

**“Do I Really Have Rights to Participate?” Young
People’s and Youth Justice Personnel’s Perceptions of
Young People’s Rights to Participation in the Youth
Justice Family Group Conference Setting Auckland,
Aotearoa, New Zealand**

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Abstract

Between late 2016 and July 2017, the New Zealand government amended the Oranga Tamariki Act 1989 to give effect to young people's participation rights in youth justice (YJ) legal processes. Specifically, section 11(2)(a) now requires YJ personnel to ensure that young people are encouraged and given the opportunity to be heard in proceedings where the young person is deemed mature enough to do so. Section 11(2)(b) requires that young people be given reasonable opportunity to express their views on matters that affect them and, of equal importance, section 11(3) now imposes a legal obligation on YJ personnel to facilitate sub section 11(2) (a) and (b) of the Act.

This study investigates the perceptions young people and YJ personnel hold of young people's rights to participate in the legal settings of the YJ family group conference (YJ FGC) since the legislative amendments of 2017.

The theoretical and conceptual frameworks of childhood studies, more specifically the social construction of childhood and youth and the Spiral of Silence Theory were used to guide and inform this study. These theoretical and conceptual frameworks intersect to create diverse understandings of young people's participation in the YJ FGC setting.

At the heart of this thesis is the recognition that young people have unique experiences of the YJ FGC, and young people and YJ personnel have individual perceptions of young people's participation in this setting. Social constructionism epistemology and process evaluation inform this study. An interview guide and semi-structured interviews were used to collect data. I also used a documentary analysis to supplement interviews and provide background information on legislative, policy and practice changes of the amended Oranga Tamariki Act 1989 and young people's participation over time.

My research has found that young people and YJ personnel share similar perceptions of young people's participation in the YJ FGC setting. Young people and YJ personnel think it is important for young people to have participation rights and that all young people should be able to share their views in the YJ FGC setting. However, the research also found that young people can face profound personal, physical and structural/institutional challenges in participating. All participants talked about process issues, such as young people missing out on pre-conference preparation. All participants in this study also talked about young people's participation as, at times, non-existent and silenced in the YJ FGC. Silence was a pervasive theme leading me to develop the Children and Young Person Silencing Cyclone model. Through this model, I argue that silence should be considered interrelated with children's and young people's participation in YJ FGC settings.

This thesis contributes to literature on young people's and YJ personnel's perceptions of young people's participation rights with a particular focus on the YJ FGC setting. This thesis also highlights the need for more research on silencing and how the concepts of participation and silence can be understood together to fully facilitate young people's access to and improve their experience of their participation in the YJ FGC setting.

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List of Abbreviations

Child Youth and Family **CYF**

Children, Young Persons, and Their Families Act 1989 **CYPFs Act**

Children and Young Person Silencing Cyclone **CYPSC**

International Covenant on Civil and Political Rights **ICCPR**

International Year of the Child **IYC**

Ministry of Justice **MoJ**

Ministry of Social Development **MSD**

Office of the Children Commissioner (NZ) **OCC**

Office of the United Nations High Commissioner for Human Rights **OHCHR**

Reducing Youth Offending Programme **RYOP**

Spiral of Silence Theory **SST**

Universal Declaration of Human Rights **UDHR**

United Nations **UN**

United Nations Convention on the Rights of the Child **UNCRC**

Youth Aid Officer **YAO**

Youth Justice **YJ**

Youth Justice Family Group Conference **YJ FGC**

Attestation of Authorship

I hereby declare that this submission is my own work and that, to the best of my knowledge and belief, it contains no material previously published or written by another person (except where explicitly defined in the acknowledgements), nor material which to a substantial extent has been submitted for the award of any other degree or diploma of a university or other institution of higher learning.

10/01/2023

Signature

Date

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Chapter One: Introduction

Overview

The overarching question of this thesis is: what do young people (age 14 to 17 years) and youth justice (YJ) personnel think about young people's participation in the YJ family group conference (YJ FGC) setting in New Zealand? Between late 2016 and July 2017, the New Zealand government enacted significant amendments to the governing legislation of the care and protection and YJ systems, the then Children, Young Persons, and Their Families Act 1989 [CYPFs Act]. What preceded these legislative changes were several government-led reports into issues facing children and young people under Child, Youth and Family, the department responsible for care and protection and YJ (Lynch, 2016). Specific to this thesis, a report commissioned in 2015 by the Ministry of Social Development (MSD), for example, highlighted that many young people and their whānau/family, who had experiences of the YJ FGC, lacked participation in the process and felt the process was alienating and overly adversarial (MSD, 2016).

The family group conference model is the central, legally binding decision-making process used in care and protection and YJ systems throughout New Zealand (Cleland & Quince, 2014). The New Zealand government introduced the family group conference model under the CYPFs Act 1989. This Act provided separate family group conference processes for care and protection and YJ (Henwood & Stratford, 2014). The YJ FGC is a legal decision-making procedure for YJ that decides the best course of action in response to a young person's offending and includes the young person, whānau/family, community and the victim (Lynch, 2016). Its purpose is to address the causes and consequences of the crimes committed by the young person (Cleland & Quince, 2014; Lynch, 2016). This process acknowledges the young person, whānau/family, the

victim, and the community as having important roles in helping the young person take responsibility for their crimes and to prevent young people from reoffending (Lynch, 2016).

The aforementioned report by MSD in 2016, among several others, for example “the State of Care Report by the Office of the Children’s Commissioner [OCC]” (2016), recommended a major overhaul of Child, Youth and Family (now Oranga Tamariki), their policy and practices and changes to the governing legislative framework. Consequently, the 2016–2017 amendments to the legislation changed the title of the Act to the Oranga Tamariki Act 1989 (Children and Young Persons Well-being Act), and specific to this thesis it also amended the framework of relevant rights, obligations and legal expectations of those involved in the YJ system. Notably:

- Section 11(2)(a) of the Oranga Tamariki Act 1989 now requires YJ personnel to ensure young people are encouraged and given the opportunity to be heard in proceedings where the young person is deemed mature enough to do so.
- Section 11(2)(b) now requires that young people be given the opportunity to express their views on matters that affect them.
- Section 11(2)(c) now requires that young people have adequate support to express their views where they may have difficulty doing so, for example, because of their age and maturity.
- Section (11)(2)(d)(e)(f) now requires the young person’s views to be taken into account, and that any decisions made must set out the young person’s views and provide them with an explanation if their views are not upheld.
- Of equal importance, s11(3) now imposes a legal obligation on specific YJ personnel (for example, a judge, youth advocate or YJ coordinator) to facilitate ss11(2) of the Act.

The United Nations Convention on the Rights of the Child (UNCRC) (1989), particularly Article 12, framed the legislative changes¹. The introduction of the UNCRC 1989 provided the

¹See Chapter Three for New Zealand’s history with the UNCRC Article 12 and YJ. Also, although the New Zealand Government ratified the UNCRC in April, 1993, it is yet to fully incorporate the UNCRC articles and principles in to New Zealand domestic law and practice for children and young people (see UNCRC, 2023).

first international document to view children and young people as subjects of their own rights and acknowledged, through participatory articles, such as Article 12, that children and young people are entitled to participation rights (Committee on the Rights of the Child, 2009).

Recognising children and young people's participation in the form of adults listening to them and taking what they say seriously has struggled to gain recognition across cultures and societies (Hart & Thompson, 2009; Lansdown, 2011). The idea that children and young people have rights and, more specifically, rights to participation can also elicit deep anxieties amongst adults (Krappman, 2010).

Participation is an important right for young people who experience YJ processes, particularly the YJ FGC. With the 2016–2017 amendments to the Oranga Tamariki Act 1989 in mind, and no up-to-date New Zealand studies, as of August 2023, on the effects and experiences of these legislative changes for young people and YJ personnel, there remain important questions about the operation and effectiveness of YJ FGCs for young people's participation in the New Zealand context. This study addresses these issues. The findings (see Chapter Seven and Eight) identify areas of policy and practice that can be amended to improve the experiences of young people in the YJ FGC setting in New Zealand.

Key Terms

For clarity, I introduce key terms before further discussions. Except for the term “perception”, all key terms highlighted are defined by key theoretical and conceptual frameworks used in this study.

Participation

There is no universally accepted typology or definition of participation² (Lansdown, 2009; Malone & Hartung, 2010). Attempts at universal definitions have been made. For example, R. Hart (1992) defines children's participation as “the process of sharing decisions which affect

² See, for example, R. Hart (1992) *Children's Participation: From Tokenism to Citizenship*; Lansdown (2001) *Promoting Children's Participation in Democratic Decision-Making*; Shier (2001) *Pathways to participation: Openings, Opportunities and Obligations*.

one's life and the life of the community in which one lives" (p. 5); Chawla (2001) has defined participation as "a process in which children and youth engage with other people around issues that concern their individual and collective life conditions" (p. 9); and Krappmann (2010) defines participation as "what results from expressing views, listening and giving due weight to the views, interests and goals of the child" (p. 502). These definitions reflect a limited conceptualisation of children's and young people's participation and do not encompass the meaning of participation reflected by the UNCRC (Malone & Hartung, 2010). Thomas (2007) and Sinclair (2004) wrote that active participation, taking part in influencing the decision-making process and not just being listened to or consulted, is important for effective change.

Consistent with the UNCRC I adopt this definition:

Participation [is] a process in which children and young people are actively involved and have genuine influence in decision-making on matters that affect them. Making sure children [and young people] have the right information, and are able to engage in dialogue, have their views seriously considered and are involved in understanding the outcomes of their involvement are all part of the ongoing process of [their] participation. (OCC, 2019, p. 9)

Perception

I used the Oxford Languages to define the term "perception". I acknowledge perception is a subjective concept. For this study, "perception" is defined as "the way in which something is regarded, understood or interpreted" (Oxford Languages, 2018).

Silence

There is a compendium of vast and complex literature on silence (Green et al., 2021; Hanna, 2022; Spyrou, 2016). To be silent or be silenced are complex ideas (Green et al., 2021; Spyrou, 2016). According to Hanna (2022) and Spyrou (2016), being silent and silenced can be something chosen and not chosen. On the one hand, being silent can be intentional—a self-imposed act of empowerment, protection, resistance or personal control (Hanna, 2021; 2022; Lewis, 2010; Spyrou, 2016). On the other, to be silenced can be multifaceted. It can be intentional (silencing another person)—used to ignore, punish, disempower or control others, and unintentional—unconsciously using cultural, religious or social attitudes or beliefs that reproduce

silence (Hanna, 2021; 2022; Spyrou, 2016). There are multiple factors that regulate silence, such as but not limited to setting, power relations, current and past social, cultural, political, legal and historical attitudes and processes that vary and change over time and place (Hanna, 2022; Lewis, 2010; Spyrou, 2016).

There are also numerous definitions of silence in the literature. Green et al. (2021) and Spyrou (2016) explain that there is no universal definition of silence. Silence is commonly defined as the “voluntary and involuntary lack of speech or sound...” (Green et al., 2021, p. 246).

Similarly, Oxford Learner’s Dictionary (2021, as cited in Hanna, 2022, p. 24) defines silence as a “complete lack of noise or sound”. Spyrou (2016) points out, silence can also be seen in non-verbal forms, such as writing or drawings. For this thesis, I define “silence” as intentional and unintentional verbal (for example, words written or spoken) and non-verbal (for example, gestures, cultural norms, body language or drawings) communication.

There are also numerous typologies that give silence meaning and can explain why silence happens and how silence functions (Green et al., 2021; Mazzei, 2003). While it is not within the scope of this thesis to report on this literature in detail, the typologies I am using are limited to those developed by Mazzei (2003) and Spyrou (2016). I acknowledge that there are many other typologies; however, these typologies were useful for explaining the silences that emerged from my interviews with participants.

Mazzei (2003), in a study on race with white school teachers from the US, identified five overlapping categories of silence. ‘Polite silences’, ‘privileged silences’, ‘veiled silences’, ‘intentional silences’ and ‘unintelligible silence’ (Mazzei, 2003). ‘Polite silences’, are silences that are learned responses from childhood – that is, the attitude of, “[i]f you can’t say something nice, don’t say anything at all” (p. 364). It is a form of silence used when people fear offending another person (Mazzei, 2003).

‘Privileged silences’ enable individuals to ignore something because they have a position of privilege in society (Mazzei, 2003). Mazzei (2003) refers to examples of white privilege; however, this could also be used to explain some of the silences in adult-child relationships. Often, the adult has a position of privilege and power over a child (Hanna, 2022; Pahmp, 2021).

Adults can use their position of privilege to, for example, ignore children and young people, in turn silencing them. ‘Veiled silences’ are those silences that deflect questions or topics around relationships with other people. These silences occur when people do not know how to respond to what is being said or asked about specific relationships (Mazzei, 2003).

Moreover, ‘intentional silences’ are context-specific and occur when individuals withhold information/remain silent if they think what they share will be negatively received (Mazzei, 2003). This type of silence is inherent in the SST theory (see Noelle-Neumann, 1993) and can be seen in young people’s participatory experiences of the YJ FGC (see Chapter Eight). Lastly, ‘unintelligible silences’ are silences that occur but cannot be made sense of or the meanings of the silence are not readily discernible (Mazzei, 2003).

For this study, Mazzei’s (2003) categories are salient. However, this typology does not go far enough to encompass all the types of silences that can occur in the YJ FGC. For example, Mazzei’s ‘polite silences’ category could be expanded to include silences learned through social or cultural norms of how individuals are expected to act. To add to this, the category of ‘veiled silences’ could be expanded to include silences that occur when people need time to think of a response or simply do not understand what is being asked of them. Lastly, the category of ‘intentional silences’ could be expanded to include silences that occur because of the setting or people within that setting. For example, when police are present in a YJ FGC setting, a young person may intentionally be silent when asked questions that could have legal consequences.

Spyrou (2016) used his previous research of interviewing school-aged children in Cyprus about their national identities to uncover another type of silence, ‘wavering silences’. According to Spyrou (2016), children use wavering silence to “waver back and forth” between sharing everything and limiting what they say. Wavering silences occur when children are unsure about discussing controversial or emotional content with others (Spyrou, 2016). This type of silence is also salient to this thesis and young people’s participatory experiences in the YJ FGC.

Young People

What is meant by the term “young person” is essential to establishing exactly whom this research includes. In the context of law, defining what is meant by the term ‘young person’ is a

challenging and contentious task (Abrams et al., 2018; Azzopardi, 2013; Jones, 2009). It may vary from country to country (Abrams et al., 2018; Doob & Tonry, 2004). There is no consensus in the literature nor a universally agreed-upon age for young people as a group (Perovic, 2016; United Nations, 2020). When referring to the literature on YJ, particularly children's rights and childhood studies, there is further confusion when other words are used to describe 'young people'. Words such as 'young person', 'young adult', 'youth', 'juvenile', 'juvenile delinquent', 'child' and 'children' are often used interchangeably and without distinction (Bala & Bromwich, 2002; Becroft, 2006; Hollingsworth, 2007; Matthews et al., 2018). The words 'child' or 'children' are commonly used to define anyone under 18 years, particularly in legislation³ (Becroft, 2006; Hollingsworth, 2007). The UNCRC, a central conceptual framework used throughout this thesis, uses the word 'child' to refer to anyone under the age of 18 years and does not make a distinction, in definition, between 'child' and 'young person'.

In New Zealand's legislation, the words 'young person' and 'child' are given legal distinction and prescribed under the governing YJ legislation of the Oranga Tamariki Act 1989 (Becroft, 2006). Accordingly, under Section 2(1), "a child means a person under the age of 14 years", and a young person means "a person of or over the age of 14 years but under 18 years". Other domestic legislation about anyone under the age of 18 years does not make this distinction (Lynch, 2009). For example, Section 4(1) of the Children's Commissioners Act 2003 and Section 8 of the Care of Child Act 2004 use the words 'child' and 'children' exclusively, in their respective titles and throughout each statute, to refer to anyone under the age of 18 years. These terms can be defined and understood differently depending on the context in which they are used. The interchangeable use of these terms has created confusing understandings across legislation in New Zealand for children and young people (Becroft, 2006; Collins & Mead, 2021).

³ For example, in New South Wales, Australia, under the Young Offenders Act No 54 1997, s1(4) states that a 'child' is any person who has reached the age of 10 years, but under the age of 18 years; and in Wales, under the Children Act 1989, s105(1) a 'child' is a person under the age of 18.

To further complicate the issue, ‘age’ is often used as a yardstick to circumscribe, by definition, young people in conflict with the law (Abrams et al., 2018; Furlong, 2012; Wyn & White, 1997). Age is not seen as a stable or universally applicable concept in the context of YJ (Doob & Tonry, 2004). Some jurisdictions have repeatedly changed the ages determining which young person will fall under a Youth Court’s jurisdiction (Doob & Tonry, 2004). Youth justice systems can vary widely in their minimum and maximum ages for Youth Court (Abrams et al., 2018; Doob & Tonry, 2004). As seen in Table 1, the minimum and maximum age for young people in conflict with the law may vary between countries and in countries over time (Collins & Mead, 2021).

Table 1

Examples of Minimum and Maximum Ages Used in Youth Justice Jurisdictions

Country	England/Wales	Scotland	Netherlands	Italy	New Zealand
Minimum age	10	12	12	14	14*
Maximum age	17	15	23	18	18

Note. *In New Zealand, some 10- to 13-year-olds fall under the Youth Courts jurisdiction for serious or persistent offending. England and Wales (Children and Young Persons Act, 1933); Scotland (Doob & Tonry, 2004); Netherlands (uit Beijerse; 2016); Italy (Casa San Benedetto Istituto Don Calabria, 2016); and New Zealand (Oranga Tamariki Act, 1989).

The meanings and experiences attached to age are embedded in specific social, cultural, political, legal and historical processes that vary and change over time and place (Abrams et al., 2018; Wyn & White, 1997). Leading international instruments for guidance on YJ, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (“The Beijing Rules”) and the United Nations Guidelines for the Prevention of Juvenile Delinquency 1990 (“The Riyadh Guidelines”)⁴, do not specify a minimum and maximum age for young

⁴ See Section 2(a) and commentary of The Beijing Rules and Section VI of The Riyadh Guidelines.

people in conflict with the law. Instead, this guidance on YJ infers, in explanations and definitions, that children and young people in conflict with the law are context-dependent constructs, best defined and understood in each country's domestic legislative definitions and understandings.

The confusing use of words and ages to define young people who come into conflict with the law has led to difficulties in maintaining consistent terminology for 'young people' throughout this thesis. In New Zealand, using the word 'child' when referring to a young person, particularly older young people, can be infantilising (Becroft, 2006; Lynch, 2009). For this thesis, when discussing the literature, the terms 'child' and 'children' will only be used interchangeably with 'young people' in Chapter One and the beginning of Chapter Two. For all other chapters, 'child' or 'young person' will be used when discussing respective statutory contexts and 'children and young people' will be used when referring to both groups.

Youth Justice Family Group Conference

In 1989, New Zealand child welfare and YJ agencies adopted the practice of family group conferencing (Lynch, 2016; Williams & Ioane, 2021). New Zealand was innovative in creating the family group conference, and it has been viewed as one of New Zealand's "best-known policy exports" (Lynch, 2016, p. 142; Williams & Ioane, 2021). Many countries⁵ have introduced the family group conference model into various professional fields, such as education, child welfare and YJ and, where necessary, changes to the model have been made to accommodate specific political, cultural and social/historical contexts and legislative frameworks (Barnsdale & Walker, 2007; Daly & Hayes, 2002; Fox, 2008; Zinsstag et al., 2011). Consequently, the 'family group conference' has taken on several labels⁶ and, despite some shared commonalities, 'family group conferencing', particularly in YJ, varies considerably in practice and process between countries and sometimes within countries (Daly & Hayes, 2002; Fox, 2008; Haydon & McAlister, 2015; Umbreit & Armour, 2011).

⁵ For example, Australia, Canada, the United States of America (US) (some States), Israel, South Africa, Wales and the Republic of Ireland (Barnsdale & Walker, 2007; Skaale Havnen & Christiansen, 2014).

⁶ For example, Barnsdale and Walker (2007) interchangeably, and confusingly, used the term 'family group decision-making' with 'family group conferencing'; in Northern Ireland the term 'youth conferencing' is used (McVie, 2011). To maintain clarity, the term 'YJ FGC' will be used.

New Zealand and Australia are world leaders in developing, implementing and legislating for YJ FGC models (Daly & Hayes, 2002; Stewart et al., 2008). Daly and Hayes (2002) wrote, "... there has been an extraordinary degree of sustained, legislated activity [about YJ FGCs] in Australia and New Zealand that is not seen in any other jurisdiction" (p. 212). Coming out of New Zealand and Australia are two YJ FGC models– the New Zealand model (the original family group conference model) and the Wagga Wagga model. These models have been piloted and, in some cases, adopted by other countries⁷ (Fox, 2008; Maxwell & Hayes, 2006; Umbreit & Armour, 2011; Zinsstag et al., 2011).

The Wagga Wagga model was developed a year after the New Zealand model in the State of New South Wales (NSW), Australia, and departed from the New Zealand model in several ways (see Daly & Hayes, 2002). The Wagga Wagga model was influenced by John Braithwaite's theory of re-integrative shaming⁸ and is coordinated and facilitated by the police (Daly & Hayes, 2002; Maxwell & Hayes, 2006; Umbreit & Armour, 2011). In this model, the YJ FGC is scripted and focuses on the offence rather than the offender or the victim (Umbreit & Armour, 2011).

In contrast, the New Zealand model was shaped by political activism arising from concerns about the overrepresentation and treatment of Māori and Pasifika in the welfare and criminal justice systems (Umbreit & Armour, 2011). This model is a non-police-led approach coordinated and facilitated by personnel in welfare and YJ agencies (Maxwell & Hayes, 2006; Umbreit & Armour, 2011). In this model, conferencing is non-scripted and focuses on consensus group decision-making (Umbreit & Armour, 2011).

Youth justice family group conferencing is just one of many restorative justice (RJ) measures used worldwide as an alternative to the traditional justice processes within the criminal justice

⁷ Youth justice family group conference models used in North America and Western Europe have mainly been influenced by the Wagga Wagga model (Daly & Hayes, 2002; Zinsstag et al., 2014).

⁸ Briefly, reintegrative shaming theory asserts that there are two different types of shaming; stigmatizing shame, where shame is directed at the offender rather than the act of offending and disrespects, condemns and labels the offender, which leads to more criminal offending and is part of the criminal justice model (Braithwaite, 1989). And re-integrative shaming, which is respectful disapproval directed at the act rather than the person and does not condemn or label the person. It centers on forgiveness and crime prevention (Braithwaite, 1989).

system (Bergseth & Bouffard, 2012; Fox, 2008; Price et al., 2022). While YJ FGC models are part of several YJ systems globally (Umbreit & Armour, 2011, UNICEF, 2020), other RJ models are more frequently used (Bonta et al., 2002; Daly & Hayes, 2002; UNICEF, 2020; Zinsstag, 2011). For example, ‘children's hearing boards’ in Scotland (see UNICEF, 2020); ‘the bureau model’ in Wales (see UNICEF, 2020); ‘the YJ liaison and diversion’ and ‘youth restorative disposal models’ in England (see UNICEF, 2020); ‘victim-offender mediation’ in South Africa, (see Roy & Schoeman, 2021); and ‘victim-offender mediation’, ‘family unity meetings’ and ‘circle sentencing’ in the US and Canada (see Bonta et al., 2002; Umbreit & Armour, 2011; Zinsstag et al., 2011). Some RJ models fall under the umbrella of mediation and share similar aims and practices with YJ FGC models (Umbreit & Armour, 2011). Sometimes RJ models, such as victim-offender mediation and circle sentencing, are referred to interchangeably with the YJ FGC model (McCold, 1999; Umbreit & Armour, 2011). These are, however, distinct models of mediation that function differently from the YJ FGC (McCold, 1999; Roy & Schoeman, 2021; Umbreit & Armour, 2011).

The YJ FGC model used in this study is the New Zealand model and is defined and legislated for in section 246 of the Oranga Tamariki Act 1989. Also, in Chapter Five the literature used to discuss previous studies only looks at studies that have used the YJ FGC model (this includes the Wagga Wagga model, the New Zealand model and adaptations of these models). This thesis does not discuss any other forms of RJ models of mediation.

Youth Justice Personnel

The composition of YJ personnel that attend a YJ FGC can vary widely. Often a multi-agency approach is adopted for these settings. At times, several different professionals such as a facilitator, convenor, or coordinator; police officer; YJ social worker; youth advocate; youth psychologist or psychiatrist and a youth educationalist can be present at a conference at one time (Bolitho, 2012; Daly & Hayes, 2001; Cleland, 2012; Hodgson, 2020; McGarrell et al.,

2000; Slater, 2009). The roles⁹, responsibilities and obligations towards young people and legislative powers YJ personnel have in YJ FGC settings vary significantly across jurisdictions (see Bolitho, 2012; Daly & Hayes, 2001; Cleland, 2012; McGarrell et al., 2000; Morris et al., 1997; Slater, 2009). For example, in some jurisdictions, police officers are the coordinators of the YJ FGC (Zinsstag et al., 2011). In others, like New Zealand, they are legally entitled participants (Cleland & Quince, 2014). Their roles are not necessarily comparable. As such, I only pay attention to selected domestic research on YJ personnel's perceptions in this study.

In New Zealand, section 251(1) of the Oranga Tamariki Act 1989 sets out the YJ personnel entitled to attend the YJ FGC. Key personnel that can be involved in a YJ FGC in New Zealand include, but are not exhaustive of, YJ coordinators¹⁰ (section 251(1)(c)), youth advocates (lawyers) (section 251(1)(g) and YAOs (police) (section 251(1)(e) (Oranga Tamariki Act 1989). Youth justice social workers are also key personnel involved in the YJ FGC (Morris & Maxwell, 1998). However, they are not legally entitled participants of the conference under the Oranga Tamariki Act 1989. Only youth advocates and YJ social workers were interviewed for this study (see Chapter Six). Young people participants in this study were also asked questions about YJ coordinators.

For this thesis, "YJ personnel" refers to YJ social workers, youth advocates and, where applicable, YJ coordinators. I acknowledge that this study only speaks to certain YJ personnel and that there are several other YJ personnel, for example, the police, that can impact young people's ability to participate in their YJ FGC. However, they could not be included in this study because the scope of this study includes only the views of YJ personnel who are legislatively required, by the Oranga Tamariki Act 1989, to ensure young people's participation rights are upheld in the YJ FGC.

⁹ For example, in North America and the UK, YJ FGCs are coordinated and convened by a police officer (Bolitho, 2012; Suzuki & Wood, 2017); in Sydney, NSW, community/volunteer members take on the role of YJ coordinators are contracted outside of the Department of and used on a case-by-case basis (Bolitho, 2012).

¹⁰ Youth justice coordinators are convenors and facilitators of a YJ FGC and have a statutory role in the process (Henwood & Stratford, 2014)

My Positionality

Reflecting on how I ended up here, I realised that my interest in children's participation rights began when I was 12. From the age of 12, I had the privilege of interacting with a child psychologist. This kind human acknowledged my participation as central to our discussions and my voice worthy of being listened to. These experiences were meaningful for me as a child—to feel heard, seen and listened to, especially by an adult. This stayed with me. I pursued a degree in psychology and criminology and focused on anything and everything to do with children. I noticed in the third year of my degree that I gravitated towards criminological and policy papers.

I followed my criminology interests into teaching and a Summer studentship on juvenile (in)justice in Indonesian prisons. I followed my policy interests into a master's degree in policy studies, where I researched parents' perceptions of children's rights in the family home setting. My Summer studentship was my first experience researching legislation and recognising that children's participation rights vary significantly across jurisdictions¹¹. In contrast, my master's research indicated a lack of civics education in New Zealand, particularly about the UNCRC 1989 and children and young people's participation rights. As such, research on children's and young people's participation rights became a professional and personal undertaking.

I felt I had a solid and holistic social sciences and policy understanding of children's rights, but my legal understanding was lacking. After 'umming and ahing', I took a leap of faith and talked to the law school about my options. The following year, I enrolled in a doctorate of law and started my thesis with a YJ expert. Youth justice in New Zealand was not an area I had explored before. I had no understanding or knowledge of the Oranga Tamariki Act 1989 or the policy or legislative changes that preceded it. After reading to become familiar with the topic, I noticed a significant gap in the literature—a lack of both research and up-to-date research worldwide on young people's and YJ personnel's views of young people's participation in YJ FGC settings. I

¹¹ See: Davies and Robson (2016) *Juvenile (in)justice: Children in conflict with the law in Indonesia*.

raised questions as to why this is. I was also curious why the literature seemed to show that even in settings where participation legislation or practice exists, some young people still had their rights to participation hindered, ignored or silenced.

Through more reading and questions and my then supervisor's ideas and passion for YJ, I started a doctorate that focused on young people's and YJ personnel's perceptions of young people's participation rights in the legal setting of the YJ FGC. However, after a year and a half in law school, I changed supervision and schools and ended up back where I began. I kept my topic and pursued the socio-legal and policy understandings of young people's participation rights.

Research Questions

This study has several key research questions, including:

1. What are some young people's experiences of YJ FGCs?
2. What does participation mean to young people?
3. To what extent do young people feel able to participate in YJ FGCs?
4. What are the perceptions of key YJ personnel in respect of young people's participatory rights?
5. In what ways do YJ FGC processes support and hinder young people's participatory rights?
6. In what ways do key YJ personnel support and hinder young people's participatory rights?
7. What legislative, policy and process changes are required to further support or recognise young people's participatory rights?

Rationale For the Research

The family group conference model has been used and adapted to various professional fields, such as care and protection (welfare) and YJ settings worldwide (Barnsdale & Walker, 2007;

Zinsstag et al., 2011). There have been numerous studies in the international and domestic literature that have investigated children and personnel's views of participation in the context of welfare family group conferencing (for example, Bell & Wilson, 2006; Carswell et al., 2013; Connolly, 2006, Devine, 2005; Holland & O'Neill, 2006). However, minimal empirical studies have comprehensively discussed young people's and YJ personnel's perceptions of young people's participation in YJ FGC settings (Creaney, 2020; Daly & Hayes, 2002; Suzuki & Wood, 2017).

From the previous empirical studies that have explicitly addressed young people's participation in YJ FGC settings, there are mixed views of young people's experiences of participation (for example, Commission for Children and Young People, 2021; Hodgson, 2020; Maxwell & Morris, 1993; Maxwell et al., 2004; OCC, 2017b). It can also be seen from the previous empirical research that young people's experiences and perceptions of participation can vary and are context specific. For YJ personnel, very little is known in the New Zealand context about how they facilitate young people to participate or their views about young people's participation in the YJ FGC setting. Since the 2016–2017 legislative changes to young people's participation in YJ processes in New Zealand, no studies have been conducted to understand what young people and YJ personnel think about young people's participation or to understand young people's experiences of participation in this setting.

The rationale for this research is listed below

1. To give young people and YJ personnel a voice in the literature on their perceptions of young people's participation rights in the YJ FGC setting;
2. Most of the research that acknowledges young people's participation rights in New Zealand focuses on the care and protection part of the Oranga Tamariki legislation and does not reflect the perceptions and experiences of young people and key YJ personnel governed by the YJ part of the Oranga Tamariki Act;
3. No New Zealand studies have looked at recent legislative changes to the Oranga Tamariki Act 1989 on young people's legal rights to participate in YJ FGC and on key YJ personnel's legislated responsibilities to ensure these rights are met.

