach to youth justice brings with it a number of benefits.

(i) Accountability

Restorative justice inherently builds on an offender's positive qualities and abilities, rather than only on his/her offence, and enhances offender accountability and an understanding of the consequences of criminal behaviour. Children and young people are held accountable to their victims, their family group and the wider community. Restorative justice is not an easy option – research in NZ by Maxwell, Morris et al (1993, 2004) has demonstrated that children and young people found FGCs to be more daunting than court appearances. It is more difficult for the child/young person to shy away from responsibility when faced with the human face of their crime and the shame experienced by their family and whanau when compared with a brief court hearing.

(ii) Diversion

The family group conference involves offenders directly in deciding how to make amends for their crimes, rather than relegating them to being passive objects of punishment. Diversion from the formal criminal justice system has been part of the youth justice system in Aotearoa/New Zealand since the 1930s, due to the long recognised negative effects of court appearances and imprisonment. Currently every effort is made to achieve accountability by the young person without recording a formal adult conviction. The stigma of criminal conviction makes it more difficult for a child/ young person to become involved in non-

² The model of youth justice which is employed in New Zealand at present is admired internationally and the use of family conferences to deal with offending by young people has spread to other jurisdictions including Australia, Belgium, Ireland and the United Kingdom.

criminal society. Low-level offending is usually dealt with by means of a warning at the scene pursuant to s 209 of the CYPF Act. More serious offending may be dealt with informally by Youth Aid or referred to a family group conference. Formal criminal proceedings are not instituted except in cases where the public interest requires it (s 208 (a)). Age is a mitigating factor (s 208 (e)). Child offenders are dealt with through family law type proceedings. Sanctions are age appropriate and take the least restrictive form appropriate to the circumstances (s 208 (f)).

(iii) Keeping young people in the community (s 208 (d))

This aspect of youth justice increases the likelihood that a young offender may ultimately earn reacceptance in the community. In the family group conference the young person is held accountable and then reintegrated to their community and family. Keeping the child/young person in the community allows him/her to continue with education and training which will reduce re-offending. The current legislation also emphasises the importance of strengthening families and facilitating them in dealing with offending by their young people (s 208 (c)). Keeping children and young people in the community is a cost-effective and culturally appropriate policy when compared to institutionalisation

(iv) Serves the needs of victims (s 208 (g))

There is consensus that the needs and interests of victims are not well served by traditional court based processes. By confronting the young offender face to face, victims are able to convey their outrage and pain, and also their compassion, and thus can begin to heal the harm caused by youth crime. The victim can attend the family group conference with his/her supporters and has a say in the outcome of the conference. If victims do not wish to attend, they may send a representative or the youth justice co-ordinator may ascertain and present their views at the conference. Participation in the process means that the victim has a better chance of reparation.

Thus, Aotearoa/New Zealand endorses the internationally approved Four Ds of youth justice:

- de-institutionalisation
- diversion
- due process
- decriminalisation.

Consequently, the approach to youth justice as it currently stands in Aotearoa/New Zealand strives to reflect the General Principles underpinning the Convention on the Rights of the Child, in particular Article 3(1) which states:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

6. *Justice and Youth Offenders: National and International Human Rights Obligations.*

In addition to effectively dismantling the system of youth justice by narrowing the range of offences that may be tried by the Youth Court, the Young Offenders (Serious Crimes) Bill raises a number of concerns with regard to the New Zealand Bill of Rights Act 1990. The NZBORA contains a number of provisions that are relevant to the issue of youth offenders.³ In particular, s 25(i) regarding to minimum standards of criminal procedure provides for, *“The right, in the case of a child, to be dealt with in a manner that takes account of the child’s age.* However, it is the potential impact of the legislative changes that the Young Offenders (Serious Crimes) Bill would have upon s 25(g) of the NZBORA that causes concern for ACYA. Section 25(g) refers to the right of a (youth) offender,

³ E.g., in line with the principles of youth justice, s 23(5) provides that: “Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the person.”

“if convicted of an offence in respect of which the penalty has been varied between the commission of the offence and sentencing, to the benefit of the lesser penalty”. In the context of this submission, this right pertains to s 18 of the Sentencing Act 2002 which provides that:

[n]o Court may impose a sentence of imprisonment on an offender in respect of a particular offence, other than a purely indictable offence, if at the time of the commissions of the offence, the offender was under the age of 17 years (emphasis added).

