

# COURT IN THE ACT



THE YOUTH COURT OF NEW ZEALAND | TE KŌTI TAIOHI O AOTEAROA

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## Editorial

Judge John Walker

Principal Youth Court Judge

E ngā mana, e ngā reo, e ngā karangatanga maha, tēnā koutou katoa.

This edition of Court in the Act has been much delayed as we have all faced the challenges of working in the midst of a pandemic which has altered every aspect of our working and private lives. History has shown us that in times of crisis the interests of the vulnerable can easily be overlooked when their voices often struggle to be heard. With our focus on children and their vulnerability we have all had to be vigilant to ensure that pragmatic solutions do not trample on their protections.

(cont. on pg 2)

Thank you to the rangatahi from Te Maioha o Parekangi, who created the artwork displayed on this page.

To subscribe, contribute or provide feedback please contact the Office of the Principal Youth Court Judge: [courtintheact@justice.govt.nz](mailto:courtintheact@justice.govt.nz)

The Youth Court has continued to operate, even while the Level 4 restrictions were in place. There were, of course, limitations to what we were able to do. The priority of every court was protection of liberties and the vulnerable. Under Level 4 we were primarily dealing with young people who had been arrested and needed to be brought before a Youth Court for considerations of bail, and hearings for those already in custody in Residences, such as early release hearings and disposition. All other Youth Court work was adjourned on the papers. At Level 3 we were able to take a step towards more of a regular capacity, and again with the move to Level 2. For a comprehensive overview of how the Youth Court is operating at Level 2, FAQs are attached to this newsletter. The full protocol can be found at <https://www.districtcourts.govt.nz/assets/Uploads/Media-Releases/District-Court-Protocol-COVID-19-Alert-Level-2.pdf>

Throughout the past weeks I have seen time and time again the co-operative team approach, that we take for granted in the Youth Court, meeting the challenges caused by Covid-19. Issues arising in the Youth Court have been readily resolved by the collaborative work of Judges, Ministry of Justice, Oranga Tamariki and Police Youth Aid. There are many interdependencies in Youth Justice, and I am immensely appreciative of the collaborative work that has taken place.

One such example is extensive use of the Remand Options Investigation Tool (ROIT), requiring all agencies to properly engage in exploring other options to custody when bail is to be opposed. The widespread use of this tool has led to options being thoroughly investigated and often innovative solutions being found.

We also developed a process to ensure that, despite courts being closed to the public, our vulnerable young people were not appearing in court without support. This process allows primarily for remote attendance of whānau/caregivers, but also for actual attendance where technology is not available. As well as helping young people feel supported in the Youth Court, this process allows for important information from whānau to be shared directly with the Judge when decisions are being made.

As we look towards Level 2 now, I am conscious of the necessary consideration of timeliness when we

are dealing with young people. For a young person, a month can seem like an interminable period. The consideration of timeliness, which is always necessary in the Youth Court, is even more important when we have young people who are likely under increased stress and pressure.

We need to continue to work collaboratively, to understand the limitations placed upon us, to adapt and design suitable solutions. While we are taking steps towards a larger workload as the restrictions are loosened, we must continue to keep the safety and best interests of young people at the forefront, as well as the safety of courtroom staff and other professionals. I have no doubt that the co-operative teamwork approach of the Youth Court can continue to meet future challenges.

There are many lessons which have been learned from changes to practice, developed to face a particular situation, which should inform how we act in the future. When we are through all of this we must look at what we did well and ensure that the good innovations are not lost just because we no longer face a crisis. That is our next challenge.

I wish you all the best for the coming months.

Ngā manaakitanga

John Walker

Principal Youth Court Judge for New Zealand



# NOTICE BOARD

## Levin Youth Court Pōwhiri

On Tuesday 3 March 2020, Muaūpoko Iwi welcomed the Youth Justice community of Horowhenua on to Kohuturoa Marae before the official first sitting of the Levin Youth Court at the Muaūpoko Tribal Authority (MTA) Offices.

The closure of the Levin District Court for strengthening work has meant young people and whānau have had to travel to Palmerston North to attend court. Moving the Youth Court to the MTA offices has avoided that happening and has provided a very appropriate setting for the Youth Court.



The pōwhiri was attended by New Zealand Police, Oranga Tamariki, youth advocates, local iwi, Ministry of Justice and the judiciary. Chief District Court Judge Taumaunu was our kaikōrero and Racheal McGarvey, Advisor Cultural Strategy, was our kaikaranga for this occasion.

Principal Youth Court Judge Walker acknowledged those gathered and the collaboration, leadership and community relationships which enabled a fantastic outcome for the Levin community.