This study will contribute to the gap in the literature by providing new insight into young people's and YJ personnel's perceptions of young people's participation rights in the YJFGC setting. This study will also provide new insight into the effects that the legislative changes to the Oranga Tamariki Act 1989 may be having on practice.

Significance of the Research

This research is significant because it gives young people and YJ personnel a voice about their perceptions and knowledge of young people's participation rights in the YJ FGC setting. The voices of young people and YJ personnel in this study are the first to illuminate areas of practice, law and policy that may enable or act as barriers to the 2016–2017 legislative amendments made to the Oranga Tamariki Act 1989 for young people's participation in YJ FGC setting. This, in turn, can be used to find ways of overcoming barriers to ensure that the participation rights now enshrined in the Oranga Tamariki Act 1989 are facilitated in practice for young people in conflict with the law.

This study is also significant because it has introduced a new model that shows participation and silence as interrelated concepts. The Children and Young Person Silencing Cyclone (CYPSC) indicates that silence is a pervasive construct that can affect young people's experience of participation in the YJ FGC setting. This model and the findings of this study, in turn, contribute to and build on a very small body of literature (for example, Merkel-Holguin et al., 2019; Spyrou, 2016) about children's and young people's silence and their participation. It also contributes to the broader literature on silence (for example, Noelle-Mazzei, 2003; Neumann, 1974) and the literature on children and young people's silence (for example, Hanna, 2021, 2022; Green et al., 2021).

Similarly, this study also builds on the existing literature on young people's experiences of participation (for example, Commission for Children and Young People, 2021; Hodgson, 2020; Maxwell & Kingi, 2001; Trimboli, 2000; Smithson et al., 2020; Wagland et al., 2013). This study also contributes new knowledge to the literature on YJ personnel's views of young people's participation rights in the YJ FGC setting in the New Zealand context. No up-to-date

studies in New Zealand have explicitly addressed youth advocates or YJ social workers' perceptions of young people's participation rights in the YJ FGC setting.

Lastly, this research contributes new knowledge to the field of childhood and youth studies and children's rights, more specifically, young people's agency and participation rights. The findings of this study have the potential to illuminate how policy, legislation and perceptions of YJ personnel over time have acted as and may act as barriers and enablers to young people's participation in the YJ FGC setting.

What This Research Is Not

Many studies that include YJ FGCs focus on participants' perceptions of the YJ FGC outcomes. This study, however, is not concerned with and does not include young people's or YJ personnel's views of the YJ FGC process outcomes because this study is concerned with young people's and YJ personnel's perceptions of young people's participation in this process. As such, this study uses a process evaluation research method to understand young people's and YJ personnel's views of young people's participation in this process.

Structure of the Thesis

There are a further eight chapters included in this thesis. To begin the literature review is divided into the first four chapters:

- **Chapter Two: Youth Justice a Historical Overview** – This chapter begins with a detailed but non-exhaustive discussion on the historical developments of YJ from Western social and legal perspectives over time. It finishes with a context-specific discussion on YJ in New Zealand and legislative changes between 1876–2019.
- **Chapter Three: Setting the Scene: Human Rights and Children's Rights** – This chapter begins with a brief discussion of rights, which is followed by a historical overview of international human rights, children's rights and participation rights in New Zealand domestic legislation.

- **Chapter Four: Theoretical and Conceptual Frameworks** – This chapter presents the theoretical and conceptual frameworks I used in my study. This chapter begins by briefly discussing the theoretical and conceptual framework of childhood studies, with a particular focus on developmentalism and social constructionism. This is followed by a general historical overview of children and childhood, focusing on young people and narrows to a discussion about young people and youth in New Zealand. This chapter finishes with a brief discussion of the SST and some of the literature on silence as it can be applied to young people in conflict with the law.
- **Chapter Five: Previous Research on Young People’s and YJ Personnel’s Perceptions of Young People’s Participation Rights in the YJ FGC Setting** – This chapter is divided into two sections. It begins by discussing the international and domestic literature on young people’s perceptions of their participation rights in YJ FGC settings. This is followed by a discussion of the domestic literature on YJ personnel’s perceptions of young people’s participation rights in this setting.
- **Chapter Six: Methodology and Methods** – This chapter presents the methodological and ethical frameworks that support this research. This chapter begins with a critical discussion of my epistemological position from a social constructionism perspective and is followed by a discussion on process evaluation. This is followed by a discussion of the qualitative methods of semi-structured interviews and documentary analysis that I used to conduct the study and qualitative content analysis, which I used to analyse the data. This chapter finishes with a discussion of the ethics guidelines I followed while undertaking this study.
- **Chapter Seven and Chapter Eight: Findings** – Chapter Seven and Chapter Eight present the findings of this study. Chapter Seven presents the documentary analysis findings under thematic headings drawn from the data. Chapter Eight presents the interview findings from young people and YJ personnel and are presented under thematic headings drawn from their interviews.
- **Chapter Nine: Discussion and Conclusion** – Lastly, Chapter Nine presents a discussion of the findings from this study. This chapter also discusses the practical

implications of the study, its strengths and limitations, and recommendations for future research. This chapter finishes by drawing conclusions relevant to the New Zealand context.

Chapter Two: Youth Justice a Historical Overview

The history of youth justice is a history of conflict, contradictions, ambiguity and compromise. . . . (Muncie & Hughes, 2002, p. 1)

Introduction

This chapter provides a non-exhaustive but detailed overview of the developments of YJ from a Western perspective. It begins with a general historical overview of YJ and finishes with context-specific discussions on the New Zealand legislative changes between 1876–2019.

There is considerable focus on literature from Western jurisdictions, particularly in North America and the United Kingdom (UK). Policy and legislative understandings of children and young people in conflict with the law in New Zealand were primarily influenced by Western notions of justice (Lynch, 2016). These notions rarely included Indigenous interpretations of justice (Lynch, 2016; Morris, 2004; Tauri, 2015).

Pre-Nineteenth-Century: Children and Common Law

Youth justice, in Western discourse, is a relatively new concept that has been shaped and reshaped by social, political, economic, and theoretical shifts (Lynch, 2016; Watt, 2003; Whitehead & Lab, 2015). The historical view and development of YJ in the Western world has coincided with the evolving view of children, young people and childhood. A historical overview of YJ and young people in conflict with the law cannot be fully understood without considering the historical relationship with the evolving ideas of children, young people and childhood (Whitehead & Lab, 2015). Also, the views about children, young people and childhood expressed in this chapter are examples of general societal views that have existed in

Western societies. Not all societies or children and young people everywhere over time would have experienced these views of children, young people and childhood and youth.

Historically, before the 19th century, under common law, children and childhood were not afforded a distinct or protective status within Western societies or criminal justice systems

(Elrod & Ryder, 2020; Whitehead & Lab, 2015). Before the 19th century, common law societies generally viewed children as chattels (property) of their fathers, and their position in society and legal status was derived from their fathers' (Ariès, 1986; Cunningham, 2006).

Children's powerlessness and vulnerability characterised them within society and the family unit (Cunningham, 2006; Lynch, 2016; Pollock, 1983). The legal doctrine of *patria potestas* gave fathers unfettered rights over their children; this also included having the power to mistreat their children for unruly or deviant behaviour without consequence (Lynch, 2016; Pollock, 1983). The justification for this view of children and their control was that children were presumed to have 'no will of their own' and lacked self-determination (Lynch, 2016; Pollock, 1983). In medieval society, it was generally held that, once a child reached the age of 5 or 6, they were seen and treated as mini-adults and expected to undertake the same responsibilities as adults, such as work (Ariès, 1986; Cunningham, 2006; Lynch, 2009). Children were perceived to have few distinctly different needs to adults; they were viewed as economic units whose value was in their economic contribution to the family and community (Clark, 2010b).

The view of children as mini-adults extended to Western criminal justice systems (Whitehead & Lab, 2015). Before the mid to late 19th century, in common law, there was no age distinction between adults and children who offended and very few immunities for children who offended (Mallet & Tedor, 2018; Morris, 2004; Watt, 2013). There was also no distinction made between children who had offended and children who needed care, often due to poverty (Mallet & Tedor, 2018; Whitehead & Lab, 2015). Separate courts for children who offended did not exist (Whitehead & Lab, 2015). Older children who broke the law were seen to be acting of free will and were tried and sanctioned in the same way as adults (Lynch, 2009; Morris, 2004; Watt, 2003). Platt (1969) wrote that because children were not afforded a special status in society, there was no need for a separate court system to deal with children who had offended.

The principle of *doli incapax*, in English Common Law, was the first and only acknowledgement of childhood as a distinct period of life during this time (Blackstone, 1809). This principle held that those less than seven could not form mens rea (criminal intent); those aged seven to 14 years were presumptively incapable of forming mens rea – but this could be refuted if it could be proved that a child knew what they did was wrong, and those aged 14 and above were given the same legal sanctions as an adult (Blackstone, 1809; Lynch, 2016). Children 14 years and above were subject to harsh punishments such as imprisonment, capital punishment and corporal punishment (Lynch, 2016; Platt, 2009). The dominant discourse of classical criminology did not acknowledge the different capacities of children compared to adults. It held that all criminal behaviour was a rational choice by individuals and that deterrence was a necessary justification for harsh sanctions (Lynch, 2009).

Nineteenth-Century: The Child-Saving Movement

The 19th century saw a shift in how crime and children were recognised in Western societies and law (Cunningham, 2006; Doolan, 2008). Children and women started to lose their status as chattels of their fathers and husbands and were seen as dependent beings (Cunningham, 2006; Doolan, 2008; Harris & Webb, 1987). The industrial revolution brought about changes to the traditional way of family life and work settings (Cunningham, 2006). Many families moved from the countryside into cities for work in factories (Cunningham, 2006). However, factory work was dangerous, especially for children (Cunningham, 2006).

In Western nations, there was an early recognition of the dangerous working conditions for children (Cunningham, 2006). The Factory Act 1833¹², for example, in the UK, was introduced and led to children losing their economic capabilities. Similar legislative restrictions were placed on children in other Western nations, such as the US, Australia, and New Zealand (Cunningham, 2006; Whitehead & Lab, 2015). This contributed to the perpetual issue of

¹² Under this legislation children under nine years of age were unemployable; children between the ages of nine and thirteen years could work a maximum of nine hours a day, and children between the age of 13 and 18 years could work a maximum of 12 hours a day (Cunningham, 2006).

poverty. It made poor children more visible as many spent their time roaming city centres and the public labelled street children as a threat to social order (Cunningham, 2006; 2021; Muncie, 2009; Whitehead & Lab, 2015).

Legal doctrines such as *parens patriae* were used to contain poor and street children, particularly in the US (Mallet & Tedor, 2018). This legal doctrine gave States powers to intervene in parents' control and discipline of children. It also gave impetus to the idea of housing neglected and criminal children in separate facilities to adults, where their unsavoury or deviant behaviour could be reformed¹³ (Mallet & Tedor, 2018). In the US, the houses of refuge were established as facilities to house unsavoury and deviant children, with the first facility opened in 1825 in New York (Krisberg, 2005). These houses of refuge were modelled on the Bridewell Institution in London¹⁴ and sought to educate and reform children labelled a threat to social order (Krisberg, 2005; Whitehead & Lab, 2015). Central to these institutions was the idea that by removing children from unsavoury settings, they would be removed from bad influences (Krisberg, 2005; Mallet & Tedor, 2005). Similar systems were also established in England, Wales, and New Zealand (Mallet & Tedor, 2018; Morris, 2004). However, these reformatories and industrial schools were primarily run by churches and targeted morality, work, and education rather than children's criminal offending (Cunningham, 2006; Morris & Giller, 1987). By the mid-19th century, many of these institutions were seen to be failing in their original intentions and were labelled punitive and oppressive (Hawes, 1971). This gave the impetus to the child-saving movement (Krisberg, 2005; Mallet & Tedor, 2018). In the US, for example, the Chicago Woman's Club campaigned to raise awareness of child welfare issues and provided support for Youth Court legislation (Mallet & Tedor, 2018). There was a view that if children were not saved, "[e]very child allowed to grow up in ignorance and vice, and so to become a pauper or criminal, is liable to become in turn the progenitor of generations of criminals" (Platt, 1977, p. 130). The view of children as needing protection because of their "powerlessness and

¹³ During the 19th century, there was also a shift in criminological thinking, from classical criminology to positivist criminology (Garland, 1988). Positivist criminology viewed criminal behaviour as an outcome of personal attributes and environmental influences, rather than purely a rationale choice (Garland, 1988).

¹⁴ These institutions were designed, in London, to house deviant children for correction purposes.

vulnerability” came to the fore. Children were presumed to need guidance and protection to become ‘good’ adults (Harris & Webb, 1987). The child-saving movement gave impetus for the first Youth Court to be established (Mallet & Tedor, 2018). It is a point of contention in the literature as to where and when the first court was established. Watt (2003, p. 2) wrote

While many claim Illinois founded the first juvenile court in 1899, the State Children's Act in South Australia established one in 1895. Other countries were swift to follow suit – England and Canada in 1908, France and Belgium in 1912 ... New Zealand formally established a separate youth court in 1925.

The Youth Court was designed as a mechanism to save children. The idea of the court was to act in *loco parentis* (in place of the parents) and to provide services to reform children (Mallet & Tedor, 2018). This often included the supervision of children via a probation officer to ensure that the “best interests” of their welfare could be met (Mallet & Tedor, 2018).

Twentieth Century: The Welfare Approach to Child Offending

The establishment of the Children/Youth Courts in Western legal settings introduced a new paradigm, the welfare model of justice (Muncie, 2004; 2009). This model viewed poor children and children who committed crime as “uniquely vulnerable”; victims of their environment and “unsavoury” upbringings (Lynch, 2016; Muncie, 2004; 2009) Watt, 2003; Whitehead & Lab, 2015). The court’s purpose was to help and rehabilitate rather than to punish children (Whitehead & Lab, 2015). The legal acknowledgement of delinquency contributed to a change in how children in conflict with the law were viewed (Mallet & Tedor, 2018; Platt, 2009).

Legislation for delinquency acknowledged children in conflict with the law as vulnerable and allowed for legislative powers to intervene in the lives of children and families (Platt, 2009). In the US, court intervention and state paternalism, via the legal principle of *parens patriae*, was heavily endorsed, with courts citing “best interests” to “treat” and “cure” (Mallet & Tedor, 2018; Watt, 2003). As stated by Chicago Youth Court Judge Mack in 1909:

Most of the children who come before the court are, naturally, the children of the poor. In many cases the parents are foreigners, frequently unable to speak English, and without an understanding of American methods and views. What they need, more than anything else, is kindly assistance; and the aim of the court in appointing a probation officer for the child, is to have the child and parents feel, not so much the power, as the friendly interest of the state; to show them that the object of the court is to help them to train the child right ... (Mack, 1909, pp. 116–17)

In the years that followed, the UK, Canada¹⁵, Australia and New Zealand¹⁶ established welfare approaches to justice and courts for children. These courts were seen to take less of the welfare model approach, seen in the US (Bala & Roberts, 2006; Watt, 2003). The courts established to deal with children in England and Scotland in 1908 were termed ‘modified criminal courts’ (Faust & Brantingham, 1979). It took some Western jurisdictions many years to fully embrace the welfare model of justice. In New Zealand, the welfare model of justice came in the mid-1920s and, in the UK, in the late 1960s (Watt, 2003).

The welfare model of justice was seen as an improvement but also problematic (Maxwell & Morris, 1993; Watt, 2003). It gave courts paternalistic and almost unfettered rights over what happened to children (Minow, 1995). Legal rights such as the right to due process and access to legal counsel were ignored in favour of the discretion of judges who justified their, at times, arbitrary approaches in the name of “best interests” (Maxwell & Morris, 1993; Morris, 2004; Whitehead & Lab, 2015). The courts were also criticised for being intrusive in children’s lives (Watt, 2003; Whitehead & Lab, 2015).

In Re Gault

Issues surrounding the lack of due process, often experienced by children in conflict with the law, appeared in the mid-1960s in the case of *In re Gault* 387 U. S. 1, (1967). Under the welfare model of justice, children in the US who were accused of committing a crime could be placed into residential institutions without having due process (Mallet & Tedor, 2018; Whitehead & Lab, 2015). In the landmark case of *In re Gault*, Gerald Gault, a 15-year-old boy, was arrested

¹⁵Before 1908, Canada had no laws specifically applying to children in conflict with the law. In 1857 the Establishing Prisons for Young Offenders Acts was passed to enable children to be housed in separate prisons to adults (Bala & Roberts, 2006).

¹⁶Nordic countries also established a ‘welfare’ system in the early 20th century for children in conflict with the law. However, their systems differed, and continue to differ, to that established by the UK, North America, Australia and New Zealand (see Lappi-Seppälä (2011), for a greater discussion).

and accused of making an obscene phone call. The police informed neither of his parents of his arrest or charges, and he had not been entitled to any legal representation until after he had appeared in court (United States Courts, n. d.). Additionally, he was not allowed to confront the witness in court, and no transcript of his hearing was made (United States Courts, n. d.).

Following his court appearance, he was placed into a boys home for juvenile detention for six years (United States Courts, n.d.). Gerald's parents applied to the Supreme Court to hear their case after having two writs of habeas corpus dismissed (United States Courts, n.d.).

Following the hearing, the United States Supreme Court ruled, in part, that children are legally entitled to due process, the same protections as adults, when in conflict with the law; and that children, like adults, are persons under the Constitution of the United States (Minow, 1995; United States Courts, n.d.). This landmark case helped to situate the welfare model of justice as an 'inconsistent and unpredictable' process (Lynch, 2009). Many Western nations overhauled their approaches to YJ, including New Zealand (Doob & Tonry, 2004).

The New Zealand Context: From Welfare to Justice

New Zealand's legal treatment of children followed historical and international views, particularly those used in the UK (Morris, 2004; Watt, 2003). The Neglected and Criminal Children Act 1867 acknowledged that there was a difference between criminal children and neglected children (Morris, 2004). The purpose of this Act was to establish separate facilities for children in conflict with the law (reformatories) and children in need of care (industrial schools) (Watt, 2003). The attitude of the time was that children needed to be protected from themselves, and coercive action through 'treatment' in institutions could be used (Lynch, 2016). However, only industrial schools were built (Morris, 2004). This led to criminal and neglected children being held in the same facilities (Morris, 2004).

The Juvenile Offenders Act 1906 was the next significant legislative change for children in conflict with the law (Morris, 2004). In a period of significant social and political changes, the view of children as a public concern rather than a private concern started to appear (Morris, 2004). Like the Juvenile Delinquents Act 1908 (CA) and the Children Act 1908 (UK), the

Juvenile Offenders Act 1906 set out to distinguish child offenders from adult offenders (Watt, 2003). It established separate hearing sessions for children and set out the procedures that formalised magistrates' duties towards children (Morris, 2004; Watt, 2003). By the early 1920s, the Act's intentions were unfulfilled, doing little more than formalising the processes for children that had already been used by the courts (Lynch, 2016; Morris, 2004).

The Child Welfare Act 1925

The Child Welfare Act 1925 entrenched the welfare model in New Zealand legislation for nearly 50 years (Doolan, 2008; Lynch, 2016). The Act's objective was heavily welfare-based, with special provisions for children in conflict with the law to achieve this (Morris, 2004).

During the late 19th and early 20th century there were significant shifts in theoretical and social views about children. Prominent psychologists of the early 1900s, such as Sigmund Freud and Carl Jung, developed theories on child development and personality that led to new conceptions of how children in conflict with the law should be viewed (Doolan, 2008; Morris, 2004). The philosophy behind the Child Welfare Act was that with state intervention, criminal children could be re-classified as children in need of care (Lynch, 2016; Morris, 2004). This approach was similar to policies and laws that had been adopted in the US (Seymour, 1976).

This Act established a Child Welfare Branch as part of the Department of Education (Morris, 2004; Seymour, 1976). A separate Children's Court was to appoint magistrates with the experience and personality to work with children and young people (Lynch, 2016; Morris, 2004). In practice, as in the 1906 Act, there was little effect on the court. Many children's cases were not heard in the Children's Court. Only a few magistrates were appointed who had specific knowledge of children (Morris, 2004). The Children's Courts were criticised as simply modified adult courts (Seymour, 1976).

Following WWII, there was another shift socially and economically (Morris, 2004). New Zealand experienced mass migration from rural areas to the city centres, particularly by Māori. There was also a rise in concern about juvenile and moral delinquency, which mirrored a rise in

prosecutions against children (Doolan, 2008; Morris, 2004). Several amendments¹⁷ were made to the Child Welfare Act to counter the welfare model's harsh effects (Lynch, 2016). This Act was criticised for providing few safeguards for children in conflict with the law (Doolan, 2008; Lynch, 2016). The Act enabled the dismissal of due process rights and supported invasive powers under the guise of "best interests" into children's lives (Lynch, 2016; Morris, 2004). Many of the decisions made by the Children's Court led to the alienation of children from their families (Doolan, 2008; Morris, 2004). Particularly, many Māori children were removed from their whānau/family and placed into institutions, often for an indeterminate amount of time (Doolan, 2008; Morris, 2004). Māori, in the mid to late 1960s, had begun to argue that they were better able to deal with their tamariki (children) in conflict with the law (Morris, 2004). However, there were no resources provided to Māori by the government at the time to do this (Morris, 2004).

The late 1960s saw growing dissatisfaction with the Act by communities and practitioners working with children (Morris, 2004; Seymour, 1976). In 1973, Hon. Norman King, the Minister for Social Welfare, introduced to New Zealand Parliament the Children and Young Persons Bill (Seymour, 1976). The Children and Young Persons Act 1974 became the successor of the Child Welfare Act 1925. It was seen as "a completely new approach" for children and young people in conflict with the law (Seymour, 1976, p. 45).

Children and Young Persons Act 1974

The welfare model was the cornerstone of twentieth-century YJ statutes in New Zealand (Watt, 2003; Lynch, 2009; Lynch, 2016). Internationally shared criticisms of this model led to a shift towards a more justice-focused approach to offending (Muncie, 2009). The justice model stressed a rights-based approach and was designed to address the deed (offending) rather than the need (circumstance) (Muncie, 2009). The justice model stated that children were entitled to legal safeguards such as equity and protection during due process; should be given sentences for

¹⁷ For example, Section 2 of the Child Welfare Amendment Act 1960 established the first right to appeal against a decision made in the Children's Court.

their offending, not their circumstance; and the courts should return to their role as administrators of justice rather than acting in loco parentis (Muncie, 2009).

The Children and Young Persons Act 1974 was neither purely welfarist nor purely justice-focused; it included both perspectives (Lynch, 2016). The Act was innovative in establishing several ‘firsts’ in New Zealand’s domestic legislation for children and young people. It established the paramountcy principle, which stated that “the interests of the child or young person shall be the first and paramount consideration” (Children and Young Person Act 1974) and made a distinction in law between children (those aged under 14 years) and young people (those aged 14 years, but under 17 years) (Children and Young Persons Act 1974). This legislation also made a distinction between the age of criminal responsibility (10 years old) and the age of prosecution (14 years old) (Morris, 2004).

Under this Act, the Children’s Court was reformed and became the Children and Young Persons Court (Morris, 2004). This court had jurisdiction over young people aged 14 to 16 (Lynch, 2016). Children’s boards were established for those under 14 years (Morris, 2004; Seymour, 1976) (see below). Seymour (1976) wrote that when compared to its predecessor, the establishment of the new court presented little more than a name change. The new court was mostly focused on the welfare perspective of the State as the good parent (Watt, 2003). Changes to the Children’s and Young Persons Act 1974 for young people in conflict with the law did little more than assimilate and clarify existing procedures (Seymour, 1976). Children’s boards were an informal community process comprised of a police officer, a social worker and, when needed, a member from the Department of Māori and Island Affairs (Morris, 2004; Seymour, 1976). Children and young people and their parents could attend the boards meetings, and the boards only had authority when children and young people admitted wrongdoing (Morris, 2004). These boards had limited authority. At most, the boards could take no action, provide a warning, counsel the child, young person or parents, or refer the child or young person to another agency for correction and, as a last resort, recommend court proceedings (Morris, 2004). Board representatives dominated discussions around children and young people. Children, young people and their parents were limited in their contributions (Morris, 2004). The

boards were criticised as ineffective in supporting children, young people and their parents and in diverting children and young people away from the justice system (Morris, 2004).

Within a decade of its inception, the Children and Young Persons Act 1974 faced heavy criticism. The excessive and invasive court intervention in children and young people's lives, and the negating of the roles and responsibilities of whānau/family towards their children and young persons, led to dissatisfaction with the treatment of children and young people; more specifically, young Māori and Pacific peoples (Becroft, 2004; Carruthers, 2012; Doolan, 2008). The Children and Young Persons Act 1974 was criticised as having a monocultural design that was not meeting the needs of young Māori and Pacific peoples and their whānau/family (Hassall, 1996; Jackson, 1988).

These criticisms co-existed with a rise in Māori nationalism and changes in social attitudes away from state responsibility for children and young people towards community and whānau/family responsibility (Morris, 2004). There was also an emergence of international trends towards rights for children¹⁸. The year 1979 marked the 20th anniversary of the 1959 Declaration of the Rights of the Child (Doolan, 2008). This year was flagged by the UN as the "International Year of the Child" (IYC) and was intended to bring to the fore international issues facing children (Doolan, 2008). In 1982, the New Zealand Human Rights Commission found that the department responsible for young people's welfare, including those in conflict with the law, had breached the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of young Māori and young people (Doolan, 2008). This coincided with a growing demand for the Children and Young Persons Act to be revised (Becroft, 2004; Carruthers, 2012; Morris, 2004).

¹⁸ For a greater discussion on children's rights see the next chapter.

The Reform Years and Puao–Te-Ata-Tu

The present system is based wholly on the British system of law and justice, completely ignoring the cultural systems of the Māori and breaking down completely that system, completely alienating Māori, leaving them in a simple state of confusion and at the whim of the existing system. (Review of the Children and Young Persons Bill, 1987, p. 82)

Between 1984 and 1989, the Department of Social Welfare convened two departmental working parties to reform the Act¹⁹. The first working party²⁰, in their 1984 discussion paper, rejected the philosophies of the welfare model and moved towards creating two distinct judicial proceedings: Welfare-orientated care and protection proceedings to be held in the Family Court and a separate Youth Division of the District Court for young offenders (Watt, 2003). The Youth Division was designed to address accountability and to prevent unnecessary institutionalisation of children and young people in conflict with the law (Watt, 2003). The first working party wrote that by having the Youth Division as part of the District Court, young people's due process and legal rights could be better protected (Watt, 2003). The first working party also recommended that the arresting powers of police for young people be minimised to ensure that the court process became the last resort (Morris, 2004; Watt, 2003).

Following the recommendations from the first working party discussion paper, the Children and Young Persons Bill was introduced to Parliament in 1986. There were numerous objections by the public during the submission stage of the Bill (Morris, 2004). The Bill was criticised for perpetuating the monocultural system of law and for not referring to the Puao-Te-Ata-Tu (Daybreak) report (Morris, 2004; Watt, 2003). Puao-Te-Ata-Tu (Daybreak) was published in 1986 by the Ministerial Advisory Committee on a Māori Perspective for the Department of Social Work (Morris, 2004; Watt, 2003). It was based on extensive consultations with Māori²¹

¹⁹There were over 900 submissions and two government working parties over a four-year period to introduce the 1989 Children, Young Persons and Their Families Act.

²⁰A working party is a committee or group of people appointed by the government department to undertake a review into a specific issue.

²¹ In Māori culture, whānau/family shared responsibility for offending by their young person, as well as reparations and restorations made to the victim (Jackson, 1988). Tikanga o nga hara "the law of wrongdoing," was based on the understanding that redressing offending was a collective responsibility shared by the victim, the victim's whānau/family and the offender and their whānau/family. Māori did not see offending as a crime against the state but as an imbalance in the social and whānau/family environment.

(Morris, 2004). The report found that the intervention of the state and exclusion of whānau/family in dealing with young Māori had led to the disempowerment and alienation of whānau/family, especially from the decision-making processes surrounding their young person (Puao-te-ata-tu, Ministerial Advisory Committee, 1988). The report also found that there was inherent racism within the social structures of the justice system. Young Māori were disproportionately appearing in the Children and Young Person Court and disproportionately handed custodial sentences (Ministerial Advisory Committee, 1988; Morris & Young, 1987). This was supported by claims made in a similar report for the Department of Justice in the same period (Jackson, 1988). This report advocated for a separate and autonomous system of justice for Māori, in which Māori could be part of the decision-making processes surrounding Māori offending (Jackson, 1988).

In 1987, under a re-elected Labour government, a second working party was commissioned by the Department of Social Welfare (Lynch, 2016; Watt, 2003). The second working party, in their report recommendations, acknowledged that there were numerous concerns to overcome from the Children and Young Persons Bill. Particularly, the second working party addressed criticisms around the jurisdiction of the District Court, over the Youth Court, and diversionary processes used for young people (Watt, 2003). The second working party recommended keeping welfare and youth offending cases in a separate jurisdiction. They advocated that the legislation include a Youth Court as a division of the Family Court to avoid negative stigma associated with the District Court (Watt, 2003). In response to the lack of diversionary processes, the second working party suggested the establishment of 'Family Advisory Panels' (Watt, 2003).

The report from the second working party went to the Parliamentary Select Committee considering the CYPF Bill in 1987. The Parliamentary Select Committee took 18 months to redraft the 1986 Bill. During this process, the committee consulted the influential report by Mike Doolan, the then National Director of Youth and Employment for the Department of Social Welfare (Watt, 2003). His report recommended that the proposed notion of having a Youth Court as an arm of the District Court, and a separate Family Court for welfare concerns,

should be maintained to avoid the recurring theme of blurring welfare and justice processes (Doolan, 1988). His report proposed the appointment of a Principal Youth Court judge to oversee the development of the Youth Court (Doolan, 1988). Doolan (1988) also recommended using a statutory process, the family group conference, rather than Family Advisory Panels as a means of diversion (Doolan, 1988). The process was suggested to empower whānau/family in decision-making around their children's and young person's offending (Lynch, 2016). The YJ FGC was proposed as a means to resolve conflict without prosecution. It included the young offender, their whānau/family, the victim and their whānau/family and was convened by professionals (Doolan, 1988). It was proposed that a Youth Court judge oversee the conference's outcome.

The YJ FGC was designed to reflect Indigenous notions of justice and was seen as a potentially useful diversionary process that could empower whānau/family while reducing the state's powers (Watt, 2003). In 1989, the Bill was reintroduced into the House of Representatives and included dramatic changes to the YJ system. On November 1, 1989 the Children, Young Persons, and Their Families Act 1989 (CYPFs Act) came into force.

Children, Young Persons and Their Families Act 1989

The CYPFs Act was called a lynchpin and revolutionary at its inception (Carruthers, 2012; Maxwell & Morris, 2006; Watt, 2003). The CYPF Act was a lengthy piece of legislation that offered a new approach to YJ and challenged the traditional philosophies of justice (Carruthers, 2012; Maxwell & Morris, 2006; McElrea, 1993). McElrea (1993, p. 13) wrote, “[t]he new paradigm does not easily fit within the old parameters—liberal/conservative, justice/welfare, punishment/rehabilitation, justice/mercy. It cannot be described in those terms because it requires a new way of thinking, and of doing justice”.

