

Conceptualisations of Youth and
Implications for Policy:
A Study of Four Cases in Aotearoa/New Zealand

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Abstract

What we claim to know and understand about youth has roots in history and culture, and is informed by disciplines within both the natural and the social sciences. Policy and legislation that concern youth draw on all these understandings in their efforts to manage, develop, control and protect young people. Yet there has not been a serious consideration of the fixing of age limits in either historical or current legislation, which means the potential limiting of young people's rights as citizens and their exposure to learning experiences has not been challenged.

Taking a critical approach to contemporary views of youth, this study examined the conceptualisations of youth that have influenced the development of policies and legislation that concern young people in New Zealand/Aotearoa. It reviewed a range of legislation and policies and found that age limits existed in a broad scope of legislation and were applied in an arbitrary fashion. Four case studies were investigated: three cases concerned legislation that set age limits for young people, and one case study where an age limit has not been applied, that of medical consent. I analysed the submissions to Select Committees and the associated Hansard debates and other related documents for the legislation cases, and the relevant legislation and other documents that were associated with the case of medical consent.

This exploration of the development of these policies and the critical explication of the constructions of youth that informed them found that views of youth were contradictory and equivocal, and that the justifications for the age limits in these cases were inconsistent. Evidence for the development of principles that might guide policy or legislation concerning age-setting was not available. Instead, it was found that a predominant view of 'youth as risk' overwhelmed any rational, evidence-based assessments of young people at various ages and in a range of policy contexts. The explanation for this view of 'youth as risk' is found in Ulrich Beck's 'Risk Society' theorising, although he did not specifically refer to or single out young people. This study therefore builds on his work since I argue that because of

their life stage and their position in contemporary western societies, young people are particularly exposed to the risks of the 'risk society'.

The study concludes that given that much of the 'risk' associated with young people lies in the social context over which they have little control, youth policy should consider more seriously the impact on young people of policy developments across all sectors. It should also take into account the diversity of young people, not just in such differences as gender, ethnicity and disability, but also in their very different roles and activities in families and communities. A focus on 'inclusion' rather than 'participation' of young people in society would better encourage consideration of young people in policies across all sectors, and would also help promote more positive views of young people. If it is established that an age limit is necessary, then a youth ministry should examine more closely the impact on young people of an age change and provide a more sophisticated analysis of evidence and principles, as well as the competencies required for the activity under discussion. It should also consider whether the motive for an age limit might be the perceived vulnerability or riskiness of young people when in fact the problem the policy is endeavouring to solve is a wider societal one.

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And to my children, who are now young people, thank you for showing me how competent, responsible and wonderful young people can be.

'Just look at the spate of ageist laws passed recently - raising the driving age, zero blood alcohol for under 20s, raising the alcohol purchase age from off-licences.

Youth feel that the Government is targeting them, and using their age as a scapegoat, rather than tackling issues such as drink driving in a non-ageist way.'
Young person's post on Voicy, the Ministry of Youth Development's online youth engagement and consultation tool.

'If the law should impose upon the process of "growing up" fixed limits where nature knows only a continuous process, the price would be artificiality and a lack of realism in an area where the law must be sensitive to human development and social change.' Lord Scarman

Chapter One: Introduction

1.1 Overview of the Research

Within our own society as well as internationally, adolescence is conceptualised in diverse ways and there is no one accepted definition of what adolescence is or what it should be. Along with the many ideas about what adolescence is, there is further diversity in ideas about young people's roles and contribution to society, what their needs are and how these needs should best be met. While young people are subject to and benefit from the range of policies and legislation that are intended for the populace as a whole, there are also policies that are designed specifically for young people, and there is a significant quantity of legislation that includes age limits.

There is a lengthy history of development of policies and legislation intended to protect or promote the interests of young people. Early on, there was the introduction of regulations around apprenticeships put in place by the various Guilds, and later legislation such as the Factories Acts, and the introduction of universal schooling, which were initiated towards the end of the nineteenth century. In New Zealand in 1875, restrictions were placed on the hours that could be worked by children between the ages of 10 and 14 years, and in 1877, the school leaving age was set at 12 years. These age limits were designed for the protection of children and youth as well as to provide the opportunity for formal periods dedicated to education and training. In earlier times also, the patriarchal family model that predominated had meant children and young people were subject to child/parent relations that allowed parents to select marriage partners as well as careers for their children. However, changing economic and social patterns over the last one hundred and fifty years have allowed young people increasing freedom to make their own way in life independently of the wishes or demands of their parents.

Children's rights are now enshrined in conventions such as the United Nations Convention on the Rights of the Child (UNCRC), as well as legislation that protects

them or promotes their interests. This legislation has reflected the views held about young people at particular times in history, as well as the diverse views about young people in different places and within different cultures. The age limits set in legislation were sometimes intended to protect young people, such as in employment legislation that placed restrictions on young people working in dangerous workplaces, or to promote their development, such as in raising the school leaving age, although there may have been an additional element of self-interest from adults wanting to erect barriers to entry into a limited labour market.

In addition, alongside the protection and promotion rights of children and young people, there has also developed a focus on children's and young people's participation rights which suggests that they should have a say in decisions that affect them. Within policy and research, there is now a greater awareness of the need to consider the views and wishes of young people who are affected by a policy, or are the subjects of research.

However, policies and legislation that concern young people do not always appear to reflect the social, economic and family relations in which young people are immersed at particular times. Often such policies and legislation seem to have been introduced in an ad hoc fashion, patching together some of the newer views of young people but still adhering to age limits instituted in past policies/legislation. So, while there has been some adjustment in rejecting old ideas about children's and young people's rights, there has not been a serious consideration, or reconsideration, of young people's rights and responsibilities in the fixing of age limits in either historical or current legislation.

The aim of this research was to investigate policies and legislation in New Zealand that specifically concern young people, examining the way in which these are influenced by how adolescence is perceived and constructed, and the consequences of this for young people in terms of limiting both their exposure to learning experiences and their rights as citizens. While the thesis does not examine the economic and political aspects of legislation development per se, these aspects are of course important and are raised in Chapter Two in relation to the broader context of the risk society. The thesis is concerned particularly with how

conceptualisations of young people shape the legislation or policies that affect them. My starting point was in recognising that identifying such principles was particularly important given recent changes to legislation which disadvantage young people, such as in youth wages, youth benefits and the driver licensing age, or in the persistent attempts to change the age of consent for contraceptive advice or abortion, which is also troubling for healthcare providers.

In the early stages of this research, I scanned New Zealand legislation looking for the presence of age limits across a range of laws, to gain some idea of the extent to which age limits exist in legislation, the variety of different age standards applied, and whether there were consistencies across legislation. [See Appendix 1 which lists some of this legislation.] As can be seen in this list, what I found was that there is a wide variety of ages used and little consistency can be seen in the selection of ages across and within particular laws and policies.

A number of age standards appear to be applied for the purposes of protection of young people, some for the protection of others, and some whose purpose is open to debate. The first group includes, for example, age standards concerning sexual conduct with a child, abandonment of a child, wilfully frightening a child; others refer to the responsibilities of guardians that relate to the care of the child and some were possibly aimed to protect the health of the child/young person, such as legislation relating to the sale of tobacco products, and sale of alcohol. The second group, pertaining to the protection of others from young people, was no doubt the intention of the Arms Act in restricting by age the possession of firearms and firearms licences. However, for a number of Acts it is not clear what the rationale might be for the age standard, and for some it could be concluded that it was for the benefit of adults, such as the age standards in the Minimum Wage Act, which, it can be argued, simply provides a source of 'cheap labour' by setting a wage lower than that which adults would earn for the same work. The setting of the age of 17 years for purchase or lease of land in the Land Act is interesting because it was, and still is, below the Age of Majority. It is possible that at the time the law was passed, just after World War II, there was a desire to open up land for farming; in addition, it may have been that the ideas about young people at 17 years of age were

influenced by the young ages of many men and women who were involved in combat.

What was clearly and surprisingly evident in this scan, and can be seen in the list in Appendix 1, was that age limits are widely applied in legislation and that it is difficult to discern any coherence across the Acts in terms of the ages selected. The inconsistent use of age limits is unfair on young people and confusing for everyone. It is a problem for both young people and adults in simply knowing what you can do at what age, but it is also confusing for young people in trying to understand what is expected of them, how they should behave and where they fit in society.

This research then proceeded to examine, in depth, the rationale for age-setting in policy and legislation. The objectives of the analyses were:

- *To examine recent legislative or policy developments that concern youth with a view to understanding the conceptualisations of youth that inform such policies.*
- *To determine whether some principles could be developed that would guide future policies and legislation to best support young people as they move through this stage of life.*
- *To explore the wider societal context within which these conceptualisations arise.*
- *To make recommendations as to how the question of age might be addressed in future policy initiatives.*

The study employed qualitative and inductive approaches. Its standpoint was that while 'adolescence' is a life stage through which people pass, adolescents are also active agents who contribute to the construction and reconstruction of their social and cultural worlds.

1.2 Adolescence, Youth or Young People?

Blatterer discusses the use of the terms 'adolescence' and 'youth', and finds that 'adolescence' constitutes a particular perspective on youth (Blatterer, 2007, p. 68). From the mid-nineteenth century, middle and upper class young men spent longer periods in education and became increasingly separated from the adult world during this time in their lives. While working-class young men still laboured in

factories and on farms, from the end of the nineteenth century the idealised 'model' of the bourgeois youth began to take hold with the emergence of white-collar occupations and the potential for education to provide upward social and economic mobility. From early in the twentieth century with the development of the biological and behavioural sciences, there developed a view of the special physical and psychological developmental phase of this life-stage, which became termed 'adolescence'. So, for Blatterer, adolescence, with its special developmental status, has supplanted youth as a category, while 'youth' is retained as an attribute, signifying beauty, strength and vitality, and in Western societies at least, youth is seen to have become 'a lifestyle for all ages' (2007, p. 66).

In the literature across the various domains such as psychology, sociology and social/youth work, different terms are used to describe young people. For example, 'adolescence' is commonly used within the field of psychology, and 'youth' within the field of youth work. In everyday life, these different terms tend to be associated with different views of young people, so that an 'adolescent' is likely to be regarded as having different attributes than a 'youth', for example, 'youth' often being associated with 'troublesome young men', whereas 'adolescent' is descriptive of a life stage, rather than a pejorative term. In this work, I use the terms interchangeably, and the terms youth, adolescent and young person, all refer to a group of young people aged from around 13 to 25 or so years of age.

1.3 Outline of the Thesis

Chapter Two provides a context to the study. There is a review of a selection of literature relating to the historical and contemporary views of youth. The literature selected covers areas that are most relevant to a study of youth policy, and age-setting in particular, as well as some literature that provides some insight into the controversies and conformities within and across these disciplines.

In Chapter Three, I outline the methodology for this research, describing the theoretical approach taken to the study, and the methods used to explore the topic. The research used case studies, and the four cases selected include the Alcohol Reform Bill 2010, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill 2009, two Land Transport Bills concerning

driver licensing, and the case of medical consent. There is a discussion of the rationale that guided the selection of these case studies, and there is a brief account of some ethical considerations.

Chapter Four presents the findings from the three legislation case studies, followed by an analysis of documents relating to the medical consent case study.

A discussion of these findings in Chapter Five provides a deeper analysis and draws on the work of Ulrich Beck to explain the findings concerning 'youth and risk'.

Chapter Six looks to the future and suggests how the findings from this study can be used in youth policy development.

Chapter Two: Context

This chapter reviews a selection of the expansive literature that concerns young people. There are many different disciplines that have in diverse ways examined young people, and constructions of youth from across all of these can be and are drawn on in our contemporary understandings of youth. Because of the extensive scope of literature on young people, this review has selected those areas that are most relevant to a study of youth policy, and age-setting in particular, and provides summary descriptions of what are the most germane discussions. It also aimed to provide some insight into the controversies and conformities within and across these disciplines, as well as some recent developments based on new technologies which are regularly referred to in the on-going debate about how young people are or should be integrated into today's society.

The review begins with discussing some historical views of adolescence, then outlines contemporary approaches, including social approaches, and then adolescent physical, psychological and cognitive development. There is a brief discussion of some critiques of adolescent research. This is followed by a consideration of the broader social issues that affect young people in society, including 'rights' and 'risk' and how youth is implicated in power relations more generally. There is then an introduction to some theories of contemporary western societies which are relevant to this study. The particular situation for young people in New Zealand is outlined, followed by a brief discussion of some of the problematic issues for young people.

2.1 Historical Views of Adolescence

Views of what constitutes childhood and youth have undergone changes throughout history. The very existence of the stage 'adolescence' as we understand it today is relatively recent, emerging only in the last two hundred years in response to changes such as the advent of new technologies and industrialisation, the development of schooling, economic changes such as the Great Depression, and the consumer and mass media influence of the 1950s (Jones, 2009; Klein, 1990). In

more recent times, later marriage/partnering and child-bearing, and longer economic dependence on parents, has further delayed the historical transition to adulthood.

2.1.1 Ariès's Childhood

Heywood (2001) describes histories of childhood and adolescence prior to the 1950s as being mainly 'institutional in character' (p.5), consisting for example of histories of school systems or legislation concerning children. It was not until the 1960s and the work of Phillippe Ariès in particular that historians began to look seriously at life as it was for children, or childhood as it was perceived by adults of the time. Ariès's assertion that 'childhood did not exist' in medieval society and that after 'infancy' (around five or seven years of age) young people were perceived as small scale adults (2001, p. 11) has received wide attention, both positive and negative. Heywood outlines critiques of Ariès's work, particularly those by historians, and concludes that the reason why Ariès's thesis was so widely accepted, by sociologists in particular, was that it opened up the field of study of childhood. If historical childhood was so different from one's own, it becomes clear that childhood is culturally constructed rather than 'natural' (2001, p. 12).

Considering the sociological thinking that preceded the publication of Ariès's *Centuries of Childhood* in 1962, Ben-Amos (1995) states that Ariès's depiction of childhood as short and adolescence as non-existent in medieval and early-modern Europe fitted so well with existing theories that there was widespread acceptance of his work. However, Ben-Amos suggests that some of Ariès's claims were not supported by evidence, and later work by historians found that Ariès's claim that adolescence in particular did not exist in earlier times was incorrect. Ben-Amos states that 'Historical demography has shown that in England, and in parts of northern and western Europe, most people married and had families of their own only in their mid- and even late twenties, so that full adult responsibilities were postponed for many years' (1995, p. 82). He maintains that adolescence as we recognise it today, as not children yet not required to assume the responsibilities of adulthood, was clearly a life stage for most people in the early modern as well as medieval times.

2.1.2 Transitions to Adulthood Over Time

Heywood covers the period from medieval times to the early twentieth century and it is clear that over this historical period there have been many different conceptualisations of children and young people and many which we would recognise today. Hanawalt has also argued against the assumption that adolescence is a modern invention, and suggests that there is evidence that the European medieval world certainly 'recognised and defined adolescence' but that is not to say 'it was the same as the nineteenth or twentieth century concept of adolescence' (Hanawalt, 1992, pp. 342–343). Heywood also makes the point that there existed a 'gradual transition from early childhood to adulthood' until the late nineteenth century, but later 'age-graded classes of the school system and child labour laws' made a clear distinction between childhood and adulthood (Heywood, 2001, p. 171). More recent literature on youth describes the prolonged but indeterminate period from childhood to adulthood, a period where labour market changes, such as the demand for educated workers, and other economic and social policies that have extended the period during which young people are dependent on parents, has meant that 'adulthood' rather than being set precisely tends to be achieved via a process of negotiation (Furlong & Cartmel, 1997).

Furstenberg claims that adolescence existed prior to the twentieth century as an ill-defined period during which young people remained semi-dependent on their families because of unemployment, extended education and the decline of the family farm. However, he notes that it only emerged as a 'discrete life stage' in the middle of the twentieth century and that 'adolescence becomes culturally defined as a life stage when full-time education replaces full-time employment as the primary activity of young people' (Furstenberg, 2000, p. 897). Urbanisation and industrialisation had enabled young people to obtain jobs independently of their parents, and following the two World Wars when jobs were abundant, and in the United States veterans' allowances enabled young men to marry younger, the period of dependent adolescence became shortened. However, later in the twentieth century as the baby boom cohort reached their teenage years and jobs became harder to secure and required higher skills, there was an extension of the

period of economic dependence for young people again. The large numbers of young people and their 'extended youth' was seized on commercially and by the media, and lead to the development of a popular youth culture.

Adolescence as it exists today is often viewed as a stage of transition (Bendit, 2006), where young people are in the process of acquiring the capacities and rights of adulthood. It is sometimes assumed that this transition in the past followed a pre-determined path, whereas in today's society with its extended periods of education and training, and no longer a simple linear path from education to employment, the process to adulthood has become longer and more complicated. However, Heywood's finding that until the late nineteenth century there was an 'absence of an established sequence for starting work, leaving home and setting up an independent household' (Heywood, 2001, p. 171) indicates that the elusiveness of adulthood may not be new after all. Ben-Amos also finds that not only is adolescence not an invention of the twentieth century but that in the past it had many of the features we recognise today, such as prolonged duration, conflict with adults and even an attraction to radical ideas. He also suggests that sociological studies on the transition to adulthood in modern society show many 'traditional' features such as conformity, smooth adaptation, assumption of adult roles, a measure of responsibility and even early maturation (Ben-Amos, 1995, p. 83). Heywood does point out an important difference though in that individual young people in the past did not have the same degree of choice as young people today; most young people in the past had their careers and often their life partners marked out for them by their parents (Heywood, 2001).

2.1.3 Distinguishing Adolescence from Adulthood

In recent history, G. Stanley Hall (who published the two-volume *Adolescence* in 1904) is often cited as the first theorist to attempt to define adolescence (Aitken, 2001; Heywood, 2001; Wallace & Kovatcheva, 1998). Hall believed that 'a great deal about adolescence could be explained by reference to the evolutionary history of humanity' (J. J. Arnett, 2006, p. 190) and he described the development of individuals from an early 'primitive' childhood through to 'civilised' adulthood. Adolescence was a period of 'storm and stress' as the young person oscillated

between the two stages. While some of Hall's 'information and insights [that] are strikingly similar to what we believe today about adolescents' (2006, p. 187), and some reflect the time of his writing (early twentieth century), the concept of adolescence as a time of 'storm and stress' has survived. Later theorists such as Franz Boas and his student Margaret Mead challenged biological determinism and sought an example that might show a different form of adolescence, thus supporting the view that social and cultural context is at least as important as biology in adolescent behaviour (Muuss, 1996, p. 106). Their theory was famously challenged by Derek Freeman (Freeman, 1983) who argued for a synthesis which recognises both the biological and the cultural in determining human behaviour. Most theorists now accept the importance of both 'nature and nurture' and the interaction of the biological with the cultural in the development of individuals (Muuss, 1996).

Other studies have challenged the widely held view of adolescence as a time of storm and stress or heightened emotionality, conflict and defiance of adults (Berk, 2003). For example, while some studies have linked higher hormone levels to greater moodiness, the link is not strong (2003, p. 198). Moreover, social experiences that young people are exposed to at this time can also explain any 'mood swings' that might be more prevalent during adolescence. Berk describes studies that have investigated mood fluctuations of children, adolescents and adults, and while they indicate that adolescents report less favourable moods than do children and adults, she points out that they were linked to a greater number of negative life events – difficulties getting along with parents, disciplinary actions at school, or breaking up with a boyfriend or girlfriend. In addition, while adolescents also experienced less stable moods, swinging from cheerful to sad and back again, they were also moving more frequently from one situation to another and their mood swings were often related to these changes. Other possible factors are sleeping pattern changes, as adolescents go to bed much later, possibly as a result of a biological change, but they also often have evening activities and part-time jobs, which may cause them to become sleep-deprived (2003, p. 198).

Arnett (1998) has described research on what it means to be adult in contemporary American majority culture, and compares this with other conceptions cross-culturally and historically. He notes that anthropologists have found that marriage is almost universally regarded as a marker of adulthood. However, he also notes that this may occur at earlier ages than in modern Western societies, typically 16-18 years for girls and 18-20 years for boys in traditional/preindustrial cultures. In addition, marriage in these societies is usually arranged by adults as young people do not have the authority or economic resources to manage this themselves. While marriage is found to be a marker of adult status, it is usually preceded by the development of a range of skills and character attributes that ready a young person for marriage. These may include the capacities to provide, protect, and procreate for boys, thus skills such as those of hunting and farming for food provision, skills of warfare to protect, and sexual skills in order to procreate, need to be developed. Girls may need to develop the ability to care for children and run a household. Alongside these skills, young people are also expected to develop character attributes such as diligence, reliability, courage, and confidence.

In England from the 16th to 18th centuries, the transition to adulthood has been described as a gradual process that took place over many years until adulthood was reached and people married in their late twenties. Over this period, young people were granted legal, social and economic rights and obligations as they developed certain character traits. There was a distinct life stage of youth, with young people considered to lack impulse control, be subject to emotional extremes, and engage in reckless and riotous behaviour. The traits they needed to develop to be deemed adult included open-mindedness and rationality. These young people were usually sent out from their homes to live in another family household where they spent a period of time 'in service', usually lasting seven years, learning domestic or farming skills, or being apprenticed to a trade or craft (J. Arnett, 1998). Arnett also cites a study of New England young men in the 17th and 18th centuries which found that there was a transition period, termed 'communal manhood' when the young men prepared for the adult responsibilities of work and marriage, and their roles as heads of households and providers and protectors of wives and children.

Over the 19th century, as the population grew and industrialisation developed young people were more likely to leave their homes for urban settings where they were unknown and individualism grew as community bonds diminished (1998, p. 300). The transition to adulthood now became less distinct and there was a greater emphasis on the development of character qualities considered necessary for adulthood, although marriage remained the marker for full adulthood. These character traits included self-control and a strong will for independent decision-making, differentiating the 'adult' from the 'high-spirited but undisciplined youth' (1998, p. 300). The importance of marriage as a marker continued into the 20th century, but from the 1960s the median age of marriage began to rise and the American ethos of individualism strengthened, initiating a decline in the significance of marriage as a marker of adulthood, and increased emphasis on possession of a new set of character traits, described by Arnett as accepting responsibility for oneself, making independent decisions, and financial independence (1998, p. 301).

In Robertson's investigation of age of consent law changes in New York city between 1886 and 1921, he argues that 'encounters between ordinary New Yorkers (jurors) and prosecutors produced a distinction between teenage girls and younger girls, that helped prepare the ground for the modern notion of adolescence' (Robertson, 2002, p. 784). After the age of consent was raised to 16 years in New York City, all men who had sex with underage girls were charged with rape (sexual intercourse with a non-consenting victim), and statutory rape (sexual intercourse with a person under a specified age) was used only as a secondary charge. However, prosecutors found it difficult to procure a guilty decision from jurors for teenage girls (up to the age of consent, then 16 years) as 'juries could not fit teenage girls to their plastic ideas about childhood' (2002, p. 783). He argues that physiological maturity suggested the potential for sexual desire and a higher intelligence, so prosecutors had to use other arguments, such as the language used by the girls, to establish their 'childishness'. Amendments were made to the law concerning definitions of rape in the first degree and second degree or statutory rape, and prosecutions over time caused the distinction to become based purely on

age as men who had sexual intercourse with teenage girls failed to be found guilty of first degree rape. 'Both the outcome of prosecutions, and the behaviour of the teenage girls whom they encountered in courts, forced reformers to abandon their view of the teenage girls as simply children' (2002, p. 792). Thus, a distinction developed between the teenage girl and the child, so that the publication of 'Adolescence' by G. Stanley Hall in 1904 'provided reformers and prosecutors not only with a label, but also an explanation for the unique character of this age group.' (2002, p. 784). Roberston argues that this distinction was a necessary precondition for the positioning of teenagers as a separate class between adulthood and childhood.

2.2 Current Views of Adolescence

2.2.1 Social Views

In a discussion of some of the contemporary theoretical conceptualisations of youth within the European Union (EU) member states, Bendit (2006) has described how political and sociological discussions of youth in Europe have as their central aspect the overlapping of (individual) ageing, requirements of transitions into adulthood that young people must pass, and (historical) cohort or generation effects. Beyond these 'classical approaches' to the youth phenomenon, he regards the two main dimensions of theoretical discussions of youth life and transitions as (a) including the conditions of the stage (structural conditions, such as the provision of education, health, leisure,) and (b) youth utilisation of these conditions (youth agency, both as individuals and as members of social groups). Against this theoretical background, Bendit described three ways of viewing youth within the EU member states, that is *youth as a stage of transition*, *youth as an age group*, and *youth as a problem group*.

2.2.1.1 Adolescence as a Transition

In the *stage of transition* view, youth are in a process of acquiring the capacities and rights of adulthood. However, while at times in the past the process of becoming adult followed a pre-determined path, in today's society where young people spend a much longer period in school and post-school education, and are less likely to transition from education directly to a life-time career, the process to adulthood

has become longer and more complicated. In this context, young people determine their adult positions through a process of negotiation. This view of *youth as a stage of transition* emphasises the acquisition of capacities and rights associated with adulthood. While policies around schooling, work and welfare will affect the speed and form of transitions, the transition is now often a process of individual negotiation. Moreover, there are no longer simple pre-determined paths to adulthood and many 'status passages' are not linear and forward (for example, education to employment), but reversible (employment to education) or synchronous (education *and* employment) (Bendit, 2006).

Dwyer & Wyn (2001) discuss past theories of social classification and class analysis that they claim emphasise upward (or downward) mobility but not horizontal mobility. However, research findings indicate that for current generations of young people 'mixed patterns involving a range of educational, occupational, lifestyle, personal relationship and locality choices' (2001, p. 188), now hold greater importance and that the concept of social mobility needs to be broadened to include these priorities. Furthermore, as young people now define themselves not in terms of their careers but in terms of a blending of 'being' and 'doing', the old ideas about the normal transition to adulthood, from school via post-school training to a 'life-long career', need to be reassessed.

Dwyer & Wyn suggest that for post-1970s young people, the promise of education as providing for social mobility, as well as being a public good and having economic utility, has failed. Young people now face flexible and impermanent employment prospects. Findings from research that actually asks youth about their experiences, recognising the emphasis on individual choice but within a context of unpredictable employment outcomes, indicate young people are 'giving notice of other priorities in their lives that enable[d] them to adjust to foreclosed options' (2001, p. 196). This has implications not only for the relationship between education and employment, but also in how adulthood is defined. Achievement of a full-time permanent position, with at least prospects of a 'career', once a marker of adulthood, may no longer be an option for many of today's young people. For Dwyer & Wyn (2001), the now extended pre-employment period and the

deregulated job market have given young people more time to consider their priorities concerning adult life, and descriptions of today's young people that emphasise their 'failure' to reach adulthood – 'post-adolescence' and 'over-aged young adults' – use old ideas about the transition to adulthood that fail to recognise the ways in which young people are adapting to current conditions.

Demographic changes that have taken place in industrialised countries in the last fifty years have been seen to create a new, distinct phase of life between the late teens and early twenties (J. Arnett, 2000). Ages of marriage and first childbirth have risen for both males and females; for the United States, the median age of marriage rose from 21 and 23 years in 1970 to 25 and 27 years in 1977, and in 2011 it was 27 and 29 years (for females and males respectively). (Corresponding figures for New Zealand for 2012 were 28.5 years and 30 years respectively). Arnett also notes the increase in the proportion of young Americans in post-school education, from 14 percent in 1940 to over 60 percent by the mid-1990s (2000, p. 469). Arnett has proposed a new period – emerging adulthood – to describe the years from about 18 to 25, where young people have left the dependency of childhood and adolescence but have not yet taken on the responsibilities of adulthood. He sees this time as one of exploration of a variety of possible life directions in love, work and worldviews (2000, p. 469).

Arnett (2000) notes that only in their late twenties do a majority of young people indicate that they feel they have reached adulthood. Moreover, the characteristics that matter most to emerging adults (18-25 years) in their subjective sense of attaining adulthood are not demographic characteristics such as finishing education, settling into a career, marriage and parenthood, but rather individualistic qualities of character, specifically 'accepting responsibility for one's self' and 'making independent decisions' ranking as the top two. A third criterion 'becoming financially independent' also ranks near the top (2000, p. 473). Arnett notes that these may reflect the 'growing individualism' in American society. He notes the low importance placed on the taking on of specific adult roles in the transition to adulthood and compares this with Schlegel and Barry's study of 186 non-Western cultures which concluded that the transition to adulthood is defined

by marriage in nearly all of them, with some also requiring parenthood before a person is considered to have reached full adult status (J. Arnett, 1997).

Horowitz and Bromnick (2007) contest Arnett's concept of 'emerging adulthood' which is expressed primarily by 'accepting responsibility for oneself'. In their research, conducted with 16 and 17-year-olds, they found that young people have a range of 'markers' of adulthood and that there was an 'astonishing amount of variability' in the young peoples' selection of criteria for adulthood (2007, p. 209). This led them to challenge Arnett's view of a stage of 'emerging adulthood' based on a discreet set of markers. They found instead that adulthood is a 'contestable' concept, that it is both an internally complex concept and variably describable. They describe the stage of life between childhood and adulthood as 'contestable adulthood' rather than the 'emerging adulthood' as proposed by Arnett and that 'arguing one's way into adulthood is the central occupation for contestable adults' (2007, p. 227).

Discussing youth as a liminal stage between childhood and adulthood, a stage of being neither child nor adult but in a state of incompleteness, Blatterer argues that in contemporary Western societies the focus on individual choice and personal development for people of all ages, has kept options for the future open. Adulthood then, is no longer a final status and 'the liminality attributed to youth (adolescence) is becoming a quality of contemporary adulthood' (Blatterer, 2007, pp. 75–76). His argument focuses on the demise of adulthood rather than the extension of adolescence, that the combination of individual choice and personal development for all ages, along with market exploitation of youth taste in music, fashion, magazines and lifestyles to all age groups, has meant 'youth as a value has replaced adulthood as a goal' (2007, p. 82). Adulthood then is no longer a destination, and the attributes of youth, vitality, carefreeness, risk-taking and improvising, are now embraced by all: 'the tropes of youthfulness constitute an overarching value in themselves, and perhaps especially for those who have outgrown its biological limitations' (2007, p. 82). However, Blatterer notes that while these attributes underpin the new adulthood, at the same time they are at

the core of the discourse that positions young people as trapped in perpetual adolescence.

Descriptions by Dwyer & Wyn of young people's re-defining of adulthood in response to the new economic and social conditions they find themselves in, points to a recognition of young people's agency. Young people, as with people in every stage of life, are 'agentic' (producers as well as products of society) and are active in the construction and reconstruction of both adolescence and the wider societies in which they live. More recent views of young people have taken into account their agency, that they also contribute to the construction of 'childhood' or 'adolescence' and society generally (Corsaro, 1997; James & Prout, 1997; R. Smith, 2009). In recognition of these views, there has been an increasing emphasis on children's rights, seen internationally in the United Nations Convention on the Rights of the Child (UNCRC) (United Nations, 1989) and locally in the Agenda for Children (Ministry of Social Development, 2002) and the Youth Development Strategy Aotearoa (Ministry of Youth Affairs, 2002). Appreciation of young people's agency, and understanding that it will shape programmes and policies, should influence the development of national and local programmes and policies by including the views of youth. However, the extent to which this happens depends on the extent to which adults recognise and acknowledge young people's competencies, are prepared to relinquish their power over them and to facilitate their inclusion and empowerment.

2.2.1.2 Youth as an Age Group

Youth in western societies today are often viewed in terms of their physical, cognitive and emotional development, or in terms of their socialisation into the adult world; successful socialisation being reached when they become 'just like us (adults)'. The scientific view of children and adolescents is that their competencies are basically a function of age; this is the core thesis of the work of developmental psychologists which has come to dominate policy in the last few decades (Boyden, 2010).

Youth as an age group is described by Bendit as 'coming close to the politically favoured definition of youth' in Europe (Bendit, 2006). European countries and EU

institutions define youth as between the ages of 15 to 25 or 14 to 30, and youth policy is targeted not at education *or* employment *or* welfare but rather at education *and* employment *and* welfare combined. Normally, youth are not affected by these at the same time, but rather one policy segment after another might become important at different times in their lives. The problem with this view of youth is that it can lead to contradictions in policy. For example, in some countries educational policies treat professional youth with qualifications as adult and well prepared to enter the labour market. Unemployment policy, however, means that up to the age of 25 they receive only half the unemployment benefit because they are supposed to live with their parents. 'This inconsistent treatment of young people prevents them from becoming independent in good time. It also shows that both researchers and politicians are unclear about the definition of "Youth"' (2006, p. 56).

A study examining opinions about the appropriate timing of adolescents' adulthood entry and sexual debut in the Nordic countries (Denmark, Sweden, Norway and Finland), describes the disorganised and complex transitions to adulthood in the late-modern world and the extended period of 'adolescence' or 'emerging adulthood' that most young people currently experience (Rasanen, 2009). However, it finds that adulthood is based on age at least within the law; in most countries, young people can buy alcohol and cigarettes at 18 and parents no longer have legal rights and duties, including financial obligations, towards their children once they reach a certain age, generally 18. They are also usually able to engage in legal contracts, get married and be treated as adults under the law, at a specified age. Rasanen also notes that official age limits are not universal and that reaching a legal adult age does not guarantee that the young person is treated as an adult. Rasanen examined the 2006 European Social Survey (ESS) results for these four Nordic countries, focusing on two questions: "At what age, approximately, would you say boys/girls become adults?" and "Before what age would you say a woman/man is generally too young to have sexual intercourse?" He found that across the four countries the average age of adulthood entry varies from 17 to 22

for girls and 19 to 22 for boys, but the age after which it is acceptable to have sex ranges from only 16 to 17 years.

Internationally, while there is variation from country to country regarding age-based legislation, there is a dearth of evidence or rationale for selecting a beginning or end of adolescence, or for selecting ages at which restrictions might be appropriate. Across different countries and states, youth may comprise an age group such as 15 to 25 or 14 to 30, which is sometimes further broken down into the stages of adolescence, post-adolescence, and young adulthood (Bendit, 2006, p. 55). In most countries, there is a variety of different age limits covering issues such as voting, employment, driving, drinking, joining the armed forces, consent to medical treatment, consent to sexual intercourse, getting married, signing contracts, gambling, and being held responsible for criminal behaviour.

2.2.1.3 Youth as a Problem Group

Views of youth as 'adults in the making' see youth as 'not something,' that is, 'not yet adult', and also tend to see the value of youth in terms of the adults they will become. If they are viewed as 'something' they are often viewed as a problem – delinquent, disordered or deviant. Indeed, 'moral panics' (McRobbie & Thornton, 1995) have developed periodically concerning the behaviour of youth, for example around the 'bodgies' of the 1950s, and behaviours leading to the Mazengarb Report in 1954 on the moral delinquencies of New Zealand youth (Mazengarb, 1954).

More recently, there has been media sensationalism, if not full-blown moral panic, around youth gangs, truancy, boy racing and teenage drinking. These moral panics and other concerns about youth risk-taking behaviours have often led to youth becoming a major focus of attention within research and policy making. Dwyer & Wyn (2001) discuss a 'cultural pessimism' about youth, starting with G. Stanley Hall's work on adolescence which described this stage as a time of 'storm and stress' and has since been 'supported by leading scholars in the fields of psychology (e.g. Erikson, Bettelheim) and sociology (Parsons) and regularly come alive in periods of social upheavals such as the 1930s and the 1960s and now again in the 1990s' (2001, p. 155). Such negative characterisations of young people have naturally fed into the various 'moral panics' that have seen young people as a

threat to society. Moreover, the concentration on the problematic aspects of youth have overshadowed understandings about how youth might be healthy, happy and successful (Boyden, 2001).

The *youth as a problem* understanding of young people sees risks for youth in educational failure, unemployment and homelessness, and the associated risks of mental health problems, alcoholism and drug addiction. In this view, young people are seen as being in danger of perpetuating the underclass, with the support of the welfare system. By engaging in irresponsible sex, producing high rates of teenage pregnancy and fatherless children, in some cases being without any parental control, leading to high crime, drug taking, debt, and violence, they thus reproduce the underclass. However, other research has attributed young people's early sexual experience and parenting to the degree of risk they experience in their environments (Nettle, 2010; Upchurch, Aneshensel, Sucoff, & Levy-Storms, 1999) and their unemployment as a consequence rather than a cause of a lack of social capital in their neighbourhoods as well as local high unemployment (MacDonald, Shildrick, T. A., Webster, Webster, C., & Simpson, D., 2005; Shildrick, MacDonald, R., Furlong, A., Roden, J., & Crow, R., 2012).

In a description of the Local Crime Prevention Programmes in Finland, Harrikari describes how children and the young in these programmes are positioned as 'becoming' future citizens. Such positioning includes those with learning disabilities being defined as a 'risk group' with early intervention being promoted, and other children positioned as being 'in danger of marginalization'. In this positioning of young people, adults are key actors in the programmes and children and young people are the targets of their activity (Harrikari, 2013, p. 64).

The ways that adults view these 'problematic youth' do not necessarily align with the ways that youth themselves perceive their situations. A study undertaken by Dwyer & Wyn (2001) found that most 'early' school leavers ('non-completers') in reflecting back on their decision remained convinced that 'at the time it was the right thing to do' or that they were 'glad' or 'lucky' that they left when they did. Another study found that 91 percent of early leavers were happy to have left, a figure which included over half of those who had been unable to find any work or

training since. The authors also point to a study of 'dropping out' in which an investigation of demographic data showed that while Hispanic and African American youth are more likely than White youth to drop out of school, and youth from low income families more likely to drop out than youth from middle and upper income families, nevertheless 49 percent of all school dropouts are White and 52 percent are from middle-income families. The rhetoric concerning 'drop outs' tends to regard them as an at risk problem-driven minority, but it needs to be recognised in education policy that there will always be some young people, from every sector of society, who do not follow the expected pattern of school – post-school training – employment (2001, p. 41).

2.2.2 Developmental Views

2.2.2.1 Maturity

There is also a conceptualisation of 'adulthood' that relates to individual physical and cognitive development, and is commonly referred to as 'maturity'. Reaching 'maturity' is indicated by changes in physical, cognitive, emotional, and social functioning. Within the psychology literature there is an emphasis on stages of growth and how physical and psychological development is closely linked. Growth patterns for different bodily systems (brain and head, lymph system, genitals) vary, with some growing rapidly during infancy and childhood and others rapidly during adolescence, and 'maturity' is deemed to be reached once growth ends.

The beginning of adulthood is generally regarded as coincidental with puberty. In some societies, the onset of puberty and movement into adulthood is marked socially with initiation ceremonies. For girls this tends to be at menarche, while for boys it is often age-groups who are initiated together (Berk, 2003). While the onset of puberty is generally seen in changes in bodily size and proportions, growth of breasts and testes, development of bodily hair, menarche (first menstruation), spermarche (first ejaculation), that take place between about eight and 16 years of age, the hormonal changes that precipitate these begin much earlier. Puberty is initiated in the brain after reactivation of the hypothalamic-pituitary-gonadal (HPG) axis. In the first year of life the GnRH pulse generator (Gonadotrophin-releasing hormone (GnRH) neurons are activated via the GnRH pulse generator) becomes

quiescent until about a year before the external changes of puberty are evident (Dorn & Biro, 2011, p. 181). It appears that the mechanisms for reactivation of this system remain somewhat of a mystery and there are several likely signals that trigger pubertal onset, including the hormones leptin and ghrelin as well as body composition, genetic factors, and there was a recent discovery of the kisspeptins from the KISS1 gene, which are linked as receptors to reproduction and pubertal initiation (Dorn & Biro, 2011, p. 181).

There is a rise in the adrenal androgens (primarily responsible for axillary and pubic hair) called adrenarche, around ages six to eight years in girls, and these continue to rise into the third decade of life. Gonadarche, the beginning of the development of ovaries and testes and external signs of puberty, occurs with the reactivation of GnRH neurons. These external signs are used to describe the stages of puberty, 'Tanner's stages': Stage I, prepubertal; Stage II, breast and genital development indicating entry into puberty; and up to Stage V, full maturity. Adrenarche, or adrenal activation, which is a separate event, occurs as a consequence of the activation of the hypothalamic-pituitary-adrenal (HPA) axis (Buck Louis et al., 2008, p. S193). Dorn and Biro note that both adrenarche and gonadarche represent different endocrine axes as well as different external physical characteristics, so adrenarche and gonadarche need to be considered separately in examining the role of puberty in psychological and behavioural development (Dorn & Biro, 2011, p. 182).

The measurement of puberty is seen as important for a number of reasons including understanding the development of physical and mental conditions, the different effects of drug metabolism, the impact of the environment, understanding emotions and behaviours and also for deciding when to intervene medically for 'precocious' or 'delayed' puberty in individuals. There is a perception that there has been a change in age of sexual maturation over the last 30 years or so (Akslae, Sørensen, Petersen, Skakkebaek, & Juul, 2009; Demerath et al., 2004; Parent et al., 2003), in response to studies that indicated falling age of pubertal development (Herman-Giddens et al., 1997). However, the data supporting this are equivocal and several reviews of studies of measurements of puberty report that because of wide

variations in sample size, selection of participants and study designs reported, only tentative conclusions can be drawn about possible changes in pubertal age and onset. Coleman & Coleman (2002) conclude that evidence supporting a decrease in age of menarche is still unsubstantiated, there is too little research on boys to come to any conclusions about a decrease in age for male pubertal development, and that given the limitations of the studies only a very tentative conclusion can be drawn about girls: that is, that 'it appears possible that [the onset of puberty amongst girls] may well have decreased in age in recent years' (2002, p. 548). Similarly, Dorn et al report that because of inconsistencies in the measurement of physical changes in puberty and the general lack of consistency and clarity in the use of terms describing stages of puberty, comparison of results across studies is limited (Dorn, Dahl, Woodward, & Biro, 2006, p. 31). A review undertaken by Lee et al finds that 'the results collected over the years since 1969 presented herein fail to verify any overall changes in the ages of pubertal events for girls and boys in the United States' (Lee, Guo, & Kulin, 2001, p. 87). Other authors have also reached similar conclusions, that is, there is insufficient evidence to support a secular trend toward early sexual maturation (Chumlea et al., 2003, p. 110; Sun et al., 2005). An expert panel which looked at the evidence of a trend towards early puberty for the United States from around the mid-twentieth century to today concluded: 'A majority of the panelists agreed that data are sufficient to suggest a trend toward an earlier breast development onset and menarche in girls but not for other female pubertal markers. A minority of panelists concluded that the current data on girls' puberty timing for any marker are insufficient. Almost all panelists concluded, on the basis of few studies and reliability issues of some male puberty markers, that current data for boys are insufficient to evaluate secular trends in male pubertal development.' (Euling et al., 2008, p. S172). There is not a clear downward trend in all studies and there does not appear to be consensus regarding the extent of an earlier onset of puberty (for example, (Euling et al., 2008; Viner, 2002).

It has also been suggested that a drop in age at menarche has taken place over the last 150 years. The age at menarche is commonly taken to be 17 years in the nineteenth century, which has led to the belief that there has been a drop in age at

menarche of around three years between the mid-19th and mid-20th centuries (Parent et al., 2003). This apparent drop in age is implicated in arguments that claim biological puberty in females no longer matches other functions of adulthood, so that 'the emerging mismatch creates fundamental pressures on contemporary adolescents and on how they live in society' (Gluckman & Hanson, 2006, p. 10). Referring to the relatively earlier onset of puberty, Dahl uses the metaphor of 'turbo-charging the engines of a fully mature 'car' belonging to an unskilled driver, whose navigational skills are not yet fully in place' to describe the different timings of sexual maturation and cognitive development (Dahl, 2004, p. 18). Bullough describes this belief in the downward trend as being implicated in concerns about 'growing teenage sexuality and the growing problem of teenage pregnancy' and that stories about it have appeared 'in almost every kind of popular journal from Newsweek to The Nation, and in scholarly literature of anthropology, psychology, child development, nursing and other fields' (Bullough, 1981, p. 365).

However, the age at menarche in medieval times was reported by medieval authorities as between 12 and 15 years (Stoertz, 2001) or 12 and 14 years (Bullough, 1981). Bullough finds that claims of the age at menarche being 17 years in the nineteenth century can be sourced to J.M. Tanner but that analysis of Tanner's data establishes that it is based on very small sampling in Norway, Sweden and Finland and does not include any American or English data. If the Dutch, British, German and other available data were graphed from 1840 onwards, the decline would be seen to be from between 14 and 15 years to between 12 and 13 (1981, p. 366). This is contested (Tanner, Ellison, & Bullough, 1981), although Tanner does find that for the United States, the drop in age 'is best estimated at about one year in the well off-classes, between say 1890 and 1930 to 1940 and 18 months or a little more for the less well off, between about 1890 and 1960 to 1970' (Tanner et al., 1981, p. 604). Moreover, the figure of 17 years in the nineteenth century, which seems to be based on Norwegian figures, was by then generally accepted to have been 'artificially high'. There appears to be a general consensus that the age at menarche dropped between the late nineteenth century and early twentieth, but there is some disagreement regarding the extent of the drop.

Going back to earlier times, the age of menarche during the Classical period is considered to be between 12 and 14 years of age (Bullough, 1981; Diers, 1974), which is not much different from today where the average age at menarche is calculated to be 12.4 years in a United States study (Chumlea et al., 2003) and in an Italian study (Rigon et al., 2010); 12.9 years in a Canadian study (Harris, Prior, & Koehoorn, 2008) and in a study of a British cohort (C. Rubin et al., 2009); and 12 years 11 months in another British study (Whincup, Gilg, Odoki, Taylor, & Cook, 2001). It is believed that because of increases in population with associated higher rates of disease and poorer nutrition, there was an increase in the age at menarche during medieval times. Comparisons of age at menarche in different parts of the world in contemporary times indicate that there are ethnic as well as geographic variations, which are explained by genetic factors as well as nutrition, and environment – both psychosocial as well as the possibility of chemical interactions from the presence of new compounds in the environment (Bullough, 1981; Chumlea et al., 2003; Harris et al., 2008).

The lack of definite evidence describing the extent of a downward trend in age of puberty, combined with the knowledge that the age at menarche today seems to be about the same as that in classical times (between 12 and 14 years), means claims about physical maturation being earlier today than in previous times, need to be treated with caution. Hypotheses concerning variations over time in adolescents' social and cognitive development, particularly those that implicate pubertal changes, should also be treated cautiously, since we cannot be certain of changes in physical markers of adolescence or adulthood over time, let alone other types of development.

2.2.2.2 Cognitive and Psychological Development

There has been an extensive examination of the stages of human development, investigating cognitive, emotional, social and psychological development at different times of life, much focusing on childhood and adolescence (for example, Freud, Hall, Piaget, through to Erikson, Bronfenbrenner, Vygotsky). So, while there is a considerable depth of knowledge about human development, it is not always applicable in setting ages in policy and legislation, in part because although all

humans might pass through particular stages, they do not do so at the same age: 'There is an inherent conflict between the practical focus on using chronological age to determine rights and obligations and the highly individualistic processes of maturation.' (Office of the Prime Minister's Science Advisory Committee, 2011, p. 2). To some extent, the earlier ideas concerning the stages of adolescence have been overshadowed, certainly in the popular press, by the new 'teen brain' research (discussed below in the Neuroscience and Adolescence section). Arguments concerning the allocation or restriction of rights to young people often suggest that they have not yet reached sufficient 'maturity' to be able understand the significance or consequences of a decision or behavioural choice, so need to be protected from making a 'wrong choice', in their own best interests. It is not always clear what is meant by 'maturity', and it is maturity in decision making and in risk taking behaviour that are of particular significance to policy and legislation that affects adolescents.

2.2.2.3 Decision Making

Scott et al (1995) suggest that critics of 'paternalistic legal policies' applied to adolescents maintain that there are no significant differences between adult and adolescent decision making. However, they suggest there are differences between adults and adolescents that concern *judgment*, and that there are valid reasons for concerning ourselves with adolescent judgment even when we do not consider it valid to question adult judgment. Their argument rests on the concern that adolescents as a group might be less able to make 'good' judgments because they are more susceptible to peer influence, have a tendency to focus more on immediate rather than long-term consequences, and have a tendency to be less risk averse and thus more inclined to make risky choices than are adults. They also note that some studies had found that social and contextual factors, such as IQ, race/ethnicity, socioeconomic status and familial structure and dynamics, may have different effects on decision making for different groups of adolescents, as well as for adolescents compared with adults.

In a 1996 paper, Steinberg & Cauffman suggested that competent decision making is supported by both cognitive and psychosocial factors. Psychosocial factors that

are relevant for decision making fall into one of three categories: responsibility, temperance, and perspective. They noted that 'whether an individual actually demonstrates responsibility, temperance or perspective when faced with a particular decision likely depends on the nature of the situation and the social context of the decision' (Steinberg & Cauffman, 1996, p. 252). Examining current understandings of these three factors, they looked at the question of whether or not the differences in manifestation of these between adolescents and adults is sufficient to warrant drawing a legal distinction between adults and adolescents. They reviewed the evidence available that might support drawing a distinction in law between adolescents and adults, or among adolescents of different ages, and concluded that while the evidence points to a difference in the psychosocial characteristics that are likely to affect maturity of judgment between early and middle adolescence, the empirical links between psychosocial characteristics and maturity of judgment remain to be established. They noted that most studies evaluated decision making in laboratory conditions using hypothetical situations, which do not require the subjects to exercise responsibility or temperance, since there are no real consequences and decisions are made without the pressure of time or coercion. For differences between older adolescents and adults, they noted that the necessary psychosocial research had not yet been conducted. They suggest that should the links between psychosocial characteristics and maturity of judgment be verified, then, based on findings concerning those under and over 16 years of age, there would be justification for distinguishing between those 16 years and younger and those 17 years and older.

In a later paper, Albert & Steinberg reviewed the most important findings concerning judgment and decision making over the ten years prior to 2011 (Albert & Steinberg, 2011). They note that much of the research into judgment and decision making (JDM) stemmed from concerns about adolescent risk taking, in particular that 'adolescents are more likely than adults over 25 to binge drink, smoke cigarettes, have casual sex partners, engage in violent and other criminal behaviour, and have fatal or serious automobile crashes, the majority of which are caused by reckless driving or driving under the influence of alcohol' (2011, p. 212).

It was assumed that adolescents must therefore differ from adults in terms of 'rational decision making' and much of the early research focused on assessing and comparing adolescent and adult performance in the various stages involved in decision making. However, the research undertaken, in laboratory conditions, found that adolescents perceived risks in much the same ways as adults and used similar decision making processes to adults. There was little evidence that cast light on the different risk taking behaviour observed in teenagers.

However, Albert & Steinberg describe three areas in which there have been changes in approaches to JDM over the last decade. One is a change from an examination of age differences in risk processing towards a comprehensive modelling of factors predicting adolescents' decisions; this included examining the interplay of both risk and benefit perceptions as well as the role of experience (2011, p. 212). Another change was a shift towards the adoption of dual-process models of cognitive development that describe two relatively independent modes of information processing, an analytic (deliberative, controlled, reasoned, 'cold') system and an experiential (intuitive, automatic, reactive, 'hot') system. The third change was a focus on the social and emotional factors in decision making. Studies undertaken over this period revealed differences in adolescent and adult decision making and also provided a better understanding of adolescent decision making in real-world situations. This later work, and the new understandings from developmental neuroscience, points to the higher risk taking behaviour of adolescents as being in part a consequence of adolescent sensitivity to reward and in part a consequence of the slow maturing of the self-regulatory system.

Understanding that adolescents' decision making and behaviour is affected by environmental factors has supported a more nuanced approach to policy and legislation. In the United States, for example, it was successfully argued by the American Psychological Association that because of adolescents' 'developmental immaturity', the juvenile death penalty should be abolished. However, the same Association was also able to argue that adolescents should have the right to seek an abortion without parental involvement because they are 'as mature as adults' (Steinberg, Cauffman, Woolard, Graham, & Banich, 2009). The apparent

contradiction is resolved by recognising that the decision making abilities required for the two situations are significantly different. Adolescents' decisions to commit crimes 'are usually rash and made in the presence of peers', while 'adolescents' decision about terminating a pregnancy can be made in an unhurried fashion and in consultation with adults' (Steinberg et al., 2009, p. 586). While cognitive capacity does not change much after 16 years of age, psychosocial functioning (risk perception, sensation seeking, impulsivity, resistance to peer pressure and future orientation) continues to mature until individuals reach their mid-20s. Steinberg et al conclude that adolescents' decision making 'in situations that elicit impulsivity, that are typically characterized by high levels of emotional arousal or social coercion, or that do not encourage or permit consultation with an expert who is more knowledgeable or experienced' is likely to be less mature than that of adults. However, where there is the opportunity for 'more deliberative reasoned decision making, where emotional and social influences on judgment are minimized or can be mitigated, and where there are consultants who can provide objective information about the costs and benefits of alternative course of action' adolescents are just as capable as adults of making mature decisions, at least by the time they are 16' (Steinberg et al., 2009, p. 592).

2.2.2.4 Neuroscience and Adolescence

The development of technologies over the last twenty years or so has provided the capacity to visualise the structure and functioning of the brain while a person is still alive, awake and working. These technologies have enabled a significant advance in the study of neuroscience, and over recent years there has been a number of studies using these technologies that have indicated differences in the structure and function of brains of children, young people and adults. One outcome has been a 'swathe of writing in the academic press' about 'the teen brain', (Sercombe & Paus, 2009, p. 25) but discussions and debates about the research are 'frequently hyperbolic and misinformed' (Steinberg, 2009, p. 740).

The two main technologies involved are MRI, Magnetic Resonance Imaging, and fMRI, Functional Magnetic Resonance Imaging. MRI works by turning on and off radio frequency waves while a person is inside an electromagnetic cylinder.

Hydrogen protons (abundant in the body which is made up mainly of water and fat) when placed in a magnetic field, line up, either north or south, thus cancelling each other out, but a few protons are not cancelled out; when the RF pulse is applied, these protons flip to align with the magnetic field. When the RF pulse is switched off they flip back, releasing energy in the process. This energy is transmitted to a computer that receives these signals as mathematical data which it then converts to a picture, providing cross-sectional 'photographs' of the part of the body being scanned (Sercombe & Paus, 2009, p. 26). MRI is used to measure the size and shape of structures. Functional MRI uses an MRI scanner but provides pictures of the part of the brain that is active by measuring the amount of oxygen in the blood. The energy the brain uses is acquired from the oxidation of sugars in the blood; as the oxygen is used the level in the blood drops. Oxygen-rich haemoglobin and oxygen-poor haemoglobin react differently in a magnetic field and the protons in areas of oxygenated blood produce the strongest signals when exposed to RF pulses. The computer picks up these signals and converts them into a three-dimensional map of the brain that can show the most active areas. fMRI is used to measure patterns of brain activity.