Youth Court sittings will be held fortnightly on a Tuesday at the MTA office and continue until further notice. Matters where the young person is in secure care or Police custody will continue to be heard in Palmerston North.

Due to the evolving Covid-19 situation, sittings at the MTA office have been temporarily suspended. They are intended to return when all parties feel this is safe to do.



**Left to right:** Lindsay Poutama (CEO of Te Runanga o Raukawa), Chief Judge Taumaunu, Tim Tukapua (Muaupoko Tribal Authority Board Chair), Di Rump (CEO of Muaupoko Tribal Authority).

# NOTICE BOARD

## Young Adult List – First Session

The Young Adult List, a trial of a new way for handling young adults in the criminal justice system, launched on Friday 6 March at the District Court in Porirua.

The Young Adult List separates out young adults aged 18 to 25 years old from others appearing in court. It provides extra wrap-around support to help identify any special needs or characteristics the young adults may have.

The first session began with a mihi whakatau, karakia and waiata. There was a moving atmosphere in the courtroom, with people recognising the exciting opportunity for change that this trial presents.

Porirua District Court will hold the Young Adult List sessions every Friday.

The sessions have currently been put on hold due to the evolving Covid-19 situation.

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### NOTE:

For more information on the Young Adult List, see page 5 for a full update.

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Principal Youth Court Judge Walker opens the Court



Steve Gunson from Ngāti Toa delivers a mihi whakatau



Some of the many support services available in the Court

# YOUNG ADULT COURT UPDATE

## **About**

A Young Adult List has recently been introduced in the Porirua District Court. All 18 to 25 year olds will be heard in a separate list, so that everyone in the court room can focus on the special characteristics and needs of young adults.

The Young Adult List draws on the processes used in the Youth Court to remove barriers to participation, help young adults be better engaged in the court process and make the court proceedings generally easier to understand.

## **Rationale**

As a matter of procedural fairness, young adults require a different approach to effectively engage in the court process. Research shows that cognitive skills and emotional intelligence continue to develop into at least a person's mid-20s. Young adults with an under-developed brain tend to have traits such as impulsivity and high susceptibility to peer pressure, which can often result in some interaction with the justice system. To these characteristics must be added the high prevalence of neuro-disabilities and other barriers to full participation.

## **How**

A dedicated multidisciplinary team will be present at each court session to help support the young adults' participation in the court process. This will include an Iwi Liaison Officer, Bail Support Officer, Adolescent Specialist Probation Officer, Police Prosecutor, Adolescent Mental Health Nurses, and other existing agencies at the Porirua Court. Everyone at the court, including the lawyers and the Judge, will be alert to the special needs and characteristics of the young adults.

As well as engaging specialist professionals with a youth focus, the Young Adult List will be screening for neuro-disabilities, adapting the architecture of the court room and using plain language in court to make it easier for young adults to understand technical terms. An information booklet for young adults has been developed which uses plain language to explain the court process.

There will also only be one or two Judges presiding in the Young Adult List, which will provide young adults with a sense of continuity and enable them to build a connection with the Judge.

## SUMMARY

### **What:**

A pilot List Court for young adults

### **Where:**

Porirua District Court

### **When:**

Fridays from Friday 6 March

### **Who:**

All 18 to 25 year olds

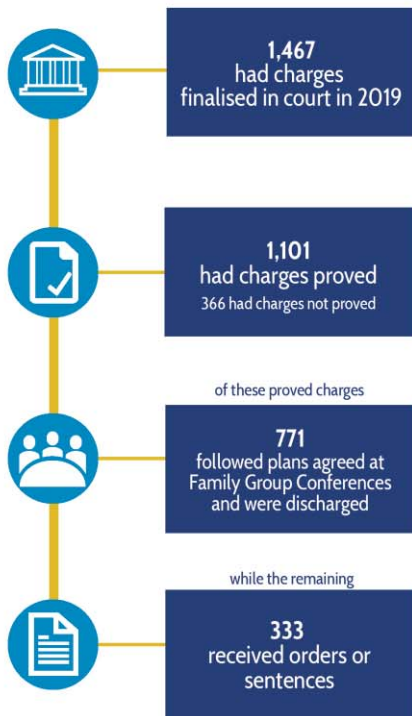
# STATISTICS



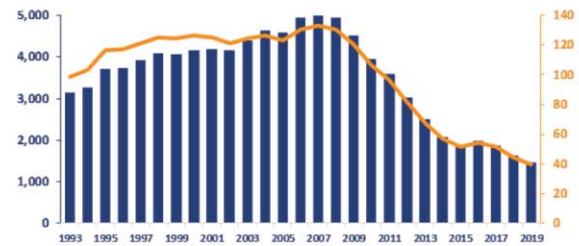
## Trends in children and young people in court