The Act changed how the criminal justice system viewed children and young people in conflict with the law (Carruthers, 2012). The CYPF Act provided clear, practical, and legislative distinctions between children and young people in need of care and protection and those in need of a justice response (Cleland & Quince, 2014; McElrea, 1993). Section 208(b) outlined the principle that criminal proceedings were not to be taken against a child or young person when

the objective was their welfare (McElrea, 1994). Part II of the CYPF Act sets out the principles and objectives for children and young people in need of care and protection; Part IV sets out the principles and objectives for young people in need of a justice response. The YJ principles were based on the justice model and held that young people needed to be accountable for their offending and treated fairly (CYPFS Act 1989, s 4 (f); Wilson, 2011).

The CYPF Act also provided separate family group conference processes for both settings (Henwood & Stratford, 2014; Lynch, 2016). It stressed the well-being and empowerment of young people and their whānau/family and was vital in making practical attempts to address the participation of all involved in the offending through the YJ FGC process (Maxwell & Morris, 2006; Watt, 2003). The Act confirmed the jurisdiction of the Youth Court to deal with young people from the age of 14 to 17 years who were alleged to have committed a crime. It also established the YJ FGC, rather than the Youth Court, as the decision-making forum for young people charged with serious offences (Cleland & Quince, 2014; Henwood & Stratford, 2014).

The YJ FGC was created as a decision-making procedure that takes the responsibility of deciding the best course of action in response to the young person's offending, from the courts to the young person, whānau/family, community, and the victim (Lynch, 2016). The purpose of a YJ FGC is to address the causes and the consequences of the crime(s) committed by the young person. It acknowledges the important role(s) that whānau/family, the community, and victim(s) play in helping the young person take responsibility for their crimes and to prevent future re-offending (Cleland & Quince, 2014; Henwood & Stratford, 2014; Lynch, 2016). Particularly, victims were given a voice and a role in the process of helping the young person take responsibility for their offending (McElrea, 1993). This gave victims a sense of power that had not been seen in previous legislation (McElrea, 1993).

Under the CYPFs Act 1989, young people in conflict with the law, the victim and their whānau/family and supporters are placed at the centre of the YJ FGC decision-making process (Henwood & Stratford, 2014). They are encouraged to be involved in creating a plan that seeks to hold the young offender accountable for their crimes, reduce the likelihood of re-offending, and help to repair the harm caused to the victim (Henwood & Stratford, 2014). This plan can

include but is not exhaustive of, outcomes like: “work for the victim or community service” (Lynch, 2016, p. 153). Once finalised by attendees, this plan must then be agreed to by a Youth Court judge and monitored by the Youth Court (Henwood & Stratford, 2014; Lynch, 2016;).

The underlying intention of the YJ FGC provisions within this Act was to limit State powers in dealing with offending by empowering families, returning to them their autonomy and responsibility within a legal framework, to resolve their young person’s offending (Maxwell & Morris, 2006). This method of dispute resolution represented aspects of restorative justice/Māori dispute resolution and had a clear goal to improve a system that had failed Māori (Cleland & Quince, 2014). This represented the first legislated shift towards a restorative justice approach to youth offending (Maxwell & Morris, 2006). It provided a framework in which restorative practices could be applied in theory and action and developed over time (Cleland & Quince, 2014).

Parallels between the CYPFs Act and restorative justice are often made (McElrea, 1994). However, the phrase “restorative justice” was not used during the debates on the CYPFs Act (Cleland & Quince, 2014). Restorative justice, as a theory, did not exist until 1990 (Zehr, 1990). Since its introduction, there have been ongoing debates around how “restorative” and culturally appropriate the YJ objectives and principles are (Maxwell & Morris, 2006; Tauri, 2017). The CYPFs Act was seen as a Western model of justice that attempted to establish a culturally appropriate system (Maxwell & Morris, 2006).

The objectives of the CYPFs Act reflected contemporary trends and addressed issues such as the separation of welfare and justice processes, the importance of diversion, empowering victims, strengthening families and offering culturally appropriate law (Carruthers, 2012; Maxwell & Morris, 2006; Watt, 2008). However, “[t]he use of one piece of legislation for these different spheres means a complex set of principles that have inherent tensions” (Lynch, 2016, p. 28). Lynch (2016) wrote that there were questions to be asked about how the rights of young offenders could be balanced with the interests of victims and how the needs of young offenders could be met while ensuring their accountability for their crimes.

Children, Young Persons and Their Families Act 1989: 1989 to 2010

Youth justice can all too easily become a societal and political football. Youth justice is also a victim of fashion in that the pendulum swings from “get tough” to “welfare” approaches over time - often in response to a particular crime being highlighted in the media. Shocking crimes by children may lead to calls for the legal system to get tough on young offenders and knee-jerk responses are likely to be inevitable. (Becroft, 2006)

Between 1989 and 2010, the CYPFs Act had legislative stability, incurring only minor amendments (Cleland & Quince, 2014). However, the implementation of the Act through the Department of Social Welfare received some early criticism. In 1992, a report into the operations of the Act, though generally favourable, cautioned viewing the CYPFs Act as an exercise in cost-cutting (Mason & Department of Social Welfare, 1992). It noted that a decrease in budgetary spending led to understaffing, crisis management and a lack of funding to meet the needs and demands of the CYPFs Act across care and protection and YJ (Mason & Department of Social Welfare, 1992). Maxwell and Morris’s (1993) study also alluded to a lack of funding and resources within the department by stating that programmes to help young people through diversion and rehabilitation were often not accessible or available.

In 2000, a Ministerial Review of Child, Youth and Family (CYFs)²² by Principal Youth Court Judge Mick Brown found that there was an urgent need for change within the department of CYF. He also noted the “extreme pressure” experienced by the department (M. J. A. Brown, 2000). In 2003, another review of CYFs by the Treasury, Ministry of Social Development (MSD) and CYFs found “deep and systematic problems” within CYFs (Dyson, 2003). The report recommended a complete overhaul of the department (Dyson, 2003). Between 1989 and 2015, CYFs had numerous reviews, and between 1998 and 2008, the department underwent 14 restructures (MSD, 2015). The department was noted as using crisis management responses that led to instability (Devaney, 2017). It faced the same structural issues for many years, which led to a policy and legislative overhaul between 2011 and 2017.

A change in government in late 2008 led to the first significant amendments to the Act since its inception (Lynch, 2016). As part of the government’s “First 100 Days” programme, The

²² Formerly, titled the New Zealand Children and Young Person Service under the Department of Social Welfare.

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

Amendment Bill was introduced to parliament on February 18, 2009 and gained Royal Assent on March 3, 2010 (Lynch, 2016). The purpose of this Bill was to “strengthen the response to seriously offending children and young people” (Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill 2009). The Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 1989 brought children aged 12 to 13 years who are serious or repeat offenders into the Youth Court’s jurisdiction. It broadened the court’s scope of powers through new orders of parenting and education, drug and alcohol treatment, rehabilitation, and mentoring (Lynch, 2016). There were, however, criticisms of these reforms (Lynch, 2016). The primary justifications for the amendments to the law were from an unfounded view that child offending was out of control and that the Family Court did not have the legislative powers to deal with serious offending by children (Lynch, 2016). There was no evidence that youth offending had changed in this age group or that the jurisdiction of the Youth Court needed to change (Wilson, 2011).

During this period, YJ personnel protected the YJ system from what was termed punitive reforms (Lynch, 2016). Police sparingly used their powers to prosecute 12- and 13- year olds. Diversionary procedures were used for most 12- and 13- year olds who came to their notice (Lynch, 2016). The Youth Court used judge-led innovation and its discretionary powers to model an alternative way to respond to the number of young Māori coming through the YJ system (Dickson, 2011). For example, the use of Rangatahi (young people) Courts allowed parts of the YJ FGC to be relocated to a marae (meeting house), and for whānau/family and iwi (tribes) members of that marae to monitor and see through the YJ FGC plan (Lynch, 2016). The use of Rangatahi (young people) Courts was seen as a culturally appropriate alternative for young Māori, following a YJ FGC, using judge-led innovation instead of statutory processes (Lynch, 2016).

From the Children, Young Persons and Their Families Act 1989 to Oranga Tamariki Act 1989

Between 2011 and 2016, there were several government-led inquiries about child welfare and YJ (Lynch, 2016). This period of reforms was referred to as the “vulnerable children reforms” and focused more on the care and protection of children than young people in YJ (Devaney, 2017, p. 29). The MSD released two significant child welfare reports: the Green Paper on Vulnerable Children in 2011 and the White Paper for Vulnerable Children in 2012. These reports were heavily welfare-focused and set out future policy intentions and legislative reforms for reducing the number of at-risk children and young people (Lynch, 2016).

The Youth Crime Action Plan, a 10-year intervention-focused plan, was introduced in 2013 (Ministry of Justice [MoJ], 2013). Its purpose is to prevent young people from offending and re-offending (Lynch, 2016; MoJ, 2013). It focuses on tackling youth offending by partnering with the community, reducing escalation through police-led alternative actions, and providing interventions, such as rehabilitation programmes, to prevent re-offending (MoJ, 2013). The full effects of the action plan are yet to be seen. However, similar crime reduction programmes in a comparable jurisdiction of England and Wales were proven to be mostly ineffective²³ (Maguire, 2004).

In 2015, the MSD commissioned an expert panel to review the practices and processes of the Department of CYF. The expert panel provided recommendations for future structure and systems changes as well as future investments to provide better outcomes for children and young people (MSD, 2016). The expert panel produced 81 recommendations and found that CYF was failing children and young people (MSD, 2016). Particularly, the panel found that Māori young people continued to be over-represented in the YJ system, and re-offending by young people had not been reduced (MoJ, 2013).

Additionally, young people and whānau/family who had experienced YJ FGCs reported a lack of participation in decision-making processes; whānau/family felt alienated from what they

²³ Maguire (2004) explained that administrative, practical, process and funding issues led to the programmes ineffectiveness.

perceived was an overly adversarial process (MSD, 2016). The panel recommended changes to the department's practice and policy structure and legislative framework for YJ. It suggested increasing the jurisdiction of the Youth Court to include young people up to their 18th birthday and to provide consistent mechanisms of support for young people and whānau/family, including community-based options as an alternative to YJ residences (MSD, 2016).

From the expert panel's report and others, such as the Office of the Children's Commissioner [OCC] "State of Care Report" in 2016, CYF and the governing legislation underwent significant changes and amendments between 2016 and 2019. On December 8, 2016 the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill was introduced to Parliament, and on July 13, 2017 the Oranga Tamariki Act 1989/Children's and Young People's Well-being Act 1989 came into force. The department of CYF was replaced by Oranga Tamariki/Ministry for Vulnerable Children on April 1, 2017 (Keddell, 2017).

Oranga Tamariki was created as a standalone ministry and is accountable for ensuring the welfare of children and young people and justice responses (Keddell, 2017). The ministry set out five major areas for transformation: "prevention, intensive intervention, care support, YJ services, and transition support" (Keddell, 2017, p. 11). To achieve adequate support in these areas, Oranga Tamariki also created a five-year systematic plan for transformation. This plan included, but was not exhaustive of, investing in early interventions for children and young people at risk; putting in place services and processes to meet the amendments made to the Oranga Tamariki Act on July 1, 2019; and to form a partnership with Māori that assists, supports and ensures their active participation (Oranga Tamariki, 2017b).

The Oranga Tamariki Act 1989 builds on the existing legislation (OCC, 2017a). Most amendments took effect on July 1, 2019 (Oranga Tamariki Act 1989). Where concerning YJ, section 2(1) amended the jurisdiction of the Youth Court to deal with young people up to their 18th birthday, and section 11(2)(a) requires professionals to ensure that young people are encouraged and given the opportunity to be heard in proceedings where the young person is deemed mature enough to do so. Section 11(2)(b) requires that young people be given reasonable opportunity to express their views on matters that affect them. Lastly, section

5(1)(b)(i) requires any person exercising power under the Oranga Tamariki Act to respect and uphold the rights of young people under the UNCRC and the United Nations Convention on the Rights of Persons with Disabilities. The effects of the amendments to section 2(1), 11(2)(a)(b) and 11(3) of the Oranga Tamariki legislation will be seen throughout this thesis.

Conclusion

This history of YJ is contradictory and confusing, at times. A history of YJ must include a brief discussion of the evolving changes in perceptions of children and childhood. New Zealand's early YJ history and the trends and attitudes of the criminal justice system towards children and young people were heavily influenced by Western social, political and legislative perspectives. The Child Welfare Act 1925, under the welfare model of justice, had legislative stability for nearly half a century and had a significant impact on YJ in New Zealand. The impact of protective and, at times, invasive State intervention in children, young people's and whānau/families' lives is still visible (Abuse in Care Royal Commission of Inquiry, 2020). The Children and Young Persons Act 1974, paved the way for a complete legislative overhaul, particularly with respect to how young people were viewed and treated when in conflict with the law. The CYPFs Act 1989, was considered a lynchpin of its time and incorporated processes that had parallels with restorative justice.

The CYPFs Act 1989, remained relatively stable in legislative terms. However, from 2010 to 2017, there was another shift in policy for the treatment of children and young people. Numerous government reports have documented the failings of the CYPFs Act 1989 in practice. The government department responsible for child welfare and YJ responses had been heavily criticised for failing to meet the needs of both children and young people in New Zealand. This led to the disestablishment of CYFs and the establishment of Oranga Tamariki. At the same time, the governing legislation underwent significant amendments. The Oranga Tamariki Act 1989 came into force on July 1, 2017. The amendments to the YJ section of this Act, specifically section 2(1), 11(2)(a)(b) and 11(3) provide the basis for this study. The next chapter discusses the international framework of rights, human rights and children's rights. It also

discusses New Zealand legislation and its incorporation of children's and young people's participation rights over time for young people in conflict with the law.

Chapter Three: Setting the Scene: Human Rights and Children's Rights

Mankind owes to the child the best that it has to give. (United Nations Declaration of the Rights of the Child, 1924)

Introduction

Rights are a fundamental concept in this study. The idea of rights, and humans possessing them, is not a modern invention. For centuries, moral and legal laws worldwide have recognised the limited powers of States over their citizens and the responsibilities and duties States have towards their citizens (Donnelly, 2013; Freeman, 2002). However, precisely what limits, responsibilities and duties States have over and to their citizens, as codified as “rights”, have been understood and experienced differently in different contexts over time (Donnelly, 2013; Freeman, 2002).

There is a compendium of vast and complex literature on rights. It presents many historical and present, divergent and conflicting, theoretical and conceptual views²⁴ (Donnelly, 2013; Duffel, 2013; Freeman, 2002; Heywood, 2011). It is not within this thesis's scope to report on this literature in detail. However, it is important to acknowledge a broader theoretical and conceptual framework of “rights” from which children's rights emerged. Human rights and children's rights literature is also problematic and conflicting (Freeman, 2007; Te One, 2011). The idea of children and young people as rights-holders is a relatively new idea that has created divisive scholarly debate (Fortin, 2009; Freeman, 2002; Guggenheim, 2005; Te One, 2011).

²⁴ See Donnelly (2013) *Universal Human Rights in Theory and Practice*; Kramer et al. (1998) *A Debate Over Rights*; Steiner (1994) *An Essay on Rights*, and Wacks (2006) *Philosophy of Law*.

Questions about children and young people's agency; their legitimacy as rights-holders; and, what rights, if any, children and young people should have, have led to divergent views throughout the literature (Alderson, 2018; Cowden, 2016; Federle, 2018; Fortin, 2009; Freeman, 2002). For this thesis, I adopt the view that human rights are for all human beings and that regardless of the debates, children and young people are rights-holders because they are human beings.

This chapter begins by briefly discussing the complexities of defining the word "right". It then briefly discusses the theories of rights that have attempted to address whether children and young people can be viewed as legitimate rights-holders, namely choice and interest theory. Following this discussion, a non-exhaustive but detailed overview of international and domestic human rights and children's rights, as it pertains to specific human rights treaties, will also be presented, introducing the UNCRC and the concept of participation in New Zealand legislation.

"Right?" What Does This Word Mean?

The language used to talk about children and young people in law and justice is imbued with the language of rights (Ferguson, 2013). Precisely what a "right" is and how the word "right" is defined is complex (Duffel, 2013; Freeman, 2002). What defines something as a right has existed in both morality (being right) and in law (having a right) (Donnelly, 2013). Donnelly (2013) wrote that there are two different conceptions of the word "right". The first "right" is about morality (rectitude, what ought to happen). In the second case, the word is about entitlement, ownership, duties and obligations (Donnelly, 2013). Freeman (2002) and James and James (2012) have combined the notions. They refer to rights as just claims or entitlements to act or be treated in a certain way. Heywood (2011) refers to human rights as rights that all people have by being human. Because children and young people are human, they are also entitled to rights. The near-universal ratification of the UNCRC accords children and young people positive (legal) rights (Archard, 2018; Buck, 2014a), yet controversy and philosophical debate remain around exactly what moral rights children and young people are entitled to and

whether children and young people can be considered moral rights-holders (Archard, 2018; Cowden, 2016; Eekelaar, 1992; Fortin, 2009; James & James, 2012).

Archard (2018) and Cowden (2016) consider the criticisms in philosophical and political discourse around the idea of children and young people possessing rights. Archard (2018) points out that detractors express concern about ascribing more rights (e.g., children's rights) as just claims and adding to the lists of rights-holders can equally devalue those rights. Cowden (2016) wrote that there is contention as to whether rights in the UNCRC can be translated into meaningful legal rights. Others have pointed to the existing disagreements about the nature of rights (Archard, 2018; Duffel, 2013; Fortin, 2009; James & James, 2012). The debates surrounding the nature of rights can be understood through the competing theories of choice (or will) theory and interest (or welfare) theory (Archard, 2018; McCormick, 1976). The next section briefly discusses these theories and how they justify whether children can be viewed as rights-holders.

Theories of Rights: Choice and Interest Theories

“Choice” theory maintains that to be considered a rights-holder and to exercise rights, a child or young person must have the capacity and capability to choose when and whether to exercise those rights (Archard, 2018; Buck, 2014a; Fortin, 2009; Hollingsworth, 2007). Archard (2018) and Hollingsworth (2007) explain that under this theory, holding rights also includes an individual possessing the power to enforce or waive the duty that correlates to those rights. This view contends that competency and power are prerequisites for being a rights holder. Archard (2018, p. 3) explains choice theory logic as:

- “Rights are protected choices
- Only those capable of exercising choices can be rights-holders
- Children are incapable of exercising choice
- Children are not rights-holders”.

Hollingsworth (2007) contends that some children and young people can be excluded as rights-holders under this theory because of the prerequisite of capabilities. Ferguson (2013); Fortin (2009), and Tobin (2015) further explain that proponents of this theory similarly contend that because children and young people, at specific points in their lives, are unable to exercise choice and can lack the power to enforce or waive the duty that comes with a right, they cannot be viewed as having rights. Buck (2014a) and Fortin (2009) wrote that this is an ‘unattractive logic’. Similarly, Archard (2018) and Tobin (2015) wrote that when rights are contingent on capacity and notions of capability, they are exclusionary to children and young people who are not seen as capable. If possessing rights were based solely on capacity and ability to choose, many children, young people, and adults would have limited rights (for example, the right to freedom of expression) at different stages of their lives.

To remedy this logic, proponents, such as Herbert Hart, conceded that children and young people can be viewed as rights-holders if adults or institutions act as representatives, and exercise choice on behalf of a child or young person, until such a time that they are viewed as competent to make rights-related decisions for themselves (Archard, 2018; Cowden, 2016; MacCormick, 1976). Critics of this alternative question, how and who would be selected as representatives for the child or young person (Archard, 2018; Buck 2014a; MacCormick, 1976); one key question is how do adults entrusted with choosing on behalf of the child or young person know that the choice is what the child or young person would make if they were capable? (Archard, 2018; Cowden, 2016). MacCormick (1976) criticised this concession for having the wrong emphasis. He wrote that this view suggests that another person’s duty to enforce rights must exist before children or young people can be seen as rights-holders. Buck (2014a) and Fortin (2009), on the other hand, questioned the lack of safeguards for children and young people when adults and institutions, acting as representatives, fail in their corresponding duties towards children and young people.

On the other hand, the “interest” theory of rights maintains that possessing rights should be based on whether a child or young person has an interest that requires protection rather than on the competency and capacity of a child or young person to lay claims or waive duties on others

(Archard, 2018; Buck, 2014a; Cowden, 2016; Fortin, 2009; MacCormick, 1984). Hollingsworth (2007) wrote that interest theory, like choice theory, connects rights and duties. They explain that with interest theory, the point of having rights is not whether a child or young person can place a duty on another but whether the interest that requires protection justifies placing duties on another to fulfil those rights (Hollingsworth, 2007).

Unlike choice theory, interest theory states that children and young people can be seen as rights-holders because they have rights-related interests and needs that society recognises require protection (Hollingsworth, 2007). As such, legal and moral normative constraints are placed on others to ensure that children's and young people's interests can be protected. Archard (2018, p. 3) explains that interest theory logic states that:

- “Adults have duties to protect the important interests of children
- Rights and duties are correlative
- Children are rights holders”.

This theory recognises that not all children and young people are capable of exercising choice and places a duty on adults (often a parent(s)) to ensure the fulfilment of those rights on behalf of the child or young person (Archard, 2018; Ferguson, 2013; MacCormick, 1984). Buck (2014a), Federle (2009) and Fortin (2009) point to two limitations of the interest theory in identifying what interests rights should protect and what mechanisms can be used to turn interests into rights. Federle (2009) argued that while rights can be used as an empowering mechanism, using an adult representative to exercise rights on behalf of a child or young person can disempower children and young people. Federle (2009) wrote that the interest theory underscores children and young people's powerlessness and, by way of a representative to exercise rights, promotes the construction of, or perception of children and young people as incompetent. Federle (2009) further states that the interest theory allows adults to argue for the protection of children whilst making choices that may conflict with children's interests and further adults' interests.

In his seminal work, Eekelaar (1986) proposed a list of basic, developmental, and autonomy interests that might be considered moral rights for children and young people. Basic interests

arise out of claims for children's physical, emotional and intellectual well-being; developmental interests arise out of claims in the broader community to ensure children have equal opportunity and access to resources to maximise their potential; and autonomy interests arise out of claims to freedom of choice over their lives without adult interference (Eekelaar, 1986). Eekelaar (1986) wrote that children often lack the information and experience to make decisions that serve their best interests. He suggested that adults could "make some kind of imaginative leap and guess what a child might retrospectively have wanted once it reaches a position of maturity" (Eekelaar, 1986, p. 170). Eekelaar (1986) wrote that if a child's autonomy interests conflict with a basic or developmental interest, the latter should be considered superior. He justified his perspective by stating that adults would unlikely approve of autonomy interests that negate the child or young person's basic or developmental interests in a way that would affect their future adulthood (Eekelaar, 1986; Fortin, 2009). Fortin (2009), however, argued that if this logic was used in practical situations, it could have far-reaching consequences for children and young people, for example, in situations involving decisions around lifesaving medical treatment.

There is yet to be a consensus on which theory of rights applies to children and young people (Cowden, 2016; Fortin, 2009). Fortin (2009) suggests that maybe a solid theoretical justification for the existence of children's moral rights is not as important as just believing that children have rights. However, just believing children have rights will not guarantee those rights to be fully implemented and enjoyed. Instead, for children and young people to be recognised as rights-holders and to have their rights implemented in law, policy and practice, it could be argued that belief entwined with legislative procedures and protections are needed. This chapter now moves to a discussion of international human rights and children's rights frameworks in which rights specific to this study can be found.

Human Rights and Children's Rights

The idea that children and young people possess rights is a relatively new notion. More specifically, the idea that young people in conflict with the law have rights, particularly rights to participation, is contentious (Cleland & Quince, 2014). The rights of young people in YJ

systems globally are embedded within a broad ambit of international human rights documents. Some of the first universal protections for young people in conflict with the law can be found in international human rights documents, whose main emphasis is not on children and young people, such as the Universal Declaration of Human Rights (UDHR) 1948 and the International Covenant on Civil and Political Rights (ICCPR) 1966 (Fortin, 2009). However, these documents lacked provisions for young people to take part and be heard in judicial settings. It was not until the 1980s, and the introduction of the Beijing Rules 1985, explicitly designed for children in conflict with the law, and the UNCRC 1989, that additional human rights for ‘children’ gave way to the idea that children and young people should be seen and heard within judicial settings.

The following section begins with a brief discussion of the human rights documents aforementioned. These documents provide part of the historical foundations for the international legislative view and treatment of young people who come into conflict with the law. Central to this thesis is the participation of young people in discussions around their offending.

Underpinning the concept of participation in New Zealand legislation is the UNCRC 1989.

While it is not within the scope of this thesis to discuss, with detail, all aspects of the UNCRC, it is necessary to provide the historical context for the Convention briefly and to discuss exactly what the UNCRC is. Also, Article 12 of the UNCRC will be discussed in the context of young people’s participation within the YJ system of New Zealand.

Human Rights and the Universal Declaration of Human Rights

Human rights is a broad, contentious and complex concept (Freeman, 2002; Ishay, 2004). There is disagreement on the history and the exact origins of the concept and what can and should be universal human rights (see Clapham, 2007; Donnelly, 2013; Freeman, 2002; Heywood, 2011; Ishay, 2004; O’Byrne, 2013). Donnelly (2013) explains that if, by contemporary definition, human rights mean rights of equality and inalienability, without distinction, for all human beings, then universal human rights are a relatively recent idea. The UDHR 1948 represented the first steps in providing universal international norms for all human beings, including young people.

The UN General Assembly adopted the UDHR in 1948. It is a post-war Declaration that provided for the rights of all human beings. It is non-binding on nation states and used as a framework of minimum standards by which nation states can strive to implement and protect human rights (Freeman, 2002). However, it carries moral and diplomatic force and places robust obligations on nation states to abide by its articles (Heywood, 2011). The UDHR has 30 articles that set out universal human rights and emphasises the universality, indivisibility, interrelatedness and interdependence of these rights (Alston & Goodman, 2013; Donnelly, 1989). Article (1) of the UDHR states that all human beings are equal in dignity and rights. The international community acknowledged that legal protections under this Declaration also applied to ‘children’ (Heintze, 1992; Beuren, 1995). While this Declaration did not exclude ‘children’, it provided limited ‘child’ specific provisions (see Article 25(2)). Article (2) and the clause “without distinction of any kind such as ...”, does not explicitly list age as a parameter. Children are only briefly mentioned in the UDHR from an adult-centric and protectionist view (see Articles 25(2) and 26(3)), and there are no provisions that refer to specific protections for children or young people in conflict with the law.

The International Covenant on Civil and Political Rights (ICCPR)

The ICCPR 1966 provided the first set of legally binding rules and obligations on nation states for children and young people in conflict with the law (Beuren, 2006). The ICCPR 1966 codified rights set out in the UDHR, it was adopted by the UN in 1966 and entered into force in 1976 (Liefwaard, 2016). The Preamble recognises that “all members of the human family”, including children and young people, have these inalienable rights, including rights to due process (ICCPR, 1966). Furthermore, the ICCPR was the first international document to expressly place obligations on nation states to provide separate justice processes for children and young people who came into conflict with the law. Article 10(2)(b) and (3) set out the minimum guarantees for children and young people in conflict with the law (Kilkelly, 2008a). Article 10 2(b) and (3) provide special protections for children and young people from being imprisoned with adult offenders. Part (3) also provides that per the age and legal status of the child and young offender, children and young people should be given appropriate rehabilitation

for their offending. Article 14(4) states that criminal proceedings should consider the child/young person's age and promote the idea of rehabilitation (ICCPR, 1966). In 2007, the Office of the United Nations High Commissioner for Human Rights, under General Comment No. 32, clarified the scope of Article 14(4), stating that:

. . . juveniles need special protection. In criminal proceedings they should, in particular, be informed directly of the charges against them and, if appropriate, through their parents or legal guardians, be provided with appropriate assistance in the preparation and presentation of their defence; be tried as soon as possible in a fair hearing in the presence of legal counsel, other appropriate assistance and their parents or legal guardians, unless it is considered not to be in the best interest of the child, in particular taking into account their age or situation. Detention before and during the trial should be avoided to the extent possible. (Human Rights Committee, 2007)

The New Zealand government signed the ICCPR in 1968 and ratified it in 1978 (McGregor et al., 2015). However, it maintains reservations to Article 10(2)(b) and (3) (MoJ, 2020). It has reserved the position to mix young offenders with adult offenders if there is a shortage of facilities or when mixing youth and adult offenders could benefit the young person (MoJ, 2020).

The ICCPR 1966 has no definition for children and young people, and it does not have any articles that provide participatory rights for young people processing through the criminal justice system. However, the ICCPR is an important watershed in the history of universal legal protections for young people in conflict with the law. It set the tone for young people's legal protections within the international community and human rights instruments (Cleland & Quince, 2014). It recognised that because of the age and vulnerability of young people who come into conflict with the law, they require unique legal protections (Cleland & Quince, 2014).

The Beijing Rules

Complementary to the UDHR 1948 and ICCPR 1966 is the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules") 1985. The Beijing Rules are guidelines and recommendations of good practice for nation states to model minimum standards for YJ systems (Van Bueren, 1995). Liefwaard (2016) wrote that the Beijing Rules was the first child-centred international instrument to provide a set of standards for children and young people in conflict with the law. Noticeably, it was seminal in acknowledging young people's participation in YJ proceedings. Specifically, rule 14.2 states that "[t]he proceedings shall be

conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely”. However, the Beijing Rules, like the UDHR, are non-binding on nation states and referred to as soft law (Van Bueren, 1995). Beuren (2006, p. 364) wrote that “. . . Rather than seeing [the rules] as mainly non-binding per se, states appear to have accepted without comment the application of the rules to the child criminal justice system”.

In New Zealand, some of the Beijing Rules have found expression in YJ processes and governing legislation, the Oranga Tamariki Act 1989. The emphasis on the primacy of diversion from criminal proceedings for young people in conflict with the law (see r. 11 of the Beijing Rules) and that police who work with young people are specially trained (see r. 12.1) are notable. Section 208(a) of the Oranga Tamariki Act 1989 gives legal expression to the primacy of diversion by stating that “. . . unless the public interest requires otherwise, criminal proceedings should not be instituted against a child or young person if there is an alternative means of dealing with the matter”. Section 247 of the Oranga Tamariki Act 1989 provides the YJ FGC as a diversionary process away from criminal proceedings. While the Oranga Tamariki Act 1989 does not give legal expression to provisions for training police who work with young offenders, the New Zealand police have, since the late 1950s, provided a specialised section of police officers known as Youth Aid Officers [YAO] (Cleland & Quince, 2014). Youth Aid Officers are trained to work specifically with young people in conflict with the law (Cleland & Quince, 2014; YouthLaw, 2020).

The UDHR, ICCPR and Beijing Rules set out some specific fundamental principles for protecting some of the rights of young people in conflict with the law. However, these instruments were mostly non-binding on nation states and fell short of providing all necessary legal protections for young people who come into conflict with the law. Specifically, these instruments lack rights provisions that respect, in full, young people’s agency and views on matters that affect them when in conflict with the law. It was not until 1989 and the introduction of the UNCRC that statutory provisions for young people’s participation in conflict with the law came to be.