Clause 14(2) of the Bill proposes to amend the Sentencing Act in two ways. First it seeks to reduce the age at which an offender may be sentenced to a term of imprisonment from 17 years down to 16 years. Second, it seeks to change the focus of section away from the time that the offence was committed and towards the time at which the offender is convicted. Simply put, the Bill would introduce a situation where a person who commits a crime whilst under the age of 16 years could be subject to a term of imprisonment if convicted of that crime on or after his or her 16th birthday. ACYA is concerned that youth offenders could be excluded from the right to benefit from a lesser penalty as provided for by s 25(g) of the NZBORA. ACYA is concerned that youth offenders could be excluded from the right to benefit from a lesser penalty as provided for by s 25(g) of the NZBORA. This concern is highlighted by the Attorney General’s advice provided in relation to the consistency of the Youth Offenders (Serious Crimes) Bill with the NZBORA.⁴ The Attorney-General’s report concluded that clause 14 arguably limits the right contained in s 25(g) but only to the extent that it would allow a sentence of imprisonment to be imposed on someone who committed an offence whilst under the age of 16 years but who was convicted of that offence on or after reaching the age of 16 years. ACYA, however, finds little comfort in the Attorney-General’s reasoning that such a limitation would be justified, under s 5

⁴ Ministry of Justice (2006). Attorney-General Legal Advice: Consistency with the New Zealand Bill of Rights Act 1990: Young Offenders (Serious Crimes) Bill 2006.

of the NZBORA, because it would protect young persons who commit ‘non-serious offences’ whilst under the age of 16 years from being sentenced to a term of imprisonment. The basis for the Attorney-General’s rationale was that it would be up to the sentencing court to take into account that the offence, when committed, did not give rise to a sentence of imprisonment. ACYA questions the advice given in the report that the proposed legislation “gives effect to New Zealand’s obligations pursuant to UNCROC and the ICCPR.”⁵

ACYA agrees with the advice that it would be a rare case in which such a sentence of imprisonment would be appropriate in such circumstances but for reasons which are of even greater concern to ACYA. The Bill’s proposal to further amend the s 18 of the Sentencing Act would in fact greatly broaden the circumstances in which youth offenders could be sentenced to imprisonment if convicted of a ‘serious offence’ which it defines as:

- (a) *for which the maximum penalty is imprisonment for a term of not less than 3 months or a fine of not less than \$2,000; or*
- (b) *that is, in the case of any other offence, committed by an offender to whom this section applies who has previously been convicted of an offence to which paragraph (a) applies or has more than 3 previous convictions for offences other than those to which that paragraph applies.”*

In effect, youth offenders, aged between 16 and over, could be subject to a term of imprisonment in respect of several hundred offences, many of which are now regarded as minor offences under the Summary Offences Act and could include minor traffic offences, such as careless driving. Of even great concern to ACYA is that the few remaining minor offences could become ‘serious offences’ because of earlier (minor) offending committed by a young person or which he or she has already been convicted. Not only that, youth offenders aged 16 and over may be

⁵ Ibid, para. 25.

subject to a term of imprisonment on the basis of previous offending. This potential outcome conflicts with s 26(2) of the NZBORA which provides that “No one who has been finally acquitted or convicted of, or pardoned for, an offence shall be tried or punished for it again.” ACYA would also like to draw attention to the fact that such proposals may impact negatively upon the youth offender’s right to a fair trial as provided for in s 25(a) of the NZBORA. There is a concern that youth offenders aged under 16 years might be prompted to plead guilty to offences that they have not in fact committed. The basis for such a course of action would be to avoid the risk of going through the often lengthy court process during which time the offender may turn 16 and be subject to heavier penalties upon being found guilty.⁶

The above-mentioned provisions of the NZBORA, pertaining to the rights of both adult and youth offenders incorporate international human rights law into domestic law. With regard to provisions of international human rights law, ACYA would to point out that although it may be correct to view international human rights treaties as not having legally binding effect, nevertheless, such treaties do provide a context in which current social and legal standards may be set.⁷

Thus, at the level of international human rights law, Article 3 of the Universal Declaration of Human Rights provides, that “Everyone has the right to life, liberty and security of person”. The right to a fair trial is provided for by Article 10 whilst the right to be presumed innocent until proven guilty is provided for by Article 11. According to the Human Rights Committee, “Article 10 does not indicate any limits of juvenile age.” States parties may determine such an age in the light of relevant social, cultural and other conditions. However, the Committee was of opinion that Article 6(5), as it relates to the right to life,

⁶ Ibid, para.s 19-29.

⁷ G Austin (1994). “The UN Convention on the Rights of the Child – and Domestic Law” *I(4) Butterworths Family Law Journal* 63.

suggested that all persons under the age of 18 should be treated as youths, at least in matters relating to criminal justice.⁸

These rights have become legally binding upon Aotearoa/New Zealand, in the international sphere, by virtue of its ratification of the International Covenant on Civil and Political Rights. Article 14 of the Covenant makes further provision for basic standards in the administration of criminal justice. The following provisions of Article 14 resonate with ACYA's concern that the rights of youth offenders might be compromised by the changes proposed:

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. ...

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

*3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: ...
(g) Not to be compelled to testify against himself or to confess guilt.*

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation....

⁸ General Comment No. 21: Replaces general comment 9 concerning humane treatment of persons deprived of liberty (Art. 10) : . 10/04/92. CCPR General Comment No. 21. (General Comments), para. 13.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

In this regard, the Human Rights Committee has commented that Article 14(4), provides that in the case of children and young people, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation. Furthermore, youth offenders “are to enjoy *at least the same* guarantees and protection as are accorded to adults under article 14.⁹

Similarly, ACYA would like to highlight the provisions of Article 15(1) of the ICCPR which provides:

No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby (emphasis added).