Statistics for children (aged 10-13) and young people (aged 14-16\*) in Youth, District and High Courts in the year ended December 2019

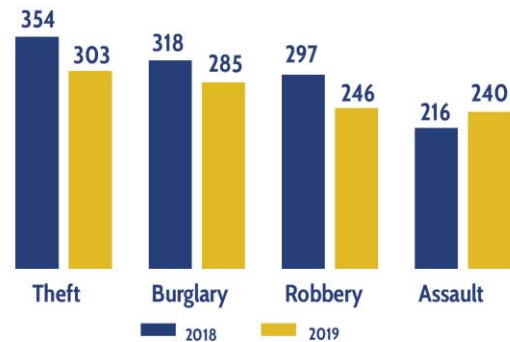
Most offending by children and young people is dealt with outside the court system, only the most serious offending goes to court



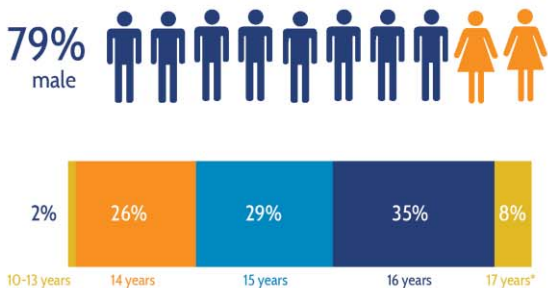
Number of children and young people in court in 2019 **1,467** ↓ 10% from 2018



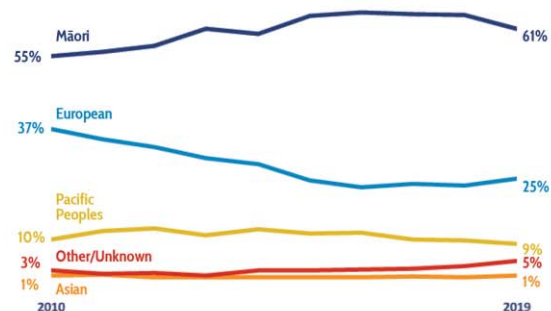
In 2019 most offence types decreased, but assault increased



Children and young people in court in 2019 were:



The percentage of Māori in court has decreased



More detailed statistics are available on the Stats NZ website (<http://nzdotstat.stats.govt.nz/>) under "Justice".  
 A full summary of this data is available at <https://www.justice.govt.nz/justice-sector-policy/research-data/justice-statistics/children-and-young-people-in-court/>.  
 Percentages may not add up to 100 as they have been rounded to the nearest whole number. Ethnicity data uses multiple ethnicities, counting a person more than once.  
 All data has been randomly rounded for privacy reasons.

\*From July 1 2019 the youth jurisdiction was extended to include 17 year olds. 17 year olds are included in this data from 1 July onwards.

# EFFECTING REAL CHANGE



*Principal Youth Court Judge*

*John Walker*

The start of a new decade is a fitting time to reflect on how far we have come and the steps we must take to enact real change in the coming years .

2019 was an exciting year for youth justice, with the significant legislative changes that took effect on 1 July. Much has been made of this reform, especially in relation to the increase in age jurisdiction.

In my view, the most important change is the amendments to the purposes and principles of the Oranga Tamariki Act 1989, including the new overarching principles which apply to all matters under the Act. These principles include encouraging the participation and expression of young people, placing the well-being of young people at the centre of decision-making, and protecting the young person's mana tamaiti and well-being by acknowledging their whakapapa and the whanaungatanga responsibilities of their family, whānau, hapū and iwi. There is a clear commitment to the principles of te Tiriti o Waitangi and a strengthened reference to the Convention on the Rights of the Child.

These amendments have provided us with an opportunity to effect real change. Everyone involved in youth justice needs to take hold of this opportunity and give life to the purposes and principles. As I have previously said, the new principles are only words on a page unless we all breathe life into them.

What does giving life to the purposes and principles look like? References to the changes should be seen in submissions by counsel and in plans produced by Family Group Conferences and social workers. Judges should be referring to the new principles and purposes in their decisions. The changes should be pervading the entire court process.

It is important that all those working under the Act – including judges, lawyers, social workers, police youth aid officers and lay advocates – have a firm understanding of the principles and their duties and obligations to give effect to the principles.

The recent decision of Judge FitzGerald, *New Zealand Police/Oranga Tamariki v LV*, is an excellent example of decision-making that makes reference to the profoundly important changes to the Act. The decision begins and ends with the young person's pepeha and serves as a reminder of the principles that we must keep central in our mind when interacting with young people at all stages of the youth justice process.