There are a number of other neuroimaging techniques, including Positron Emission Tomography, electroencephalogram, and diffusion tensor imaging, but fMRI has become the preeminent technique for measurement of brain activity because it has a number of advantages over others, such as it does not expose the brain to ionizing radiation as in PET, provides clear signals, and obtains data from the entire brain (Aguirre, 2014, p. S10).

Research using these new technologies has challenged old ideas about not just brain functioning, but also concepts of predeterminism and free will. One of the outcomes concerns the maturing of the brain, and claims have been made, and taken up by mainstream media, that the 'teen brain' explains teenagers' impulsive decision making and that the brain does not 'reach maturity' until the mid-twenties.

Steinberg describes four specific changes in the brain at adolescence that are important in describing behavioural and emotional changes during this life stage. First, is the decrease in grey matter in the prefrontal cortex in adolescence (the

prefrontal cortex is involved in decision making, working memory, judgments, controlling impulses and emotions). This reduction is likely reflective of 'synaptic pruning', that is, a reduction in the total number of 'circuits' or unused neuronal connections. The effect of synaptic pruning is to reduce the number of 'possible pathways' or 'unwanted circuits', and this occurs during a period (late childhood and early adolescence) when major improvements in basic information processing and logical reasoning are seen. Sercombe & Paus note however, that there may not actually be a reduction in the amount of grey matter, but it appears as a reduction in scans because the 'signal' from grey matter is 'diluted' by the white matter, which increases in volume over the adolescent years (Sercombe & Paus, 2009, p. 31). Second, are changes in dopaminergic activity, where there is a proliferation then a reduction and redistribution of dopamine receptors in the paralimbic and prefrontal cortical regions. The dopaminergic activity in the prefrontal cortex is higher during adolescence than at any other point in development. As dopamine plays a critical role in the brain's reward circuitry, changes in the concentration of dopamine receptors may have important implications for sensation seeking. Third, is the increase in white matter (myelin) in the prefrontal regions. Myelin is a fatty substance that forms a sheath for nerve fibres, and the process of myelination improves the efficiency of the neural signal. The decrease in grey matter and increase in white matter start around puberty and occur in different parts of the brain at different times. Fourth, there is an increase in connections not only among cortical areas but between cortical and subcortical regions, a change which is important for emotional regulation (Steinberg, 2009, p. 743).

Using MRI and DTI, these structural changes have been measured and a number of behavioural changes during development have been associated with them. However, use of fMRI has enabled changes in the brain and behaviour to be measured simultaneously. Studies using these techniques have found that children recruit distinct but larger, more diffuse prefrontal regions when performing tasks requiring decision-making and cognitive control; adolescents tend to recruit the relevant network of related brain regions but less efficiently than do adults; and the areas of the brain associated with cognitive control become more focally activated

with age (Casey & Jones, 2010; Steinberg, 2009). fMRI studies have also found that several aspects of reward processing appear to involve regions known to mature during early adolescence. Focusing primarily on the accumbens, a subcortical brain structure known to play a central role in reward processing, it has been found that adolescents showed a more vigorous accumbens response to reward than did both children and adults (Steinberg, 2009).

For example, in a study involving a small group of children, adolescents and adults, (36 subjects ranging in age from 8-30) Luna and Sweeny (2004) used fMRI to investigate the brain distribution function on an antisaccade task performance. The antisaccade task requires participants to inhibit the reflexive tendency to look at a sudden onset target and instead direct their gaze to the opposite hemifield. As such it provides a convenient tool with which to investigate the cognitive and neural systems that support goal-directed behaviour (Tatler & Hutton, 2007, p. 387). Results indicated that the increased integration of distant brain regions underlies improved efficiency with maturity in the cognitive control of behaviour. Luna and Sweeney postulate that adolescents are 'approximating the adult activation profile, but they do not yet activate the entire circuitry efficiently' (2004, p. 304). They suggest that this may indicate 'a vulnerable system that could fail under 'hot' high demanding situations' such as 'heightened states of affect or motivation, or distracting stimuli and competing tasks' (Luna & Sweeney, 2004, p. 304).

Some neuroscience researchers have claimed that behaviour is entirely a function of the brain, and that the findings from neuroscience will challenge the concept of free will, which will have ramifications for the justice system (Greene & Cohen, 2004). They argue that the current (United States) system is retributive (the aim of punishment is that people get what they deserve), although having elements of consequentialism (punishment is an instrument for promoting future social welfare). However, they claim that the 'new neuroscience will undermine people's common sense, libertarian conception of free will and the retributivist thinking that depends on it, both of which have heretofore been shielded by the inaccessibility of sophisticated thinking about the mind and its neural basis' (Greene & Cohen, 2004, p. 1776). Green and Cohen have been challenged on the grounds that even

accepting the material basis of behaviour, 'that all mental and behavioural activity is the causal product of physical events in the brain' (Rosen, 2007, p. 52), responsibility is still possible and the behaviour should not be excused. It is not necessary that we always behave rationally, but under the law we need only be 'capable of minimal rationality according to predominantly conventional, socially constructed standards' (S.J. Morse quoted in Wasserman & Johnston, 2014, p. 547). Morse has also challenged the neuroscience justification used in the United States Supreme Court case that questioned the juvenile death penalty: 'What did the neuroscience add?...If adolescent brains caused all adolescent behaviour we would expect the rates of homicide to be the same for 16 and 17-year-olds everywhere in the world – their brains are alike – but in fact, the homicide rates of Danish and Finnish youths are very different than American youths' (S. J. Morse quoted in Rosen, 2007, p. 52).

It has also been noted that even though neuroscience developments have established differences between the adolescent's brain and that of the child's or the adult's, "different" does not necessarily mean "deficient" and while there are some universals there is also individual variance. In addition, the environmental context influences the expression of neural development. (Steinberg, 2010, p. 160).

Others have criticised the 'teen brain' research findings on the grounds that it fits 'too well' with preconceived ideas of adolescence: 'the research trends are dominated, not surprisingly, by the century-old view of adolescence as the "stage of life characterised by turbulence" view. Experiments are designed within this framework, and written up and publicised accordingly by the media, often taking what are already stigmatising interpretations and pushing them further for mass titillation' (Sercombe and Paus (2009) p.36 quoted in Feixa, 2011, p. 1642).

2.2.3 Research on Adolescence

A review of psychological research over the period 1985-1995 found that there was a 'bias that leaned heavily towards attitudes of adolescence turmoil, instability, and abnormality'. One third of articles focused on abnormalities and risk-taking behaviours. The authors noted that the patterns here were similar to those found in Stefanko's review of articles published in 'Adolescence', a leading journal on

adolescence. In that study of articles published between 1976 and 1981, problem behaviours, sexuality and clinical programmes were the focus of almost half the articles (Ayman-Nolley & Taira, 2000, p. 37). Ayman-Nolley and Taira also noted the 'alarming' percentages of topics seldom studied, which include language, creativity, art, leisure, career and work, puberty and peers. They suggest that these domains are not unimportant as both Piaget and Vygotsky have made clear the importance of adolescence for the development of creativity; they also note that the majority of Havighurst's eight developmental tasks for adolescence are under-represented (these are: accept one's body, adopt a masculine or feminine social role, achieve emotional independence from parents, develop close relationships with peers of the same and opposite gender, prepare for an occupation, prepare for marriage and family life, establish a personal value or ethical system and achieve socially responsible behaviour (Seiffge-Krenke & Gelhaar, 2008, p. 34). Part of the explanation given for these omissions and for the focus on the 'dark side' of adolescence lies in the historical and social contexts within which researchers are operating. For example, one study found that 'during economic hard times adolescents are seen as immature, unstable and from other dark perspectives, whereas in war times they are seen as individuals with competence and as an important element in the work-force'. The omission of research into positive aspects of adolescence is also partly explained by the representations of young people in the media and in literature, studies of which have found that they are persistently presented as 'troubled, emotionally unstable, with a surplus of hormones over which they have very little control' or there is an 'over-emphasis on criminal activity at a misleading and biased level, seconded only by sport's accomplishments' (2000, p. 44). The authors conclude that there are a number of reasons why such negative views of adolescents arise, including that many psychological and personality disorders first appear in early teenage years, so that these years may come to appear more turbulent and unstable generally. There is also the fact that the individual conscience and identity of adolescence gives rise naturally to a desire to change or challenge the world around them. This can be viewed as 'rebellious, rude and outrageous' but as the authors point out, 'without

the push from adolescents of each generation ... progress and evolution would slow down or possibly even come to a halt' (2000, p. 45).

2.3 Rights

Youth may be viewed in terms of their physical, cognitive and emotional development, or in terms of their socialisation into the adult world, but other views of adolescence focus on the agency of youth in the construction and reconstruction of both adolescence and the wider societies in which they live (Corsaro, 1997; Holloway & Valentine, 2000; Jenks, 2005; Qvortrup, 1994). These have led to policies supporting children's and young people's rights, such as those outlined in the UNCRC. This Convention, which was ratified by the New Zealand Government in 1993, sets out rights for children to which signatories to the document are committed. Countries are required to report on progress made in implementing the principles of the Convention. However, not all principles have been adopted by all countries and there is a great deal of contention and controversy concerning the rights of children and young people.

Discussions concerning young people's rights and ages at which they may or may not be granted the rights that are available to adults usually focus on two opposing issues; one is children's and young people's need for care and protection while they are 'vulnerable', and the other is their human right to the freedoms and privileges available to adults. To understand how these might play out, it is informative to consider the arguments of the extremes of freedoms versus protection. One of these positions, extreme freedom, was a child liberationist movement in the early 1970s, part of what was an 'anarcho-libertarian rejection of established authority' and the general ferment of the 1960s which sought resistance to oppressive institutions such as the family and schools (Archard, 1993, p. 46).

Archard distinguishes between rights which guarantee children a minimum standard of health care, education and freedom from violence and cruelty, and rights which are available to adults, such as the rights to vote, work, own property, choose one's guardian and make sexual choices. The first group of rights, arguably already available to children, reflect a paternalistic view of children as needing adults to secure their welfare. The second group of rights is the one that the 'child

liberationists' focus on and hold should be available to all people of whatever age. The basis of the child liberationists' claims, as summarised by Archard, were that firstly, the idea of children's vulnerability and incapacity - their 'childishness' – is a false ideology, which helps support the denial of their rights in the same way that the patriarchal ideology that supported the oppression of women held views of women as being naturally weak, emotional, illogical, and dependent. Secondly, the child liberationists maintained that age as a criterion of rights is arbitrary, and thirdly that the 'incompetence thesis', that children lack capacities, is false. Archard dismisses the second argument, maintaining that age is not arbitrary but is based on the idea that there is increasing competence with increasing age and that it is clearly evident that certain skills and abilities increase with age. He maintains that there is sense therefore in allocating certain rights on the basis of age since even though some early maturers may be disadvantaged and some late maturers unfairly rewarded, this is more efficient than the alternative of testing individual competencies considered appropriate for a right to be awarded. The point is, he maintains, to match the competence to fit the right and the age to fit the competence.

The argument regarding competence is challenged on the grounds that children's incompetence is a social or ideological construct, 'which helps to support the denial of their proper rights'. Moreover, because society holds that children are incapable of making choices for themselves, society denies them the opportunity to show that they can (1993, p. 49). Archard suggests 'it would be a mistake to deny, on the grounds of incompetence, the rights of self-determination to all children' (1993, p. 69).

He discusses in detail two rights, the right to vote and the right to sexual choice. On voting, he concludes that there is a need to distinguish between competence to vote and the concept of a good or desirable voter who is informed, makes rational selection based on good information, and is not likely to be persuaded by undue influence of others. He concludes, 'the competence required of a voter, rather than the set of ideally desirable qualities, is not beyond a teenager who should be allowed to exercise rights of political self-determination as early as possible and not

just in the polling station' (1993, p. 74). On the right to sexual choice, the argument offered for the 'protection of children' against the undue influence of adults may be best countered by not offering special protection to children, but rather to remove the conditions which are responsible for the weaker position of the child and thus empower them. He concludes, 'it is best in the matter of sex as in so many other things not to presume children "innocent incompetents". Instead they should be thought capable of making choices and society should act to provide those conditions under which the proper exercise of that competence can be secured and protected' (1993, p. 81).

At the other extreme, is the 'caretaker thesis' which argues that children should not be free to make autonomous decisions, and that caretakers have not just the right but the duty to deny children the rights to self-determination since they do not yet have 'the capacity to make intelligent decisions in the light of relevant information' (1993, p. 53). Ideally, the caretaker chooses for the child, not just what the child would choose, but also with regard to the interests of the adult the child will become. Between these two extremes sit a range of approaches that accept some limitations on children's rights because of their perceived vulnerability and physical, cognitive and psychological immaturity, but also encourage the child's participation in and contribution to decisions that affect them and those close to them.

Children in New Zealand have rights protection like others through the Human Rights Act 1993 and the Bill of Rights Act 1990, and particular rights protection in The Care of Children Act 2004. In addition, there are a number of Acts that provide for the protection of children's and young people's rights, including the Children, Young Persons, and Their Families Act 1989, the Education Act 1989, the Vulnerable Children Act 2014, and many others that include rights or welfare protection provisions specifically for children. There is as well the additional protection provided by New Zealand being a signatory to the UNCRC.

The UNCRC, ratified by 193 nations and all member states (except the United States), is understandably viewed primarily as a document that is concerned with protecting children's rights. The Convention applies to all 'children' up to the age of 18 years, except in the case of armed conflict when 'children' can be recruited into

armed forces from the age of fifteen years (United Nations, 1989 Article 38). (An 'optional protocol' was adopted in 2000 that states parties do not compulsorily recruit those under 18 years into armed forces and that they take measures to ensure that members of their armed forces under 18 years do not take a direct part in hostilities). The Convention covers survival rights, development rights, protection rights, and participation rights.

The transformative nature of the Convention in promoting the right to participation is also widely acknowledged. The 2009 'General Comment' by the Committee on the Rights of the Child emphasised the need for states to fully implement Article 12 (the right to express views) concluding: 'Achieving meaningful opportunities for the implementation of article 12 will necessitate dismantling the legal, political, economic, social and cultural barriers that currently impede children's opportunity to be heard and their access to participation in all matters affecting them. It requires a preparedness to challenge assumptions about children's capacities, and to encourage the development of environments in which children can build and demonstrate capacities. It also requires a commitment to resources and training.' (UN Committee on the Rights of the Child (CRC), 2009).

However, provision of children's rights, while providing protection, has limitations. Grugel (2013) describes some of the limitations of rights discourses in ensuring children's status and well-being: 'Rights claims work by framing injustices in ways that train the gaze on individuals who have been deprived of their "rights" and to whom restitution must be made by states, or the "duty bearers". But, in the process, they can also serve to distract attention away from underlying political practices and structures that shape and contribute to structural inequalities and their reproduction' (2013, p. 20). A New Zealand study that interviewed tamariki Māori and their parents in relation to the UNCRC, and particularly Article 30 (which refers to indigenous rights) found that: 'The status of the rights of tamariki Māori as children who should be afforded the protection of the Convention are fragile as illustrated by relatively poor health and the low levels of educational attainment. The status of the language and culture for the communities these children belong is also fragile' (Waldon, J, 2010, p. 5).

For New Zealand Māori children, the emphasis of the UNCRC on the individual means it has some limitations in assuring their rights:

‘To Māori, the rights of children and youth are not divisible from the Māori collective, and the rights of Māori children will not be fully realised unless the collective rights of Māori families and Māori as a people are fully realised. The Government usually interprets international human rights instruments from a western paradigm of human rights and hence places greater emphasis on the individual than the collective. Progress in addressing the rights of Māori of children and youth must be resolved within the context of Maori rights as stated in Te Tiriti o Waitangi. Current Government policies and practice do not explicitly acknowledge of [sic] Māori children and youth as part of the indigenous collective. Policies and processes need to be reoriented towards the integration of both their individual and collective rights.’ (Action for Children and Youth Aotearoa Incorporated, 2007, p. 13). The ‘limitations’ described here neither negate nor diminish the importance and the value of the UNCRC, but remind us that if children are to flourish, governments need to be alert to the impact on children of broad economic, social and cultural policies and practices.

The ‘rights’ argument is complex and crosses boundaries of law, ethics, philosophy, psychology and sociology. The rights claims for children as seen above can be complex and the case for youth has the additional complication that, for most people, parents’ and other adults’ rights of authority over children diminish over time as children mature.

2.3.1 Medical Consent Rights

Where once adolescents were considered chattels of their parents, after the Industrial Revolution and increasing public concern for the plight of children there was greater use of the *parens patriae* doctrine, where the state has ‘a right and a duty to override parental autonomy and act as a surrogate parent where necessary to provide protection for the life and general health of a neglected or abused child’ (Schlam & Wood, 2000, p. 142). In the United States, while minors can make decisions concerning contraception and abortion without parental consent (although requiring judicial by-pass in some states), nevertheless, the majority of

medical treatments performed on minors continue to require it. Parental consent is justified on the grounds that parents have the child's best interests in mind because of the 'natural bonds of affection'; that children are incapable of making medical decisions; that parents pay for the treatment; and that 'parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions'. However these authors also note that apart from such considerations, there is the possibility of a deeper resistance to the right of children to consent that lies in the fear that children, empowered with information and the right to be heard, will make problematic, illogical, irrational decisions (2000, pp. 149–150).

The 'mature minor' doctrine was developed in the United States to ensure treatment of minors (1) when parental consent may cause intra-family conflict or be difficult to obtain, and (2) to protect physicians who treat mature minors. Judicial decisions indicate that there must be clear and convincing evidence that 'the minor is mature enough to appreciate the consequences of her [sic] actions, and that the minor is mature enough to exercise the judgment of an adult,' but the authors note that 'neither judicial decisions nor statutes provide specific guidance for determining in advance when a minor is "mature"' (2000, p. 152). The authors go on to suggest that there is guidance from developmental research, in particular the work of Jean Piaget, and of Lawrence Kohlberg on 'moral development', as well as a variety of other research, which indicates that children from about the age of nine years, and certainly from 13 or 14 years, can be shown to have the decision-making maturity of adults (2000, pp. 154–155). However, criticism of these conclusions includes that adolescents are more susceptible to peer influence and are more likely to be risk-takers than are adults, and are also more concerned with short-term consequences than adults who are more likely to take the longer view.

Alderson (2007) discusses the situation in English law, where consent to medical treatment can be given by a child deemed to be competent by the treating doctor. Issues concerning consent to research are also discussed, beginning with the Nuremberg Code of 1947 which was a response to harmful research carried out during the Second World War, and the 1964 Declaration of Helsinki, which was a

response to the problems caused by thalidomide and the dangers of under-researched treatments. Alderson describes research that challenges the commonly held views of children as unable to see and appreciate others' viewpoints, or understand and make competent decisions about their treatment choices. She states, 'Childhood and youth tend to be associated with being ignorant, volatile, foolish, over-emotional, needy and helplessly dependent. Conversely, adulthood tends to be identified with being informed, stable, wise, rational, reliable and above all competent. However, at times many children can be wise and many adults can be foolish. The characteristics are more realistically understood as combined at every age instead of being age-associated' (2007, p. 2276). She concludes that children's competence is developed through their personal social experience rather than through age or physical growth, and furthermore children's competence and autonomy can be affected by practitioners' care, information, support and respect for children.

This conclusion is reflected to an extent in the guidelines for practitioners published by the British Medical Association (BMA). It suggests, 'Doctors should not judge the ability of a particular child or young person solely on the basis of his or her age' (British Medical Association, 2010, p. 7). Alderson's suggestion that the child's competence can be affected by the practitioner is also reflected in the BMA's discussion covering who should assess competence: 'GPs who have known the young patient for a long time are well placed to assess their development and maturity but because these change, it is unwise to rely on any assessment that is not contemporaneous. Health professionals who assess competence need to be skilled and experienced in interviewing young patients and eliciting their views without distortion. The treating doctor may be the most appropriate person, but other members of the health care team who have a close rapport with the patient may also have a valuable contribution to make' (2010, p. 8).

However, the requirements for 'competence' are challenging:

For a young person under the age of 16 to be competent, a young person should have:

- the ability to understand that there is a choice and that choices have consequences
- the ability to weigh the information and arrive at a decision
- a willingness to make a choice (including the choice that someone else should make the decision)
- an understanding of the nature and purpose of the proposed intervention
- an understanding of the proposed intervention's risks and side effects
- an understanding of the alternatives to the proposed intervention, and the risks attached to them
- freedom from undue pressure (2010, pp. 7–8)

Competent minors are sometimes referred to as being *Gillick* competent. This refers to a case brought by Mrs Gillick that concerned the advice and supply of contraceptives to minors, and which was finally decided by the House of Lords. It established that minors (under 16 years of age) could consent to contraceptive advice and treatment without their parents' knowledge or consent.

Discussing some of the ramifications of the *Gillick* judgment, Pilcher argues that the views of children held by the two judges who dissented can be seen in contemporary views of childhood in Britain. These include that children have a unique nature which distinguishes them from adults, they are vulnerable since they have not developed the capacity to make their own rational, autonomous decisions and are thus incapable of self-determination, and require that 'adult caretakers' make decisions for them 'in their own best interests' (Pilcher, 1997, p. 308). In this paper, Pilcher uses the example of changes to sex education policy in Britain, to argue that rather than 'establishing British children's autonomy rights and encouraging a realignment of generational power relations in a number of areas of children's lives ... assumptions about the competencies and capacities of children and the rights of parents within current sex education policy are, in fact, more in keeping with the conceptions of childhood rehearsed by the minority of the Law Lords in the *Gillick* Judgment' (1997, pp. 314–315). The majority view, which described what came to be known as the 'Gillick competent child' embraced a different view of children. One main area of difference was that in the view held by

the majority of the *Gillick* Lords, 'personhood' is not determined by age, but by whether a child has 'sufficient understanding and intelligence' to make self-determining choices. The other main difference was in rights claims, the majority Lords maintaining that parental rights are not absolute and 'decline in proportion with growing maturity, understanding and intelligence of the child' (1997, p. 307).

As Consent to Medical Treatment is one of the case studies investigated in this thesis, the situation in New Zealand will be discussed more fully below (Chapter 4.6).

2.4 Risk Taking

It is a widely-held view in Western societies, and a common theme in the psychology literature, that adolescence is a period of heightened risk taking. Arnett distinguishes between 'reckless behaviour' and 'problem behaviour'. 'Problem behaviour' is that which might be regarded by adults as undesirable, such as adolescent sexual activity which does not have serious consequences, whereas sexual activity without contraception he would label 'reckless' (J. Arnett, 1992). He also distinguishes 'reckless behaviour' from 'risk taking', as 'risk' is also used in relation to economic calculations and gambling, and to behaviours such as truancy, which while detrimental do not have potentially serious consequences.

'Recklessness' is also distinguished from 'thrill seeking' behaviours, such as rock climbing or parachute jumping, which might involve risk but where precautions are taken to maximise safety. Arnett claims that 'adolescents are over-represented statistically in virtually every category of reckless behaviour' (1992, p. 339), the most prevalent forms of which he describes as driving a car at high speed while under the influence of alcohol, sex without contraception, use of illegal and potentially dangerous drugs, and minor criminal activity. He provides statistics for the United States showing that the prevalence of such reckless behaviours is much higher amongst adolescents than among adults. These behaviours are so common amongst adolescents that they cannot be regarded as 'deviant' or pathological but should rather be seen as features of adolescence as a developmental stage. (He uses puberty to the early 20s to describe adolescence). He describes attributes that are found in studies to have higher scores for adolescents than for other age

groups, and which are also related to 'reckless behaviours'. These include 'sensation seeking' and 'egocentrism', both of which he relates to the greater susceptibility of adolescents to peer influence.

There are some authors who challenge the idea of youth as risk-takers. In a paper that examines the rhetoric concerning 'teen driving', Best (2008) claims that the presentation of teen driving statistics not only construct youth as 'interchangeable, one hardly distinguishable from another', but 'they also construct this group into a particular image, in this instance the signifier of "risk" - risk to others and risk to themselves' (2008, p. 665). Best suggests 'that there is a moral and political basis' to the creation of the 'public American drama of the teen driver' (2008, p. 666). Males (2010) suggests that 'modern developmental theorists' have constructed the concept of internally driven adolescent risk-taking 'without first controlling for the effects of hazards imposed externally on adolescents by grown-ups.' He claims that developmental theorists' 'persistently negative comparison of adolescent biology and behavior to adult biology and behavior ignores both positive adolescent-adult comparisons and the socioeconomic disadvantages adolescents suffer' (2010, p. 49). Males presents data on traffic crash analysis by age and poverty level, and age-by-poverty comparisons of crime, gun mortality, and drunken driving, that suggest including variables such as poverty and low-income environments 'challenges even correlational evidence for a distinct phenomenon called "adolescent risk taking" and bio/developmental bases for it' (2010, p. 51). In a study that investigated poverty as a determinant of young drivers' fatal crash risks, Males found that 'driver age was not a significant predictor of fatal crash risk once several factors associated with high poverty status (more occupants per vehicle, smaller vehicle size, older vehicle age, lower state per capita income, lower state population density, more motor-vehicle driving, and lower education levels) were controlled' (Males, 2009a, p. 443). Another study that explored road traffic injuries among young drivers in Sweden found that parental social class and education were significant factors in young drivers' injury rates and that 'twenty-five percent of the injuries could be avoided if all young people experienced the injury rate of the highest

socioeconomic group and 29 percent if all young people had the injury rate of those with highly educated parents' (Hasselberg & Laflamme, 2003, p. 253).

Bessant (2008) writes about the way that the 'teen brain' has been used to 'explain' young people's bad/aberrant conduct said to characterise 'adolescent risk-taking', such as criminality, impulsivity, fast driving, incapacity to reason, irrationality, lying, rebelliousness, drugtaking and nose piercing (2008, p. 350). She challenges interpretations of the changes that MRI and fMRI detect in the brain, suggesting that they overreach the technical limitations of these technologies and moreover that it is debatable whether what is 'measured' does in fact reflect or read the mental experience of a behaviour or perception. Bessant maintains that views of adolescents as 'risk takers' rest on a history of viewing adolescents as 'deviant', different from the (adult) norm, a view seized on by the media because 'the claims that young people are badly behaved, maladjusted and simply overly exuberant has always made excellent copy for the media' (2008, p. 356). Bessant claims that there is no evidence that *all* young people by virtue of their adolescent brains, or any other reason, are 'risk takers', 'irrational' or 'immoral', any more than *all* adults are models of rationality or good judgment. She states: 'Indeed claims that young people are naturally irrational or anti-social entails the same kind of prejudice displayed by those who spoke of the 'Jewish brain', the 'female brain' or the 'Negro brain' to explain how those groups were both different and problematic' (2008, p. 357). She further argues that accepting the concept of the deviant teenager, and following the arguments of those who suggest that the 'teen brain' does not mature until the mid-twenties so that a range of rights should not be available until people reach the age of 23 or 25, means that young people's experiences will be even further limited and they will not have the opportunities to develop their capacity for good judgment.

Epstein (2007) has argued that the appearance of turmoil in the adolescent years is a factor of modern Western societies. He cites research on teens in other societies, one that investigated 186 preindustrial societies and found that: 'about 60 percent had no word for "adolescence," teens spent almost all their time with adults, teens showed almost no signs of psychopathology, and antisocial behavior in young males

was completely absent in more than half these cultures and extremely mild in cultures in which it did occur.’ Another series of long-term studies set in motion in the 1980s suggested that ‘teen trouble begins to appear in other cultures soon after the introduction of certain Western influences, especially Western-style schooling, television programs and movies. Delinquency was not an issue among the Inuit people of Victoria Island, Canada, for example, until TV arrived in 1980. By 1988 the Inuit had created their first permanent police station to try to cope with the new problem.’ (2007, pp. 58–59).

2.5 Power and Ideology

There are a number of commonalities in the constructions or descriptions of young people, or ‘youth as a group’, across the medical, psychological, sociological and legal disciplines, and within policy and the media. These include youth having attributes such as ‘immaturity’ (physical, mental, and psychological), being ‘risk takers’, or ‘at risk’, ‘developing’, and ‘in transition’. Oftentimes these descriptions incorporate negative connotations. The commonalities in the ways young people are viewed, within the various disciplines described and other arena including in academic literature, raises the question as to how has this come about and how far does it reflect the ‘real’ position of young people?

A critical approach to answering this question requires investigation of the contextual power relations, that is, the position of ‘youth’ within the context of a modern capitalist economy. For Marx, it was the contradictions in the real world, in capitalist society, that gave rise to the ‘distorted awareness’ of the nature of society. It is from this distorted awareness that ‘ideologies’, or false views of reality emerge; these are a consequence of the material world. Thus, ‘life is not determined by consciousness but consciousness by life.’ (Marx and Engels, 1964, as cited in (Swingewood, 1991, p. 73). Furthermore, the ideologies are put forward by competing groups for specific purposes, not by chance, and it is the material effects of ideologies that affects people, not the ideologies themselves: ‘the working class, in other words, is not controlled or dominated by ideology as such, but by the institutions and practices which derive from it.’ (Ransome, 1992, pp. 118–119). The social conditions in which people live shape their perception of the world, and the

ideas that come into prominence and are articulated throughout society are those that coincide with the interests of the dominant class.

Applying this analysis to youth as a 'class', alongside their changing material conditions there has arisen a parallel ideology concerning 'youth'. The elongation of 'childhood' over the last century, as young people have been kept longer at school and their entry to the workforce has been delayed, and more recently, their delayed age of marriage and parenthood and entry into the housing market, is associated with a narrative of youth as incompetent and vulnerable. Such a narrative, which derives from and supports the interests of modern capitalist economies in the need for an educated and highly skilled workforce, also benefits adults by justifying limitations placed on youth in the employment and housing markets, as well as enabling legislation that distinguishes youth from adults in ways that are detrimental to youth but of benefit to adults, such as 'youth benefits' or 'youth rates' and the many other age-related restrictions.

2.5.1 Hegemony

'Hegemony' was originally used to describe the unification of ideas and political aims of the working classes seen as necessary for the working class to become a 'class'. However, Gramsci extended the meaning of hegemony to include the ways by which a dominant social group establishes and maintains social control:

'Previously germinated ideologies become 'party', come into confrontation and conflict, until only one of them, or at least a single combination of them tends to prevail, to gain the upper hand, to propagate itself throughout society – bringing about not only a unison of economic and political aims but also intellectual and moral unity, posing all the questions around which the struggle rages not on a corporate but on a 'universal' plane, and thus creating the hegemony of a fundamental social group [the proletariat] over a series of subordinate groups' (Selections from Prison Notebooks, cited in (Ransome, 1992, p. 134).

It is possible to extend this meaning of hegemony to explain social divisions other than class, such as those of gender, race or age. While Gramsci was concerned with the means by which one class, the bourgeoisie, maintained social and political

control over another class, the proletariat, both the means and the outcome of class dominance have been applied within the social sciences to explain the dominance of one group over another. Applied to the social and political power of adults over youth as a group, hegemonic views of youth enable adults as a 'class' to maintain political and social control over youth as a 'class'. In this way, it can be seen that hegemonic views of youth which portray this group as 'risk', a danger to themselves or others and lacking the maturity to make good decisions, enable adults to place boundaries around them, for 'their own protection' and that of society.

2.5.2 Foucault

More recently, metanarratives such as the Marxist one have been dismissed or treated with scepticism, particularly by those described as 'post-modernists', who have gone on to question the usefulness of ideology. Their claim has been that all discourse is power-laden, so it is not possible to distinguish between ideology and an underlying reality; there can be no uncovering of the true nature of reality in the Marxist sense. Foucault, while rejecting Marxist ideology, avoided the problem of distinguishing between truth and ideology, or of finding no distinction and the subsequent relativist 'black hole', by sidestepping ideology as in opposition to 'truth' and seeing 'power-knowledge' as a unitary concept: 'We should admit rather that power produces knowledge (and not simply by encouraging it because it serves power or by applying it because it is useful); that power and knowledge directly imply one another; that there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations ... it is not the activity of the subject of knowledge that produces a corpus of knowledge, useful or resistant to power, but power-knowledge, the processes and struggles that traverse it and of which it is made up, that determines the forms and possible domains of knowledge' (Foucault, 1979, pp. 27–28).

Foucault then, is interested rather in the discursive system, the processes by which knowledge and beliefs are produced and positioned. He suggests the development of political dominance by the bourgeoisie was masked by 'the other dark side': the

development of an egalitarian juridical framework that guaranteed a system of rights was accompanied by 'systems of micro-power that are essentially non-egalitarian and asymmetrical that we call disciplines' and that 'the disciplines provide at base, a guarantee of the submission of forces and bodies.' (1979, p. 222).

Foucault describes Jeremy Bentham's panopticon, a type of 'prison', designed so that a supervisor in a central tower can at all times observe 'shut up in each cell a madman, a patient, a condemned man, a worker or a schoolboy' (1979, p. 200) and used this Panopticon to illustrate how people in modern society become self-governing under the systems of disciplines. Foucault's understanding of power in this way has been seen as offering 'a powerful critique of domination outside traditional ideological class lines. Beyond the conscious and the cognitive, there is a domain of the body object, where technologies of power are also deployed.' (Zhao, Yuezhi, 1993, p. 79). Foucault sees power and the securing of social cohesion as operating through systems of control of bodies, rather than minds.

His focus on the control of bodies is particularly useful in the analysis of the control of young people, for whom the surveillance and control of their bodies is so normalised that it is rarely noticed. In an observational study of two schools in northern England, Simpson (2000) described how 'children's bodies were perceived as "dangerous" and troublesome agents which must be controlled' (2000, p. 67) and that the 'underlying intent of the school curriculum, which orders the spatial and temporal lives of children, is to ensure that schools are inhabited by "docile bodies"' (2000, p. 63). 'From the moment they entered the school, pupils were introduced to a strict regime of constraint, which not only determined where and when they should be throughout the day, but also how they should comport themselves' (2000, p. 77). She goes on to describe how this led to pupils' rebellion being expressed through their (gendered) bodies, with boys belching, yawning, tipping their chairs and girls pushing the boundaries of the uniform code.

It is common for young people's movements to be constrained outside school as well and for reasons of 'safety' parents are told to always know where their young person is. The New Zealand Police website has advice 'Keeping your teenagers safe' that suggests 'Talk to your teenagers and be sure to always know what they are

doing ... Know where your children are and who they are with. Make sure you can contact one another at any time. Set curfews, for example "be home by ten o'clock".' ('Keep your teenagers safe | New Zealand Police', n.d.). GPS systems have been developed for parents to enable them to keep track of their child. A New Zealand news article reporting parents use of tracking devices for children quoted one parent as saying: "We just want to be able to see where she is going and what she is up to. We don't see it as being over protective". Their daughter was unaware of the device, which sent updates to her parents' cellphones (O'Callaghan, 2015).

GPS tracking devices for teenagers are also marketed to parents in terms of 'safety': 'you can be comfortable knowing that your teen is hitting the road safely ... GPS vehicle trackers not only provide real-time location updates right from your smartphone, PC or tablet, but you're also able to receive speed alerts the moment your teen exceeds any speed you select. Encourage your teen driver's good habits with a GPS tracker for parents.' A United States Consumer Guide suggests: 'Car crashes are the No. 1 cause of teenage deaths. But rather than just fretting at home, concerned parents can now monitor their teens while they're driving, checking on such things as the car's speed and location or even its acceleration and braking... On the map, you can also set up a geo-fence around a geographic area, such as a school or workplace, or an entire region. Once set, you'll get an alert every time the car crosses a boundary. You'll also receive an alert if the device is disconnected or reconnected. And you can run a detailed report for a specific time period that can even show where the car was stopped and for how long.'

2.6 The Contemporary Context

2.6.1 *Reflexive Modernisation*

Anthony Giddens and Ulrich Beck both developed similar but not identical conceptualisations of the conditions of second or late modernity, both describing responses to social conditions in terms of 'reflexive modernity' (Beck, Giddens, & Lash, 1994). This was a response to the apparent collapse or 'fracturing' of the structures of modern society – the nation state, the welfare state, the nuclear family, class structures, and the certainties of science. The accepted truths have been called into question, so that there is now 'reflection on reflection': 'the

assumptions that guaranteed the rationality of various subsystems lose their very obviousness and persuasiveness. It becomes ever more abundantly clear that every given is in fact a choice' (Beck, Bonss, & Lau, 2003, p. 16). While post-modernism also reflects such de-structuration, reflexive modernisation is different in that it also involves a re-structuring and re-conceptualising process.

The early promise of science was that it would lead to certainty; reason would replace the dogmas of tradition (Giddens, 1991, p. 21). However, science depends on 'the methodological principal of doubt'; the basis of science is that no matter how appealing a theory might be at any given time it is always liable to be replaced or revised in the light of new findings. This undermining of the certainty of knowledge has meant a questioning of the bases or coordinates of knowledge. This has happened in both the scientific and social arenas: 'modernity's reflexivity refers to the susceptibility of most aspects of social activity, and material relations with nature, to chronic revision in the light of new information and knowledge' (1991, p. 20).

Beck et al (2003) outlined the processes that challenge first modern society as follows:

1. Globalisation undermines the economic foundations of first modern society and with it the idea of society as nation-state. Because globalisation challenges the relation between local and the global and between domestic and foreign, it affects the very meaning of national borders and thus the certainties of the nation-state.
2. The welfare state has provided the basis for an intensification of individualisation, releasing people from traditional class ties and family supports. Legal norms of the welfare state make individuals (not groups) the recipients of benefits.
3. The transformation of gender roles; the roles 'men' and 'women' are constructed and performatively established. The changing relations of families and dissolution of the sexual division of labour has also had an impact on the labour market.

4. Flexible employment practices express, in their chronic form, a breakdown in the full employment society, and perhaps even in the central significance of gainful employment.
5. The global ecological crisis which acknowledges limited resources, making it more difficult to conceive of nature as a neutral or infinite provider of resources; nature is no longer perceived as an outside that can be adapted to one's purpose, but increasingly as part and parcel of society.

These structural insecurities of the modern world have forced individuals to create their own 'reflexive subjectivities'; such reflexivity is a requirement for living in the modern world, so 'individualization is a fate, not a choice' (Beck & Beck-Gernsheim, 2002, p. xvi). 'Individualization is a compulsion, albeit a paradoxical one, to create, to stage manage, not only one's own biography but the bonds and networks surrounding it and to do this amid changing preferences and at successive stages of life, while constantly adapting to the conditions of the labour market, the education system, the welfare state and so on' (2002, p. 4).

The 'reflexive biography' is a risk biography, it does not necessarily succeed: 'The wrong choice of career or just the wrong field, compounded by the downward spiral of private misfortune, divorce, illness, the repossessed home – all this is merely called bad luck. Such cases bring into the open what was always secretly on the cards: the do-it-yourself biography can swiftly become the breakdown biography. The preordained, unquestioned, often enforced ties of earlier times are replaced by the principle: "until further notice"' (2002, p. 3).

Neither does individualisation imply unfettered freedom since decisions have to be made: 'decisions, possibly undecidable decisions, certainly not free, but forced by others and wrested out of oneself, under conditions that lead to dilemmas...' (Beck et al., 1994, p. 16). Beck makes clear that this sense of 'institutionalized individualization' is different from the 'autarkic human self' of neo-liberalism, that is, individuals 'who can master the whole of their lives' and derive and renew their capacity for action from within themselves', an individualism which implies 'the disappearance of any sense of mutual obligation' thus inevitably threatening the

welfare state. Furthermore, 'individualization' as he employs it is 'not freedom of choice, but insight into the fundamental incompleteness of the self, which is at the core of individual and political freedom in the second modernity' (Beck & Beck-Gernsheim, 2002, p. xxi). So, for Beck, individualization is 'a structural characteristic of highly differentiated societies' that 'does not endanger their integration but actually makes it possible. The individual creativity which it releases is seen as creating space for the renewal of society under conditions of radical change' (2002, p. xxi).

The individualisation thesis offers a more moderate stance than post-modernism, where social structures such as class and gender become irrelevant, by admitting the influence of both structures and individual choice. The post-modern view, it is contested, minimises the impact of structural barriers and over-reaches the capability of agency in late modernity (Côté, 2002).

2.6.2 Individualisation and Young People

Furlong and Cartmel argue that there are 'powerful sources of continuity; [and] young people's experiences continue to be shaped by class and gender' (Furlong & Cartmel, 1997, p. 6). Even if there has been a weakening of social structures, there are nevertheless macro-level events that affect the daily lives of adolescents and over which they have no or little control. Such macro-societal changes as 'demographic trends, widening economic disparities, globalization, changes in government, and service delivery' (Call et al., 2002, p. 71) affect the health and wellbeing of adolescents. One of the dangers for young people in the individualisation view is that they risk being blamed for making 'choices' over which they have little control when they have limited power over policies and structures that determine their lives (Jones, 2009).

Reporting research based on interviews with young people in the Netherlands, du Bois-Reymond (1998) used two concepts of life adopted by young people, 'normal biographies', and 'choice biographies'. Young people who follow 'normal biographies' may have a longer phase of adolescence than previous generations but still aspire to a clearly defined profession and employment at an early stage and enter fixed relationships in order to start a family (Du Bois-Reymond, 1998, p. 66).

'Choice biographies' are based not just on freedom and own choice, but, given that in Western societies there are more options to choose from, young people are forced to reflect on the available options and justify their decisions. 'It is the tension between option/freedom and legitimation/coercion which marks "choice biographies"' (1998, p. 65). One of the features of the 'normal biography' adolescents is that they want to grow up earlier than the post-adolescents (the 'choice biographers'), and the post-adolescents are suspicious of the concept of adulthood, seeing it as 'serious, boring and responsible' (1998, p. 74). Moreover, adulthood is seen as not settled and as reversible, and a state that might describe part of your life, but not all of it: 'adulthood cannot always be defined according to age: one can be an adult in one's plans and social position, "and apart from that, all people are who they are"' (1998, p. 75).

This corresponds with descriptions by Dwyer & Wyn (2001) of young people placing more importance on aspects of their lives other than employment as defining who they are. It also encapsulates the problem Dwyer & Wyn outline regarding youth research, where the impact on youth of changes such as globalisation, local and national economic restructuring, the casualisation of the youth labour market and increasing need for post-school education, has led to a new complexity in their lives which, while recognised, is not fully appreciated by youth researchers. There is still a tendency for these researchers to apply past models of linear developmental markers (finishing schooling, getting a job, living independently, starting a family) in describing the transition from adolescence to adulthood and to fail to appreciate the ways in which young people are adjusting to the complexity in their lives (2001, pp. 170–172). Higgins has described how the model of transition that informed education and employment policies in New Zealand in 1980s and 1990s 'conflated access with equity, qualifications with labour market power and student status with childhood dependency' (Higgins, 2002, p. 52), a model that 'assumed away a network of complexities that young people encounter in their choice-making and experiences of transition' (2002, p. 57).

2.6.3 *The 'Risk Society'*

Beck's (1992) 'Risk Society' is directly bound up with reflexive modernity. He defines risk as 'a systematic way of dealing with hazards and insecurities induced and introduced by modernization itself' (1992, p. 21). While 'modernity', the early stages of industrial society, was concerned with making nature useful or releasing mankind from traditional and associated issues of the distribution of socially produced wealth, these issues are now overshadowed by questions of the political and economic 'management' of the risks of actually or potentially utilized technologies (1992, p. 19). Such risks, industrial pollutants and toxins, the 'safety' of water and food stuffs, 'nuclear' accidents, ecological disasters, and genetic modification, are global, cause often irreversible harm, are invisible, and the harms may be evident only in the future. Nor are the solutions to be found in more technology or more science, since the certainties of science are now also questioned: 'science becomes more and more necessary, but at the same time, less and less sufficient for the socially binding definition of truth'. This is '*a product of the reflexivity* of techno-scientific development under the conditions of the risk society' (1992, p. 156).

Alongside this, changes in class and family structures and forms of employment with flexible and impermanent working patterns including the demise of life-long career patterns, has meant that individuals today face a complex world without the security of tradition or certainty of knowledge or evidence to guide them. In reflexive modern society, the pre-given boundaries provided by patterns of occupation, family, gender, neighbourhood, nation, are 'undermined and overthrown through the technological, economic, political and cultural processes of radicalized modernization. The end result is that the subject no longer has firm boundaries. There is instead a multiplicity of inclusionary and exclusionary practices, and, according to context, a multiplicity of ways that things are bounded off' (Beck et al., 2003, p. 24). In the face of this complexity, individuals are still obliged to make decisions. But this brings new risks, since now, what was once seen as a 'blow of fate', an event for which the individual bore no responsibility, is today much more likely to be considered a personal failure.

Risk also expresses a future component; it is to do with something anticipated, that has not yet happened, which is significant for the consideration of young people in society, since they are seen as representing the future and as in a process of 'becoming'. Beck states 'the center of risk consciousness lies not in the present, but in the future. In the risk society, the past loses the power to determine the present. Its place is taken by the future, thus, something non-existent, invented, fictive as the 'cause' of current experience and action.' (Beck, 1992, p. 34).

2.7 New Zealand

A number of laws and policies govern the lives of adolescents in Aotearoa New Zealand, but different agencies use different ages to mark the beginning and end of the life phases 'child' and 'adolescent', and the range of ages covering legal restrictions, responsibilities and rights is at the least very inconsistent if not actually chaotic. Some of the statutes describing these ages are outlined in Appendix 1.

The Ministry of Youth Development and the Office of the Children's Commissioner are the key agencies in New Zealand responsible for working with and for youth in the development of policies that affect youth and in developing and disseminating information about youth. It has a role promoting youth participation and youth contribution to local and national decision-making fora, including councils and government.

'The Ministry of Youth Development - Te Manatū Whakahiato Taiohi - encourages and supports young people, aged between 12 and 24 years old, to develop and use knowledge, skills and experiences to participate confidently in their communities. Its aim is 'for all young people in New Zealand to have the chance to participate in youth development opportunities.

From November 2015 Government agreed a new direction and priorities for the Ministry of Youth Development:

- Increasing the number of quality opportunities for youth development overall, which includes those that provide leadership, volunteering and mentoring experiences.

- Increasing the proportion of opportunities targeted to youth from disadvantaged backgrounds.
- Working in partnership with business and philanthropic organisations to jointly invest in shared outcomes.

Building a formal recognition of young people's community and voluntary participation and contributions by having a way that this can be recorded and valued.'

(Ministry of Youth Development, n.d.-a)

The key document guiding the Ministry's approach to youth is the Youth Development Strategy, Aotearoa (2002). The Strategy is about how government and society can support young women and men aged 12 to 24 years inclusive to develop the skills and attitudes they need to take part positively in society, now and in the future (Ministry of Youth Affairs, 2002, p. 7). It is based on a youth development approach that has six key principles: that youth development is shaped by the 'big picture, is about young people being connected, is strengths-based, happens through quality relationships, requires young people's participation, and good information'. These will contribute to the desired result of positive youth development where young people gain a 'sense of contributing something of value to society, feelings of connectedness to others and to society, belief that they have choices about their future, feeling of being positive and comfortable with their own identity' (2002, p. 8).

The main focus initially of the Office of the Children's Commissioner was on monitoring the operation of the Children, Young Persons and Their Families Act 1989, but over time it has developed a research and advocacy role and works with Government to implement the United Nations Convention on the Rights of the Child. In these ways, the Office of the Commissioner can and does advocate for children and young people across all sectors, as for example in its focus on child poverty.

Laws relating to young people in New Zealand are found in numerous statutes and there is 'often little consistency of principle and logic. Each right or obligation

relating to children and young persons must therefore be examined within the specific statutory context which creates it' (Laws of New Zealand, 2016 Part 1 at [1]). The ages at which young people are permitted, or restricted from, engagement in activities varies from statute to statute and even the definitions of 'child' or 'young person' show little consistency or logic. For example, in the Children, Young Persons, and Their Families Act 1989, 'child' refers to any person under the age of 14, while a 'young person' means any person who has attained the age of 14 but who has not yet turned 17; in the Care of Children Act 2004, the term 'child' refers to anyone under the age of 18. Under the Age of Majority Act 1970, 'full age' is reached for all the purposes of New Zealand law at 20 years, but for the purposes of the Electoral Act 1993, a person becomes an 'adult' and eligible to vote, at the age of 18 (Laws of New Zealand, 2016 Part 1 at [2]). Most legal entitlements come into effect before 'full age' of 20 years is reached.

The Ministry of Youth Affairs produced a guide to 'youth ages' for the development of policy and law. Apart from the need for compliance with the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990, and the need to consider the principles of the UNCRC, the Guidelines outline a number of considerations, including whether a youth age is necessary, and if it is, that the agency consider whether the age is in young people's best interests, whether it is consistent with other ages in similar laws and policies, how it will affect young people's ability to have a say in decisions that affect them or whether it will help or hinder young people's participation in society. It notes 'please don't assume it is acceptable to treat young people differently just because of their age' (Ministry of Youth Affairs, 2001, p. 7). So, while there is advice on setting a youth age, the Ministry does not provide advice as to what ages are appropriate for any particular restrictions or rights and suggests only that using youth ages in law and policy 'acknowledges the young person's vulnerability due to their age, with a method to: protect them, empower them, determine their entitlements and define their responsibilities' (Ministry of Youth Affairs, 2001, p. 3).

2.7.1 Māori children and Youth

In New Zealand, the way in which Māori (New Zealand's indigenous people) society is viewed and organised means that the concept of 'children's rights' as it is perceived and enacted in Western societies, does not exist. Within Māori society, children do not 'belong' to parents in the same way they do in Western society: 'Children belong not only to their parents but also to the whānau, and beyond that to hapū and iwi ... they are "ā tātou tamariki" (the children of us many) as well as "a taua tamariki" (the children of us two)' (Walker, 2013, p. 30). A wider group of people than parents is responsible for children: 'I am the parent of my sisters' and brothers' children, just as they are parents to my children. Those whānau members are all parents, and will love and discipline and care for the children in a special way in their role as parents' (2013, pp. 30–31).

In an article that examined pre-European Māori parenting, Taonui (2010) describes some early written accounts of the observed roles and relationships of parents and children. These describe how children are cared for by the wider community and that the concept of parental ownership was foreign: 'no man having a large family was ever allowed to bring them all up himself - uncles, aunts and cousins claimed and took them, often whether the parents were willing or not' (2010, p. 195) and 'The wife almost invariably opposes the husband in favour of her children, and the former dares not assume any superiority, as the relatives of his wife are ever ready to avenge, even with his blood, any unkindness shown to her or the children, the latter being regarded as less belonging to the parents than to the tribe in general' (2010, p. 194).

Many early accounts noted that the children were not chastised and took their place alongside adults, being treated with respect when they asked questions or spoke up: 'They also ask questions in the most numerous assemblies of chiefs, who answer them with an air of respect, as if they were a corresponding age to themselves. I do not remember a request of an infant being treated with neglect, or a demand from one of them being slighted' (2010, p. 194).

In an analysis of the effects of adoption on Māori adoptees, Newman describes the position of the child in society and the importance of genealogical links: 'a child is

deemed to be a *taonga* (treasure) of the entire *whānau* (family, including extended family members). When a child became *whāngai* (literally 'to feed', the term describes a child raised by relatives who are not the biological parents) there was no legal transfer from one set of parents to the other or any severing of biological ties. Instead, for the wellbeing of the *tamaiti whāngai* (literally 'feeding child'), it was essential that the child retained all knowledge of their history, their place within the community, spiritual values, genealogical links and rights to their birth parents' tribal land' (Newman, 2011, p. 6).

2.7.2 The Treaty of Waitangi and Whānau, Hapū and Iwi

The position and role of child within the family is viewed differently by Māori particularly, as well as by Pacific and other cultural groups who have settled here. The Māori view of the child or young person within whānau, hapū and iwi, has had a significant bearing on the development of policies within social welfare and justice particularly. An Annex to Puaoteata-tu (Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare, 1988), expresses concern that in the overriding principle of the Children and Young Persons Act, where the interests of the child are paramount, 'although qualified by considerations such as the "public interest" and the promotion of satisfactory relationships with others ... the centrality accorded the child is not in keeping with Māori tradition' (1988, p. 52). It suggests that under Māori tradition 'the importance attached to the child's interests is subsumed under the importance attached to the responsibility of the tribal group through the tribal traditions and lore of inherited circumstance. The tribal group (hapū) is bound to provide for the physical, social and spiritual well-being of the child and its upbringing as a member of the particular hapū. This responsibility would take precedence over the views of the birth parents.' (1988, pp. 52–53). The Māori view of the child and of her/his parents situates both within larger groupings, whānau, hapū and iwi, to which they have responsibilities and from which they secure rights. Puaoteata-tu states: 'But it follows too that the children had not so much rights, as duties to their elders and community. The community in turn had duties to train and control its children. It was a community responsibility' (1988, p. 75).

While some legislation may be criticised for not taking into account Māori cultural values and norms concerning children, for example the adoption law not being able to accommodate whāngai (Māori form of adoption), there are instances of the Court at least recognising these and acknowledging the importance of whakapapa (genealogy) or whānaungatanga (relationships) in guardianship and custody applications (Lloyd, 1998; Somerville, 2003). There is evidence that Māori views of family relationships, in particular that children belong not only to their parents but to whānau, hapū and iwi, and also of the importance of whakapapa, have been at least recognised if not actually influential in the development of New Zealand legislation concerning 'families'. For example, the Law Commission Report 'New Issues in Legal Parenthood' includes a section on the Māori view of identity, and notes that 'when making recommendations we are particularly obliged to take into account the Māori dimension and to consider the multicultural character of New Zealand society' (New Zealand Law Commission, 2005, p. 111). A paper examining the influence of case law on the development of the Human Assisted Reproductive Technology (HART) Act, notes that although Government commitment towards the Treaty of Waitangi has helped the formation of a bicultural society, earlier legislation reflected a 'nuclear, truncated and highly biologized view of family according to pākehā folk understandings, ignoring Māoridom's traditionally more open family formations' (Legge, Fitzgerald, & Frank, 2007, p. 24). It finds some irony then, in noting 'that the 2004 HART Act signals a turn towards a wider (possibly more indigenous?) contemporary legal understanding of 'family' within New Zealand society.' While other influences, including the social and legal acceptance in New Zealand of new family forms such as same-sex couples, as well as the reaction to the secrecy that used to apply to adoption, are part of the background to legislation such as the HART Act, it seems likely that the partnership provisions of the Treaty of Waitangi have meant that Māori concepts of 'family' relations have also had some influence on the way the legislation has developed.