Again, ACYA is concerned that the Young Offenders (Serious Crimes) Bill would contravene Aotearoa/New Zealand’s obligations under international human rights law.

The rights of children are also provided for in the ICCPR by way of Article 24. In particular, Article 24(1) provides that:

⁹ General Comment No. 13: Equality before the courts and the right to a fair and public hearing by an independent court established by law (Art. 14):13/04/84, para. 16.

Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State (emphasis added).

This meaning of this provision has also been expanded upon by the Human Rights Committee which has pointed out that, in addition to Article 24, children and young people, as individuals, benefit from all of the civil rights enunciated in the Covenant. Some provisions expressly indicate that measures must be adopted with a view to affording minors greater protection than adults. With particular regard to youth offenders, the Committee stated that youth offenders, if lawfully deprived of their liberty:

shall be separated from adults and are entitled to be brought as speedily as possible for adjudication; in turn, convicted juvenile offenders shall be subject to a penitentiary system that involves segregation from adults and is appropriate to their age and legal status, the aim being to foster reformation and social rehabilitation.¹⁰

In terms of the rights of the child, Aotearoa/New Zealand has undertaken further specific human rights obligations by virtue of its ratification of the UN Convention on the Rights of the Child. Consequently, Aotearoa/New Zealand has undertaken further international human rights obligations with regard to the treatment of youth offenders. ACYA strongly encourages the Law and Order Committee to take New Zealand's international human rights obligations into account. In particular, ACYA would like to draw the Committee's attention, once again, to Article 3(1) of the UN Convention on the Rights of the Child which states:

¹⁰ *General Comment No. 17: Rights of the child (Art. 24) ICCPR, para. 2*

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

It is this General Principle which ought to inform New Zealand's international legal obligations with regard to youth justice, provisions which stem primarily from Articles 37 and 40 of the Convention on the Rights of the Child.

In particular, Article 37 of the Convention on the Rights of the Child prohibits torture or other cruel, inhuman or degrading treatment or punishment. Specifically, Article 37(b) is particularly significant to the changes envisaged by the Young Offenders (Serious Crimes) Bill as Article 37(b) provides that detention is to be only as a measure of last resort and for the shortest appropriate period of time. Furthermore, any decision to detain a child/young person places an obligation upon the relevant authorities to ensure that where a child/young is deprived of liberty, he or she 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 (art. 37(c)). These provisions would be violated by a proposed legislative changes based upon the meaningless mantra of 'adult time for an adult crime'.

The provisions of Article 40 of the Convention are equally significant. The Select Committee must take into account the right of every child/young person who is recognised as having infringed the penal law to be treated in a manner consistent with the promotion of his or her sense of dignity and worth, which reinforces the child/young person's respect for the human rights and fundamental freedoms of others and which takes into account the age of the child or young person and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society (art. 40(1)). The proposed changes are a cause of

great concern to ACYA as they run contrary to provisions of Article 40(4) by increasing the range of options available to the District Court to detain children in institutionalized care.

The extent to which New Zealand is currently meeting its current international obligations to youth offenders is giving rise to some concern, even at the international level. In 2003, the Committee on the Rights of the Child stated, in relation to youth justice in New Zealand that although it noted the Youth Offending Strategy and the Task Force on Youth Offenders and the use of family group conferencing, it reiterated its concern that special protection was not being accorded to all persons under 18 who were in conflict with the law. The Committee was further concerned that youth offenders, both female and male, were not separated from adult offenders.¹¹ It recommended that New Zealand *ensure the availability of sufficient youth facilities* so that all youths in conflict with the law are held separately from adults in pre- and post-trial detention; and, undertake a systematic evaluation of the use of family group conferencing in youth justice (emphasis added).¹² In 2004, responding also to the matter of youth justice in New Zealand, the Committee Against Torture expressed its concern at the fact that youths are sometimes not separated from adult detainees.¹³ Consequently, ACYA's primary concern with the Young Offenders (Serious Crimes) Bill is that it will result in increased levels of imprisonment of youth offenders alongside adult offenders.

In addition to the international legal obligations contained in the Convention on the Rights of the Child, both the UN Committee Against Torture and the UN Committee on the Rights of the Child have recommended, with respect to youth justice, that the following standards be fully implemented within New Zealand:¹⁴

¹¹ Committee on the Rights of the Child. Concluding observations: New Zealand: New Zealand. 27/10/2003. CRC/C/15/Add.216, para. 50.

¹² Ibid, para.s 32 & 50.

¹³ Committee Against Torture, Conclusions and recommendations of the Committee against Torture: New Zealand. 11/06/2004. CAT/C/CR/32/4. (Concluding Observations/Comments), para. 6(e).

¹⁴ Committee Against Torture, *ibid*; Committee on the Rights of the Child, *supra* note 1, para. 50(a).

- (a) the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines);
- (b) the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).