We also need to be thinking about the ways in which important elements from Te Kōti Rangatahi and the Pasifika Courts can be brought into all Youth Courts. Creating links in the court room to cultural supports, connecting young people with their whānau and iwi and generally conducting proceedings in a culturally appropriate way are all steps that are even more important to take now, following the 1 July changes.

In the Whangarei Youth Court, Judge Davis recently conducted a hearing entirely in Māori. The young person's first and preferred language was Māori and so the proceeding was heard in Māori and translated into English. The decision was also delivered in Māori, and Judge Davis emphasised that it is the Māori version that is the decision of the Court.

This shows how we in the Youth Court can take the lessons from Te Kōti Rangatahi and bring them into our court rooms. We are obliged to provide for the participation and engagement of young people in decision making that affects them. Conducting proceedings in a young person's preferred language is certainly one way of removing barriers to engagement.

It will soon be a year since the legislative changes have come into force. We must think about the reform that was envisaged and whether we are making the most of every chance to give effect to this vision.

# CASE WATCH

**NOTE:** Youth Court decisions are published in anonymised form on the District Court New Zealand website. These cannot be republished without the leave of the court, and no identifying particulars of any child or young person, or the parents or guardians, or the school they attended, may be published.

## *New Zealand Police v XR* [2020] NZYC 67.

XR is a vulnerable young person with a range of complex needs – autism, intellectual disability, anxiety, drug dependency and exposure to family violence. The Judge in this case refused to approve the Youth Justice Family Group Conference plan because he was of the view that XR should not be dealt with in the Youth Court, as this breached the Oranga Tamariki Act 1989 and was contrary to XR's rights under the Child's Rights Convention. The Judge noted that using Youth Justice powers to manage XR's behaviour was further traumatising her and causing greater harm. Another Family Group Conference was directed, and the Judge urged the coordinator to discuss care and protection issues and come up with a plan that could be implemented outside of Youth Court involvement.

## *R v SQ* [2019] NZYC 627.

SQ was charged with sexual violation by rape and attempted sexual violation by unlawful sexual connection. The Judge considered whether to discharge SQ under s 282 or s 283 of the Oranga Tamariki Act 1989. A discharge under s 282 would mean it would be as if the charges against the young person were never laid. A discharge under s 283(a) would keep a record of the offending but the young person would face no further consequences. The Family Group Conference had recorded a unanimous decision for SQ to receive a s 282 discharge. However, the Judge decided that while a discharge was the right outcome, a s 282 discharge would be inappropriate based on the seriousness of the offence and the impact on the victim. SQ was accordingly discharged under s 283(a).

## *New Zealand Police v MQ* [2019] NZYC 456.

MQ is a young person with extensive care and protection history. He has been diagnosed with FASD, ADHD and has low intellectual functioning. This case was a disposition hearing for some serious offending, which included violence. The Judge ordered a supervision with residence order for 6 months followed by a supervision order for 12 months. Conviction and transfer was considered irresponsible given that Corrections are not currently equipped to deal with someone MQ's age with his presenting issues. The Judge also took into account the disproportionate number of Māori already in prison. Emphasis was placed on establishing services designed to affirm mana tamaiti, be centred on MQ's rights (including those in the CRC), promote his best interest and advance his needs.

## *New Zealand Police v MQ* [2020] NZYC 35.

This case involved the reasons for the decision not to grant MQ early release from supervision with residence. MQ was involved in an incident at a Youth Justice residence. The Judge had to decide whether MQ had absconded or committed further offences and whether MQ's behaviour was satisfactory. Although MQ had in many respects done well in the residence, MQ's behaviour on the date of the incident was unsatisfactory and not minor so for that reason the Judge decided MQ could not be released early.

Youth Court judgments released since 2016 are published in full on the District Court website. Select '[All Judgments](#)' at the top left of the homepage to search.



# CASE NOTE:

## NEW ZEALAND POLICE/ORANGA TAMARIKI V LV

### Executive Summary

1. Judge FitzGerald decided the case of *New Zealand Police/Oranga Tamariki v LV* [2020] NZYC 117 on Thursday 27 February 2020.
2. This case was heard in the crossover list at the Manukau Youth Court. The Youth Court matter related to the orders to resolve the 13 charges for offending during 2019. The Family Court matter considered whether the care and protection plan provided was adequate.
3. The Youth Court charges were discharged under s 282 Oranga Tamariki Act 1989 (the Act). The care and protection plan provided was not approved because it did not adequately comply with the Act.
4. Discussion included the following:
  - a. The profoundly important changes made to the Act that came into force 1 July 2019;
  - b. The protection of children's rights in the Convention on the Rights of the Child (CRC);
  - c. Themes of the UN's general comment no 24 (2019);
  - d. Relevant Treaty of Waitangi principles; and
  - e. Concerns over criminalising care and protection issues.