The United Nations Convention on the Rights of the Child

Foreshadowing the UNCRC 1989 was the children's rights movement that emerged from the disasters of WWI. Following WWI, there was widespread poverty, displacement, and orphaning of children, particularly across Western Europe (Cunningham, 2006). This led to global efforts to protect children from harm (Cunningham, 2006; Doek, 2019; A. B. Smith, 2016). To consolidate these efforts, the Fifth Assembly of the League of Nations adopted the Declaration of the Rights of the Child²⁵ in 1924 (Office of the United Nations High Commissioner for Human Rights [OHCHR], 2007). This Declaration was the first codified children's rights standard that provided a set of moral obligations on children's humanitarian needs and a normative standard for children's treatment (Buck, 2014b; Cowden, 2016; Fortin, 2009). However, as a non-binding Declaration, it was aspirational and considered soft law (A. B. Smith, 2016). It did not place any legal obligations on nation states (OHCHR, 2007). It was absent of children's civil and political rights and did not contain any articles about children's and young people's participation (Krappmann, 2010). Rather than being seen as subjects of rights, children were viewed as passive objects of adult protections (OHCHR, 2007).

In 1946, following WWII, the UN suggested a revision to the 1924 Declaration (OHCHR, 2007), and in 1959 an expanded version, the Declaration on the Rights of the Child, was unanimously adopted by the UN General Assembly (Buck, 2014b; Doek, 2019; Fortin, 2009; OHCHR, 2007). Although limited in scope, Cowden (2016) explains that the Declaration was seen as a more comprehensive document than the 1924 version and the first proper attempt to provide an organised description of children's overriding claims. It embodied 10 universal and guiding principles for children and young people's protection and provision, and second to the UDHR, it recognised childhood as an important period of life (Alston et al., 2005). However, like its predecessor, it had limited status as a Declaration (Cowden, 2016). Similarly, it did not mention any participation rights for children and young people (Krappmann, 2010). Instead, it

²⁵ Eglantyne Jebb, a social reformer and founder of Britain's Save the Children Foundation, had been part of the efforts, pre-dating the League of Nations, to protect children (A. B. Smith, 2016). She developed the Children's Charter for the Save the Children Foundation in 1920 (Veerman, 1992). This document was eventually adopted by the League of Nations as the 1924 Declaration of the Rights of the Child or Geneva Declaration of the Rights of the Child 1924 (A. B. Smith, 2016; Veerman, 1992).

emphasised paternalistic rights and stressed that those in power and with authority held the right to determine what was best for children and young people rather than children and young people themselves (Rogers & Wrightsman, 1978). The unanimous adoption of the 1924 Declaration by the League of Nations and the 1959 Declarations by the UN General Assembly gave both documents moral authority and paved the way for a legally binding children's rights treaty (Buck, 2014b; Cowden, 2016).

To mark the 20th anniversary of the 1959 Declaration of the Rights of the Child, the UN declared 1979 the International Year of the Child (IYC) (Buck, 2014b; OHCHR, 2007).

Cantwell (2011) wrote that the IYC brought to the public's attention issues facing children and young people worldwide, such as children and young people in prison. At the same time, there was a push for a legally binding international children's rights document (Cowden, 2016). The UN General Assembly asked nation states to contribute ideas for bettering all children's well-being (Doek, 2019; Fortin, 2009). The Polish Delegation contributed two draft documents to the OHCHR to turn the 1959 Declaration into a legally binding Convention (Buck, 2014b; Doek, 2019; Fortin, 2009; OHCHR, 2007). The first draft was submitted in 1978²⁶, and the second, a revised draft, was submitted in 1979. In the same year, the OHCHR established an open-ended Working Group comprised of member states represented in the OHCHR to review the revised document²⁷. The Working Group also included Non-Governmental Organisations and other non-state parties, however, they did not have the same status in the working group as the member states.

The Working Group held 11 sessions between 1979 and 1989. They reached consensus on each article through debate and compromise, emphasising that this would promote states' ratification of the Convention (Buck, 2014b; Doek, 2019; A. B. Smith, 2016). This resulted in lengthy

²⁶ The first draft was heavily criticised by other member States. It was viewed as challenging to implement as international law because it used language that was too vague for a legally binding document (Buck, 2014b; Doek, 2019; OHCHR, 2007). This and other criticisms, led to the Polish Delegation submitting a revised version of the document in 1979.

²⁷ The right for a child to express a view on all matters that affect them was first seen in Article 7 of the 1979 draft: "The States Parties to the present Convention shall enable the child who is capable of forming his own views the right to express his opinion in matters concerning his own person, and in particular, marriage, choice of occupation, medical treatment, education and recreation." (OHCHR, 2007, p.75)

debate, with Article (1), the right to life; Article (14), the right for a child to choose their religion; Article (21), the right to adoption, and Article (4), the age at which children can participate in armed conflict, proving particularly controversial (Buck 2014b; Doek, 2019). As a non-voting member, New Zealand contributed to the drafting process by recommending using gender-neutral language and providing provisions for children with disabilities, whilst rejecting provisions for children's employment (McGregor et al., 2015). Following the 10-year drafting period, on November 20, 1989, the UN General Assembly adopted the United Nations Convention on the Rights of the Child and opened it for signature on January 26, 1990. It entered into force on September 2, 1990.

The UNCRC is the most widely ratified Convention in the world²⁸ (A. B. Smith, 2016). It provides an international benchmark for respect for children as human beings (Buck, 2014b; Freeman, 2000; Lansdown, 2001; A. B. Smith, 2016). Unlike its predecessors, the Convention was the first international document to view children and young people as subjects of their own rights rather than passive recipients of adult protections (Committee on the Rights of the Child, 2009; Freeman, 2000; Lansdown, 2001). Equally separating the Convention from its predecessors is its inclusion of some civil and political rights and acknowledging that children and young people are entitled to participation rights (Committee on the Rights of the Child, 2009; Fortin, 2009; Freeman, 2000; Lansdown, 2001; A. B. Smith, 2016).

By codifying children's rights as a UN Convention, it positioned children's rights as "hard law" and placed formal obligations on States to meet its requirements (A. B. Smith, 2016). The UNCRC establishes the relationship between the State, children, and young people, with the State bearing responsibilities and duties to uphold all their rights (A. B. Smith, 2016). The UN Committee on the Rights of the Child was established to monitor the progress States make in implementing the UNCRC into their laws, policy and practice. States that have ratified the Convention provide periodic reports to the Committee, the first two years after ratification of

²⁸ The US is the only nation state that has not ratified the Convention. However, it signed the UNCRC in 1995, and has ratified its two optional protocols; the lack of ratification of the UNCRC in its entirety is symbolic of the historical legacy of the US opposing ratification of human rights documents (A. B. Smith, 2016). The major concern to ratification is fear that it would impede parents' rights and that international law could take the place of both federal and state law (Buck, 2014b; A. B. Smith, 2016).

the Convention and then once every five years after that (A. B. Smith, 2016). In response, the Committee provides States with Concluding Observations to inform them of their progress. To date, New Zealand has provided six periodic reports.

The Convention is wide-ranging and includes 54 articles on all children and young people's civil, political, economic, cultural, and social rights (Buck, 2014b; A. B. Smith, 2016). Morrow (2011) and A. B. Smith (2016) wrote that the articles of the Convention can be divided into three main categories of 'protection' (to be free from discrimination, abuse, neglect, and exploitation): 'provision' (to have access to essential services and resources) and, most controversially, 'participation' (to recognise children as active agents in their own lives and respecting their views)²⁹. Four of the articles also have the status of general principles that "express basic values about the treatment of children..." (A. B. Smith, 2016, p. 10) and must be taken into account when interpreting all other rights in the Convention. These are:

- Article (2) expresses the notion of universality and non-discrimination in that all rights enshrined within the Convention apply to all children on the basis of no discrimination.
- Article (3) expresses that "the best interests of the child shall be a primary consideration" (UNCRC, 1989).³⁰
- Article (6) expresses that all children have the right to life, survival and development.
- Article (12) expresses that all children have the right to freely express their views on matters that affect them and that adults take children's views seriously in accordance with their age and maturity.

Central to this thesis is a discussion around young people's participation within the YJ system of New Zealand. Underpinning the concept of participation in New Zealand domestic law is the

²⁹ I have chosen to use the three P's approach. However, it is important to acknowledge that there are some criticisms in the literature of using the three P's approach to categorising children's rights. For example, Quennerstedt (2010, p. 619) argues that "this conceptualisation has hampering effects on examinations and discussions in research in children's rights", particularly because it is problematic for how it frames research of children's rights.

³⁰ The relationship between Article 3 and Article 12 can be seen throughout this thesis. It is important to recognise that the best interests of a young person cannot be fully known if young people are not asked what they think.

UNCRC, more specifically, Article 12. The following section will discuss Article 12 focusing on its application for young people when in conflict with the law.

Article 12

When introduced in 1989, Article 12 presented a revolutionary concept (Lansdown, 2011; Lundy, 2007; A. B. Smith, 2016). It was the first article of an international human rights document to explicitly acknowledge children's and young people's autonomy and their views as important (Freeman, 1996). It challenged children's and young people's long-held status as incomplete human beings (Krappmann, 2010), once thought of as objects of adults' concerns and decisions who should be seen and not heard (Lansdown, 2001, 2011; Lundy et al., 2019; Tisdall, 2016, Tobin, 2012). Article 12 recognises that children and young people are not necessarily incompetent, entirely reliant on adults or voiceless (Lansdown, 2011; Lopatka, 1996). Article 12 imposes duties on others to ensure children can freely express their views. However, it also recognises that children and young people have agency and can determine whether they exercise this right. In 2009, the UN Committee on the Rights of the Child adopted General Comment No. 12³¹ on the right of the child to be heard. This General Comment elaborates the meaning and interpretation of Article 12 and has provided much-needed guidance for its interpretation and implementation. Article 12 states that:

1. State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the children, either directly or through a representative or appropriate body, in a manner consistent with the procedural rules of law.

Paragraph (1), implicitly says that children and young people have a stake in matters that affect their lives (Lansdown, 2011). It acknowledges that their views are important and that children and young people have a right to express a view on matters that affect their lives, and have

³¹ Where concerning young people in conflict with the law, General Comment No. 24 (2019) on children's rights in YJ is also useful to understanding the implementation of Article 12 in the YJ sphere.

adults take those views seriously with consideration for the child or young person's evolving capacity, age, and maturity (Fortin, 2009; Lansdown, 2011; OCC, 2019).

Paragraph (2) outlines States obligations to extend the right to be heard to children and young people in conflict with the law in judicial settings, including that of formalised decision-making processes, such as the YJ FGC (Committee on the Rights of the Child, 2009; Lansdown, 2011; Lundy et al., 2019). It also expressly states the ways in which children and young people can be heard in judicial settings (for example through a representative), consistent with the State's procedural rules of law. "In a manner consistent with the procedural rules of national law" (UNCRC, 1989) is a contentious phrase of the UNCRC. The UN Committee on the Rights of the Child (2009) has stressed that this phrase does not imply that States can derogate from their obligations to ensure Article 12 is fulfilled in its entirety in practice and legislation. Instead, domestic legislation and practice should enable young people to enjoy this right in judicial settings effectively.

However, children and young people globally, including young people in conflict with the law, often have their rights to participate ignored or not fully realised in domestic legislation and YJ practice (Kilkelly, 2008b; Lansdown, 2011; OCC, 2017b). Lansdown (2011) explains that underlying negative attitudes towards children and young people, such as a view that they lack the capacity to make informed decisions, and economic demands on governments to implement policy, practice and legislative change, have contributed to the hindering of the full realisation of Article 12. Allen (2002), Cleland and Quince (2014), and Trivasse (2017) explain that long-standing negative views held by society of young people in conflict with the law can negatively affect legislative reform and policy targeting young people's participation within YJ systems. More broadly, it could also be argued that part of the problem is that critical interpretive issues can still affect the understanding and implementation of Article 12 (Lundy et al., 2019). For example, expressions such as "capable of forming his or her own view" and "given due weight in accordance with age and maturity" can be problematic (Lundy et al., 2019). Under international law, capacity, age, and maturity are not prerequisites for children and young

people to be entitled to their human rights (Lundy et al., 2019). The Committee on the Rights of the Child (2009, p. 6), General Comment No. 12 explains

States parties cannot begin with the assumption that a child is incapable of expressing her or his own views. On the contrary, States parties should presume that a child has the capacity to form her or his own views and recognise that she or he has the right to express them; it is not up to the child to first prove her or his capacity.

Article 12 of the UNCRC 1989 explicitly states that children's and young people's views must be "given due weight" by adults "in accordance with the age and maturity of the child".

However, the UN Committee on the Rights of the Child (2009, p. 8) has expressed that "[c]hildren's levels of understanding are not uniformly linked to their biological age. Research has shown that information, experience, environment, social and cultural expectations, and levels of support all contribute to the development of a child's capacities to form a view".

Furthermore, Daly and Rap (2018) explain that part of fulfilling this right in the YJ setting is for decision-makers to inform the young person of the outcome of their case and how and why the young person's views were or were not considered. Cashmore and Parkinson (2007) explain that young people's inclusion and being informed of how their views were considered is an integral part of young people learning to understand the consequences of their offending.

Trivasse (2017) wrote that young people's inclusion in determining their YJ outcomes is crucial to the young person's compliance and reducing future offending.

Inherent to Article 12 is adults' obligation to consider children and young people's views and facilitate this right to be fully realised (Lansdown, 2011; Lundy et al., 2019). For young people in conflict with the law, the UN Committee on the Rights of the Child (2009) have stressed that young people cannot be listened to properly in a 'hostile', 'insensitive', or 'intimidating' environment. They also stress that proceedings, like the YJ FGC, must be accessible to young people, with adequately trained staff and information provided in child-friendly language that allows a young person to make informed decisions (Committee on the Rights of the Child, 2009). However, Lansdown (2011) wrote that criminal justice systems for children and young people globally are too often intimidating and alienating settings. To add emphasis, Lansdown wrote that children and young people cannot express their views or talk about issues affecting

their lives if they are not supported to take part actively or do not have the information needed to develop an informed view.

Furthermore, Lansdown (2011) also commented that young people capable of forming a view must have the opportunity to decide how that view will be shared. Article 12 (2) of the UNCRC states that young people can express their views in a YJ setting, either ‘directly’, through ‘a representative’ or an ‘appropriate body’. Specific to this study and New Zealand legislation are the notions of direct participation and representation. Direct participation refers to the idea of a young person capable of forming their own view and being heard in person by the adults conducting the proceeding (Lundy et al., 2019). The UN Committee on the Rights of the Child (2009) has recommended that ‘wherever possible’, a child/young person should be heard directly. However, the ‘wherever possible’ implies that there may be circumstances where young people cannot be heard directly. Examples are when a young person cannot or does not wish to express their view or where expressing their view could be contrary to their best interests (Lundy et al., 2019).

Alternatively, young people’s views can also be heard through a representative. A representative can be the young person’s parent(s), lawyer, or another adult, such as a social worker (UN Committee on the Rights of the Child, 2009). While Article 5 of the UNCRC acknowledges the responsibilities, rights and duties of parents and extended family in guiding young people’s exercise of their rights, the Committee has also expressed the opinion that when young people are in conflict with the law, a representative should be independent and competent (UN Committee on the Rights of the Child, 2009). Equally, representatives cannot have a conflict of interest with, and must represent the sole interests of the young person (UN Committee on the Rights of the Child, 2009). Lundy et al. (2019, p. 424) wrote that representatives should take the time to explain the processes and gain the young person’s views and “cannot assume or substitute” the child’s or young person’s views with their own.

In the New Zealand YJ system, representatives such as youth advocates (lawyers) and YJ social workers bring specialist knowledge and intend to make the process more accessible and understandable for young people (Becroft, 2014). Similarly, Rap (2013) explains that YJ

personnel, such as youth advocates, can help young people to understand the procedures, processes, and outcomes and contribute to young people forming and sharing their views.

Young people cannot meaningfully take part in YJ processes, such as the YJ FGC, if they do not understand it (Becroft, 2014; Rap, 2013).

Participation

Merely granting children's rights or proclaiming that they are capable participants does not, in and of itself, create, effect or transform participation.... children's participation depends principally on the invitation offered through dialogue to be acknowledged and to negotiate the terms of their recognition. (Fitzgerald et al., 2009, p. 301)

Children and young people's participation in the decision-making processes is complex. The idea of participation in the form of adults listening to young people and taking what they say seriously has struggled for recognition across societies and cultures (Hart & Thompson, 2009; Lansdown, 2011). Maxwell and Morris (2004) acknowledge that the ideas of participation for young people in the YJ FGC setting can, at times, be at odds with cultural norms and expectations. A. B. Smith (2016) elaborates stating that one of the criticisms of the UNCRC is the cultural bias related to the notion of individual rights versus collective rights. A. B. Smith (2016) wrote, in some cultures, young people are viewed as an integral part of the family and the community participation is viewed as a collective notion and responsibility, rather than an individual. Cleland and Quince (2014) explain that in New Zealand, Māori take collective responsibility for their young person's offending. Through redressing the harm caused, the whānau/family group share the responsibility of participating, rather than solely the young person.

Dershowitz (2004) argued that affording children and young people rights implies that children and young people, like adults, are entitled to participate in their social, political, and cultural environments. However, Krappmann (2010) wrote that the idea of children and young people holding rights and, more specifically, rights to participation can also elicit deep anxieties about children and young people and their claims. Viewing a child or young person as capable of asserting their own views and providing children and young people with the opportunity to

express views, can be perceived as potentially allowing a child's or young person's opinion to override adults' and whānau/family "obligations" to determine what is best for them (Tisdall et al., 2004). However, as outlined above, Dershowitz (2004) argues that affording children and young people rights implies that children and young people, like adults, are entitled to participate in their social, political, and cultural environments. Children and young people's participation as described by Article 12 does not give children and young people the final say in decisions, but rather it says that they must be part of the decision-making processes.

Over time, participation in the context of children's rights has taken on a specific meaning (Fitzmaurice, 2017; Malone & Hartung, 2010). Fitzmaurice (2017) and Herbots and Puts (2015) explain that participation under the ambit of children's rights is complex and contested in theory and practice. Although the word 'participation' does not appear in Article 12, together with other civil rights, such as but not limited to the right to freedom of expression (Article 13), and the right to participate in judicial processes (Article 40), these articles are broadly conceptualised and categorised as a package of 'participatory' rights (Committee on the Rights of the Child, 2009; Lansdown, 2011; Lundy et al., 2019; A. B. Smith, 2016). Despite the widespread use of the umbrella term 'participation', there is a lack of clarity and consensus on what participation means and looks like for children and young people (Rap, 2013).

In 2007, Lundy proposed a model for conceptualising children and young people's active participation under Article 12³². They argued that simply categorising participation as 'the child's voice' does not capture the full extent of meaningful participation under Article 12 (Lundy, 2007). Lundy developed four categories of space, voice, audience, and influence, in which children and young people's full potential for participation can be realised.

'Space' refers to children and young people's opportunity to express their views (Lundy, 2007). This places an onus on adults to be proactive in encouraging children and young people to share their views while equally offering them a safe space to express those views. Lundy (2007) also wrote that it is essential that children and young people are asked if they want to share their

³² Lundy's (2007) model of participation has been focused on in this thesis because it is consistent with the UNCRC idea of participation, and the idea of participation used in this thesis.

views. Having the choice to share their views is equally as important as having the choice not to share (Lundy, 2007; Lansdown, 2011).

‘Voice’ refers to the facilitation of children’s and young people’s views. Lundy (2007) wrote that the right to express a view should not depend on the capacity to form a ‘mature’ view but on the ability to form a view, whether it is mature or not. Also, children and young people might need the help of others to, at times, express their views. Children and young people should have access to information and resources necessary to form a view and be provided with the opportunity to use different methods to communicate their views such as drawing or video recording (Lundy, 2007).

‘Audience’ refers to the opportunity to have their views listened to by those making the decisions that will affect their lives (Lundy, 2007). Lundy (2007) explains that even when children and young people have a view to be expressed, there are no guarantees that they will be heard. Thus, creating an accountable audience, whereby children and young people are guaranteed to be listened to, places an onus on adults to learn to listen effectively to children and young people (Lundy, 2007). This is integral to ensuring meaningful participation for children and young people (Lundy, 2007).

Lastly, ‘influence’ refers to the “due weight” and children and young people’s views being acted upon (Lundy, 2007). Lundy explains that it is not enough for adults to listen to children and young people; they must also take what children say seriously. However, she contends that because Article 12 stipulates that due weight is given “in accordance with their age and maturity” (Lundy, 2007, p. 937), and this is dependent on what adults think is age-appropriate and mature, adults acting as gatekeepers to children’s and young people’s participation can restrict their access to participation. To safeguard this process, Lundy (2007) suggests that children and young people should be informed of how their views were used and why and how the decisions affecting their lives were made. This model is useful for explaining effective participation, particularly for young people in conflict with the law.

Young people's participation in the YJ settings is a specific process in a unique context (Rap, 2013)³³. In theory, *all*³⁴ young people in conflict with the law, possess legal rights to participate in YJ decision-making processes about their lives³⁵ (Hooper, 2013; Smithson & Jones, 2021). However, children and young people globally, including young people in conflict with the law, often have their rights to participate ignored or not fully realised in YJ practice (Kilkelly, 2008b; Lansdown, 2011; OCC, 2017b). Hooper (2013), Smithson & Jones (2021) and Lohmeyer (2020) explain that young people in YJ systems face a myriad of barriers to their participation, such as social and institutional barriers associated with criminal justice systems. These barriers are often rooted in power differentials, that can systematically deny or limit young people's participation (Smithson & Jones, 2021).

Power is a complex and multifaceted concept (See Clegg & Haugaard, 2009). Göhler (2009, p. 27) wrote "the concept of power seems to be one of the most unclear and controversial". There are very few studies that have examined power in the context of YJ settings (see Smithson & Jones, 2021), and no studies that have looked at the effects of power dynamics for young people, when making decisions, in the YJ FGC setting. Smithson and Jones (2021, p. 350), however, explain that when it comes to power differentials, young people in the YJ system have to contend not only with their social and legal status, but also with "their master status as 'offenders'". Smithson and Jones (2021) further explain that by virtue of being 'offenders', young people in conflict with the law are viewed by society to have withdrawn the right to a voice in decision-making processes about their lives.

Even in YJ systems with effective models of participation, legislative reform, and processes in place to enable young people to participate, research has criticised the lack of young people's participation within their respective YJ systems (Carswell et al., 2013; Kilkelly, 2008b; Maxwell et al., 2004; OCC, 2017b). As stated by Principal Youth Court Judge John Walker

³³ This is discussed in more detail in Chapter Five.

³⁴ See Article 12 of the UNCRC 1989.

³⁵ In the New Zealand YJ FGC process, this is a legal obligation.

Justice is not served when a young person is confused, or are kept out of the loop, or are not acknowledged as the very centre of our YJ system. Justice is not served when it does not recognise the role that culture has to play in a young person's paradigm. To hold a young person to account for their actions, we must ensure they are truly present at every stage of the journey. (J. Walker, 2018)

Article 12 and New Zealand Youth Justice Legislation

On April 6 1993, the New Zealand Government ratified the UNCRC. Governments that ratify international conventions have a legal obligation to bring their domestic laws and policies into line with those conventions. In *Tavita v Minister of Immigration and A-G* [1994] 2 NZLR 257, the Court stated that the UNCRC cannot override domestic laws unless the rights in the UNCRC have been incorporated into domestic law. The New Zealand government has been slow to ensure the full implementation of the UNCRC in New Zealand law³⁶ and policy (Ludbrook, 2009). For young people in conflict with the law, the New Zealand legislature has been equally slow to enable legislation for Article 12 to take full effect. From 1989 to early 2017, the Youth Court of New Zealand's governing legislation placed no explicit legal duty on YJ personnel to ensure that young people were encouraged or given the opportunity to be heard in YJ processes. Section 11 of the then CYPFs Act 1989 stated

Where, in any proceedings under this Act, a child or young person appears before a Family Court or a Youth Court, that Court and the barrister or solicitor representing the child or young person shall, where necessary and appropriate, encourage and assist the child or young person to participate in those proceedings to the degree appropriate to the age and level of maturity of the child or young person.

In 2017, the Youth Court's governing legislation was amended to include several significant changes for young people's participation within the YJ setting and, most importantly, to give more effect to Article 12 in New Zealand domestic legislation. Specifically, section 11(2)(a) requires professionals (personnel) to ensure that young people are encouraged and given the opportunity to be heard in proceedings "to the degree appropriate for their age and level of

³⁶ On the 21st of November 2022, in *Make it 16 Incorporated v Attorney-General* [2022] NZSC 132, the Supreme Court of New Zealand ruled that preventing young people aged 16 to 17 years from voting was discriminatory and inconsistent with the Bill of Rights Act 1990. Although the judgement does not specifically discuss Article 12 or young people's participation, this is an important legal decision for young people's participation. This decision can lead to legislative change that recognises young people's active participation as citizens and young people's active participation as important part of democracy in New Zealand.

maturity”; Section 11(2)(b) requires that young people be given reasonable opportunity to express their views freely on matters that affect them; Section 11(2)(c) requires that young people have adequate support to express their views and be understood where they may have difficulty doing so, for example, because of their age and maturity³⁷; Section (11)(2)(d)(e)(f) require the young person’s views to be taken into account, and that any decisions made must set out the young person’s views and provide them with an explanation if their views are not upheld. Of equal importance, s11(3) imposes a legal obligation on specific YJ personnel (for example, a judge, youth advocate or YJ coordinator) to facilitate ss11(2) of the Act.

Article 12 presents the need for a “profound and radical reconsideration” of the relationships between children, young people, and adults (Lansdown, 2011; Lundy et al., 2019). While there has been much advocacy and studies undertaken to give legitimacy and effect to Article 12 (Lansdown, 2011; Lundy et al., 2019), even as one of the most recognised articles of the UNCRC, it remains one of the most contentious rights³⁸ of the UNCRC, and the least understood and underutilised right, particularly for young people in conflict with the law (Lansdown, 2011; Lundy et al., 2019).

In 2007, the Committee on the Rights of the Child (2007) commented that “. . . the voices of children involved in the juvenile justice system are increasingly becoming a powerful force for improvements and reform, and for the fulfilment of their rights”. The OCC (2019) wrote that young people’s participation is critical to effect change in the YJ system. To date, no other research has looked into the effects of the aforementioned legislative reform on young people’s participation in the YJ FGC process in New Zealand.

³⁷ General Comment No. 12 (2009, p. 11) provides the definition for maturity and defines maturity as “the ability to understand and assess the implications of a particular matter”.

³⁸ Lundy et al. (2019) explains that one of the reasons that Article 12 is seen as contentious is because there remains widespread resistance to the idea that children and young people can be part of adult’s decision-making processes about children and young people’s lives. Also, see Lundy et al. (2019) Article 12 The right to respect the views of the child; Williams (2023) Children’s Voice versus Children’s Voices for further discussion.

Conclusion

The concept of rights has a long and contentious history. The theoretical frameworks that underpin rights are complex and have created divisive and competing views in the literature. No universally agreed-upon definition or theory exists to explain or justify rights. More specifically, rights literature is imbued with contentions. ‘Choice’ and ‘Interest theory’ are commonly used to explain/justify if children can be viewed as rights-holders. However, there is yet to be a consensus on which idea most applies to children and young people.

The introduction of human rights documents, such as the UDHR, ICCPR, Beijing Rules, and the UNCRC, posits that children and young people, like adults, are legitimate rights-holders.

Human rights and children’s rights are broad and complex concepts. There is contention in the literature about the history of human rights and the idea of children possessing rights, particularly those to participation. For young people in conflict with the law, their rights have been embedded within a broad ambit of international human rights documents. The UDHR and ICCPR were groundbreaking in providing universal international norms for all human beings, including young people. However, for young people in conflict with the law, these international documents were absent of participation rights. The Beijing Rules, though formative in providing this protection, was considered soft law and nations, including New Zealand, did not amend their domestic legislation to include these rights for young people in conflict with the law.

Specific to this study is the UNCRC and Article 12. Foreshadowing the UNCRC, is a history of children’s rights movements and Declarations that paved the way for the UNCRC. The UNCRC positioned children’s and young people’s rights as hard law and was the first children’s rights document to acknowledge that children and young people are entitled to participation rights.

Article 12, one of the Convention’s most contentious but influential rights, recognises that children and young people are entitled to participation rights and can be involved in the decision-making processes on matters that affect their lives. For young people in conflict with the law, Article 12 and the notion of participation is problematic. Worldwide, young people’s rights to participate have been ignored or not fully realised in domestic legislation and YJ practice. Equally, young people’s participation through being listened to by adults and having

what they say taken seriously, has struggled for recognition across societies and cultures. There is a lack of clarity and consensus within the literature about what participation means and should look like for young people. However, Lundy's (2007) model of participation is useful for explaining what effective participation should or could look like.

In New Zealand, implementing Article 12 in YJ legislation has been slow. Amendments to the Oranga Tamariki Act 1989 in 2017 meant the first significant changes for young people's participation in YJ processes since 1989. These changes are cognisant with the model of participation put forward by Lundy (2007). However, in practice, the effects of these legislative reforms on young people in conflict with the law are yet to be known. The next chapter discusses the theoretical and conceptual frameworks of this study; childhood and youth studies, the Spiral of Silence Theory (SST) and the concept of silence.

Chapter Four: Theoretical and Conceptual Frameworks

The understanding of childhood, the view of children, is very much an “adult” projection; we often unconsciously see them as what we are not, as what we fear and what we miss. (Mouritsen, 2002, p. 34)

Introduction

One commonality shared between adults is that they were once a child and a young person and have experienced childhood and youth. Therefore, many adults assume they understand childhood and youth and what it means to be a child and a young person (James & James, 2012; Montgomery, 2023; Morrow, 2011). However, these concepts are deeply complex. Since John Locke’s independent study of children and childhood in the 17th century, many diverse and predominantly Eurocentric theoretical and conceptual images and understandings have emerged (Clark, 2010a; Cunningham, 2006; Morrow, 2011). Contrasting and contradictory images of children and young people as sites for investments and threats to society, as innocent, angelic, and innately evil³⁹, have co-existed and persisted through time (James et al., 1998).

The literature is filled with many historical and present, divergent and competing theoretical and conceptual approaches for understanding children, young people, childhood and youth (Cunningham, 2021; Woodhead, 2009). While it is not within the scope of this thesis to report on this literature in detail, it is important to acknowledge that there are broader theoretical and conceptual frameworks of children, young people, childhood and youth from which childhood and youth studies emerged. Particularly, the historical constructions of children, young people,

³⁹ These images are non-mutually exclusive. For example, a child can be perceived as both angelic and devilish or an economic commodity and a threat to society.

childhood, and youth are important to understand contemporary social constructions about young people in conflict with the law (Cleland & Quince, 2014).

Centrally, the approach to this thesis is in the social construction of children and young people and childhood and youth. Exactly who can be considered a child or young person in their childhood or youth is not universally understood or implied within or across cultures and societies (Cunneen et al., 2016; Furlong, 2012; Heywood, 2018). Instead, these concepts differ widely and are socially, politically, culturally and historically dependent (Cunneen et al., 2016; Fionda, 2005; Heywood, 2018).

It is also important to acknowledge that pervasive Western biases have dominated how children and young people and childhood and youth are constructed. Much of the historical literature used in this study that discusses the concepts of children, young people and childhood and youth is Eurocentric. Particularly, the ‘history of childhood’ (between the 1700s and 1900s), as discussed in this study is set in various Western nations, namely the US, UK, Canada, and Australia (Cunneen et al., 2016; Cunningham, 2021; Stearns, 2008). These views do not account for all experiences of children’s and young people’s childhoods and youth over time – particularly not for Māori tamariki (children) and rangatahi (young people) in New Zealand (Cleland & Quince, 2014). Also, these views come from adults, mainly from male perspectives. Very little of the history of children, young people, childhood and youth comes directly from the voices or experiences of women and children/young people (Cunningham, 2006; Cunneen et al., 2016). For this study, I adopt the view that what it means to be a child or young person and what childhood and youth are have shifted over time (Clark, 2010a; Cunningham, 2021; Furlong, 2012; Heywood, 2018).