(a) The Riyadh Guidelines

According to fundamental principles underpinning the Riyadh Guidelines, “the prevention of juvenile delinquency is an essential part of crime prevention in society” (Gdl. 1) and that “the well-being of young persons from their early childhood should be the focus of any preventive programme” (Gdl.4). Guideline 5 provides that delinquency prevention policies should avoid criminalising and penalising a child/young person for behaviour that does not cause serious damage to his or her own development or does not cause serious harm to others. According to this Guideline, such policies and measures should involve:

- (a) The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at social risk and are in need of special care and protection;*
- (b) Specialized philosophies and approaches for delinquency prevention, on the basis of laws, processes, institutions, facilities and a service delivery network aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, the commission of infractions;*
- (c) Official intervention to be pursued primarily in the overall interest of the young person and guided by fairness and equity;*
- (d) Safeguarding the well-being, development, rights and interests of all young persons;*

(e) Consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood;

(f) Awareness that, in the predominant opinion of experts, labelling a young person as “deviant”, “delinquent” or “pre-delinquent” often contributes to the development of a consistent pattern of undesirable behaviour by young persons.

With regard to their scope, Guideline 7 provides that the Riyadh Guidelines should be interpreted and implemented within the broad framework of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Declaration of the Rights of the Child and the Convention on the Rights of the Child, and in the context of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), as well as other instruments and norms relating to the rights, interests and well-being of all children and young persons. Part VI of the Guidelines make specific reference to Legislation and Juvenile Justice Administration encompassing laws and procedures that promote and protect the rights and well-being of all children/young persons (Gdl. 52). The Guidelines not only prohibit harsh or degrading correction or punishment measures (Gdl. 54), they recommend that law enforcement and other relevant personnel, use, to the maximum extent possible, programmes and referral possibilities for the diversion of children/young persons from the justice system (Gdl. 58).

(b) The Beijing Rules.

The fundamental principles underpinning the Beijing Rules are aimed at promoting the welfare of children/young people to the greatest possible extent in order to minimise the necessity of intervention, and thus any related harm caused,

by the youth justice system. The proposed changes to Aotearoa/New Zealand's youth justice system disregard the important role that a constructive social policy for children/young people ought to play, inter alia, in the prevention of (future) youth crime and delinquency. Equally, the proposed changes fail to take into account the need to improve constantly the system of youth justice in addition to continued development of a progressive social policy for children and young people in general. Thus, ACYA would like to highlight Rule 5.1 of the Beijing Rules which states:

The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

According to the Commentary accompanying the Rules, Rule 5 refers to two of the most important objectives of youth justice which are the promotion of the well-being of the youth offender and the "principle of proportionality", respectively. ACYA is concerned not only that the Young Offenders (Serious Crimes) Bill does not take these fundamental principles into account but that it also promotes the use of sanctions that are merely punitive. In light of this, ACYA would like to draw the Select Committee's attention to further Commentary accompanying Rule 5.1 which provides that any response to young offenders should be:

based on the consideration not only of the gravity of the offence but also of personal circumstances. The individual circumstances of the offender (for example social status, family situation, the harm caused by the offence or other factors affecting personal circumstances) should influence the proportionality of the reactions (for example by having regard to the offender's endeavour to indemnify the victim or to her or his willingness to turn to wholesome and useful life).

These basic principles must continue to be fully effected in our youth justice system.

Finally, ACYA would like to draw the Select Committee's attention to the United Nations Rules for the Protection of Juveniles Deprived of their Liberty which are relevant to any proposed changes to the youth justice system in New Zealand. These rules are intended to establish minimum standards accepted by the United Nations for the protection of children/young people deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society (Rule 3). In particular, Rule 1 which states:

The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort (emphasis added).

Where it is determined that detention is required, such detention should be for the minimum necessary period and should be limited to exceptional cases, and should include the possibility of his or her early release (Rule 2). Moreover, the deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of children/young people. Children and young people detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society (Rule 12).

However, as it currently stands, Aotearoa/New Zealand's present system of youth justice has been the cause for some concern. At the international level, the UN Committee on the Rights of the Child regards the minimum age of criminal responsibility, of 10 years, as being too low. The Committee is also concerned

that all persons under 18 years in conflict with the law are not afforded special protection. To that end, the Committee has recommended that New Zealand review the age limits set by different legislation affecting children to ensure its *conformity* with the principles and provisions of the Convention. The Committee also specifically recommended that New Zealand:

- (a) *raises the minimum age of criminal responsibility to an internationally acceptable level and ensure that it applies for all criminal offences;*
- (b) *extends the Children, Young Persons and Their Families Act of 1989 to all persons under the age of 18 (emphasis added).*¹⁵

In conclusion, ACYA strongly opposed the proposed measures contained in the Young Offending (Serious Crimes) Bill 2006. ACYA reiterates its contention that any proposed changes to Aotearoa/New Zealand's youth justice system MUST be guided by New Zealand's domestic and international legal obligations to children and young people who may be in conflict with the law.