### Facts

5. L is a proud kōhine (adolescent Māori woman). Her whakapapa links to a rangatira in Ngāpuhi. She comes from a line of esteemed Māori healers and orators. She is proud of her whakapapa, interested in tikanga Māori and has a strong connection to te ao wairua.
6. L grew up being exposed to neglect, abuse and family violence. She moved often, was separated from her family and disconnected from her whānau. L faced instability in education due to the frequent moving. She has been diagnosed with PTSD and Reactive Attachment Disorder.
7. In 2019, when L was old enough to fall within the Youth Court jurisdiction, she was charged with 13 offences. L has admitted to offences including assault, unlawfully getting into a vehicle and aggravated robbery, burglary and reckless driving.
8. L was remanded in custody at a Youth Justice Residence for just over four months.
9. There have been six Youth Justice Family Group Conferences (FGC) in relation to L's offending. Hapū and iwi were not invited to any FGC. No FGC plan was ever devised. L did not get the opportunity to complete an FGC plan because she was on remand in secure custody. The interests of victims were never addressed. The sixth FGC resulted in a formal care and protection plan.

### Issues

10. The issue in the Youth Court proceedings was whether the two aggravated robbery charges should be discharged under section 282 or an order made under section 283(a) of the Act.
11. The issue in the Family Court Proceedings was whether the care and protection plan was adequate.

### Oranga Tamariki Act 1989

12. Judge FitzGerald made decisions primarily by reference to the Act, and in particular the important 1 July changes. He started with the purposes in section 4, to promote the well-being of L and her whānau, hapū and iwi. The case found that none of these purposes were fulfilled. L's mana was not fulfilled, her well-being and best interests were disregarded, she has been unable to participate and no assistance has been provided to whanau.

13. The next consideration under the Act was section 4A, setting out primary considerations in decision making. Again, the Judge considered that these considerations have not been a priority in the management of L's case.
14. There was also discussion of the te reo terms and concepts in the Act. The Judge noted that in L's cases none of these terms have been recognised or even mentioned in any report, plan or document. There had been no protection nor recognition of L's whakapapa or the whanaungatanga responsibilities of hapū and iwi.

#### **Convention on the Rights of the Child (CRC)**

15. The next document that was considered was the CRC. Judge FitzGerald noted that although every child in New Zealand is entitled to the protection of the rights in the CRC, the rights of children and young people like L are routinely breached, and have been breached in this case.

#### **UN General Comment no 24 (2019)**

16. The latest UN general comment provides guidance on child justice issues. Two themes are avoiding criminalising the behaviour of children and diverting children from criminal law processes where possible.
17. The Judge treated the UN general comment as instructive in deciding whether to attach to L the label of 'youth offender'. The general comment provides evidence-based reasons why increasing the use of diversion, even in cases of serious offending, decreases the likelihood of future offending.

#### **Treaty of Waitangi**

18. The case referred to the following Treaty principles: the principle of active protection, the principle of partnership, the principle of equity and the principle of options. The Judge also referred to the duty of good faith and the duty of consultation, which arise from those principles.
19. Judge FitzGerald considered that the Treaty principles and duties had been breached in relation to L. Most importantly, there had been no invitation to hapū and iwi to be involved in discussions at FGCs.

#### **Decision**

20. A section 282 discharge was ordered on all charges. The Judge considered that stigmatising her with the label of 'youth offender' was not appropriate, granting L a section 282 discharge could reduce some disparity and give her an opportunity for a different future.
21. L had already spent four months in custody – the equivalent to the most restrictive order available in the Youth Court.
22. The breaches of the Act, the breaches of L's rights under the CRC and the breaches of Treaty principles and duties were all relevant to the decision that was made.
23. The care and protection plan was not approved because it did not comply adequately with the Act. Judge FitzGerald adjourned proceedings and strongly recommended that an FGC be convened, to which hapū and iwi are invited.
24. Judge FitzGerald criticised the practices of care and protection stepping back with the result that youth justice powers and facilities are used to manage children's behaviour. This further traumatises children and young people and increases the risk of further offending.