The influence of Māori views of the family on the development of New Zealand legislation and policy was also emphasised in the 2007 issue of the journal *Social Work Now*. Several of the articles referred to the 'indigenous' Family Group

Conference (FGC), and one in particular stated: ‘The CYPF Act might be seen, at first blush, as epitomising the social aspect of the deregulation occurring at the time, emphasising as it does the devolvement of decision-making from the state to family-led arrangements. This Act was the product of a government listening carefully to the people most affected by existing social services legislation and practice. And having listened, government borrowed heavily from indigenous Māori culture to produce a radical new means of decision-making for children, young people and families not only from Māori but from all cultural and ethnic backgrounds the FGC is not a minority boutique institution; it is a core part of the machinery of government, the engine-room of decision-making for child welfare and youth justice’ (Bartlett, 2007, p. 16).

2.7.3 Other Family Arrangements

There is a tension between family, collective and individual rights and responsibilities which is highlighted in New Zealand in relation to both Māori and Pacific cultures. In a paper examining issues related to Pacific children’s consent to participation in research, the authors note: ‘Samoans, Tongans and other Pacific communities differentiate between child and adult according to life stages, often including rites of passage such as sexual or marriage unions, or engagement in public activities. This social determination of what a child is differs from Western convention where age appears to be privileged over other contextual factors’ (Suaalii & Mavoia, 2001, p. 40). They note further the collective framing of rights and responsibilities for Pacific children in extended families, and that while pākehā children are likely to hold individual rights at earlier ages than they are given responsibilities, the reverse is common for Pacific children who are likely to have family and community responsibilities rather than rights at an earlier age.

Western views of adolescence are challenged by other immigrant groups in New Zealand. Tupuola’s (2004) study investigated the identity status of youth of multiple, transient and diasporic cultural backgrounds in Aotearoa New Zealand and the United States of America. She found that the ‘master narratives of adolescent psychology’ that describe a linear progression over time to a fixed single

identity fail to account for the multiple identities which are explored through a social-cultural lens rather than a maturational perspective for these young people of immigrant backgrounds (2004, p. 96). Moreover, the achieved identity status for these youth is temporary and transient in nature.

2.8 The Disconnect

Both within New Zealand and internationally there are concerns about the health and wellbeing of young people (Office of the Prime Minister's Science Advisory Committee, 2011; World Health Organization, 2014). Studies within New Zealand indicate that while there have been reductions in substance use by young people over recent years, New Zealand continues to have high numbers of young people who are emotionally distressed, bullied, using contraception inconsistently, exposed to violence, and/or are overweight, and with stressed family relationships (Clark et al., 2013). Young people are also more likely than other age groups to experience a mental health disorder (anxiety disorders, mood disorders and substance abuse disorders) as well as suicide and suicide attempts. Furthermore, they are the least likely to make a mental health visit to the healthcare sector (Clark et al., 2013; Oakley-Browne, Wells, & Scott, 2006).

Interestingly, although concerns are often raised in the media about levels of youth crime and achievement in education, the statistics indicate that there have been improvements in both these areas over the last decade. Youth (14 to 16-year-olds) apprehension rates have declined since 2007 and the number of children (10-13 years) and young people (14-16 years) charged in court in 2015 was the lowest for 20 years (Ministry of Justice, 2015). The Ministry of Justice has also noted that 'children and young people are generally less experienced at offending and often offend in groups and in public, which makes them more likely to be apprehended by Police' (Ministry of Justice, 2010, p. 28). The number of students attaining Levels 1, 2 and 3 NCEA continued to rise over the years 2011 to 2015 (from 65 to 74 percent Level 1, 68 to 76 percent Level 2, and 54 to 63 percent Level 3) (New Zealand Qualifications Authority, 2016, p. 7).

However, young people as a group can be negatively affected by policies and practices that overlook their contributions or place them at a disadvantage

compared with other age groups. A 2016 report examining youth unemployment in New Zealand stated that young adults, aged between 15 and 19 years, suffered the greatest employment setbacks following the global financial crisis (GFC) of 2008-2009. The total employment in this age group fell from around 150,000 in 2007 to 122,000 in 2009 and a low of 102,000 in 2012 and 2013, and by mid-2016 had recovered to only 115,000 workers, 23% lower than prior to the GFC. While the total number of jobs overall has grown, the share of the job market taken up by younger workers has fallen from almost 7% in 2007 to less than 5% since 2011 (Johnson, 2016, p. 6).

It has been argued that young people's 'negative behaviours', such as teen pregnancy, risky driving, drug and alcohol use, and criminal activities, is a 'comprehensible' response to their environments. Nettle (2010) claims that people in the poorest areas follow an accelerated life history trajectory (younger childbearing, shorter breastfeeding, father figures more likely to be absent) not for reasons of negligence or error, but as coherent responses to the context in which they have to live. A study of women living in Gloucestershire, United Kingdom, found that teenage motherhood was predicted by a woman's subjective experience of risk in her environment (how safe she felt at home and walking in her residential area, her perceptions of crime, violence and vandalism in her area, and problems with neighbours), and that this was a more discriminating predictor than either economic indicators of environmental deprivation or measures of family stress and stability (Johns, 2010). Similarly, Upchurch et al (1999) found that boys who perceive their neighbourhoods as threatening are significantly more likely to experience first sex at a younger age than those who see the neighbourhoods as safe, and that girls living in neighbourhoods with higher levels of ambient hazards are on average more likely to experience first sex at younger ages than do those reporting safe neighbourhoods.

Dwyer & Wyn (2001) describe how policy in North America, Australia and the United Kingdom has created a two-tier model for youth which distinguishes between mainstream and disadvantaged youth. The cut-off point for 'mainstream' is arbitrary but ensures that a sizable minority fall into the 'disadvantaged' group.

Dwyer & Wyn argue that creating such an 'at-risk minority group' obscured the fact that both mainstream and minority group young people faced similar dismal employment prospects in these countries in the late twentieth century. While there was much talk of 'knowledge societies' and their need for a highly skilled labour force, Dwyer & Wyn note that most of the employment growth was in the services sector which required lower-level skills. Alongside this they claim there has been confusion and even distortion of figures for participation in education, overestimating the actual participation rate so that the 'mainstream' appears to be successfully engaged in post-compulsory education. Combined with a re-classification of the unemployed who became forced into short-term 'training programmes' or 'work for the dole' schemes, an impression was created of a 'successfully' engaged mainstream while at the same time obscuring the actual collapse of the youth labour market. Young people, and their parents, became convinced of the need for post-compulsory education, but the reality is that in a world of changing labour markets, linked to globalisation and deregulation of the economy, the prospects for a full-time career path for both mainstream and at-risk youth are similarly dismal.

The New Zealand Ministry of Youth Development's 'Youth Development Strategy' describes young people as needing to be successful at school, in relating to friends and partners, at work and emotionally, if they are to develop in positive ways. 'Building a youth development strategy on this information base makes it more likely that all young people will enjoy this success and that fewer will suffer from mental illness, unemployment, addiction, unwanted pregnancy, loneliness or become involved in crime'. 'Failure' in youth development is also described: 'Too many young people are arriving at adulthood unprepared to contribute productively as citizens and employees. This group continues to be disproportionately made up of Māori and Pacific young people. The trend has doubled the associated costs through negative investments in the justice and health systems and lost returns from non-involvement in the labour force' (Ministry of Youth Affairs, 2002, p. 10).

2.9 Summary

This review of a selection of literature that is relevant to youth policy has explored some widely-held views of young people across a range of disciplines, and has introduced some ideas that are less widely-held or more controversial. It illustrates the variety of possible approaches to exploring issues relating to young people and demonstrates that too narrow an approach can overlook not just the diversity of young people but also risks failing to appreciate their very different social contexts.

The review describes some challenges to many widespread assumptions concerning the nature of adolescence and the 'problems' of this stage of life. Political and social responses to the perceived problems of adolescents, or the problem of adolescence, have sought explanations for youth negative outcomes in mental health, employment, justice and education, within youth themselves and solutions have often involved restricting the rights of young people. However, as some authors have suggested, these 'problems' can be responses to historical, social and economic changes over which adolescents have had little influence.

Adolescence may be viewed as a stage of development or as a period of transition, and there is no consensus about when it begins or when it ends. Because of individual variation, even biological changes cannot be relied on to provide any certainty, and viewing adolescence as a 'transition' clearly signifies its dependence on social and cultural interpretations which vary across time as well as geography. The evidence available concerning physical, cognitive and social maturity does not provide certainty for imposing particular age limits. The growing area of literature on adolescence and brain development might have age-based relevance, but this is still in the early stages. The literature on consent to medical treatment comes closest to discussing in detail the issues that could be considered in relation to age discrimination. Here, attention is paid to aspects such as competence, rights, and responsibilities, in relation to age.

There is no clear evidence that might support policy makers in deciding the appropriateness of imposing restrictions and providing for rights at particular ages, within legislation and policy that concerns young people. This has led to the current situation where there are multiple ages within policy and legislation, with the

associated withdrawal of rights or imposition of responsibilities. But perhaps more importantly, the absence of conformity or certainty about 'adolescence' has allowed the historical confusion concerning young people in policy and legislation to continue unchallenged. So, the muddle of ages in policies, and on-going discourses about young people's 'limitations' - being risk takers, poor decision-makers, and subject to neurobiological changes - continue to influence youth policies.

My study investigated the assumptions about adolescence that lie behind policy responses to young people, critically exploring the rationale for and consequences of policy and legislation that limits their rights in key legislative documents. The next chapter will describe the methodology used to undertake this investigation, including the theoretical approach and the data collection methods.

Chapter Three: Methodology

In current times, young people generally spend extended periods in education, and with high youth unemployment rates they typically spend longer periods financially dependent on their parents. This social and economic context means that young people today are unlikely to establish independent homes or families until they reach older ages than in times past. Moreover, young people are widely perceived either as a 'problem', or in terms of their 'vulnerability' (they may be 'risky' or 'at risk'). The perceptions of youth in terms of dependency and trouble potentially expose youth to restrictive policies, such as raising the ages at which young people can engage in some 'adult' activities, or the use of curfews, or policies such as those that place restrictions on receipt of state benefits, all of which are justified as being 'for their own good' or 'in their best interests'. However, paternalistic policies such as these raise issues concerning the rights and liberty of young people as citizens and whether and when it might be justifiable to deprive some citizens of the rights available to others. It is also questionable whether it is wise to limit young people's learning opportunities by restricting their exposure to a range of experiences.

Acknowledging these recent changes in transition for young people, accompanied by and responded to with shifting views of young people, and accepting that views of youth change across cultures and across time, raises questions about the extent to which current views of young people accurately reflect their competencies and vulnerabilities, and how far policies based on such views support young people or how far they reflect adult priorities. This thesis aimed to investigate these questions.

The review of literature in Chapter One demonstrated that the meanings of adolescence and how adolescents are viewed in society are influenced by the many and diverse discourses concerning young people. These are located primarily within disciplines such as sociology, psychology, history, law, anthropology, education, or cultural world views or an amalgamation of several or all of these. They are also likely to be tempered by contemporary media and by personal experience.

A methodological approach that depends on only one of these discourses would not cover the many and varied aspects of youth in contemporary New Zealand society. This chapter presents the theoretical framework that guided this study, providing an outline of the theories used and a rationale for the approach taken. This is followed by an account of the methods and procedures used and how the data was analysed.

3.1 Theoretical Framework

The theoretical framework for this study is informed firstly by Critical Theory, which provides the underpinning perspective that knowledge is not independent of human interests so that power relations and prevailing ideologies shape our understandings. The study further makes use of critical discourse analysis, which contends that mechanisms of power and ideology lie 'hidden' within texts and can be exposed by examining texts. Secondly, this study is framed by the understanding that patriarchal power relations in today's society shape the relations between young people and adults. Feminist Standpoint theory enables the study to remain 'critical' where the researcher is an adult in a patriarchal context. The next sections explicate these theoretical approaches, that is, Critical Theory, Critical Discourse Analysis, and Feminist Standpoint Theory.

3.1.1 Critical Theory

This study aimed to investigate the impact of ideas and beliefs about adolescence in policies and legislation that concern young people. It examines not just the ways in which discourses that form youth policies construct the concept of youth, but also the ways in which such discourses operate ideologically to produce and reproduce hegemonic views of youth. It takes the view that societies such as New Zealand are not 'unproblematically democratic and free' (Kincheloe, McLaren, & Steinberg, 2011) and that individuals within such societies are influenced by social and historical forces. Views of adolescents as vulnerable or risky, and of adolescent development as a process of moving through a series of stages marked by certain

achievements, are so widespread that the imposition by adults of age restrictions on young people seems natural. Critical theory, defined as a way of 'submitting the very "givenness" or taken-for-granted character of the social world (its concepts, understandings, cultural categories) to a critical reconsideration and ... thus part of the self-reflective public discourse of a democratic society' (Schwandt, 2007), provided a framework for the study.

Critical Theory was originally associated with the Frankfurt School in Germany (The Frankfurt Institute for Social Research), with the 'first generation' of the school, Max Horkheimer, Theodore Adorno and Herbert Marcuse, writing from the 1930s onwards. Situated in the Europe of the 1930s, and from 1935 the United States where they moved to escape Hitler's Germany, the early theorists sought an explanation for the failure of a proletarian revolution, as anticipated by Marx, and for the rise of fascism and Nazism in Europe, as well as the development of Western mass consumption and conformist mass culture. Rather than economic conditions causing humanity's slide into fascism, the Critical Theorists traced the rise of fascism back to the Enlightenment; empirical science was seen to lead to capital's control of nature, and the subsequent dominance of technology and its associated consciousness is viewed as repressive in any society, whatever its particular ideology. Rejecting an economic explanation for oppression, Frankfurt School theorists focused on understanding domination.

There have been many diverse developments in Critical Theory from these original beginnings (Kincheloe et al., 2011, p. 163), but the essence of Critical Theory for the Frankfurt School, which remains the same today as it is widely applied, was its basis in *praxis*, distinguishing it from traditional theory whose goal was 'pure knowledge' gained by a disinterested, autonomous scientist. Critical Theory acknowledged a relation between knowledge and interests, that all knowledge is shaped by human interests or is 'political' in the broadest sense, and that it was the task of social science to reveal the forces at work in society.

There are many critical traditions, such as critical ethnography, critical feminism, liberation studies, critical race theory, but all critical approaches have in common a questioning of currently held values and assumptions, and of challenging

conventional social structures through a process of discarding ‘false consciousness’(Gray, 2009, p. 25). Kincheloe et al (2011) have detailed what they view as the underlying commonalities and list some basic assumptions that define critical theorists or researchers. They acknowledge that not all critical researchers will concur, but nevertheless suggest that a broad definition is possible. The basic assumptions they outline are:

- ‘All thought is fundamentally mediated by power relations that are social and historically constituted;
- Facts can never be isolated from the domain of values or removed from some sort of ideological inscription;
- The relationship between concept and object and between signifier and signified is never stable or fixed and is often mediated by the social relations of capitalist production and consumption;
- Language is central to the formation of subjectivity (conscious and unconscious awareness);
- Certain groups in any society and particular societies are privileged over others and, although the reasons for this privileging may vary widely, the oppression that characterizes contemporary societies is most forcefully reproduced when subordinates accept their social status as natural, necessary, or inevitable;
- Oppression has many faces, and focusing on only one at the expense of others (e.g. class oppression versus racism) often elides the interconnections among them;
- Mainstream research practices are generally, although most often unwittingly, implicated in the reproduction of systems of class, race, and gender oppression.’

(2011, p. 164)

A ‘critical’ approach in this study challenges the idea that our understandings of youth stem from, or are based on any natural or inevitable positioning of young people in relation to adults. It rather shifts the focus onto the social context for this positioning, to an examination of underlying relations of power between adults and

young people, and to locating where the benefits and values of the current positioning of young people might fall.

3.1.2 Critical Discourse Analysis

For Critical Theorists, the aim of social theory is to reveal the distortions or the ideology and power that lie hidden in discourses and that serve the interests of certain groups or ideologies. Critical discourse analysis is concerned with exposing the mechanisms of power and ideology that lie hidden in texts. Fairclough describes discourses as ‘ways of representing aspects of the world – the “mental world” of thoughts, feelings, beliefs and so forth, and the social world’ and furthermore ‘discourses not only represent the world as it is (or rather is seen to be), they are also projective, imaginaries, representing possible worlds which are different from the actual world, and tied in to projects to change the world in particular directions’. (Fairclough, 2003, p. 124). Van Dijk describes discourse analysis as a ‘type of discourse analytical research that primarily studies the way social power abuse, dominance, and inequality are enacted, reproduced, and resisted by text and talk in the social and political context’ (van Dijk, 2001, p. 352).

As described earlier, the status of adolescence is shaped by the various discourses concerning youth, many of which position young people as ‘*less than* adult’ or ‘*problematically* adult’, not unlike the positioning of ‘women’ as opposed to ‘men’ that has been the subject of feminist unravelling. Such discourses may arise from historical or contemporary social relations, or from various organisational practices such as in education, justice and mental health. In this sense, young people occupy the ‘subject positions’ of ‘adolescents’, as constituted by these discursive practices. However, they are also active agents who have the ability to re-position themselves, so are neither ‘the inception of their experiences (thus having complete agency and ‘free will’ to act), or conversely, [as] discursive marionettes’ (Allen & Hardin, 2001, p. 169).

My study has been shaped by critical discourse analysis, in that it examines the ways in which ‘adolescence’ is discursively constructed historically, socially and institutionally, and by active agents positioning themselves and shaping the world around them. Accepting that the naturalisation of discursive practices, that is, the

conventional ways of 'talking about' youth, including the beliefs and understandings of youth, as well as the social structures and practices that govern their actions and behaviours, is hegemonic, then querying this naturalised discourse opens up a space for renegotiating the relationship between youth and adults: the 'denaturalization of existing conventions and replacement of them with others' is a 'significant target of hegemonic struggle' (Fairclough, 1995, p. 94).

Van Dijk (1993, 2001) describes social order as lying on two levels: the 'micro' level which includes language use, discourse, verbal interaction, and communication; and the 'macro' level, which encompasses power, dominance, and inequality. Critical discourse analysis has to theoretically bridge the gap between the micro and macro approaches. He explains that 'a racist speech in parliament is a discourse at the microlevel of social interaction in the specific situation of a debate, but at the same time may enact or be a constituent part of legislation or the reproduction of racism at the macrolevel' (van Dijk, 2001, p. 354).

Van Dijk notes that most people only have active control over everyday talk with family members, friends and colleagues, but that members of more powerful social groups and institutions, and particularly their elites, have 'more or less exclusive access to, and control over, one or more types of public discourse' (van Dijk, 1993, p. 356). He further states that those who have 'more control over – and more influential – discourse (and more discourse properties) are by that definition also more powerful'. The implication of this for my study is that politicians, as an 'elite' group, and the legislative process through which they effect social and policy change, are in a position to influence and control the public and political discourse that reveals or hides the power relations between adults and young people.

3.1.3 Feminist Theory

The power relations between men and women in modern Western societies such as in New Zealand, have been extensively described and analysed in feminist theorising. These power relations are situated in historical patriarchal social and family systems. While feminist theorising has exposed the existence and functioning of patriarchy in societies such as ours, it has focused mainly on the power relations between men and women rather than the other facet of patriarchy

which is the power relations between older men and younger men and women. Millett, who wrote 'notes toward a theory of patriarchy' (Millett, 1971, p. 24), describes the reach of patriarchy: 'while patriarchy as an institution is a social constant so deeply entrenched as to run through all other political, social, or economic forms, whether of caste or class, feudality or bureaucracy, just as it pervades all major religions, it also exhibits great variety in history and locale' (1971, p. 25). Millett also notes that 'the principles of patriarchy appear to be two fold: male shall dominate female, elder male shall dominate younger' (1971, p. 25) and describes how traditionally 'patriarchy granted the father nearly total ownership over wife or wives and children, including the powers of physical abuse and often even those of murder and sale' (1971, p. 33). She describes the 'chief contribution of the family in patriarchy [as] the socialization of the young into patriarchal ideology's prescribed attitudes towards the categories of role, temperament, and status' (1971, p. 35). While we can assume that Millett is thinking of socialisation here primarily in terms of gender rather than that of young people in relation to older people, her argument that the ideology of patriarchy, as it is expressed and replicated in families, and is further reinforced through 'peers, schools, media, and other learning sources, formal and informal' (1971, p. 35), applies equally to 'age' as to gender. She states: 'while we may niggle over the balance of authority between the personalities of various households, one must remember that the entire culture supports masculine authority in all areas of life' (1971, p. 35). This 'masculine authority', which also describes the power relations between men and younger men and women, an aspect under-theorised in feminist literature, is clearly evident in the very existence of age-related policies and legislation.

3.1.4 Feminist Standpoint Theory

Accepting patriarchy as forming the basis for the power relations between young people and adults allows useful comparisons to be made between the position of young people and that of women, and to draw on feminist approaches that have explored the position of women and domination. The problematic issue in emancipatory research with children and young people is that as an adult

researcher, you are always speaking *for* them. An approach such as that of Standpoint methodology comes closest to recognising and dealing with this dilemma. Standpoint inquiry locates its subject in the *actual*, remaining aware that power relations exist and operate through discourses, including those that examine the position of the subjects of research. It recognises that theory is itself a practice, and the divide between theory and practice can be brought under examination (D. E. Smith, 1992).

Feminist standpoint theories and methodologies aim to challenge the relations between social power and the production of knowledge about women, by beginning with the situated 'knowing subject'. Through dialogue, analysis and reflexivity, the position of women as oppressed in relation to men is able to be understood and articulated. Standpoint theory was developed in the 1970s and 1980s, and was influenced by Marxist thought. Marx held that the views of the ruling class are dominant, but partial, and that the vision of the proletariat therefore has to be struggled for, as it lies hidden beneath the social and material relations in which all are forced to participate. The position of women in this sense is comparable with that of the proletariat, whose marginalised and inferior position is taken for granted as 'natural'. The 'standpoint' position of the feminist analyst then is one that stands at the rupture of the discourse that upholds the relations of ruling and the world as 'known' by the analyst – the 'actual' – and it is from this standpoint that 'inquiry is directed towards exploring and explicating what she does not know – the social relations and organisation pervading her world but invisible in it' (D. E. Smith, 1992, p. 91).

One of the criticisms of standpoint theory challenges the claim, made by some standpoint theorists, that the position of women, or of other oppressed groups, is the best place from which to ask questions and critically analyse social order; this is subjected to the criticism that there is no one standpoint that represents all women, or all of any group, and once the many different positions of group members are recognised, one falls into a relativist trap from which there can be no coherent theorising about the group in relation to power relations in society. A number of ways out of this trap have been suggested, but Collins in particular

reminds us that ‘the notion of standpoint refers to groups having shared histories based on their shared location in relations of power – standpoints arise neither from crowds of individuals nor from groups analytically created by scholars or bureaucrats’ (Collins, 1997, p. 376). In Collins’ view, the ‘relativism problem’ occurs because of a misconception that considers the standpoint of the individual, when standpoint epistemology was concerned with the standpoint of the (oppressed) group. Moreover, for Collins, the basic premise of standpoint theory is to explicate power relations, so she criticises arguments that decontextualize standpoint theory ‘from its initial moorings in a knowledge/power framework while simultaneously recontextualizing it in an apolitical discussion of feminist truth and method’ (1997, p. 375).

Accepting that views about young people in today’s society are shaped by patriarchal relations, feminist standpoint theory provides a means for researching and revealing power relations between adults and young people, even though, as an adult researcher, I am part of the ‘powerful’ group. Applying the ‘lens’ of feminist standpoint theory enables exposure of the patriarchal power relations that mediate discourses about youth, so that these discourses are not accepted as ‘true’ depictions of young people, nor that they articulate a ‘natural’ or ‘normal’ position of youth in relation to adults, but that deeper meanings for the positioning of youth need to be sought.

3.2 Summary

The two main theoretical frames for the methodology for my research are Critical Theory and Feminist Standpoint Theory. Critical Theory recognises the existence of power relations in society, and that the historical context and prevailing ideologies shape the individual’s, including the researcher’s, understanding of social events. The task for critical theorists is to examine claims for ‘truth’ in the context of prevailing views and expose them for what they are, that is, ideologies that support or benefit powerful groups. Critical discourse analysis examines ‘texts’ for the purpose of exposing the power relations that shape the discourse about particular groups in society.

The methodology is framed by a recognition that the broad social context in which this research takes place is patriarchal, that is, in today's society, power relations exist between adults and young people that shape the views about young people in social, political, economic and family arenas.

Feminist standpoint theory provides the rationale for an adult conducting research on young people to remain 'critical', that is, that it is possible to expose the ideology hidden in current discourses about young people, by acknowledging and recognising patriarchal power relations as they play out in today's society.

The examination of the relevant texts in these case studies will expose hegemonic views of youth that have enabled laws and policies to be enacted that control young people, and that at the same time reinforce views of young people as a group in need of control.

3.3 Methods

I began the research by undertaking a review of the literature, selecting from the wide range of studies and disciplines that examine and concern young people. As this study focused on contemporary constructions of adolescence, a substantive review of recent literature that discusses the conceptualisation and positions of young people was undertaken. This looked at literature within the following fields:

- Local and international
- Sociological
- Science/psychology
- Citizenship/state/legal
- Cultural views
- Historical development

This literature revealed that there are diverse views about the nature of adolescence that vary over time and space. It also revealed a widely-held view that the 'problem' of adolescence lies within the nature of adolescence itself, so there has been less focus on exploring or attending to the contextual factors that might influence young people's opportunities and development. It was evident from the literature that there is little robust information or evidence about adolescent maturity or development that could be drawn on to guide age-setting in policy or legislation. There is a wide range of ages applied in the allocation of rights and responsibilities to young people which reflect disparate historical and cultural contexts.

I undertook a scan of New Zealand legislation looking for age limits, in order to gain some idea of the extent to which age limits exist in legislation, the variety of different age standards applied, and whether there were consistencies across legislation. Some of this legislation is listed in Appendix 1. As can be seen in this list, there is a wide variety of ages used and little consistency can be seen in the selection of ages across and within particular laws and policies.

Because an objective of the study was to examine the appropriateness and/or effectiveness of age-related policies, an important source of information to answer

my research questions would be the processes around the development of legislation. Development of legislation involves a process that produces a range of documents or 'texts', including government department reports, submissions from the public to Select Committees, and Hansard debates. The rationale for age-related legislation and the subsequent commentary in submissions and Hansard particularly is both shaped by and shapes the perception and position of 'youth' in society. It was considered that the texts associated with age-related legislation would contain views of youth, and particularly hegemonic views of youth, expressed in formal, representative and enduring form.

A further review of legislation recently passed or considered was therefore undertaken to identify potential pieces of legislation that might be analysed in depth as case studies. This included Bills where the legislation directly concerned young people, or where the status of young people was referred to or debated by Members of Parliament prior to the passing of legislation. The focus was on recent legislation because the study is concerned to understand contemporary views of youth and how these influence policies that concern youth.

Three case studies of legislation that was relevant to youth were selected and one case study investigated issues concerning the age of consent to medical treatment. The cases were chosen both for their relevance to youth and to ensure that views of youth would be represented there. The three case studies based on legislation are: The Alcohol Reform Bill 2010; the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill 2009; and the Land Transport Bills of 2007 and 2010.

The selection of the case studies looked for the following factors:

- For the legislation case studies, that they were contemporary: as noted earlier, legislation that includes age restrictions or rights indicates an ad hoc approach to the selection of ages, with the resulting confusion of ages across the different Acts. It is likely that oftentimes age selection was based on maintaining coherence with ages applied in other Acts, such as the voting age or the age of majority. However, we might expect that recent and contemporaneous legislation that applies age restrictions would be consistent

in its application of ages, and if it is not consistent that there are good reasons for discrimination, which can be examined. Investigating the reasons for age selection in the past may reveal historical views of young people and how they fit in society, but to understand how contemporary views of young people influence policies that concern them it was necessary to focus on recent legislation.

- That the variety of discourses concerning youth were included: it is likely that different youth policies are informed by different conceptualisations of youth, possibly exclusively or that a particular discourse might dominate. Using only one case study risked overlooking the variety of discourses, and the criteria for inclusion ensured that as far as possible this variety was available for examination.
- That the case studies represented decisions or included discourses concerning ideas about youth or the application of principles, rather than decisions based on limited resources. Policy makers often have to make decisions for resource allocation when resources are limited, and decisions then reflect the need to apply something across the board which is simple and effective but may not represent a principle or be equitable for all groups. While it might have been interesting to identify such cases, examination of them would not provide the depth of discussion or argument that might lead to principle-based decisions or some consistency for age-based decisions.

For the legislation case studies selected, the Hansard debates and the submissions to Select Committees were analysed, and other associated documents, Briefings, Bills Digests, Explanatory Notes, Select Committee Commentaries, Advice, and Responses to Questions were all read and canvassed for relevant information. For the case of medical consent, the regulations, codes and other documents that related to medical consent for children and youth were analysed.

Other documents and legislation that related to the case studies that were reviewed included documents from the Ministry of Youth Development (MYD), Ministry of Social Development (MSD), Child Youth and Family Services (CYFS),

Ministry of Justice, Ministry of Health (MOH), Office of the Children’s Commissioner (OCC).

3.3.1 Ethical Considerations

The data that was to be examined in the study was all publicly available, so there were no major ethical issues regarding data collection or data use. However, because the data included submissions to Select Committees in which the authors are named, there was an issue concerning whether I should use the submitters’ names in my thesis or provide anonymity, even though the submissions are publicly available and the authorship is also available publicly. In the case of submissions written by organisations, I considered that the organisation could be named in my analysis, since the views represented the position of the *agency*, and that even if the organisation changed over time and no longer supported the views it had presented in its submission, such a change did not reflect on individuals. However, I considered that for individual submitters these arguments did not apply. When a particular Bill is before Parliament and being reported in the media, individuals make submissions that reflect their views at the time. Sometimes these views are expressed passionately, as individuals may feel strongly about an issue that is in the public arena. It is most likely that when writing their submission, the ‘audience’ that they have in mind is the Select Committee, and individual submitters probably do not reflect on the fact that their submission is a ‘public document’ that is stored and made available for analysis. For this reason, and because submitters may later change their views, I considered that it could be prejudicial and furthermore there was no need to identify individual submitters in this thesis.

Thus, when sections of submissions from organisations or agencies are quoted, the organisation is named, but individual submissions have no names attached. Quotes from submissions are numbered, with prefixes AR representing the Alcohol Reforms Bill, DL representing the two Driver Licensing Bills, and YC representing the Children, Young Persons, and Their Families (Youth Courts Jurisdiction) Bill.

3.3.2 Case Studies

Case study methodology enables an in-depth study of a phenomenon in a particular context. The case study method in this study was instrumental, that is, it was the study of a particular case not because of the interest in that case, but in order to learn about some particular problem or question (Stake, 1995). Yin describes the scope of a case study: 'A case study is an empirical inquiry that investigates a contemporary phenomenon (the 'case') in depth and within its real-life context, especially when the boundaries between phenomenon and context may not be clearly evident' (2014, p. 16). Mabry suggests that the '*raison d'être* of case study is deep understanding of particular instances of phenomena' (Mabry, 2008, p. 214). The phenomenon being investigated in this study was 'age setting' (for young people), and the four cases were purposively selected as providing accounts of the processes and the rationale for age setting, in contemporary legislation for three cases, and policy in the fourth case. Investigation of four cases allowed for a comparison of the rationale across the four cases and for cross-case conclusions to be drawn. The legislation cases also enabled the phenomenon of 'age setting' to be studied in its 'real life' context, that is, as it took place in the creation of legislation. The case of medical consent allowed for a deeper understanding of the phenomenon, by providing a comparator case where there was no age limit. The selection of cases is described below; it aimed to ensure that a range of the factors that might influence age setting were included, but at that at the same time they were sufficiently alike to enable conclusions to be drawn across the four cases.

3.3.2.1 Selection of Case Studies

I examined the lists of legislation that had been debated by Parliament, selecting for further examination the Bills that had relevance for youth and were contemporary – less than five years old.

A search within the Parliamentary website under Legislation, Bill, for keyword 'youth' yielded nine Bills. These included:

1. Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill;

2. Children, Young Persons, and Their Families Amendment Bill (No 4);
3. Judicial Matters Bill;
4. Legal Assistance (Sustainability) Amendment Bill;
5. Minimum Wage (Mitigation of Youth Unemployment) Amendment Bill;
6. Policing (Storage of Youth Identifying Particulars) Amendment Bill;
7. Sale of Liquor (Youth Alcohol Harm Reduction) Amendment Bill;
8. Sale of Liquor (Youth Alcohol Harm Reduction: Purchase Age) Amendment Bill;
9. Social Security (Youth Support and Work Focus) Amendment Bill.

A search on 'age' for 2008-2011 yielded 2 results:

1. Land Transport (Driver Licensing) Amendment Bill
2. Sale of Liquor (Youth Alcohol Harm Reduction) Amendment Bill

There were no results for 2011 onwards.

A search within the Bills Digests for 'youth' yielded 19 results. I read the Bills Digests, which are summaries prepared to assist consideration of the Bill by members of Parliament, and the Explanatory Notes to the Bills, and scanned Hansard debates and submissions to Select Committees, to establish what contribution the Bills might make in answering the research questions. In many cases, where there was reference to youth age, it was a minor part of a Bill, and in other cases there was little or no reference in Hansard debates to the issue of youth age. In some cases, the Bill was a minor Bill and would not have provided sufficient debate or information to form a case study. Those that had little reference to youth and were not able to provide information relevant to the research questions were discarded. The Bills that remained included:

1. Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill
2. Minimum Wage (Mitigation of Youth Unemployment) Amendment Bill
3. Sale of Liquor (Youth Alcohol Harm Reduction: Purchase Age) Amendment Bill
4. Land Transport (Road Safety and Other Matters) Amendment Bill and the Land Transport (Driver Licensing) Amendment Bill
5. Social Security (Youth Support and Work Focus) Amendment Bill

I had already decided to include the issue of Consent to Medical treatment, as it is practised under the Code of Health and Disability Consumers' Rights and other advice to health practitioners, since this differs from other possible cases in that there is no minimum age for consent or refusal of treatment and a young person's right to consent to or refuse treatment is decided by clinicians on the basis of their assessment of the young person's ability to understand the issues involved.

I also drew up a table of potential case studies in order to determine the presence within the cases of a range of factors that were likely to be considered in the development of age-based policies or legislation for young people. These included cognitive and psychosocial factors, such as decision-making and peer influence, as well as contextual factors such as whether peers or adults are involved, cultural influences and the degree of risk, and wider factors such as the economic context and whether other policies or legislation might be relevant to age selection. This helped me to assess whether a wide enough range of factors would be covered when selecting the cases.

The alcohol reforms (attempting to raise the drinking age or drink-purchase age from 18 to 20 years) and the driving licensing changes (raising the minimum driver licensing age from 15 to 16 years), were both recent and both concerned legislation; they also made an interesting comparison. After both Parliamentary debates and much discussion in the media, the drinking age was not raised, but the driving age was. The drinking age was interesting because the age at which a young person is legally allowed to drink or purchase alcohol is often compared with the voting age or the minimum age of military service, so there are discussions about the meaning of 'adulthood' in arguments concerning the drinking age. The driving age was interesting because it has been 15 for many years (possibly since 1925) and it concerned not just age but ability and skills. Both these cases also affect almost all young people, excluding only those who never use alcohol, or never drive, both small minorities, members of which are self-selecting, except where they might be excluded from drinking or driving for reasons of health or disability.

The remaining case study then was to be selected from any of: the Social Security (Youth Support and Work Focus) Amendment Bill; the Minimum Wage (Mitigation

of Youth Unemployment) Amendment Bill; and the Children, Young Persons and their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010.

The aim of the changes in the Minimum Wage (Mitigation of Youth Unemployment) Amendment Bill as outlined in the Explanatory Note was to 'provide an incentive for employers to take on young workers at a reduced rate of pay while foundational work skills, experience on the job, or training is gained'. The Social Security (Youth Support and Work Focus) Amendment Bill aimed to make changes to the Independent Youth Benefit (a benefit for young people who are unable to receive support from their families) and to the Domestic Purposes Benefit for young parents by replacing these benefits with a new Youth Payment, described in the Explanatory Note as:

- Youth Payment for 16-17-year-olds with no dependent children who have exceptional circumstances;
- A Young Parent Payment for 16-18-year-old parents (and, if aged 16-17 years, have exceptional circumstances or come from a low-income family).

'The new payments will be based on the level of financial assistance available at 1 April 2012 and will be distributed through redirections (for accommodation and utility costs), a payment card (for food and groceries) and an in-hand allowance. An abatement-free income level will be set at \$206.73 per week'. The Welfare Benefit Reforms would affect only those young people who receive the Independent Youth Benefit or young people (under 19 years) who were parents on a benefit.¹ It was discriminatory on the grounds of age, in that it placed restriction on these young people both in terms of how they spend their benefit and also places obligations on them to undertake education and training.

However, certain features of the Children, Young Persons and their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010, outlined below, meant that it was likely to better answer the research questions than either the Welfare Benefit

¹ About 3,000 people were affected including: 909 people on Independent Youth Benefit; 489 sole parents on Emergency Maintenance Allowance; 930 sole parents on DPB aged 18 years; 163 people on UB, SB or DPB-CSI; 257 people aged 16 – 18 years included as partners (Ministry of Social Development, 2012, p. 5)

Reforms or Minimum Wage (Mitigation of Youth Unemployment) Amendment Bill cases.

The intention of the Children, Young Persons and their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 was described in the Explanatory Note to the Bill:

‘This Bill amends the Children, Young Persons, and Their Families Act 1989 (the **principal Act**) to —

- Expand the jurisdiction of Youth Courts, by making 12 and 13-year-olds liable to prosecution in respect of certain serious offences other than murder or manslaughter; and
- Strengthen and expand the orders available to Youth Courts sentencing or otherwise dealing with a child or young person against whom a charge is proved before a Youth Court.’

The Act introduced a number of changes, and some that were relevant in terms of the Act as a potential case study included:

- Child offending involving offences other than murder or manslaughter, and that required a formal response, were dealt with as a care and protection issue in a Family Court. This would continue to be the case. However, for a small group of the 12 and 13-year-olds who are charged with serious offences, the New Zealand Police would have the option of commencing proceedings in a Youth Court. For these proceedings the Act would, subject to a few modifications, apply to these children as if they were young persons. Other changes were proposed to support the amendments.
- That among other amendments to sentencing orders available to the Youth Court, The Act was amended to empower Youth Courts to make an order requiring a parent, guardian, or usual caregiver of the young offender, the young offender (if he or she was, or was soon to be, a parent or guardian or other person having the care of a child), or both, to attend a parenting education programme for a period not exceeding 6 months.

- The Act introduced a test of culpability for 12 and 13-year-olds appearing in the Youth Court. The Youth Court judge would need to be satisfied that the young person knew either that the act or omission constituting the offence was wrong or that it was contrary to law.
- This test is known as *doli incapax* (literally meaning ‘incapable of evil’) and previously applied to protect absolutely children under the age of 10 years from criminal prosecution. For children aged 10 to 14 the *doli incapax* presumption required the prosecution to prove that they were not *doli incapax* at the time of the offence. The presumption had to be successfully rebutted before prosecution of a child in the High Court (charged with murder or manslaughter) or in the Family Court (if they were the subject of an application for a declaration that they were in need of care and protection on the grounds of their criminal behaviour).
- Under the 2010 Act, the test applied to the small group of 12 and 13-year-olds appearing before the Youth Court (the number of such young people was less than 100).
- It had been argued that the New Zealand legal system ignored the presumption, and that reasons for avoiding the *doli incapax* test included that: evidence of previous misbehaviour was able to be raised to show that the child knew their action was wrong; the test for knowledge of wrongfulness was very low and therefore too easily proved; and the presumption was only raised in the most serious cases, where any question about knowledge of wrong seemed futile (Hall & McIver, 2012).
- The Green Party Minority view (on Select Committee Commentary) stated that the bill treated children as adults for serious offending and the Party held the view that the age of criminal responsibility must be no lower than 14 years. It stated further that the bill was contrary to the UNCRC, which could not be justified, and that young children who commit serious offences must be managed in the context of their family and their age.
- In its submission to the Select Committee, the Youth Court stated that ‘the proposal to include some 12 and 13-year-olds within the Youth Court, albeit on

a very limited basis, represents the **most fundamental change** to New Zealand's present youth justice system since its inception in 1989' (Youth Court of New Zealand, 2009, p. 7).

- It stated further that 'for the last 20 years, offending by 10-13-year-olds (child offending) has been dealt with on the basis that the offending is primarily a result of inadequate parental/familial care and protection of the child ... While at that age there is certainly an element of deliberate and personal choice involved, the philosophy of the current Act is that unless there are significant interventions into the child's family system then there will be little chance of turning a child away from crime ... It is a legitimate question for the Youth Court to ask, in the light of such a fundamental change, whether there is good reason to abandon this philosophical framework for serious child offenders (ibid., p.7).

There are a number of significant issues raised here that are particularly relevant to setting policies for age limits: the recent (2010) and fundamental change in policy for this group of 12-13-year-olds; the parameters of family responsibility; the UNCRC in the New Zealand context; and the resurrection of the concept of *doli incapax*. *Doli incapax* in particular relies on the Youth Court Judge to decide whether or not a young person is *doli incapax*, and in a similar way, consent to medical treatment also relies on the judgment of an individual, the health professional. Comparisons of the ways in which these judgments are made and what sort of evidence is drawn on, are particularly interesting in examining how 'principle-based' policies might be developed.

In view of the above, it was decided that the Children, Young Persons and their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 Act would make an interesting and relevant case study. In addition, New Zealand's policy in this is contrary to the UNCRC and the issues that arise from that; the concept of *doli incapax* was to be considered for 12-13-year-olds and decisions on that are made separately for each individual; the Act has reduced the age for which young people are being held 'responsible'; and it changes the philosophical framework on which the previous Act was based from one where the family was held to be primarily

responsible to one where the 12-13 year old offenders are held responsible for their offending.

Strategic selection of cases that are sufficiently similar in that all include the phenomenon being studied in ways that are comparable, but that are at the same time sufficiently different to illustrate varied approaches, can offer the possibility for greater depth in that it allows for the complexities of an issue to arise (Mabry, 2008; Stake, 2003). In this study, selection of cases which covered both the raising and lowering of the ages for rights, as well as the case for medical consent which has no age limit, opened up the possibilities for the complexities of age in policy to emerge and as in fact became evident, the failure of policy makers and legislators to wrestle with the issue of age setting in a way that confronted the intricacies or opened up pathways for how the issue might be managed in future.

3.3.2.2 Documents Accessed

For the three case studies that concerned legislative changes, I retrieved all relevant documents relating to the legislation from the Parliamentary website and imported them into the NVivo software programme for coding and analysis as qualitative research data. The documents included Hansard Debates, Bills Digests, Explanatory Notes to Bills, Commentaries from Select Committees, additional advice to Select Committees (such as requests for further information from government ministries, summaries of submissions, other reports and evidence from professional or specialist groups), as well as the public and government agency submissions to Select Committees. I also retrieved documents from the MYD website that referred to the Alcohol Reform Bill and the Driver Licensing Bills. The analysis of the documents related to these cases turned out to be a major task. There were almost 2,000 submissions to Select Committees, 17 Hansard debates, as well as Select Committee Commentaries, and Advice to Select Committees, and other related documents.

In New Zealand, there is not a formalised system of professional lobby groups influencing politicians that would provide material for analysis, as in some other countries. While there are groups which hold particular positions on the legislation

for these cases, such as the hospitality industry in the case of alcohol reforms, the views of these interest groups are covered in submissions.

For the medical consent case study, I searched for and read literature and documents, such as codes, regulations and legislation that were relevant to the case.

The Documents accessed for each of the Bills are listed in the table below. The Land Transport (Driver Licensing) Amendment Bill (2007) and the Land Transport (Road Safety and Other Matters) Amendment Bill 2010 both proposed to raise the driver licensing age from 15 to 16 years, and for this reason the two Bills were reported to the House concurrently. The submissions to the Road Safety Bill which also included other provisions, were scanned for comments relating to driver licensing age and relevant material was imported into Nvivo.

Alcohol Reform Bill 2010	Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill 2009	Land Transport (Driver Licensing) Amendment Bill 2007; Land Transport (Road Safety and Other Matters) Amendment Bill 2010
Explanatory Note	Explanatory Note	Explanatory Notes
Bills Digests (2)	Bills Digest	Bills Digests
Commentary from Select Committee	Commentary from Select Committee	Commentary from Select Committee (Road Safety)
Hansard (5 debates)	Hansard (6 debates)	Hansard (1 debate, Driver Licensing) (5 debates Road Safety)
Advice: Initial Briefing Responses to Information Requests (10) Additional advice (5) Departmental Reports (Parts One and Two) Alcohol Reform RIS Other related reports include: MYD-Young people's views on the Draft National Alcohol Action Plan: Consultation document; Young people's views on alcohol; Law Commission Review: Sale and Supply of Liquor, Youth Friendly Survey Findings. Youth Parliament - Inquiry into how to support young people to be safe with alcohol. Simon Power press release video on Government's positions on alcohol law reforms 2010.	Advice: Initial Briefing and Presentation Responses to Information Requests (4) Summary of Submissions (3) Departmental Report Other related reports such as: MYD -Safer Journeys: Youth Consultation; Youth Voices on Road Safety; Youth Issues Survey Report;	Report of the Transport and Industrial Relations Committee (Driver Licensing) and Report of the Ministry of Transport (Road Safety) Initial Briefing Advice and response to Information Requests (10 reports). Other related reports such as: MYA - Tough is not Enough; UNICEF NZ Summary Position Paper - Young and Accountable?
Submissions (1808)	Submissions (67)	Submissions on Driver Licensing Bill (28); Submissions on Road Safety Bill (48)
In many cases submitters also supplied additional evidential material with their submissions.		

This was the complete set of material that is available to Members of Parliament in making changes to legislation. In addition to the Bills Digests, Explanatory Notes to Bills, Commentaries from Select Committees, Departmental Reports, and additional advice to Select Committees listed here, I also retrieved and analysed material from the Ministry of Youth Development, Ministry of Justice Youth Courts, and Ministry of Transport websites that provided policy and research reports and background information relevant to the cases.

3.4 Analysis

The aim of this research was to investigate the ways in which age-related policies and legislation in New Zealand that concern young people are influenced by how adolescence is perceived and constructed. The analysis therefore focused on the ways in which 'youth' or 'young people' as a group were conceptualised and comprehended in submissions and other relevant documents.

I undertook thematic analysis of submissions, debates and documents, using the constant comparative method, and informed by Critical theory and critical discourse analysis as well as Feminist Standpoint theory (Collins, 1997; Hartsock, 1983; Kincheloe et al., 2011). Thematic analysis includes reduction and exploration of texts, through the use of codes and the identification of themes. Themes were identified from categories derived from both the research questions and theoretically driven (deductively), and through identification of issues that arose from the texts (inductively). The process involved reading and re-reading the texts, searching for categories or themes, a process described as involving 'iterative reviews of the dataset', in order to identify 'emerging patterns and categories ... a process which marshals evidence for developing and warranting findings' (Mabry, 2008, p. 218). Because my analysis was situated within the frameworks of Critical Discourse Analysis and Feminist Standpoint theory, the approach in the analysis acknowledged power inequalities, and congruent with standpoint theory, it focused particularly on 'the role of discourse in the (re)production and challenge of dominance.' (van Dijk, 1993, p. 249).

Van Dijk (1993, p. 259) notes that 'privileged or preferential access to discourse' is a crucial power resource; in this study for example, this privileged access is seen in

MPs' 'access' to Parliamentary debates and their control of the debating chamber via the Speaker, and the privileged 'talk' that takes place there; their 'invitation' to the public to submit views to Select Committees, and the context for oral submissions which take place in a highly structured fashion (usually) in Select Committee Rooms within the Houses of Parliament, a formal process where expression of views is closely managed by MPs. Thus, 'discursive action may be restricted in many ways, either because of institutional power, resources ... or because of group membership' (1993, p. 260). Beyond access to discourse, there is the manifestation of power at the 'micro-level' of discourse, that is, in 'text and talk'. Apart from direct 'content', where powerful groups simply use 'statements that directly entail negative evaluations of THEM, or positive ones of US' (1993, p. 264), Van Dijk has provided a useful list of other persuasive techniques:

- (a) Argumentation: the negative evaluation follows from the 'facts'.
- (b) Rhetorical figures: hyperbolic enhancement of 'their' negative actions and 'our' positive actions; euphemisms, denials, understatements of 'our' negative actions.
- (c) Lexical style: choice of words that imply negative (or positive) evaluations.
- (d) Storytelling: telling above negative events as personally experienced; giving plausible details above negative features of the events.
- (e) Structural emphasis of 'their' negative actions, e.g. in headlines, leads, summaries, or other properties of text schemata (e.g. those of news reports), transactivity structures of sentence syntax (e.g. mentioning negative agents in prominent, topical position).
- (f) Quoting credible witnesses, sources or experts, e.g. in news.

(1993, p. 264)

Such techniques were in evidence in the data analysed, and paying attention to these assisted with the coding of text by exposing, or enabling the detection of, underlying intentions to form opinion, to present stereotypical views of youth, and to retain or facilitate adult dominance or superiority.

The analysis of the submissions for the Alcohol Reform Bill involved a first phase of scanning documents for any references to youth and youth age, since the Alcohol Reform Bill included a wide range of changes other than raising the minimum

purchase age for alcohol. All submissions that expressed a view of young people or stated a position on the age change, were entered into an NVivo database for further analysis. For the driver licensing case, because there were two Bills that related to the change in age, submissions and Hansard Debates on both Bills were used as data for the analysis. Similarly, for the Courts Jurisdiction case, all submissions were used. As in the Alcohol Reforms case, the Land Transport Bills and the Courts Jurisdiction Bills concerned changes other than those related to young people, but the smaller numbers of submissions meant that it was practical to manage the complete texts of all the submissions in NVivo.

Codes were first created deductively, that is, based on views of young people that exist in the literature and that might be expected to be considered in age-related policies. These included codes such as 'competence', 'rights', and 'risk'. In addition to these, a number of other codes were created inductively, that is, out of themes that arose consistently in submissions, such as 'parental responsibility or control' or 'community responsibility'. Other codes were created for themes that rarely appeared in the data but whose absence was seen as being important. For example, the codes for 'Maori' and 'Pacific' young people, and a code labelled 'Youth not one group', which referred to the diversity of young people. Many references were coded to more than one node; for example, the following text from a submission was coded to 'Youth agency or lack of agency' and 'impacts on other areas or people': *'The use of other travel modes should be promoted for young people. If they obtain their license at a younger age, it encourages greater use and reliance on private motor vehicles. By raising the driving age will also assist in reducing car travel to and from secondary schools and extra curricula activities, which adds to peak period congestion and parking around schools and facilities'*. The 'lack of agency' is clear here in that young people will be obliged to use 'other modes of transport' if the drivers' licensing age is raised; the impact on others is indicated by the benefits to other car users of the reduced congestion and improved availability of parking. A Critical Discourse analysis reveals that 'reduced congestion and improved parking' (a social and environmental 'good') obscures the underlying

effect which is the clear benefit to ‘adults’, the ‘other car users’. The nodes developed are listed in Appendix 2.

The Hansard debates were analysed separately using Excel software, and all Advice and other documents relevant to the Bills were analysed in NVivo, using the themes developed for the analysis of submissions.

The Alcohol Reform Bill, the Child Young Persons and Their Family (Youth Courts Jurisdiction and Orders) Amendment Bill and the Land Transport Bills represented recent legislation that related to youth, and along with medical consent, the four case studies provided a range of documentary material that was examined for the views of youth that were represented there. I approached this material with a particular research question in mind, looking for evidence concerning that question; one of the challenges was to extract this evidence, that is, the views about young people, in material that was created for a different purpose. Material that was not related to my question was disregarded, while I sought to detect within the available statements, comments, opinions and references which were originally intended as commentary on the various policies, any underlying views about youth.

Policy and other documents from government departments or ministries, and Briefings, Bills Digests, Explanatory Notes, Select Committee Commentaries, Advice, and Responses to Questions for the legislation cases were all read for information on age setting and young people. Some of this material provided background information to the rationale for legislation, and some included commentary about young people in the policy setting. Views about young people in terms of the appropriateness of the particular age for rights or responsibilities were sometimes referred to, but the focus remained largely on the purpose and implications of the policy, and comment on ages usually focused on alignment of ages in other policy/legislation. These documents are not cited in the analysis sections as the submissions and Hansard debates explored the evidence and provided views of young people in relation to age and the rights and responsibilities for the legislation or policy concerned, but in a more lively and direct fashion. In relation to this, it is pertinent to note that submitters to the Select Committees for the three legislation cases included agencies and non-governmental organisations, as well as individuals,

with extensive experience in the policy area concerned, both in relation to practice and research; they would in many cases be the sources of information and expertise for government policy.

3.4.1 Validity and Robustness

Taking a Critical and Feminist Standpoint approach focused the analysis on youth in the context of the power relations between adults and young people, both historical and current, and that are upheld in the discursive representations of youth. Such an approach inevitably guided or influenced interpretation of the data. Other researchers working with the same data might come to different conclusions. It is inevitable in both qualitative and quantitative research, that how one looks at the world, or what paradigm guides the research, will influence interpretation of data and lead to different knowledge outcomes. For quantitative research, there are criteria of reliability and validity that can be applied to assess the robustness of the research. Other criteria, often described in terms of 'credibility' and 'transparency' are used as measures for qualitative research (Guest, MacQueen, & Namey, 2012; Remenyi, 2012, p. 21).