7. *The Young Offenders (Serious Crimes) Bill: Aiming for 'Zero Tolerance', Achieving Discrimination and Marginalisation.*

The principles of non-discrimination and equality constitute the cornerstone of international human rights treaties, which enshrine the notion that dignity and equality is to be accorded to *all* human beings.¹⁶ Article 2(1) of the International

¹⁵ Ibid, para. 50.

¹⁶ The Universal Declaration of Human Rights (the Declaration) states that all human beings are "born free and equal in dignity and rights..." Moreover, Article 1 of the Declaration provides that, "All human beings are born ... equal in dignity and rights" whilst Article 2 states that, "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind such as ... birth or other status." These principles and rights were given a legally binding nature in the ICCPR and the ICESCR. The Preambles to both Covenants also state that their rights are to be extended to "everyone" as well as recognising "the inherent dignity" and "the equal and inalienable rights of all members of the human family" where such rights "derive from the inherent dignity of the human person".

Covenant on Civil and Political Rights (ICCPR), echoing the principles of the Universal Declaration, states that:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as ... birth or other status.

Furthermore, Article 2(2) requires that:

Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the present Covenant.

Finally, Article 26 of the ICCPR provides:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In terms of the rights of the child, the notions of dignity and equality are enhanced by the recognition of the special protection accorded by international human rights instruments to the rights of the child which can be traced back to Article 24(1) of the ICCPR, as previously referred to. The Preamble to the Convention on the Rights of the Child reiterates the recognition by the United Nations Charter of

the inherent dignity of all members of the human family as well as its recognition of the dignity and worth of the human person. It also recognises that the fundamental rights and freedoms contained in the Declaration and the International Covenants should be extended to all individuals without “distinction of any kind”, and considers that the child should be brought up in the spirit of the ideals proclaimed in the Charter including dignity and equality. Article 2 of the Convention contains the Convention’s principle of non-discrimination whereby all rights contained in the Convention are to be extended to all children “without discrimination of any kind”.

Discrimination can be described as unjustifiable differential treatment whereby the limitations imposed on the rights of an individual cannot be justified. Unjustifiable limitations are those that do not have a significant objective and/or which the means by which such an objective is reached is neither rational nor proportionate and which overtly limits the rights of the individual concerned. With regard to determining the legitimacy of such distinctions, a series of questions can be raised. The first question to be asked is whether the age-based distinction serves an important and significant objective. Both New Zealand domestic law and international law impose obligations upon the State to protect and provide for children and young persons. Youth justice legislation provides the prime example of where age-based distinctions may be used positively to protect and provide for children and young persons. Section 208 of the CYPF Act is a clear example of age-based distinctions having an important and significant objective where such objectives/principles include:

- The principle of keeping young children and young persons out of the criminal justice system;
- The principle of protecting the child or young person from excessive use of the court system;
- The principle of a child or young person’s age; and

- The principle of the child or young person’s umbrella of special protection during investigations.¹⁷

In terms of the youth justice system, these obligations can be regarded as an important and significant objective. Furthermore, in the context of youth justice such positive age-based distinctions support the obligation to protect and provide for young persons and may be imposed to ensure that young persons do not act to limit their opportunities that they have in later in life.¹⁸

Previous paragraphs in this submission have indicated the basis for this differential treatment which range from the historical recognition of the need to treat youth offenders less punitively, through to current sentencing statistics which indicate that youth offending tends towards the less serious type of offending. The New Zealand Court of Appeal has recognised the need for positive differential treatment of youth offenders and referred to a report prepared for the defence by Dr Ian Lambie, a registered consultant psychologist who stated:¹⁹

It is widely accepted that adolescents do not possess either the same developmental level of cognitive or psychological maturity as adults (Steinberg & Scott, 2003). Adolescents have difficulty regulating their moods, impulses and behaviours (Spear, 2001). Immediate and concrete rewards, along with the reward of peer approval, weigh more heavily in their decisions and hence they are less likely than adults to think through the consequences of their actions. Adolescents’ decision-making capacities are immature and their autonomy constrained. Their ability to

¹⁷ See, further, PHR Web and PJ Treadwell, *Family Law in New Zealand* (11th ed), Wellington, LexisNexis, 2003, at para 6.652.

¹⁸ C Breen (2006). *Age Discrimination and Children’s Rights: Ensuring Equality and Acknowledging Difference*, Martinus Nijhoff: Leiden.

¹⁹ *R v Slade* (2005) 21 CRNZ 600, para 43. See further, *Court in the Act* (No. 14, May 2005). ‘Special Feature 1: What We Know about Youth Offenders’, ‘Rethinking Crime & Punishment: An English Perspective on Youth Offending;’, ‘Special Feature 2: Sentencing young offenders – how and why their young age makes a difference’, Youth Court Website: <http://www.courts.govt.nz/youth/>.

make good decisions is mitigated by stressful, unstructured settings and the influence of others. They are more vulnerable than adults to the influence of coercive circumstances such as provocation, duress and threat and are more likely to make riskier decisions when in groups. Adolescents' desire for peer approval, and fear of rejection, affects their choices even without clear coercion (Moffitt, 1993). Also, because adolescents are more impulsive than adults, it may take less of a threat to provoke an aggressive response from an adolescent.”