# RECENT RESEARCH AND PUBLICATIONS

## NEW ZEALAND

### **Article title: What is communication assistance? Describing a new and emerging profession in the New Zealand youth justice system**

Author(s): Kelly Howard | Clare McCann | Margaret Dudley

Source: *Psychiatry, Psychology and Law* 27(1) 2020:1-15

Abstract: 'Communication assistance' is a term that derives from Section 80 of the Evidence Act 2006: a legislative provision that has given birth to a whole new profession in the New Zealand legal system. This legislative provision has been used to appoint a new role: that of the communication assistant to support complainants, witnesses and defendants of all ages with identified communication needs. This study focuses specifically on the provision of communication assistance for young people who offend in the NZ criminal justice system. It provides a qualitative analysis of professionals' descriptions ( $n = 28$  participants) of communication assistance for this population in justice processes. The findings illustrate that communication assistance shares its core with a similar role in England and Wales, that of the intermediary, but that communication assistants in New Zealand have broader scope than their counterparts working in the area of youth justice.

### **Report title: Children's Rights in Aotearoa New Zealand: Reflections on the 30th Anniversary of the Convention on the Rights of the Child**

Source: The Law Foundation, December 2019

Abstract: This publication is a collection of reflections that arose from a 2-day VUW symposium, held in August 2019, entitled "Children's Rights – National and International Contexts". It was held in recognition that it's been 30 years since the United Nations Convention on the Rights of the child was signed, setting out the civil, political, economic, social, health and cultural rights of the child. The collection includes 24 articles from those who presented and participated at the symposium, including panel members. The symposium was

attended by academics, members of the judiciary, public sector colleagues, NGO colleagues and postgraduate students. It was structured around a series of panels, where presenters shared brief reflections, and had time for questions and interaction with the symposium participants. Panel members included international experts of children's rights who shared their reflections on the potential of the international children's rights framework.

### **Report title: What were they thinking? A discussion paper on brain and behaviour in relation to the justice system in New Zealand**

Author(s): Dr Ian Lambie

Source: Office of the Prime Minister's Chief Science Advisor, 29 January 2020

Summary: This discussion paper is the fourth in a series of reports. It presents strong evidence of the over-representation of people in the criminal justice system who have had brain injuries, shedding new light on the impact of such injuries and developmental differences on both victims and offenders. The report was written by the Chief Scientist for the Justice Sector, Professor Ian Lambie.

### **Report title: Youth Justice Insights: Separating Misconceptions from Facts**

Source: Oranga Tamariki Evidence Centre: Te Pokapū Taunikitanga

Abstract: The purpose of this report is to explore key questions about the youth justice system. These questions are commonly posed and have been generated from discussions by both those within the youth justice community and those outside it. For example, questions often focus on the link between care and protection and youth justice, or comparisons between the youth justice system and the adult justice system. This report brings together information from a number of different sources. Throughout it, the questions are answered using publicly available information or data that can be requested by anyone about the system and the children and young people involved.

# RECENT RESEARCH AND PUBLICATIONS

## AUSTRALIA

**Article title: 'Crossover kids': Offending by child protection-involved youth**

Author(s): Susan Baidawi | Rosemary Sheehan  
Source: Trends & issues in crime and criminal justice 582, Australian Institute of Criminology, December 2019

Abstract: The over-representation of children from child protection backgrounds in the youth justice system is a significant and longstanding concern. While the association between child maltreatment and youth offending is established, the pathway of child protection-involved youth to criminal justice outcomes has received little attention. This paper presents selected findings of a detailed case file audit of 300 crossover children appearing before the Victorian Children's Court in 2016-17. Findings explore children's exposure to maltreatment and other adversity, as well as their child protection involvement, co-occurring challenges, offending and sentencing outcomes. The risk factors for earlier and more serious offending are also examined. Results indicate that crossover children present with more serious offending profiles than other court-involved children. The findings emphasise the need to prevent, divert and respond to crossover children's criminal justice contact.

**Report title: Rethinking Sentencing for Young Adult Offenders**

Source: Sentencing Advisory Council Victoria, December 2019

Abstract: Rethinking Sentencing for Young Adult Offenders assesses the available sentencing options for offenders aged 18 to 25 in Victoria. The report reviews the literature on young adult offenders and their offending trajectories. It also analyses sentencing outcomes for young adult offenders in Victoria and explores approaches to sentencing this age group in other jurisdictions.

## UNITED KINGDOM

**Report title: Sentencing Remarks for Children: A New Approach**

Author(s): Kathryn Hollingsworth  
Source: Policy Briefing #14, Newcastle University, January 2020

Summary: Sentencing children in a rights-respecting way requires a focus on the way in which the sentencing remarks are communicated to children. Sentencing remarks that fulfil the four functions of a 'sentence for children' promote effective participation, help children to perceive the system as just and trustworthy, and support reintegration. This policy briefing studies children's participation and engagement during the sentencing process and how children make sense of sentencing remarks. Research was done involving young people aged 14 to 21, who had been sentenced in the criminal courts as children, to see what form of sentencing remark was the most appropriate. The brief includes an example 'Letter to Joe' which reflects the author's idea of a children's rights approach to sentencing.