The idea of young people’s participation is central to this study. Participation has been framed within the YJ FGC setting. Also central to this study is the concept of silence. The Spiral of Silence Theory (SST) and the concept of silence have been applied to explain variations in young people’s participation in the YJ FGC setting. Applying the SST and the concept of silence provides a unique lens for viewing and understanding young people’s participation in YJ FGC contexts.

This chapter begins by briefly discussing childhood and youth, particularly the competing views of developmentalism and social constructionism⁴⁰. This is followed by a general historical overview of children, young people, childhood and youth, focusing on young people. Following this discussion, a detailed overview of the SST and silence literature will be presented as it applies to young people in conflict with the law.

Lastly, this thesis is about a specific group of ‘children’ at a certain point in their ‘childhood’—that is, ‘young people’ in conflict with the law in their ‘youth’. As established, there is no consensus in the literature as to who can be considered in their youth, nor a universally agreed-upon term for young people or youth (Cooper et al., 2023; Furlong, 2012; Montgomery, 2023). Similarly, there is no universal understanding of the concept of ‘youth’ (Furlong, 2012; C. S. Hart, 2014). While there are, at times, distinctions made in the literature between childhood and youth studies, children and young people and childhood and youth, there is a tendency for young people and ‘youth’ and all they entail to be subsumed under the umbrella of children and ‘childhood’ (Cooper et al., 2023). The interchangeable and confusing use of these terms in literature has led to difficulties in maintaining consistent terminology for young people and youth throughout this thesis. In this chapter, the terms ‘childhood’ and ‘children’ will be used when discussing all children under 18, agency and structure, childhood studies, the history of childhood and the UNCRC 1989. ‘Youth’ and ‘young people’, or rangatahi (Māori young people) will be used when discussing youth studies and the history of youth in New Zealand.

Childhood and Youth Studies

The field of childhood and youth studies was developed in the 1980s as an interdisciplinary approach and combines different approaches to understanding children, young people, childhood and youth over time (Canosa & Graham, 2020; Montgomery, 2023; Morrow, 2011). It is used to explain how society has constructed varying views of children, young people, youth

⁴⁰ See pages 72 to 75 for a brief discussion explaining these concepts.

and childhood (Jenks, 2005; Montgomery, 2023; A. B. Smith, 2013; Woodhead, 2009) and provides a holistic insight into what it means to be a child and young person, the concept of childhood and youth, and the importance of children's and young people's agency and children's rights (Montgomery, 2023; Morrow, 2011; Woodhead, 2009). This theoretical approach acknowledges how society chooses to imagine and theorise children and young people, and the concepts of childhood and youth will significantly affect children and young people's lives (Montgomery, 2023; Moss & Petrie, 2002). A. B. Smith (2013), Montgomery (2023) and Morrow (2011) wrote how society thinks about children and young people, childhood and youth 'profoundly influences' children and young people's position in society and shapes the attitudes and values that determine how children and young people are viewed and treated. Similarly, Cleland and Quince (2014) and Fionda (2005) wrote that society's views of children (including young people) and childhood (including youth) can have a significant effect on policy and legislation about children, particularly young people, in conflict with the law.

Agency and Structure

A key concept of the childhood and youth studies approach is agency (James & James, 2012; Morrow, 2011; Threadgold et al., 2021). Agency, however, is a problematic concept (Sirkko et al., 2019; Threadgold et al., 2021). It is not universally understood or defined; it means different things to different disciplines and equally to theorists within the same fields (C. S. Hart, 2014; Morrow, 2011; Sirkko et al., 2019; Wyness, 2015). When referring to children's⁴¹ agency, Morrow (2011, p. 11) defines agency as "the capacity to act" in a limited but commonly used definition. Similarly, James and James (2012, p. 3) wrote that agency is "the capacity for individuals to act independently". Regarding agency and children's participation, Wyness (2015) defines children's agency as "having the capacity, the space and the opportunity to have some involvement in decision-making processes" (p. 27).

⁴¹ For this section, on agency and structure, the term children is inclusive of young people.

By definition, children's agency is not an isolated concept. It is interrelated with other concepts, such as structure (James & James, 2004; Qvortrup, 2009). However, the duality between agency and structure is complex and contested in the literature (James & James, 2004; Qvortrup, 2009). There are ongoing theoretical and conceptual debates about this dualism. James (2009) explains that the debates around agency and structure between the 1960s and 1970s raised essential questions for childhood studies around the idea of children's agency and the role that children have in shaping their socialisation and society.

The relationship between agency and structure is essential for understanding how the ideas of childhood and youth have changed over time (James & James, 2004; Nico, 2021). Under childhood and youth studies, childhood and youth are positioned as permanent fixtures (structure) of society (James & James, 2004; Nico, 2021; Qvortrup, 2009). Childhood and youth are occupied by agents (children/young people) and exist within a larger social structure (society) (James & James, 2004; Nico, 2021; Qvortrup, 2009). Structural parameters determine childhood and youth (James & James, 2004; Nico, 2021; Qvortrup, 2009). A non-exhaustive list of parameters, as provided by Qvortrup (2009), are the economic, political, social, cultural, technological, ideological and discursive factors that "represent understandings of and ideologies about children and childhood" (p. 25). These parameters shape societies' understandings of children and childhood/youth. Over time, structural parameters change, and childhood (Qvortrup, 2009) and youth (Nico & Caetano, 2021) take on different forms. Thus, societies' understandings and perceptions of childhood and youth are constantly changing, but childhood and youth remain permanent structures of society that all children occupy (James & James, 2004; Qvortrup, 2009). Changes to childhood and youth over time result from structural conditions and human intervention (agency).

The agency approach offers an alternative to the traditional view of children as human becomings—that is, empty vessels, passive participants of society and products of socialisation (C. S. Hart, 2014; James, 2009; James & James, 2004; Wyness, 2015). Children, under this lens, do not exist in a vacuum (James et al., 1998). They are recognised as human beings, social actors and participatory subjects with agency. "[T]he actor is someone who does something; the

agent is someone who does something with other people, and, in so doing, makes things happen, thereby contributing to wider processes of social and cultural reproduction” (Mayall, 2002, as cited in James, 2009, p. 41). Children and young people shape and contribute to structures and decision-making processes in their social worlds as much as they are, in turn, affected by these same structures and processes (Freeman, 2007; James, 2009; James & James, 2012; Prout & James, 1990). However, children must “work with and against structures whose character is rooted in past events, interactions and beliefs” (Mayall, 2000, p. 252).

Accordingly, children’s agency is a relational concept. Children are connected agents whose agency is enabled and constrained by societal parameters and interactions with adults in their social world (Nico, 2021; Wyness, 2015). Adult-child relationships, however, have a profound power imbalance (Wyness, 2015). Children exist in an adult world where adult-centred cultures and processes can limit and enable opportunities for agency (Mayall, 2000; Nico, 2021; Sirkko et al., 2019; Wyness, 2015). Children’s agency is structured and constrained by adults (Mayall, 2000; Wyness, 2015). Adults play an integral role in children’s ability to participate and exercise their agency. They provide the structures, opportunities, and support for children to exercise their participation and their agency (Morrow, 2011; Nico, 2021; A. B. Smith, 2013; Woodhead, 2009). This framework recognises that children are both competent actors and heavily controlled.

Children’s agency can represent a challenge to adult-child relationships (Lee, 2001a; A. B. Smith, 2013). The adult-child relationship and the structures of society, position adults as powerful and children as powerless (Wyness, 2015). Adults have occupied, and continue to occupy, positions of power and authority over children that have sometimes silenced their views (James & James, 2012; Montgomery, 2023). Recognising that children have agency means seeing that even within these asymmetrical but interdependent relationships and structures, children are also competent and contributing social actors who express their resistance despite differences in power in their relationships with adults and their social positions.

Childhood and youth studies stress that childhood and youth are ‘cultural and social inventions’ (Clark, 2010a; Cooper et al., 2023; Furlong, 2012). It recognises that there are many diverse

‘childhoods’ and ‘youths’ and that, although there may be similarities shared, childhood and ‘youth’ is not the same for all children and young people or homogenous truths (Clark, 2010a; Furlong, 2012; James & James, 2012; Lee, 2001a). A. B. Smith (2013) wrote, when collectively discussing children that it is problematic to theoretically view children’s childhoods and youth as homogenous concepts. Instead, it is essential to consider children’s cultural and social contexts and not generalise their experiences. After all, “[c]hildhood is not an idiosyncrasy” (Pryor, 2008, p. 1).

Developmentalism Versus the Social Construction of Childhood and Youth

Developmentalism

Since the 20th century, developmental psychologists, such as Jean Piaget (1973), dominated traditional thinking about children and childhood in Western societies (James, 2009; James & James, 2012; Morrow, 2011; Norozi & Moen, 2016). Through these theoretical perspectives, thinkers such as Jean Piaget⁴² positioned childhood as a universal concept, a natural and biological process of development (Buck, 2014a; Cunningham, 2021; Morrow, 2011; Tisdall & Punch, 2012). Children were regarded as passive dependents who lacked competence and rationality and required protection (Clark, 2010a; James et al., 1998; A. B. Smith, 2013; Tisdall & Punch, 2012). This view entwined childhood with notions of biological immaturity and physical development.

Similarly, the concept of adolescence, for young people, in Western society, was also universalised in the early 20th century (Arnett, 2006). Adolescence was viewed as a specific developmental phase that began “with puberty and ended once physiological and emotional maturity were achieved” (Furlong, 2012, pp. 1–2). Psychologist Stanley Hall (1904) dominated traditional thinking about adolescence in the early 20th century (Arnett, 2006). Hall saw adolescence as a period of life between childhood and adulthood, characterised by “storm and

⁴² See Piaget (1973) *The Psychology of the Child*.

stress” - problematic physiological and physical adjustments in development (Arnett, 2006; Cleland & Quince, 2014; Muncie, 2004). Adolescence was seen as a period of angst, risky behaviour and defiance against parents (Arnett, 2006). Hall also equated this stage of life with delinquency and criminality - “a period of semi-criminality is normal for all healthy boys . . . those whose surroundings are bad will continue it, but others will grow away from it as they approach maturity” (Hall, as cited in Arnett, 2006, p. 188). Cooper et al. (2023) and Muncie (2004) wrote that the concept of adolescence, much like today, was associated with negative and troubling images. Terms like ‘trouble’, ‘moral degeneration’, ‘unrestrained’, ‘undisciplined’, ‘unruly’ and ‘delinquent’ were synonymous with adolescence (Cooper et al., 2023; Muncie, 2004). Cooper et al. (2023) and Muncie (2004) explained that the early 20th century understanding of adolescence gave rise to the view that all children could be troublesome; however, only the working-class young males were more likely to be delinquent⁴³.

In contrast to children, young people, childhood and youth, adults were regarded as competent and rational human beings (Clark, 2010a; A. B. Smith, 2013; Tisdall & Punch, 2012). These views positioned children and young people as unfinished, lacking full personhood and a site for improvement (human becomings) (Walkerdine, 2009). They suggested that reaching some ideal level of rationality (human being) was to successfully achieve pre-determined and specific competencies at different ‘ages and stages’⁴⁴ (Buck, 2014a; Furlong, 2012; James & James, 2004; Walkerdine, 2009). Under this lens, adulthood is the holy grail through which children, young people, childhood and youth are understood (Furlong, 2012; Lee, 2001b). Fionda (2005) wrote that this views society as adult-centric, where adults control childhood, youth and children’s and young people’s dependence and positions within society.

Developmentalism enabled normative models of children’s and young people’s capabilities that can still be seen in practice, policy and law (Furlong, 2012; Morrow, 2011; Smith & Taylor, 2003). Understandings of prescribed ‘norms’ of ‘ages and stages’ to reach a prescribed level of

⁴³ Girls only became a matter of concern when “they lacked domestic and moral surveillance” (Muncie, 2004, p. 71).

⁴⁴ In many Western nations, some understandings of competency are created using adult criteria, thus many children and young people are seen as non-competent (Morrow, 2011).

competency and maturity have shaped assumptions about childhood, youth and children and young people's competence and maturity (James & James, 2004). These assumptions ignore children's and young people's individuality and the diversity of children's and young people's childhoods and youth. They can also undermine the role of children's and young people's experiences in terms of their capacities, capabilities and maturity (James & James, 2004). Assumptions can lead to adults grossly underestimating the maturity and competency of children and young people at different points in their lives (Morrow, 2011).

Childhood and Youth as a Social Construction

Childhood, like so many other vitally important aspects of life – gender, health, youth and so on – [is] socially constructed. It [is], in other words, what members of particular societies, at specific times and in particular places, say it is. (Wagg, 1992, as cited in Clark, 2010a, p. 7)

From the 1980s, childhood studies offered an alternative conceptualisation of children and childhood. Childhood studies challenged the dominant idea of the natural and universal childhood (Fionda, 2005). James and James (2004, p. 13) explain that “. . . childhood is a developmental stage of the life course, common to all children and characterised by basic physical and developmental patterns while childhood is a developmental stage”. How adults and society interpret, understand, and politicise these changes varies greatly (James & James, 2004). Accordingly, childhood is not seen as a purely biological, natural or universal feature of human groups (Clark, 2010a; Hendrick, 1997; James & James, 2004). James and Prout (2005, p. 7) explain that:

[t]he immaturity of children is a biological fact of life but the ways in which this immaturity is understood and made meaningful are a fact of culture . . . It is these ‘facts of culture’ which may vary and which can be said to make of childhood a social institution.

Childhood is not a static, universally experienced, or understood concept that can be normatively applied (Clarke, 2010; James & James, 2012). There is no universally shared experience of childhood or universally agreed-upon definition of children or childhood (Clark, 2010a). Instead, childhood is understood as a social construction. How society understands children and childhood is diverse and historically, culturally, socially and contextually dependent (Clark, 2010a; James & James, 2004; Jenks, 2005).

Similarly, youth studies, often interrelated with childhood studies, or referred to as ‘childhood and youth studies’ (Montgomery, 2023), offers a broad and interdisciplinary approach to understanding young people and youth. Youth studies challenged the dominant understanding of adolescence as a purely biological and universal life stage for young people (Furlong, 2012). Furlong (2012) and Cooper et al. (2023) explain that through the work of later psychologists, such as Charlotte Bühler (1921) and Erik Erikson (1968), it was recognised that Stanley Hall’s developmental explanations for adolescence were limited in their scope and that adolescences is more than a biological phase and is shaped by other factors such as cultural and social factors.

The terms ‘teenager’ and ‘youth’ were later developed as more flexible terms, which encompassed the concept of adolescences. While there is no universal definition of ‘youth’, Gunter and Holford (2023, p. 213) describe this period of life as an “in-between stage, in which young people are neither quite children not quite adults.” Similarly, Furlong (2012, p. 3) describes youth as “a period of semi-dependence that falls between the full dependency that characterises childhood and the independence of adulthood”. Youth is seen as a “socially constructed intermediary phase that stands between childhood and adulthood: it is not defined chronologically as a stage that can be tied to specific age ranges, nor can its end point be linked to specific activities” (Furlong, 2012, p. 1). Rather, youth is diverse and historically, culturally, socially and contextually dependent (Wyn, 2015).

Social constructionism explores “the way in which social ‘reality’ arises through meanings that people give to actions and situations” (Clark, 2010a, p. 7). The social construction of childhood and youth is thus “the complex interweaving of social structures, political and economic institutions, beliefs, cultural mores, laws, policies and the everyday actions of adults and children, in the home and on the street...” (James & James, 2004, p. 13). Through this theoretical lens, the ‘reality’ of concepts such as children, young people, childhood and youth depends on the meanings and expectations people ascribe to them in a specific place, time and context (Clark, 2010a; Hendrick, 1997).

How childhood, youth, children and young people are socially constructed is integral to understanding how young people in conflict with the law are viewed and treated (Fionda, 2005).

Childhood and youth are understood through social structures and everyday interactions between children, young people and adults (James & James, 2004; A. B. Smith, 2013). Social constructionism can be used to understand societies' views of young people in conflict with the law over time and how these views have profoundly shaped young people's experiences with the law (Cleland & Quince, 2014; Omaji, 2003).

A Brief Historical Perspective of Childhood and Youth

Historical constructions are integral to understanding how societies have formed particular perceptions of young people in conflict with the law over time. The historical platform from which notions of children and childhood have been constructed is an integral part of the development of childhood and youth studies (Woodhead, 2009). Cleland & Quince (2014) explain that the historical development of the concept of childhood can serve as a trajectory for understanding current legal and policy responses to young people in conflict with the law.

“The history of childhood is a nightmare from which we have only recently begun to awaken” (deMause, 2006, p. 1). The Western history of childhood is filled with images of children, young people, childhood and youth relevant to specific social, economic and political contexts (Cunningham, 2006; Heywood, 2018). Although these images depend on specific historical and social contexts (Cunningham, 2006; Heywood, 2018), these images are not static. Cunningham (2006) wrote that past and current inventions and images of children, young people, childhood and youth entwine to shape the existing views. Over time, images of children and young people as angelic, evil, corrupt and innocent have transcended their historical context to reappear in modern social contexts.

Throughout the Eurocentric literature, there are divisive discussions about the beginning of the concept of childhood and what childhood has meant, over time, in Western societies (Cunningham, 2021; Heywood, 2018). Some suggest ideas about childhood extend back to the writings of the Ancient Greek and Roman authorities (see Buck, 2014a; Cunningham, 2006,

2021). Ariès (1986)⁴⁵ studied historical medieval paintings and documents, across several centuries, to determine the beginning of the concept of childhood (Ariès, 1986; Cunningham, 2006, 2021; Pollock, 1983). Ariès suggested that the idea of childhood is relatively modern. From his analysis, he argued that although children have always existed, there was no concept of childhood or youth as distinct or specialised stages of life, separate from adulthood during the Middle Ages (Ariès, 1986; Jenks, 2005; Kroll, 1977; Norozi & Moen, 2016). He wrote that after age 7, children became part of adult society (Buck, 2014a, Cunningham, 2021). Ariès concluded that the idea of childhood emerged in the 17th century. He wrote that with the changing dynamics of the family unit and a rise in appreciation of the importance of education, the modern concept of childhood was invented (Ariès, 1986; Pollock, 1983).

Ariès's ideas about the inception of the concept of childhood are divisive⁴⁶. Pollock (1983) critically questioned his notion of childhood as a modern invention and his methodology to make his conclusions. Archard (2004) criticised Ariès's thesis as making an "ill-judged leap" from concept to conception. Archard wrote that it is not that childhood did not exist. Instead, childhood has existed in all societies, but there have been different conceptions of what childhood means over time. What can be seen through Ariès's notion of the Western concept of childhood is a challenge to the idea of childhood "as an unproblematic descriptor of a natural biological phase" (James & James, 2001, p. 27). His ideas suggest that childhood is not static, but instead, changes within society can be attributed to at least some of the changes in the concept of childhood over time (James & James, 2004). Also, Ariès's thesis shows how the way in which adults see childhood and how they treat children will shape children's experiences of childhood and their interactions with society (James & James, 2004).

Early Perspectives

Between the 17th and 20th centuries, distinct images of children and childhood emerged.

Presented in the literature as competing views, the contrasting images of children and childhood

⁴⁵ Initially published in 1960 in French under the title 'L'enfant et la vie familiale sous l'Ancien Régime' and translated in 1962, and reproduced in 1986 as 'Centuries of childhood: A social history of family life'.

⁴⁶ See for example, Archard (2004) Children Rights and Childhood; deMause (2006) The History of Childhood and Postman (1994) The Disappearance of Childhood.

over time have, respectively, been heavily shaped by religious and philosophical doctrines and ideas and social, political and economic discourses (Cunningham, 2021). Religious and philosophical doctrines and ideas influenced early views of children and childhood (17th to mid-19th century). Comparatively, late 19th to 21st century ideas of children and childhood were influenced by academic, political, economic, and social discourses and developments (Cunningham, 2021).

During the 17th and 18th centuries, two images of children and childhood emerged. The first, brought about during the pre-industrial period, with a rise of Protestantism and Puritan ideals, viewed children as born innately evil and sinful ('the evangelical child') (Cunningham, 2006). Children required strict discipline and long hours of religious engagement, such as prayer and reading scriptures, to avoid eternal hell and damnation (Cunningham, 2006, 2021). Childhood was seen as a time of correction and reformation.

Secondly, during the Enlightenment period, philosophers and other intellectuals began to question the nature of man and religious structures (Cleland & Quince, 2014; Cunningham, 2006, 2021). Philosophers Jean-Jacque Rousseau and John Locke offered views that challenged the Protestant and Puritan ideals of children and childhood. English philosopher John Locke (1762) wrote that the human mind is a "tabula rasa" (blank slate). John Locke thought that experience is where ideas come from. Comparatively, Swiss-born philosopher Jean-Jacque Rousseau⁴⁷ wrote that it is not man that is born wicked, but rather wickedness is learned (Cunningham, 2006, 2021)⁴⁸. These views rejected the idea of the innately evil child and helped to establish the idea of the romantic child (Clark, 2010b; Cunningham, 2021). Children from this view gradually became objects of affection and innocence who required protection (the romantic child) (Clark, 2010b; Cunningham, 2006). Childhood was seen as a time of innocence.

The idea of one-on-one schooling for boys was encouraged by Rousseau. He thought that children (primarily boys) needed training and guidance from adults (mostly men) to become

⁴⁷ In Rousseau's book *Emile* (1762) he painted childhood as a time of innocence, lack of responsibility and happiness. He wrote "[i]t is no part of a child's business to know right and wrong" (Rousseau, 1762, as cited in Cunningham, 2006, p. 114).

⁴⁸ Before the rise of psychological and sociological theories, philosophical discourse also struggled between the competing ideas of nature and nurture.

good citizens (Cunningham, 2006). It is important to acknowledge that wealthy and poor children, much like today, lived in contrasting worlds (Cunningham, 2006). One-on-one schooling, for example, applied to mostly children of wealthy families. For the majority of the population living in poverty, the necessity for children to enter the workforce at an early age outweighed the idea of the idyllic notion of childhood (Cunningham, 2006). Jenks (1996) wrote, “[o]nly the privileged classes could afford the luxury of childhood with its demands on material provision, time and emotion” (p. 64).

The Industrial Revolution brought about some of the most significant changes to childhood in Western history (Cunningham, 2021, 2006) and gave rise to new attitudes towards children and childhood (Soung, 2011). The Industrial Revolution centralised production in factories in city centres (Hendrick, 2011). Many families moved from rural areas to city centres out of economic necessity. Many poor children were exploited for their labour and made to work in dangerous jobs, such as in factories and mines and as child servants and chimney sweeps (Cunningham, 2006). This contributed to two polarising views of childhood, one as a time of education and innocence (mainly for the wealthy) and the other as a time of hard labour and economic contribution (mainly for the poor) (Hendrick, 2011).

The working conditions brought on by the Industrial Revolution for children were hazardous, sometimes causing injury or death (Cunningham, 2006, 2021). This became a matter of public concern and gradually led to Western governments introducing legislation restricting child labour⁴⁹. This symbolised one of the first steps towards the idea of a universal childhood, one shared by both rich and poor children (Cleland & Quince, 2014) and represented the beginning of the social reform movement (Soung, 2011). The restraints on children working in factories made the perpetual issue of poverty and street children more visible (Cunningham, 2006; Muncie, 2004). Some children experiencing adverse social and economic conditions gravitated towards petty crime and delinquent behaviours (‘the delinquent child’) (Muncie, 2004). This

⁴⁹ For example, the 1819 and 1833 Factory Acts in the UK, limited the number of hours children could work and made it illegal for any child under the age of 9 to be employed (Cunningham, 2006).

fuelled the perception of street children as a social crisis and a threat to society and brought about the social problem of juvenile⁵⁰ delinquency (Cunningham, 2006).

The origin of the concept of juvenile delinquency is contested in the literature (Muncie, 2004). Cunneen et al. (2016) and Muncie (2004) explain that the concept of juvenile delinquency was developed and understood within a particular historical context and came with several socio-historical and economic developments and issues. For example, industrialisation, urbanisation, population growth, pauperism, and vagrancy were contributing factors (Cunneen et al., 2016; Muncie, 2004). Muncie (2004) wrote that the child-saving movement helped to establish the concept of juvenile delinquency during this period.

Muncie (2004) wrote that defining delinquency is problematic because it changes with social, political and legislative shifts in perceptions of crime. Over time, definitions of delinquency have included terms such as, neglect, a lack of morals, subnormality, a disturbance and maladjustment (Hendrick, 1997). Cunneen et al. (2016) wrote that developing the concept of delinquency was another step towards government control of poor and problematic children. This partly provided cause for the development of the juvenile justice system, compulsory schooling and reformatories (Cleland & Quince, 2014; Cunneen et al., 2016). Muncie (2004, p. 51) explained that "... [I]t was only through the developing legal powers and institutions of juvenile justice that the 'problem' of childhood and youth could be constituted and defined".

During the late 19th to early 20th century, under the guise of the welfare model, reformers established institutions, such as Barnardo's, and reformatories to 'help' and 'control' street children (Cunningham, 2006; Muncie, 2004; Soung, 2011). Reformers advocated that children needed interventions to regulate their behaviour and provide discipline and guidance (Muncie, 2004). However, these interventions alone could not combat the issues of poverty or the number of street children (Cunningham, 2006). In England and Wales, for example, compulsory schooling⁵¹ was introduced as another alternative intervention (Cleland & Quince, 2014). The

⁵⁰ During this time, juvenile referred to *all* children, not just young people.

⁵¹ Although child labor had been outlawed for children aged 5–10, for many of the poor their children still engaged in marginal employment to economically contribute to the family. Compulsory education was not seen as beneficial (Cunningham, 2006).

puritan fear that ‘idle hands lead to wickedness’, and the heightened concern of the public of children as lawless and a threat to social order contributed to the introduction of compulsory schooling across the Western world (Clark, 2010b; Cleland & Quince, 2014). These developments gradually led to the images of children evolving from an economic commodity to a site for investment (Cunningham, 2006).

Introducing compulsory schooling across Europe, North America, and Australasia set childhood as a ‘universal’ condition (Muncie, 2004). It separated children from adults and organised children into cohorts based on ages (Cunningham, 2006). This mirrored a time in the growth of scientific knowledge around the study of children, particularly from the perspective of developmental psychology⁵² (Clark, 2010b). Compared to adults, developmentalism positioned children as more impulsive and less likely to appreciate the consequences of risky behaviour (Arnett, 2006). In part, this was attributed to older children and assisted in the re-emergence of the concept of adolescence⁵³.

Paralleling the re-emergence of adolescence in the early 20th century was a shift in the view of the causes of delinquent behaviour in children. Previously viewed as a matter of choice and free will and then as a consequence of economic and social disadvantage, delinquent behaviour was considered a consequence of issues within the family setting (most commonly the working class), such as neglectful parenting (‘the welfare child’) (Muncie, 2004). This view saw the family as responsible for children’s psychological and behavioural development (Muncie, 2004). Defective discipline and neglectful parenting were seen as the leading causes of children engaging in criminal behaviour (Muncie, 2004). Children deemed neglected or delinquent were placed into reformatories or homes for protection and rehabilitation (Muncie, 2004; Song, 2011). During the early 20th century, ideas of neglect and delinquency became conflated (Collins & Meads, 2021; Muncie, 2004). Children could be labelled delinquent even when not

⁵² Experts, such as doctors and psychologists, had access to an abundance of research subjects (children) that had not existed in plenitude before (Clark, 2010b; Cleland & Quince, 2014).

⁵³ Jean-Jacque Rousseau is credited with the invention of the concept of adolescence in the 1760s. He saw adolescence as a time of emotional turmoil that led to unsavory behavior (Muncie, 2004).

engaging in delinquent behaviour (Collins & Meads, 2021). The notions of adolescence and delinquency contributed to negative perceptions surrounding children in conflict with the law.

Following World War I and II, competing views of children as innocent, in need of care/protection/education, and as corrupt and a threat to social order could be seen (Cleland & Quince, 2014; Jenks, 2005; Jones, 2009). At the same time, a new category of childhood, ‘teenagehood’ emerged (Cleland & Quince, 2014). Cleland and Quince (2014) and Brickell (2017) explain that during the 1940s to 1950s, the use of the terms ‘teenagehood’, and ‘teenager’ were popularised and, by the 1950s, had become embedded in many Western societies, including New Zealand. Regarding young people in their teenagehood/youth, Cleland and Quince (2014, p. 28) wrote that constructions of youth from this period onwards were “very closely tied to the media”.

During the 1960s and 1970s, the rise in mass media played a significant role in shaping attitudes towards children (Cleland & Quince, 2014; Muncie, 2004). For example, in the UK, a rise in delinquent youth behaviour⁵⁴ and youth subcultures was overly publicised and exaggerated in the media as a threat to social values (Muncie, 2004). This led to increased public concern and policing of children and harsher policy and legislative responses in the UK, with similar concerns mirrored across the Western world (Cleland & Quince, 2014; Muncie, 2004). Late criminologist Stanley Cohen’s research into ‘Mods and Rockers’⁵⁵ in the early 1970s famously popularised the media’s and society’s exaggeration of young people’s deviance as a moral panic. They explained a moral panic as occurring when

⁵⁴ Much of the discussions around youth behaviour at this time, particularly in the UK, favored white boys. This, as shown throughout this thesis, has fundamentally and detrimentally shaped the way in which youth, of all genders and races are viewed.

⁵⁵ See Cohen (1972) *Folk Devils and Moral Panics: The Creation of Mods and Rockers*.

[a] condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylised and stereotypical fashion by the mass media ... Sometimes the object of the panic is quite novel and at other times it is something which has been in existence long enough, but suddenly appears in the limelight. Sometimes the panic passes over and is forgotten, except in folklore and collective memory; at other times it has more serious and long-lasting repercussions and might produce such changes . . . in legal and social policy or even in the way the society conceives itself. (Cohen, 1972, p. 1)

Young people's behaviour and subcultures were presented in the media as problematic.

Troubling images of youth as 'hooligans', 'violent', 'punks', and 'vicious young criminals'

perpetuated by the media exacerbated public concern about youth, particularly in the UK,

Canada and Australasia (Muncie, 2004). It positioned many young people, their interests, and

behaviours as a threat to society (Cleland & Quince, 2014; Muncie, 2004).

A Turning Point in History: The Modern Child

So fixated are we on giving our children a long and happy childhood that we downplay their abilities and their resilience. To think of children as potential victims in need of protection is a very modern outlook, and it probably does no-one a service. (Cunningham, 2006, p. 245)

The 1970s and 1980s saw a paradigm shift in how children and childhood were viewed

(Cunningham, 2006; James, 2009; Norozi & Moen, 2016). The newly established field of

childhood studies raised questions about the dominant views of children's development and

childhood. Childhood studies challenged the idea of a universal childhood and brought to the

fore the idea of the socially constructed childhood (Clark, 2010a; James, 2009).

Equally, new theories that challenged the dominant psychological views of children's

development, such as Lev Vygotsky's sociocultural theory of child development, recognised

children's development as a product of social interaction and positioned children as social actors

(James, 2009). These theoretical shifts coincided with global economic, social and political

changes that positioned children as visible and worthy of being listened to (Cunningham, 2006;

Fionda, 2005; Jenks, 2005). Particularly, the UNCRC was adopted by the UN General

Assembly and opened for signature on the 20th of November 1989.