Maxwell suggests that validity for qualitative research 'pertains to [the] relationship between an account and something outside of that account, whether this something is construed as objective reality, the construction of actors, or a variety of other possible interpretations' (Maxwell, J. A., 1992, p. 283). Validity is seen by Maxwell as not being an inherent quality of a particular method, but rather it 'pertains to the data, accounts or conclusions reached by using that method in a particular context for a particular purpose.' (1992, p. 284). External and internal validity are sometimes used to describe the extent to which the constructions of the researcher match the constructions of those being researched (internal validity) and the extent to which research findings are generalizable to other cases or situations (external validity) (Gray, 2009, p. 190). While some methods for ensuring internal validity are not applicable for a thesis where the research must be completed by a single researcher (such as inter-coder reliability or team debriefings), there are other criteria that are established including acknowledging

and reporting the orientation of the researcher and triangulation (Mabry, 2008; Patton, 2002).

For studies, such as this one, that are concerned with 'deeply understanding specific cases within a particular context' (Patton, 2002, p. 546) 'reflexivity' is an important criteria for authenticity. There is always a possibility that the researcher selects and interprets data in ways that 'conform with the researcher's preconceived notions' (Flyvbjerg, 2006, p. 17). For a study to be credible a high level of consciousness and reflexivity is required to ensure that the researcher's stance does not overwhelm the study and lead to a misinterpretation of the data.

'Reflexivity' is understood as 'the realization that the researcher is not a neutral observer, and is implicated in the construction of knowledge' (Gray, 2009, p. 498), and that researchers need to be aware that their 'stance', their biases and their personal background can shape the research process and findings. One of the ways of achieving reflexivity is for the researcher to set out clearly their approach and predisposition (Gray, 2009, p. 499). For this study, I have made clear the critical approach taken which assumes power relations between youth and adults and that these shape the ways that youth are viewed. I was constantly aware of and reflected on my stance as a critical researcher focusing on the power relations between adults and youth; this reflexivity was in fact aided by the fact that the 'vulnerability' and 'riskiness' of youth was so widely expressed – their 'powerlessness' was normalised in this way and rarely questioned. It meant I was constantly challenged in my interpretation by this context where young people as 'risky or at risk' is held to be a 'norm', a view supported in the literature on 'adolescence' which focuses on abnormalities and risk-taking behaviours (as described in Chapter Two). Against this 'norm' of adolescence as a period of 'storm and stress', it was unavoidable to constantly reflect on how far the unequal status of youth is inevitable because of young people's actual 'riskiness', and how far it is an expression of 'power relations' that benefit adults.

Flyvbjerg refutes the claim that 'the case study supposedly contains a bias toward verification, understood as a tendency to confirm the researcher's preconceived ideas', stating: 'The case study contains no greater bias toward verification of the

researcher's preconceived notions than other methods of inquiry. On the contrary, experience indicates that the case study contains a greater bias toward falsification of preconceived notions than toward verification.' (Flyvbjerg, 2006, p. 21). This is confirmed in my study, as the original aim of seeking a rationale in order to develop guidelines for future age-setting from the cases examined had to be discarded when the data did not yield the evidence anticipated.

3.4.2 Transparency

The data used for the legislation case studies is publicly available; awareness of this understandably imposes an additional need for reflexivity, to constantly consider the possibility that data might have been omitted or disregarded or 'misread'. In addition, because the data was 'created' by submitters – 'the public' – and members of Parliament, there is also an awareness of the possibility that those who created the data might be readers of any subsequent interpretations. Thus, the public nature of the data means nothing is hidden, and there is a greater onus on the researcher to interpret 'fairly'. The transparency of the data and interpretation is also enhanced by my use of extensive quotations, which also provide the reader with examples of the raw data.

3.4.3 Triangulation

Patton (2002, p. 556) describes four kinds of triangulation, one of which is triangulation of data sources. This involves checking for consistency of what people say about the same thing over time and comparing the perspectives of people from different points of view. In this research, the four case studies provided an opportunity to compare different views of young people in quite different contexts as the policies concerned youth of different ages and in four contexts – drinking, driving, justice and medical consent. Study findings are made more credible when themes emerging from the data are consistent across the four cases.

3.4.4 Generalisability

In terms of generalisability understood as 'the capacity of a case to be informative about a general phenomenon, beyond the specific site, population, time, and circumstances studied' (Mabry, 2008, p. 22), because the cases in this study were

intentionally selected to cover a variety of discourses concerning youth, it is argued that the findings from across this range of cases are applicable more generally and not confined to these particular cases. Schofield argues that 'there is broad agreement that generalizability in the sense of producing laws that apply universally is not a useful standard or goal for qualitative research' (Schofield, J. W., 2002, p. 179). It was not the intention of this study to seek 'universal laws' but rather that the cases would be informative about a general phenomenon.

3.5 Summary

Using the methods described and analysing the data from within a critical and feminist theoretical framework yielded five major themes: Diversity; Rights, Responsibilities and Agency; Competence; At Risk and Risky; and Age. These themes encompass the views of young people and their status in New Zealand society, as expressed by submitters and MPs and in related documents across the three legislation case studies. The theme 'Diversity' describes the ways in which young people were seen as being different in terms of gender, age, socioeconomic status, or ethnicity. 'Rights, Responsibilities and Agency' includes the ways in which young people's rights were depicted, views about whether they were 'responsible' or not, and views about any responsibilities held by them, or that should be held. It also includes a section on Parental Rights, Responsibilities and Roles, which was present in the data and often placed in opposition to youth rights and responsibilities. The 'agency' of young people includes depictions of young people's ability to act independently, and includes their ability or freedom to 'make choices'. The theme 'Competence' describes the ways in which young people were seen as being 'inherently' competent or not, and also whether they were seen as capable or not to undertake tasks or responsibilities. 'At Risk or Risky' was the major theme, and represented very widely-held views, which also dominated other views of young people. Young people were very commonly seen as being either vulnerable to risk created by others, or as representing a risk to themselves and others by their own behaviours. The theme 'Age' represents the ways in which MPs, who as legislators finally decide age limits, viewed age in relation to young people and age limits in legislation.

In the next Chapter I provide detailed discussions showing how the data demonstrated these themes. Accounts of the analysis of each of the three legislation case studies are presented under these theme headings. These are followed by an account of the analysis of the documents relevant to the medical consent case study.

Chapter Four: Findings

This chapter describes the findings from the analysis of the submissions to Select Committees and the Hansard debates for the three legislation case studies, followed by findings from the analysis of the case of medical consent.

The Four Case Studies

Alcohol Reform Bill 2010	The Alcohol Reform Bill was a response to the Law Commissions 2010 report, <i>Alcohol in Our Lives: Curbing the Harm</i> . The objective of the Bill was to minimise alcohol related harm and it contained a number of provisions related specifically to young people. These included a graduated age for the purchase of alcohol, restricting the alcohol content of ready-to-drinks, allowing only parents/guardians to provide alcohol to under 18-year-olds, and proposed restrictions on advertising alcohol in ways that would appeal to minors.
Land Transport (Driver Licensing) Amendment Bill 2007; Land Transport (Road Safety and Other Matters) Amendment Bill 2010	The 2007 Bill proposed to raise the driver licensing age from 15 to 16 years and to extend the length of the learner licensing period from 6 to 12 months. The 2010 Bill also proposed to raise the minimum licensing age from 15 to 16 years and it introduced a zero permissible breath/blood alcohol concentration for drivers aged 20 years of age.
Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill 2009	The aim of this Bill was to extend the Youth Court's jurisdiction to cover the most serious 12 and 13-year-old offenders, and to allow a wider range of sentencing orders to be made for dealing with offenders. These orders could include a requirement to attend a rehabilitative or education programme, such as a parenting programme, mentoring programme, or alcohol and drug rehabilitation programme.
Consent to Medical Treatment	In New Zealand, there is no Act which stipulates an age below which children cannot give consent to medical treatment. The Code of Health and Disability Consumer's Rights states that every consumer is presumed competent to give informed consent and there is no age limit on the presumption of competence. This was therefore a case study where there was no age limit.

As described in Chapter Three, the analysis of documents, submissions and Hansard debates was informed by Critical theory and critical discourse analysis, as well as Feminist Standpoint theory. This meant that while the core premise of the data was concerned with 'age change', the analysis sought to detect and expose the underlying power relations that were represented within the discourses available in the data. While there were some 'young people' who submitted on the Driver Licensing Bills, the data mainly represented the views of 'adults'. Analysing the data from a critical and feminist standpoint meant searching for underlying meanings that exposed the status of youth in relation to adults, for the presentation of stereotypical views of youth, and for views that aimed to facilitate or maintain adult dominance or superiority. Conceptualisations of young people that were drawn on to support or oppose an age change were understood as reflective of, or constrained by, the position of adults situated in dominant power relations with young people.

The findings are presented here under the main theme headings: Diversity; Rights, Responsibilities and Agency; Competence; At Risk or Risky; and Age. Although each legislation case study concerned age change, different arguments were drawn on in the submissions and Hansard for the different cases studied, and the ways in which young people were represented is made richer by considering them within the locus of the particular case study.

4.1 Diversity

A surprising and distinguishing feature across all the three legislation case studies was the extent to which young people were regarded as an undifferentiated group. This was very much the case in the data analysed, but even in the literature ‘young people’, ‘youths’, and ‘teenagers’ are often referred to as though they are a group whose age, which actually varies from about 13 to 25 years (13 to 19 years for ‘teenagers’), creates commonalities that overwhelm any other variances such as gender, ethnicity, disability, socioeconomic status, partnered or single, or parental status and whether they are at school, engaged in post-school study, or in work. When an age limit was under debate, those above and below that particular age might be described as having quite different attributes, but within those two groups, youth were depicted as a uniform rather than a diverse group of people. Differences which commonly feature in policy planning include ethnicity, disability and socioeconomic status. These were almost never raised, and there was rarely reference to differences by age within age groups, just an assumption that those under 16 or 18 years, for example, are ‘different’ from those over these age limits. The times when a distinction was made are therefore notable and are discussed below.

4.1.1 Alcohol Reform Bill

In the submissions and Hansard debates reference was sometimes made to ‘responsible’ and ‘irresponsible’ young people, with some suggesting that the ‘responsible’ young people between 18 and 20 years of age should not be penalised because of the behaviour of a small minority of young people who are *problem youth drinkers* or who end up *in A&E on a Saturday night getting their stomach pumped*. Another suggested: *I think it would be unfair to put the majority of teenagers that drink responsibly out just because some people abuse alcohol among us. It is like making it R20 to buy spring onions because a lot of teenagers are stuffing them in people's letterboxes*. One suggested, on the contrary, that while there were some young people who were *mature enough to have a drink with their parents or friends and not become disgustingly intoxicated, unfortunately the*

majority of the young drinkers do not have the maturity to realize when they have had enough.

Some also distinguished between young women and men in terms of drinking behaviour, sometimes noting that alcohol created a propensity for violence amongst young men, but many noted an increase in binge drinking amongst young women, and in particular suggested that it exposed young women to sexual assault, sexually transmitted infections and unwanted pregnancies. Submissions also often noted that young women risked exposing their babies to the chance of Foetal Alcohol Spectrum Disorder (FASD) if they became pregnant and continued drinking. Tertiary students were singled out as being more *hazardous* drinkers than their peers. Māori youth were mentioned as beginning to drink earlier and being at greater risk from alcohol related harm than pākehā:

This alarming issue fits with the disproportionate representation of Māori under 24 years having a much higher level of alcohol related harm. The hazardous pattern of binge drinking and the increased availability of alcohol within our communities and the age of our first exposure to trying alcohol is significantly younger than non Māori. (Te Runanga o Aotearoa, New Zealand Nurses Organisation).

There was also reference in submissions to the increasing use of alcohol by Pacific young people, and it was noted that although Pacific people were more likely to be non-drinkers, they had more concerning patterns of drinking. There was one submission that distinguished between the drinking patterns of young people from different Pacific ethnicities, Cook Islands Māori youth, Niuean youth, young Samoan males and females and Tongan females.

One submission noted that young people who were religious or participated in religious activities were less likely to abuse alcohol.

Some Members of Parliament in the Hansard debate on this Bill also expressed concern for young Māori drinkers:

For Māori there is greater likelihood of harmful effects from alcohol than for non-Māori, twice the rate of severe alcohol-related problems, and four times

the rate of alcohol-related deaths. Yet Governments of both persuasions continue to tinker with a framework dedicated to achieving bugger all. (Hone Harawira, Hansard, Alcohol Reform Bill, First Reading).

Māori make up a disproportionate number of the clients in alcohol and drug treatment services. Māori tamariki and rangatahi are seen by alcohol and drug treatment services at a rate of at least three times the rate of non-Māori the same age. (Te Ururoa Flavell, Hansard, Alcohol Reform Bill, In Committee).

4.1.2 Land Transport (Road Safety and Other Matters) and Land Transport (Driver Licensing) Amendment Bills

The main distinction made in this case study was between rural and urban youth. It was often stated that youth in rural areas did not have access to public transport so they would be particularly negatively affected by raising the driver's licensing age from 15 to 16 years (which meant in effect the restricted licence could not be achieved before 16 and a half years and a full licence before 17 and a half years with an advanced driving skills course, otherwise 18 years). It was suggested by a number of submitters that rural youth would experience greater disadvantage in terms of attending social and sporting events and in undertaking employment. The contribution of rural youth to farm work was mentioned as well, illustrating the additional hardship on these young people and their families and on regional economies if they were not able to drive.

A submission from the Automobile Association suggested that support and funding 'to make professional driving instruction and supervised practice more accessible to all, particularly disadvantaged groups with high crash risk or with no access to supervisors (e.g. young Māori, foreign students)'.

It was noted that some young people were employed, at times with jobs that involved driving, and these young people did not always have other means of travelling between home and work, and occasionally submissions referred to other responsibilities that some young people had, that they might be parents for example, or needed to work to supplement family income.

In the Hansard debates, speakers referred to the negative impacts on young people of raising the driver licensing age, particularly for rural youth and their families since they did not have the option of public transport and distances to activities meant walking or cycling was not practicable: *But there are some differences in rural communities—and I happen to live in one—where public transport is not available, and where distances from activities are much greater.* (Jeanette Fitzsimons, Hansard, Land Transport (Driver Licensing) Amendment Bill, First Reading). MPs noted the impact in terms of jobs and activities and some also suggested that rural families and communities would be negatively affected: *Country kids often assist with stock moving and droving on the farm. They might also help move stock on the road, acting as sentinels to slow down oncoming traffic, using either their farm bikes or sport utility vehicles.* (Rahui Katene, Hansard, Land Transport (Road Safety and Other Matters) Amendment Bill, Third Reading).

Some MPs noted that for urban young people there could be similar disadvantages since often they did not have access to public transport either, and some noted that with both parents working they do not have time to drive their children around:

Parents do not have time to leave their jobs to come home to pick up their children, when those children have come home on the bus, and take them back to school, or to pick children up from school because those children have had to stay behind for a music lesson, or whatever. David Bennett is quite right. The problem does not necessarily apply just to young people in rural areas, who are particularly challenged by lack of public transport; it also applies to our young people in urban areas, because sometimes they go to schools that are well outside the area where they are living, or that do not connect them to available public transport. (Sandra Goudie, Hansard, Land Transport (Driver Licensing) Amendment Bill, First Reading).

Some speakers raised the issue of 16-year-olds who were fully employed, possibly doing shift work, some making essential contributions to the family income, but who would be unable to get to work without a driving licence. Others noted that employment opportunities and some courses would be restricted since some jobs

required a driver's licence and some courses required a probationary driver's licence.

Some MPs noted the limitations on young people in terms of the freedom and independence associated with being able to drive themselves, one referring to getting a licence as an *important part of my journey to adult life*, and another suggested that *if they had a bit more freedom, they would keep out of trouble*. As in the other case studies, there was reference to most young people being responsible and that raising the driving age *will seriously disadvantage many youngsters who are very responsible and who are driving cars responsibly in the countryside*. (David Shearer, Hansard, Land Transport (Road Safety and Other Matters) Amendment Bill, In Committee). The higher proportion of young Māori involved in fatal crashes was raised but it was suggested that rather than raise the driving age the response should be to improve driver training and make it more accessible for rangatahi.

Other MPs argued that the benefits outweighed the disadvantages for young people, and raised the issue of safety, stating that raising the driver licensing age by one year *will save at least four lives a year*. It was also claimed that not many young people would be disadvantaged and that there were alternatives for them: *there were all the ways that we got to school when we were young*. It was also suggested that young people should use alternative forms of transport that were healthier and would reduce congestion on the roads.

4.1.3 Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill

Submitters on this Bill differentiated young people by age – those of 12 and 13 years being seen as having different needs from those who were 14 years or older. A number of submissions expressed concern that the changes suggested in the Youth Courts Jurisdiction Bill would mean that 12- and 13-year-old children would be mixing with older offenders, thus placing them at risk of being influenced by these older, criminally inclined 'peers', or at risk of physical and sexual abuse. Reference was made to the younger age group being *developmentally immature and vulnerable to the influence of others*; that *adolescence is a time of rapid development, and the issues faced by young people entering this phase (at around*

12 years) will be very different from those who are well into adolescence (i.e. 14 + years). Submitters noted the likelihood of 12 and 13-year-olds being put with 14 to 16-year-old criminals and on remand in the supervision with residence; and that 12 and 13 year old 'children' who were offending were likely to be running with older youths and clearly are in need of proper care and attention.

Submissions on this Bill also referred to the *high prevalence of mental health problems amongst young offenders*, and one noted that young female offenders were more likely to have mental health problems than young male offenders. It was also noted that young male and female offenders exhibited different types of mental health disorders and needed different treatment environments. One submission noted the different needs for treatment and rehabilitation amongst different young people:

Residential sentences tend to regard the young people as a homogenous group whereas they have individualised, multi-dimensional needs and the treatment responses need to accommodate this if crime is to be reduced.

There had been suggestions that processing 17-year-olds in the Adult Court contravened UNCRC and that 18-year-olds should come under the jurisdiction of the Youth Court. The New Zealand Police Association submission opposed this suggesting that there were significant differences, including physical and social as well as in terms of decision-making, between 17-year-olds and younger people.

Sometimes there was a distinction that reflected the different types of crimes committed. For example, one submitter noted that the majority of youth who sexually offend can be treated successfully and that most do not go on to commit further sexual offences as adults, *unlike youth who have offended seriously in non-sexual ways ... who show high rates of further serious offending.*

A number of submitters and some MPs noted that a high proportion of young offenders, and therefore also of the 12 and 13-year-olds that the Bill referred to, are Māori and Pacific. Some suggested that this was a social issue and needed a social response. Some noted that because of the higher rates of apprehension of Māori and Pacific young people, the changes in the Bill would have a greater impact

on these communities; others suggested that because of the high proportions of Māori and Pacific affected, ‘culturally responsive’ options should be available to the Courts.

One MP noted:

Young Māori offenders will suffer the worst from these measures. Research presented by Judge Becroft in May last year shows that young Māori offenders are more likely to come to the attention of the police, even though their offending is less serious than that of their Pākehā counterparts. Other New Zealand statistics show—by way of example, in diversion rates—that young Pākehā are four times more likely to get diversion than young Māori. Further research from Christchurch shows that if people are Māori, they are more likely to be stopped and arrested than if they are Pākehā. The system has filters that over-identify Māori, leading to higher imprisonment rates and longer sentences than those for non-Māori ... It will mean that many of our young Māori men and women will spend a large proportion of their youth in institutions that will encourage a greater chance of reoffending.
(Kevin Hague, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, First Reading).

4.1.4 Summary: Diversity

In the submissions and the Hansard debates in all three case studies, one of the most striking things overall was that young people were treated as if they were a homogeneous group. Young people as a diverse group having all the differences that exist amongst people in general was rarely considered, so the times when differences were raised were notable.

The main distinction made was in age, where those above the age-standard being discussed were considered to be different from those below that age. However, there was little uniformity across the case studies in terms of the attributes of a particular age.

Gender differences were referred to in relation to the effects of alcohol and binge drinking, ethnicity was raised in relation to youth offending, and the differences in

needs of rural and urban youth in relation to driving. Occasionally there were other references to differences, such as mental health issues for young offenders, or higher rates of binge drinking amongst tertiary students.

However, the distinctions that usually appear when legislation or policies are discussed, such as gender, ethnicity, disability, or socioeconomic differences, were mainly absent. In addition, there was rarely any reference to what young people were doing – at school or engaged in post-school education or training, or in employment, whether part-time or full-time, or other roles that they may have, such as being parents or partners or carers.

That youth were viewed as an undifferentiated group stands in stark contrast to the approach taken in New Zealand social policy, which consistently refers to ethnic, socioeconomic, occupation and age differences. As is raised later in the discussion of findings, it reflects the overwhelming view of youth as a 'risk' group. The case of medical consent was the one case where young people were viewed and considered as individuals.

Feminist standpoint theory can provide an explanation for the grouping of young people in this way, since seeing young people as an undifferentiated group enables the 'more powerful' group, adults, to generalise about 'youth', attributing to the group as a whole features that justify discrimination. They can then be seen as 'other', an 'other' that has limitations and poses risk, and restrictions can then be imposed on them with minimum challenge or disruption.

4.2 Rights, Responsibilities and Agency

Analysis of the data across the three legislation case studies revealed contradictory and often ambiguous ideas regarding young people's rights and responsibilities. While in many cases there was either acceptance of, or a failure to question the idea that young people have lesser rights than adults, there was little reference to any age at which it was assumed that a young person was now an adult or was entitled to the same rights as adults. Some commented on the 'unfairness' of prohibiting all 16-year-olds from driving or preventing 18-year-olds from purchasing alcohol, when the problems around motor vehicle crashes and binge drinking were caused by a minority. There were also a few who raised issues of different young people having different needs, abilities or competence, as described in the previous section on 'Diversity'.

There were some references to 'being responsible', usually expressed in terms of young people being 'irresponsible' and so not yet ready for adult rights, and occasionally it was suggested that young people needed to *learn* to be responsible, for example by being allowed to drink under the supervision of 'responsible adults'. Some also argued for changing young people's behaviour as a way of attending to problems that originated in the wider society, such as the 'binge drinking culture' in New Zealand; others saw changing young people's behaviour as leading to improved outcomes for a future society. Young people in these views were 'held responsible' for the behaviour and activities of a wider society. Some argued that young people had better outcomes when given a sense of personal responsibility for their own welfare and some suggested that they needed to gain experience if they were to learn to make 'good decisions'.

Some held that most young people were 'responsible' and should not have their rights curtailed because of a minority of 'irresponsible' young people; another view was that many, or all, young people shirked their responsibilities and needed to be held responsible for their behaviour, which overwhelmed any rights they might claim. Others suggested that the 'reduction of harm' overwhelmed rights claims.

4.2.1 Alcohol Reform Bill

4.2.1.1 Equating with Other Rights

For the case of the Alcohol Reform Bill, the main 'rights' argument that was raised was in relation to setting the alcohol purchase age at 20 when young people under that age had other rights and responsibilities, such as the right to vote, make a will, join the police force or the armed forces.

A majority of people surveyed for this report have stated that it is their right to be able to consume alcohol and that they believe that the police are breaching their basic human rights. This is because they can drive at 15 (with a license), have a gun (with a license), get an abortion (with two doctors consent), get married under 18 (with parents' consent), have a baby at sixteen, but they are not allowed to drink alcohol at their after ball parties, even though they can be given so much other responsibility as already stated. (Submitter AR194).

Raising the age is not fair. On your 18th birthday you are given a raft of rights and you are given a raft of responsibilities. You can vote, you can fight, you can smoke, you can gamble, you can even get elected to a council ... but under these changes you could not go and buy a bottle of wine to have with dinner. (Gareth Hughes, Hansard, Alcohol Reform Bill, In Committee).

Given that 18-year-olds have all the responsibilities of adults and socialise with adults, they find any discrimination against them to be totally arbitrary ... there is no justification for the state to restrict young people's rights beyond those afforded to other adults. (Keep It 18).

4.2.1.2 Arguments for Overriding Rights

However, others suggested that young people had demonstrated that they were not capable of drinking responsibly, and some suggested that the harm to young people outweighed any rights arguments:

ADANZ [recommends that the government] not allow its concern for the drinking and voting rights of young people to over-ride the real and significant harms that have occurred since the lowering of the purchase age.

(Alcohol Drug Association New Zealand (ADANZ)).

In addition, some ignored the rights of 18 to 20-year-olds arguing that the drinking age should be raised to 20 years not because of the drinking patterns or the wellbeing of 18 to 20-year-olds, but because young people of that age group were more likely to mix with under-18-year-olds and act as suppliers of alcohol for under-age young people. In order to prevent under-18-year-olds from drinking, it was argued, alcohol should be unavailable to 18 to 20-year-olds.

The reason I am going to vote for the split age² is not that I think 18- and 19-year-olds are the source of the problem ... I think we need to put a gap between people who are able to purchase alcohol and those very young teenagers who are drinking more and more. (Iain Lees-Galloway, Hansard, Alcohol Reform Bill, In Committee).

Sometimes the rights of young people were discounted in favour of the need to protect young people by enhancing the rights or responsibilities of adults:

It is not about restricting their rights; it is about enhancing the rights of those who love and care for them to guide them in safe and responsible choices as they move into the adult world. (Tim MacIndoe, Hansard, Alcohol Reform Bill, In Committee).

I will vote for 20 ... I could not look any health practitioner in the eye and say that I did not do everything I could to curb the harm that alcohol does. I do not think this is an anti-young person position to take; quite the contrary, I think it is a pro-young person position to take. (Hon. Maryan Street, Hansard, Alcohol Reform Bill, In Committee).

Some submitters argued in favour of keeping the alcohol purchase age at 18 years because of the importance of 'young backpackers' to the tourism industry. It was suggested by others that under-20-year-olds should still be allowed to work in cafés and restaurants but only sell alcohol under supervision or have their duties restricted, thus focusing on the needs of the hospitality industry and sidestepping

² The split-age option refers to the proposal that 18-year-olds could drink in on-licence premises but could not purchase alcohol 'off-licence'.

any discussions about how this reflected on the rights or responsibilities of the young people concerned.

The international youth market (i.e. 18-19 year old backpackers) is an important cohort in the visitor mix ... To not allow them access to alcohol on licensed premises would be a negative factor in attracting them to New Zealand and the regions. (Regional Tourism Organisations New Zealand).

[Backpackers] are a critical source of labour not only for the tourism and hospitality industries, but also for many other sectors ... WHT recommends that 18–20yr olds to continue to be allowed to serve alcohol in licensed premises but only under strict supervision by a duty manager (over the age of 20). (Waiheke Health Trust).

Under-20-year-olds would continue to be allowed to be employed in non-restricted areas (for example, supermarkets, cafés and restaurants) and for certain duties in restricted areas, such as cleaning and stocktaking. (Western Bay of Plenty Youth Access to Alcohol (YATA)).

One MP noted that sometimes Parliament does pass legislation that discriminates against people with regard to age, but *as someone who values freedom I believe that the evidence must be there and the threshold must be high* (Nikki Kaye, Hansard, Alcohol Reform Bill, In Committee). The Select Committee requested from the Ministry of Justice an explanation of the implications of a split alcohol purchase age (that would allow on-licence alcohol purchase from age 18 and off-licence alcohol purchase from age 20) from the perspective of the New Zealand Bill of Rights Act 1990. The Ministry's response noted the 'excessive drinking and intoxication' that contributed to 'our crime rate, our injury rate, our road crash statistics, and reducing our overall level of health' and that 'heavy alcohol consumption and consumption by young people significantly increase[ed] the risk of alcohol-related harm.' It also noted that the highest proportion of alleged offenders affected by alcohol are aged 17-20. On these grounds, it concluded that the split age proposal satisfied the Act's criteria for 'reasonableness'. It also decided that it was 'proportionate', since the other measures to reduce harmful youth consumption (such as raising the purchase age to 20 years) involved greater

infringement of the right against discrimination, and that ‘Officials are not aware of measures which target only harmful youth drinking, as opposed to all youth purchasing’ (Ministry of Justice, 2011). Apart from the evidence regarding ‘alleged offenders affected by alcohol’, the arguments considered by the Ministry do not refer to age, but only to ‘young people’.

4.2.1.3 Taking Responsibility and Being Responsible

Some speakers suggested that young people were being ‘targeted’ or used as scapegoats when the problem really lay with the *binge drinking culture* or the *serious cultural, historical problem our country has with alcohol*. It was also suggested that although the problem was widespread and not restricted to youth, that the majority of problem drinkers were adults, or that increasing the age would not do anything to address the *alcohol harm in this country*, some suggested that raising the age was a *starting point* and that young people had a responsibility to be a part of a culture change:

If we are to make meaningful change, we need to start with the young... and I want to see our young leaders bringing about that culture change ... What I do not yet see is young leaders taking the lead in developing and driving that responsible drinking culture. (Michael Woodhouse, Hansard, Alcohol Reform Bill, In Committee).

Those who opposed raising the alcohol purchase age often argued that there were at least some young people who were ‘responsible’ and should not have their ‘rights’ infringed because of the behaviour of an irresponsible minority.

The majority of responsible teenagers should not have to pay for the smaller percentage who abuse alcohol consumption and cause problems. (Submitter AR144).

Raising the purchase age creates a double standard of adulthood and penalises the majority of young people who aren't in A&E on a Saturday night getting their stomach pumped. (Submitter AR42).

... whilst we are, at this particular stage, considering only the aspect of purchase age, I want to speak on behalf of the enormous percentage of 18

and 19-year-olds who are acting responsibly. (Cam Calder, Hansard, Alcohol Reform Bill, In Committee).

Some who opposed a zero BAC for under 20-year-olds also referred to 'responsible' young people:

This bill could be construed as a covert way to prevent "responsible" young people from drinking alcohol at all, as it would restrict their freedom to a disproportional amount ... You expect them to vote, heaven forbid, to fight in a war, you let them drive a lethal weapon at 16 years, yet you wouldn't trust the majority of responsible young people to stick with the current, sensible youth limit. (Submitter RS2).

Others suggested that young people were not responsible, or were not responsible drinkers:

Research amongst 18-year-olds at Otago University shows that they are, for the most part, not capable of responsible drinking. (Submitter AR245).

4.2.1.4 Agency

'Agency' is used here as the ability of individuals to 'make (conscious or unconscious) choices among an available set of structurally provided alternatives' (Hays, 1994, p. 63). There were a number of ways in which young people were seen as making such choices. It was not suggested that young people in making 'choices' were active in reconstructing their social worlds, rather that they were making selections from the options available. There was some creativity in how they might react, but it was not 'structurally transformative'.

While many submitters suggested that a significant contributor to young people's drinking was their distinct susceptibility to advertising and marketing, which it was suggested deliberately targeted youth, and many of these submissions described naïve and vulnerable youth, others were more likely to see young people as capable of acting independently of alcohol marketing. They suggested that there was little point in restricting the availability of alcohol such as RTDs (Ready to Drink alcohol mixes), since in that case young people would turn to other forms of alcohol, such as spirits. Some also suggested that there was little point in raising the purchase

age, since those under the age would just find other ways of accessing alcohol. These arguments suggested that young people are capable of making decisions about their own drinking choices, that they have sufficient initiative to find replacements for RTDs, and that in spite of difficulties with availability they will continue to drink as they wish. In other words, when contrasted with the arguments regarding advertising, in this case they are deemed impervious to coercion.

There were a significant number of submissions that referred to young people having some 'choice', about what they did, such as choosing to use alcohol, or their choices about how they used alcohol. Some suggested that young people knew there were negative aspects to alcohol use, such as hangovers, loss of inhibitions or aggression, but also positive aspects such as that it was a social lubricant, and that binge drinking was 'normal'.

Young people's susceptibility to environmental influences was noted in some submissions that described the wider culture that influenced or affected young people:

Young people are often blamed for poor social behaviour and adverse outcomes while surrounded by a strongly permissive environment. It is not they who are being irresponsible! (Fetal alcohol network).

We complain about youth alcohol abuse but then foster a materialistic, individualistic culture conducive to reduced social cohesion, trust, confidence etc. In this way, we fail to help our young people to value themselves and increase individual isolation. We know that people who do not value themselves are more likely to undertake harmful activities, often to feel more at ease or to numb bad feelings. (New Zealand Council of Christian Social Services).

Other arguments that focused on contextual influences included those that advocated changing the 'drinking environment' so that young people would be discouraged from drinking or encouraged to 'drink sensibly'; supporting the 'split-age purchase' option which would enable young people to drink in a 'civilised'

environment; restrictions on the marketing and advertising of alcohol which affected young people's perceptions of alcohol and promoted drinking; the need for education around alcohol and its effects; and the need for good role models from adults, whānau and families. Some submitters suggested that young people were susceptible to peer pressure to drink, or that they were lured into drinking with sweet and cheap RTDs.

There were thus two contrasting ideas about young people's agency presented in submissions; in one view, they were understood as having at least a degree of agency in that they would find ways around the law, and in the other they were viewed less as having agency and more as victims of, or at least particularly susceptible to, an alcohol-promoting environment.

4.2.2 Land Transport (Road Safety and Other Matters) and Land Transport (Driver Licensing) Amendment Bills

The issue of raising the Drivers' Licensing age was rarely viewed as a 'rights' issue, although a number of submitters and MPs did raise the issue of the discriminatory effects on some young people. For example:

Raising the driving age from 15 to 16 is a significant move that takes an important right away from people based on their age ... Any statistics showing a higher rate of traffic accidents, traffic offences or driver deaths of 15-year-olds as compared to any other year age group would have to be overwhelming before any move is made to disenfranchise a year age group because there would still be many people in that year age group who drive safely and who need to be able to drive to contribute and participate in our society. (Submitter RS27).

4.2.2.1 Arguments For and Against Overriding Rights

For some, the negative impact on young people of the age changes were viewed as acceptable. For example, a submission from the Injury Prevention Research Unit, University of Otago, provided evidence from its own research in support of the argument that the effects of raising the driver licensing age (such as on the mobility

of young people, especially rural young people, and on their parents) had been exaggerated. It was determined that:

... data from the New Zealand 2006 census ... showed that 26% of 15-year-olds and 40% of 16-year-olds were employed either part-time or full-time. On the day of the 2006 Census, Tuesday 27 March, only 6% (n=1005) of 15 year old workers and 19% (n=4692) of 16 year old workers drove to work.

They concluded that *it would seem that the proposed changes to the law will have relatively little impact on travel to work for the majority of young people.* However, a proposal that would prevent almost a fifth of adults who drove to work from being able to commute by car is unlikely to be considered a 'little impact'.

The Automobile Association noted the potential impact for school leavers:

Raising the Restricted age prevents significant numbers of school leavers from the independent mobility necessary for driving to work for a year, because a Learner permit does not allow a person to drive themselves to work ... We have seen no evaluation of cost of the flow-on impacts on young people's careers, productivity or social adjustment of a year's loss of independent mobility.

It went on to note: *The University of Otago Injury Prevention Unit has acknowledged to the AA that its research report significantly underestimated the numbers of young drivers affected (this report is referenced by the Ministry of Transport) and which thus erroneously concludes the impact is not significant.*

Others noted the positive effect for young people of obtaining a drivers' licence:

In a sense, gaining a driver's licence for young people is their first step to independence. It is a way in which they can positively engage in community activities, positively engage in terms of supporting their own independence and getting a job, and positively engage in socialising with the broader part of the community that they are involved in. I think that more social connectedness of young people to their community is a good thing, and that we should find ways to encourage more of that. (Hon. Nanaia Mahuta, Hansard, Land Transport (Driver Licensing) Amendment Bill, First Reading).

Both submitters and MPs reported on the different effects raising the driver's licence age would have on rural youth compared with urban youth. Some suggested that rural youth could be treated differently as their transport needs were different from those of urban youth. Some also suggested that young people would lose the opportunities to take on responsibilities, such as their independence from their parents for transport, or to engage in employment. Others noted that some young people had 'adult' responsibilities and the absence of adult rights could be discriminatory; one example provided was that of a 16-year-old mother whose employment meant her shift finished late at night and she needed to drive a car to get home. Federated Farmers noted the effects on young people's careers:

A further point to consider is that a heavy vehicle license can only be obtained after a full car license has been obtained. Adding one or two years to the age at which a learner license can be obtained would also add one or two years to the age at which a heavy vehicles license can be obtained. This could hamper the career development of young people wishing to get into the transport industry or, more immediately for farming. (Federated Farmers of New Zealand).

Some submitters suggested the use of exemptions for some young people, either overlooking or ignoring aspects such as responsibility or competence in relation to age:

If the driving age does get raised, Stand Up advocates for special exemptions to be given to young people on a needs basis – young people who live in provincial or other areas who wouldn't be able to rely on their parents to drive them to the places they need to go, or where public transport is poor or non-existent. (Stand Up Youth Union Movement).

Introducing a 6.00 pm curfew for the first stage of a restricted license (maybe 6 months). This will enable them to take the car to school and drive home after any after school activities or after school work. It will also enable 16-year-olds who have started full time work to actually get to and home from work. There are no public transport options for many of us. (Submitter DL23).

The Council understands that there will be some people in rural communities, or young people with jobs that involve driving who will be against raising the driver licensing age. However, instead of leaving the age at 15 years, to account for these select few, consideration should be given to whether, by application to the Ministry of Transport, or something similar, affected persons can be given some form of limited licence following an appropriate assessment of competence to cater for their specific circumstances. (Christchurch City Council).

As in the Alcohol Reform Bill, the ‘rights’ issue was also framed in terms of protecting young people: *We are not talking here about removing a right from New Zealanders; we are talking about protecting young New Zealanders* (Hon. Peter Dunne, Hansard, Land Transport (Driver Licensing) Amendment Bill, First Reading).

As in other cases, there were two opposing views expressed regarding young people’s rights: that all young people should not *be penalised by the actions of a few* while others suggested that restrictions on young people would create benefits: *Lives will be saved when the driving age goes from 15 to 16, and when there is a harder pathway to full licensing.*

An interesting comparison can be drawn between views about the rights of young people and those of other age groups in a submission from the Christchurch City Council which made the following suggestions regarding road safety and older drivers:

The most important initiative supported by the council is to increase road safety for older New Zealanders through improved roads and roadsides, followed by expanding road safety education targeting older drivers.

Additional initiatives recommended include more regular driver testing during senior years to assess reaction to situational and environmental factors. For example, reaction to increased traffic or urban and rural differences. This could include coaching programmes to help older drivers adapt to new situations or to revise old habits. The promotion of public

transport 'Gold Cards' may also assist older drivers in their decision-making about transport options.

In the approach taken here the emphasis is on changing the driving environment (improved roads and roadsides), as well as providing additional education, regular testing and coaching. Even the suggestion that some might be better not driving is moderated by the idea that the older driver might be 'nudged' into a non-driving decision by the promotion of free public transport. This approach stands in stark contrast to the views of young drivers that appeared in most of the submissions, which did not consider the driving environment, and were complacent about the effects raising the driving age might have on young people.

One of the other changes suggested in the Land Transport Bill 2010, was a BAC (blood alcohol concentration) level of zero for drivers under age 20. This was supported by many submitters, but some opposed it on the grounds that most 18 and 19-year-olds made sensible decisions around drinking and driving but they would be penalised by the behaviour of a minority if the BAC level was lowered to zero.

A zero limit was viewed by some submitters as too extreme and impractical but others disagreed and supported a zero BAC limit for young people as it would send a message that even small amounts of alcohol *reduce a person's ability to pay attention to the driving task*. It was also suggested that because *young drivers have to allocate more of their attention to the driving task than experienced drivers, the effect of alcohol on their driving performance is greater* (Federated Farmers), thus implying that there was a difference between 'young drivers' and (other) adults in this way. There were contradictory views about the 'fairness' of this proposal and many supported lowering the BAC level for all drivers. Some noted the discriminatory element of lowering it for young people only:

YI would like to reiterate its argument that it is unfair to enforce laws that are based on age ... we advocate that age shouldn't be used since it says drivers of the age 20 and above are more responsible which cannot be proven. (Youth Infusion Hutt City Council Youth Council).

If this Bill proceeds to reduce the BAC for under twenties to zero or near zero but does not reduce the BAC to 0.05 for adults it will be discriminating unfairly on the basis of age. (Submitter RS20).

Another submitter suggested:

Age discrimination for those under 18 is ok. Discriminating against those who are 18 and over is ETHICALLY WRONG, because: They are perfectly capable of driving with some alcohol in their system. They can purchase alcohol. They are adults, barely teens. At the age of 18 they have sufficient decision making skills. (Submitter RS21).

4.2.2.2 Responsibility

Arguments supporting the ‘rights’ of young people were often immediately counteracted by a reference to ‘responsibility’:

The issue is that, yes, there is a right to mobility, but with that right comes a responsibility to be a good, safe young driver, and that is what I want to see become the culture of New Zealand—as it is in most other countries. (Hon. Harry Duynhoven, Hansard, Land Transport (Driver Licensing) Amendment Bill, First Reading).

I am very aware of the pressure that parents come under on this issue. But with rights come responsibilities (Hon. Harry Duynhoven, Hansard, Land Transport (Driver Licensing) Amendment Bill, First Reading).

However, these responsibilities were not described by the speaker.

4.2.3 Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill

4.2.3.1 UNCRC Rights

The UNCRC was frequently cited in support of children/young people’s rights in the Youth Courts Jurisdiction Bill case. Submitters suggested that the changes were incompatible with the UNCRC, in particular by setting too low the age at which a child is regarded as having the capacity to infringe the penal law.

The Children's Commissioner for example, opposed the amendments that would lower the age of criminal responsibility for the following reasons:

The proposal is inconsistent with UNCRC, particularly:

- *Article 40(3)(a) of UNCRC which specifically recognises that 12 and 13-year-olds do not have the cognitive, emotional and social development to comprehend and accept adult responsibility for their actions.*
- *the establishment of a minimum age below which it is presumed children have the capacity to infringe penal law. The Children's Commissioner and the United Nations Committee on the Rights of the Child (UN Committee) agree that 12 or 13 years of age is too low and these offenders should therefore be dealt with via the existing care and protection provisions of the CYPF Act.*
- *the argument put forward in this Bill that some 12 and 13-year-olds should be dealt with in the same way as young and/or adult offenders. The Children's Commissioner submits this argument directly contradicts Article 40(3)(b) which promotes the treatment of children and young people who offend without resorting to formal judicial proceedings.*

Other submitters also noted that this Bill was inconsistent with the recommendation by the Committee on the Rights of the Child that New Zealand should raise, rather than lower, the age of criminal responsibility. Others noted that dealing with 17-year-olds in the adult rather than the Youth Court was also in contravention of the UNCRC, which defines a child or young person as under 18 years³. Barnardos also noted the Crown Council's advice:

... that "requiring the young person to attend mentoring programmes, parenting education programmes and drug and alcohol programmes, and the removal of the need to consent before making supervision with activity

³ More recently, following on from the Report "Expert Panel Final Report: Investing in New Zealand's Children and their Families" of April 2016, Cabinet agreed to investigate raising the youth justice age to include 17-year-olds. From 2019, it was announced that 'most 17-year-old offenders will be dealt with in the youth justice system, under new changes announced by the government.' Reported on 7 December, 2016 at: <http://www.radionz.co.nz/news/political/319846/youth-court-to-be-used-for-most-17-year-olds>

orders, potentially entail forced association and/or deprivation of liberty and so may also engage ss 17 or 22 of the Bill of Rights Act."

MPs opposing the Bill also raised the UNCRC expressing concern that this change was in contravention to the Convention and would harm New Zealand's international credibility and reputation.

... the bill is contrary to New Zealand's obligations under the UN Convention of the Rights of the Child. (Kevin Hague, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, First Reading).

4.2.3.2 Arguments for Overriding Rights

A number of submissions on this Bill emphasised the need to hold young people 'accountable' for their crimes or misdemeanours. These suggested that 12 and 13-year-olds are able to distinguish right from wrong, that they are capable of making sound judgments, that their actions are deliberate, and that being aware that they would have to attend only Family Court hearings until age 14 years provided little in the way of punishment or rehabilitation, but rather meant that they simply carried on engaging in criminal activity.

Some suggested that there should be the option to send offenders under the age of 17 years to prison depending on the seriousness of the offence, or their recidivism, rather than the young person's age.

It is important to stress the Association is not advocating for a system that sends young offenders to prison by default. But there should be the flexibility to provide for this option to receive due consideration in serious circumstances ... Such a change would at least give courts the option of sending the worst recidivist offenders to prison. The prosecution would still have to make the case to send the offender to prison, and the youth advocate would make the case to keep them out. Provisions such as these would address the final serious outstanding deficiency in Youth Court sentencing options by providing effective responses to all of the worst

(estimated) 2% of offenders. (Submission of the New Zealand Police Association)

Young offenders not meeting their sentencing criteria will be treated as a young adult. (Submitter YC25).

Many submitters noted that punishments such as ‘boot camp’ approaches were dehumanizing and would not be considered acceptable for adult offenders.

4.2.3.3 Arguments for Protection of Rights

Submitters and MPs expressed concern regarding the ability or competence of 12 and 13-year-olds to understand what their rights were, and whether their understanding of Court processes was sufficient to enable them to exercise their rights.

Being the mother of a 12-year-old, I do not believe that he would be in a position to make legal decisions about his rights in this regard (Sue Moroney, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, In Committee Third Reading).

Occasionally speakers aligned the ages in this Bill with those in other legislation, noting in particular that in this Bill the distinction between ‘child’ and ‘young person’ occurs at 14 years of age.

So we are talking about holding children accountable under a legal framework that was set up for young people. People know that they cannot leave their children home alone before they are 14 years of age ... babysitters have to be at least 14 years of age ... Criminal law and family law are riddled with this distinction between those who are under 14 and those who are 14 and over. (Hon. Lianne Dalziel, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, In Committee).

Others commented on particular parts of the Bill in relation to ‘rights’ issues: some noted that 12 and 13-year-olds would now be exposed to having DNA samples

taken; it was noted that parents' rights would be contravened if they were ordered by the Court to take part in parenting programmes, but were not part of Court proceedings; others commented on the section of the Bill that provided for the Court to order young people to attend alcohol and drug rehabilitation; *To give the judiciary power to impose untried and unproven 'treatments' on teenagers and children for periods (up to 1 year) that represent a significant part of their lives, will be ineffective and potentially harmful. Furthermore, it is ethically dubious and raises questions with regard to the rights of young people.* CADS Altered High Youth Team, Waitemata DHB.

The arguments in submissions that opposed the law change often maintained that an offender under the age of 14 years was a product of their family environment or life circumstances. These submissions tended to focus more on rehabilitation than on punishment. The Family Court was therefore seen as a better place to treat young offenders as the family was not only the source of their difficulty, but involving and engaging the family provided a better opportunity for change. Others who opposed the change focused on possible contextual influences, such as FASD, learning disabilities or developmental delay, trauma from abuse and neglect, which meant that not all young people of any particular age should be held accountable in the same way.

4.2.3.4 Responsibility

In its submission to the Youth Courts Bill, Family Planning indicated that informed decision-making followed on from a sense of responsibility:

Family Planning supports policy and legislative initiatives which seek positive outcomes for young people by giving them a greater sense of personal value and responsibility. We believe that young people may then make informed decisions about their health and well-being, including their sexual and reproductive health and rights ... We are concerned that the proposal to make 12 and 13-year-olds liable to prosecution may not achieve the long-term aim of improving young people's sense of personal value and responsibility.

A similar approach was taken by the Foundation for Youth:

While we support the need to make every effort to turn around the lives of young and persistent offenders, the most important need in New Zealand society today is for preventative programmes that give young people a sense of self-discipline and personal responsibility and which greatly reduce the likelihood they will get drawn onto the treadmill of offending in the first place ... While young people may do as they are told during this type of [military style] camp once they leave the environment they have no capacity to maintain the positive behaviours, as military style structure and discipline will not be present. We recommend instead, that the primary focus of all programmes be to equip young people with the internal resources they need to manage in a world in which self-discipline is required.

The contrary position to this view was a concern that young people were unable to take responsibility:

It is hard enough dealing with 14-year-olds who cannot really comprehend the concept of self-management particularly if they come from disadvantaged background where violence and abuse is part of everyday life for some ... Judges will struggle to know what to do with a 12-year-old. They will not want to sentence them at the highest tariff. Options will be a Family Group Conference plan (which could have been done in the Family Court) or an Order (but 12 and 13-year-olds are not developmentally advanced enough to fully understand the need for compliance). The outcome here is that they are being set up to fail through inappropriate Orders without responsible adults supervising them. (The Henwood Trust).

It is well known that children and young people are biologically (cognitively), socially, morally and psychologically immature when compared to adults. Therefore, to assume that they have the maturity to hold them culpable of any crime to the same extent as an adult is entirely unreasonable. Therefore,

a child cannot be held accountable under the same legal processes and sanctions as an adult. (Regional Youth Forensic Service).

In its Second Response to the Social Services Select Committee, the Ministry of Social Development provided information on the prevalence of mental health disorders amongst youth offenders.

There is limited New Zealand data on the prevalence of diagnosable mental health disorders among youth offenders. The information available, however, is consistent with the findings from international research which reveals a high prevalence of mental health problems amongst youth offenders ... comprehensive health assessments carried out on 44 young people admitted to Child, Youth and Family's Youth Justice Residence in Auckland during 2005 showed that 56% had mental health issues.

It also supplied evidence from international research showing rates of mental health disorder of between 40 and 84 percent for young people who come into contact with the justice system. While the Ministry did not comment on these findings, except to note the *insufficient and variable screening for mental health problems, reduced access to services for this client group, sentencing that often does not adequately consider mental health needs*, the request suggests that MPs were aware that many young offenders may have limited 'responsibility' for their criminal activities because of underlying mental health conditions.

4.2.4 Summary: Rights, Responsibilities and Agency

Young people's rights, when considered, were generally seen as different from those of adults. However, the age at which a young person was entitled to adult rights was undefined and depended on the topic under discussion. In some cases, it was suggested that young people's rights could be overlooked because of the benefits to society generally, both now and for the future, from the legislative changes. This view was apparent in arguments regarding traffic congestion, or those that supported raising the alcohol purchase age even while noting the nationwide problematic alcohol culture. In some cases, arguments were couched not so

much in terms of 'rights' but rather in terms of disadvantage or unfairness; this was seen in the driver licensing case, where it was noted that the changes would restrict at least some young people's opportunities for employment, social, and sporting activities. The issue of young people's rights was most strongly drawn on in the Courts Jurisdiction case where the UNCRC was able to be drawn on as a 'rights document' and also where the age group being considered, 12 and 13-year-olds, was most clearly viewed as 'vulnerable'. They were usually referred to as 'children'.

Young people were also generally assumed to be less responsible than adults, although it was suggested by some that all young people should not be denied rights because of the actions of an 'irresponsible minority'. Others suggested that young people needed experience before they could assume adult rights, advocating for a longer period of driving practice, or in the 'split age' purchase option so they could learn to drink responsibly.

There were two contrasting views of young people's agency; in one they were seen as being susceptible to the coercive influences of advertising, marketing and the 'alcoholic' environment, as well as that of peers or older youth. In the other view they were seen as capable of finding 'creative' ways around restrictions, so that they could continue doing what they wanted. Their agency was usually viewed in terms of 'deviant' activities. Moreover, their agency was limited to choosing from alternatives available; it was not suggested that any of their behaviours seriously challenged the status quo or were likely to lead to changes in the social relations within which young people are located and which determine their action.

The views expressed about rights, responsibility, and young people's agency, exposed some conflicting ideas about young people. The frequent appeals to the UNCRC concerning the particular rights of children in the Youth Courts case indicated clear notions of 'children' (who are vulnerable) as opposed to 'older young people' or 'adults'. However, except for acceptance of the status quo, there was no discussion concerning the ages at which one moved between these stages. Most people were comfortable with overriding young people's rights in the cases of Alcohol Reform and Drivers' Licensing if these changes would lead to 'harm

reduction', either for young people (who were 'vulnerable'), or for society generally (from 'risky' young people). There were ambiguous ideas about 'responsibility'; some held that young people needed to be given some freedom in order to develop a sense of responsibility and others held that young people were 'not responsible' and needed protection from themselves (or society needed to be protected from them). Those who maintained that 'most' young people were responsible, commented on the loss of rights for these young people.

The contradictory ideas concerning the 'rights and responsibilities' of young people appear to emerge from conflicting ideas as to whether they are 'vulnerable' or 'risky'. Moreover, both across and even within the three case studies, there was either marked variance concerning the ages at which young people became 'responsible' or could be relied on to 'act responsibly', or there was no attempt to consider a particular age - 'young people' was sufficient.

Although the focus of the analysis of the submissions to select committees and Hansard debates was on the ways that youth were conceptualised, it became apparent that views of youth rights as well as expectations concerning youth behaviour and outcomes, were very much intertwined with ideas about parents and families. For this reason, an additional theme that was mapped from the data is included here. It describes Parental Rights, Responsibilities and Roles.

4.2.5 Parental Rights, Responsibilities and Roles

It is generally taken for granted that there are certain rights associated with parenthood, 'parental rights', but exactly what these are is not clear and there appears to be considerable uncertainty as to the scope of parental rights. While historically children had few rights and were regarded as being under their father's exclusive control until they reached the age of majority, the extent of parent's rights over children is now much diminished. Uncertainty about the rights and responsibilities of parents, was reflected in the submissions to Select Committees and the Hansard debates in the three case studies: The Alcohol Reform Bill, the Land Transport Bills, and the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill 2009. 'Parental rights' for the other

case study, medical consent, is discussed in the section on 'Medical Consent', since child and parental rights in this case are so intertwined.

'Parental rights' were rarely explicitly mentioned, although in the case of the Youth Courts Jurisdiction Bill, it was noted that there was an issue regarding parenting orders for the parents of a young offender: *It is contrary to the principles of justice that someone who is not the subject of the court proceedings could have a binding court order imposed on him or her, for which any breach would have legal consequences* (Kevin Hague, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill First Reading).