Court in the Act is a publication produced by the Office of the Principal Youth Court Judge.

We welcome feedback, contributions and submissions. These can be sent to: [courtintheact@justice.govt.nz](mailto:courtintheact@justice.govt.nz)

# Youth Court at COVID-19 Level 2

## Frequently Asked Questions for Youth Court professionals

Under Level 2, while there will be an enhanced ability to further increase the work of the court, the constraints which existed under Alert Level 3 still apply. These include courtroom availability, registry capacity, the number of persons who can attend court in person, and the ability of key agencies to provide services to the court.

It will remain important at Level 2 to limit the travel to courts for young persons and their whānau, to keep them, and others, safe. This consideration also applies to Youth Advocates, Lay Advocates, Police, Oranga Tamariki, and other agencies (such as Health and Education), providing services to the Court.

These FAQs should be read in conjunction with the [District Court protocol](#) and the [Youth Court protocol](#) for COVID-19 Alert Level 2.

### Q: Is the Youth Court sitting during Level 2?

Yes – at Level 2, the Youth Court will continue to provide an essential service. Court buildings are open, however for physical distancing reasons, access may be restricted, including a maximum number of people permitted in the courthouse at one time.

### Q: Are Rangatahi and Pasifika Courts sitting during Level 2?

No – the Rangatahi and Pasifika Courts will not be sitting during Level 2. Monitoring appearances for these courts will be held in the mainstream Youth Court list. Cultural processes such as karakia and pepeha may be incorporated into these hearings on request from the Youth Advocate or Lay Advocate.

### Q: How are cases being triaged during Level 2?

Youth Court Judges continue to review and prioritise cases to ensure that any outstanding matters requiring attention are addressed as quickly as possible.

This review is being conducted using information on the file, and matters affecting the liberty of young people or regarding young people in custody, continue to be heard before the court as soon as possible.

### Q: Can I appear in-person at a hearing during Level 2?

Police Prosecutors and Court Probation Officers in the “vulnerable” category, may appear by telephone link or by AVL. Police Prosecutors and Court Probation Officers who are not in the “vulnerable” category must appear in-person.

Counsel are permitted to appear in Court in-person. Counsel in the “vulnerable” category, may appear by telephone link or by AVL for all cases.

Counsel who are not in the “vulnerable” category must appear in-person for Judge Alone Trials, unless otherwise directed by the presiding Judge.

Counsel are otherwise permitted to appear by telephone link or by AVL provided that suitable AVL facilities or telephone links are arranged in advance. If not, counsel must attend in-person, unless otherwise directed by the presiding Judge. Counsel are permitted to wear PPE in court.

Other professionals who ordinarily attend Youth Court hearings may attend in-person during Level 2, under the same provisions as set out above, unless otherwise directed by a judicial officer.

To gain entry to the court, identification for contact tracing purposes may be required.

The presiding Judge may also direct the method of appearance for participants in a specific hearing or case under [s 11 of the Courts \(Remote Participation\) Act 2010](#).

### **Q: Will appointments for hearings continue for remote participation and required in-person appearances?**

Yes – the Youth Court appointment system remains in place to provide privacy for young persons and their whānau. This has additional importance now in limiting physical contact and keeping people safe. Specific appointment times will be allocated for each case. The expectation is that where in-person attendance is required, those involved will not attend earlier than the appointment time for the case and will exit the court building promptly afterward.

### **Q: What if a young person's court appearance requires air travel or inter-regional travel from the Residence?**

Air travel or inter-regional travel may be limited where possible during Alert Level 2, to prevent potential transmission risk and because airline capacity is likely to be restricted.

Case-by-case discussion will be held between the Judiciary and stakeholders to determine which cases can be managed through remote participation by the young person.

### **Q: What is a pre-hearing conference? Who is required to attend and how will this be arranged?**

A pre-hearing conference is similar to a callover, where parties meet to discuss a case prior to any hearing. The presiding Judge will convene these conferences using remote participation technology and will advise who is expected to attend. Details of how to dial into a pre-hearing conference will be provided to parties in advance by the registry.

### **Q: How do I arrange to appear at a hearing by AVL?**

Any parties wishing to appear in a Youth Court hearing by AVL should contact the Registry to arrange this. Any requests should be in line with the Youth Court Level 2 Protocol for AVL appearances.

### **Q: What is the court etiquette for attendance by AVL?**

Parties attending a hearing by AVL should:

- Appear in formal attire
- Remain seated for the hearing
- Speak directly into the microphone when addressing the Court.
- Be familiar with how to mute your microphone and turn your video off.
- Mute your microphone when you are not speaking.
- Be mindful of camera angles, glare from windows, and the background.
- Speak more slowly than a normal courtroom pace and speak as clearly as possible.
- Note that audio cues are more important in a remote context – If your remarks are addressed to a particular person, identify them and audibly signal when you expect a response.