The UNCRC positioned all children as rights holders. It embodied the idea of the international

standard for children and childhood outlined in the 1959 Declaration, in which children, as a

universal group, have similar interests that are worthy of protection (Wyness, 2015). Children

and childhood had become “a major political global issue” (Wyness, 2015, p. 132). Instead of seeing children as solely needing protection and provision, it became self-evident, through the UNCRC, that children should also be viewed as social agents who can take part in decision-making processes that affect their lives (Cunningham, 2006). Particularly, States’ obligations to uphold children and young people’s rights, for example, their right to participation through Article 12 of the UNCRC, motivated domestic legislation to ensure that children and young people’s participation could be realised.

The early 1990s brought the idea of childhood as a time of innocence into question. In England, the 1993 murder of James Bulger by two young boys⁵⁶ became a watershed for political and media responses to children, young people and youth crime and reverberated around the Western world (Cleland & Quince, 2014; S. Brown, 2009; Muncie, 2004). James and Jenks (1996) and Wyn (2015) wrote that the Bulger case put the nature of childhood on trial and signalled a ‘crisis’ in childhood. In childhood studies, it brought to the fore the divergent views of children and childhood and raised questions about rethinking children’s autonomy and the nature of children (James & Jenks, 1996; Jenks, 2005). Muncie (2004, p. 3) wrote

The Bulger case had at least three related consequences. First, it initiated a reconsideration of the social construction of 10 year olds as ‘demons’ rather than as ‘innocents’. Second, it coalesced with, and helped to mobilise, adult fear and moral panic about youth in general. Third, it legitimised a series of tough law and order responses to young offenders which came to characterise the following decade.

The moral panic associated with the James Bulger case created fears about children and youth crime (Muncie, 2004). The reaction by the UK government was to introduce harsher and more restrictive laws and policies on children that changed how children were viewed and treated when in conflict with the law (S. Brown, 2009). The view during the early 1990s was that children were not innocent but evil and had become a danger to society and themselves (Muncie, 2004). Images of young people as evil, dangerous, and a threat to society continue to be popularised by the media (Cleland & Quince, 2014; Muncie, 2004; Smandych, 2006). Young people are continuously pictured as ‘troubled’ or ‘being in trouble’ (S. Brown, 2009).

⁵⁶ See, Muncie (2004) *The Threat of Youth*.

Even though young people have agency and rights to enable their agency, their ability to exercise those rights is bound by the structures and powers in which these images and attitudes reside. Problematic images create harsher social perceptions, policies, and laws that trickle down to affect young people's opportunities to experience their agency in YJ contexts (Cleland & Quince, 2014; Muncie, 2004).

Childhood and Youth in New Zealand

The history of childhood and youth, often set in the context of the UK and Northern Europe, shares many similarities with the experiences of Pākehā (European New Zealander) children in New Zealand over time (see Cleland & Quince, 2014). However, for Māori, the Indigenous population of New Zealand, our history of childhood and youth and experiences of being tamariki (children) and rangatahi (youth) were, until the 1940s, markedly different from Pākehā (European New Zealander) experiences (Cleland & Quince, 2014). It is important to include a brief discussion of Māori historical understanding and perceptions of children and childhood.

Until the 1940s, tamariki (children) lived relatively separate lives from their Pākehā (European New Zealander) counterparts (Cleland & Quince, 2014; R. Walker, 2004a). Ninety per cent of Māori resided and worked in rural areas, while Pākehā (European New Zealander) mainly resided in urban centres around New Zealand (Cleland & Quince, 2014; Kukutai, 2011; R. Walker, 2004a). Before colonisation, Māori had their own belief systems and ways of doing and thinking, particularly around child-rearing (see Jenkins & Harte, 2011; R. Walker, 2004a).

Childhood and youth was seen as a time of play and learning (Jenkins & Harte, 2011). Tamariki (children) and rangatahi spent their lives being prepared for adulthood through games and activities that would provide them with the necessary skills to be good warriors and members of their whānau (family, often three generations), hapu (extended family) and iwi (society) (Jenkins & Harte, 2011). Early Pākehā observations of tamariki and rangatahi (both girls and boys) saw that they were loved and cared for deeply and prized by their whānau/family (Cleland & Quince, 2014; Jenkins & Harte, 2011). R. Walker (2004a, p. 63) wrote, "the function of the whānau was procreation and nurture of children". Caring for tamariki (children) was seen as a

shared responsibility of parents and the wider whānau/family and fundamental to maintaining kinship and community ties (Jenkins & Harte, 2011). Particularly, matua tupunas (grandparents) played important roles in the socialisation of their mokopuna (grandchildren) (R. Walker, 2004a).

Until the 1940s, age was not a “significant determinant in Māori social order” (Cleland & Quince, 2014, p. 32). Instead, the level of mana (authority) (either bestowed or inherited) determined a tamariki’s (children’s) status (Cleland & Quince, 2014). Tamariki (children) were included in the family and all facets of life (Jenkins & Harte, 2011). For example, boys, particularly sons of chiefs, attended and participated in public meetings with their fathers. Marsden (as cited in Jenkins & Harte, 2011, p. 25) wrote, “the sons of chiefs were often seen, at the age of four or five years, sitting among the chiefs and paying the closest attention to what was said”. Similarly, Polack, as cited in Jenkins & Harte (2011, p. 25), wrote, “They [tamariki] also ask questions in the most numerous assemblies of chiefs, who answer them with an air of respect”. Māori respected and relied on reciprocity and acknowledged the importance of tamariki participation.

Tamariki (children) were considered tapu (under special rules and restrictions) and under the protection of atua (spiritual beings) (Jenkins & Harte, 2011). Harsh punishment of tamariki (children) for transgressions was strongly disapproved (Cleland & Quince, 2014). The attitude of whānau/family, hapu (extended family) and iwi (society) was that tamariki (children) make mistakes, it was part of their childhood/youth, and they should be left to be children/young people (Cleland & Quince, 2014). There was, as such, no concept of punishment as it was readily used and understood in Western terms.

The 1940s, however, saw a shift in the way of Māori life for many and, in turn, a shift in the view of tamariki (children). Beginning in the 1940s, many Māori were moving from rural areas to urban centres for work (Brickell, 2017; Cleland & Quince, 2014; R. Walker, 2004a). Over time, pressure to assimilate to Pākehā (European New Zealanders) worldviews led to the dismantling of Māori belief systems and practices (Cleland & Quince, 2014). Tamariki (children) became socialised into Western traditions through Western schooling, which

suppressed traditional ways of ‘growing up’ and thinking (Cleland & Quince, 2014).

Particularly, older tamariki (children) were expected to be more independent and began to experience harsher punishments for wrongdoing than any previous generation (Cleland & Quince, 2014).

The 1960s and 1970s saw the establishment of Māori ethnic gangs by disaffected rangatahi (Māori youth) (Cleland & Quince, 2014), for example, the Stormtroopers and Black Power (R. Walker, 2004b). Gangs in the 1970s were viewed as centrally a Māori ‘youth’ problem and were a key factor in a rise of fear of crime in the 1970s and 1980s throughout New Zealand (Cleland & Quince, 2014). R. Walker (2004b) wrote, “the patch-wearing gang member is the nightmare incarnation of the Pākehā New Zealander’s worse fears” (p. 222). However, as Cleland and Quince (2014) point out, this is not an issue of the past. Gang-related activity is still viewed primarily as a Māori issue and labels many rangatahi (Māori youth) as a potential threat to society. Māori youth have been viewed as ‘problematic’ for a long time (Cleland & Quince, 2014).

Critiques of Childhood Studies and Youth Studies

Childhood and youth studies is integral to understanding how children and young people have been viewed and treated over time. It has developed significantly since its introduction in the 1980s and generated new understandings of children, young people and childhood and youth. However, it is not without limitations. This section will briefly discuss some of the contemporary critiques of childhood studies and youth studies.

Childhood and youth studies is presented as an interdisciplinary approach (Canosa & Graham, 2020). However, Punch (2016) argued that childhood and youth studies is largely multidisciplinary rather than interdisciplinary. Punch (2016) wrote that the lack of an interdisciplinary approach to understanding children, young people and childhood is a missed opportunity for childhood and youth studies. According to Punch (2016), most theorists within childhood and youth studies tend to conceptualise and reconceptualise understandings about children, young people and childhood and youth from within their own disciplinary frameworks

rather than drawing from and interacting with broader disciplinary frameworks within childhood studies. By staying within the boundaries of specific disciplines and not interacting with and creating links between disciplinary views, childhood and youth studies theorists cannot integrate the knowledge they share to synthesise and create a more holistic approach to childhood and youth studies. Similarly, Canosa and Graham (2020) explain that childhood studies risk becoming insular, which limits their ability to engage with and include other points of view. More specifically, it does not have ‘the disruptive impact’ necessary to counteract adult-centric views from other disciplines that have been pervasive to understanding children, young people and childhood (Alanen et al., 2018, as cited in Canosa & Graham, 2020).

Moreover, childhood and youth studies literature has many theoretical and conceptual discussions of children as social actors and agents (Canosa & Graham, 2020; Tisdall & Punch, 2012). Tisdall and Punch (2012) explain that theorists of childhood studies have been more likely to emphasise children as social actors to respond to the pervasive views of developmental psychology. However, Tisdall and Punch (2012) point out that few studies problematise children’s agency; they wrote, “agency can be accepted uncritically as a positive thing” (Tisdall & Punch, 2012, p. 256). Tisdall (2016, as cited in Canosa & Graham, 2020) explains that there is a tendency to applaud agency when children’s actions are seen positively and less of a tendency to applaud children’s agency when their actions are seen negatively. A lack of problematising agency has created a taken-for-granted concept (Tisdall & Punch, 2012). While limits of children’s agency are discussed in research, few studies further problematise children’s agency (Tisdall & Punch, 2012). Others, such as Spyrou (2018), have also criticised the overemphasis on children’s agency in childhood studies as outdated and oversimplified. By over-emphasising children’s agency, Spyrou (2018) argued that it, in turn, simplifies the effect that structural forces (for example, legislation and policy), which are out of the control of children, have on children’s ability to exercise their agency.

Additionally, there is a lack of emphasis on majority world views of children and young people’s agency and childhoods in the literature (Canosa & Graham, 2020). The post-UNCRC notion of children and childhood provides a view and expectation of a global child and

childhood (James & James, 2012; Tisdall & Punch, 2012). Given that children's experiences of being a child, young person and their childhood, youth critically depend on their social, cultural, political and environmental settings, the children's rights framework that sets an expectation of a global child, young person and childhood and youth is problematic (James & James, 2012; Tisdall & Punch, 2012). Tisdall and Punch (2012) argue that while childhood studies view childhood as socially constructed, the construction of childhood and children's rights within childhood studies conforms to a minority world norm and does not consider majority world norms. It privileges a globalised child and childhood and excludes the child/young person and childhoods/youths of the majority world from theory and practice (Tisdall & Punch, 2012). This section has briefly discussed childhood and youth studies, focusing on the competing views of developmental and social constructionism. It has also provided a brief discussion on the history of childhood from a Western lens, focusing on young people and youth. The next section of this chapter discusses the SST and the concept of silence.

Spiral of Silence Theory and Silence

There is perhaps no greater domain where youth have been so widely silenced and intrusively subjected to adult-inspired interventions as the youth justice system. (Hogeveen, 2006, p. 49).

While undertaking my data analysis, I noticed an undercurrent of silence in my participant's responses. As such, a model of silence (see Chapter Nine) emerged from my data with young people and YJ personnel in the YJ FGC setting. A discussion of the SST and silence literature is necessary to support this model.

Spiral of Silence

The fear of isolation seems to be the force that sets the spiral of silence in motion. To run with the pack is a relatively happy state of affairs; but if you cannot, because you won't share [...] in what seems to be a universally acclaimed conviction, you can at least remain silent as a second choice, so that others can put up with you. (Noelle-Neumann, 1993, p. 6)

The SST is a political and mass communication theory developed by Noelle-Neumann between the late 1960s and early 1970s and revised in 1993. The SST explains variations in people's

willingness to share opinions on controversial and moral issues in different social settings (Gearhart & Zhang, 2015; Noelle-Neumann, 1974; 1991; Peterson, 2019; Salmon & Kline, 1983). The SST can be used to explain how public opinions (majority views) are formed and how societies decide on controversial and moral issues (Noelle-Neumann, 1974; 1993). Two principles central to the SST theory are conformity and fear of being socially isolated (Noelle-Neumann, 1993).

The fear of being socially isolated is central to people's willingness to share their opinions. Noelle-Neumann (1974) wrote that most people naturally and unconsciously fear social isolation. "Not isolating oneself is, in fact, more important than one's judgment" (Noelle-Neumann, 1974, p. 43). Noelle-Neumann wrote that humans are social and opportunistic beings whose opinions fluctuate depending on their social and psychological interactions (Noelle-Neumann, 1974; 1993). To avoid being socially isolated, people monitor the behaviours and opinions of society and those around them through interpersonal communication and exposure to media and subconsciously decide whether to share or withhold their opinions (Noelle-Neumann, 1974; 1991; 1993).

Under this lens, when discussing controversial or moral issues, Noelle-Neumann wrote that, on the one hand, people would share their opinions if they align with what most people think (majority view) and are likely to receive approval. On the other hand, people will conform to the majority view or avoid sharing their opinions/stay silent if they feel their opinions align with the minority view and are likely to receive disapproval, rejection or lead to isolation (Noelle-Neumann, 1974, 1991; Peterson, 2019; Salmon & Kline, 1983). Noelle-Neumann (1974) explains that over time, "the tendency of the one to speak up and the other to be silent starts off a spiralling process which increasingly establishes one opinion as the prevailing one" (1974, p. 91). The majority view becomes the prevailing view, while the minority opinions become increasingly silent (Noelle-Neumann, 1974; 1991).

The SST is an old theory with some key tenets that have explanatory importance and usefulness for understanding silence in settings such as the YJ FGC, where discussions can cover controversial and difficult topics. The notion that silence permeates social discourse and social

interactions over time (Noelle-Neumann, 1974; 1991) and the idea that silence occurs when majority views (in this case, adults) leads to the social isolation of those with minority views (often children and young people) (Noelle-Neumann, 1974; 1991) are salient. However, the SST was created long before the YJ FGC model and for a different context. As a theoretical framework, it is not watertight. The SST does not go far enough to encompass and explain other reasons for silence, such as cultural norms or personal choice. In particular, the theory does not discuss silence as a personal choice or positive action.

Children, Young People and Silence

The concepts of children, young people, childhood and youth have been imbued with silence (Lewis, 2010). Traditionally, in Western societies, children and young people were seen as voiceless and without a voice of their own (Haring et al., 2019; Lewis, 2010). Children's or young people's views were mostly ignored or not taken seriously (Lewis, 2010). Over time, new understandings of children and young people as agentic beings and participatory subjects with a voice worthy of being listened to and taken seriously have emerged (Jenks, 2005). There exist, at times, competing social attitudes, laws, policies and practices worldwide that, on the one hand, maintain children's and young people's silence and, on the other, actively encourage and recognise children and young people's participation as important (see the UNCRC, 1989).

Much of the research in childhood studies has focused on finding children's and young people's 'truths' by exploring children's voices (Green et al., 2021; Lewis, 2010; Spyrou, 2016). Little research in childhood studies have focused on silence as a part of children's and young people's everyday experiences (Green et al., 2021; Hanna, 2021; Spyrou, 2016). Very little research has gone beyond the concept of 'voice' to explore other components, such as silence (Hanna, 2021; Lewis, 2010; Spyrou, 2016), even though, as explained by Spyrou (2016), silence is an integral part of fully understanding children and young people's voices.

Children and Young People's Experience of Silence

Silence infuses all aspects of our daily communications; what we say and what remains unspoken; those to whom we speak, and those we ignore; those we trust and respect, and those we do not. (Hanna, 2021, p. 1158)

Although there is minimal research on children's and young people's experiences of silence in relation to 'voice' in childhood studies (Green et al., 2021; Lewis, 2010), silencing is apparent in many areas throughout the literature on children and young people's lives⁵⁷ and in their social worlds⁵⁸. In the literature, on the one hand, the term silence is not used or acknowledged in some studies. Silence, instead, shows itself through the data as a lack, for example, children and young people not being listened to or their non-participation (see Merkel-Holguin et al., 2019). On the other hand, silence in some studies is overt⁵⁹. While it is not in the scope of this thesis to discuss all the literature, providing a few examples shows how silence is infused in the social structures and everyday interactions that make up children's and young people's lives.

In 2016, Spyrou looked at the issues of not including silence in research that explored child voice. His article referred to many examples from his previous study in 2000 with primary school-aged children on children's national identities in Cyprus (Spyrou, 2016). In his previous study, he found that children were readily silenced by teachers, who, by their position as teachers, were gatekeepers and had the power to silence children (Spyrou, 2016). This silence was often culturally and politically context-specific⁶⁰. For example, in his study, he found that some children were cut off or ignored (silenced) in the classroom by their teacher when they shared knowledge that did not align with the teacher's or the curriculum's cultural or political views (Spyrou, 2016). Similarly, he also found that children reproduced silence through learned

⁵⁷ See Chase (2010) Agency and Silence: Young People Seeking Asylum Alone in the UK (political); Woodley et al. (2013) Breaking the Silence but Keeping Secrets (health); Ministry for Children (2019), Have Your Say: Summary Report National Engagement on Tamariki tū, Tamariki ora: New Zealand's First Child and Youth well-being Strategy (policy)

⁵⁸ See, for example, Demony and Pereira (2021); Portugal Urges Victims of Clergy Sexual Abuse to Break Silence; Ellingham (2021) Push to Remove Right to Silence for Child Violence Witnesses; NZ Herald (2001) Silence Can be Fatal; Lewis (2022) 'Lessons Clearly Still Not Being Learned After Child Q Outrage – Silence Not an Option'.

⁵⁹ See, Green et al. (2021), Silencing Touch and Touch Silence? Understanding the Complex Links Between Touch and Silence in Residential Childcare Settings; (Welfare); Hanna (2022), Seen and Not Heard: Students' Uses and Experiences of Silence in School Relationships at a Secondary School (education).

⁶⁰ Spyrou's (2016) research was conducted in Cyprus where there has been an ongoing inter-ethnic conflict between Greek Cypriots and Turkish Cypriots (Smith, 2021a).

culturally and politically sensitive views. He wrote that larger cultural and ideological discourses within societies could be a factor in silencing children and often unconsciously silencing others (Spyrou, 2016).

Similarly, Hanna (2022) researched instances of silence between 42 young people and 27 teachers in a school in the UK. Like Spyrou's (2016) article, Hanna found that teachers and young people used silencing in the school setting. When teachers silenced young people, they used silence as a form of "discipline, control, and punishment" (Hanna, 2022, p. 29). In Hanna's (2022) study, silencing techniques such as not listening to students or not allowing them to speak manifested in teaching practices to control behaviour. This enabled teachers, at times, to maintain their authority and power over students. Some students also equated teachers' use of silence to control and punish them with emotions, "if they're [teachers] mad they'll just stare at you and be silent" (Hanna, 2022, p. 31). When it came to students' experiences of being silenced by their teachers, some students felt they were ignored and given silent treatment to disempower them (Hanna, 2022). On the other hand, some students referred to teachers and students as using silence as a buffer to avoid confrontation, "sometimes people stay silent like and don't address things because they don't want to deal with it" (Hanna, 2022, p. 30). Hanna's (2022) study also found that some students used silence as a form of resistance to teachers' authority, "one key consequence of school practices of expecting silence and imposing it on students at the teachers' discretion may be that students use it to resist teacher authority" (p. 32).

In a 2021 study, Green et al. (2021) used two ethnographic doctoral studies that spanned over 20 years to understand children's, young people's and carers' experiences of touch and silence in welfare residences in England UK. One of the key findings of this study was that children and young people's silence was often expressed as non-participation, for example, overtly refusing to discuss or talk about touch incidents (Green et al., 2021). Further, Green et al. (2021) found that children and young people's silence could also be seen in their non-verbal cues, such as being quiet, physically withdrawing from the conversation, or physical gestures. Green et al. (2021) wrote that children and young people used these kinds of silences as a form of resistance

to adults, who, if they knew these children and young people's vulnerabilities, could use them to disempower them further.

In a 2019 study, Merkel-Holguin et al. (2019) researched children's, young people's, and adults' experiences of family group conferencing in Colorado, US. Although silence was not expressly mentioned in their study, it can be seen in adults restricting children's and young people's choices and sharing of their views. One of the key findings was that professionals and families often constrained children's and young people's sharing of their views in family group conferences. Merkel-Holguin et al. (2019) wrote that despite having child-centered participatory processes, children and young people were often provided with limited options for outcomes for their family group conferences, "which may affect their [children and young people's] feelings of freedom to express themselves... (Holland & O'Neill, 2006, as cited in Merkel-Holguin et al., 2019, p. 29).

Lastly, silence is heavily imbued with the concept of power (Hanna, 2022; Spyrou, 2016). As agents, children and young people can choose to be silent (power), but they can also be silenced (powerless). However, it should be recognised that, in general, children and young people are seen as subordinate to adults (Pahmp, 2021), and in the adult-child relationship, adults inherently have more power than children and young people (Hanna, 2022; Shier, 2012; Spyrou, 2016). It could be argued that silence is one of the mechanisms through which power is exercised in adult-child relationships. Although adults inherently have more power than children and young people, silence can also be seen as a mechanism that children and young people can use to challenge that power.

Conclusion

This study's theoretical and conceptual frameworks are filled with competing and ever-changing ideas. Through childhood studies, it can be seen that the modern concept of childhood is vastly different from the 19th century. However, many of the negative images associated with young people today are repeated concerns of history. The history of childhood shows that the concepts of childhood, youth, children and young people are not simply biological states of

being; they are social constructions through law and policy, responding as social attitudes changes over time and sometimes repeat themselves (Muncie, 2004). For young people in conflict with the law, pervasive images of young people as threats to society persist today and shape how young people in conflict with the law are understood and treated, particularly in the New Zealand context.

As can be seen, silence is a part of society's makeup, in which children and young people exist. Sometimes, silence is deeply embedded in cultural and political attitudes, and structures reproduced in practice often serve to disempower or create harm. And at other times, to be silent is self-imposed; for example, it can be a choice to protect, restrict, empower or think. The SST and literature on silence, provides some explanations and examples that support the idea of children's and young people's experiences of silence. Childhood studies, the SST and the concepts of silence interrelate to provide an understanding of children's and young people's perceptions of participation in the YJ FGC context. The next chapter, on previous research, discusses the international and domestic research on young people's and YJ personnel's perceptions of young people's participation in YJ FGC settings.

Chapter Five: Previous Research on Young People’s and Youth Justice Personnel’s Perceptions of Young People’s Participation Rights in the Youth Justice Family Group Conference Setting

Introduction

Central to the family group conference is the participation of young people (Morris & Maxwell, 1998; Umbreit & Armour, 2011). While several studies in the international and domestic literature have investigated children’s and personnel’s views of participation in the context of welfare family group conferencing⁶¹, there is a paucity of empirical and up-to-date studies investigating young people’s and YJ personnel’s perceptions of young people’s participation in YJ FGC settings (Creaney, 2020; Hayes et al., 2014; Williams & Ioane, 2021).

Most studies that discuss YJ FGCs in the international and domestic literature are from the early 1990s to the mid-2000s. Many of these studies have focused on the process outcomes of the YJ FGC⁶², the relationship between YJ FGCs and recidivism⁶³, and participants’ views of procedural fairness and satisfaction with the YJ FGC⁶⁴.

Few studies have included a comprehensive discussion on young people’s and YJ personnel’s views of the YJ FGC and young people’s participation in this process (Creaney, 2020; Daly &

⁶¹ See Bell & Wilson (2006); Carswell et al. (2013); Conolly (2006); Devine (2005); Holland and O’Neill (2006); Merkel-Holguin et al. (2019).

⁶² See Sherman & Strang, (1997) and Umbreit, (1998).

⁶³ See Baffour (2006); Bergseth and Bouffard (2012); Griffiths (1999); Hayes and Daly (2001, 2003); Hayes et al. (2014); Hines (2000); Livingston et al. (2013); Luke and Lind (2002); Moore and Forsythe (1995); Seokjin et al. (2013).

⁶⁴ See Daly (2001); Fercello and Umbreit (1998); Hayes et al. (2014); McGarrell et al. (2000); Sherman and Strang (1997); Palk et al. (1998); Trimboli (2000); Wagland et al. (2013).

Hayes, 2002; Suzuki & Wood, 2017; Ward & Langlands, 2008; Williams & Ioane, 2021). Daly and Hayes (2002, p. 234) wrote, “with the exception of the first wave of New Zealand research . . ., we know very little about what happens in conferences and how they affect people”.

Similarly, other authors have alluded to there being very few evaluative studies (Maruna et al., 2008).

The lack of studies that include a detailed discussion on young people’s and YJ personnel’s perceptions of young people’s participation in this setting, particularly in the New Zealand context, presents a significant gap in the literature. Young people’s participation is foundational to the YJ FGC process and its success (Barnsdale & Walker, 2007; Henwood & Stratford, 2014). What young people and YJ personnel think about young people’s participation in this setting is pertinent. Their views can inform a holistic understanding of the extent to which young people’s meaningful participation occurs and how the YJ FGC process functions in practice (Drake et al., 2014; Williams & Ioane, 2021).

The chapter is divided into two sections. The first section discusses the international and domestic literature on young people’s perceptions of their participation rights in YJ FGC settings. The second section discusses the domestic literature on YJ personnel’s perceptions of young people’s participation rights in this setting⁶⁵.

Chapter Caveats

Youth justice family group conferencing and young people’s participation in YJ systems and processes worldwide vary considerably (Bolitho, 2012). Zinsstag et al. (2011) wrote that understanding young people’s participation in different jurisdictions is complicated. Depending on the jurisdiction, practices and policies and young people’s experiences of participation vary greatly (Zinsstag et al., 2011). Few governments have legislatively mandated the YJ FGC and the participation of young people in this process; the YJ FGC remains a non-legislated and

⁶⁵ For this discussion, only research on young people’s and YJ personnel’s views of young people’s participation in YJ FGC settings will be discussed. Significant variations exist in the roles and types of YJ personnel involved in a YJ FGC between and within jurisdictions. Only New Zealand-based research that includes YJ coordinators’, youth advocates’ and YJ social workers’ views will be discussed.

optional practice in many countries (Barnsdale & Walker, 2007; Bolitho, 2012; Skaale Havnen & Christiansen, 2014). For example, Smithson et al. (2020) briefly discuss the varied incorporation of UNCRC principles, such as participation, into YJ legislation and YJ processes throughout the UK. Similarly, Bolitho (2012) and Winterdyk (2020) briefly discuss the uneven use of young people's participation in YJ processes throughout North America.

On the other hand, some governments have made provisions for young people's views to be heard and have enshrined participation in their domestic legislation for young people in conflict with the law⁶⁶. The discretionary use of young people's participation in YJ legislation and YJ processes, including YJ FGCs', could help explain the paucity of empirical and up-to-date research about young people's participation in YJ FGC settings.

Young People's Perceptions of Participation in Youth Justice Family Group Conferences

Pre-Conference Preparation

Preparation of young people for their conference by YJ personnel is an essential precursor to young people's engagement and participation in their YJ FGC and the conference's success (Anderson & Parkinson, 2018; Maxwell & Morris, 1993; OCC 2017b; Suzuki, 2020). Hooper (2013) explains that pre-conference preparation of young people is also necessary to alleviate power imbalances in the conference setting by preparing young people to be in a room filled with adults. Suzuki (2020) wrote that for participants to engage in a YJ FGC meaningfully, YJ personnel must provide young people with information beforehand that informs them of what will happen in the conference, what is expected of them, and some of the potential outcomes of the conference. Suzuki's (2020) view is consistent with the UN Committee on the Rights of the Child (2009, p. 13) that stresses for Article 12 to be fully implemented in practice, one of the

⁶⁶ See, for example, Children, Youth and Families Act 2005 (Vic, Australia); Oranga Tamariki Act 1989 (NZ); The Criminal Justice (Northern Ireland) Order 1998 (NI).

steps in the implementation process is the preparation of children and young people involved in any “judicial and administrative decision-making process”.

In an Australian study, Trimboli (2000) surveyed 330 young people (aged 11 to 18 years) and other key YJ conference attendees⁶⁷ about their satisfaction with the YJ FGC process in NSW. Young people were asked several closed-ended questions using a fixed response survey, which included questions about young people’s pre-conference preparation⁶⁸. The study showed that the majority of young people participants were given ‘some/a lot’ of information about what would happen in their conference (96%); were given ‘some/a lot’ of information about what was expected of them in the conference (95.4%), and were given ‘some/a lot’ of information about possible outcomes (91.4%). However, it is unclear precisely what is meant by ‘some/a lot’ and whether young participants understood the information provided.

In an early New Zealand study, Maxwell and Kingi (2001) conducted a retrospective study on file data of young people (616 boys and 117 girls) who had a YJ FGC in 1998. They interviewed 302 boys and 59 girls about their preparation for and participation in their YJ FGC. In their interviews, young people participants were asked to rate their agreement/disagreement with several statements about their preparation⁶⁹ (Maxwell & Kingi, 2001). Similar to the findings of Trimboli’s (2000) study, Maxwell and Kingi’s (2001) study showed that most young people participants experienced pre-conference preparation. The majority of young people participants in this study felt they were told what would happen in their conference (76%), what would be expected of them (69%), the possible outcomes of their conference (76%) and were asked who they thought should attend their conference (82%) (Maxwell & Kingi, 2001).

In a later Australian study, Wagland et al. (2013) evaluated participants’ satisfaction with the NSW YJ FGC. In their study, 263 young people (aged 11 to 19 years) were given a fixed response self-report survey that included several questions about their pre-conference

⁶⁷ Namely, victims and a support person of each young person (Trimboli, 2000).

⁶⁸ For example, “were you given information about what would happen at the conference?”, “were you given information about what was expected of you at the conference?” and “were you given information about possible outcomes of the conference?” (Trimboli, 2000, pp. 31–24)

⁶⁹ Namely, ‘I was told what would happen’; ‘I was told what others might expect of me’; ‘I was told about possible outcomes’ and ‘I was consulted about who should come’ (Maxwell & Kingi, 2001, p. 177).

preparation⁷⁰. Their study showed that the majority of young people participants were told ‘quite a bit/ a lot’ about what would happen in their conference (98.5%); what was expected of them in the conference (94.6%), and about the possible tasks included in the outcomes of their plans (93.5%) (Wagland et al., 2013).

It could be argued that the findings of the above studies were indicative of some young people’s pre-conference preparation in the context of the Southern Hemisphere in the early 2000s.

However, a Northern Ireland study by Campbell et al. (2005) also showed similar findings.

Campbell et al. (2005) conducted observations of 185 YJ FGC’s and interviews with 171 young people who had completed a YJ FGC. Their study showed that the majority of young people participants ‘agreed’ that they were informed about what their conference would be like (96%) and ‘agreed’ that they were informed of potential outcomes of their conference by YJ professionals (90%) (Campbell et al., 2005).

On the other hand, a New Zealand study by Maxwell et al. (2004) found inconsistencies in the practice of preparing young people for their YJ FGC. Maxwell et al. (2004) conducted a large-scale study on young people’s and other attendees’⁷¹ experiences of the YJ FGC. Their study showed that 70% of young people participants (a total of 520 young people) stated that they had been contacted before their conference and informed about what would happen at their conference (Maxwell et al., 2004). However, 30% of young people participants stated that they did not meet or have any preparation meetings before their YJ FGC with YJ personnel (Maxwell et al., 2004).