In the submissions and Hansard debates the responsibilities of parents for their children's outcomes were often contradictory. Parents were depicted as both good and bad role models, particularly in their use of alcohol, and were also viewed as either competent or dysfunctional in other areas. They could be good role models if they 'drank responsibly', and it was assumed they were good models for 'safe driving', as well as being competent teachers when submitters promoted their role in teaching their young people to drive safely. In the Courts Jurisdiction case, it was often argued that 12 and 13-year-olds should be dealt with in the Family Court as this gave the best chance of success since it supported families to help their children. Involving parents was seen as essential if interventions to rehabilitate young offenders were to succeed and it was commonly suggested that children and young people who had offended could be rehabilitated *only* in the context of their families and communities. There were many comments about the need to support families if young offenders were to be helped and turned away from crime, and also about the need to change the environment that had created the young offenders.

Young people are all embedded in communities. We recommend that programmes work actively with support services within the young person's community, which address their specific needs and to aid their transition back into society. In conjunction, work with families through evidenced based therapy needs to occur so that the young person is not going back into the same dysfunctional environment. (Foundation for Youth).

Improved long-term outcomes can be achieved by including families as part of programmes designed to address the underlying causes of offending by children and young people (Woolfenden, Williams & Peat, 2002). (Kina Trust).

Many submitters and MPs suggested that the ‘military style’ or ‘boot’ camps in the Youth Courts Jurisdiction Bill had been shown to be ineffective for two main reasons: firstly, because young people in these camps are taken away in groups of like-minded young people who are likely to reinforce each other’s negative behaviour; the other reason frequently referred to was that while these camps take young people out into the wilderness or other new environments, they return them to their original families and communities which enabled their offending in the first place and where nothing has changed. The young people might have changed but they soon ‘slip back into old ways’.

Parents are also expected to undertake responsibilities that are part of court orders, such as ensuring their child obeys curfew restrictions or attends programmes, or to attend programmes such as parenting programmes themselves. It was regularly suggested that parents either were, or should be held responsible for controlling their young person’s drinking, and some suggested that the law change should allow only parents or guardians to supply alcohol to minors. MPs also raised the issue of parental responsibility in relation to young people and alcohol suggesting: that only parents should be able to give permission for supply of alcohol to minors; that parents were often poor role models; and that it was a parent’s responsibility to both provide good role modelling and to ensure that their young person drank ‘responsibly’. One speaker did note the difficulty with minors requiring parental permission if the purchase age was raised, asking if *the thousands of young people who are around the country in our universities are going to call mum and dad if they want to have a drink.*

While views of parents often implied that parents were a positive factor in their children’s lives, even if they needed support at times to fulfil their roles, other views of parents held them responsible for their children’s problem behaviour, and viewed them as a negative influence on those who had gone ‘off track’:

High risk children, many of whom end up with severe offending at an early age, tend to have life histories that are characterised by multiple familial disadvantages including social and economic deprivation, impaired parenting, neglectful and abusive home environments, marital conflict, family violence and multiple adverse family life events. Substance use is usually just one of many potential problematic behavioural outcomes of at risk youth (who are often young offenders). (CADS Altered High Youth Team).

Sometimes the responsibility of families for the behaviour of young people was viewed as being so extensive that the young person was almost considered not culpable for their criminal behaviour.

However, it was also suggested that parents were sometimes 'not responsible' for their children's outcomes in that they actually lacked that degree of influence. Submissions from some parents on the Alcohol Reform Bill described watching their children make mistakes with alcohol and feeling powerless to intervene, and several stated that there was nothing they could do to stop or control their young people's drinking. There were thus ambivalent views of the roles of parents; on the one hand, they are held responsible for the activities and outcomes of their children/young people but on the other hand they are not necessarily able to control them.

There were submissions that reflected contrasting views about the roles of parents or guardians in relation to the degree of agency that young people hold, or might hold. Supporters of the Youth Court changes suggested that young people of 12 and 13 years of age were responsible and should be 'held to account' in the Youth Court, thus assuming the child/young person to be an independent decision-maker and competent to respond to legal and court processes. It also implied that these young people were sufficiently independent of their parents to mean that their parents need not be involved nor called on to support or control their young person, as they would be in the Family Court. However, in other domains parents were viewed as responsible for much older children. For example, submitters on the Alcohol Reform Bill suggested that 'only parents' should be allowed to supply

alcohol to a minor, and others suggested that parents are responsible for teaching young people to drink responsibly. Some submitters admonished parents for not taking responsibility for their young people's drinking, while others noted the difficulties for parents trying to influence or control their young people in the face of the environmental pressures that young people were subjected to, such as alcohol marketing and advertising, or the influence of their peers, or the broader culture that normalized binge drinking. In the submissions on the two Land Transport Amendment Bills, there was acknowledgement that the parents of rural young people would have to drive their 16 and 17-year-olds to sports practice, social events, and jobs, as there was no public transport available. Two opposing views of parents emerged, in one they are viewed as a 'risk factor', in the other they are seen as a 'resource'.

The submission by The Children's Commissioner on the Children Young Persons and Their Families (Youth Court Jurisdiction and Orders) Amendment Bill was generally supportive of the idea of families as a positive institution and a resource. However, the Commissioner also drew attention to the inherent difficulties in involving families, 'urging caution' on the use of curfew orders because *they place additional pressures on families who must closely monitor the movements of any child or young person in their care*. It also noted the problems that could arise from parenting orders that were imposed:

... the Children's Commissioner is concerned that should a young person fully complete their part of the Family Group Conference Plan, but their parent or guardian does not, then either:

the young person would remain in the youth justice system longer than necessary [or]

the Family Group Conference Plan would be discharged, meaning the parent or guardian would not be held accountable for non-compliance (or non-completion) of aspects of their plan.

Neither scenario seems to provide a fair or just process for the young person.

This highlights the problem in allocating responsibility for the child's behaviours or activities, whether responsibility should lie with the child or his/her parents or in finding a demarcation line where the responsibility of the parents ends and that of the child begins. Moreover, even if it were possible to find such a line, it is not always the parents who are on the 'responsible' side of it.

The submission on behalf of the Youth Court noted that child (between 10 and 13 years of age) offending had in the past been dealt with on the basis that *offending is primarily a result of inadequate parental/familial care and protection of the child*. Furthermore, it suggested that while at that age *there was an element of deliberate and personal choice involved* it held that rehabilitation of the child required *significant interventions into the child's family system*. In this case, there is recognition of dual responsibility, but it is strongly suggested that to bring about any lasting change in the young person there would have to be changes made in the family.

The philosophy has been that simply holding such child offenders to account and using a punitive/rehabilitative paradigm within the Youth Court is unlikely to produce enduring change.

Other submissions also drew attention to the importance of families in the rehabilitation of young offenders, in particular submissions that focused on Māori young people and the need for marae-based Māori programmes for young offenders, as well as others that promoted family-based programmes such as Multi-systemic therapy (MST). The question of 'parental rights' when a young offenders' family has a Court order placed on them when it is the young person who has offended, was rarely addressed in submissions. However, a number of submitters did note the *heavy burden on parents* as well as their incapacity to police their children's alcohol consumption, especially in the 'alcogenic' context.

One submitter suggested that he did not accept that anyone other than himself should provide alcohol to his children, that it was his role to teach his son how and when it is appropriate to drink, but he did understand that *during his teenage years I will begin to lose this control*, a comment that is consistent with that in *Gillick*

regarding the diminishing control that parents have over their children as the children grow older. This is discussed more fully in the section on medical consent.

4.2.6 Discussion

In submissions and debates across the three legislation case studies, 'parental rights' were rarely referred to explicitly and there were contradictory ideas about parental responsibilities. There was also remarkably little mention of young people's rights. The area where the issue of young people's rights was referred to most explicitly was in the Youth Courts Jurisdiction case where those opposing the changes noted that they were inconsistent with the UNCRC. Some submitters and MPs also referred to raising the driver licensing age as a rights issue for rural young people in terms of employment and independent travel, especially when compared with urban young people.

In the case of alcohol reform, the argument that the drinking age should be higher than 18 years in order to reduce the likelihood of under-18-year-olds drinking did not consider the rights of those over 18 years. It is hard to imagine a type of social group other than age being discriminated against quite so easily on the grounds of the effects on a different group of people.

It was also argued in the alcohol reform case that 18 to 20-year-olds could work in the hospitality industry but not drink, sell or supply alcohol, while others argued that the drinking and serving age should be 18 years because the under 20-year-olds were important to 'backpackers' tourism. This argument is at least exploitative, in that 18-year-olds are seen as old enough and possessing the skills, attitudes and behaviours that make them suitable as employees in the hospitality and tourism industries, but are 'too young' to be allowed to drink. If the argument is that *some* young people are 'mature' but others not, and they can be detected in the recruitment process, then it is not age that is the discriminating factor but something else.

In the case of the Youth Courts Jurisdiction, it was argued that the changes were inconsistent with the UNCRC which advocates that young people should if possible be dealt with 'without resorting to judicial proceedings, providing that human rights

and legal safeguards are fully respected.’ (Article 40.3(b), United Nations, 1989). The UNCRC in fact advocates for a rehabilitative approach suggesting: ‘States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society’ (Article 40.1, 1989).

There is a degree of complexity in the approaches to youth justice in New Zealand, which are not usually based on one model, rehabilitation or retribution, but tend to be an amalgamation, possibly reflecting the entwined ‘vulnerable’ and ‘risky’ views of youth. The agency responsible for youth justice, Child Youth and Family, describes the approach to Youth Justice as follows: ‘Youth justice is for children and young people who have broken the law. It gives them a real opportunity to change their life for the better without getting a criminal record. We work with young people to help them face up to their mistakes, make good the harm to victims, be accountable for the actions and move on to a positive future.’ (Child Youth and Family, 2014b). The Ministry of Justice also describes Youth Justice as having ‘a dual focus on accountability and rehabilitation’ (Ministry of Justice, 2014).

The arguments that highlight the ‘vulnerability’ of young people within the justice system could be viewed as pointing to what is wrong or what is not working in the system more generally. Shortcomings in the system are more easily identified when they impact on young people who are likely to be perceived as more vulnerable than adults, in greater need of protection and entitled to another chance. Perhaps the issue is not so much the age at which a young person can be treated as an adult in the justice system, but rather how the system affects everyone, irrespective of age. If 12 and 13-year-olds are not sent to youth residences, or 14 to 17-year-olds not sent to prisons because youth residences or prisons are considered to be too dangerous and inadequate for rehabilitation, then selecting an age at which it is appropriate is surely arbitrary. The problems we encounter in deciding at what age

someone can be sent to prison or a youth residence should perhaps cause us to reflect on the system as a whole, rather than attempt to impose our conceptualisations of 'maturity' onto adolescents or children at particular ages.

The literature review described how the UNCRC was focused on 'protection' of vulnerable children in its approach to their rights. This approach was reflected in submissions in the case studies where young people's rights were viewed in terms of their vulnerability and need for protection, rather than their agency. So, in this view, young people had a right to be protected from the binge drinking culture, from alcohol promotion, and from risk on the roads as drivers and passengers.

Their vulnerability in fact provided submitters and MPs with the rationale for restricting their rights – their high crash rates; their presentations at A&E; for young women their vulnerability to sexual abuse, for young men vulnerability to violence, after drinking to excess; their susceptibility to advertising; their dysfunctional families; 'negative' adult role models; the binge-drinking environment; the risk of abuse from older offenders; their 'immaturity' or their 'developing brains'; their propensity for drug and alcohol addiction and mental health problems. What was missing from the rhetoric about these young people was their existence as social beings, members of families (other than dysfunctional ones), friendship groups, schools and other communities, and employees in workplaces. The portrayal of young people in the submissions and Hansard debates was predominantly of passive objects who are 'acted on' (except when acting 'deviantly'); but young people contribute positively to their communities; some are carers, many work, they help their families and friends, and many have responsibilities for family members and others. In the discussions about the impact of the change to the driver licensing age on rural young people, submitters did raise the issue of young people having 'responsibilities'. Although it was infrequent, some did acknowledge that some 16-year-olds might be parents themselves or need to contribute to their family income, or were saving to support themselves for post-school education or training. In most cases when the appropriateness of an age was discussed it was compared with other ages in legislation, such as the drinking age with the voting age, but in the case of driver licensing, references were also made to other

experiences or activities that 16-year-olds might be engaged in, such as employment or sports activities. It was one of the few instances where young people's activities were taken seriously.

The readiness with which young people's rights were overlooked or disregarded because of a perceived need to protect them can be at least partly explained by the still-extant patriarchal positioning of young people in relation to adults in today's society. In the patriarchal family described earlier, the rights of the father were upheld in exchange for his protection over the household members - wife, children and servants (for as long as they cooperated). Feminist challenges to patriarchal notions of the position of women, and challenges by many individual women in their roles and occupations, have had to expose the 'myth' of women as 'vulnerable' and needing protection. While the vulnerability of children and their need for protection is not exactly comparable with that of women, for young people particularly hegemonic discourses of 'vulnerability' are available and can be applied to uphold power relations of adults over young people in the same way.

Views concerning 'responsibility' mainly suggested that young people were 'not' or 'not yet' responsible. Some submitters suggested that young people could 'learn' responsibility, as for example in the idea behind the 'split-purchase' age for drinking or the longer learning period for driving. Apart from developing car-handling skills, it was also assumed that they would develop responsible attitudes towards driving.

The wider responsibilities that many young people hold were rarely acknowledged, yet it is estimated that around eight percent of under 24-year-olds are carers ('Young Carers', n.d.); in 2009 there were 4,670 teenage mothers and 2,251 teenage fathers (Ministry of Social Development, 2010a, 2010b); and in 2013 the employment rate for youth was 49.3 percent (falling from 57.5 percent in March 2008, before the global financial crisis; youth employment has been by far the greatest casualty; the overall employment rate dropped from 65.2 percent in March 2008 to 63.4 percent in March 2013) (Ministry of Business, Innovation and Employment, 2008, 2013). When young people were seen as having some initiative or agency it was usually deviant, involving 'risky' behaviours, finding ways around

restrictions, evading or breaking the law. In both submissions and Hansard debates, the conceptualisation of young people as contributing citizens was rare.

In part, the failure to acknowledge the active contribution of young people to their communities is a consequence of viewing adolescents as 'developing people', so that they are 'not yet something', rather than seeing them for what they are and acknowledging their strengths and contributions. The Ministry of Youth Development in 2003 changed its name from Ministry of Youth Affairs; it states on its website: 'In 1988 Government recognised that young people had little influence in decision-making processes, despite being profoundly affected by social, economic and political conditions. As a result, the Ministry of Youth Affairs was established. In 2003, following a review by the State Services Commission, the new Ministry of Youth Development was created out of Youth Affairs and the youth policy functions of the Ministry of Social Development.' ("Ministry of Youth Development," n.d.). The very name - Ministry of Youth Development - places an emphasis on youth as a time of development, so that the focus is on the 'end product', adulthood, not on youth as they are now, considering their present happiness and wellbeing and their contributions to wider society.

There were divergent views about parental responsibility, and how far families were or should be responsible for the behaviours and outcomes of their young people. There was acknowledgement of the limited ability of parents to control their young people in some cases, and there were differing views about where parental responsibility ends and the young person's begins. This meant that there were conflicting views about the roles of parents and families. Moreover, parents were depicted as both good and bad role models, who therefore represented both a resource and a risk factor for young people.

In New Zealand the statute that refers directly to parents' duties, powers, rights, and responsibilities is the Care of Children Act 2004. This Act outlines guardianship rights and states first that 'The welfare and best interests of a child in his or her particular circumstances must be the first and paramount consideration.' It has been noted that the Care of Children Act 2004, which replaced the Guardianship Act 1968, reflected a change in attitude towards children, from being viewed as the

property of their parents to being viewed as 'legitimate individuals'. The terms 'day-to-day care' and 'contact' replaced 'custody' and 'access', emphasising the new expectations on parents and guardians (von Dadelszen, 2007 at 267). Section 6 of this Act also implies that children can be expected to not only have the right to express their views but to have those views taken into account. However, while this establishes some expectations, the child's views can still be overridden: '... there is nothing to stop a Court from bypassing a child's views. There is no presumption in favour of a child's views, nothing which says that a child's bona fide views should be followed unless to do so would be contrary to the child's welfare and best interests.' (Atkin, 2004, pp. 44–45).

This section has described the findings from the three legislation case studies concerning views of young people's rights, responsibilities and agency, and also those concerning parental rights and responsibilities. Young people were most commonly perceived as vulnerable and their rights to engage in activities such as driving or drinking were in general regarded as limited by the need to protect them from harm. There was minimal consideration of young people's responsibilities, and they were seen generally as being 'not' or 'not yet' responsible in their decision-making. Their agency was usually depicted in terms of 'deviancy'.

The next section presents the findings from the three legislation case studies concerning competence, including a section that analyses the Hansard debates across the three Bills concerning the question of 'age'.

4.3 Competence

The issue of the 'competence' of young people was a common theme in the data related to the driver's licensing age and raising the drinking age. It was also a critical issue in arguments about the culpability of young people in the Youth Courts Jurisdiction case. It is expected that one of the chief reasons why a child or young person might be denied certain rights or granted others, would be because of a belief that they were 'not yet competent', or alternatively by now 'competent' to undertake the task or manage the consequences of decisions and choices made in the areas under consideration. Since 'competence' implies a degree of skill or capacity or mastery, it might also be expected to be something that could be seen or measured and therefore provide an unambiguous reason for allowing rights. However, the analysis of the Case Studies indicated that 'competence' is not easy to define or to measure, and it is not always seen as a necessary or sufficient reason for granting rights. Furthermore, it is a contentious concept that is not closely aligned with age.

The data revealed views of young people as being both 'competent' and 'lacking competence'. These are both aspects of the concept 'competence', one reflecting views of young people as capable, able, mature, and being 'like adults', and the other reflecting views of young people as lacking capacity, needing experience, and being more 'like children'.

4.3.1 Alcohol Reform Bill

4.3.1.1 Lacking Competence

One of the reasons given for raising the alcohol purchase age was that because of their 'immaturity' young people were not capable of making 'sound choices'. The evidence often used to support this was the research regarding the 'teen brain', which indicated that the frontal cortex in a young person's brain does not fully mature until they reach their mid-twenties. Submitters suggested that not only did this evidence mean young people could not make sensible judgments about

drinking alcohol, but also that their ‘developing brains’ would be damaged by alcohol.

Submissions sometimes referred to media articles that described the pre-frontal cortex of the adolescent brain as ‘not fully mature’, which suggested that *young people’s brain cells are not fully mature until they are in their 20’s*, so that adolescence is a time when *children most need them [parents] to help with decisions about subject choice, courses, careers and social relationships* (Submitter AR182, quoting media). Others referred more broadly to evidence about development, suggesting:

Tests have shown that people under this age [21] are not sufficiently developed to handle alcohol. (Submitter AR108).

We know too that the human brain and body take, on average more than 18 years of development before the body can process alcohol well and the brain make sensible decisions at the same time. (Submitter AR163).

I know that there is considerable research evidence as well as my own plentiful anecdotal evidence that young people are not emotionally equipped to deal with a psychoactive drug that they can increasingly access at a younger age. (Submitter AR145).

Some submissions cited evidence of the particular effects of alcohol on the brains of young people in support of raising the age to 20 or 21. These included effects on memory, learning and behaviour, and a greater likelihood of depression and alcoholism. Others suggested young people were socialised into *our binge drinking culture*, experienced *intense peer pressure and bullying*, and were subject to *advertising and marketing campaigns* at a time when *the brain of young people is now known to not be fully grown until 25 years of age* (Raise The Bar Trust).

Many submitters and MPs drew on information regarding the ‘teen brain’ to support arguments that young people lack ‘maturity’. It appeared that reports about the ‘teen brain’ in popular and other media provided a rationale for, and were used to support positions already taken concerning the lack of ‘maturity’ in young people. Moreover, although support for raising the alcohol purchase age

often cited ‘teen brain’ research, it was not suggested that the age should be raised to 25 years, which the evidence cited would indicate, but only to 20 or 21 years. This meant that selecting the ages of 20 or 21 years had no evidential backing, representing only a compromise between the ages of 18 and 25 years.

MPs also suggested that evidence concerning the ‘teen brain’ indicated both that 18-year-olds were not yet competent to handle alcohol and that their developing brains would be particularly negatively affected by alcohol and binge drinking.

In my view there is a big difference between an 18-year-old brain and a 20-year-old brain, not just in terms of how it metabolises alcohol but also in terms of maturity of the individual, their judgment, their ability to make decisions, and the influence of their peers at that stage (Mike Sabin, Hansard, Alcohol Reform Bill, In Committee).

Some noted that the neurobiological evidence indicated that the brain develops up to the age of 25 years: *Research indicates that for most people the maturation process involves a gradual shift from an instinctual brain response to a more rational one continuing well into the 20s. In other words, a dose of alcohol in an 18-year-old has the potential to do more harm on average than the same dose in a 25-year-old (Cam Calder, Hansard, Alcohol Reform Bill, In Committee); The younger they are, right up to the age of 25, we know that there is considerable damage (Paul Hutchison, Hansard, Alcohol Reform Bill, In Committee); It is true that young people’s brains are developing. If we were going to work on that basis alone, maybe we should set the purchase age at 25, because that would be the appropriate age—when young people’s brains have fully developed. That is not going to happen. So whichever one of these options we choose is an arbitrary decision (Iain Lees-Galloway, Hansard, Alcohol Reform Bill, In Committee).*

The Labour Party minority view in the Select Committee Commentary stated that:

We were impressed by evidence from the medical profession about the harm to brain development caused by alcohol from the impact on the developing foetus through to young adults, with some evidence saying that this harm continues through to the early twenties while the brain is still developing. It

seems clear that the earlier a young person starts drinking the greater the harm. (The Justice and Electoral Committee, 2011, p. 17)

Young people were also viewed as incompetent because of their naivety, in particular that they lacked knowledge or understanding of the effects of alcohol or of risks associated with it. These arguments suggested that young people either did not know about, or were unable to understand, the risks associated with intoxication, did not know what a 'standard drink' was, and did not understand the effects of alcohol on the body in terms of how it affected their brains, emotions, or behaviours, as well as their physical and mental health. *Our clinicians are consistently concerned about the naïve understanding of young people about the harms associated with alcohol and their belief that alcohol only represents "fun", "sophistication" and a "good time"* (Community Alcohol and Drug Services (CADS) in Auckland); *The greatest harm occurs when young folk, unaware of the potential harm to their developing brains, overindulge and cause short or long-term damage* (Submitter AR118). Some also suggested that young people used alcohol in order to manage their social anxiety *rather than learning the skills that are appropriate as we grow from childhood to adults* (Submitter AR188).

Some advocated educating young people about alcohol and its effects, and there were some submissions that supported the split purchase age for the reason that young people would be able to learn to 'drink sensibly' in a supervised and regulated environment. Some suggested education might discourage young people from drinking RTDs if they learned about their contents:

The education campaign should also inform teenagers of the very high sugar and fat content of some of alco pop drinks and fruit-flavoured ready-to-drinks. This will discourage some teenagers, who may be concerned with their appearance (getting acne and weight gain), not to binge drink. (Submitter AR193).

Many submitters commented on the impact of alcohol advertising and marketing. They referred to research describing how some alcohol advertising, marketing and promotion is aimed specifically at youth; to evidence that advertising is linked with consumption; and that it was successful in creating 'intoxigenic' environments that

encourage and support youth drinking and drinking for intoxication. Others referred to research that showed advertising was associated with earlier age of uptake of drinking as well as the amount consumed by young drinkers. Some submitters criticised the widespread marketing of alcohol generally, suggesting that there should be limits on the amount of advertising of alcohol and that it should not be associated with sports.

It was often suggested that advertising associated alcohol and/or drinking with glamour, good times and with sports and other 'heroes', and submitters were particularly critical of such alcohol and marketing campaigns because of their impact on young people, who were viewed as being more vulnerable than older adults to the effects of these campaigns.

We are bombarded with clever ads showing young, beautiful people consuming alcohol. Youth have not acquired the art of dealing rationally with advertising material. Young people exploring their environment are soaking in what is shown as glamorous, or part of the sports scene, etc. Cleverly crafted advertising is targeted at specific groups. Children are impressionable and vulnerable. They are being sold the idea that this is how to live, to achieve success, to get and keep friends and so on. This prevents them making reasoned decisions about their choice. (Auckland Association of Grey Power Inc.)

Many submitters focused on the negative impact of advertising and marketing on young people rather than on the advertising and marketing of alcohol in general. This suggested a belief that adults have extra understanding, or cynicism, that protects them from advertising. Young people were also seen as less able to manage the impact of advertising: *Many young people may lack knowledge of the complaints process [of the Advertising Standards Authority], lack faith in the complaints system or lack energy to make a complaint (Auckland Regional Public Health Service).*

4.3.1.2 Competent

Some submitters and MPs suggested that young people were capable of making good or sensible decisions: *I think we should back young people in New Zealand to be able to take the decisions they take with the right information around them. I believe that we should keep the age of purchase at 18.* (Grant Robertson, Hansard, Alcohol Reform Bill, In Committee); *18 and 19-year-olds are generally just as mentally competent as every other adult* (Submitter AR196). Others noted their competence as *a generation that is very technologically savvy, they are able to access and absorb great amounts of information* (Youth Infusion, Hutt City Council), and some noted their ‘resourcefulness’ in stealing alcohol, or as being ‘savvy consumers’ who would simply turn to different forms of alcohol if RTDs were banned. This represented a view of young people as competent, although in deviant ways:

While it is difficult for a minor to purchase alcohol from a Supermarket or Grocery store, young people are resourceful, and stealing alcohol from supermarkets is relatively easy. It is easier to go unnoticed in supermarkets which are busier and often have young people about, they also place alcohol in various parts of the store, making it difficult to monitor. Young people have told me they can steal over 6 litres of alcohol at a time by removing the bladder from the cask of wine and stuffing it into their clothing. (Submitter AR191).

4.3.2 Land Transport (Road Safety and Other Matters) and Land Transport (Driver Licensing) Amendment Bills

Because driving a vehicle requires the physical and mental capabilities to manage a car on the road, as well as the mental capacity to understand the road code and interpret road rules, these capabilities being measured in driver licensing tests, submissions concerning the Land Transport Bill might be expected to contain the most cogent reflections on young people and ‘competence’. However, even for this case, it became clear that understanding of, or beliefs about, driving competence amongst young people in relation to age are not clear cut.

4.3.2.1 Lacking Competence

Submitters often suggested that ‘research’ showed high crash rates for young people and that raising the age of obtaining a Learner’s licence from 15 to 16 would lower the crash rate for young people. These arguments were used to support a longer period of driver training. Evidence from Sweden was sometimes cited in support of an extension of the learner period, where the young driver crash rate had been reduced by 40 percent by extending the learner period to two years. However, this was achieved by *lowering* the age at which a learner licence could be obtained, from 17 and a half years to 16 years. In its submission, the Automobile Association suggested that a similar result could be achieved in New Zealand by leaving the Learner’s licence age at 15 and increasing the Restricted licence age to 16 and a half or 17 years. A submission by Dorothy Begg and John Langley, from the Injury Prevention Research Unit, University of Otago, provided evidence from their own research in support of the claim that raising the age from 15 to 16 years would have the effect of reducing the crash risk for young people: *The evidence demonstrates that young age, independent of experience, is a major determinant of risk; therefore, raising the minimum licensing age would have safety benefits.*

Many submitters suggested that there was a need for more intensive or extensive training, and some suggested a more rigorous Restricted Licence test. While these submitters often suggested that young people needed to be more competent drivers before they received their drivers’ licences, lack of competence was not attributed to age so much as to training.

It is not just a question of age, however, it also a matter of getting the right experience during each licence phase, which would be supported by a longer licensing period. (Christchurch City Council)

Submissions that supported raising the age rarely argued their case with evidence that age was the problem, but rather just stated that they supported it because it would reduce crashes. Occasionally submitters suggested ‘maturity’ was a factor and that simply being older when they gained a full driver’s licence would mean they would make ‘better decisions on the roads’. But even then, it was often noted that age was not necessarily a determinant of ‘maturity’. One submitter noted the

‘inexperience and development issues’ which impacted on road safety and suggested a minimum age of 17 years.

One aspect of competence in relation to youth that appeared in submissions was the idea of ‘invincibility’. This is connected to ‘risk taking’ (which is covered in a separate section), an attribute also associated with youth, and there is a view that because of these attributes, young people are more likely to make poor decisions with behaviours that involve risk, such as driving or drinking. In this view, competence in decision making is deficient or faulty because of young people’s beliefs in their invincibility. However, there was no suggestion that such beliefs about invincibility changed between the ages of 15 and 16 or 17 years for driving, or that there was a difference between 18 and 20-year-olds for the alcohol purchase age.

4.3.2.2 Competence and Experience

There were contrary views regarding the benefits of raising the age of learning to drive, and the assumption that it would make for ‘safer driving’ was challenged on a number of fronts. These included: that it would reduce the time a young driver would have to gain driving experience; that 16-year-olds were likely to be less safe than 15-year-olds as they were more self-assured by then; that the road crash statistics reflected lack of experience rather than driver age; that extending the age of a Learner’s licence to 16 would mean a young person would be eligible to obtain a full licence at 18 years, the same age at which they were legally able to purchase alcohol, and the mix of the two was unfortunate; and that safe driving was about attitudes and behaviours rather than age. It was suggested that keeping the age for obtaining a Learner’s or Restricted licence low was advantageous as it was better for young people to gain driving experience while they were still restricted in other areas of their lives:

One of the reasons for a driving age of 15 was that the drivers will be more experienced before they get to the age when they are most at risk. This is aged 18, when they can drink, they are independent of parents and they have the money to buy a hot car ... A 16 year old driving alone for the first time, in Mum or Dad’s car, when and where their parents say, and possibly

before a 6.00pm curfew, seems a far safer option to me than the 17 year old scenario this Bill will create. (Submitter DL23).

MPs cited evidence concerning the higher crash and fatality rate in terms of the ‘vulnerability’ of young drivers rather than in terms of them being ‘at fault’. Those who supported and those who opposed raising the driving age both suggested that the evidence of a higher crash rate for young drivers, particularly in the first six months of solo driving, indicated that driver training needed to be improved and that there should be a longer period of practice before young people could drive without supervision. They suggested factors such as lack of experience and lack of supervised driver training might be the cause of the higher tolls and that raising the driver age might simply mean the accidents will still happen but a year or two later.

There were contradictory ideas about whether it was age or experience or skills that was the key feature in reducing crash rates. For example, one MP supported raising the driver licensing age, but then went on to say:

The risk of crashing declines rapidly after the 6-month period. But the learning curve to achieve the risk profile of, say, the average 30-year-old is long. It takes about 10 years to achieve that sort of risk profile (Hon. Harry Duynhoven, Hansard, Land Transport (Driver Licensing) Amendment Bill, First Reading).

Another speaker who suggested that the higher crash rate was about experience rather than age, raised the issues of evidence-based legislation, as well as ‘teen brain’ development:

The problem is that young drivers in those first few years of driving are at a much higher risk. It does not matter whether they start driving at 15 or 16. Really, unless we were to increase the driver-licensing age to 25—the age when the frontal lobe is fully developed and, hopefully, when most people have achieved a much greater level of maturity—then increasing the age would not make sense. But the evidence does not back up the increase from 15 to 16. (Iain Lees-Galloway, Hansard, Land Transport (Road Safety and Other Matters) Amendment Bill, Third Reading).

The views regarding evidence were disputed however:

We agree the driving age for 15-year-olds should be increased to 16. I think the member Mr Lees-Galloway might like to look at some of the evidence. I have seen the evidence, and I believe that it is compelling. (Gareth Hughes, Hansard, Land Transport (Road Safety and Other Matters) Amendment Bill, Third Reading).

Some MPs suggested that older drivers who were inexperienced were just as likely to crash as young inexperienced drivers and others thought that some older drivers or experienced drivers had slipped into some quite bad habits.

There were some who considered that factors that are associated with higher crash rates might be more relevant than age-related competence. These included *speed, booze, social pressure*, as well as driving at night. One MP suggested that the testing regime needed strengthening, and that the first test *focused too much on basic, technical driving skills, and tends to ignore other important factors that determine driving behaviour* (Harry Duynhoven, Hansard, Land Transport (Driver Licensing) Amendment Bill, First Reading). One MP noted other issues associated with young people's driving:

The question is not about the age; the question is about the limits we put on people at that age. If we look at what the Minister said, some of the issues we can look at are the times young people can drive, their hours of driving, perhaps the vehicles they can drive, and how long they will be in a situation where they have to be supervised ... Raising the age is just a political attempt to get something forthright that the Government can go out and sell. (David Bennett, Hansard, Land Transport (Driver Licensing) Amendment Bill, First Reading).

In a similar vein, another MP noted that concerns regarding young people's driving competence could be viewed in a different light when other contextual factors were considered:

They found in the [driver learning] programme that some of the reasons cited for not having licences were learning difficulties and low self-esteem.

Yet again, that is more proof that basic literacy skills keep proving to be a common underlying factor in offending ... Instead of constantly telling our young boys how mad, bad, and fast they are, we should be working with the whole whānau in the interests of whānau well-being and safety. (Te Ururoa Flavell, Hansard, Land Transport (Driver Licensing) Amendment Bill, First Reading)

Another MP noted other positive effects of gaining a drivers' licence for some young people:

She was talking about their plans to offer restricted licence driving courses. She said: "For some people this is the first time they've got 100 percent in anything. The confidence somebody gets from getting their licence is unreal." That is at one end—to do with rangatahi. Te Ururoa Flavell (Hansard, Land Transport (Driver Licensing) Amendment Bill, First Reading).

The negative impact on some young people, rural youth in particular, of raising the driving age, was noted by many speakers, and several suggested that they would support some sort of exemption for such cases or additional training, contradicting the view that driver safety is age-based rather than skill-based.

4.3.3 Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill

Submitters to the Youth Courts Jurisdiction Bill often distinguished between young people (or children) under 14 years of age who committed less serious offences from those who committed serious offences, that is, offences for which the maximum penalty available includes imprisonment for at least 14 years (or 10-14 years if they were 'repeat offenders'). Some noted that the implication of 12 and 13-year-olds being tried in the Youth Court for 'serious offences' but the Family Court otherwise, implied that those who committed serious offences were more competent to understand and plead than those who committed less serious offences. In this case, it is not the young person's age that defines their competence, but rather the seriousness of the offence.

Arguments about 'competence' centred on two issues: whether or not young people of ages 12 and 13 were sufficiently capable of understanding court processes and legal proceedings; and whether these young people understood that they had committed a crime or knew the difference between right and wrong. When submitters and MPs spoke in support of the changes in this Bill they often referred to the nature of the crimes - *rape, arson, wounding with intent to cause grievous bodily harm, and aggravated robbery* – suggesting that because of the seriousness of the crimes these young people were evidently competent to be treated like adults or older youth. They were thus viewed as able to manage the Court and legal processes without family support or intervention. The 12 and 13-year-olds were usually described as 'children', some suggesting that they might be children but were committing adult crimes, while others suggested that they might be committing serious crimes but were children and still needed the protection that is given to children.

The Youth Court will call for a Family Group Conference for 12 and 13-year-olds but because of their developmental stage we are not convinced that they are able to plead, understanding all the legal implications of such a plea. (The Henwood Trust).

Most children of this age are very savvy to what is right and wrong and would realise that the courts are going to punish them for acting in a criminal manner. (New Zealand Federation of Business and Professional Women).

The intent to lower the age of criminal responsibility from 14 to 12 was thought by those who agreed with the bill to be reasonable after hearing evidence that a person's capability of making sound judgment was fully developed by this age. (Youth Parliament's Law & Order Select Committee 2007).

4.3.3.1 Lacking Competence

Submitters who opposed the extension of the Youth Court's jurisdiction to include the most serious 12 and 13-year-old offenders often referred to Article 40(3)(a) of

the UNCRC which indicates that states shall seek to promote ‘The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law’ (United Nations General Assembly, 1989b). A ‘child’ is defined in the UNCRC as every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Submitters sometimes suggested that young people of 12 and 13 years of age did not have the capability or capacity to understand the legal or Court proceedings in an action taken against them, and were therefore not competent to stand. Their ‘incapacity’ included the inability to participate effectively, to understand questions posed or the legal implications of a plea made, or to make fully informed decisions about legal representation and admission of previous offending. *I see taking DNA from 12 and 13-year-olds as being a breach of human rights. These are members of our society who do not have any understanding of their rights.* (Stuart Nash, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill In Committee, Third Reading).

It was also suggested that young people *due to their developmental immaturity can be likened to mentally impaired adults* in their ability to stand trial, and that their ‘psychosocial immaturity’ meant that they were compliant with authority figures and tended to view their rights as *granted by and therefore potentially retracted by authority rather than absolute entitlements* (Regional Youth Forensic Service, referring to research findings). Other suggestions included that young people’s development was not synchronous, physical maturity not necessarily coinciding with social, cognitive or psychological maturity, so while they were able to commit crimes they did not necessarily understand the *social, moral or legal consequences of their actions* (The Collaborative for Research and Training in Youth Health and Development Trust).

While many submitters considered that young people should be held accountable, those who opposed the change generally placed a greater emphasis on rehabilitation and suggested that they were young enough to change.

It is interesting to compare attitudes regarding age of adulthood as they appeared in the Youth Court's Jurisdiction Bill case, with those in the Alcohol Reform Bill case: In the Youth Courts case, some submissions noted that 17-year-olds should come under the jurisdiction of the Youth Court, which would comply with the UNCRC, but no submitters suggested that 18 years was an inappropriate age for the adult court. On the contrary, the Police Association submitted the following:

The Association sees no benefit in raising the upper limit of the Youth Court's jurisdiction to cover 17-year-olds. The difference between 16-year-olds and 17-year-olds is more significant than the simple difference in their age. 17-year-olds are generally physically mature. They are generally associating with other adults and engaging in adult conduct. This extends to their engaging in criminal offending that cannot be distinguished in terms of circumstances or severity from any other adult offending. 17-year-olds are able to make their own decisions about personal behaviour, including bad decisions, like any other adult and should be held accountable for those decisions like any other adult.

However, in the case of the Alcohol Reform Bill, submitters who supported raising the age took the view that 18-year-olds were not adult, and should not be treated as adult in terms of alcohol purchase until they were 20 or even older.

Some MPs referred to young people's ability to understand justice proceedings, and whether they would be competent to give consent or understand their rights:

Then there is the question about whether a 12 or 13-year-old is able to give consent. When we are talking about 12 and 13-year-olds, are we really talking about consent? For example, a 12-year-old is bundled into the back of a police car and is taken to the station and asked whether he or she will consent to a body sample being taken. In any rational analysis, there is no consent there (Keith Locke Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, In Committee Third Reading).

Would the parents need to give consent for bodily samples to be taken from a 12-year-old? ... Certainly, being the mother of a 12-year-old, I do not believe that he would be in a position to make legal decisions about his rights in this regard (Sue Moroney, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill In Committee Third Reading).

The police will not run into a whole lot of complaints about this, because 12 and 13-year-olds simply do not know their rights. If a policeman comes along to a 12 or 13-year-old, that child will not complain, because at that age children hardly know which foot to put each shoe on. (Stuart Nash, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill In Committee, Third Reading).

The problem with the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill is that it does not help, and it makes the situation much, much worse by not recognising that children as young as 12 years old are children. They might know what they do is wrong, but they do not or cannot understand the consequences of what they do, and they must never be treated as if they are anything other than the children that they are. (Metiria Turei, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, Second Reading).

Following on from this comparison of attitudes to age, it is appropriate to look specifically at what MPs had to say on the topic when debating the three Bills, as it is MPs who are the legislators and who finally decide on age limits. The analysis of the Hansard debates included a category covering MPs' views on age limits, including justifications for particular age limits, and this is discussed below.

4.3.4 Hansard Debates on Age

4.3.4.1 Alcohol Reform

Because the provisions relating to age of purchase were subject to a vote of conscience, the Select Committee Commentary did not make a recommendation on

the part of the Bill relating to ages, but summarized the main arguments of submitters. The Hansard speeches therefore provide the rationale for the way MPs voted. The main arguments made by submitters as outlined by the Select Committee Commentary, included that since the drinking age was lowered to 18 there has been an increase in drinking amongst young people, more alcohol-related road crashes involving young people, more disorder, more young people in the Emergency Department for intoxication, more drinking by under 18-year-olds. Arguments against raising the age to 20 included: that most adult privileges and responsibilities, such as the rights to vote, marry without parental consent, and stand in elections, are gained upon reaching the age of 18; that it was illogical and unfair to permit 18-year-olds to do all these things, but not allow them to buy alcohol at off-licensed premises. It was argued that raising the purchase age was an arbitrary measure for which there was no evidence, and that there was no comparative evidence relating the age of purchase to the degree of associated harm. It was also pointed out that 18 years was the most common alcohol purchase age in OECD nations.

As in submissions to the Select Committee, MPs also suggested that age was not the most important issue in relation to problems associated with alcohol. It was suggested that other issues such as advertising and marketing, or evidence of alcohol abuse across all age groups, or the 'drinking culture' in New Zealand, were just as important or more so. There was also a suggestion that the focus on age, especially in making this aspect of the Bill a conscience vote, was deliberate in that it avoided introducing any measures that were unpalatable to the 'alcohol industry':

The purchase age has never been a particular issue for the industry, so that is the one issue that is just not an issue and I think that is why the Government was prepared to give that away. (Hon. Lianne Dalziel, Hansard, Alcohol Reform Bill, In Committee, Procedure).

... I said during that debate that we were placing far too much emphasis and far too much focus on age as the sole source of redemption for Parliament when it comes to trying to address alcohol harm. The Government has done

a very good job of singling out that issue and framing the debate around alcohol reform as a debate about age. I congratulate the Government on the framing, the messaging, and the marketing that it has done around that, because it has been a superb effort on its part to distract the debate and the public from the weakness and the timidity of other parts of this so-called Alcohol Reform Bill. (Iain Lees-Galloway (Hansard, Alcohol Reform Bill, In Committee, Procedure).

As in the submissions, the selection of an appropriate alcohol purchase age, other than alignment with other rights, was arbitrary. Some MPs suggested 20 years was inappropriate since there were other rights that were available at 18 years, such as being able to vote, to marry, or to serve in the defence forces. However, it was also suggested that because of greater 'maturity' the age of 20 years was appropriate. One MP outlined the history of drinking ages in New Zealand and concluded *lower ages have never worked and never will* and suggested therefore that the age of 20 years was the best because that was the Age of Majority:

I believe that the latest possible age ... is the best, and that age is 20 years. That has been the Age of Majority in New Zealand since the Age of Majority Act 1970. Twenty-one, I think, would actually be better, personally, but that is neither legally nor reasonably viable in New Zealand. So 20 is the correct age, I believe, for both on-licence and off-licence premises. (Denis O'Rourke, Hansard, Alcohol Reform Bill, In Committee).

The same speaker outlined the rights that are conferred on young people at different ages and concluded that:

What happens in terms of the conferring of rights or the imposing of duties at other ages is completely irrelevant to the purchasing age for alcohol. They just have no relevance whatsoever. There is only one genuine criterion, I believe, for the alcohol age, and that is what age is in the best interests of young people. My answer to that is 20 years, because the later age creates more maturity (Denis O'Rourke, Hansard, Alcohol Reform Bill, In Committee).

Another speaker noted other rights, such as being able to *vote, become an MP, get married, or go to war* but suggested that these *do not normally lead to serious harm befalling the individual*. He then noted the exception of *going to war* but suggested that *18-year-olds are not sent off to war by themselves. They undergo rigorous training and are supervised by older colleagues* (Dr Cam Calder, Hansard, Alcohol Reform Bill, In Committee).

Some MPs noted the argument about aligning ages but contended that with rights there were responsibilities:

These are people whom we consider to be adults in our society. They can vote, stand for Parliament, serve in the armed forces, get married, have children, hold a firearms licence, and sell and manage the purchase of alcohol. Yet we may say to them that, no, they cannot buy a beer, and that simply is not fair. (Holly Walker, Hansard, Alcohol Reform Bill, In Committee).

I get their arguments about being old enough to fight, fornicate, vote, etc., but not old enough to buy a beer at the end of a hard day's study. They have reminded us about the National Party value of individual freedom. I want to remind them of that other National Party value: personal responsibility.
(Michael Woodhouse, Hansard, Alcohol Reform Bill, In Committee).

Several supported raising the age to 20 years because they considered the purchase age of 18 years had allowed young people under 18 years to access alcohol. One MP noted ALAC (Alcohol Advisory Council of New Zealand) evidence of a drop in the proportion of under 18-year-olds who identified as 'drinkers' between 1997 and 2010, but another noted that since the purchase age was lowered to 18 years there had been a greater level of binge drinking.

Some Members also noted that the age of 20 years was a popular choice and that

... this is what the overwhelming majority of New Zealanders in every single electorate in this country want. (Hon. Simon Bridges, Hansard, Alcohol Reform Bill, In Committee).

Another MP described conversations with MPs where:

... some of them told me that they actually voted for the 18-18 scenario not out of a deeply held conviction that it was the right thing to do but because they thought that in an environment where 18 to 20-year-olds have so much voting power it might be a bit risky to vote against something that 18 to 20-year-olds patently wanted so much. (Hone Harawira, Hansard, Alcohol Reform Bill, In Committee, Procedure).

There were also some instances of paternalistic attitudes towards young people that are worth noting:

For this reason, should the split age not come through, it is my intention to shelter as many young people as we can of the age of 18, 17, 16, and 15 from the harm that alcohol does, to help them to be more responsible, and to help them to learn about alcohol so that they can be good citizens when they are older and not feature in some of the statistics we are so worried about. I will be voting for the age to rise to 20. (Todd McClay, Hansard, Alcohol Reform Bill, In Committee).

People talked about, for instance, the age of consent for sexual intercourse being 16, being able to vote at the age of 18, being able to join the army at 18, and being able to purchase tobacco at a young age. The point that really needs to be made is this: most of the decisions that young people make at those young ages are the wrong ones. Would anyone in the Chamber really think that it is a really good idea to seek consent and go off and get married at 16, or to get married at 18; or to start having sex at an early age, at 16; or to start smoking tobacco at 16? The trouble is, of course, that when those 18-year-olds go off and vote they all go and vote for the wrong party, so those decisions are not good decisions that are made. (Hon. Chester Borrows, Hansard, Alcohol Reform Bill, In Committee).

4.3.4.2 Land Transport (Road Safety and Other Matters) and Land Transport (Driver Licensing) Amendment Bills

In introducing the Driver Licensing Bill, the Hon. Peter Dunne indicated that he wished to 'test the will of the House' in relation to the recent deaths of three 15-

year-old drivers. It was ‘because of those incidents, and mounting public concern about road safety and young drivers’ that he introduced the Bill. He noted that there was evidence of a greater crash rate for younger drivers driving solo for the first time:

For instance, the number of crashes in the first month after gaining a restricted licence, compared with the last month that one is on a learner licence, increases about 2½ times for 18 and 19-year-olds, and about 4½ times for 17-year-olds, but there is a whopping eightfold increase for 16-year-olds, and an even greater increase of tenfold for 15-year-olds. That clearly shows that the younger the age at which a driver gets a restricted licence, the higher the chance that he or she will crash. That is really the point of this legislation. (Hon. Peter Dunne, Hansard, Land Transport (Driver Licensing) Amendment Bill, First Reading).

In introducing the second Bill, the Minister noted:

It focuses on two areas where we believe we can make a real difference: young, inexperienced drivers and repeat drink-drivers. Essentially, we want to ensure that our young people have the skills and the experience to be safe on our roads. This is a top priority for the Government, because last year 32 percent of people killed on our roads were under the age of 25. That is not just disproportionate; it is tragic. (Hon. Steven Joyce, Hansard, Land Transport (Road Safety and Other Matters) Amendment Bill, First Reading).

So, for both Bills, considerable emphasis was placed on higher crash rates for young people as the rationale for introducing the legislation.

Most speakers focused on the rationale for the Bill, that is, that young drivers had a higher crash risk, and argued either in favour of raising the age because that would reduce the risk, or against raising the age because there was no evidence it would make any difference to the risk for young people overall. Many speakers noted evidence concerning the higher crash rates for the 15-19 years age group, and some also noted evidence of higher crash risk in the first month of driving for 15 and 16-year-olds compared with 18 and 19-year-olds. There were also some who

suggested that there would be negative impacts on young people and their communities, which were sufficiently significant to weigh against any potential benefits.

Many speakers stated that they did not see age as necessarily being a problem and that there was no evidence that raising the age from 15 to 16 years would make the roads safer. Some suggested that as the greatest risk period was in the first six months of solo driving, raising the age would *simply shift the age at which we have problems*. Others questioned whether there was any difference between young people of age 15 or 16 years, while some suggested that one year of ‘maturity’ would make a difference. The question of ‘brain maturity’ was also raised, one noting that as ‘the frontal lobe is not fully developed until age 25’ raising the age by one year did not make sense. Some Members noted evidence that young drivers between 15 and 24 years had proportionately higher fatal crashes than other age groups, which indicated that an age of 25 would ‘solve the problem’, but most noted that in terms of the evidence, the age of 16 was arbitrary. One speaker, a Select Committee member, suggested that *the brain of a 15-year-old and the brain of a 16-year-old, I am sure, speaking physiologically might be very similar, but I think in maturity they are worlds apart* (Dr Jackie Blue, Hansard, Land Transport (Road Safety and Other Matters) Amendment Bill, In Committee). Those who supported raising the age while acknowledging that 16 was arbitrary, or that there was no evidence it would make the roads safer, often still supported raising the driving age, suggesting that it was *a good starting point*, or that it would protect at least some 15-year-olds.

Several speakers suggested that the driving licence age was originally set at 15 years because that was the school leaving age, but that now the leaving age was 16 years it was appropriate to raise the driving licence age. Some talked about how young people in the past obtained their drivers’ licences as soon as they turned 15, while others suggested that changed driving conditions, such as volume of traffic and cars being more powerful meant the driving age *should be adjusted accordingly*. Many speakers raised the question as to whether it was age or

experience that made young people more likely to be involved in road accidents, and some noted other factors leading to higher crash rates, such as alcohol, night-driving, speeding, or driving 'souped-up cars', which would not change if the driving age was raised to 16 years. One speaker suggested that other factors associated with young people's driving, such as the time of day and the sorts of vehicles they drive, might be more important issues to find solutions to than age.

"This bill does not target any of these factors—speed, booze, social pressure, road conditions, and education. The bill is basically just to raise the minimum driver's licence age from 15 to 16 years, and to extend the length of the learner-licensing period from 6 to 12 months. Will adding 6 months make a difference? I doubt it." (Te Ururoa Flavell, Hansard, Land Transport (Driver Licensing) Amendment Bill, First Reading).

Some also noted the gender differences in accident rates, one referring to the *2 years after getting a licence* as being *the most dangerous time for young males up to the age of 25*, but evidence concerning gender differences in crash rates was rarely mentioned. While one speaker, who was a Select Committee member, admitted that *gender is a factor*, he went on to say:

There are a number of contributing factors to risk on our roads, but this bill targets one specific risk and increases the driving age. (Michael Woodhouse, Hansard, Land Transport (Road Safety and Other Matters) Amendment Bill, In Committee).

One Member suggested that *raising the age is just a political attempt to get something forthright that the Government can go out and sell*, (David Bennett, Hansard, Land Transport (Driver Licensing) Amendment Bill, First Reading) and some suggested that it was more about popularity than evidence:

It looks good in the media. Let's have a go at the young. After all, they are not a particularly politically vocal group, and drivers under the age of 18 cannot vote (Darien Fenton, Hansard, Land Transport (Road Safety and Other Matters) Amendment Bill, Third Reading).

There is very little evidence that can be nailed down that says that raising the driving age from 15 to 16 will work and will make our roads safer, but the Government is doing it. I do not know what the polling numbers are for raising the driving age, although I suspect it would be pretty popular with most of the people who are not in the age category that will be affected by it. (Chris Hipkins, Hansard, Land Transport (Road Safety and Other Matters) Amendment Bill, Third Reading).

A telephone poll conducted in Hamilton by the Waikato Times of a random group of people showed that 75 percent of people agreed that the driving age be raised, with most people wanting the age to be lifted to 18. Again, that is just an example from my own city of the variety of views on the subject ... Some people are even looking beyond the age of 16, to 18 years. (Martin Gallagher, Hansard, Land Transport (Driver Licensing) Amendment Bill, First Reading).

There was no doubt that Parliament wanted this bill to be considered. One might ask why. Well, the simple reason is that the public want to raise the driving age—they want to raise the age when youngsters can get behind the wheel of a car and drive it. I personally am totally in favour of that. I would not let my own children anywhere near a car before they were 16. If I had had my way at that time, I would have raised the age to 17. (Peter Brown, Hansard, Land Transport (Driver Licensing) Amendment Bill, First Reading).

Some Members contrasted the driving age in New Zealand with that of other countries, noting that in some countries where the driving age was higher, the rate of road deaths was lower, while others noted a number of OECD countries which had higher driving ages also had higher death rates than New Zealand.

Effectively, the age of 16 brings New Zealand to an approach consistent with that of Australia and other States that have been shown to have an effective approach, and have shown results from increasing the driving age. (David Bennett Hansard, Land Transport (Road Safety and Other Matters) Amendment Bill, Third Reading).

I notice that in Australia the driving age is around 16. In Canada, in Quebec, the driving age is around 15 or 16, but in Alberta it is actually 14 years, which I thought was extraordinary—14 years! It would be very interesting to see what the statistics are from Alberta in regard to 14-year-olds with driver's licences. I am not suggesting, by any stretch of the imagination, that we drop the age down, but it would be interesting to see what the statistics are for that particular age group, and what the conditions are around drivers' licences in that area. The United States also has a driving age of 14 years in Arkansas and North Dakota, and, again, it will be very interesting to see what the findings are from the research provided to the committee for those areas. In France and Sweden the driving age is 16, in Great Britain it is 17, and in Germany it is 17 years and 5 months. (Sandra Goudie, Land Transport (Driver Licensing) Amendment Bill, First Reading).