According to the Court of Appeal, the policy implications in the criminal justice sphere were relatively obvious. The first concern was to actually prevent the problem of delinquency manifesting itself as violent criminal activity in the decidedly “at risk” period; then to address the root causes of that offending in an individual.²⁰ The Court continued with the observation that:

If incarcerated, and again in this respect Dr Lambie's report was grounded on well accepted professional literature, adolescents experience high levels of depression, anxiety, suicidal ideation and self-injurious behaviour, and victimisation from other inmates whilst incarcerated. Then too, in institutional terms, adult institutions offer less in the way of health and mental health services for adolescents than for adult prisoners (Soler, “Health issues for adolescents in the justice system” (2002) J Adolescent Health 321).²¹

Thus, the differential treatment of adult and youth offenders can be said to have a significant objective and the means by which this objective is achieved through the system of youth justice in Aotearoa/New Zealand is both rational and proportionate. The need to balance the rights of the victim and to protect the wider interests of society with those of the youth offenders are served by the fact

²⁰ Ibid, para. 44.

²¹ Ibid para 45.

that the current regime permits limitations upon the right of the youth offenders that are relate to the seriousness (or otherwise) of the offence in question.

Once it has been established that there is an important and significant objective arising from the imposition of age-based distinctions, a series of further questions must be asked in order to determine whether the means chosen are reasonable and demonstrably justified – the formulation of a proportionality test in which three further requirements must be satisfied. First, the measures adopted must be rationally connected to the objective, any measures must be carefully designed to achieve the objective in question. With regards to the second and third requirements of proportionality, the effects of distinctions adopted should impair “as little as possible” the right or freedom in question. These requirements are satisfied by the current system of youth justice whose carefully-designed measures take account of the need for limiting the youth offenders’ rights and freedoms but only to the extent to which such impairment satisfies the important and significant objective of provision and protection for young people. The governing principles of youth justice contained in s 208 adequately reflect this need for balance as between the rights of the youth offender, the victim and society in general. There is a justifiable basis for the positive and more lenient treatment of youth offenders.

However, the negative impact of the proposed amendment to the CYPF Act as contained in clause 8 of the Young Offenders (Serious Crimes) Bill would result in unjustifiable differential treatment, and thus would be discriminatory, in two further respects. First, in treating all offenders (both youth and adult) equally by removing the justifiable more lenient treatment of youth offenders provided for in the youth justice system, the proposed amendments would have a disproportionately negative impact (as identified by the Court of Appeal above) upon youth offenders that remains to be justified. Second, clause 8 also discriminates negatively against children and young persons in that the definition of “serious offence” not only takes into account the gravity of the offence but also

previous offending. Some youth offenders would face the additional disadvantage of being treated as if he or she had committed a serious offence purely as a consequence of having committed three previous non-serious offences. In that sense they would be treated differently and more harshly than adult offenders. In addition, the District Court may, in turn, know of the previous offending before making a determination of the young offender's guilt or innocence. In contrast, evidence of previous convictions of adult offenders is only placed before the Court in only the most exceptional cases. Thus, rather than impairing the rights of youth offenders as little as possible, such proposals constitute violations of the rights of youth offenders in the criminal justice system, violations to which adult offenders are not subject. Although the prohibition on age-based contained in the NZBORA commences at the age of 16 years, the lack of justification for such overtly harsh treatment, as it relates to youth offenders under 16 years, raises serious concerns. These concerns become all the more pertinent with regard to clause 14 of the Bill which potentially subjects a youth offender to a term of imprisonment on the basis of having turned 16 years at the time of conviction. Thus, age becomes the criterion for imprisonment upon conviction for a 'serious crime' which is a violation of s 19 of the NZBORA, given that discrimination that is age-based commences at 16 years.

8. Lowering the Age of Criminal Responsibility and Introducing the Concept of 'Serious Crime': Unwarranted Reactions to Misconceived Notions of Youth Crime.

There is often a public perception that youth crime is a growing problem, that child offenders are more violent and involved in more serious crime than in previous years and that penalties for youth offending are more lenient than in previous years. In fact the amount of children who offend in a serious and persistent manner is low in New Zealand. According to the Youth Offending Strategy (Ministry of Justice/ Ministry of Social Development, 2002), apprehensions of those under 14 have increased but at approximately the same

rate as apprehension of 14-16 years and at a much lesser rate than apprehension of 31-50 year olds. The offences involved are usually property offences and assaults against children their own age. Approximately 130 youth justice Family Group Conferences for children take place every year. The New Zealand Principal Youth Court Judge, Judge Andrew Becroft has warned about the misleading effects of some media reports:

In the debate within New Zealand about youth offending, there has been inadvertent reliance placed on selected statistics that can give a very misleading picture. This picture may then be painted for the public by the media in shocking news headlines that lead to calls for fundamental change, increased penalties, lowered age of criminal responsibility and assumptions that “the system is failing”²²