Similarly, in a more recent study, the New Zealand OCC (2017b) reviewed family group conferencing practices across four care and protection and two YJ sites. This study interviewed 14 young people and other key conference attendees⁷² who had participated in a YJ FGC in the previous six months (OCC, 2017b). This review aimed to gain insight into the pre-YJ FGC process and practices, the family group conference process, and its outcomes (OCC, 2017b).

⁷⁰ Namely, “[h]ow much did the convenor tell you about what would happen at the conference?”; “How much did the convenor tell you about what was expected of you at the conference?” and “[h]ow much did the convenor tell you about the possible tasks included in the outcome plan?” (Wagland et al., 2013, p. 6)

⁷¹ Namely, YJ coordinators, family members and victims (Maxwell et al., 2004).

⁷² Namely, whānau/family and YJ coordinators (OCC, 2017b).

The OCC (2017b) study found similar results to that of Maxwell et al. (2004): YJ coordinators tasked with pre-conference preparation of young people were “putting significant effort into phone and face-to-face meetings” with young people (OCC, 2017b, p. 6). However, the study also showed that this practice varied significantly—in some cases, some young people were not contacted at all by the YJ coordinator before their conference (OCC, 2017b).

The above studies indicate that pre-conference preparation of young people by YJ personnel varies by process and practice in countries and between countries. None of the studies mentioned reported 100% of all young people taking part in pre-conference preparation processes. More specifically, the New Zealand studies (for example, OCC, 2017b and Maxwell et al., 2004) indicate that there are inconsistencies in the practice of pre-conference preparation of young people and that some young people may not be prepared by YJ personnel for their conference at all. Studies show that young people who are prepared for their conference are more likely to participate and report being satisfied with their participation and conference outcomes (Hayes & Daly, 2004; Maxwell & Morris, 1993; OCC, 2017b; Slater, 2009). Inconsistencies in practice and lack of preparation of young people for their conference by YJ personnel can act as barriers to enabling and facilitating young people to meaningfully participate in their conference.

Young People’s Participation During Their Conference: A Mixed Experience

Young people’s participation in their YJ FGC also relies on having opportunities and support to participate, particularly in the conversations around their offending and making decisions about their conference outcomes (Commission for Children and Young People, 2021; Maxwell & Morris, 1993). Research shows that when young people feel supported and facilitated to participate in their YJ FGC they are more satisfied with their conference experience and are more likely to share their views (Campbell et al., 2005; Daly & Hayes, 2002).

Negative experiences. Maxwell and Morris (1993) conducted the first study about young people’s experiences of the YJ FGC. In their New Zealand study, 154 young people (aged 14 to

16 years) and other key participants were interviewed and asked several questions about the YJ FGC experience⁷³ (see Maxwell & Morris, 1993, pp. 203–206) via open and closed questions⁷⁴.

Maxwell and Morris's (1993) study showed that nearly half of all young people participants felt they had been involved in the decision-making processes of their YJ FGC (46%). Still, almost half of the young people participants felt they had been left out of the decision-making process (45%) (Maxwell & Morris, 1993). Young people participants who felt they did not take part in the decision-making process provided several reasons why, for example, some stated that adults did not allow them to take part or made the decisions for them – “I was talked about but had no say in the matter” (Maxwell & Morris, 1993, p. 113); some young people felt they were ignored by adults – “the decision was made for me– they didn't listen to me” (Maxwell & Morris, 1993, p. 113), and some young people felt shame or embarrassment or did not know how to respond or did not feel it was appropriate for them to be part of the decision-making process – “I didn't really know what was going on – left it to my parents and the lawyer” (Maxwell & Morris, 1993, p. 110).

The researchers in this study explained that for the questions on participation and ‘who decided’, young people participant responses of, ‘they decided but I agreed to it’; ‘I wasn't involved I just agreed to it’; ‘I just agreed with what they thought best’, and ‘they decided but I was consulted’, were coded as young people taking part in their YJ FGC (Maxwell & Morris, 1993, p. 109). Maxwell and Morris's (1993) study also showed that 95% of the YJ FGCs in this study ended in consensus decision-making. Given how the responses were coded and that 45% of young people stated that they did not take part, this could cast doubt on how ‘mutual’ the consensus decisions were.

Maxwell and Morris's (1993) study indicates that young people's views of participation in the YJ FGC can vary. Their study also suggests that young people's experiences of participation can be contingent on a myriad of factors, such as adults listening to young people and

⁷³ Namely, “were you asked your views?”, “were you listened to?”, and “how involved were you in reaching the decision?” (Maxwell & Morris, 1993, p. 203).

⁷⁴ Namely, “were you asked your views?”, “were you listened to?”, and “how involved were you in reaching the decision?” (Maxwell & Morris, 1993, p. 203).

supporting them to take part in decision-making processes and young people's knowledge of the process, understanding of participation, and young people's ability to respond (Maxwell & Morris, 1993). It could be argued that when young people are uncertain about the process and their participation in it, and when they do not know what to say or how to respond, some young people's participation could become passive, or some young people might not take part at all. Since Maxwell and Morris's (1993) study, several other studies have included some questions about young people's experiences of participation in their YJ FGC. In a South African study, Tshem (2009) interviewed 10, 15 to 18 year olds on their experience of the YJ FGC. Although participation type questions were limited (see pp. 138–140), when asked, "what role did you play in coming up with this outcome?" (Tshem, 2009, p. 139), like those results found by Maxwell and Morris (1993), Tshem's (2009) study showed that more than half of the young people participants (70%) said that they were not involved in deciding their YJ FGC outcome and that adults, such as family members, had made the decisions for them. These findings were similar to those of Maxwell et al. (2004), who found that just over half of the young people participants in their study did not take part in the decision-making processes of their YJ FGC. Some young people participants also felt they were not listened to by adults during their conference – one young person said:

"I was speaking but they weren't listening. They wouldn't believe what I had to say about things going on in my life. While I was there to deal with my life, they were more interested in wrapping things up for an early night with coffees at home" (Maxwell et al., 2004).

In a 2020 study, in England, Smithson et al. (2020) interviewed 28 young people (aged 15 to 18 years) about their experience of the YJ system, including the YJ FGC. While the study did not differentiate in the findings which YJ processes young people were referring to (for example, Youth Court or the YJ FGC), one of their most salient recommendations was to let young people participate in YJ processes, including the YJ FGC (Smithson et al., 2020). Smithson et al. (2020) wrote that there is a lack of opportunity for young people to be listened to and meaningfully participate in YJ processes in England. They explained that adults in the YJ system do not always prioritise young people's participation. One young person in their study said, "They [adults] don't listen to you... they don't let you speak... so they don't understand

nothing” (Smithson et al., 2020, p. 6). Though this finding could be indicative of the state of young people’s participation in YJ processes in England, such findings are consistent with the OCC (2017b) New Zealand study and the Commission for Children and Young People in Victoria, Australia study (2021).

As mentioned above, the OCC (2017b) study found that most young people’s views, while elicited, were ignored during their YJ FGC. Some YJ coordinators did not prioritise young people sharing their views or providing the opportunity for young people to participate (OCC, 2017b). The OCC (2017b, p. 9) offered several explanations for the varied practice, including “insufficient people budget” to prepare young people for their YJ conference and a lack of training and support to improve practice. These findings are similar to a finding described by Maxwell et al. (2004), where YJ coordinators identified the need for more financial resources and training of YJ coordinators.

The Commission for Children and Young People in Victoria, Australia, conducted semi-structured interviews with 93 Aboriginal children and young people (aged 11 to 25 years) about their experiences of the Victorian YJ system and processes, including the YJ FGC (Commission for Children and Young People, 2021). Children and young people in this study were asked “whether they were able to participate in decisions affecting them... and whether they felt heard” (Commission for Children and Young People, 2021, p. 219). Overwhelmingly, in this study, most children and young people said they did not have a say and had not felt heard. One young person participant said, “[g]ive young people a say in what is going on I’ve never been given a voice. I’m still trying. Seth, 16” (Commission for Children and Young People, 2021, p. 219).

Similar to the explanations provided by the New Zealand OCC (2017b), the Commission for Children and Young People (2021) explained that in Victoria, there is no specific guidance on how YJ personnel can assist young people in taking part in their YJ FGC and there is an urgent need for funding to train staff on “effective youth participation” (Commission for Children and Young People, 2021, p. 43). This finding and those by Maxwell et al. (2004) and OCC (2017b) suggest that administrative procedures can cause barriers to young people’s participation. For

example, discrepancies in training, policy and practice and a lack of funding could lead to a lack of facilitation and opportunities from YJ personnel for young people to participate in their YJ FGC.

Lastly, in one of the few studies exclusively on adolescent girls⁷⁵ experiences of the YJ FGC, Hodgson (2020) conducted semi-structured interviews⁷⁶ with 15 adolescent girls (aged 12 to 17 years) and 13 RJ practitioners to compare young people's experiences and views of the YJ FGC with YJ personnel's views in England and Wales. Hodgson's (2020) study showed that most of the adolescent girl participants in this study saw the YJ FGC experience as impeding their participation, that their participation felt useless, and they felt that what they had to say was not listened to (Hodgson, 2020). As young people stated:

I found it absolutely useless because we didn't get our point across, we were targeted all the way through it. . . If I probably had to do one again, I wouldn't. I would choose court because you get your point across in court, it is fairer in court. . . You actually get listened to. . . It's funny because they didn't listen to me. They didn't listen to what I had to say . . . we were there to say sorry and explain our side of the story. . . she [victim] didn't even listen to our events, she just went straight in there and every single one of them had a go at us. (Sarah, 17 years) (Hodgson, 2020, p. 10).

I just switched off. I never even said anything I just had to agree with everything they said. (Naomi, 13 years) (Hodgson, 2020, p. 10).

Hodgson's (2020) study also showed that YJ personnel suppressed the views of the majority of the adolescent girl participants by not allowing them to share their stories about their offending. Hodgson (2020, p. 10) wrote, "[t]hese responses do not depict RJ conferencing as an arena in which girls can share their narratives with regard to their offending behaviour but rather as an experience, which silences their subjectivities". This study indicates that YJ personnel can act as a barrier to young people sharing and expressing their views in this setting by silencing young people's experiences.

Hodgson's (2020) study also explored other aspects of participation, including adolescent girls' reasons for choosing to participate in their YJ FGC. Hodgson (2020) found that some adolescent

⁷⁵ Teenage girls' experiences of YJ FGC are limited in the literature (Hodgson, 2020). Hodgson (2020) explains, of the research that exists it tends to focus on female victims' experiences, rather than teenage girl offender experiences.

⁷⁶ The interview schedule was not attached to this study, to find out the exact questions asked to the participants.

girl participants took part in their YJ FGC because they felt it was necessary to avoid going to court. As young people stated: “Basically, the restorative justice meeting was so we didn’t end up going to court and getting it on our record. . .” (Sarah, 17 years). (Hodgson, 2020, p. 11)

Zinsstag et al. (2011) wrote that in most jurisdictions, the participation of young people in their YJ FGC is expected. This study raises questions about whether young people, particularly adolescent girls, feel they have a choice to participate. Non-attendance and non-participation by young people can lead to harsher alternatives and outcomes, such as Youth Court and a record (Ward & Langlands, 2008; Zinsstag et al., 2021).

Lastly, Hodgson’s (2020) study also showed that most adolescent girl participants’ reasons for participating in the YJ FGC were to apologise to the victim and to change/challenge the perceived negative views of other attendees. Teenage girl participants in this study did not, however, exclusively participate to repair the harm caused to the victim (Hodgson, 2020).

Hodgson (2020) explains that this can be seen as an expression of agency and resistance to overarching RJ principles such as repairing harm. This finding suggests that some young people may participate in a YJ FGC for reasons outside the YJ FGC intentions and principles.

The above studies suggest that young people can have negative experiences of participating in their YJ FGC. What is indicated across the studies discussed, is that adults and administrative issues (such as lack of funding and training of personnel responsible for ensuring young people take part in their conference) can act as significant barriers to young people’s participation in the conference setting. As indicated by the Commissioner for Children and Young People (2021); Maxwell and Morris (1993); OCC (2017b); Tshem (2009), some young people may struggle to express their views or have their participation taken away during their conference when adults lack resources to do their job effectively or when adults take control of the conference discussion, make decisions for young people or ignore young people’s views. It could also be argued that where non-attendance and non-participation lead to harsher penalties, that young people can be coerced into participating in their YJ FGC rather than having the choice to voluntarily take part (Hodgson, 202).

Positive experiences. On the other hand, some studies have found young people's participation in their YJ FGC to be a positive experience. In an Australian study, Palk et al. (1998) re-analysed primary survey data collected by the Juvenile Justice Branch of the Queensland Department of Justice in 1997. In these surveys, 113 young people and other stakeholders⁷⁷ were asked closed-ended questions to determine their experiences and satisfaction with their YJ FGC (Palk et al., 1998). Although the survey administered to young people did not specifically mention the word 'participation', it did ask young people to respond to some statements⁷⁸ that alluded to their participatory experience.

Their study showed that most young people felt as though they were not pushed into things in their conference (97.8%), and most young people felt as though they got to say everything they wanted to say (98.9%) (Palk et al., 1998). Their study also found that most young people participants felt they were facilitated to participate in their YJ FGC by adults in the conference (98.2%) (Palk et al., 1998). However, it is unclear precisely what is meant by 'pushed into things' or what the 'things' are, as no explanation is provided. The results of Palk et al.'s. (1998) study is similar to those found in Trimboli's (2000) study, where the majority of young people participants 'agreed/strongly agreed' that they were able to express their views in the conference (91.1%) and that their views had played a part in deciding the outcome of the conference (89.2%).

In another Australian study, Hayes and Daly (2004) analysed the official crime histories and conferencing case files for 200 young people (aged 10 to 16 years) who attended a YJ FGC in Queensland between April 1997 and May 1999. They also analysed the 'Queensland Department of Families Evaluative Data of Participant's Views of their [YJ] Family Group Conference Survey' administered to young people after their YJ FGC (Hayes & Daly, 2004). Similar to Palk et al.'s. (1998) and Trimboli's (2000) study, Hayes and Daly (2004) found that

⁷⁷ Namely, parents/caregivers of the young person, the victim and victim supporters (Palk et al., 1998).

⁷⁸ Namely, "[i] was not pushed into things in the conference" and "[i] got to have my say at the conference" (Palk et al., 1998, p. 146).

all young people participants (100%)⁷⁹ said that they participated in their conference and got to share their views.

Similarly, McGarrell et al's. (2000) American study found most young people participants in this study felt they had the opportunity to express their views (90%) and that most of the young people participants felt they meaningfully participated in their YJ FGC (80%). However, it is not certain what 'meaningfully participated' means and to what extent young people were able to participate, as this was not explained in the study.

The studies mentioned, under the sub-heading of 'positive experiences', indicate that when young people are given the opportunity to express their views and participate in decision-making, they can and are more likely to participate in their conference process. It could be argued that a significant factor that can make a difference in young people's experience of their YJ FGC is when adults enable and give young people the space and support to share their views and meaningfully participate in the conference process.

Communication: A Barrier to Meaningful Participation

Successful participation in juvenile justice intervention programs relies heavily on a variety of language skills, including listening, understanding, finding non-literal meanings (e.g., of humour, metaphor, analogy), processing conversation, formulating one's own ideas and experiences into words and participating in... socially acceptable ways. (Humber & Snow, 2001, p. 2)

Youth justice family group conferences place demands on young people's language and communication skills (Metzger et al., 2018; Riley & Hayes, 2018; Sowerbutts et al., 2021).

Morris and Maxwell (1998) and Snow and Sanger (2011) wrote that, in principle, young people are expected to participate in their YJ FGC using verbal communication to discuss their offending. Young people are also expected to listen, understand and respond to non-verbal communication (for example, body language) from others involved in the YJ FGC setting (Lount et al., 2018; Snow & Sanger, 2011; Sowerbutts et al., 2021).

⁷⁹ Two hundred young people participants (aged 10 to 16 years) took part in this study.

Research has shown, however, that young people involved in YJ systems worldwide tend to have communication difficulties (Bryan et al., 2007; Lount et al., 2018; Snow & Sanger, 2011; Sowerbutts et al., 2021). For example, in a UK study, Bryan et al. (2007) found that majority of young people in conflict with the law in their study had communication difficulties. Similarly, in a New Zealand study, Lount et al. (2018) found that 64% of young people participants in their study had significant communication difficulties. In another New Zealand study, Metzger et al. (2018) explain that young people in the YJ system can have difficulty understanding and comprehending receptive language, especially when the language used by adults becomes more complex. Wallace (2020, para. 3) defines receptive language as “the [ability to understand] information provided in a variety of ways such as sounds and words, movement and gestures; and signs and symbols”. Metzger et al. (2018) also explain that young people’s communication difficulties are exacerbated in stressful settings such as the YJ FGC. This can affect how a young person interacts at the YJ conference, how others perceive the young person and their responses and young people’s meaningful participation in their conference.

In an Australian study, Riley and Hayes (2018) used secondary data (see Hayes et al., 2014) to see if the language used by facilitators in the YJ FGC affected young people’s experiences.

Their analysis of the secondary data showed that

. . . most young offenders did not understand what they had been asked by the conference facilitators, they had difficulty grasping the seriousness of what they had done, and had difficulty articulating their remorse. They often answered ‘yes’ to questions to hide their lack of understanding and to ‘get out’ of the conference as quickly as possible. For the majority of young offenders, the language was ‘over their heads’. (Riley & Hayes, 2018, p. 100)

Riley and Hayes (2018) explain that most young people in this study displayed communication difficulties. Most of the 50 young people (aged 10 to 16 years) in this study struggled to communicate their experiences, even when prompted by facilitators (Riley & Hayes, 2018).

When the facilitators tried to get young people to expand on their thoughts and share their views, what they shared was often short and difficult to understand (Riley & Hayes, 2018).

This finding suggests that underlying issues, such as communication difficulties, may hinder young people’s meaningful participation. It also raises questions about how meaningful young

people's participation can be since oral communication is central to young people sharing their views (Hopkins, 2015), yet many young people in conflict with the law have oral communication difficulties (Hopkins, 2015; Snow & Sanger, 2011; Sowerbutts et al., 2021). Lastly, Riley and Hayes (2018) study found that young people's body language can contribute to their experience and outcome of their YJ FGC. Riley and Hayes (2018, p. 106) explained that "poor eye contact, tears, lowered or shielded heads and redness of skin tone" shown by young people was often interpreted as signs of remorse or shame. However, they argue that such reactions may indicate other feelings, such as discomfort or intimidation (Riley & Hayes, 2018). They explained that young people could feel intimidated in an adult-dominated setting, particularly when adults are allowed to make accusations, judgements, and unsupportive comments toward the young person (Riley & Hayes, 2018). This finding suggests that how young people's non-verbal communication is interpreted and understood by others may also affect how others treat them in their conference.

In a New Zealand study, Metzger et al. (2018) interviewed 13 young males (aged 12 to 21) and three family members on their experiences with New Zealand's YJ system. Their study, like Riley and Hayes (2018), showed that most of the young people participants had difficulty understanding the language used in the YJ system, particularly language used by YJ personnel (Metzger et al., 2018). Metzger et al. (2018) explained that when young people participants could not understand what was being said, they also could not understand what was going on or what they were supposed to do. A young person participant in their study said, "[s]ome of the CYFs workers were confusing. I didn't understand them. The way he speaks is hard to understand. I'm like 'yep, yep' when in my head I'm like 'what's he saying?'" (Metzger et al., 2018, p. 24). This finding indicates that complex language can be a barrier to young people meaningfully participating in their conferences. Indeed, some young people may agree to ideas that they do not fully understand.

Their study also found that just over half of the young people participants had previous negative experiences communicating with adults (Metzger et al., 2018). They explained that for some young people, "violence was used as a form of communication" or to insult or put down the

young person. (Metzger et al., 2018, p. 18). They further explained that some young people consequently had learned over time to be silent because they were not listened to by adults and used silence as a form of protection (Metzger, 2018).

In New Zealand, studies have commented on the tendency of YJ coordinators to hold YJ FGCs in Oranga Tamariki offices (government buildings) (see Maxwell & Morris, 1993; OCC, 2017b). Maxwell and Morris (1993) and the OCC (2017b) explain that these are not neutral settings. They are often “sterile, cold and intimidating” and serve to empower YJ personnel while disempowering young people and their whānau/family (Maxwell & Morris, 1993, p. 73). Metzger et al.’s (2018) study also found that several of the young people participants would not communicate in settings where they felt unsafe or did not trust the adults present (Metzger, 2018). These findings also suggest that when the YJ FGC is held in a non-neutral setting, it can be a barrier to young people engaging with, and participating in the conference process. Lastly, this study raises questions about power imbalances between young people and adults in this setting.

Limitations of the Literature

All the studies reviewed so far have limitations. Firstly, Maxwell and Morris’s (1993) study generously coded participatory responses of young people participants. It cannot be said to be truly indicative of young people’s participatory experiences in this study. Young people participants did not respond to several survey questions. As such, some questions had a low response rate and could not be representative of all the young people participants who took part. Secondly, most of the studies discussed ask closed-ended questions that allude to young people’s participation but do not expressly state it and use restrictive or pre-determined response options such as ‘some/a lot’ (Trimboli, 2000); ‘agreed/disagreed’ (Campbell et al., 2005); ‘quite a bit/a lot’ (Wagland et al., 2013). The use of closed-ended response options limits the participant’s view and the richness of the data (Creswell, 2009). It also makes it difficult to determine to what extent young people participated in their YJ FGC. Given that none of the studies mentioned asked young people what they understand about participation, it also makes it

difficult to determine what people know about their rights to participation and what they think about their participation in this setting.

Thirdly, some of the studies use small participant sample sizes (see Hodgson, 2020; Metzger et al., 2018; OCC, 2017b; Riley & Hayes, 2018; Smithson et al., 2020; Tshem, 2009) and limited questions that allude to young people's experiences of participation (see Commission for Children and Young People, Hodgson, 2021; Palk et al., 1998; Tshem, 2009). The use of small sample sizes means the findings are not representative and limits the generalisability of the results (Creswell, 2009). The use of few participatory questions limits the knowledge and understanding young people can provide of their experiences of participation in this setting. The next section of this chapter discusses the previous research on YJ personnel's views of young people's participation in the YJ FGC setting in the New Zealand context.

New Zealand Context: Youth Justice Personnel's Views of Young People's Participation in the Youth Justice Family Group Conference Setting

Adults, including professionals, have a poor record of listening to [young people] and are often blinded by 'appearing to be the expert. (Manion & Nixon, 2012, p. 32)

In the YJ FGC setting, the unique position of young people means their rights to participation are managed and accessed through adults (Heath et al., 2007; Manion & Nixon, 2012); it is the adult who decides if the young person is "adult enough" to hold and express a view on matters that affect them (Neale, 2002). Particularly, YJ personnel act as central gatekeepers and facilitators of young people's access to and experience of their participation rights (Maxwell et al., 2004; OCC, 2017; Slater, 2009).

Morris and Maxwell (1998) explain that YJ personnel such as YJ coordinators, youth advocates and YJ social workers are supposed to play a 'low key' role in the conference setting. Youth justice coordinators have a central role in organising, convening, managing and mediating the conference process and participants (Suzuki & Wood, 2017; Zinsstag et al., 2011). Youth justice coordinators should also take on a neutral role to address power imbalances between young

people, whānau/family and other personnel in the conference setting. They should ensure that the process is family-led and that all participants' views are heard (Frost et al., 2014). Youth advocates are positioned in an advisory role in the conference to protect young people's legal rights and help them share their views (Morris & Maxwell, 1998; Cleland, 2012; Hopkins, 2015). When present, youth justice social workers act in a supporting role for young people and their whānau/family and provide information on the young person where necessary (Morris & Maxwell, 1998).

Research has shown that YJ personnel can redefine their roles in the conference setting (Morris & Maxwell, 1998). They can include themselves in the decision-making processes of the YJ FGC and exclude young people from the decision-making processes (Maxwell & Morris, 1993; Morris & Maxwell, 1998; OCC, 2017b; Slater, 2009, 2015).

Some of the studies conducted in New Zealand, which have included YJ personnel's views about their role in facilitating young people's participation and their views of young people's participation are discussed below under three headings: Youth justice coordinators; youth advocates; and YJ social workers.

Youth Justice Coordinators

Youth justice coordinators' views are some of YJ's most "poorly researched" areas (Suzuki & Wood, 2017). In New Zealand, very few studies have asked YJ coordinators what they think about young people's participation or their role in facilitating young people to participate in their YJ conference. Studies that include YJ coordinators' views have shown that YJ coordinators can struggle to facilitate young people's participation (OCC, 2017b; Slater, 2009, 2015). Youth justice coordinators can take on the decision-maker role in the YJ FGC setting (OCC, 2017b; Slater, 2009, 2015).

In Maxwell and Morris's (1993) study, also previously mentioned, the researcher's did not include questions about YJ coordinators' views of young people's participation and did not ask YJ coordinators about their role in facilitating young people's participation in this setting.

However, their study found that YJ coordinators were seen to be the sole decision-makers/parties to making the decisions in 60% of YJ FGCs.

In Maxwell et al.'s (2004) study, previously mentioned, the researchers conducted observations of 115 YJ FGC and observed the practices of YJ coordinators. Like Maxwell and Morris's (1993) study, their study found that YJ coordinators were one of the primary decision-makers in over half of all the conferences (Maxwell et al., 2004).

In a later study, Slater (2009, 2015) conducted semi-structured interviews with 19 YJ coordinators and four focus groups with 27 YJ coordinators about their perceptions of the YJ FGC, participant involvement and engagement and their roles in the process. While the study did not ask YJ coordinators specific questions about their role in facilitating young people's participation, Slater (2009, 2015) found that some YJ coordinators thought it was important to get young people to take ownership of the conference. Slater (2009) explained that some YJ coordinators thought it was important to talk to young people "on their level" and to ask young people questions about their "skills, interests and aspirations" as ways to include young people in the conference.

Slater (2009, 2015) also found that YJ coordinators often included themselves in the decision-making process of the YJ FGC. Youth justice coordinators in this study stated that issues outside of the control of the YJ coordinators led to their participation or impeded their ability to facilitate young people's participation (Slater 2009). For example,

"inaccuracies or pejorative language contained within the police summary of facts often offended young people and whānau/family. When this disrespectful practice was encountered, this adversely impacted upon the YJ coordinators' ability to build rapport and encourage engagement in the process". (Slater, 2009, p. 119)

In the most recent study, the OCC (2017b), previously mentioned, also interviewed YJ coordinators about their conference practices and found several issues. For example, the OCC (2017b) found a general lack of inclusion of young people in decision-making by YJ coordinators. This study found that it was common practice not to include young people or their whānau/family in the decision-making processes of the YJ conference and for some coordinators to use 'power over' tactics to get young people and whānau/family to agree to their conference plans (OCC, 2017b).

The findings of these studies suggest that there may be issues with impartiality and power when YJ coordinators are part of the YJ FGC decision-making processes. Also, it is indicated that YJ coordinators may act as barriers to young people's meaningful participation by excluding them from the decision-making processes or, at times, forcing them to agree to decisions made in the conference setting. Lastly, Slater's (2009, 2015) study shows that YJ coordinators may include themselves in decision-making when other YJ personnel, such as the police, create discord within the conference setting.

In 2019, amendments to the Oranga Tamariki Act 1989 mandated YJ coordinators to facilitate young people to participate in their YJ FGC and to ensure their views are heard (OCC, 2017b; Oranga Tamariki Act 1989). To date, no studies have looked at YJ coordinators' views about young people's participation since the legislative change. Questions remain about their views of young people's rights to participate and their role in facilitating young people to participate in their YJ FGC.

Youth Advocates

In respect of youth advocates, there is very little research that has looked at their perceptions of young people's legal rights to participation and their involvement in the decision-making processes of the YJ FGC. The research shows that youth advocates have several important, sometimes controversial, roles in supporting and ensuring young people's participation. These include building rapport with and listening to young people to best represent their views in the YJ FGC (Cleland, 2012; Hopkins, 2015; Morris et al., 1997); ensuring young people have an adequate and informed understanding of legal jargon and legal processes (Cleland, 2012; Hopkins, 2015; Morris et al., 1997); protecting the legal rights of the young people and acting on behalf of each young person's best interests in the YJ FGC (Cleland, 2012; Morris et al., 1997); and, at times, acting as a mediator/facilitator during YJ FGC process (Cleland, 2012).

In Morris et al.'s (1997) study, 54 youth advocates were surveyed, and 28 of the 54 youth advocates attended a focus group about their views of their role and responsibilities in the YJ system, including YJ FGCs. Morris et al. (1997) found that most youth advocates thought it was important that young people's views were heard in the YJ FGC (95%), and most youth

advocates saw their role as protectors of young people's rights in this setting (90%). Their study also found that when young people were uninvolved in the process or youth advocates felt that young people could not express their views, some youth advocates thought it was their role to "step in", protect and or express the young person's view on their behalf (Morris et al., 1997). This finding suggests that some youth advocates may speak for young people instead of encouraging them to share their own views when they feel the young person cannot participate in the process.

In another study, Cleland (2012) interviewed 34 youth advocates about the youth advocate's role in protecting and promoting young people's welfare and due process rights. Although Cleland's (2012) study did not ask youth advocates their views on young people's participation or how they facilitate young people's participation, Cleland (2012) found that some youth advocates saw their role in the YJ FGC setting, when the YJ coordinator was not experienced, as a facilitator of discussion between the young person and other participants involved in the conference. This finding suggests that youth advocates may confuse their role with, or take on, different roles within the conference setting to ensure young people can participate in their conference.

Although the findings from these studies do not address youth advocates' views of young people's participation in this setting, they raise some important questions about how youth advocates see their role in helping young people facilitate their participation and what youth advocates think about young people's participation.

Youth Justice Social Workers

To date, no studies have examined YJ social workers' perceptions of young people's participation in the YJ FGC settings in New Zealand. The current study is the first New Zealand study to contribute to the gap in YJ social workers' views about young people's participation in the YJ FGC process.

The views YJ coordinators, YJ social workers and youth advocates have about young people's participation, and their role in facilitating it are pertinent to a holistic understanding of young people's participation within this setting. What YJ personnel think can shape how they include

participants in YJ processes (Peterson-Badali & Broeking, 2009) and can have a significant bearing on the experience of the process for participants, including young people (Nixon, 1999).

Conclusion

The literature shows a diverse range of views relating to young people's experiences of participation in YJ FGCs. The studies discussed above indicate that young people's experiences of participation in the YJ FGC can vary and are context-specific. The literature also indicates that when young people are prepared for their YJ FGC by YJ personnel, they are more likely to meaningfully and actively participate in their YJ FGC. However, when adults and YJ personnel use language that is difficult for young people to understand and when young people have communication difficulties, these can act as silencing mechanisms and barriers to young people's participation. Young people can be reduced to not taking part at all. The notion that young people can be excluded from the decision-making process of the YJ FGC can affect the outcome of the conference, denies young people their rights to meaningful participation and makes the YJ FGC process precisely what it was designed to replace – a state dominated decision-making process (OCC, 2017b).