The evidence of the higher crash rates and fatalities in the 15 to 19-year age band was seen by some MPs as an unacceptable road toll for young people. They therefore supported raising the age as it would reduce the numbers of young lives lost. However, other MPs cited the same evidence as indicating that raising the age by one year would not have an impact on road safety, since it did not distinguish between 15 and 16-year-olds in terms of crash rates and it did not take into account other factors that might be contributing to the high rates. One MP pointed out that the research indicated that 15 to 19-year-olds were at higher risk, so preventing 15-year-olds from driving discriminated against 16 to 19-year-olds; *surely those young people deserve the same protections that ... 15-year-olds will enjoy under the legislation.*

While many referred to the statistics showing higher crash rates for younger drivers, some questioned these and suggested that there needed to be a more sophisticated analysis of the data before it was clear what was really happening in terms of age. Many MPs expressed a need for more or better evidence that this measure would have a positive impact and often stated that they supported this first reading and looked forward to the Select Committee investigation of the issues

around the evidence regarding age and safety, as well the particular issues for rural young people.

One speaker noted the inconsistencies in raising the drivers' licensing age while lowering the age in other legislation, such as for the minimum wage:

In this House we have had legislation—for example, minimum wage bills—come through, where people have argued that 16 and 17-year-olds have the same ability as 18 and 19-year-olds to work, the same maturity, and all those factors. Yet here we are doing the opposite; we are increasing the age at which young people have responsibility instead of decreasing it as we were expected to do in the minimum wage area. There is no consistency there in rationale. I know there is a difference in age, but there has to be some consistency also in rationale. (David Bennett, Hansard, Land Transport (Driver Licensing) Amendment Bill, First Reading).

4.3.4.3 Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill

In debates on this Bill, use of the term 'child' enabled speakers to attach attributes commonly associated with children to the 12 and 13-year-olds affected by this Bill. They also noted that lowering the age in this case was not aligned with the UNCRC, where a person below the age of 18 years is defined as a 'child', and that it was contrary to the spirit of the UNCRC in that the focus should be on the welfare of the young person. It was suggested in particular that rather than lowering the age, New Zealand should be looking at including 18-year-olds within the jurisdiction of the Youth Court, since up to 19 years they were still entitled to the rights and protections outlined in the UNCRC.

... the bill is contrary to New Zealand's obligations under the UN Convention of the Rights of the Child. The bill treats very young children of 12 in the same context as much older young people, denying them the opportunity to be treated in the context of their family and their age. (Kevin Hague, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill First Reading).

One speaker outlined the implications of lowering the age in terms of other rights and responsibilities that fell to 14-year-olds:

I find it hard to understand what lies behind the thinking in this area, because the law accepts that 14 years of age is the defining line between a child and a young person. Under current legislation the definition of “young person” is 14 years and older. Below that age, we are talking about children ... So what possible motive lies behind this particular change? It does not make sense that a child who is not old enough to babysit is actually now old enough to face the consequences that would be faced by a young person under the youth justice provisions of the Children, Young Persons, and Their Families Act. (Hon. Lianne Dalziel, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, In Committee).

One speaker noted the arbitrariness of the labels ‘child’, ‘young person’, or ‘adult’:

... Around the world, different jurisdictions classify the ages of people appearing before their criminal jurisdictions in different ways. A person who is legally a child in New Zealand might be a young person in another country, or an adult in yet another country. (Chester Borrows, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, In Committee, Third Reading).

Speakers appeared to deliberately manage the language used to describe the 12 and 13-year-olds who would be affected by the Bill and they were often described as ‘children’ by those opposing the changes, the implication being that they had the attributes of children and therefore should be treated as children:

... we are not talking about criminals; we are talking about children (Stuart Nash, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, In Committee Third Reading).

... Whether his or her development, or physical or mental or emotional well-being, is being, or is likely to be, impaired or neglected. All of those issues lie behind these children (Lianne Dalziel, Hansard, Children, Young Persons, and

Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, In Committee Third Reading).

In fact, they are children. They are damaged children; they are corrupted children. They are children who have been formed and shaped by poverty, by neglect ... (David Clendon, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, In Committee).

... We have all been to intermediate schools and seen 12 and 13-year-olds running around the fields, and that is where they should be. They should be kicking around rugby balls, throwing softballs around, and throwing netballs through hoops. These are not criminals. If we label them as criminals, then we are labelling them for the rest of their lives. (Stuart Nash, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, In Committee Third Reading).

Other speakers questioned whether the label 'child' should be associated with age:

We cannot say that all the young people – or young children – at my daughter's school who are aged 10, 11, 12, and 13 are children. Sadly, they are not (David Garrett, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, In Committee).

The arguments supporting the changes suggested that once they have committed these 'serious' crimes, they are no longer 'children', in the sense of being vulnerable, immature, or having the 'rights of the child' as might be determined by the UNCRC for example. In this sense, 'child' is defined not by age but by action. Many speakers referred to these young people in harsh terms: *We are talking here about young arsonists, young aggravated robbers, and young home invaders ... They are not innocent* (Tim MacIndoe, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, In Committee Third Reading); *We are talking about only those young people who have a record of offending well beyond their years. These are 12 or 13-year-olds who are out of control and are a danger to their communities* (Paula Bennett, Hansard, Children,

Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, Second Reading); *These are serious crimes and ... people who commit crimes are criminals whether they are 13 or 93 years of age. ... They are not innocent and they need our determined intervention.* (Tim McIndoe, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, In Committee Third Reading).

The idea that committing a serious offence indicated that the young person was different from a child, was challenged by some, while others suggested that it did not matter what age the offender was, the seriousness of the offence was the important factor:

There is no reason why children as young as this should be dealt with in more formal, criminal proceedings because of the nature of their crime. A child of 12 is no more likely to exhibit greater understanding of the effects of his or her actions simply because the crime is of greater severity. (Kevin Hague, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill First Reading).

Members opposite kept saying somewhat emotively, and thereby misleading the public listening to this, that these offenders are only children. Of course, we are not talking about all 12 and 13-year-olds ... We are talking about the very small group of 12 and 13-year-olds who have invaded homes and grievously assaulted other people. Let me assure members that the victims of those crimes do not think they will not be upset because it was only a 12-year-old, or it was only a 13-year-old, who committed the crime. (Hekia Parata, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill In Committee Third Reading).

I agree - they are children. But the sad fact of the society we live in today is that the very children whom members opposite purport to be so concerned about are committing serious, grown-up crimes. (Todd McClay, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill First Reading).

As in other debates, accounts of the differences between children and young people of different ages were vague and did not describe particular attributes that might have been critical for setting an age limit for the legislation being discussed.

I recently had the pleasure of spending some time with a niece and some of her friends, who are 15 and 16-year-old young women. I use the words “young women” deliberately. That young lady is a very, very different person from the one that she was 3 and even 2 years ago. A substantial evolution, a significant change, occurs at that age, between a child of 11 or 12 and a young woman of 15. To deny that is, I am afraid, a denial of what many of us who are parents and carers of children know to be the reality. (David Clendon, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, In Committee).

One speaker suggested there was a ‘philosophical’ issue involved in changing the age of criminal responsibility, which he claimed had not been addressed. This issue incorporates the fundamental question of the differences between 12 and 13-year-olds and older youth:

I want her [the Minister] to take another call and address the specific question of how we make ethical and philosophical sense of changing the age of criminal responsibility in respect of 12 to 13-year-olds, and what fundamentally lies behind it. If the Minister could convince me, I would be impressed, because she has not addressed this issue and it ought to be addressed.

The change is fundamental, because when we take 12 and 13-year-olds and put them into a youth justice jurisdiction, we are taking away from, and giving less authority to, the primary responsibility of a decent society to care about the care and protection needs of young children. (Rajen Prasad, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, In Committee).

4.3.5 Summary

In the setting of a minimum age standard for legislation it might be expected that arguments or understandings about levels of competence would be significant, even critical, deciding factors in the selection of age. However, analysis of the data suggests that competence is not seen as a critical factor in age selection. While there was little evidence provided concerning whether or not young people were competent to manage themselves, make good decisions, or manage the world around them, most submitters and MPs expressed a view of young people as being 'less competent' than adults, simply because of their life stage. This was not correlated with any particular age, but was expressed as a factor associated with being young, so that it applied to 12 and 13-year-olds in the case of the Youth Courts Jurisdiction, to 15 and 16-year-olds for driving, and for 18 to 20-year-olds for drinking. In fact, except for aligning ages with other legislation or the UNCRC, there was little practical justification for choosing particular age limits, even within the MPs' debates.

Beliefs expressed about young people's competence included that their developing brains left them with the inability to make good decisions, that they are naïve, they think they are invincible, and that they lack experience, all of which affect their ability to drive safely, make sensible decisions around drinking, or manage Court processes. Some young people because of their particular situations, their dysfunctional families, learning disabilities or developmental delays, were regarded as not having the capacity to manage their lives adequately or appropriately and were seen as being especially vulnerable. When there was acknowledgement of young people's competence it was usually seen as being associated with their experience, either contextual, as in exposure to 'responsible drinking' or (negatively) for young criminals whose serious crimes indicated their competence, or in terms of learning, as in the argument supporting a longer learner period for young drivers. Sometimes young people were seen as especially competent or 'savvy' but usually in relation to deviant activities.

While competence was often viewed as being gained or enhanced through experience, for others it was more a question of physical, cognitive or psychological

development and required a level of 'maturity', an ill-defined concept that was only very loosely associated with age.

Accepting that experience leads to greater competence is a compelling argument for enhancing children's and young people's opportunities to engage in a range of experiences rather than imposing arbitrary age limits and thereby reduce the opportunity to develop the competencies to manage a range of rights and responsibilities.

4.3.6 Discussion

The analysis of the submissions and the Hansard debates suggests that not only is competence not a critical factor in age selection, but even when it was raised there was little evidence provided that would support or dispute young people's competence to undertake tasks or make decisions.

Even in the driver licensing case which is most evidently a skills-based activity, there was no consensus about whether what appeared to be a higher crash rate for young drivers was an issue of age or of experience. While some evidence was presented that indicated there was a difference in crash rates for 15 and 16-year-olds (for example, (Begg & Langley, 2009; McCartt, Mayhew, Braitman, Ferguson, & Simpson, 2009)) it was not claimed as evidence of greater competence associated with age. While Begg et al., and other research (Mayhew, Simpson, & Pak, 2003; McCartt et al., 2009; Williams, 2009) indicates that 16-year-olds have a higher crash risk than those licensed at older ages, there are a number of issues that tend to complicate the interpretation, such as the other effects that increase the likelihood of crashes, like night-time driving, alcohol, and gender.

Interestingly, and as in the other case studies, there was rarely any reference made to gender differences in crash rates. This is also reflected in much of the literature, and while most studies do not look at the differences, those that do show there is a significant difference in crash rate or risky driving for young males and females (Laberge-Nadeau, Maag, & Bourbeau, 1992; Ministry of Transport, 2014; Oltedal & Rundmo, 2006). For example, for 2015 in New Zealand, in 16 percent (47/291) of fatal crashes a woman driver was at fault; men drivers were at fault in 78 percent

(227/291) of fatal crashes; female drivers aged 16-24 years were at fault in 2.4 percent (7/291) of fatal crashes; and male drivers aged 16-24 years were at fault in 22 percent (65/291) of fatal crashes (Ministry of Transport, personal correspondence).

There are also gendered differences that can influence driving, such as the different effects of age and experience (Laberge-Nadeau et al., 1992), and involvement in drink-driving and 'risky' driving (Neale, Martin, Daube, Grace, & Panko, 2014) which also tend to be overlooked when age is discussed in relation to safety for young drivers. While the impact on rural youth of raising the drivers' licensing age was raised by some submitters and parliamentarians, apart from one submission that noted the difficulties for a 16-year-old single mother whose shift finished at 10pm, there was no mention of any differential impact on young men and women of this law change. However, a New Zealand study on women and drink driving indicated that not being able to get home was cited as a reason for young women choosing to 'drink-drive', while 'being rich enough to get cabs everywhere' was one of the suggestions by study participants that would stop young women drinking and then driving (Neale et al., 2014, p. 36).

There was reference in submissions and Hansard debates to the improvement in crash rates in Sweden after the extension of the learning period there, and it was suggested that the extra hours of practice had contributed to a 40 percent reduction in young driver crash rates. However, this reduction has also been attributed to the younger age at which Swedish drivers could begin training (the extension to the learner phase had been achieved by lowering the age to 16 years from 17 and a half years). There is evidence from a Swedish study that those who started behind-the-wheel training as 16-year-olds had a higher likelihood of passing the driving test than those who started at later ages (Nyberg, Gregersen, & Wiklund, 2007) and it appears that since the changes to driver licensing in New Zealand (where the age increased from 15 to 16 years, a tougher restricted licence test was introduced, and there was encouragement of a training period of 120 hours), that younger drivers are more likely to pass than older drivers. It is reported that in November 2014, the pass rate for 16-year-olds was 66 per cent, dropping to

56 per cent for 18-year-olds and 54 per cent for those aged 20 to 24. The pass rate dropped below 50 per cent for those aged over 34 and kept declining (Chatterton, 2014). It is yet to be ascertained what the effect of the changes might be on crash and injury rates, but the higher pass rates of the youngest age group suggest either that they are more skilled drivers or at least more dedicated to passing the test than those in older age groups.

Support for raising the drivers' licensing age in submissions was focused on reducing the crash rate amongst young drivers, but there was no accompanying suggestion that younger people were 'less skilled'. Rather it was just assumed that they were 'inexperienced' or 'immature' or 'riskier drivers'. While there is considerable literature that looks at evidence of the effects on crash rates of the driving age, of graduated licensing periods, and of types of training, there does not appear to be any research undertaken with young people that looks at the skills needed for driving such as that undertaken for older drivers which looked at skills and abilities such as visual search behaviour, attention and hazard perception (Levin, Dukic, Henriksson, Mårdh, & Sagberg, 2009). The summary statement in that research report contrasts with the approach taken in reports on young drivers: 'The definition of older people as a problem (e.g. risky car drivers), and as a homogeneous group based on chronological age, may obscure the differences between groups and individuals based on variations in health, gender, ethnicity, living [situations] or economy. There is nothing in the results from that research project that supports age based limitations for renewal of driving license for otherwise healthy older people' (2009, p. 7).

While the literature reports evidence of high crash rates for young drivers compared with other age groups, it is difficult to distinguish the age effect from the effect of driver inexperience, or from some of the effects of the Graduated Driver's Licence (GDL), such as the prevalence effect (reduced number of teenagers driving) or night-time curfews that mean fewer young people drive at times when accidents are more likely for all age groups. An early New Zealand study suggested that the reduced crash rate following the introduction of GDL was likely to be attributable to an overall reduction in exposure (Langley, Wagenaar, & Begg, 1996), findings

supported by a more recent United States study (Karaca-Mandic & Ridgeway, 2010). More recent New Zealand research refutes the prevalence argument and suggests that GDL restrictions have reduced the crash rate for 15-19-year-olds (although because data is not available regarding the numbers of licensed drivers or distance travelled, the research estimated the number of licence holders for the years investigated) (Begg & Stephenson, 2003). It should be noted also that the crash statistics often provide data for age groups, such as 15-19 years, or 16-24 years, so that any differences in driving competence that may exist between say 15-year-olds compared with 17-year-olds may not be clear. One study that looked at fatal motor-vehicle crash involvements per 100 million miles driven by driver age (16 through 74) and state, along with 14 driver-, vehicle-, and state-level variables, found that driver age was not a significant predictor of fatal crash risk once several factors associated with high poverty status (more occupants per vehicle, smaller vehicle size, older vehicle age, lower state per capita income, lower state population density, more motor-vehicle driving, and lower education levels) were controlled (Males, 2009b). Another study found that parental occupation and level of education was related to the risk of road traffic injuries in young drivers (Hasselberg & Laflamme, 2003).

The conditions for the 'Restricted licence' are interesting from the point of view of competence: A 'Restricted Licence' means the driver cannot drive alone between 10pm and 5am, and cannot normally carry passengers without a supervisor, except for their spouse/partner; children who live with them under their care or that of their spouse; their parent/guardian; relatives who live with them and who are on a social security benefit; or someone they look after as their primary caregiver. The reasons for raising the driver's licence age appeared to be based on the grounds of 'safety', backed up by evidence that the younger drivers and those with less experience had higher crash rates. However, unless one speculates that the additional responsibilities held by the young people (and some others) with Restricted Licences in the exempt groups somehow make them 'safer drivers', the exemptions appear to reflect sympathy for the plight, not of the young drivers

themselves but of those in their lives who need transport. But whatever the reasoning, it is clearly not about 'competence'.

In the Youth Courts Jurisdiction case, the arguments about 'competence' focused on whether or not young people of ages 12 and 13 were sufficiently capable of understanding court processes and legal proceedings to enable them to participate effectively and understand the implications of a plea. Other arguments centred on the competence of these young people to understand that they had committed a crime or that they knew the difference between right and wrong. The Bill extended the principle of *doli incapax* into the Youth Court for 12 and 13-year-olds being tried for 'serious offences', a principle which protects absolutely children under the age of 10 years from criminal prosecution. Previously, a child or young person between 10 and 13 years was presumed *doli incapax* unless proven otherwise, when they appeared before the High Court for murder or manslaughter, or the Family Court because they were in need of care and protection because of their criminal activity. However, it has been argued that Courts and prosecutors in New Zealand avoided dealing with the *doli incapax* test for the reasons that: evidence of previous misbehaviour may be raised to show that the child knew what they were doing was wrong; that the test for knowledge of wrongfulness is too easily proved; and that it is only raised in the most serious cases where it would be very difficult to try and establish that knowledge of wrongdoing was lacking (Thompson in Hall & McIver, 2012). Hall & McIver (2012) argued that it would be a challenge for Youth Court judges to assess a child's knowledge of right and wrong particularly since 'New Zealand case law is slim given the low numbers in the High Court and the lack of willingness among Family Court judges to engage in the inquiry' (2012, p. 9).

A young person might have the equivalent cognitive and psychosocial abilities as an adult, but there is evidence that young people's decision-making is affected by peers and is less future-oriented than that of adults (Steinberg et al., 2009, p. 587). Steinberg et al. argue that in cases of criminal activity, which for young people is typically carried out in group situations so that there is high impulsivity, social coercion and emotional arousal, adolescent decision-making 'is likely to be less mature than adults' (2009, p. 592).

Evidence that the decision-making competence of adolescents might be equivalent to that of adults in situations where there is time for reasoned judgment, but not in situations where there is emotional arousal and peer pressure, indicates that adolescents might have the capacity to understand court processes but that mitigation in sentencing should apply since they are possibly less culpable. However, while culpability and decisions about punishment might rely on evidence that there are differences in the way young people make decisions, such as that they are more easily influenced than adults, or that they are likely to perceive risk differently from adults, this does not help determine a 'right age' for treating young people in the same way as adults within the justice system. Young people do not reach developmental milestones at the same time, and have different life experiences that are likely to render them more or less competent at different ages and in different situations. As pointed out by Becroft 'young people mature at different rates and a "one size fits all" template to determine maturity is insufficient' (Becroft, 2006, p. 6).

The fairest response would appear to be the application of *doli incapax*, where the capacity of a young person to be tried is determined on an individual basis. This approach applies in medical consent and there is at least the opportunity for its use in criminal trials for young offenders.

As with crime, young people are likely to engage in drinking when they are with peers and in excitable situations, and in such situations they are potentially more susceptible to peer influences affecting their judgment and decision-making capacities (Steinberg & Scott, 2003). Once they have had a drink or two, adults are also more 'vulnerable' to impulsive and unwise decision-making, but adults' drinking tends to be more 'private' than that of youth, taking place in homes, restaurants, and clubs. Because they are not out on the streets in large numbers, their inappropriate drinking behaviour is not so public, while for young people the effects of alcohol on their behaviour are usually witnessed and take place in public arenas. Because they cannot afford to pay the higher prices of alcohol in bars, clubs and restaurants, young people 'pre-load', drinking as much as possible of cheaper

alcohol at home before heading out into town. The social, economic and environmental context for young people's drinking is quite different from that of adults.

This section has described the findings across the three legislation case studies concerning young people's 'competence' in relation to age-setting. Competence is sometimes seen as being dependent on or related to developmental stage, and sometimes it is seen as dependent on or enhanced by experience, but in neither of these constructions is there a clear correspondence with age. Competence is also an attribute that is seen as related to context, as indicated by the different driving age suggested for rural young people, the conditions for the Restricted licence, and evidence of the influence of poverty on crash rates. For drinking and criminal activity, the influence of peers in excitable situations is understood to affect competence in terms of decision-making.

The next section will describe the findings concerning the overarching theme of 'risk' across the three legislation case studies.

4.4 At Risk or Risky

When youth are viewed as a problem, they are seen as being either 'risky', that is, risk takers who endanger themselves or are a danger to others, or as 'at risk', vulnerable to a variety of negative influences or events. Viewing young people as 'at risk' is sometimes aligned with an idea of young people as being 'unformed yet', so that there is an opportunity to shape them for good rather than bad, or for positive outcomes rather than negative ones. In this view, they are seen as in need of adult protection until they have had the time to develop the maturity required to make good decisions. In the submissions and Hansard debates on the Alcohol Reform Bill, this idea of youth appeared in the arguments in favour of raising the age for alcohol purchase because 18-year-olds were not yet competent to handle alcohol and that it had long-term negative health effects, and for those who supported a 'split age purchase' for the reason that young people would learn to 'drink sensibly' in the presence of 'sensible adults'. For the Driving Licence age, the idea of youth as 'unformed yet' was evident in the emphasis on the need for a longer and more intensive training period. In the Youth Courts Jurisdiction Bill, it was evident in the focus on providing opportunities for rehabilitation; given the chance, these young people could develop into good, contributing citizens.

In all three case studies, the 'safety' of young people and of society generally was also invoked as a rationale for limiting young people's freedoms. Thus, raising the age for attaining a driving licence was justified as it *improves the road safety outcomes for all New Zealanders, especially our youth*. The Explanatory Note to the Youth Courts Jurisdiction Bill states: 'The reforms aim to reduce re-offending by serious and recidivist child and youth offenders and thereby improve *community safety* [my italics]. A related aim is to assist children and young people to get their lives on track and to lead socially constructive lives, free of crime' (Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill. Explanatory Note., 2009, p. 28).

Both the immediate and the long-term effects or consequences of young people as 'at risk' were considered. In the Alcohol Reforms case, they might be in immediate

danger of violence or risky sexual behaviour or alcohol poisoning, and in the longer term they may be at risk of alcohol dependency, brain damage or giving birth to children with FASD.

Young people seen as 'risky' in the Alcohol Reform case included those who were binge drinkers, drove under the influence of alcohol, became violent, committed crimes, or were injured as a consequence of their drinking. They also included youths who supplied alcohol to younger people, who purchased alcohol when underage, or who stole alcohol. In the Driver Licencing case young people were regarded as 'risky drivers' because of their developmental stage, or because they did not have the training or experience to know how to drive safely. In the Youth Courts case, young people who committed serious crimes were viewed as 'risky' since they presented a danger to society. Older offenders were also seen as a risk to younger offenders, either in terms of physical abuse or negative role-modelling of criminal behaviour.

4.4.1 Youth as Risk

4.4.1.1 Alcohol Reform Bill

For the case of the Alcohol Reform Bill, young people's 'risk' to themselves and others included their violence, promiscuity, becoming alcohol dependent, the effects of alcohol use and abuse on their mental health, unsafe or unwanted sex; for young women, the potential for unwanted pregnancies and the impact of their drinking on their babies, in particular the risk of FASD. Submitters and MPs talked about the effects of alcohol on the 'growing brain', that *heavy youth drinkers become heavy older drinkers*, and the risks of long-term negative health effects such as cardiovascular disease and cancers.

As well as the risk to themselves, the risks from young people's drinking in terms of its negative effect on others were also described. Accounts included the impact on health services, Emergency Departments in particular, and sometimes on the disruptive impact of drunken youth in the streets, both the visual impressions of young people drinking in public and the danger they presented to themselves or to others:

... being disturbed around 3am by drunken racket from groups of young people fighting and creating havoc along the nearby road. (Submitter AR264).

... it is not pleasant to visit town and have to negotiate drunken youths, vomit and all the other results of alcohol abuse. (Submitter AR166).

... they'll 'pre-fuel', and thus arrive at their destination – normally on city centre streets via public transport – at the height of their drunkenness. (Submitter AR266).

Some referred to the impact on the justice systems of young people's drunkenness or alcohol abuse, and others suggested that there would be longer-term negative effects when these 'alcohol impaired' young people took on 'adult' roles in the future.

... poor choices and catastrophic consequences such as drunken driving of young people which have resulted in death, devastating families and leading to early imprisonment. Many children grow up affected by foetal alcohol syndrome, diagnosed and undiagnosed, whose poor impulse control and learning disabilities affect their capacity to participate easily in our society, frequently ending up in the prison system. Other children, at all levels in our society, are neglected and or abused because of the excess use of alcohol, and there is now a strong cultural expectation that abuse of alcohol and drugs is the initiation rite to adulthood. For some young people, who hold little hope of employment, it becomes a means of avoiding the frustration of growing up to face a life of little purpose; for others it is seen as a matter of entitlement and a justification to behave in anti-social ways. (Submitter AR168).

We rely on our young people to run this society in the future and can't help wondering what state they will be in when we are looking around for competent caring people to govern this country in 10-20 years from now. (Submitter AR89).

While some submitters and MPs suggested there was a ‘binge drinking’ culture in New Zealand, many believed that ‘binge drinking’ was not just endemic to youth but that it was a particular problem for youth, both for its immediate and long-term effects on young people and also in its social manifestations. While the submissions mainly portrayed young people as vulnerable to, or as victims of a heavy drinking culture, others viewed them as being active abettors:

We deal all the time with kids that hustle money to purchase alcohol, that steal alcohol, that stand over people for alcohol, that physically hurt others for alcohol and then commit a whole range of alcohol related offences that mostly involve violence, domestic or otherwise. (Porirua Alcohol and Drug Cluster).

The following ruling from the Speaker is interesting in view of the many references in the debates to young people’s binge drinking, drunkenness, drunken behaviour and negative impact on society:

Gareth Hughes: ... that I used to be a barman across the road at the Back Bencher. There I saw the problem. It was not youth drinking. It was inappropriate drinking—inappropriate drinking, no matter what the age was. There I saw regular alcoholism. I saw regular intoxication. I even saw MPs binge drinking and intoxicated, across the road.

The Chairperson: Order! [Interruption] Order! I do not think you should make that reference. I think that that is an inappropriate remark, and I ask the member to withdraw it.

Gareth Hughes: I withdraw. The real issue is irresponsible consumption, regardless of the age. (Hansard, Alcohol Reform Bill, In Committee).

4.4.1.2 Land Transport (Road Safety and Other Matters) and Land Transport (Driver Licensing) Amendment Bills

In the driver licensing case, young drivers were viewed generally as more dangerous, inexperienced and incompetent than older drivers. They put not only themselves but their passengers and other road users at risk. Research evidence was provided by some submitters that indicated *young age independent of*

experience, is a major determinant of risk (Dr Dorothy Begg and Professor John Langley, Injury Prevention Research Unit, University of Otago). Most submitters who supported raising the age believed that this would improve road safety for everyone, but particularly for young people. However, there was a small number who thought that raising the driver licensing age so that a full licence would not be obtained until 17 years at the earliest would place these and other road users at greater risk. It was suggested that they would be more confident and self-assured and therefore 'riskier' drivers, have the money to buy a faster car, and when reaching the drinking age of 18 years would have had less driving experience.

By increasing the driver licensing age, the age difference between driving and drinking converges and is potentially a lethal combination. (Christchurch City Council Submission).

Federated Farmers supports a zero alcohol limit being imposed for drivers under 20. We believe that this measure in combination with extending the learner period will have real and positive safety outcomes for young drivers. As such we see rising the minimum licensing age to 16 and the unsupervised age to 17 as an unnecessary step (and indeed risky as mentioned above). (Federated Farmers of New Zealand).

MPs also described high road crash outcomes for young people, but the data referred to cover a broader age range:

Young men between 15 and 19 years are seven times more likely to die than 45 to 49 year-old male drivers. (Te Ururoa Flavell, Hansard, Land Transport (Driver Licensing) Amendment Bill, First Reading).

... fatalities involving young drivers between the ages of 15 and 24 years represent about a quarter of all drivers involved in fatal accidents. (Hon. Nanaia Mahuta, Hansard, Land Transport (Driver Licensing) Amendment Bill, First Reading).

4.4.1.3 Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill

The Youth Courts Jurisdiction Bill was aimed at a group of young people, serious offenders, whom it was considered could not be adequately dealt with under the current system. 'The aim of this Bill was to amend the Children, Young Persons, and Their Families Act 1989 (the Act) to extend the Youth Court's jurisdiction to cover the most serious 12 and 13-year-old offenders, and to allow a wider range of sentencing orders to be made for dealing with offenders.' (Bills Digest No. 1729). This group was by definition, 'high risk': *Unfortunately, a number of serious and persistent young offenders cause significant harm to their victims, themselves, their families, and their communities* (Hon Paula Bennet, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, First Reading).

While many submitters expressed concern about the vulnerability of the group of young people being targeted in this Bill, there were some who held that they were 'risky' and should be 'held accountable' for their crimes. In these submissions, it was suggested that these young offenders knew that what they were doing was wrong, were possibly repeat offenders and were out of their parents' control.

There is an urgent need to prosecute the increasing number of violent, serious and repeat child offenders as young as 12 and 13. Taking a hard line will make the offender and caregivers aware that their disregard for upholding the law will not be tolerated ... But it is the increasing group of young children who have no regard for the law, who continue to offend and commit the most serious of crimes that we need to target. They not only have the ability to destroy their own lives but the lives of their victims. (Submitter YC25).

It is our opinion that 12-13-year-olds should be held accountable for actions that are considered serious enough to go before the youth court, as long as the child's rights are adhered to. (New Zealand Federation of Business and Professional Women Incorporated).

It [the Youth Court] is likely to be equally effective at dealing with younger offenders who are cognisant of and should be held responsible for their own serious actions. (New Zealand Police Association).

In most cases, the desired outcome for both those who supported and those who opposed 12 and 13-year-olds being treated under the jurisdiction of the Youth Court, was identical in that both wanted young offenders dealt with in a way that would stop the offending and give them the opportunity to lead better lives, as well as protect the community. There was one submission, interestingly from the Youth Parliament's Law and Order Select Committee, which suggested rehabilitation of violent offenders was not possible.

There was also concern expressed for the future outcomes for young offenders and some argued that unless there was some sort of intervention then these 'children' would become adult criminals.

Let us think about military-style camps to help some of the worst of the young children who are getting into the most trouble. I am talking about young kids without help who will go on to fill up our prisons when they become adults. (Todd McClay, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, First Reading).

The Police Association suggested young offenders would exploit the changes:

The practical reality is that such a change [bringing 17-year-olds within the Youth Court Jurisdiction] would be greeted with gleeful derision by young offenders and would be seen as an extension of the 'free reign' they believe they have until they reach an age at which they can be brought before an adult court. (New Zealand Police Association).

New Zealand has separate justice processes for under 17-year-olds and the child offending and youth justice processes are governed by the Children, Young Persons and Their Families Act 1989. The youth justice system has unique elements in its use of Police Youth Aid alternative action and Family Group Conferences. It holds that youth should be held accountable and take responsibility for their behaviour,

but it also has a focus on diversion, avoiding criminal proceedings against a child or young person if there is an alternative means of dealing with the matter. While youth justice processes emphasise that young people should be held accountable for their offending and encouraged to take responsibility for their behaviour, the underpinning ethos is that of rehabilitation of the young person rather than punishment. The FGC 'lies at the heart of the youth justice system' (Youth Court of New Zealand, 2016). So, the youth justice system already had a focus on families as central to the needs of young offenders. 'The Youth Court will refer matters to a family group conference before making a decision and will prefer decisions that respond to victims, and keep the young person in the community (where public safety does not require otherwise) and enhance their wellbeing' (2016).

In view of this, and of the Minister's opening argument that *the present system is not effective enough for this group* (Hon Paula Bennett, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, First Reading), the changes in the Bill, that 12 and 13-year-old 'serious' or repeat offenders could be tried in the Youth Court, appear to be designed to enable the application of a wider range of sentencing options for these serious young offenders, but also 'tougher' sentences:

This bill, and the Fresh Start range of initiatives, will improve the current system by providing tougher but significantly more flexible and effective legislation that gives a greater range of options for responding to serious and persistent offending by children and young people

However, arguments against the changes suggested that if there were limited and inadequate sentencing options available in the Family Court then the better solution was to extend the powers of the Family Court.

It appears to us that everything of a proven therapeutic value for treating these 12 and 13-year-olds is already available through the Family Court.
(Families Commission).

The reference to the 'therapeutic' value of sentencing in the quote above represents a commonly expressed view in the data, which was that sentencing for

12 and 13-year-olds in particular, but for young people more generally, should be 'therapeutic' or rehabilitative rather than retributive. Even for those who articulated the view that young people should be held accountable or punished for their crimes, there was still a desire that sentences should also rehabilitate. While young offenders were, not surprisingly, viewed as 'risky', the young people who were the focus of this bill were also seen as being at least to some extent 'at risk' because of the negative influences and effects of their families, communities, poor mental health, addiction, or school failure, as well as the influence of older offenders they might be exposed to in Youth Court processes.

Elements of 'moral panic' rhetoric were sometimes employed by MPs: Those who argued in favour of the change described these young offenders as 'a very small group' of the 'worst offenders': *the most determined, most recidivist offenders ... who are getting more aggressive and are creating havoc wherever they go* (Paula Bennett, Hansard, In Committee, 17 February 2010); *a worrying number of young people who are running amok in this country and we are talking here about young arsonists, young aggravated robbers, and young home invaders* (Tim MacIndoe, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, In Committee, Third Reading); *I think of these young people not as our hope for the future but actually as our fear* (Paula Bennett, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, In Committee); *we are talking about a thousand of the most seriously at risk, seriously disturbed, and seriously dangerous young people in our community* (Tim MacIndoe, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, In Committee). However, it was also often emphasised that this was a very small group of young people and they *do not represent the majority of teenagers*.

4.4.2 Youth at Risk

4.4.2.1 Alcohol Reform Bill

At the First Reading of the Bill, the Minister of Justice indicated that the focus for legislative change was on the harm caused by young people's drinking and that excessive drinking had become 'normalised' in the New Zealand culture:

The bill focuses strongly on the high and disproportionate harm caused by youth drinking. Risky drinking behaviour is becoming increasingly normalised, especially among our young people. The Government is not prepared to stand by and allow excessive and harmful alcohol consumption to be further ingrained into our culture.

These two issues were reiterated in many of the Members' speeches as well as in the submissions made on the Alcohol Reforms Bill. The arguments referring to the 'harms' caused by young people's drinking fell into two broad categories: those that had an immediate effect on young people and those that had an effect on their development that would become apparent in the longer term. Within the first category the concerns were mainly about young people's immediate health and safety. The second category included concerns about the effects of alcohol on the developing brain as well as on other areas of development such as decision-making or impulse control, which would have longer-term outcomes for the young person and sometimes on society more generally.

Many submitters, as well as MPs, commented on New Zealand's 'drinking culture', which they saw as a culture of excess alcohol consumption, with a high acceptance of binge drinking. Some referred to the 'normalisation' of binge drinking within New Zealand in general and not just amongst youth. While some advocated raising the alcohol purchase age as a way of 'protecting' young people from this culture, others advocated changing the drinking environment in order to encourage moderation. The latter group supported changes such as reduced opening hours for on- and off-licence premises, changes to alcohol advertising and sponsorship, reducing the numbers of alcohol outlets, increasing the price of alcohol, and other suggestions such as making public drunkenness an offence.

Young people were seen as particularly vulnerable to the drinking culture present in the wider society, the impact of alcohol advertising including through the sponsorship of sport and other activities, and the easy availability of alcohol. Some submitters also described young people as vulnerable to the effects of parents' and other adults' drinking, both in terms of the negative role modelling of excessive drinking, as well as the impacts on young people of adult violence, sexual abuse and

road accidents caused by drink driving. Submitters also described young people as emotionally ill-equipped to manage the effects of alcohol, socially too immature to resist its easy availability, and many commented on physiological and mental health risks. There were also suggestions that young people were 'naive' about the effects of alcohol, particularly about the dangers of excessive alcohol consumption. One submitter suggested that being *less politically engaged*, 18 and 19-year-olds were a *softer target* for politicians who need to be seen to be doing something.

Issues of vulnerability to alcohol also included the impact on young people of alcohol abuse within their families, especially parental drunkenness, and the impact on young people of the deaths of people close to them that were a result of either violence or accidents associated with alcohol. FASD was often mentioned as being a risk factor for young people, in terms of both the risks of young women getting drunk and pregnant, or drinking while pregnant, and also of the young people who currently suffer from FASD as a consequence of their mothers' drinking. There was also the issue of the vulnerability of young people to alcohol-induced assault, violence and death, and for young women particularly, their vulnerability to sexual assault.

Concern was expressed by the Police in the newspaper at the growing number of extremely intoxicated young women during the Sevens Weekend and the very vulnerable and potentially dangerous situation in which they placed themselves while drunk. (Submitter AR136).

Too often, I bear witness to "drunken" rangatahi under the age of 16 years who regrettably find themselves in unsafe situations. I am horrified to learn that adult men have supplied alcohol to young women in particular and then have taken advantage of these young women in a sexual manner. Although consent has been gained, I challenge the integrity of the consent given that the young woman has been drunk and incoherent. I know this, because it is the friends of our rangatahi who end up at our home frightened, scared and overwhelmed by what has happened to them. (Submitter AR271).

I told him of the young first year students being brought in by their friends to see the doctor, worried that they might have or might not have had sex several nights ago, so drunk they are not even sure. The pregnancies and abortions, the STDs and the moral carnage caused by alcohol infused sex. (Submitter AR261).

Many submitters referred to evidence of the impact of alcohol on the developing brain and supported raising the alcohol purchase age because of the ‘fact’ that the ‘teen brain’ continues to develop up to the age of 25: *Young people are obtaining alcohol at an age when their brain is still developing (actually until age 25) (Submitter AR71); Drinking, especially binge drinking in the first 25 years before brain development is complete, may adversely affect later brain function (Submitter AR62); Since 1999, new research has shown that the brain continues to develop until well into a person’s twenties. (Alcohol Action South Canterbury); a vast body of research now clearly indicates that important aspects of brain function and judgment are not properly established until the early or mid-twenties (Submitter AR246); Underage (under the age of 21) drinking can cause alterations in the structure and function of the developing brain, which continues to mature into the mid to late twenties, and may have consequences reaching far beyond adolescence. Gateway Church Hibiscus Coast.* However, most of these submitters recommended raising the alcohol purchase age to only 20, or occasionally 21, years.

Some submitters suggested ‘hormones’ or ‘emotions’ in combination with alcohol put young people at risk of mental health disorders, promiscuity, and suicide. It was also suggested that their drinking patterns – infrequent but heavy sessions - put them at greater risk of harm than adults.

Teenagers need the law on their side to prevent them from harming themselves and others. Please, ACT now, before more young lives are ruined! (Submitter AR184).

Submissions sometimes raised broader issues, such as *a materialistic, individualistic culture conducive to reduced social cohesion, trust, confidence,* and some suggested that young people’s use of alcohol, and engagement in other harmful activities, was an attempt to *numb the pain* which might be partly a result of the ‘difficulties’ of

growing up, but were also laid at the door of adult society, such as policies that allowed for high unemployment for youth, the *failure of society to protect its children*, and the dysfunctional family contexts of some youth. Others suggested that young people might drink heavily as a way of helping them get through difficult times, or to cope with stress or boredom, or other negative life experiences. However, many submitters blamed an ‘alcogenic environment’ for the harm to young people that was caused by alcohol, some focussing solely on the ‘alcogenic’ environment not referring to the issue of raising the purchase age. It was suggested that because of young people’s particular vulnerability to this environment, a public health response was required which must not be *subverted by vested interests such as the alcohol industry*.

But the tragedies befalling our binge-drinking youth are not just because of bad individual choices, but because they live in a society awash with cheap, easily accessible alcohol plus social messages that overcome any rational awareness of alcohol’s intrinsic hazards. It’s the adults at fault, and the Bill as it currently stands does not address the real problem, summed up by the Law Commission as “the unbridled commercialisation of alcohol”. (Submitter AR237).

There were a great many submissions that suggested advertising and marketing encouraged harmful drinking patterns amongst young people, who were also seen as having a naïve understanding of the harms of alcohol. Many also blamed the ready availability of RTDs which they suggested were flavoured to mask the taste of alcohol, thus making them more palatable to the young, and particularly to young women. Many suggested that there needed to be tighter restrictions concerning advertising and marketing, that the easy availability of alcohol, such as in supermarkets, needed to be addressed by way of legislation, and that there should be greater education about the dangers of alcohol.

One of the reasons given for young people’s binge drinking was that they were considered to be victims of peer pressure, and that marketing and advertising campaigns both built on and created the impression of alcohol being a part of youth culture. Some parents who submitted suggested that in the face of the success of

these, combined with peer pressure, they were helpless to moderate their young people's attitudes to alcohol or their drinking behaviours.

Many individuals and organisations suggested that youth should not be portrayed *as the cause of the heavy drinking culture*, but rather were *victims of the adult heavy drinking culture*.

However, raising the drinking age was seen as a solution to 'the problem of alcohol' by many submitters, even those who noted that the problem was *not a youth issue*:

In my experience some of the most intoxicated people are those in the older age bracket – the 'hidden' drinkers, although young people are given that label – because it is seen as being socially acceptable for older people to behave in this way ... Return the purchase age for all alcohol to 20 years.

(Submitter AR119).

Many stated that *less than 10% of heavy drinkers are under the age of 20*. However, in spite of suggesting that the 18 and 19-year-olds were not the problem, most of these submitters still supported raising the drinking age to 20 years!

Reasons were rarely provided for why 20 years was an appropriate age, except in the Hansard debate where, as quoted earlier, MP Denis O'Rourke suggested aligning it with the Age of Majority.

One MP noted that drinking was aligned with 'adulthood', comparing the New Zealand situation with that in Germany where:

... those who experiment are much younger and therefore experimentation with alcohol is considered a more juvenile thing, whereas in New Zealand it is often associated with adulthood, which has its own complications. (Dr David Clark, Hansard, Alcohol Reform Bill, In Committee, Procedure).

4.4.2.2 Land Transport (Road Safety and Other Matters) and Land Transport (Driver Licensing) Amendment Bills

In the Case of the Driver Licensing Bill, young people were considered to be 'at risk' as drivers of or passengers in cars involved in road accidents. Submitters and MPs noted the higher crash rates for young people and argued that raising the drivers'

licensing age would mean fewer young people would be killed or injured on the roads.

... we think raising the driving age to 16 would be one of the most cost-effective means of reducing crashes and achieving a safer road system.

(Institution of Professional Engineers New Zealand (IPENZ)).

Traffic crashes are the single greatest killer of 15 to 24-year-olds, and the leading cause of permanent injury for that age group ... Fifteen to 19-year-olds are six times more likely to crash than you or me. (Harry Duynhoven, Hansard, Land Transport (Driver Licensing) Amendment Bill, First Reading).

... the number of young people killed on our roads every year. It is not just the act of losing a young, vibrant life; it is what that loss does to a family, to the community, to the school, to the university, and to that young person's place of employment. (Hon. Tau Henare, Hansard, Land Transport (Road Safety and Other Matters) Amendment Bill, First Reading).

Young drivers were seen as both 'risky' and 'at risk' because of their higher rate of accidents:

The Council supports the introduction of new measures in the Bill which are designed to improve the safety of young drivers and to provide the Courts with a wider suite of tougher sanctions for serious or repeat driving offences. However, the Council submits that the Bill should go further in that it should ... raise the minimum driver licensing age from 15 years to 17 years.

An integrated and comprehensive road safety education that targets secondary school could be implemented to ensure young people who, statistically vulnerable high risk drivers, are fully informed in road safety education. (Christchurch City Council).

There were some opposed to raising the age who suggested young rural people in particular, but also others living in urban areas, would have their chances of employment, and their opportunities to take part in some sports and other activities, put at risk because they were not able to access public transport. It was suggested that the flow-on effects in terms of productivity and social consequences

needed to be assessed. Some young submitters noted that not being able to take up part-time work would inhibit their ability to save for their post-school education; others noted that some young people leave school at 16 years of age and seek full-time employment. Not being able to obtain a driving licence by then, with flow-on effects if they sought a heavy traffic licence, could mean reducing the types of employment that they could engage in. One submitter also suggested that raising the driving age would reduce young people's risk of obesity and its health-related problems because they would be using more active modes of transport.

The Land Transport Bill also included a proposal to lower the Blood Alcohol Concentration (BAC) level to zero for under 20-year-olds, and some submitters noted that this would put at risk young people who had been 'drinking responsibly' but who even the next day might show traces of alcohol in the blood; one suggested that those using medicines and mouth washes that include alcohol would be 'criminalised'.

MPs also expressed contradictory ideas about young people, whether they were vulnerable or risky, and whether it was age or skills and experience that was actually the issue:

... we are talking about protecting young New Zealanders, about ensuring that the period during which they take their learner licensing test, through to gaining their provisional licence, and finally their full licence, is one where they can be equipped with the experience and the skills necessary to be effective drivers and where their contribution to negative road-safety statistics can be reduced. (Hon. Peter Dunne Hansard, Land Transport (Driver Licensing) Amendment Bill, First Reading).

It is essential that we create a safer environment for our young people to develop into fully competent drivers ... Raising the minimum licensing age to 16—that is, the age at which one can begin to learn to drive—and extending the length of the learner-licensing period to 12 months will not, however, on their own create a safe enough environment. The greatest risk period for young drivers is the first 6 months of driving solo—that is, when ... as Peter Dunne said, young drivers are estimated to be about seven times more likely

to have a crash than in the period when they were beginner drivers and were supervised. (Hon. Harry Duynhoven, Hansard, Land Transport (Driver Licensing) Amendment Bill, First Reading).

Both the vulnerability and riskiness of young drivers were combined in the use of the term 'safer environment', and the creation of this 'safer environment' appeared to be about improving the skills of the young drivers:

The key conditions are the restrictions on carrying passengers and on night-time driving, and these conditions are critical for lowering the risk profile of young drivers. As I stated earlier, this Government is fully committed to creating a safer environment for our young people to develop into fully competent drivers ... Experience in Sweden, which is the safest driving environment in the world, has shown that increasing supervised driving practice to about 120 hours before a young person can drive solo reduces the crash rate by about 40 percent (Hon. Harry Duynhoven Hansard, Land Transport (Driver Licensing) Amendment Bill, First Reading).

Some speakers referred to the different driving conditions that existed today from when they were young and able to get their driving licences at 15 years of age. The different conditions included both the amount of traffic on the roads as well as the types of cars:

... we now have much more souped-up cars on the road that young people can get behind the wheel of. Those cars are much, much faster. That is a concern, but it is not to do with the age at which they can get their driver licence; it is to do with the types of cars that we have on the road and the modifications that people make to them. There is a cost factor in there, as well. There are a whole lot of other issues that we would need to unpack and consider, but the age itself is not the proxy for dealing with the issue of young people getting in trouble behind the wheel. (Chris Hipkins, Hansard, Land Transport (Road Safety and Other Matters) Amendment Bill, Third Reading)

Other speakers used the same reasoning to support raising the driving age:

I am with most people here in the House who say: “Yeah, I got my licence at 15 and could not wait to get it”, but that was when there were Cortinas and the likes. Nowadays the sort of car that one can get would drag off anything from those days. Times have changed, so we must move with the times. (Tau Henare, Hansard, Land Transport (Road Safety and Other Matters) Amendment Bill, Third Reading)

Some MPs who described the high road crash rates for young people were not so sure of the relationship between age and involvement in accidents for young people:

New Zealand’s road death rate for 15-year-olds to 17-year-olds is the highest in the OECD, and our road death rate for 18-year-olds to 20-year-olds is fourth highest. No one—no one—wants to see our young people dying unnecessarily in horrific road crashes, but we have found no research that attributes the high rate to the age at which young drivers are able to begin their driver-licensing and education process. (Darien Fenton, Hansard, Land Transport (Road Safety and Other Matters) Amendment Bill, Second Reading).

... the terrible propensity for young drivers to have a much higher proportion of fatalities and injuries than other age groups. Just raising the driving age from 15 to 16 will not on its own be the cure-all panacea, but it will give us a starting point for a renewed national, New Zealand-wide discussion to address some of the horrific statistics we observe with regard to our young people... (Martin Gallagher, Hansard, Land Transport (Driver Licensing) Amendment Bill, First Reading).

The extent of public support for the changes was noted, a factor likely to influence MPs support of the Bill:

... There is overwhelming public support for this measure. The Television One Colmar Brunton poll on Monday night showed 82 percent in favour of it. There have been polls in newspapers showing similar figures. I think the New Zealand Herald figure was around 87 percent. Most of the people who have

a vested interest in promoting road safety and better driving conditions are also in favour of this move. (Hon.Peter Dunne, Hansard, Land Transport (Driver Licensing) Amendment Bill, First Reading).

4.4.2.3 Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill

In the Youth Courts Jurisdiction Bill those who were opposed to the Bill viewed 12- and 13-year-olds as ‘children’ who were in need of care and protection rather than punishment. They were most often viewed as being victims of their upbringing or of environmental influences that provided them with little choice. There were some submitters, often agencies who worked with youth, who viewed the criminal or risk activities of these young people as health issues; they suggested that high proportions of young people who came before the Courts suffered mental health disorders, and others had alcohol or drug dependence problems. They suggested that for these reasons these young people should not be treated as criminals, that they were better dealt with in the Family Court, and that the emphasis should be on rehabilitation rather than punishment. There were also suggestions that at 12 and 13 years of age, they would not be sufficiently developmentally advanced to understand the legal implications and to make competent decisions about pleading. There was a view of young people as being developmentally immature so that they should not be treated as adults within the Justice system:

It is well known that children and young people are biologically (cognitively), socially, morally and psychologically immature when compared to adults. Therefore, to assume that they have the maturity to hold them culpable of any crime to the same extent as an adult is entirely unreasonable. Therefore, a child cannot be held accountable under the same legal processes and sanctions as an adult ... Adolescence is a time of growth, development and rapid change. Children and adolescents are not “mini-adults”. Adulthood doesn’t start until 18 years of age according to the UN Convention on the Rights of the Child so line up the CYPF Act legislation to reflect this and bring

these young people within Youth Court jurisdiction. (Regional Youth Forensic Service).

Others suggested that taking risks was a normal part of growing up, or of the developmental stage of this group, and care should be taken that society's response to young people if they were apprehended did not have the effect of encouraging them into deviant patterns of anti-social behaviour. This could come about either through the young person taking on the label of 'criminal' or 'deviant', or through being exposed to older youth offenders, at Court appearances or as a result of sentencing, who might appear as role models.

Young people were seen as vulnerable to harm from other older offenders, and to the harsh environments of military-style camps or adult prisons. There were many references to the potential for 12 and 13-year-olds to be exposed to abuse by older youth, as well as the negative influence of these older more 'hardened' criminals, particularly if they were sentenced to youth residences.

A range of submitters to the Youth Courts Jurisdiction Bill held a view of young offenders as often being victims of family cycles of abuse, experiencing poor education outcomes, including illiteracy, and having alcohol and drug dependence issues. They advocated strongly for these issues to be addressed and they also saw young people as particularly responsive to rehabilitation. The emphasis in submissions was very much focused on the effectiveness of youth justice in terms of reducing offending, for the benefit of society as well as the young offenders. The idea of punishment was usually raised only to say that it is ineffective in terms of preventing a young person from reoffending. Those who viewed youth as 'amenable' to change and deserving of support for that change, suggested that these young people were themselves 'victims' rather than 'criminals'. Those who supported such a view of youth focused on interventions that support and strengthen families and whānau rather than punishment or other strategies directed at the youth themselves. They also tended to take a broad view, advocating for 'reduced offending', rather than focusing on individual wrong-doers. In this view, young people were seen as being, at least partly, formed by their family and social contexts, and if they were to change, their family and social

contexts also needed to change. The 'social contexts' might include the provision of counselling for drug and alcohol addiction, or education support.

Our experience is that a significant number of young women in the 15 – 18 year age range are completely enmeshed in a lifestyle that revolves around abuse, drug use, offending and violence. Without intensive, therapeutic intervention they are unable to change the situation they are in, and have little hope of changing it for their children (Adventure Development).

I have noticed a cycle of crime in working with young women coming out of prison - both their parents frequently having been involved in crime to some degree. If we explore everything from truancy to parental supervision to drugs and alcohol and abuse history issues, violence etc then young people are being caught up in a wider cycle. Over the past five years I have seen siblings of offenders come into the system. (Aotearoa New Zealand Association of Social Workers).

In our view, the key issue is not a lack of legislative authority to deal with younger, high risk and serious offenders, but a lack of coordinated community and family based intervention models that have proven effectiveness in reducing offending for this particular group. While these models exist, they have yet to be comprehensively developed in New Zealand and are discussed later in this submission. (Barnardos New Zealand).

MPs who opposed the move were also likely to present these young offenders as being 'at risk' themselves; victims of dysfunctional families and communities or of the justice and welfare systems; *they do not end up being offenders simply because they have grown up to be offenders. There are issues that lie behind them and they are always, every time, about care and protection (Lianne Dalziel, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, In Committee Third Reading); the root cause of their offending: dealing with their care and protection issues (Annette King, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, Second Reading); 80 percent are not at school ... 80 percent have alcohol and drug problems ... one in three kids will undergo a psychological*

assessment ... about a quarter of teenagers who appear in the Youth Court have symptoms ... of foetal alcohol spectrum disorder (Katrina Shanks, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, Second Reading).

Sometimes young offenders were seen as being both 'at risk' and 'risky'. For example, the Bill's provisions were supported by the Minister *so that these young people – a tiny minority – can get the intensive support offered by this Government's Fresh Start reforms. Their behaviour needs special attention if they are to be saved from a lifetime of crime* (Paula Bennett, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, Second Reading); the same speaker later in that address referred to *those young people who have a record of offending well beyond their years. These are 12 or 13-year-olds who are out of control and are a danger to our communities.*

However, such conflicting views as to whether these young offenders were responsible for their crimes or whether the responsibility lay with their family or community contexts, led to contradictory ideas about both them and their families being held accountable or being supported to change. The conflicting views as to how they should be treated and whether or not their families, parents or guardians needed to be included as part of their 'rehabilitation' meant that, as in the other case studies, there were conflicting views about the roles of families, how far they were 'part of the problem' or 'part of the solution':

... some families need to take greater responsibility for the path their kids are on (Paula Bennett, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, In Committee Third Reading).