**Note:** Youth Court rules still apply regarding confidentiality.

### **Q: Are support people allowed to attend Court during Level 2?**

Yes – support persons for young people are allowed to attend court, and should apply using the same [process](#) as under Level 3 and 4.

### **Q: Can victims attend hearings during Level 2?**

Yes – victims can attend Youth Court hearings in-person during Level 2. Victims may also contact the registry if they wish to attend a hearing by AVL instead.

### **Q: Can media still attend hearings during Level 2?**

Yes – accredited news media will continue to have access to the court in order to report court proceedings, and to ensure continued open and transparent justice. Remote access will continue to be facilitated in accordance with current Youth Court protocols.

### **Q: What happens when a young person is arrested during Level 2? Who is involved?**

Young people arrested during Level 2 will be brought before the court as soon as possible. First appearances of young people from Police custody may be conducted by AVL where facilities exist, unless otherwise directed by the Judge. The Duty Youth Advocate will appear either in-person or by AVL and will be provided the opportunity to consult with the young person and take any instruction prior to the hearing.

Other parties who would normally attend a young person's first appearance will also appear either in-person or by AVL.

### **Q: What if a young person is arrested during Level 2 who already has active matters in the Youth Court?**

Young people arrested who already have active matters before the Youth Court may also be brought before the Court via AVL as above.

The young person's continued offending may highlight the need for the Court to reconsider their bail conditions. The Court may decide to tighten or otherwise amend bail conditions, or consider placement in Oranga Tamariki or Police custody.

### **Q: Are Family Group Conferences (FGCs) happening during Level 2?**

Yes – FGCs will be convened and held during Level 2. Generally, these will be held using remote participation, Oranga Tamariki premises, or other suitable venues where Level 2 social distancing and contact tracing can be carefully managed. FGC participants who are unable to attend in-person will be offered remote participation options.

### **Q: Will FGC plans continue to be monitored during Level 2?**

Yes – Young people who have active FGC plans will be contacted regularly by Oranga Tamariki. Some plan components may not be physically possible to complete during the Level 2 period, but the plan will still be monitored.

### **Q: Do I still need to provide a report to the Court during Level 2?**

Yes – all Youth Court professionals should continue to provide reports to the court as normal. Reports should be submitted by email to the registry no later than two working days before the hearing.

During Level 2, it is preferred that any information requested by the court is provided in writing in advance of the hearing, including any Lay Advocate submissions. This will allow the presiding Judge the opportunity to consider the matter on the papers, before convening a hearing as required.

### **Q: Will all stakeholders still receive reports prior to the hearing?**

Yes – reports will be distributed by email before the hearing as normal. If you require access to a particular report, please contact the registry.

Please note that due to reduced registry capacity, there may be some delay in addressing or responding to emails.

### **Q: Will Lay Advocates continue to be assigned during Level 2?**

Yes – Lay Advocates will continue to be assigned to cases during Level 2, when directed by the presiding Judge.

### **Q: Can Lay Advocates attend hearings during Level 2?**

Yes – Lay Advocates may attend hearings in-person during Level 2, unless otherwise directed by a judicial officer.

It is strongly recommended that Lay Advocates attend by AVL wherever possible, to support physical distancing requirements and reduce further risk of infection.

### **Q: Can Lay Advocates still conduct home visits during Level 2?**

No – Lay Advocates should not be conducting any in-person visits with young people or their whānau. Instead, Lay Advocates should make contact with young people and their whānau by phone or using AVL technology.

**Q: How do Lay Advocates conduct interviews with young people and their whānau during Level 2?**

Lay Advocates should conduct interviews with young people and their whānau using alternative methods of contact such as by phone or video call.

When doing so, Lay Advocates should bear in mind that these methods may not provide the level of security and privacy which is required.

**Q: Will Communication Assistants continue to appear during Level 2?**

Yes – Communications Assistants will continue to facilitate assessments and attend hearings during Level 2, depending on the needs of the young person. Attendance by AVL or in-person will be determined on a case-by-case basis in consultation with the court, unless otherwise directed by a judicial officer.

**Q: Will Education Officers still provide information to the Court?**

Yes – written reports continue to be provided to the court, and Education Officers will appear at hearings by AVL where possible.

**Q: Will mental health assessments and reports continue to be provided?**

Yes – written assessments and reports continue to be provided to the court, and health providers will appear at hearings by AVL where possible. Health assessments are also being conducted by AVL wherever possible, to reduce the risk of infection for young people and their whānau.

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