Thus, in contrast to the more sensationalistic reports to be found in the media, analysis of the most recent statistics show:

(i) Offending attributed to under 17 year olds has stabilised. Offending by under 17 year olds has not increased at any greater rate than adult offending, remains remained at about 22% of the total number of apprehended offenders for the last ten years.²³

²² ‘Youth Justice- The New Zealand Experience, Past Lessons and Future Challenges’, A paper presented at the Australian Institute of Criminology/NSW Department of Juvenile Justice, Sydney 1-3 December 2003, p. 27

²³ Principal Youth Court Judge, Andrew Becroft, Youth Offending: Putting the Headlines in Context, (*Issue 3 - covering 2003*) December 2004, <http://www.justice.govt.nz/youth/media/rates1204.html>. Judge Becroft stated:

“1. Offending attributed to under 17 year olds has increased over the last 12 years, but much less so over the last 7 years:

- The total number of resolved offences attributed to under 17 year olds has increased from 33,500 in 1989, to 45,522 in 2000, dropping slightly to 43,436 in 2001, and increasing to 44,533 in 2002 and 46,532 in 2003. It has been relatively stable over the last 7 years. (*Source: NZ Police and Ministry of Justice*)

(ii) The majority of youth crimes are not serious in nature. In a 2000/2001 study, Police described almost half of youth offences as “of minimum seriousness”. The majority of offences are petty dishonesty or property offences. The average

(It should also be noted that this is not the same figure as the number of individual offenders, and does not take into account population growth)

- Similarly, the non-traffic apprehension rate (per 1,000 population) for 14-16 year olds increased from 148.2 in 1992, to 175.0 in 1993, to 182.8 in 1994, and to 193.4 in 1996. It has remained relatively unchanged since. It was 184.0 in 2001, 181.0 in 2002 - the lowest since 1993, and 188.6 in 2003. *(Source: NZ Police and Ministry of Justice)*
- More strikingly, the apprehension rate for 10-13 year olds has remained relatively static, being 46.5 in 1992, and 46.2 in 2001, 44.7 in 2002, and 45.1 in 2003 (the lowest since 1999). *(Source: NZ Police and Ministry of Justice)*
- The number of charges processed in the Youth Court increased from 8,674 in 1990/91, to 14,209 in 2000/01, but again has remained relatively static in the last 6 years with 13,754 in 2001/2002, and 13,476 in 2002/2003. *(Source: Ministry of Justice)*
- The number of cases (per 10,000 of population between 14 and 16) in the Youth Court has increased from 130 in 1990/91 to 197 in 2000/01. It dropped to 185.1 in 2001/2002 and further dropped to 182.1 in 2002/2003. It has been reasonably stable in recent years. *(Source: Ministry of Justice)*

Generally, during the last 6 years there have only been relatively small increases in offending rates by under 17 year olds.

Police apprehensions of children and young people aged between 10 and 16 increased by 5.3% between 1996 and 2003, a period when the total population in that age group rose more than 14%. *(Source: NZ Police and Ministry of Justice)*

2. Offending by under 17 year olds has remained a relatively static proportion of total offending over the last 10-12 years:

Under 17 year olds account for about 22% of total offenders apprehended. This figure has not significantly changed over the last decade (1994: 22.33%, 2003: 21.77%). In other words, while the number of those under 17 year old offenders apprehended has increased, it has not increased at any greater rate than adult offenders apprehended. *(Source: NZ Police figures; Ministry of Justice)*

In fact, the percentage of apprehended offenders who were under 17 years old has been decreasing since 2001 (2000: 23.09%; 2001: 22.12%; 2002: 21.90%; and 2003: 21.77%). *(Source: NZ Police figures, Ministry of Justice)*

Debate about increasing youth crime should take place in the context of overall crime increases.”

seriousness of proved cases involving young offenders has fluctuated over the last decade with no clear pattern.²⁴

(iii) Violence features in about 10% of offences involving young people. The rates of violent offending attributed to 14-16 year olds significantly increased between 1991 and 1995, but much less so since. Violent offending attributed to 10-13 year olds peaked in 1997, and has dropped in each of the last 3 years.²⁵

²⁴ According to Judge Becroft, *ibid*:

“3. Only a small percentage of offending by under 17 year olds is “serious” offending:

- Just over 50% of the offences attributed to young people are dishonesty offences (52% in 2002);
- 20% of all offences attributed to young people are shoplifting;
- Property damage is the next largest offence, about 1 in 8; (12% in 2002).
- Nearly half the offences committed by under 17 year olds and recorded by the Police in a study in 2000/01, were rated by the Police as of minimum seriousness

(These were mostly property and dishonesty offences involving goods of less than \$100 in value);

- Violence makes up 1 in 10 of all offences, and has done so since 1994 (2002: 10.7%).
- Drug offences, antisocial behaviour and property abuse each made up about one in 20.