Actually, that is what most parents do undertake. We install self-discipline, personal responsibility, and community values in our children. It is unfortunate that not everybody does that in their own family, or in their wider families even. If they did, then maybe we would not have so many offenders now. People actually taking responsibility for their own families would be a good thing (Katrina Shanks, Hansard, Children, Young Persons,

and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, Second Reading).

The Children's Commissioner also supports initiatives to work with the child, young person and their family, especially parents or guardians. The research clearly indicates that the most effective responses are those that include a child or young person's family and wider community ... As well as addressing the needs of children and young people who offend, this Bill also includes proposals for parents and guardians. The research indicates that early interventions provide the best opportunity to support both children and young people who offend and their families. The Children's Commissioner therefore encourages this Committee to endorse legislative options that provide support to and empower families to strengthen the protective and resilience factors of their children. (The Children's Commissioner).

Current provisions under the Children, Young Persons and Their Families Act 1989 (CYPF Act) allow for such children to be responded to by a care and protection family group conference, a youth justice family group conference (FGC) and/or referral to the Family Court for a declaration that the child is in need of care and protection. All these provisions enable the children to be placed in alternative care and for other steps to be taken to ensure their future wellbeing. Referral to a youth justice FGC enables them to be made accountable for their offending and to take steps to make amends for the harm that they have caused. (Submitter YC13).

That family focused services that treat the child within in the context of the family will greatly maximise the chance for reintegration of that child into family and community life (Metiria Turei, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, In Committee Third Reading).

The Police Association submission suggested it might not always be best to involve families:

Some of these children may be repeat offenders, and some of them may despite their age already be out of their parents' control. In such cases, the Police Association is strongly of the view that a more direct youth justice response is not only appropriate, but required if there is to be effective intervention to halt the child's trajectory towards more serious and persistent offending.

While some argued that 12 and 13-year-old offenders needed to be placed in residential programmes rather than go back to the same 'criminal' or abusive environments from which they had come and which had enabled their deviant behaviours, others argued that they had 'care and protection' needs and that families had to be involved if there was to be any rehabilitation. It was suggested in the latter case, that the Family Court was appropriate because *family, that whānau, that hapū, that iwi should be a part of dealing with that young person's or child's behaviour* (Jacinda Adern, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, In Committee Third Reading). Some supported treating 12 and 13-year-olds in the Family Court for both reasons, acknowledging the negative influence of 'inadequate' families, but suggesting that with the right Court-ordered intervention and support, families could bring about positive change in their young people. It was suggested that in order to help these young people the focus needed to be on the circumstances that had led to them becoming criminals, and for some, families could be supported to promote change:

We know that such offending comes out of drug and alcohol abuse; out of dysfunctional, disadvantaged, and violent families; and out of truanting. But the responses we have seen from the Government thus far in all of those areas have been shallow at best, and at worst those areas have been ignored. (Jacinda Adern, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, First Reading).

Other organisations will be involved, such as the Ministry of Social Development and Child, Youth and Family, the Ministry of Justice, the New

Zealand Police, and the New Zealand Defence Force, plus all those justice and welfare agencies that will support these people and wrap around the parenting orders to support parents to be good parents and to support their young people. (Jo Goodhew, Hansard, Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill, First Reading).

While it was often suggested that 12 and 13-year-olds could be at risk of abuse as well as the negative peer influence of older youth offenders if they were placed in residences with them, or simply by association if they were also dealt with in the Youth Court system, there were no suggestions regarding any particular age at which a young person moved from being 'vulnerable' to the abuse or influence of older youth to becoming one of those youth who were 'harmful' to others. It is most likely that this was simply a response to the changes in the Bill therefore accepting the status quo of 14 years as an acceptable age for Youth Justice, but it does indicate that no particular age presented itself as being an obvious or reasonable cut-off point for moving from being 'at risk' to 'risky'.

The use of *doli incapax* was to be extended to 12 and 13-year-olds who appeared before the Youth Court, so there was the potential for those considered 'criminally incapable' to be held accountable in this Court to be screened by judges and referred to the Family Court. The Families Commission argued that although a child may be protected by the *doli incapax* provision, rather than leave it to the judges' discretion, it would be better to protect young people by prescribing a minimum age at which a child is deemed to be incapable of infringing the law, or of distinguishing between right and wrong. It was often suggested that New Zealand should follow the UNCRC and accept that children are presumed not to have the capacity to infringe penal law, where a child is anyone under 18 years. In this argument, the focus is on the young person, and what is an appropriate response to them. However, those who argued in favour of the Bill focused on the crime rather than the criminal, suggesting that because of the 'seriousness' of their offences, 12 and 13-year-old 'serious offenders' should be treated differently; they had

indicated by their behaviour in committing such offences that they were different from other 'children'.

4.4.3 Summary

Across the three case studies the conceptualisation of young people as 'at risk' or 'risky' or both, was a dominant theme. They were 'at risk' because of their own or other young people's foolhardiness or incompetence. They were also 'at risk' in that they were vulnerable to their environments, such as dysfunctional families, peer pressures, New Zealand's 'alcoogenic' environment, alcohol advertising and marketing, and being at a higher risk of being involved in a road crash. Other vulnerabilities included their vulnerability to health, including mental health, problems, educational failure, their own abuse of alcohol or drugs, or from FASD. They were also commonly viewed as 'at risk' because of their immaturity – they did not have the cognitive or emotional abilities to manage risky environments or make good decisions.

Young people's 'immaturity' also made them 'risky': their inexperience or naivety and lack of control, often ascribed to their 'teen brains', meant they made bad decisions thus putting themselves and others at risk from their driving, drinking, antisocial or criminal behaviours, and in providing negative role models for younger peers. Those who were 'risky' were sometimes seen as being mature or clever in deviant ways and a danger to themselves and others. These views of young people as 'risk' was pervasive in all three case studies, from submissions, MPs and in related advice provided to the Select Committees.

4.4.4 Discussion

As described in Chapter Two, the conceptualisation of young people as 'risk takers' is widespread and deeply embedded in Western societies, although it is challenged by some authors (Bessant, 2008; Epstein, 2007; Males, 2009a, 2010). Research that examined key documents on child and youth policies in the United Kingdom (primarily England) published between 1996-2009 found that "'risk" has underpinned United Kingdom Government policy across the field of children and young people since 1996/1997' (Turnbull & Spence, 2011, p. 947). It found that the

focus on youth as 'risk' had moved beyond criminology and epidemiology to cover almost every aspect of young people's lives: "e-safety issues and risks", "safety on the roads" (including cycling), "fire risks, "risky situations" ranging from substance misuse and sexual activity to accidental injury in the home, as well as more general failure "to reach full potential" or putting "young people's own futures at risk" (2011, pp. 947–948). Moreover, young people were also expected to become 'risk managers' in being able to judge and manage risks they encountered, so that finally they are held responsible for any failures in outcomes.

In submissions and Hansard debates, a similar focus on 'risk' was evident and young people were overwhelmingly viewed as being either 'at risk' or 'risky', or both. Their immaturity, incompetence, naivety or lack of experience meant there was a high likelihood of making 'bad choices' in many areas of their lives, and it also meant they were especially vulnerable to environmental contexts, such as dysfunctional families, and negative peer influence, as well as marketing and the media. There were some submitters and MPs who noted that 'most' young people were sensible and that they were disadvantaged by restrictions that were designed for the 'few' troublemakers or difficult youth, challenging the position that all youth are risky. However, this was not a widely expressed view. Moreover, it appeared that even when it was clear that there was a minority of 'trouble makers' or 'risk-takers', it was generally found acceptable for all young people to be held responsible for the 'bad choices' that some might make: if some young people engage in binge drinking or some are risky drivers, then raising the alcohol purchasing age or the driving age, which will affect both responsible and irresponsible youth, was deemed to be an acceptable policy response.

Except for the Youth Courts Jurisdiction case where a number of submitters referred to the 'dysfunctional' families and communities that had influenced young criminals, very little reference was made to the social or economic context for young people that might affect their behaviours. The atypical case was the Alcohol Reform Bill where the wider drinking culture and advertising and marketing were often raised as being significant influencers, but even here submitters still saw the solution as being to raise the drinking age.

Beck (1992) describes contemporary western societies as 'risk' societies, the 'risks' created by the apparent collapse or 'fracturing' of the structures of modern society – the nation state, the welfare state, the nuclear family, class structures, the certainties of science. As well, there are the risks created by the side effects of industrial society - industrial pollutants and toxins, the 'safety' of water and food stuffs, 'nuclear' accidents, ecological disasters, genetic modification, whose harms are invisible, and may be evident only in the future. The fracturing of past structures may be liberating, but they had also provided some security and a sense of solidarity. Individuals are now 'forced' to make their own decisions, to create their own individual and social biographies. This has meant that young people are now held responsible for the choices they are 'free' to make and for the outcomes of those choices. Some submitters acknowledged the inability of parents or families to 'control' their young people's drinking, and some spoke of young criminals as being 'out of the control' of their families, suggesting that families and communities were no longer or not always critical in shaping youth behaviour. This view of young people fits with Beck's individualisation thesis; the source of risk and its resolution, whether from binge drinking, car crashes, or youth crime, are sought not in society or the environment, but in youth themselves. When 'youth' is conflated with 'risk', the introduction of legislation that will limit young people's ability to take risks or be exposed to risk by preventing them accessing alcohol or driving hardly needs justification – for drinking and driving 'youth' are the risk. Young people are held responsible for the 'choices' they make and if the outcomes are deemed unacceptable then 'choice' for all young people is removed by legislation.

Interestingly, the first words in the Youth Development Strategy state that the Strategy moves 'beyond ... Focusing ... on 'at risk', negative labels, problems ...' (Ministry of Youth Affairs, 2002, p. 2), yet the explanation provided on p. 10 for 'Why A Youth Development Strategy?' is full of descriptions of 'risk': 'Globalisation, new technologies and associated social change are challenging and altering all aspects of society within single generations'; 'This is also a critical stage for wider society; young people 'test' its values and norms, enhancing its capacity to adjust to a rapidly changing world'; 'The increasing rate of social change and competition for

training and job opportunities is increasing the stress on young people'; 'Over the past 40 years, the youth population has not shared the health gains of other population groups'; 'Too many young people are arriving at adulthood unprepared to contribute productively as citizens and employees'; 'This group continues to be disproportionately made up of Māori and Pacific young people'; 'The trend has doubled the associated costs through negative investments in the justice and health systems and lost returns from non-involvement in the labour force'; 'In addition, New Zealand's ageing population and shrinking working age population accentuate the economic risks of not improving outcomes for all young people in New Zealand' (2002, p. 10). These outline social and future risks for New Zealand, both those that face young people and those that implicate young people. In the last comment, youth outcomes are seen as critical for the rest of society – in particular the 'ageing population'.

Some individuals other than youth are labelled 'risk takers', for example people who engage in extreme sports, mountain climbers, motor racing drivers, gamblers and some stock market investors, and these people are viewed with trepidation or admiration and their 'failures' seen as always being a potential outcome.

Sometimes experience of 'near misses' might lead people to modify their risk-taking and put extra safeguards around what they do, but generally, there is social acceptance that some individuals like to take risks and they do not encounter prohibitions when they risk only themselves. Males (2010) argues that risk-taking statistics concerning older adults are consistently ignored; he notes that 'adults aged 30 to 64 are 1.9 times more likely to commit suicide, 2.7 times more likely to die in accidents other than traffic accidents, and four times more likely to die from abusing illicit drugs than are adolescents aged 16 to 19 (National Center for Injury Prevention and Control [NCIPC], 2009)—all pivotal indexes of risk taking. Middle age (led by ages 45-49, 40-44, and 50-54) has emerged as a much more dangerous time for violent death than older teen years—a trend behavioral scientists still display extraordinary difficulty acknowledging two decades after it became evident.' (2010, p. 50). Bessant argues that what constitutes 'risk taking' behaviour alters across time and cultures and furthermore suggests that 'some young people

are sometimes at risk not because their brains are different, but because they have not had the experience or opportunity to develop the skills and judgment that engagement in those activities and experiences supply'. (Bessant, 2008, p. 358). Best, in describing the discursive creation of the 'problem of the teen driver' talks about how youth are 'coming of age in a moment of deep insecurity felt by adults in what many regard as a culture without trust and social cohesion, absent of a sense of certainty and predictability but besieged by anxiety and insecurity' (Best, 2008, p. 654). The problem of the teen driver originates in the fears and anxieties that exist within such societies, the 'risk society' as described by Ulrich Beck.

The dominance of the theme of 'youth as risk' raises the question as to why youth as a group is held to be 'at risk' or 'risky'. In a context of patriarchal relations between adults and young people, and a history of hegemonic discursive practices that depict youth as a problem, I argue that Ulrich Beck's theorising of contemporary western societies as 'risk societies' provides an explanation for this. This argument is expounded in Chapter Five.

The next section on medical consent in New Zealand, describes the case where there is no age limit in legislation for consent to or refusal of medical treatment.

4.5 Medical Consent

The three previous case studies examined documents associated with the passing of specific Bills into law. This case study, investigating consent to medical treatment by children and young people, does not refer to any particular legislative process, but to the current legal position and to codes and practices in New Zealand that describe how consent to medical treatment by young people is viewed and enacted.

There is in fact no Act which stipulates an age below which children cannot give consent to medical treatment. New Zealand Acts that are relevant to the issue of consent and will be addressed below, include the Care of Children Act (2004) and the Bill of Rights Act (1990). However, the situation both in law and in practice concerning consent to medical treatment for children and young people is not entirely clear. In part because of the lack of clarity, this case raises interesting issues about the status of young people.

Under the New Zealand Code of Health and Disability Consumer's Rights:

Every consumer must be presumed competent to make an informed choice and give informed consent, unless there are reasonable grounds for believing that the consumer is not competent (The Health and Disability Commissioner, 1996 Right 7(2)).

There is no age limit on the presumption of competence, so children and young people are also presumed competent under this Code to consent to or refuse medical treatment.

There is a separate section in the Code (Rights 7(3) and (4)) that covers cases when a patient is deemed 'not competent' to give informed consent, which does not mention age, further supporting the case that a child or young person of any age is presumed competent.

The Bill of Rights states: 'Everyone has the right to refuse to undergo any medical treatment' (New Zealand Bill of Rights Act, 1990 s11), which allows refusal of treatment at any age, although it does not comment on consent. The UNCRC does

not comment specifically on medical treatment but makes clear that children have the right to seek information and that children's views should be heard and taken seriously in Articles 12 to 17 (United Nations, 1989).

The Bill of Rights also contains clauses concerning rights to freedom of thought, conscience, religion and belief (Section 13) and the right to 'manifest' these beliefs in practice or observance (Sections 13 and 15). However, these rights are not absolute and when tested in court in the case of parents refusing a blood transfusion for their son, were limited as follows: *We define the scope of the parental right under s 15 of the Bill of Rights Act to manifest their religion in practice so as to exclude doing or omitting anything likely to place at risk the life, health or welfare of their children (Re J (An Infant):B and B v Director-General of Social Welfare, 1996)*. It should be noted that the passing of the Care of Children Act in 2004 has provided protection from legal proceedings (except by leave of the Judge of a High Court) against medical practitioners who administer blood transfusions to people under 18 years without their consent (Care of Children Act, 2004 s37).

The Care of Children Act (2004) states clearly that a person over the age of 16 years can consent to or refuse medical treatment to be carried out 'for the child's benefit', but it is silent for those under 16 years, creating some confusion about the legal situation. The silence on under 16-year-olds can be construed to suggest that parental consent is required for this group. This would appear to be the stand taken by schools, for example, which do not provide paracetamol to students without parental permission (Andrew, 2011). Other advice often supports a cautious stand on consent. For example, advice to social workers provided by Child, Youth and Family, states that 'In principle, when a child or young person requires a medical examination or procedure social workers should obtain informed consent from both the parent or guardian and the child and young person' (Child Youth and Family, 2014a). However, advice provided on this website also states that 'A young person aged 16 years or older can consent or refuse to consent to medical procedures as if he/she were of full age' and suggests that 'In assessing whether a child or young person has the capacity to consent in their own right, it is best to err on the side of caution particularly when the medical procedure is non-routine'.

The Ministry of Justice website has a page on 'Children's Rights' which is also silent on children under 16 years, stating only 'Once they are 16, children can decide for themselves whether they want to consent to any medical treatment, operation, dental procedure or blood transfusion. This right to give consent also includes the right to refuse consent' (Ministry of Justice, n.d.).

The Medical Council in its document 'Information, Choice of Treatment and Informed Consent' states that it is not clear under the Care of Children Act (2004) whether parental consent for treatment or procedures for people under 16 is required or not. The Medical Council places emphasis on the presumption of 'competence' that underlies the Code of Health and Disability Consumer's Rights:

People under 16 years of age are not automatically prohibited from consenting to medical, surgical or dental procedures so judgment of the patient's competence to make an informed choice and give informed consent is needed in each instance.

And:

You should assess a child's competency and form an opinion on whether he or she is able to give informed consent. (Medical Council of New Zealand, 2011).

These guidelines also note that: 'The common law approach to judging the competency of the patient is informed by *Gillick v West Norfolk and Wisbech Area Health Authority* [1985] 3 All ER402 (House of Lords)', and suggest that it is likely that the principles set out in *Gillick* will be followed by New Zealand Courts.

Gillick refers to a House of Lords decision (AC 112 [1986], n.d.) which ruled that doctors can provide contraceptive advice and treatment to young women under 16 years of age without requiring parental consent. The judges' commentaries in this case outlined a number of provisions, including that the young woman was 'competent' to give consent (now known as 'Gillick competence'), that she understood not just the medical implications of her choice but also wider moral and family questions, and that the doctor seek to persuade her to involve her parents. The findings in this case are also seen as applicable more generally, that is for medical treatment other than contraception.

There have been some criticisms of the application of 'Gillick competence' and commentators have noted some reservations, including that the standard set by Lord Scarman is a high threshold and 'one that medical doctors have expressed as higher than they would expect from some competent adults' (Grimwood, 2010, p. 747): "It is not enough that she should understand the nature of the advice which is being given: she must also have a sufficient maturity to understand what is involved. There are moral and family questions, especially her relationship with her parents, long-term problems associated with the emotional impact of pregnancy and its termination and there are the risks to health of sexual intercourse at her age, risks which contraception may diminish but cannot eliminate. It follows that a doctor will have to satisfy himself that she is able to appraise these factors before he can safely proceed on the basis that she has at law capacity to consent to contraceptive treatment" (Lord Scarman AC 112 [1986], n.d.). Grimwood also suggests that there is some confusion as to whether a young person or child need have only 'the capacity' to understand the proposed treatment and repercussions, or whether they need to demonstrate understanding of the actual treatment or procedure they are to undergo (2010, p. 749) and that Lord Fraser's guidelines are not clear in so far as they indicate that the doctor could override a patient's wishes if s/he believed that was in the 'best interests' of the patient (Grimwood, 2010; McLean, 2000).

However, in practice, it appears that Gillick competence is interpreted more loosely and the advice given to practitioners is put rather more simply, the Medical Council suggesting:

... a competent child is one who is able to understand the nature, purpose and possible consequences of the proposed investigation or treatment, as well as the consequences of non-treatment (Medical Council of New Zealand, 2011).

And Child Youth and Family suggesting:

Based on Gillick the age of consent is based on a test of the child or young person's age and maturity and the capacity to weigh up the relative benefits, advantages or disadvantages or risks. The social worker needs to use their

professional judgment to decide if an individual child or young person has the capacity to make a decision about a medical procedure and if they sufficiently understand what they are being asked to consent to. (Ministry of Social Development, n.d.-b).

A Ministry of Health document, 'Consent in Child and Youth Health: Information for Practitioners', provides an extensive analysis of the issues concerning consent. It provides guidance as to what 'competence' and 'capacity' mean, and advice for situations where parents and children disagree, and where children request that their parents not be informed. It notes in particular that:

Although the situation has not been tested in court, it is likely that the child/young person's treatment and consent rights under the Code of Health and Disability Services Consumers' Rights and common law and their privacy rights under the Health Information Privacy Code enable them to be advised and treated without their parents being involved (Ministry of Health, 1998).

While noting that it has not been tested in New Zealand Courts as to whether parents can give consent for children who are deemed to be 'Gillick competent', it provides advice to practitioners for a situation where a child has refused treatment, suggesting that if there is no alternative treatment, the treatment is regarded as being in the child's best interests and the consent of parents has been obtained, then the practitioner may proceed. So it advises that a child's or young person's right to refuse treatment can be overridden in that situation.

The same document notes that 'consent issues for young people differ from those of young children and that where there is a difference of opinion about consent to treatment it will be between the young person themselves and the health care provider rather than their parents and the provider (although the parents may be involved with the young person's consent)' (1998, p. 4). The document earlier defined its use of the term 'young person' to mean people in the age group 12 to 18 years, but it prefaced the sentence above concerning consent with: 'although there is no particular age at which any person may be regarded as competent, young people's increasing maturity and ability to understand complex issues must be recognised and their autonomy respected and promoted'.

It states explicitly that the legal position regarding consent is governed by the Code of Health and Disability Services Consumers' Rights and common law, the common law rule being defined by *Gillick*. Regarding *Gillick*, it notes that the practitioner must decide the child's competence; that the practitioner should make every effort to involve parents, but if that is not possible the practitioner can proceed if satisfied that the treatment is in the child's best interests; and that parental control over children diminishes as the children grow in intellectual capacity and maturity.

The Ministry of Health document also provides some advice as to how competence is assessed, noting that competence should be determined in each case, implying that determining competence by age (status competence) is not appropriate. It states that:

It is not acceptable to assume that children (or children/young people with disabilities) are automatically incompetent. Children should be assumed competent unless assessed otherwise. Determining competencies is a process that is situation- and treatment-specific.

And:

The following questions may help a practitioner to assess the individual's competence:

- *Does the patient understand why they need the intervention?*
- *Does the patient understand what the intervention involves and what it is for?*
- *Does the patient understand the probable benefits and risks and what the alternatives are? (1998, p. 14).*

In an article challenging the American Academy of Pediatrics' recommendations that children be given a greater voice in health decision making, it was suggested that there is no test for 'competency' and that even if a test could be devised it would exact a 'high price in terms of efficiency, privacy, and respect for autonomy' (Ross, 1997, p. 42). Ross goes on to suggest that even if an age standard is arbitrary and some who fall below it are competent while some who fall above it are incompetent, in general individuals above the line are likely to be more competent

than those below it. In the United States parental consent for minors (those under 18 years) 'reflects the conception that minors are incapable of understanding and making decisions about medical treatment' (Kuther, 2003, p. 345). However, in New Zealand, the approach is quite different since all patients are presumed competent unless there are reasonable grounds for believing otherwise, which suggests that medical practitioners are in fact making assessments of 'competence' as part of informed consent processes.

A New Zealand paper that addressed the ethical dilemmas when parents refuse life-saving medical treatment for their children, suggested that age can be a 'rough guide' to competence, and notes in particular that: 'Most children under 10 years of age lack the experience and deliberative competence to make important decisions. They are unable to make informed judgments about their own health and best interests beyond very simple and immediate issues. However, children's wishes and preferences should be respected, if at all possible, even if they are unable to make competent decisions ... from 10 to 14 years of age are often, but not always, able to form reasonable judgments about what should happen to them'; and from 14 years a young person 'would be expected to have views and have these respected' (Pinnock & Crosthwaite, 2005, p. 370). However, it also states that: 'it is ethically more important to make an individual assessment of the capacity of the child or young person to understand' (2005, p. 371). This paper makes a suggestion that for non-emergency cases where there is disagreement about treatment, in order to resolve the conflict between parents and health professionals and to avoid litigation, there could be constituted a national-level multidisciplinary advisory committee, similar to an ethics committee, which could 'help to avoid the dominance of a narrow and medicalized view of a child's interests. It can also reassure parents and the wider society that there has been full and careful consideration of the child's interests' (2005, p. 371).

4.5.1 Risks of Treating or Not Treating

The level of emergency and the risks of treatment also have some bearing on advice given regarding consent for children and young people. In the Code of Health &

Disability Services Consumers' Rights, the Commission suggests that the degree of hazard of an intervention needs to be considered in the assessment of competence:

The level of ability necessary to consent to treatment with a high degree of risk or complexity or with serious consequences for the child will usually be different from that required to consent to minor and low risk procedures. Thus while a child of 12 may be competent to consent to the setting of a broken limb, he or she may lack the necessary maturity and understanding to consent to heart surgery. The key under the Code is to consider each case on its own facts and not to lay down blanket rules. (Health & Disability Commissioner, 1998).

In research investigating healthcare providers' knowledge of the law relating to consent to medical treatment, the author asked participants about consent for under-16-year-olds. It was found that:

A functionally competent 14-year-old girl was considered unable to consent to the removal of a prominent mole on her face by 83.5% of respondents whose patients include adolescents. (Peters, 2009, p. 53).

The author concluded that:

Had the doctor refused to remove the mole without parental consent, it is unlikely that a complaint would have emanated from the patient. However, if the doctor had determined that the patient was functionally competent and removed the mole without parental consent, an aggrieved parent or guardian would be far more likely to complain. In the absence of legal certainty, the status approach remains not only easier to administer but provides less risk for healthcare providers. (2009, p. 53).

An Appendix to the Ministry of Health's 'Consent in Child and Youth Health' includes a section on teenagers who refuse treatment and outlines an English case where the young person's refusal of treatment was overridden by the parents' consent. It notes that 'This view could be seen as undermining the emerging citizenship of adolescents' and goes on to state: 'the better view in New Zealand is that, applying the *Gillick* decision and s. 11 of the New Zealand Bill of Rights Act

1990, if a young person is mature enough to give valid consent, or refuse consent, to a health care procedure, that consent or refusal to consent is fully effective (provided that the young person was competent and not coerced at the relevant time) and cannot be overridden by the wishes of parents or guardians.’ (Ministry of Health, 1998, p. 49).

However, although the Ministry of Health’s ‘Consent in Child and Youth Health: Information for Practitioners’ (1998), the Medical Council’s ‘Information, choice of treatment and informed consent’ (2011), and ‘The Informed Consent Process and the Application of the Code to Children’ (Health & Disability Commissioner, 1998), all indicate that *Gillick* is likely to be followed by New Zealand Courts, it is not certain and there are some indications that the Courts ‘prescribe to orthodox notions of a child’s capacity and to date have failed to sufficiently recognise the potential autonomy of the child’ (Thomson, 2001, p. 156). Thomson describes two separate cases where applications were made for orders to place children, who were both 12 years old, under Court guardianship so that surgery to prevent blindness in one case, and chemotherapy for malignant lymphoma in the other, could be undertaken. In both cases the parents had refused treatment for religious reasons, and the young people both expressed views similar to their parents. In the first case the judge found that ‘at the age of 12, he lacks the capacity to exercise his right’ and in the second case the judge found the young person ‘somewhat confused, understandably in the present circumstances’ (2001, p. 156).

In these cases, the consequences of accepting both the parents’ and the young persons’ decisions to not treat were potentially perilous, with the possibility of blindness in one and death in the other case. The Care of Children Act has as its purpose ‘to promote children’s welfare and best interests’ and in these cases, the ‘best interests’ of the child, as viewed by the Court, overrode the refusal of consent and the wishes of the child or young person, as well as any parental rights of consent. In both cases, the judges found the young people ‘incompetent’ to decide.

4.5.2 Abortion

It is interesting to consider the different approach taken by MPs in the case of abortion, as reflected in the Select Committee Commentary to the Care of Children

Bill in 2004, and the Justice and Electoral Committee Commentary of 2016 in response to a petition. Abortion is treated as a separate case in the Care of Children Act (2004) and a 'female child (of whatever age)' can consent to or refuse abortion 'as if she were of full age.' There is also no restriction on the 'sale or disposal, etc, of contraceptives to children'(Care of Children Act, 2004 s 38). There is therefore no requirement for parental consent for a woman of any age seeking abortion. This is an exception to the usual silence regarding consent to treatment for under 16-year-olds. There are strict requirements around consent to abortion, which might have been seen as sufficient to ensure that young women, like all others, are adequately informed and protected by these provisions. However, it is interesting to consider the background to this case, since it is a procedure that is not without risk of complication, particularly to women who are under 18 years, (Fergusson, John Horwood, & Ridder, 2006; Sykes, 1993; Zhou, Nielsen, Møller, & Olsen, 2002), although evidence of health effects is sparse and often of poor quality (Charles, Polis, Sridhara, & Blum, 2008).

The Select Committee Commentary to the Care of Children Bill set out the reasons why no age limit was mandated for this particular procedure. The Select Committee noted best practice guidelines:

The Ministry of Health Consent in Child and Youth Health document states that good practice is to seek the consent of parents and their competent child. But, in line with Gillick the health practitioner's role is to encourage (not coerce) the child to involve his or her parents. Ultimately a competent child must decide whether or not to involve parents/guardians or other family members

The Committee also noted:

... overseas research that suggests most females under 16 years would consult at least one parent. In overseas research females who do not consult parents are found as being both competent to make the decision alone and having good reasons not to inform their parents.

(The Justice and Electoral Committee, 2004).

The Commentary also included the views of United Future, National and New Zealand First members who opposed the Clause. The National Minority view referred to 'parental rights' and suggested that:

... this provision [consent to abortion] needs amendment to provide that such a procedure would require the knowledge of a parent or guardian except where a Family Court Judge decides otherwise.

We are concerned that the non-notification of parents is used as a shield by abusers of young girls and leaves young girls without support at a particularly vulnerable and difficult time of their lives.

The United Future member considered that:

... in the vast majority of cases it is in a child's welfare and best interests for her parents to be required to consent to such a serious and potentially life-threatening medical procedure, even when the child is unwilling for them to do so.

The views opposing the Clause refer to parental rights, the vulnerability of the young women, and to their 'best interests'. The arguments outlined in the Commentary that supported the Clause were that most young women consulted at least one parent, that good-practice guidelines advised practitioners to seek consent of competent children and their parents, but that application of *Gillick* suggested a 'competent' child could decide whether to involve parents.

In addition to the above, the Commentary noted that:

Although the submissions we received contained many opinions about the clause, we did not receive any evidence of the provision being abused, even though it has been operative for 27 years.

In the Hansard debate on the Supplementary Order Paper to the Care of Children Bill which would require notification to a parent or guardian for a 'girl' under 16 seeking an abortion, (and if the 'girl' objects to that there is written notification through to a judge), arguments in favour of informing parents included the trauma to 'girls' later if they do not inform, their need for family support at this time,

possible subsequent health risks when parents do not know (the example was given of a young woman haemorrhaging during the night), that the 'girls' are too young or immature to make decisions on their own, as well as parental 'rights to know'. Those who argued against the requirement to inform parents mainly expressed concern for those young women who would be placed at risk from their own families, the possibility that they would not seek medical advice but go elsewhere if they knew the doctor would inform their parents, and the need to respect doctor-patient confidentiality at all times.

When this Act was passed in 2004, it was after the *Gillick* case, but it was also subsequent to the 1977 amendment to the Guardianship Act 1968, which included the same clause, viz., that 'a female child (of whatever age)' may consent to or refuse an abortion. The arguments both for and against the imposition of an age limit in the case of abortion appeared to rest on differing interpretations of competence, vulnerability, parental rights, and the 'best interests' of the young woman. The Committee decided not to change this provision, basing its recommendation on three grounds: (1) that there had been no evidence of the provision being abused over the 27 years of operation; (2) that while best practice guidelines recommended that practitioners seek consent of parents and their competent child, finally a competent child must decide whether or not to involve parents/guardians or other family members; and (3) current practice was that clients were encouraged to consult with parents or another trusted adult.

In 2015 a petition was put to the Justice and Electoral Committee: "That the Parliament pass legislation providing that a parent of a woman under the age of 16 years has the right to know if that woman has a pregnancy confirmed before she is referred for any resulting medical procedure, and that any consent sought for the medical procedure be fully informed as to procedure, possible repercussions, and after-effects." The Committee received submissions and heard evidence from a number of organisations and individuals and reported back that 'although it is best practice for a young person to tell her parents that she is pregnant, this should not be mandatory' and that 'mandatory unconditional parental notification could result in some young people being forced into making a decision against their own wishes'

(Justice and Electoral Committee, 2016, pp. 6–7). So, while acknowledging other reasons for opposing parental notification, such as potentially putting the young person ‘at risk of harm’, the Committee also respected the young person’s right to make their own decision. The Committee also suggested that ‘the best way to ensure that all young people are supported is to focus on the oversight of the whole abortion process’ (2016, p. 7).

4.5.3 Parents and Families

Apart from the provision regarding abortion there is uncertainty concerning consent to treatment for young people under the age of 16 years, and sometimes for those over 16 years. For example, Peters (2009) found that more than half healthcare professionals surveyed believed third party consent should be sought for ‘competent’ intellectually handicapped patients and many preferred to seek court orders authorising the treatment of competent persons refusing life-saving treatment. Regardless of the presumption of competence as set out in the Code of Health and Disability Services Consumers’ Rights, common law as in *Gillick*, and the Care of Children Act, practitioners are advised and tend to act with caution and to include parents in decision-making wherever possible. Practitioners and the Courts are likely to act in ‘the child’s best interests’, these interests determined by the health practitioner.

Because the outcome of providing or withholding treatment can be critical, involving the health and even the life of the child or young person, it is not surprising that practitioners are cautious in seeking consent and are likely to seek parental consent whenever possible, partly through concerns about sanctions and litigation, but also as a matter of ‘good practice’.

However it is good practice to seek the consent of parents and their competent children to health care procedures. In most cases this will be what the children want given the positive nature of most family situations and a child’s need for guidance and support. (Ministry of Health, 1998, pp. 12–13)

For parents as well, involvement in the decision-making concerning their children's health is critical and gets to the very heart of their role as nurturers and protectors. The more vexed issue of 'parental rights' is likely to be invoked when parents can claim that they have been denied the opportunity to 'help' their child, or to fulfil their role as protector or nurturer when they are not informed about their treatment or have no say in the matter.

However, in the two Auckland Healthcare cases described earlier where Courts found that 12-year-olds were 'not competent' to refuse treatment, the families' wishes were also denied, and the young people were placed under the guardianship of the Court. As any individual has the right to refuse treatment as long as they are deemed competent, these cases illustrate also the limitations on parental rights. While parents have extensive rights over children these are not absolute and over recent years there has been a shift towards acceptance of 'children's rights' and of more limited parental rights. In *Gillick*, Lord Fraser commented on parental rights as follows:

It was, I think, accepted both by Mrs. Gillick and by the D.H.S.S., and in any event I hold, that parental rights to control a child do not exist for the benefit of the parent. They exist for the benefit of the child and they are justified only in so far as they enable the parent to perform his [sic] duties towards the child, and towards other children in the family.

And Lord Scarman:

The principle of the law, as I shall endeavour to show, is that parental rights are derived from parental duty and exist only so long as they are needed for the protection of the person and property of the child.

(AC 112 [1986], n.d.)

In cases of consent to or refusal of medical treatment such as the two Auckland Healthcare cases referred to above, the 'child's welfare' took precedence over parental rights. Also, in the case concerning a three-year-old boy requiring a blood transfusion, the Court found that *the parents' right to practice their religion cannot extend to imperil the life or health of the child* (Thomson, 2001). In another case

involving a severely disabled infant whom it was considered could not recover, the Court agreed with expert medical opinion that discontinuing treatment was in the infant's best interests even though it was the parents' wishes that treatment be continued (*Auckland Healthcare Services v L & L*, 1998).

Where parents refuse to give consent in life-threatening circumstances, if the situation cannot be resolved by other means, practitioners are advised to be guided by the best interests of the child and their right to life and make application for intervention by a Court (Ministry of Health, 1998, p. 16). Research referred to earlier (Peters, 2009), suggests practitioners are likely to act cautiously when parental consent is not given, and as Thomson notes, although 'Parliament implicitly allows transfusions without parental consent' the cautiousness of practitioners and fear of sanctions means doctors are likely to seek a Court order (Thomson, 2001, p. 155).

In the *Gillick* case, both Lords Scarman and Fraser set out views of the roles of parents, stating that parental rights are not absolute and diminish in relation to the child's developing abilities. The case also suggested that parental rights have a social context and that 'social customs change, and the law ought to, and does in fact, have regard to such changes when they are of major importance' (AC 112 [1986], n.d.). Lord Scarman noted that 'three features have emerged in today's society which were not known to our predecessors: (1) contraception as a subject for medical advice and treatment; (2) the increasing independence of young people; and (3) the changed status of women' (AC 112 [1986], n.d.). It has been suggested that in *Gillick* a parent's interest in the development of his or her child does not amount to a right so much as a responsibility or duty, a view which is also taken in the Care of Children Act, which replaced the Guardianship Act 1968, and where the language used in relation to custody and guardianship moved from 'possession' and 'control' to 'determining for or with the child or helping the child to determine questions about important matters affecting the child' (McKenzie, 2012, p. 11). *Gillick* also established that a 'status based' approach is not appropriate, Lord Fraser stating: 'the solution to the problem in this appeal can no longer be found by referring to rigid parental rights at any particular age' (AC 112

[1986], n.d.), and Lord Scarman: 'If the law should impose upon the process of "growing up" fixed limits where nature knows only a continuous process, the price would be artificiality and a lack of realism in an area where the law must be sensitive to human development and social change' (AC 112 [1986], n.d.).

The Ministry of Health's Consent in Child and Youth Health, notes that for Māori families the child is not regarded as belonging to one or both parents and that responsibility for decision-making is shared with significant and available members of the whānau. It states in addition: 'When it comes to seeking consent this means that, wherever possible, decisions about a child may involve whānau as well as the immediate parents and the child ... This involves changing thinking about a child's rights in purely individual terms to more collective terms' (Ministry of Health, 1998, p. 7). It also notes that for Pacific families, 'traditionally, decisions are made by an extended family group or community and an issue is discussed until it is resolved, perhaps by intervention from the 'right' person. Older people are regarded with respect and their views are influential, as are community leaders such as church ministers' (1998, p. 7). While in both Māori and Pacific communities, children's rights do not have the same focus and significance as they have in Western societies today, neither do parents have sole 'rights over' their children in these cultures. Decisions are made by wider groups, extended family or whānau and aiga, as well as others in their communities; the roles, responsibilities and rights of both children and adults for Māori and Pacific peoples are circumscribed by their place in the community. Unlike Western societies today, the emphasis on the rights of children, and the rights of parents, is in the collective rather than the individual, so that the rights of children and parents both are bestowed on and constrained by their wider communities.

An article that investigated the new understandings of parenting (developed through the routine use of assisted reproductive technologies) in New Zealand case law prior to the Human Assisted Reproductive Technology Act (HART) 2004, concluded that the HART Act 'signals a turn towards a wider (possibly more indigenous?) contemporary legal understanding of 'family' within New Zealand society' (Legge et al., 2007, p. 24). It notes that there is a greater acceptance of

non-traditional family forms in New Zealand than in some other Western countries, which has meant that 'same-sex couples, reproductive material donors and surrogates have been allowed full use of the legal system to argue for recognition of their role in new family formations and have felt empowered enough to do so' (2007, p. 24). While this article was focused on changes to the legal definitions of parents in terms of donors and offspring, the broadening of understandings concerning parental roles and the shifts towards what appear to be Māori understandings of whānau and whāngai (adoption), including the importance of whakapapa (genealogy), might also signal or reflect new social understandings of the roles and responsibilities of parents and children within New Zealand 'families' more generally. However, there is no indication of overall steady progress towards a different construction of 'family' or parental roles. For example, the Care of Children Act 2004 has been described as following a westernised, nuclear family model of parenting as opposed to that of the Child Young Persons and Their Families Act of 1989, where the responsibilities for caring and protecting children were assigned to a wider kin group (Atkin, 2004).

There are some who argue that there are 'family rights' and that parents should have 'wide discretion in pursuing family goals, goals which may compete and conflict with the goals of particular family members' (Ross, 1997, p. 43). Schoeman (1980) also discusses the limitations of referring to rights arguments in relation to young children and their parents, and suggests that a better focus is one that relates to the 'intimate relationship' between young children and parents. He suggests that we should entrust parents to make judgments for 'the common good' when their own interests are involved, thus arguing for limited state or outside intervention in families. He concludes that state interference in family conflicts will negatively impact on the family as a site of intimate relations. More recently, Salter (2017) has argued that because parents have responsibility for the practical and financial burdens of health care decisions, and also act as 'educator, shepherd, nurturer, and guide', 'to say that health care decisions can or should be artificially from [this wider context] and handed over to the underage individual exclusively ignores and potentially disrupts the protected nature of childhood and adolescence

within family decision-making' (Salter p. 38). Salter argues that even if adolescents have decision-making capacity, and she believes 'most adolescents don't have decision-making capacity', parents should have the 'authority' to make decisions for their children because they are 'morally and legally responsible' for them. Winters points out that there can be negative consequences if parents' decisions are overridden by healthcare providers, such as parents not engaging with the child being treated, or fleeing with the child (Winters, J. 2017). However, parents do not always act in their child's best interests; there may be parental or family disharmony, parental emotion or grief, financial or other considerations, which might prevent them from seeing their children's needs and concerns or interfere with an optimal decision-making process (Whitty-Rogers, Alex, MacDonald, Gallant Pierrynowski, & Austin, 2009).

On the first appraisal 'family rights' arguments might look like the sorts of arrangements that exist in Māori and Pacific communities, where there is a concern for the group which takes precedence over any individual. However, in the case of Māori and Pacific 'families' the focus is not on 'rights' but on 'responsibilities' whereas the arguments referred to above are concerned rather with parents' rights to make decisions that are in what they consider to be the family's best interests. The other difference is that for Māori and Pacific cultures the whānau/aiga is a wider group, and decision-making is likely to include input from others than just parents. The 'family rights' arguments seem to hark back to the patriarchal family model of the past.

The 'family rights' argument also raises the issue of 'autonomy' in medical decision making, which is the current standard model in health care (as opposed to the earlier 'paternalistic model'). The autonomy model came about partly as a consequence of the social upheavals and challenges to authority of the 1950s and 1960s, and partly in response to unethical research that had been carried out, not just the Nazi doctors during the Second World War, but later in experiments such as the Tuskegee Syphilis and Willowbrook trials. In the autonomy model, the patient is fully informed of all facts and options and is regarded as an independent and responsible individual who weighs the relevant facts and makes a choice that fits

with their values and lifestyle. However, while the 'autonomy' model is viewed as appropriate for adults but 'too difficult' for children and young people so that the 'paternalistic model' still operates in practice for them, well-informed adults can have difficulties with decision-making in medical treatment. Even for adults, it is not necessarily the case that 'autonomy' can replace 'paternalism' or 'beneficence', but that some sort of balance between the two is often needed. In a paper advocating for a 'collaborative autonomy model', Rubin notes the limits on autonomy in many situations and describes several studies which found that more than half of patients prefer to leave the final decision to the physician (M. A. Rubin, 2014, p. 314).

The type of approach promoted in advice to medical practitioners regarding consent for children and youth (Ministry of Health, 1998) and also in the guidelines for assessing 'competence' in *Gillick*, describe a model which is more inclusive of 'values' and of others in young people's lives. In the *Gillick* case, Lord Scarman, stated:

It is not enough that she should understand the nature of the advice which is being given: she must also have a sufficient maturity to understand what is involved. There are moral and family questions, especially her relationship with her parents; long-term problems associated with the emotional impact of pregnancy and its termination; and there are the risks to health of sexual intercourse at her age, risks which contraception may diminish but cannot eliminate. It follows that a doctor will have to satisfy himself [sic] that she is able to appraise these factors before he can safely proceed.

(AC 112 [1986], n.d.)

Adult patients, who may not in fact find 'autonomy' any easier to manage than children, might also benefit from a decision-making process that is similarly extensive. Patient autonomy has been criticised for its assumption that patients can comfortably take responsibility for deciding on treatment choices, and it is suggested that even well-informed adults have difficulties with such decision-making in medical treatment (Olthuis, Leget, & Grypdonck, 2014). Chan et al, suggest decision-making is now being seen in relational terms and that family involvement

in decision-making, particularly in multicultural contexts such as New Zealand, is becoming more prominent (Chan, Peart, & Chin, 2014).

Arguments for and against adult decision-making for children and adolescents encompass the same sorts of issues as those that arise in surrogate decision-making for adults who are incapacitated. The issues that arise here when physicians and surrogates disagree on treatment (See for example, The Hastings Center Report "Surrogates and Authority" Volume 47) create complex ethical and practical dilemmas for both surrogates and physicians (Fetherstonhaugh, McAuliffe, Bauer, & Shanley, 2017). There may be additional potential problems with children and families which may exacerbate the issue, for example if parents become non-compliant and refuse to support treatment (Winters, 2017). The 'Zone of Parental Discretion' is an 'ethically protected space where parents may legitimately make decisions for their children even if the decisions are sub-optimal for those children i.e. not absolutely the best for them' (Winters, 2017). However, this 'ethical tool' is for situations where clinicians and parents disagree, and is silent 'on children's views, rights and wishes' (Alderson, 2017, p. 8). I argue that in such situations it is even more imperative that children should be consulted and if possible their consent obtained, and for situations where children are unable to give their views, a 'relational' approach where the broader family is consulted would be preferable.

It is sometimes argued that children should not be allowed decision-making rights because their shorter and narrower experience of life limits their ability to draw on past lessons or the broader contextual knowledge that is available to adults.

Experience broadens with age and for most of us the more experience we are exposed to the better evidence we have on which to base decisions. However, in the field of healthcare at least, aligning age with experience is dubious, since in many cases children have considerable experience of their own illness, treatments, hospitals, and of the consequences of treatment and of non-treatment (Alderson, 2017). Arguments in favour of the recent extension of Euthanasia Laws in Belgium to cover children suggested that children with terminal illness had different levels of competence because of their experiences. It has also been argued that in situations such as when contemplating an abortion, where there is an absence of

peer influence, there is time for reflection and the opportunity to consult with adults, adolescents' decision-making is just as competent as adults (Steinberg et al., 2009).

Understanding that young people's maturity or competence in decision making depends not just on individual characteristics and experience, but also on the context in which decisions are made, it does not make sense to view competence to consent to or refuse medical treatment as settled at any particular age. This appears to be broadly accepted in New Zealand although it does not necessarily extend to serious procedures: when 'risk' is high, the medical profession and the courts can return to the 'paternalistic model' and decide 'in the child's best interests'.

4.5.4 Summary

Since the *Gillick* case, countries such as New Zealand where it has a place in common law, have grappled with the issue of minors' rights to consent. It seems that within New Zealand law and policy, there is acceptance of the idea that an age limit for consent is neither practicable nor preferable. The policies and guidelines for practitioners in this area suggest that children and young people should be presumed competent, be given the opportunity to provide informed consent, and it is recommended that wherever possible, parental consent is also obtained. Where there is a conflict of opinion between the young person and their parents, or where the young person does not want their parents informed, the response of the medical professional is likely to depend on the degree of risk involved in providing or withholding treatment. If the child or young person does not consent to treatment that is recommended, it appears that both practitioners and the Courts are likely to override their refusal (and if necessary, that of their parents) on 'best interests' grounds. Although 'best interests' are decided by the practitioner, backed up by the Court when necessary, these cases are rare.

The issues concerning children's consent to medical treatment continue to be debated and there is yet to emerge a coherent policy that is able to encompass the various ethical and practical issues that have been canvassed. The situation in New Zealand is fortunate in that acceptance of *Gillick* as common law, and the

presumption of competence (unless otherwise established) in all health consumers including children, means that children are at least informed and consulted about their own treatment. While there are still some problems, such as significant gaps in practitioners' knowledge of the law (Peters, 2009), the approach here seems to be workable. Problems that might arise, such as when parents and children disagree, when children do not want parents to be told about their health issue, or when parents and/or children disagree with the practitioner's preferred approach, are in any case not solved by an age standard for consent. The legal position might be clearer in that case, but the practical problems of the emotional, psychological or social repercussions for the parties involved would still remain. Moreover, if an age standard was applied there is then an additional problem which is the treatment of a non-consenting and unwilling patient.

It is still the case in New Zealand that when medical professionals and young patients disagree on treatment, the professional, and the courts when they have been resorted to, can make decisions based on the child's best interests as determined by the medical professional, or by the courts. Cases where the medical professional is likely to invoke the court, which can override the child's wishes (and the parent if the parent also refuses consent) are not common, but for less serious cases, the extent to which young people are in practice permitted decision-making powers is not known. Research (Peters, 2009) indicates that health professionals' knowledge of the law regarding consent is limited, and that they are likely to seek parental consent before treating young people, a result that the author suggests is entirely predictable 'from the perspective of risk management' (2009, p. 53).

In many ways the case of consent to or refusal of medical treatment by minors lays out the parameters for the management of age limits, rights and responsibilities. The medical consent issue, because of the high stakes involved – future health and wellbeing, life and death, parental rights, professional confidentiality – accentuates concerns such as vulnerability and decision making ability that may be more muted in discussions about whether young people should have rights in other areas of their lives. It also highlights the 'confused and contradictory' nature of arguments concerning minors' rights to consent. While in New Zealand at least, young people

are presumed competent to consent or refuse medical treatment, in practice this is limited, partly because medical practitioners appear to have a poor understanding of the legal position, but particularly due to the reluctance of practitioners to take on the risk to themselves of treating without parental consent. This reflects a lack of confidence in young people's ability to make decisions, as well as a possibly misguided but nevertheless common belief that parents have the right, or should have the right to provide consent.

4.6 Summary of Findings

The analysis of the data across the three legislation case studies did not lead to coherent explanations regarding policies for youth at particular ages, but rather found that a range of familiar opinions, ideas, stereotypes and sometimes evidence were drawn on to justify the positions of the speakers or writers as to whether an age limit should be raised, or lowered for the Courts Jurisdiction case.

The main outcome was that the way in which age limits are set is probably best described as chaotic and the attitudes that are held about young people and that inform such policies are capricious and contradictory. As described in the Introduction, the early scan of New Zealand legislation (see Appendix 1), demonstrated the wide range of legislation that includes age standards, the wide range of ages that are selected, and the absence of any obvious coherence across the legislation for the selection of particular, or indeed any ages. This scan was a catalyst for the approach taken in my study. I had anticipated that this research would make it possible to develop some principles regarding age standards that could be applied in the development of policy and legislation that concerned children and young people. However, the analysis of the case studies did not provide a reasoned explanation for the selection of age limits, and nor were the views expressed about young people able to be shaped into a comprehensive collection of attributes that young people possess or lack that might support particular age limits. Nor was there any consensus about, and indeed there was little discussion of, the role or tasks of youth in contemporary New Zealand society. Apart from aligning age to other legislation or the UNCRC, the selection of ages was arbitrary, and views about young people consisted of a repertoire of ideas, evidence or common stereotypes, out of which were selected any needed to support the case being made.

The case of consent to medical treatment described a situation where there is no age limit, which while in practice may not always be applied, does demonstrate that at least in some situations such an approach is workable. What was particularly conspicuous in documents and reports providing commentary and advice about

consent in healthcare for children and young people was an attitude of respect towards them and their competencies. This contrasted with the ways in which young people were referred to in many submissions and the Hansard debates.

The theme that dominated was the concept of 'risk' which was woven through all case studies and overwhelmed other ideas about young people that might have provided sound arguments or evidence for the development of some principles regarding age standards. The next Chapter explores the idea of 'youth as risk' in the context of the 'risk society' as theorised by Ulrich Beck.

Chapter Five: Youth and the Risk Society

The concept of 'youth as risk', was a predominant view in my analyses, and formed an overarching explanation for the other themes that emerged. The view of young people as 'at risk' or 'risky' was a powerful narrative thread that wove through all four case studies. Other views of young people that might enable the development of principles that could be applied to different areas of policy and legislation in relation to youth age were overwhelmed by views of 'risk'. For instance, when young people were seen as competent, it was often in their capacity for deviant activities so that their competence made them risky. But when seen as lacking capacity, their incompetence placed them 'at risk', unable to engage with the world in the way that adults can. Views concerning young people's 'rights and responsibilities' were determined by the extent to which they presented a risk to themselves or others: if the risks created by a few irresponsible youths were deemed sufficiently harmful, then submitters and MPs were apparently comfortable with all young people losing rights because of the actions of a minority. Viewing 'youth as risk' also meant that it was not necessary, or perhaps even possible, to see their diversity. Their 'risk' was a commonality that overwhelmed any other differences that are conspicuous in other identifiable groups in society, such as gender and ethnic differences, their diverse environments and family cultures, and their engagement in a variety of activities.

This chapter will argue that the contours of society for today's youth, that of 'new', 'high' or 'reflexive' modernity, as described by Beck and Giddens, create an anxiety which is expressed in fears of and for young people. Within this 'risk society', young people are also situated in patriarchal relationships with adults, positions that are upheld by hegemonic views of youth as immature, undeveloped and lacking competence. These social dynamics combine to support a compelling perception of young people as at risk and risky. The chapter sets out how the findings of my analyses can be explained by the concept of the 'risk society'. Referring back to some of the literature in Chapter Two, it first provides a brief contextual background to the findings of 'youth as risk'. It then focuses on Beck's 'Risk Society',

building on his theorising of western industrial societies to explain why 'youth as risk' is such a predominant conceptualisation of young people in contemporary western societies, such as in New Zealand.

5.1 The Context

Over the last century within Western societies, the view of youth as a problem has progressed from G. Stanley Hall's description of adolescence as a time of 'storm and stress' through to more recent views of the inadequacies of the 'teen brain'.

Knowledge about and understandings of children and adolescents over this time has been significantly grounded in the evidence from developmental psychology, at least within modern Western societies, and much of this has focused on the 'deficits' of this stage of life. Research on youth, investigating hormonal differences, peer influence, identity crisis, decision-making, judgment, risk taking, and neuroscience's 'teen brain', is situated within and draws from a context where adolescence is already defined as a period of 'turmoil, instability, and abnormality' (Ayman-Nolley & Taira, 2000, p. 42). Young people as a 'problem to be solved', risk takers, poor decision-makers, subject to neurobiological changes, has dominated the discourse about youth. This focus on 'youth as a problem' and 'youth with problems' has influenced how youth are viewed by families and communities as well as by youth themselves, and has at times created moral panics about youth. These 'deficit' views of young people were regularly expressed in the submissions to Select Committees and the Hansard debates.