(Source: Maxwell and Morris, 1998; Maxwell, Robertson and Anderson, “Police Youth Diversion”, a report from the Crime and Justice Research Centre, Victoria University 2002)

- The average seriousness of “proved” cases in the Youth Court has fluctuated over the last decade, with no clear pattern, save for significant increases in the most serious offences in the first half of the 1990’s.
- The proportion of “proved” cases that resulted in any type of custodial sentence remained at 9% from 1994 to 1997, but dropped in the next six years to just under 4% in 2003.”

²⁵ Judge Becroft states, *ibid*.,:

“Violent offending attributed to 14-16 year olds has increased since 1991 but much less so since 1995.

- Apprehensions by the police of 14-16 year olds for violent offences increased from 104 per 10,000 of the population in 1991, to 196 in 1995. It has increased only

(iv) The percentage of under 17 year olds involved in violent offending has remained relatively stable over the last 10 years.²⁶

slightly since then to 210 in 2001 and dropped to 205 in 2002, before increasing again to 215 in 2003. (Source: NZ Police, Ministry of Justice)

- The number of apprehensions for serious offences for 14-16 year olds has remained reasonably static over the last 6 years.

- For instance, there were 354 aggravated robberies/robberies by 14-16 year olds in 1995; 310 in 2000; 320 in 2002; and, 326 in 2003: an average of 309 each year between 1994 and 2003. (Source: NZ Police, Ministry of Justice)

Violent offending attributed to 10-13 year olds peaked in 1997, at 47 per 10,000.

- Apprehensions for 10-13 year olds for violent offending have fluctuated around an average of 42 per 10,000 of the population in each year from 1994 to 2003 (45 in 2000; 42 in 2002; and 40 in 2003). (Source: NZ Police)

Apprehensions for robberies by this age group increased from 66 in 1994, to 82 in 1998, and then averaged 70 in the next five years (73 in 2003).

It should be noted that over the last decade, the total number of violent offenders apprehended by the police in New Zealand has increased. For instance the rate per 10,000 of violent offences committed by 31-50 year olds increased more than for 14-16 year olds.

It may be that society is becoming less tolerant of violence and that there are more complaints of violence. Whatever the reason for the increase, an important question is: why is our society as a whole (not just young people) apparently becoming more violent?

Also the increase in violent offending does not represent any significant change in the percentage of young people under 17 involved in violence, which has fluctuated from 11 to 14% of all violent offenders apprehended by the Police each year from 1994 to 2003 (12.99% in 2001 and; 12.97% in 2003).

Moreover, in the Police diversion study, mentioned at point 6 below, 56% of the violent offences were not rated by the Police as of medium or greater seriousness.”

²⁶ According to Judge Becroft, *ibid*:

“...over the last 10 years the proportion of young offenders in each of three different age groups under 17 has remained approximately the same:

- Under 10 year olds form about 3% of under 17 year old offenders apprehended (2.7% in 2003);

- 10-13 year olds form about 24% of under 17 year old offenders apprehended (21.8% in 2002; 24.3% in 2003); and

- 14-16 year olds form about 70% of under 17 year old offenders apprehended (76.5% in 2002; 73.1% in 2003).

(v) Only the most serious youth offenders come before the Youth Court. Only 16% of young offenders are directly charged in the Youth Court. Despite an increase in the population, the number of cases finalised in the Youth Court has declined over recent years. Well over half of those appearing in the Youth Court either receive an absolute discharge after the completion of a Family Group Conference Plan, or the case against them is not proved.²⁷

In other words, it would appear that, in fact, the levels of youth offending have remained stable and have tended to be confined to offences that are less serious in nature. These statistics give a view of youth offending that is in marked contrast to the assertions contained in the Explanatory Note to the Young Offenders (Serious Crimes) Bill which states that, in some cases, only children are responsible for a recent spate of very serious, and shocking, crimes.

9. Conclusion.

ACYA strongly opposes the changes proposed in the Young Offenders (Serious Crimes) Bill 2006. Such changes would result in the dismantling of an effective youth justice system. The changes would result in violations of Aotearoa/New Zealand's national and international human rights obligations pertaining not only to the treatment of youth offenders but also with regards to the administration of justice. The proposed changes would have a disproportionately negative effect on

Also the percentage of apprehended offenders in each age group who are violent has remained very stable over the last 8 years:

- For under 10 year olds about 5 - 7% (7.4% in 2003);
- For 10-13 year olds about 7 - 9% (9.3% in 2002; 9.0% in 2003);
- For 14-16 year olds 10 - 11% (11.3% in 2002; 11.4% in 2003).

(Source: NZ Police; Ministry of Justice; Maxwell, G. Crime and Justice Research Centre, Victoria University 2002)."

²⁷ Ibid.

youth offenders and would subject children/young people to excessively punitive measures. Accordingly, ACYA rejects the Young Offender's (Serious Crimes) Bill 2006 as a baseless attempt to portray young people in an excessively negative light in order to garner support for proposals that would dismantle a long standing and effective system of youth justice.