The more recent dominant neo-liberalism and market-oriented policies current in Western societies has meant that young people have to some extent benefited from 'individual rights' arguments. There has been the development of the UNCRC, the Agenda for Children, the Care of Children Act. However, Bessant suggests that 'the application of liberal ideas about rationality and individualism affects the capacity of liberal policy programs to address in substantive ways the experience of injustice and inequality that characterise the lives of many young people (i.e., high poverty levels, breaches of civic and legal rights, etc)' (Bessant, 2005, p. 107). The problem for youth also is that their capability for 'rational action' is mistrusted; they are considered to be too immature, that their brains not fully developed, that they

are inclined to impulsiveness and risk-taking, and are subject to peer influence. As a group then, they are mostly held to be unable to engage as citizens and exercise their rights. For instance, even though they have the right to consent to medical treatment, when there is high risk from treating or failing to treat, in practice decisions are made by adults in the 'child's best interests'.

5.2 Why Risk?

The overarching theme arising from my research was that of 'risk', that is, youth were viewed predominantly as being either 'risky' or 'at risk'. Being 'risky' meant they were likely to make 'bad decisions', get into trouble, break the law, fail at school, drink too much, drive too fast. Being 'at risk', meant they were naïve, inexperienced, incompetent, and therefore vulnerable to being manipulated or were endangered. This dominant view of youth as 'risky' raises the question as to why this particular view of young people was so predominant across these cases. Views of adolescents over time have depicted the problems of youth or youth as a problem, from G. Stanley Hall's depiction of adolescence being a time of 'storm and stress', through a range of negative social representations of, and some moral panics about, teenagers – teens and sex, smoking, drinking, driving, pregnancy, digital technology, social media, pornography. These hegemonic discursive practices associated with the depiction of 'the teenager' or 'adolescence' are aligned with the broader social contexts in which these young people live and the particular social and economic changes which appear to threaten social stability. The 'fact' of youth is socially constructed to suit changing social and economic circumstances and it is argued here that the representation of young people as 'risk' is located in a society that is in a state of flux and one in which 'risk' is a predominant theme.

Beck (1992; 1994) and Giddens (Beck et al., 1994; 1991) have argued that a 'historical rupture' has occurred and that pre-existing structures of the nation state, the nuclear family, class structures, and the certainty of science have collapsed. They argue that the era we live in today, 'high modernity' (Giddens) or 'reflexive modernity' (Beck), is one in which formerly fundamental social and political processes have 'collapsed' or 'fractured', and become subject to interrogation,

thereby leading to a 'reflection' on modernity. Unlike post-modernist accounts of this deconstruction which see in it the collapse of meta-narratives, Beck and Giddens describe 'reflexive modernity' as the disembedding but subsequent re-embedding of social structures. Giddens states: 'Modernity's reflexivity refers to the susceptibility of most aspects of social activity, and material relations with nature, to chronic revision in the light of new information or knowledge' (Giddens, 1991, p. 20) and Beck describes it as: 'If simple (or orthodox) modernization means, at bottom, first the disembedding and second the re-embedding of traditional social forms, then reflexive modernization means first the disembedding and second the re-embedding of industrial social forms by another modernity' (Beck et al., 1994, p. 2). Reflexive modernization then is optimistic in that firstly, it does not come about in response to a crisis or 'bitter experiences' but rather it is the success of modernity that brings it about; and secondly, that the emancipation of people from the 'old orders' has opened up the 'compulsion to find and invent new certainties for oneself and others' (1994, p. 14).

'Reflexive modernity' is still 'modernity' but is the 'modernization of modernity': the old structures – nation states, families, classes, male/female roles, full employment and a career for life, the exploitation of nature seen as a provider of resources - are challenged in this second modernity. Globalisation challenges the idea of the nation state; feminism has challenged the traditional roles of men and women both within the family and in work; easier divorce and new forms of relationships which are more fluid has meant that the nuclear family is being replaced by new arrangements; flexibility and casualisation in the labour market and changing technologies have meant that there is now significant underemployment if not unemployment and that a 'job for life' is no longer the expectation for most people. Beck claims these are not all negative; individuals 'willingly' accept the loss of security and certainty in exchange for the 'freedoms' offered. The freedoms consist of individuals having to 'negotiate' or construct their own biographies rather than having them set by the classes or occupations that they enter. However, this is also risky and not necessarily 'free'; Beck points out that while traditional ties of social class and nuclear family are removed, or rather

recede into the background, they are replaced with the constraints of the labour market and consumer society, 'which stamp the biography of the individual and make that person dependent upon fashions, social policy, economic cycles and markets, contrary to the image of the individual control which establishes itself in consciousness.' (Beck, 1992, p. 131).

Changes in global politics and economics, in the family and gender roles, in employment and in the certainties of science, create social risks which have to be managed by individuals. However, Beck also describes in detail additional 'risks' of modern industrial societies, that is, the risks that are the side effects of industrialization such as pollution and environmental damage; the risks of the 'unknown' side-effects of chemical contamination in the food we eat or the water we drink; and the risks from genetic engineering, not just in plants and animals but also in humans, many of which are unknown and will only appear in the future. The risks today from industrial society differ from those of the past in that (1) they are global or at least affect others beyond the immediate area e.g. nuclear fallout or acid in the air, the interruption of food chains, pollution or destruction of waterways; (2) they are 'invisible' e.g. pollutants in foodstuffs, chemical contamination, gene-altering effects of radioactivity. Moreover, there is no 'expert' on risk; 'there are always competing and conflicting claims, interests and viewpoints of the various agents of modernity and affected groups, which are forced together in defining risks in the sense of cause and effect, instigator and injured party' (Beck, 1992, p. 29). One of the consequences is that the scientists and engineers are expected to predict and control such risks, a task which is not only political (what are acceptable and non-acceptable exposures) but is also impossible since some risks are incalculable; moreover, because of the interdependence of industries, businesses, individuals, it is often impossible to identify a guilty party should a disaster occur. 'Responsibility' thus proves problematic in modern society – 'everyone is cause *and* effect, and thus non cause' (1992, p. 33).

Beck's description of the 'historical rupture' of 'first modern society' (in relation to 'high' or 'reflexive modernity') identifies disruption and uncertainty at the rupture: "... the undermining of every aspect of the nation-state: the welfare state; the

power of the legal system; the national economy; the corporatist systems that connected one with the other; and the parliamentary democracy that governed the whole. A parallel process undermines the social institutions that buttressed this state and were supported by it in turn. The normal family, the normal career and the normal life history are all suddenly called into question and have to be renegotiated”

. “Both its [modern Western society’s] attitude towards problem-solving and its institutionalized answers seem progressively less suited to meet the challenges at hand. The more the foundations are undercut, the more thinkers and social actors feel themselves at sea, the more the Western project of modernization loses its telos” (2003, p. 8). Along with these disruptions and environmental hazards is the threat of international terror. While Beck is optimistic in that ‘reflexive modernization’ enables the principles of modernity to be ‘redeemed from their separations and limitations in industrial society’ (Beck, 1992, p. 15), he acknowledges the impact of the shaking of the foundations. He describes the normative ‘counter-project’ of risk society as being ‘safety’. While ‘the dream of the class society was that everyone wants and ought to have a share of the pie, the utopia of risk society is that everyone should be spared from poisoning’; in the risk society, the ‘commonality of anxiety replaces the commonality of need’ (1992, p. 49).

Neither Beck nor Giddens discuss theories of ‘reflexive modernity’ or the ‘risk society’ in relation to youth specifically, but the significance of this theorising of today’s society for young people, and how it informs the dominant theme of ‘youth as risk’ in this study is realised in the observation that young people have particular vulnerabilities in the ‘risk society’. Here, I describe how young people, because of their life stage, are most particularly affected by, and I argue the most ‘at risk’ in a ‘risk society’.

In terms of ‘ecological risks’, whether pollution or contamination or industrial disasters, young people rarely form part of the decision-making systems in politics and industry, although they may form part of protest groups such as the ‘green’ movements. They are therefore at risk of industrial, agricultural or ecological

pollution or disasters, like others, but have little say in risk assessment or decision-making. They might also be said to suffer disproportionately as they are more likely to experience the longer-term effects of such disasters, by still being alive when the full effects materialise.

Youth are also at the vanguard in a 'risk society' in which 'individuals become the agents of their educational and market-mediated subsistence and the related life planning and organisation' (1992, p. 90) and hold the responsibility for the failure or success of that. This is in a context where 'a uniform system of lifelong full-time work organized in a single industrial location has given way to a risk-fraught system of flexible, pluralized, decentralized underemployment' (1992, p. 143). Young people are more vulnerable in any labour market because they have less experience, and have not yet had opportunities for training that might assist entry or provide greater job security, flexibility or progression. In addition, employment laws often discriminate against them. They are also in a position of vulnerability in having to 'guess' what sort of training might be most useful in a rapidly changing labour market.

In the 'risk society', roles have become 'negotiable', but for young people their ability to negotiate is circumscribed by their particular positioning within patriarchy, their economic dependency, as well as by legislation that limits their rights. While all people are now forced to piece together their own individual biographies, because they are at the beginning of their 'life careers' young people are in the more precarious position of having to make fresh choices and decisions in all areas of their lives. These include what training or education they might need or want, what sort of work they want to do, what sort of partner or relationship they want or might aspire to, choices about sexuality and even gender, about whether and how to parent, how they enact roles, such as partner or spouse, as friend, as employee. There are risks with all these decisions and the responsibility for 'wrong choices' rests on them, since the risks are held by the individual: 'Failure becomes personal failure, no longer perceived as class experience in a 'culture of poverty'. It goes hand in hand with forms of self-responsibility. Whereas illness, addiction, unemployment and other deviations from the norm used to count as blows of fate,

the emphasis today is on individual blame and responsibility' (Beck & Beck-Gernsheim, 2002, p. 24).

Although traditional commitments and support relationships (social class and family) no longer operate as they did in the past, individuals are still 'institutionally dependent': 'the liberated individuals become dependent on the labor market and because of that, dependent on education, consumption, welfare state regulations and support, traffic planning, consumer supplies, and on possibilities and fashions in medical, psychological and pedagogical counselling and care' (Beck, 1992, pp. 130–131). So, Beck does not see individuals as immune from external forces and operating in isolation. Youth are perceived, rightly or wrongly, as being particularly vulnerable to these forces because of their naivety. This was compellingly expressed in the many submissions that criticised the advertising and marketing of alcohol because of its greater impact on young people.

'Risk' is about the future: 'The centre of risk consciousness lies not in the present, but *in the future*. In the 'risk society', the past loses the power to determine the present. Its place is taken by the future, thus, something non-existent, invented, fictive as the "cause" of current experience and action. We become active today in order to prevent, alleviate or take precautions against the problems and crises of tomorrow and the day after tomorrow - or not to do so' (1992, p. 34). Young people will be the decision-makers in the society of the future, so there is understandably a greater anxiety about them and what the outcomes for them might be, for their sakes, but also for our own. Youth policies now are often framed as an 'investment' in youth. Giddens points out the difference between 'risk' and 'hazard' noting that today's 'risk society' is not more hazardous or dangerous than pre-existing forms of social order, but the difference is that 'risk is bound up with the aspiration to control and particularly with the idea of controlling the future ... The idea of 'risk society' might suggest a world which has become more hazardous, but this is not necessarily so. Rather, it is a society increasingly preoccupied with the future (and also with safety), which generates the notion of risk' (Giddens, 1999, p. 3).

Young people can thus be seen as particularly 'at risk' in a 'risk society': biographies and choices are more important and more precarious as described above; young

people are at greater risk of long-term harm from industrial, agricultural, or scientific experiments or 'failures'; as they form the future, they bear the future risk of current policy failures. Because they represent the future, in a 'risk society' control of young people is one way of managing 'risk', but it also positions young people as the 'carriers' of risk.

Beck describes the displacement of fears in the 'risk society', that 'precisely as the dangers increase along with political inaction, the 'risk society' contains an inherent tendency to become a *scapegoat* society: suddenly it is not the hazards, but those who point them out that provoke general uneasiness' (Beck, 1992, p. 75). Although he does not refer to young people here, he suggests that 'social stereotypes' are created or blamed for the 'invisible risks'. Young people, who because of their life stage are more exposed to, and therefore draw attention to, the risks of the 'Risk Society' become the scapegoats for 'the invisible threats which are inaccessible to direct action' (1992, p. 75).

These young people are also subject to the power relations between young people and adults, which stem from past (and present) patriarchal forms. While patriarchy as expressed in the past was the nearly total ownership and power of individual men over children (and wife and servants) in a family and household, over time the power relations between parents and children have become diluted in their expression. Adult *responsibility* for children, rather than *rights over* children, is now more commonly accepted as the parental role. However, adults as a group or class having power or authority over youth as a class is a form of patriarchal power that is still available, and indeed the existence of age-related policies is an expression of that. The economic dependence of children and young people enables adults to maintain power over young people, and power relations are also upheld in hegemonic views of young people, as are heard in the commonly expressed descriptions of their limitations and inadequacies compared with adults.

Hegemonic depictions of youth as incompetent or irresponsible enable adults to impose boundaries or restrictions that will benefit adults, such as by avoiding competition for jobs, or reducing road congestion and air pollution by forcing young people to use public transport. However, the hegemony of adults over youth also

requires the cooperation of youth in the same way as the hegemony of men over women requires the cooperation of women; these are close relationships, unlike those of class, because they also occur within families as well as society at large. The 'consent' of the oppressed must be at a deeper level than that of class where relationships are more distant and not emotional, and these power relations are therefore more obscure, as well as more difficult to expose and modify. The disjunction between the broader ideology concerning youth and the views of actual young people in families was seen in some submissions where parents often presented their young people as 'responsible' or 'competent' and who should not suffer because of other 'irresponsible' youth. It is also the case that some policies, such as student allowance or youth benefits, and policies which affect youth employment, might benefit adults as a class but not adults as parents who have to manage the elongation of 'childhood' with their children's economic dependence. There may be public patriarchy but private equality in some households, and parents can also be victims of policies that disadvantage youth.

In this chapter, I have argued that the greater 'risks to' and the greater 'risk of' young people in a 'risk society', situated in a milieu where hegemonic views of youth shore up patriarchal relations between youth and adults that also provide material benefits to adults, have created complex relations between young people and adults which were exhibited in this study in the confused and contradictory views of youth expressed, but where the overwhelming view was that of 'risk'. The next chapter provides an overview of the research and findings, and draws on the findings to make some recommendations for future youth policy developments.

Chapter Six: Conclusions

This chapter provides a summary of the research and its findings, then outlines some implications of these findings in recommendations for future policy development and for future research.

6.1 Key Findings

This study originally set out to examine four case studies in order to determine how youth were viewed and the ways in which these views or ‘constructions’ of youth enabled and supported the setting of ages in youth policy and legislation. The aim was to extract from this data coherent evidence regarding young people that could be used to develop guidelines for age setting in contemporary New Zealand, as opposed to what appears as a chaotic assortment of ages across legislation, as seen in Appendix One.

Analysis of the data from within a critical and feminist framework allowed for the detection of underlying power relations between youth and adults and also called attention to hegemonic discourses that depicted young people as stereotypically inadequate or foolish. Critical theory challenges the idea that our understandings of youth stem from, or are based on, any natural or inevitable positioning of young people; this meant that conventional depictions of youth in the data were not just accepted as such but considered in terms of where the benefits might fall, and the values demonstrated through such a positioning of young people. Feminist standpoint theory provided a ‘feminist lens’, enabling the position of ‘youth as a group’ to be seen in relation to ‘adults as a group’.

It was found that views of young people, and thence of youth age-setting, were confused and contradictory, and that the overriding discourse concerning youth was one of ‘youth as risk’, a narrative that was woven through all four cases. This raised the question as to why this discourse was so dominant and why it should have overwhelmed other views of young people to the extent that rational, evidence-based assessments of young people that might guide policy or legislation

concerning age-setting were not available. Thus, the public policy framework originally developed for this thesis was no longer appropriate, and it was necessary seek new frameworks to assist in explaining these findings. As described in the previous chapter, an explanation for the dominant discourse of 'youth as risk' was found in Ulrich Beck's theorising of the 'Risk Society'.

I argued there that the theoretical analysis by Ulrich Beck of modern western societies as 'risk societies' provided the best explanation for the overwhelming depiction of 'youth as risk' in this study. Beck's understanding of contemporary western societies is that the modernisation of industrial society, 'reflexive modernisation', has 'demystified' our understanding of science and technology and changed the 'modes of existence in work, leisure, family and sexuality' (Beck, 1992, p. 10). Individuals are faced with the 'latent side effects' of techno-economic progress, the risks produced by technological and scientific developments, environmental pollution, and terrorism, which are 'non-class specific' and are global hazards. Moreover, we can no longer depend on 'experts' to predict and control such risks, which may be incalculable, and the experts are likely to contradict one another. Individuals are therefore forced to assess risk for themselves. Alongside the creation of these physical but unseen and often unknown risks, there has been a collapse or fracturing of class and family structures, and the rise of flexible and impermanent working patterns, including the demise of life-long career paths. While limiting 'freedom', these structures also provided some security. Now individuals are forced to become agents of their own education and career courses, and of their life planning and organisation.

I have built on Beck's work to argue that youth are at the vanguard of this 'risk' society. Because of their life stage, they are having to make choices in all areas of their lives: in education and work, and in their social and family roles. I also argued that they are more vulnerable in their decision-making because of their powerlessness and lack of experience. I suggested that they are also at greater risk from techno-scientific and environmental side-effects, the implications of which may take years to develop. Finally, because 'risks', unlike hazards, do not actually

exist and are only predictions of hazard, the 'risk society' is preoccupied with the future and controlling the future; young people as the future are the carriers of risk. Acknowledging young people's particular risk in the contemporary 'risk societies' as described by Beck, I argued that this, in the context of patriarchal relations between adults and young people, and a history of depicting adolescence as a time of 'storm and stress' (and the recently discovered a 'teen brain' to account for it), explains the predominant theme of 'youth as risk' found in this study.

6.2 Future Directions for Policy

While we all live in the 'risk society', the premises of this society implicate young people most obviously and with greater impact because of their life stage, being at the beginning of their work and 'life' careers, and as they represent the future they bear the impact of our responses to all our fears for the future. I argue that accepting Beck's theorising of contemporary western societies as being 'Risk Societies', and accepting young people's particular vulnerability in this type of society, exemplified in the discourse of 'youth as risk' that dominated this study, indicates the need for development of policies that can manage and mitigate of the negative effects of 'risk society' for young people.

For Beck, individualisation 'is not based on the free decision of individuals' (Beck et al., 1994, p. 14). Instead, the structural contradictions and insecurities in the labour market, the educational system, and family and gender roles force individuals under the conditions of the welfare state to become 'actors, builders, jugglers, stage managers of their own biographies and identities and also of their own social links and networks' (Beck & Beck-Gernsheim, 2002, p. 23). For young people particularly, this means that they are in the position of having to make, and accept responsibility for, decisions taken in a social and economic context over which they have little control. Individual young people must manage and identify with their own career successes and failures and their own choices of lifestyle. While in the past family and class, while limiting freedom, also provided a buffer, now any failures and problems are individualised and become psychological attributes. Inequalities have not disappeared: 'They merely become redefined in terms of an

individualization of social risks. The result is that social problems are increasingly perceived in terms of psychological dispositions: as personal inadequacies, guilt feelings, anxieties, conflicts and neuroses' (Beck, 1992, p. 100). The responsibility is now seen to lie with the individual: 'class biographies, which are somehow ascribed, become transformed into reflexive biographies which depend on the decisions of the actor' (1992, p. 88).

The implications of this for youth policy are first of all recognition that individualisation 'has already become a reality' (Beck & Beck-Gernsheim, 2002, p. 161), but also understanding that individualization and the development of 'risk biographies' are a response to economic, political and social contexts, and that these are not the same for all young people. Beck describes how 'as people are removed from social ties and privatized through recurrent surges of individualization', on the one hand 'everything revolves around the axis of one's personal ego and personal life' but on the other hand 'those areas where commonly organized action can affect one's personal life steadily diminish, and the constraints increase to shape one's own biography' (Beck, 1992, p. 135). Beck does not negate the impact of the structural limitations on individuals, but emphasises that the 'risks' are now the responsibility of the individual: what was once "'a blow of fate" sent by God or nature ...today ... [is] considered "personal failure"' (Beck, 1992, p. 136). Moreover, the boundaries between the sub-systems of education, labour, family, and so on, disappear in their impact on the individual. This means that the individual has to manage the 'connections and fractures' of 'sub-systems'. Decisions have to be made, and even if a 'decision' is not possible because 'neither consciousness nor alternatives are present', the individual has to 'pay for the consequences of decisions not taken' (1992, p. 135).

To ease this burden of responsibility for decisions taken or not taken requires recognition and acceptance of the impact of the interrelation of many sectors on the individual biography. For youth policy, such an understanding would better reflect the impact of policies across all sectors on young people's choices. For example, policies for the funding of education and training would recognise that today a lifelong career is unlikely; that decisions made about student loans with

limited knowledge of a changing labour market might, with the best of intentions, have a dismal outcome; that the real growth in jobs has been in service occupations, meaning many students face limited prospects of being able to find a job that matches their qualifications; that economic policies that have forced young people to remain dependent on their families for longer periods in order to undertake post-school training or education, or even to be available for the labour market, have the effect of disabling young people who do not have such family support: their homelessness, educational or employment failure, or their 'deviancy', being a consequence of such policies rather than of their own 'choice'.

In terms of youth policy, the main consequences of this analysis are twofold. First, it should be acknowledged that while choices are necessary, they are not always free and alternatives are not always available. For young people particularly, policy needs to recognise the limitations on freedom in decision-making that may stem from their gender, ethnicity, disability, and sexuality; their different social, educational, leisure and employment activities; their different roles in families and community; and also that they reach developmental milestones at different ages. Second, policies developed across sectors may have to be managed by the individual young person all at once; economic, education, and employment policies may all impact at the same time, and in ways that provide a young person with little choice.

In New Zealand, these discussions and the responsibility for representing the needs and aspirations of young people, across government in all policy areas, could be promoted by a youth ministry in addition to the Children's Commissioner who already advocates for children/young people. The Ministry for Youth Development describes its function to: 'encourage[s] and support[s] young people, aged between 12 and 24 years old, to develop and use knowledge, skills and experiences to participate confidently in their communities.' (Ministry of Social Development, n.d.-a). The focus here is on youth participation, but a youth ministry could take a more active role in advocating for young people in the development of policies in other areas, and to ensure that the impact on youth is taken into account in policy development across all sectors. The Office of the Children's Commissioner, which

describes its role as an ‘advocate for the interests and wellbeing of children and young people’(Children’s Commissioner, n.d.) clearly already has a role in representing their interests. The new Ministry for Vulnerable Children Oranga Tamariki describes its role as ‘dedicated to supporting any child in New Zealand whose wellbeing is at significant risk of harm now, or in the future. We also work with young people who may have offended, or are likely to offend (‘Oranga Tamariki Ministry for Vulnerable Children’, n.d.)’. While its role is ‘limited’ to ‘vulnerable children’, advocacy for this group is particularly critical as it includes young people who are most ‘at risk’ in a Risk Society.

6.1.1 Inclusion

In New Zealand public policy today, there is a focus on encouraging the participation of young people in decision-making, as well as in their communities and society more generally. However, in view of the impact of the ‘risk society’ on young people particularly, their greater ‘risk’, and considering the hegemonic discursive practices associated with the depiction of ‘the teenager’ or ‘adolescence’, I argue that the principle of ‘inclusion’ would better provide for consideration of young people in decision-making across all sectors and would also help in promoting more positive views of young people within adult society.

Over recent times there has been an emphasis in child and youth policy development on the need to ‘hear the voices’ of young people and the focus of the Ministry of Youth Development is on youth ‘participation’ and ‘youth development’. The Ministry has consulted with youth on a number of events and policies, such as on the proposed changes to university entrance (2010); the Canterbury earthquake (2010); the sale and supply of liquor (2009); the Defence Review (2009); on Depression, Poverty And Being Valued As A Child Or Young Person (2011); Young, Disabled, and Speaking Out (2011) for the New Zealand report on the UN Convention on the Rights of Persons with Disabilities; and a number of regional consultations (Ministry of Youth Development, n.d.-b).

Both ‘participation’ and ‘youth development’ concern things that individual young people need to do.

'In November 2015 Government agreed a new direction and priorities for the Ministry of Youth Development:

- Increasing the number of quality opportunities for youth development overall, which includes those that provide leadership, volunteering and mentoring experiences.
- Increasing the proportion of opportunities targeted to youth from disadvantaged backgrounds.
- Working in partnership with business and philanthropic organisations to jointly invest in shared outcomes.

Building a formal recognition of young people's community and voluntary participation and contributions by having a way that this can be recorded and valued.

Building capability refers to those competencies or skills that people require to live and participate in their communities. Those competencies or skills include:

- thinking
- communication
- managing self
- relating to others
- participating and contributing.

Building resilience refers to young people strengthening their personal identity and sense of self-worth, through managing change and loss, and through engaging in processes for responsible decision making.

They learn to demonstrate empathy, and develop skills that enhance relationships. It includes recognising or growing individual strengths such as optimism, self-esteem, good problem solving skills and personal supports. Resilience is enhanced with supportive connections.' (MSD, n.d.).

These 'new directions' focus on young people as active subjects, they need to 'do things' in order to achieve the desirable outcomes described in the Ministry's policies. They also bear the consequences of failing to do these things, in their 'mental illness, unemployment, addiction, unwanted pregnancy, loneliness or

becom[ing] involved in crime' (Ministry of Youth Affairs, 2002, p. 10). It is clear that in these approaches to youth development it is young people who must be active in making choices, and who also carry the risks for 'wrong choices', even though they may have limited information, their choices are circumscribed, and they have little control over outcomes.

In Beck's view, social, technical and environmental 'hazards' are produced by industrial society but the 'risks' fall on the individual. 'Individuals are now expected to master these "risky opportunities" without being able, owing to the complexity of modern society, to make the necessary decisions on a well-founded and responsible basis, that is to say, considering the possible consequences' (Beck et al., 1994, p. 8). Accepting that the 'risks' for young people emerge from contexts over which they have little control, then a more fruitful approach would be 'inclusion' rather than 'participation'. If we were to adopt 'inclusion' of young people as a principle in policy development, it would require changing what we do so that young people are included; adult society here becomes the active subject.

'Inclusion' indicates a broader social change, an opening-up of adult society, and of adult approaches to policies across all sectors, to take account of young people, of their stage in life, their lived realities, their diversity, their needs and aspirations, and of the broader impacts of policies on young people. This will also mean that a youth ministry will have a greater role in ensuring the needs and aspirations of young people are included in the development of policies across all governmental areas, such as education, health and justice but also others such as housing and employment whose policies also affect young people. Recognising the social, political and economic contextual factors in young people's decision making and understanding their 'vulnerability' (being 'at risk') as 'powerlessness', should lead to policies that work better for young people. It should also direct attention away from seeing young people as 'the problem' and therefore placing restrictions on them, and move towards recognising the risks to them of the 'risk society' in which they live.

Feminist theorising has exposed the power relations and the social and historical positioning of women in relation to men, and in the same way understandings of youth need to acknowledge and incorporate the power relations between youth and adults and to consider the social and historical positioning of 'youth' as a social group. This includes the hegemonic discursive practices associated with the depiction of 'the teenager' or 'adolescence', and both the 'scientific' and the 'popular' views of youth that define them and tell them 'what they are really like'. Rather than viewing the problems of youth as residing within youth themselves (their 'immaturity', riskiness, impulsiveness, their 'teen brains'), understandings about youth also need to acknowledge and encompass the social and power relations that are (mostly) presently ignored. Policies that will affect young people need to consider young people's social and economic contexts as well as the effects of living in the 'risk society' and what that means for their decisions about education, work, where they live, and the families they will create.

6.1.2 Dignity

The data revealed many negative and disparaging views of young people, views which are also commonly expressed in the media. A youth ministry could take a lead in working to change these widely held derogatory views of young people. The preamble to the UNCRC states: 'Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world' (United Nations, 1989). The concept of 'dignity', described here as 'inherent dignity ... of all members of the human family', if promoted as a foundational principle in discussions about youth, would encourage more respectful and positive views of young people. 'Dignity' as '[T]he glue that holds all of our relationships together is the mutual recognition of the desire to be seen, heard, listened to, and treated fairly; to be recognized, understood, and to feel safe in the world' (Hicks, 2013) when considered in relation to young people, or 'youth' or 'teenagers', highlights the often demeaning and negative ways in which youth are treated compared with adults, and which was often expressed in both the submissions and Hansard debates.

Dignity is a fluid and opaque concept, used in the UNCRC as above and in the Universal Declaration of Human Rights (UNDHR) (The United Nations, 1948), but it is not defined in either declaration. The UNDHR provides some direction in the second sentence in Article 1: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” As well as the ‘spirit of brotherhood’ [sic], which encompasses concepts of equality and care, dignity can also be seen as co-constructed. It is something that arises between two human beings in the way they respond to one another, and recognition of the dignity in one person by another enhances the dignity of both. This concept of dignity is more than respect, which is earned through actions, and is intimately associated with rights: ‘Human rights and human dignity mutually co-constitute one another in the contemporary world. Human rights reflect a particular specification of certain minimum preconditions for a life of dignity in the contemporary world. Our detailed understanding of human dignity, however, is shaped by our ideas and practices of human rights and the practice of human rights can be seen as justified, in some ultimate sense, by its production of beings able to live a life of dignity’ (Donnelly, 2016, p. 32). Habermas has similarly connected human rights and human dignity, arguing that ‘the normative substance of the equal dignity of every human being that human rights only spell out’ was something that was inscribed in human rights implicitly from the outset (Habermas, 2010).

Dignity is a complex and contested concept and it is beyond the scope of this thesis to give justice to the many ways in which dignity has been understood and conceptualised. However, I suggest a naïve understanding of the term can be used to counteract the often derogatory and demeaning ways in which young people are described, and which I encountered many times in my data. A naïve understanding suggests that dignity is something ascribed to all human beings and allows us all to be treated with the highest worth. Applying the term in this way to young people could encourage more respectful views of young people and more respectful ways of interacting with them. In this way, Donna Hicks’ useful list (Hicks, Donna, 2011) of the ‘Essential Elements of Dignity’ (Appendix 3) could form a practical tool for

gauging the application of 'dignity' for agencies that represent young people in policies across government, and for interactions between adults and young people. It also provides descriptions of safety, fairness, and independence which could usefully guide decisions concerning age-setting.

6.1.3 Age Setting

In terms of age-setting, there needs to be acknowledgement first of all that the current selection of ages, apart from aligning them with other rights, is arbitrary, and following that, as the findings from this study indicate, there is a need to look much more closely at evidence, principles, and the effects on young people as well as the effects on wider society, of any change in age. A youth ministry would have a key role in this and it would need to consider the most recent evidence concerning young people's competencies in areas being considered, with regard to the particular cultural and social milieu of the young people who are affected by the policy.

The underlying view of youth as risk, whether risky or vulnerable, which has been the dominant discourse of young people in the legislation cases explored in this thesis, should be acknowledged and understood as located within social, economic, cultural and political contexts. Available actual evidence, in context, should be a much more prominent part of policy information that would guide any new age setting legislation or policy. Evidence concerning age and attributes such as competence, decision-making ability, judgment and so on, is complex and will no doubt change over time as further research is undertaken and evidence is gathered. It is to be hoped that this research also continues to consider the differential effects of context on behaviour. The apparently contradictory arguments used by the American Psychological Association (APA) regarding age and the death penalty and age of abortion rights illustrate the complexity in applying evidence in different contexts: 'although the APA was criticized for apparent inconsistency in its positions on adolescents' abortion rights and the juvenile death penalty, it is entirely possible for adolescents to be too immature to face the death penalty but mature enough to make autonomous abortion decisions, because the circumstances under which

individuals make medical decisions and commit crimes are very different and make different sorts of demands on individuals' abilities' (Steinberg et al., 2009).

While the medical consent case provides a practical example for how a 'no age' policy can work well, there will always be some areas where age limits will be seen as necessary because of power imbalances between young people and adults, and because there are contexts where young people and children are vulnerable. Age of consent to sexual relations is one such example, where the legal age of consent provides some protection for children/young people against predatory adults, or adults who are in positions of power over young people. The choice of age may be arbitrary, but in a patriarchal social context where young people lack power in relation to adults, an age of consent provides some protection for young people. A key contextual issue in such cases might lie in the significance of the impact on young people.

Age setting is often a response to a perceived problem that concerns young people, but it may not always be young people who are the problem. Age limits may be applied because young people/children are viewed as vulnerable, but they are actually in Beck's terms 'lightning rods for invisible threats', for what is a policy or situation where many others are also vulnerable. For example, while the real problem with the ethics in the making of pornographic films might be in the commodification of sex and/or the exploitation of women or children, we would still want to protect children from being involved, because of their particular powerlessness and therefore vulnerability to adult exploitation or abuse. Similarly, labour laws with the goal of protecting children/young people, such as those that set an age limit for working in hazardous settings, might be based on particular competencies that children would not be expected to have. However, they may also be indicators of extremely hazardous environments where an appropriate response might be to aim to protect workers of any age.

A contemporary illustration of the complexities of this is provided in the case of the legalisation of medically assisted dying in Canada. UNICEF has argued that 'that where medical assistance in dying is legally available to competent adults, it should also be available to competent "mature minors"' (UNICEF Canada, 2016, p. 3) and

that ‘the exclusion of competent ‘mature minors’ from access to medical assistance in dying simply on the basis of age is an arbitrary distinction’ (2016, p. 5). For this legislation, the Report of the Joint Committee stated: ‘That the Government of Canada immediately commit to facilitating a study of the moral, medical and legal issues surrounding the concept of “mature minor” and appropriate competence standards that could be properly considered and applied to those under the age of 18, and that this study include broad-based consultations with health specialists, provincial and territorial child and youth advocates, medical practitioners, academics, researchers, mature minors, families, and ethicists before the coming into force of the second stage.’ (Parliament of Canada, 2016, p. 35). Although this represents an extreme case, being about ‘life and death’, the suggested approach that includes the ‘moral, medical and legal issues’, the ‘competence standards’, and the ‘broad-based consultations’, outlines a good process for consideration of age-based legislation. We would also in New Zealand want to include cultural factors, as well as the impact on different groups (recognising the diversity of youth) in our country, and depending on the policy, other contextual factors that might be relevant, such as economic impact. Clearly this is a major piece of work, but appropriate for the protection of young people’s rights and in order to avoid the arbitrary and confused nature of age setting we have seen in legislation to date.

6.3 Recommendations

To summarise, I make the following recommendations: That ‘inclusion’ rather than ‘participation’ be adopted as a principle in the development of youth policy; that the focus of youth policy shift from the ‘risks’ posed to and by young people to promote the inclusion of the needs and aspirations of young people in the development of policies across all sectors; that the principle of ‘dignity’ be promoted as a foundational principle in discussions about and with young people; that the application of age limits is recognised as arbitrary and that evidence, principles, and the effects on young people’s lives are extensively investigated in any imposition of age limits; that civics education be further promoted in schools, including particularly the understanding of power relations in society.

6.3.1 Limitations and Further Research

This study investigated *conceptualisations of young people*, as evidenced in the case study documents, that influence the development of policy. The findings and conclusions reached might have been different if alternative cases were chosen for study and other sources of data used.

Future research could usefully interview those involved in the development of policies and legislation both for comparison and in order to further develop some areas that were limited in this study. These might include, for example, reflections on how the diversity of young people is part of policy development. It might also investigate where or to what extent in the process of policy development generally, is the impact on young people considered.

Interviews with health practitioners and Youth Court Judges might illuminate the ways that competence is assessed and how far practitioners or judges are comfortable in making such assessments, with a view to whether this approach could be used more widely.

Research could also investigate the development of youth policy in other countries, both in the ways young people are conceptualised, as well as the processes that are followed in policy development. In Sweden, for example, the strongest focus in youth policy is on two views of youth: as ‘a struggle for social status’ and as ‘a period with intrinsic value’. With the first of these, the focus turns to ‘identifying which societal structures hinder the development of young people and to act to change these’, and for the second ‘it is natural to see youth as a period that is valuable in itself’ (The Swedish National Board for Youth Affairs, 2010, p. 5). Important principles and processes that New Zealand might build on may emerge from such international comparative research.

What is particularly missing from this study is the ‘voice’ of young people. Further research might usefully investigate the views of young people concerning how they perceive the dynamics of the ‘risk society’, and how it affects them. Research could also focus on how young people are affected by a range of policies, both those concerning age limits, but others that affect their decision-making and their

choices, such as in education, employment and housing/accommodation. It would also be informative to develop an understanding of the views of young people on 'inclusion' and how they see their contribution to society, including their political engagement.

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Appendix 1: Ages in New Zealand Legislation and Policy

Year	Legislation / Policy	Age Definition
1948	Land Act	(1) Any person of the age of <u>17 years</u> and upwards may become a purchaser, lessee, or licensee under this Act. (2) For the purposes of this Act, and also of the Fencing Act 1978, any minor who holds any land by virtue of any lease, licence, or other form of tenure under this Act shall be deemed to be of full age.
1955	Adoption Act	Child means person under the age of <u>20 years</u> ; includes any person in respect of whom an interim order is in force even though have attained that age
1955	Marriage Act	A marriage licence shall not be issued by any Registrar and no marriage shall be solemnised by any Registrar or marriage celebrant if either of the persons intending marriage is under the age of <u>16 years</u> on the date of the notice of the intended marriage. If either of the parties to an intended marriage is a minor, the Registrar shall not issue a licence authorising the marriage or solemnise the marriage unless it has been consented to in accordance with this section (section describes consent of parent/s guardians).
1961	Crimes Act	<u>Section 21 Children under 10</u> : No person shall be convicted of an offence by reason of any act done or omitted by him when under the age of <u>10 years</u> . <u>Section 22 Children between 10 and 14</u> : (1) No person shall be convicted of an offence by reason of any act done or omitted by him when of the age of 10 but under <u>14 years</u> , unless he knew either that the act or omission was wrong

or that it was contrary to law. Section 98AA Dealing in people under 18 for sexual exploitation, removal of body parts, or engagement in forced labour

(1) Every one is liable to imprisonment for a term not exceeding 14 years who - (a) sells, buys, transfers, barterers, rents, hires, or in any other way enters into a dealing involving a person under the age of 18 years for the purpose of— (i) the sexual exploitation of the person; or (ii) the removal of body parts from the person; or (iii) the engagement of the person in forced labour; Section 132 Sexual conduct with child under 12: (6) in this section, (a) child means a person under the age of 14 years; and (b) doing an indecent act on a child includes indecently assaulting the child. Section 134 Sexual conduct with a young person under 16: (6) In this section, (a) a young person means a person under the age of 16 years; and (b) doing an indecent act on a young person includes indecently assaulting a young person. Section 144A Sexual conduct with children and young people outside NZ: (1) Everyone commits an offence who, being a New Zealand citizen or ordinarily resident in NZ (a) does outside NZ, with or on a child under the age of 12 years, an act to which subsection (2) applies {sexual connection or attempted sexual connection with a child under 12 or doing an indecent act on a child under 12}; or (b) does outside NZ, with or on a person under the age of 16 years, an act to which subsection (3) applies {Sexual connection or attempted sexual connection with a young person or doing an indecent act on a young person}; or (c) does outside NZ with or on a person under the age of 18 years, an act to which subsection (4) applies {an act that if done in NZ would be an offence under the Prostitution Reform Act 2003 (breach of prohibitions on use in

prostitution of persons under 18 years}. Section 152 Duty of parent or guardian to provide necessaries: (1) Everyone who as a parent or person in place of a parent is under a legal duty to provide necessaries for any child under the age of 16 years, being a child in his actual custody, is criminally responsible for omitting without lawful excuse to do so, whether the child is helpless or his health permanently injured, by such omission. Section 154 Abandoning child under 6: Every one is liable to imprisonment for a term not exceeding 7 years who unlawfully abandons or exposes any child under the age of 6 years. Section 159 Killing of a child: (1) A child becomes a human being within the meaning of this Act when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, whether it has an independent circulation or not, and whether the navel string is severed or not. Section 163 Killing by influence on the mind: No one is criminally responsible for the killing of another by any influence on the mind alone, except by wilfully frightening a child under the age of 16 years or a sick person, nor for the killing of another by any disorder or disease arising from such influence, except by wilfully frightening any such child as aforesaid or a sick person.

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| 1969 | Minors' Contracts Act | Minor means a person who has not attained the age of <u>18 years</u> ; and a person is of full age if he or she has attained the age of <u>18 years</u> . |
| 1970 | Age of Majority Act | For all the purposes of the law of New Zealand a person shall attain full age on attaining the age of <u>20 years</u> |

- 1980 Family Proceedings Act Proceedings by or against minors.
A minor may bring and continue or defend any proceedings under this Act, and an order made under this Act against a minor shall be binding on and may be enforced against the minor, as if the minor were of full age.
- 1981 Summary Offences Act Ill-treatment or wilful neglect of child
Every person is liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$4,000 who,(a) Being a paid or unpaid staff member of a residence under the Children, Young Persons, and Their Families Act 1989, ill-treats or wilfully neglects any child under the age of 17 years who resides in that residence; or (b) Being a person to whom the care or custody of a child under the age of 17 years has been lawfully entrusted, ill-treats or wilfully neglects that child.
Section 10(b) Leaving child without reasonable supervision and care:
Every person is liable to a fine not exceeding \$2,000 who, being a parent or guardian or a person for the time being having the care of a child under the age of 14 years, leaves that child, without making reasonable provision for the supervision and care of the child, for a time that is unreasonable or under conditions that are unreasonable having regard to all the circumstances.
- 1983 Arms Act ...no person shall have a firearm in his possession unless he [sic] is of or over the age of 16 years. No person shall have an airgun in his possession unless he is over the age of 18 years or is between the ages of 16 and 18 years and is the holder of a firearms licence.

- 1989 Children Young Persons and their Families Act Section 2 Interpretation: Child means a boy or girl under the age of 14 years; Young person means a boy or girl over the age of 14 years but under 17 years, but does not include any person who is or has been married or in a civil union.
- 1989 Sale of Liquor Act Every person commits an offence and is liable to the penalty set out in subsection (2A) who, being the licensee or a manager of any licensed premises, sells or supplies any liquor, or allows any liquor to be sold or supplied, on or from the licensed premises to any person who is under the age of 18 years.
- 1989 Education Act Right to free primary and secondary education Except as provided in this Act or the Private Schools Conditional Integration Act 1975, every person who is not a foreign student is entitled to free enrolment and free education at any State school during the period beginning on the person's fifth birthday and ending on 1 January after the person's 19th birthday.
New Zealand citizens and residents between 6 and 16 to go to school
(1) Except as provided in this Act, every person who is not a foreign student is required to be enrolled at a registered school at all times during the period beginning on the person's sixth birthday and ending on the person's 16th birthday
- 1990 Smoke-free Environments Act Sale of tobacco products and herbal smoking products to people under 18 prohibited
(1) No person may sell a tobacco product or herbal smoking product to a person younger than 18 years

- 1991 Child Support Act Section 5 Children who qualify for child support: A child qualifies for child support if he or she (a) is under the age of 18, or is aged 18 and enrolled at and attending a school; and (b) is not living with another person in a marriage, civil union or de facto relationship ; and (c) is not financially independent; and (d) is a NZ citizen or is ordinarily resident in NZ.
- 1993 Electoral Act In this Act, unless the context otherwise requires, adult (a) means a person of or over the age of 18 years.
- 1993 Human Rights Act Prohibited grounds of discrimination
For the purposes of this Act, the prohibited grounds of discrimination are: age, which means (iii) for the purposes of any other provision of Part 2 (Unlawful Discrimination), any age commencing with the age of 16 years.
It shall not be a breach of section 22 (employment) to decline to employ a person under the age of 20 years on work involving the national security of New Zealand where that work requires a secret or top secret security clearance.
- 1995 Domestic Violence Act child means a person who is under the age of 17 years; but does not include a person who is or has been married or in a civil union or a de facto relationship
- 1999 Land Transport (Driver Licensing) Rule 1999 Learner licences: Requirements to be satisfied by applicant: class 11 - (a) is 16 years of age or over at date of application. Restricted licence: Requirements to be satisfied by applicant Class 1R (a) is 16 years and 6 months of age or over on the date of application and has held for at least 6 months... Full licence: Requirements to be satisfied by applicant Class 1 (a) if under 25 years of age, - (i) is 18 years of age or over and holds, and has

held for at least 18 months, a Class 1R licence; or (ii) is 17 years and 6 months of age or over and holds, and has held for at least 12 months, a Class 1R licence, if the person provides a certificate showing successful completion by the person of an approved course of a type specified in clause 93(a) that was undertaken at least 6 months after the person's restricted licence was issued (b) if 25 years of age or over, holds and has held a Class 1R licence for either - (i) at least 6 months; or (ii) at least 3 months if the applicant provides a certificate showing successful completion by the applicant of an approved course of a type specified in clause 93(a)

- 2000 Employment Relations Act For the purposes of subsection (3), a minor aged 16 years or over may be a party to agreed terms of settlement, and be bound by that settlement, as if the minor were a person of full age and capacity.
- 2003 Children's Commissioner Act Section 4 Interpretation: Child, except in section 13, means a person under the age of 18 years
- 2003 Racing Act Restrictions on betting: (1) Every person commits an offence who, (a) being under 18 years, makes a bet, whether on his or her own behalf or on behalf of another person; or (b) makes a bet on behalf of any person under 18 years.
- 2003 Gambling Act Age restriction on instant games and similar games: (1) Every person under 18 years commits an offence who purchases, or attempts to purchase, a ticket in the following games, either on the person's own behalf or on behalf of any other person: (a) an instant game that is a New Zealand lottery: (b) a New Zealand lottery that is highly repetitive or frequently drawn: (c) any other similar

game run by the Lotteries Commission and that is declared by the Minister, by notice in the Gazette, to be subject to this section. (2) Every person commits an offence who purchases, or attempts to purchase, a ticket in a game listed in subsection (1) on behalf of a person under 18 years. (3) Every person commits an offence who: (a) sells, or offers to sell, a ticket in a game listed in subsection (1) to a person under 18 years, whether the ticket is purchased or intended to be purchased for that person or for any other person; or (b) provides credit to a person under 18 years to enable that person to purchase a ticket. Eligibility for licensed promoter's licence: (1) Subject to subsection (2), the following persons may apply for, and obtain, a licensed promoter's licence: (a) a natural person who is over the age of 18 years. Age restriction on gambling in casinos: (1) Every person under 20 years commits an offence who: (a) participates in casino gambling; or (b) is found in the gambling area of a casino. (2) Every holder of a casino operator's licence commits an offence who allows a person under 20 years: (a) to participate in casino gambling; or (b) to enter, or remain in, the gambling area of a casino.

2003 Prostitution Reform Act (20): No person may assist person under 18 years in providing commercial sexual services. No person may cause, assist, facilitate, or encourage a person under 18 years of age to provide commercial sexual services to any person. (21): No person may receive earnings from commercial sexual services provided by person under 18 years. No person may receive a payment or other reward that he or she knows, or ought reasonably to know, is derived, directly or indirectly, from commercial sexual services provided by a person under 18 years of age. (22): No person may contract for commercial sexual services

from, or be client of, person under 18 years

(1) No person may enter into a contract or other arrangement under which a person under 18 years of age is to provide commercial sexual services to or for that person or another person. (2) No person may receive commercial sexual services from a person under 18 years of age.

2004 Care of Children Act Section 8 Interpretation: Child means a person under the age of 18 years. Section 28 Time at which Guardianship ends: the duties rights responsibilities of a guardian end when the first of the following events occurs: (a) the child turns 18 years (b) the child marries or enters into a civil union (c) the child lives with another person as a de facto partner. Section 36 Consent to procedures generally: A consent or refusal to consent to any of the following if given by a child of or over the age of 16 years has effect as if the child were of full age. Section 38 Consent to Abortion: (1) If given by a female child (of whatever age), the following have the same effect as if she were of full age [(a) and (b) not listed].

2004 Civil Union Act Section 5 Reference to civil union in any other enactment:
In any other enactment, unless the context otherwise requires, a reference to a civil union refers to (b) a relationship that is entered into overseas and (i) is of a type...recognised as a civil union; and (ii) is between 2 people who are at least 18 years old or, if either party is younger than 18 was entered into with the consent of that party's guardians.

2010 Alcohol Reform Bill Part 2
Ages (9) Age at which people may lawfully buy alcohol for consumption off licensed premises

The age at which people may lawfully buy alcohol on licensed premises for consumption off those premises is the age of 20 years. (10) Age at which people may lawfully buy alcohol for consumption on licensed premises. The age at which people may lawfully buy alcohol on licensed premises for consumption on those premises is the age of 18 years. (11) Certain terms relating to age defined In this Act, unless the context otherwise requires,—

minor means a person who is under the age of 18 years

Under the buying age,—

in relation to buying alcohol on licensed premises for consumption off those premises, means under the age stated in section 9: (b) in relation to buying alcohol on licensed premises for consumption on those premises, means under the age stated in section 10.

The
Minimum
Wage

There are three minimum wage rates:

The adult minimum wage applies to all employees aged 16 and over who are not starting-out workers or trainees, and all employees who are involved in supervising or training other employees.

The starting-out wage applies to starting-out workers. Starting-out workers are:

16- and 17-year-old employees who have not yet completed six months of continuous employment with their current employer.

18- and 19-year-old employees who have been paid a specified social security benefit for six months or more, and who have not yet completed six months continuous employment with any employer since they started being paid a benefit. Once they have completed six months

continuous employment with a single employer, they will no longer be a starting-out worker, and must be paid at least the adult minimum wage rate.

16- to 19-year-old employees who are required by their employment agreement to undertake industry training for at least 40 credits a year in order to become qualified.

The training minimum wage applies to employees aged 20 years or over who are doing recognised industry training involving at least 60 credits a year as part of their employment agreement, in order to become qualified.

For employees aged under 16

There is no minimum wage for employees aged under 16 but all other employment rights and entitlements still apply. When looking at whether an employee who is 16 years or older is a starting-out worker, any time spent employed by an employer before the employee turned 16 must be included when calculating the time that employee has been continuously employed.

(Ministry of Business, Innovation and Employment <http://employment.govt.nz/er/pay/minimumwage/index.asp>).

Other Restricted Age Policies

Buy a Lotto, Big Wednesday or Keno ticket = Any age

Buy an Instant Kiwi ticket = 18 years

Buy fireworks = 18 years

Get a tattoo = 16 years

You can baby-sit children = 14 years

You are no longer entitled to free dental care = 18 years

Join the Police force = 19 years

Join the Army Navy or Air Force = 17 years

Vote and stand as a candidate in parliamentary or local authority elections = 18 years

Opening a cheque account / borrowing money = 18 years

You cannot own a legal entity (corporation) until you reach the age of 18 years

Anyone that is under 18 is legally able to sign a contract, but can break that contract at any time

There is no minimum age to register a legal business entity (sole proprietorship, partnership, LLC). There is a minimum age however for a business checking account. Therefore, you can register a business while you are under the age of 18, but you cannot open a checking account for it.

Appendix Two: Nodes Created in NVivo

Name	Sources	References
Views about the Policy	52	150
Impact of policy on youth	45	79
Youth and their Communities	31	93
Adult role modelling and adult responsibility	10	159
Background data on youth relevant to policy	37	255
Associated policies	32	68
Impacts on other areas or people	23	42
Parents Families Whanau	15	21
Parental Responsibility or Control	33	155
Role in educating	8	20
Parental role modelling	8	23
Negative impact on parents	6	6
Parents as suppliers of alcohol	4	47
Maori young people	12	34
Pacific Young People	9	20
Purpose of Bill	8	24
Views of youth	6	6
Youth Rights and Responsibilities	58	206
Youth not just one group	49	109
Youth as Risk or problem to others	47	278
Youth and competence	46	106
At Risk or Vulnerable	44	461
Youth Agency or lack of agency	23	114
Youth not the problem	22	96
Giving choices	18	28
Youth different from adult	15	40

Developmental views	13	91
Policies 'for their own good'	12	42
Youth becomes the Adult	11	46
'Demonising' youth	11	19
Youth Culture and making choices	10	210
Youth today and yesterday	4	25
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Engagement with young people	3	11
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Alcohol or drugs and health	5	58
Alcohol or drugs and crime	5	8
Alcohol or drugs and violence	4	18
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Age is the problem	23	201
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Maturity	20	40
Age as determinant of child youth adult	18	31

Appendix 3: Essential Elements of Dignity

- Acceptance of Identity - Approach people as being neither inferior nor superior to you. Give others the freedom to express their authentic selves without fear of being negatively judged. Interact without prejudice or bias, accepting the ways in which race, religion, ethnicity, gender, class, sexual orientation, age, and disability may be at the core of other people's identities. Assume that others have integrity. Inclusion Make others feel that they belong, whatever the relationship— whether they are in your family, community, organization, or nation.
- Inclusion - Make others feel that they belong, whatever the relationship— whether they are in your family, community, organization, or nation.
- Safety - Put people at ease at two levels: physically, so they feel safe from bodily harm, and psychologically, so they feel safe from being humiliated. Help them to feel free to speak without fear of retribution.
- Acknowledgement - Give people your full attention by listening, hearing, validating, and responding to their concerns, feelings, and experiences.
- Recognition - Validate others for their talents, hard work, thoughtfulness, and help. Be generous with praise, and show appreciation and gratitude to others for their contributions and ideas.
- Fairness Treat people justly, with equality, and in an evenhanded way according to agreed-- on laws and rules. People feel that you have honored their dignity when you treat them without discrimination or injustice.
- Benefit of the Doubt - Treat people as trustworthy. Start with the premise that others have good motives and are acting with integrity.
- Understanding - Believe that what others think matters. Give them the chance to explain and express their points of view. Actively listen in order to understand them.
- Independence Encourage people to act on their own behalf so that they feel in control of their lives and experience a sense of hope and possibility.
- Accountability Take responsibility for your actions. If you have violated the dignity of another person, apologize. Make a commitment to change your hurtful behaviors.

(Hicks, Donna, 2011, p. 26)