As established, the YJ FGC models used in other jurisdictions can function significantly differently from the New Zealand model, which means that research findings in other jurisdictions are not a reliable indicator of the extent to which young people's participation occurs in YJ FGCs in New Zealand. Except for Maxwell and Morris (1993), Maxwell and Kingi (2001), Maxwell et al. (2004) and the OCC (2017b), empirical research, very little is known about young people's perceptions of their participation rights in YJ FGC settings in New Zealand. Similarly, very little is known about the role of YJ personnel in facilitating young people to participate in their YJ conference and what YJ personnel think about young people's rights to participate in this setting. As such, essential questions remain about young people's and YJ personnel's views of young people's participation in the New Zealand YJ FGC setting and the operation and effectiveness of the YJ FGC model for young people's participation that

this research addresses. The next chapter discusses the methodology and methods used to undertake this study.

Chapter Six: Methodology and Methods

Introduction

The research questions of this thesis focus on understanding young people's experiences of the YJ FGC and young people's and YJ personnel's perceptions of young people's participation in this process. This chapter outlines the methodology and methods I used to guide this research. The chapter discusses my epistemological position on social constructionism and the process evaluation method. In line with social constructionism and process evaluation, I then discuss the qualitative methods of semi-structured interviews and documentary analysis that I used to collect the data and qualitative content analysis, which was used to analyse the data. Lastly, this chapter finishes with a discussion of the ethics processes in undertaking this study.

Social Constructionism

O'Leary (2017) wrote that researchers must "consider their own orientation to knowledge and truth" (p. 10). What is believed about the nature of reality and knowledge will influence the design of any study and research process, which is informed by various, sometimes contentious, epistemologies (paradigms) and theoretical lenses⁸⁰ (Creswell & Creswell, 2018; Denzin & Lincoln, 2005). Patton (2015) suggests that "there is no 'right' approach any more than there is a 'right' fruit – apples, oranges, passionfruit. What you eat is a matter of personal taste, availability, price, history, and preference" (p. 77). However, Smith (2021b) explains that it is important to recognise that our ways of thinking about the social world are deeply entrenched in imperialist and colonialist frameworks informed by Western philosophical traditions.

⁸⁰ Crotty (1998) explains that epistemology is the theory of knowledge that is embedded in every philosophical position during the research process, and a theoretical lens is an approach that determines the methodology and methods used to produce the research results.

Furthermore, these frameworks coexist in patriarchal and capitalist systems that privilege Western ways of knowing (Smith, 2021b).

As an adult academic researcher whose ancestry is both Māori and Pākehā, exploring a topic through communicating with young participants who identify as Māori, Pākehā, and Pasifika, it is important to acknowledge that there are epistemic differences between the knowledges and truths known to researcher and researched. Youth justice personnel also identify with different ethnicities and have qualified in their professional roles through various educational pathways.

We all have different lived experiences and perceptions.

At the heart of this thesis is the recognition that young people have unique experiences of the YJ FGC, and young people and YJ personnel have individual perceptions of young people's participation in the YJ FGC process. These experiences and perceptions are interpreted and given meaning through participants' social interactions with others, the YJ system, and the world around them. The epistemological approach that best fits this way of knowing is social constructionism. Social constructionism demands that we reflect on how we know what we know (Burr, 2015).

“Social constructionism begins with the premise that the human world is different from the natural, physical world and therefore must be studied differently” (Patton, 2015, p. 199). The theory of social constructionism does not preoccupy itself with ontological claims about reality (Andrews, 2012). It is more concerned with epistemological claims that meaning and reality are socially constructed (Andrews, 2012). Burr (2015) and Crotty (1998) explain that social constructionism is not a singular epistemology. No universal definition for social constructionism could capture the different types of social constructionists (Burr, 2015). Instead, social constructionists can hold several different theoretical viewpoints but typically agree on four key assumptions⁸¹ (Burr, 2015). My discussion below refers to the four key assumptions to justify my social constructionist position.

⁸¹ These assumptions also vary throughout the literature. I have used Burr's (2015) assumptions of: Knowledge is socially constructed; language and social processes are fundamental to sustaining knowledge; knowledge is socially and historically specific; knowledge and social action are inseparable.

Broadly speaking, Crotty (1998, p. 42) defines constructionism as “the view that all knowledge and therefore all meaningful reality as such, is contingent upon human practices, being constructed in and out of interaction between human beings and their world and developed and transmitted within an essentially social context”. Accordingly, this position claims that what we know as ‘truth’ (meaning) is not objective in an absolute sense (Crotty, 1998). Moreover, what we know as knowledge is not a direct perception of our reality (Crotty, 1998). Instead, truth cannot be found; it is made (Crotty, 1998). It is multiple, socially constructed, ever-changing, and formed through social interaction, particularly language, that transmits our knowledge about reality (Burr, 2015; Crotty, 1998). Burr (2015, p. 10) wrote:

“[c]oncepts and categories are acquired by each person as they develop the use of language and thus reproduced every day by everyone who shares a culture and a language. This means that the way a person thinks, the very categories and concepts that provide a framework of meaning for them, are provided by the language that they use.”

Language is fundamental to social processes, truth and knowledge production (Burr, 2015; Burr & Dick, 2017). Social constructionists view truth as the outcome of social processes. Burr (2015) explains that our worlds are constructed and reconstructed when people converse; through language, we think about and understand the world. However, language is not neutral. Language is contextually and culturally specific; it abides by established conventions that can also constrain what we know and how we perceive and conceptualise the world (Burr, 2015). The language young people and YJ personnel use, guide how they conceive of and express their realities of participation in the YJ FGC context.

Constructionists also contend that no one truth is more real or valid than another or universal for all people (Burr, 2015). Crotty (1998) asserts that the world and objects in it do not have objective truths waiting to be discovered when people engage with them. Instead, actual truth about the world and objects comes about when people’s consciousnesses engage with and interpret these phenomena (Crotty, 1998). Therefore, different people may construct several truths attached to the same reality (Crotty, 1998). Using this epistemology, I view young people’s and YJ personnel’s truth and the meanings attached to multiple realities as a product of their interactions and interpretations.

Under a broad social constructionist perspective, truth and knowledge are also relative to context and are historically and culturally specific (Crotty, 1998; Burr, 2015; Burr & Dick, 2017). Truth and knowledge are products of political, social, economic, historical, and cultural realities (Burr, 2015; Burr & Dick, 2017). As such, people inhabit different worlds and have diverse ways of knowing of truths and of realities. The meanings we give to our realities are embedded in social-cultural processes that vary over time and situations (Burr, 2015; Crotty, 1998). Our culture and sub-cultures can pre-empt the truths we create by giving us a lens through which to view these phenomena (Crotty, 1998). Burr and Dick (2017) refer to these lenses as discourses. Discourses, accordingly, are seen as “broad meaning systems” that help us make sense of the world (Speer, 2015, as cited in Burr & Dick, 2017, p. 3).

Discourses are, however, entwined with power relations (Burr & Dick, 2017). Power relations exist between individuals and societies’ social structures (Burr & Dick, 2017). Burr and Dick (2017, p. 5) define power relations as “how the positions occupied by people in society, such as occupations and class, allow some groups to have more authority (and therefore more power) than others”. Accordingly, those with more power (for example, YJ personnel in the YJ context) can set and change social constructs, such as discourses, that create our reality. Burr (2015) and Crotty (1998) assert that our constructions of truth and knowledge are entwined with power relations, and what we see as truth varies historically and cross-culturally. Young people and YJ personnel may have different interpretations of the same phenomena, such as young people’s participation, based on their culture, discourses and power relations.

Accepting a social constructionism epistemology means acknowledging that truth and knowledge are not absolute but what we make of them (Crotty, 1998). However, it is also about recognising that these concepts are entwined with power. Language is embedded in our social interactions and social structures, which can influence what we come to know and see as truth. When applied to qualitative research, Patton (2015) explains that the constructionist worldview is epistemologically subjectivist. That is because the researcher’s role is to uncover multiple meanings of reality with participants while acknowledging their own assumptions and biases.

Together, researchers and participants engage in a process of socially constructing reality, rather than “objectively depicting reality” (Patton, 2015, p. 200).

This study also draws from the theoretical perspective of interpretivism. Merriam and Tisdell (2016) wrote that social constructionism informs interpretivism. In interpretive research, reality is socially constructed, and there are multiple interpretations of a single reality (Merriam & Tisdell, 2016). Crotty (1998) explains that interpretivism is concerned with understanding. It emphasizes the subjective nature of reality and the importance of understanding the meanings people give to their social reality. Under this lens, reality is not fixed or objective but rather created and negotiated by individuals through their interactions with others. As such, the views of those who have experienced the phenomena are important (Hesse-Biber & Leavy, 2011). As this study is based on young people’s and YJ personnel’s perceptions, the constructionist and interpretivism frameworks are most useful for understanding the participants’ social realities and the meanings they attach to their experiences.

Process Evaluation Study

Process evaluation is a useful research approach for investigating young people’s and YJ personnel’s realities of young people’s legal rights to participate in the YJ FGC setting⁸².

Process evaluation sits within the broad scope of evaluation research (Bess et al., 2004). Owen (2006, p. 1) describes evaluation research as a “process of knowledge production, which rests on the use of rigorous empirical enquiry”. It is used to investigate the extent to which processes function as intended and if these processes serve their key participants (Bess et al., 2004; Bowie & Bronte-Tinkew, 2008; Rubin & Babbie, 2009).

Process evaluation is an inductive method of theory construction whereby data collected from participants can lead to identifying strengths and weaknesses in a process and provide recommendations for improvement (Bess et al., 2004; Bowie & Bronte-Tinkew, 2008; Rubin &

⁸² Process evaluation is interchangeably referred to, throughout the literature, with other names, such as formative or implementation evaluation (Bess et al., 2004; Bowie & Bronte-Tinkew, 2008; Rubin & Babbie, 2009).

Babbie, 2009). Process evaluations, however, are not designed to test the successes of process outcomes (Rubin & Babbie, 2009). Instead, the purpose is to obtain information from key participants about their experiences of the process to improve the implementation and delivery (O’Leary, 2017; Rubin & Babbie, 2009). For this study, the research questions address the experiences of young people’s participation in the YJ process of the family group conference. It is not concerned with the outcomes of the YJ FGC but rather how young people experience the process and their participation.

Bess et al. (2004) and Bowie & Bronte-Tinkew (2008) wrote that qualitative research methods fit with process evaluation. Bowie & Bronte-Tinkew (2008, p. 3) explain that

[q]ualitative methods refer to research in which information generally is collected in non-numerical form. Such information may provide deeper understanding about how participants feel about a program and its activities and generally focus more on “what happened” than on whether particular goals were achieved.

Process evaluation is a helpful framework for a qualitative study designed to capture people’s experiences of a specific phenomenon in their own words and considers the participants’ perceptions (Bess et al., 2004; Patton, 2002; 2015). Process evaluation is helpful in understanding participants’ social reality based on the meanings of their experiences’ (Hesse-Biber & Leavy, 2011). O’Leary (2017) wrote that a good process evaluation includes the perspectives of key participants and stakeholders in the process. This study utilises the views of key participants (for example, young people) and some key YJ personnel (for example, YJ social workers) of the YJ FGC process.

Interviewing and Interview Guide

Interviewing is rather like a marriage: everybody knows what it is, an awful lot of people do it, and yet behind each closed door there is a world of secrets. (Oakley, 1981, as cited in Patton, 2015, p. 628)

The popularity and use of interviewing across many areas have established the idea that we live in an “interview society” (Fontana & Frey, 2000, as cited in Patton, 2015, p. 624); that interviewing is a “fundamental activity” for understanding the variety of people’s experiences (Gobo, 2011 as cited in Patton, 2015, p. 624). Qualitative interviewing for research

distinguishes itself from other types of interviews as a data-collection method used for making sense of and understanding the experiences participants have of a specific phenomenon (Kvale, 1996; Patton, 2015). Qualitative interviews allow the researcher to enter into the participant's perspectives to see how they conceptualise the world and to understand the meanings they attach to their experiences (Kvale, 1996; Patton, 2015). Tracy (2013) wrote that qualitative interviews can provide insight into phenomena that cannot be observed or accessed, for example, the YJ FGC. My primary data collection method was individual semi-structured interviews using an interview guide approach. Because I had two different groups of participants, I used two interview guides, one for young people and one for adult participants (see appendix G).

The semi-structured interview guide approach uses predetermined questions or topics to explore with each participant (Kvale, 1996; Patton, 2015). The predetermined nature of the questions and issues creates a comprehensive and systematic approach to collecting data (Patton, 2015). Using this method, the researcher has stability and adaptability in that the interview guide encourages the same questions and topics to be explored with each participant. It facilitates conversational and spontaneous yet flexible discussions on the topic area (Patton, 2015). It allows the interviewer to probe and investigate the perceptions/experiences that emerge from participants' responses and any new information that also arises from participants' responses (Bryman, 2012; Patton, 2015).

An interview guide also provides a framework for developing and sequencing questions (Patton, 2015). Patton (2015) wrote that descriptive and non-controversial questions are relatively easy to answer and ease the participants into the interview process. Questions in my interview guides were sequenced by first asking non-intrusive descriptive questions before asking questions that require in-depth recall. For example, young people and adult participants in my study were first asked, "[b]efore we start, do you have any questions about today's interview or about the study?" This is a non-intrusive question and helped to ease participants into the interview process.

Patton (2015) wrote that the wording of questions in an interview guide can affect participants' responses. Tracy (2013) provides a broad set of characteristics for structuring good questions. Firstly, questions in the interview guide should be simple and clear and avoid jargon. Secondly, questions should ask one idea at a time and not be double-barrelled. Thirdly, questions should be open-ended to allow participants to share from the entire repertoire of their perceptions and experiences (Patton, 2002; Tracy, 2013). Lastly, questions should be straightforward, neutral and non-leading (Tracy, 2013). If needed, probes can be used to bring out the richness of the data's who, what, where and when and provide clarity to participants' responses (Patton, 2002).

O'Reilly and Dogra (2017) recommend that student researchers discuss their interview guide with their supervisors. When I wrote my questions, I talked with my supervisors about how the questions should be structured and worded. My third supervisor reviewed these questions. These questions were re-worded on numerous occasions to ensure, to the best of my ability, that the questions were straightforward and neutral and did not lead the participants.

Also, before designing the questions for young people participants, I met and talked to Sally Kedge from Talking Trouble Aotearoa NZ. Sally is a speech-language therapist (SLT) and a court-appointed communication assistant. Sally has many years' experience working with and interviewing young people in the New Zealand YJ system. Sally provided examples of the types of questions and language used for young people in this setting that I could use as a guide. I also referred to the literature for guidance on structuring questions for young people. For example, O'Reilly and Dogra (2017, pp. 21–23) provide some characteristics similar to those mentioned by Tracy (2013) for structuring questions for children and young people.

The researcher is also an instrument and fundamental to the methodology (Marshall & Rossman, 2016; Merriam & Tisdell, 2016). The data collected during the interview can depend on the participant's willingness to share and the interviewer's interpersonal skills (Marshall & Rossman, 2016; Patton, 2002). Tracy (2013, p. 159) explains that "good interviewing is more than just asking good questions – it is creating a logistically feasible and comfortable interaction that will encourage an engaging, honest and fun dialogue". To this end, interviewers should

attempt to establish rapport with their participants (Patton, 2002). As all my interviews were face-to-face, I utilised two methods to develop rapport with my participants.

Adult Participants

For adult participants, I introduced myself. I asked each adult participant if they had any cultural practices they wanted us to participate in, which no adult participant chose. I took the time to position the adult participants as experts. I explained that I was not an expert in this area but that they were. I emphasised that what they had to say, their experiences were very important and that I was solely interested in learning about their perceptions of young people's participation rights as YJ personnel. By revealing this information, it allowed me to show the adult participants that I was aware and open about their position as the expert and my position as a non-expert before the interview began. To build rapport, Patton (2002) also recommends starting each interview by asking each participant introductory questions. At the beginning of my interviews, I also asked each adult participant introductory questions such as, "[w]hat do you think is the best part of your job?" to create rapport.

Young People Participants

For young people participants⁸³, I followed the same process I used for the adults discussed above. However, after briefly introducing myself, I invited young people and, where applicable, their parent(s) or caregiver(s) to have an informal conversation over kai (food and drinks) before commencing the interview process. Sharing food and engaging in informal conversation over kai provided time for the young person to get to know me, feel more comfortable in the interview setting, and ask me any questions about the research process. In Māori culture, kai is integral to extending manaakitanga (respect and care). Kai represents "the freeing of tapu (sacred – spiritual restrictions)⁸⁴" (Tūtira Mai NZ, 2015, p. 7). I spent about half an hour with each young person talking and sharing kai before beginning each interview. Only four young

⁸³ See Appendix L for some examples of my personal reflections on interviewing young people.

⁸⁴ In one example, from my interviews, a young person said to me that they thought Christmas had arrived early because they could have real Coca Cola. I asked them what they meant by this, and they said that they only had "real" Coca Cola once a year, at Christmas. This small gesture, unbeknown to me, made the young person I interviewed that day feel very special, which helped to create the rapport we had.

people asked me questions about the research process. These questions included, “how long will you ask me questions for?” and “can I stop the questions to go to the toilet?”

I also recognised that there would be power imbalances between myself as the adult researcher and young people participants, which can affect rapport building and data collection (O’Reilly & Dogra, 2017; Shaw et al., 2011). Shaw et al. (2011) recommend creating a relaxed, informal environment for the interview to minimise the power imbalance. I used a round table with comfortable chairs in the interview room for my interviews. O’Reilly and Dogra (2017) recommend giving young people some control during the interview process. I asked each young person where they would like to sit and if they wanted to keep some kai (food and drink) with them during the interview. I informed young people participants that they could pause or stop the interview process or refuse to answer any questions at any time without any repercussions whatsoever. Shaw et al. (2011) also recommend dressing casually to help create a relaxed setting. For interviews with young people, I dressed more casually (for example, jeans, sneakers and a jumper). Lastly, when beginning the interview process, to further build rapport, where it was needed, I would ask the young person participant introductory questions such as, “[h]ave you seen any good movies lately?”, “[p]rompt: If they say yes, what was it called? Do you think I should see it?” and “[p]rompt: If they say no, have you seen any really bad ones lately?”

The researcher does not undertake research as a blank slate (O’Reilly & Dogra, 2017). When designing the interview guide, the researcher determines what will be discussed, the questions, and how the conversation will go (O’Reilly & Dogra, 2017). These notions are shaped by the epistemological assumptions of the researcher, as well as their theoretical and personal understandings of the phenomena under study (Merriam & Tisdell, 2016; Patton, 2002).

Preconceived understandings and biases can also impact how researchers view and treat participants. For my research, I acknowledged that I held personal and theoretical understandings and biases about, for example, young people’s participation and youth crime.

O’Reilly and Dogra (2017) implore researchers to reflect on their role in the data collection process. Patton (2002) defines self-reflexivity as a re-iterative process of examining and re-examining what I know as a researcher and how I know it. When designing the interview

questions, I wrote down and reflected on my subjectivities, values and beliefs. Before each interview, I wrote down the opinions I had before and after each interview. At the end of each interview, I compared these opinions and took note of the differences between them. This helped me to reflect on my own biases and the research.

Pilot Interview

Marshall and Rossman (2016) wrote that pilot interviews help the researcher to understand themselves as a researcher. A pilot interview provides an opportunity to tease out and work through any potential barriers to conducting interviews, for example, testing recording equipment, and provides the opportunity for pilot interviewees to give feedback on the interviewer's questions and interviewing techniques (Marshall & Rossman, 2016; O'Reilly & Dogra, 2017). O'Reilly and Dogra (2017) wrote that pilot interviews for children, and young people are useful to check that the questions are child-friendly and allow the researcher to familiarise themselves with engaging with children and young people in an interview setting. As I had not interviewed young people before⁸⁵, I conducted two pilot interviews before I commenced my research. I piloted my 14- to 15-year-old and 16 to 17 year old interview questions with two young people from my social network aged 15 and 17. The two pilot interviews yielded valuable information about what the young people liked about the interview setting and the questions, what they did not understand, and what they thought I should have asked. Their views helped me to reflect on my interview questions and research design. After discussing with my supervisors, I amended, added, and omitted some questions in my interview guide based on my pilot interviewees' feedback. Overall, however, the framework of the interview guide produced a wealth of information.

Limitations to Interviews

Interview methods also have limitations. Firstly, interviews are close encounters that are time-constrained (Marshall & Rossman, 2016). The quality of the data interviewers collect from interviewees depends on the researcher's interpersonal and interviewing skills and ability to

⁸⁵ As I had previous experience interviewing adult participants and had checked my interview guide with my supervisors, on several occasions, I did not conduct pilot interviews with adults.

build rapport and trust with their participants (Marshall & Rossman, 2016). Particularly for young people participants, I needed to take the time to hold informal conversations with kai (food and drink) before commencing the interviews. This, however, meant adding more time to the interview process. Engaging informally with young people before the interview allowed us to build rapport. Three of the young people I eventually interviewed expressed hesitancy about being interviewed because they had negative experiences in settings with YJ personnel previously. As such, our informal conversations and kai (food and drink) were important to help break down three young people's preconceived notions of me as a professional. One young person said, "phew, you're right (alright), eh? You aren't stuffy like the other professionals we speak to. You are chill and nice".

I also needed to ensure that in line with taking an ethical approach to this study, the young people felt comfortable and safe around me. Young people participants were offered the opportunity to bring a support person to the interview, to pause or stop the interview without any repercussions whatsoever and to ask me any questions before, throughout and after the interview process. No young person asked to pause or stop the interview or brought a support person to the interview. Only one young person participant withdrew from the interview process. This occurred when they arrived for their interview, spoke to me briefly and decided they did not want to participate. Acknowledging the young person's wishes not to take part relates to the ethical principle of voluntary participation and the Treaty of Waitangi principle of partnership (see below).

Interview topics may also be sensitive (Marshall & Rossman, 2016; Patton, 2002). Participants may be unwilling or uncomfortable sharing their perspectives or provide responses they think the researcher wants to hear (Marshall & Rossman, 2016; O'Reilly & Dogra, 2017). This can be salient when interviewing young people. Young people may fear getting the question wrong, being embarrassed about their responses, or may be anxious about their responses or that the information they share may be able to identify them (O'Reilly & Dogra, 2017). Young participants may also be unable to find the words to answer the questions or struggle to express their views (Marshall & Rossman, 2016; Patton, 2002).

O'Reilly and Dogra (2017) point out that young people may also have their own discourse and ways of understanding and interpreting the topic. It may not be that they do not have the words, but they may have their own communication style or vocabulary, which may differ from the researcher's. As such, I familiarised myself with the jargon used by young people by Googling "latest jargon terms for teens" and talking to my nieces and their friends. I also asked my pilot interviewees if there were any phrases I needed to know⁸⁶. With young people participants, I assured them that they were the expert and I was the non-expert and that nothing they might share could be wrong. Because the questions in my research asked young people and YJ personnel to provide personal experiences and thoughts on a sensitive topic of young people's participation rights in the YJ FGC process, it was important that participants felt they could share their experiences. To enable this, all participants were informed before their interview that all their personal information would remain confidential and that my role as the researcher was as a non-expert learning from the experts.

Although my interviews were conversational, I also gave young people participants a pen and pieces of paper. In the first instance, pen and paper were provided for young people to draw how they remembered the YJ FGC setting (see Chapter Eight). I also explained that if they could not find the words to answer the question, they were most welcome to skip the question or if they wanted to, they could write or draw their responses instead. This is an example of a participatory technique that allows the young person an alternative option to provide or expand on their answers (Morgan et al., 2002). Providing an alternative way for young people to express their views also honours the ethical principle of doing no harm and Article 12 of the UNCRC (Graham et al., 2013). While no young people participants used this option to answer questions, seven young people participants used this option to draw while conversationally answering questions. One young person explained that drawing while thinking helped them think through their answers.

Lastly, the quality of the data collected from participants can also be affected by the participant's knowledge of the topic (Marshall & Rossman, 2016). Participants may not

⁸⁶ For example, "yew" (pronounced 'you') or 'yo' can mean yes or something is good.

understand or lack the necessary information on the topic (Marshall & Rossman, 2016). It was hoped that by providing participants with an Information Sheet (see appendix A) outlining the research topic, participants would have time to reflect on it. However, it became clear throughout the interview that many questions were difficult for young people to answer. This is because although their responses show that, for example, they understood the concept of participation rights and most knew who their YJ coordinators were, most were unfamiliar with the term participation rights and the title YJ coordinator.

Sampling and Recruitment–Interviews

Qualitative studies are generally designed to elicit a deep understanding and rich descriptions of a specific topic (Merriam & Tisdell, 2016; Patton, 2015). Sample sizes are often small and purposeful (Merriam & Tisdell, 2016). A purposeful sample combined with a maximum variation is considered most useful in a qualitative study (Sandelowski, 2000). Purposeful sampling allows the researcher to identify and select information-rich cases (participants) who have knowledge or experience with a specific phenomenon in question and who have the time to share and can communicate their knowledge and experience (Creswell & Creswell, 2018). Merriam and Tisdell (2016) and Patton (2015) explain that purposeful sampling allows researchers to gain insight about a specific issue from information-rich cases. Patton (1990) also explains that purposeful sampling with a small sample allows the researcher to illuminate the study's questions by exploring in-depth, common, and unique themes of the phenomenon under study. Bryman (2012) and Patton (2015) argue that there is no general rule for sample size in qualitative inquiry. Instead, the sample size selected for a study will depend on several factors, such as the time and resources available to undertake the study and the cost.

On the other hand, maximum variation sampling allows the researcher to purposefully choose participants from the sample provided to achieve a more representative sample of all the possibilities within a given sample (Patton, 2002; 2015). This is useful when there is an oversubscription for participation by potential participants. This, however, did not need to be used in my study.

The initial aim of this study was to recruit five YJ coordinators, five youth advocates, and 10 to 15 young people. However, in the early stages of the research, access to potential research participants was denied by Oranga Tamariki (see recruitment procedure). As such, five YJ social workers were added to the recruitment phase of the study as potential participants. The following criteria were used to recruit participants:

Young People

- A young person aged 14-17 who has taken part in a YJ FGC in the past six months;
- A young person who is comfortable discussing their views and experiences in English;
- A young person who is comfortable taking part in an interview in an AUT City Campus office or a private office in a real estate agency in West Auckland.

Youth Advocate

- A youth advocate who is a registered member of District Courts in New Zealand;
- A youth advocate who is over the age of 20 years;
- A youth advocate who does not have a working relationship with me;
- A youth advocate who is comfortable being interviewed in English.

Youth Justice Coordinator

- A YJ coordinator who has previously worked for Oranga Tamariki;
- A YJ coordinator who is over the age of 20 years;
- A YJ coordinator who does not have a working relationship with me;
- A YJ coordinator who is comfortable being interviewed in English.

Youth Justice Social Workers

- A YJ social worker who has previously worked for Oranga Tamariki;

- A YJ social worker who is over the age of 20 years;
- A YJ social worker who does not have a working relationship with me;
- A YJ social worker who is comfortable being interviewed in English.

Recruitment Procedure

Initially, purposeful sampling (see page 130) was used to recruit participants. However, most participants were recruited during the study using snowball sampling. Snowball sampling is a recruitment technique where participants of the research and “well-situated” people assist the researcher in identifying information-rich cases as potential participants (Patton, 2015). The process for recruitment is explained in the next three sections of this chapter.

Youth Justice Coordinator and Youth Justice Social Worker Participants

In New Zealand, YJ coordinators and social workers who have contact with young people in the YJ FGC process are employed by Oranga Tamariki. Access to the contact details of currently [at the time of recruitment] employed potential YJ coordinators and YJ social worker participants can only be accessed through Oranga Tamariki’s Research and Data Access Committee (RADA). After obtaining ethics approval from AUTEK (see appendix F), I completed and submitted RADA’s ethics application online. I requested the contact details of potential YJ coordinator and YJ social worker participants from Oranga Tamariki for recruitment purposes. After one month, RADA declined my application⁸⁷. After consultation with my supervisors, I changed my potential participants to YJ social workers and YJ coordinators, *previously* employed by Oranga Tamariki. Instead of using Oranga Tamariki to recruit, on the advice of my primary supervisor, I approached social work academics from my informal social network to help with the recruitment phase of the research.

⁸⁷ The reasons for declining my research application cannot be shared because OT placed a confidential clause on this information. Further to this, the RADA application is lengthy and time consuming. Given the time constraints of doctoral research, and that OT strongly suggested an alternative research proposal, on a different topic, I decided it was best not to resubmit my application.

I used Google to see which universities in New Zealand offered a Bachelor of Social Work. I then searched the social work webpages of each university for the email addresses of professors and senior lecturers of social work. I selected five academics from each university and sent them an email informing them of my study. I explained that I was contacting them because I was declined research access by RADA. I informed them that I had full ethics approval from AUTEC and asked if they could help me recruit potential YJ coordinators and social worker participants. I attached to each email two Recruitment Notices (see appendix C) and Information Sheets (see appendix A). I asked each academic if they were willing to forward this information to any potential participants in their informal social network who matched the criteria presented above. Several academics agreed to assist in recruiting participants⁸⁸. Five academics also shared the Recruitment Notice on academic notice boards and with their postgraduate research students. The Recruitment Notice stated that if they would like to participate in my study voluntarily, to contact me directly, through phone or email, to ensure that their identity was kept confidential from the social work academics. Potential participants were given two full weeks to consider participating in my study. When participants voluntarily chose to participate, I emailed them a Consent Form (see appendix B) to complete and email back to me before their interview. Further, a social work academic suggested that I place my Recruitment Notice and Information Sheet, for YJ social workers, on the Aotearoa New Zealand Association of Social Workers (ANZASW) website, which I also did. The Recruitment Notice and Information Sheet stated that potential YJ social workers and YJ coordinator participants needed to be *previously* employed by Oranga Tamariki.

When potential participants contacted me, I reiterated that I did not have ethics approval from RADA. I also explained that I was willing to meet with the participants before the interview to answer any study queries. However, without ethics approval from RADA, most potential participants who initially replied to participate in the study and who worked for Oranga Tamariki in 2019 declined to participate. After two weeks, with a zero-response rate, I asked

⁸⁸All academics who replied also shared their disappointments and sympathies in recruitment frustrations with OT/RADA.

ANZASW to keep my advertisement for recruitment on their website. I also asked the social work academics if they could send a reminder email or to re-share my Recruitment Notice and Information Sheets with their informal social network. After three months, I reached four out of five YJ social workers for voluntary participation in my study. No participants requested a meeting before their interviews. Around the same time, COVID-19 placed New Zealand into a strict lockdown, which made recruitment and interviewing difficult. As such, I decided to end my recruitment for YJ social workers.

In a final attempt to recruit potential YJ coordinators, I used snowball sampling. I asked members of my social network (academic potluck group⁸⁹ and senior lecturers in my school) to share the Recruitment Notice and Information Sheet, via email, with any potential YJ coordinator participants within their informal social networks. There was a zero-response rate from YJ coordinators. After another two weeks and a zero-response rate, I talked to my supervisors and decided to end the YJ coordinators' recruitment. Noticeably, unlike YJ social workers, there are no official webpages or social networking groups in which YJ coordinators can be contacted.

Youth Advocates

In the first instance, I sent an email to the New Zealand Law Society (NZLS) requesting the contact information of youth advocates in Auckland, New Zealand. There are no ethical requirements from the NZLS for researchers contacting their members other than having ethical approval from their research institution before interviews occur. The NZLS has a list of admitted members of the profession available on request, including youth advocates. I was sent the list from NZLS; however, I noticed that the list did not expressly state what type of lawyer each contact was. After another email with the NZLS, I was informed that lists of available youth advocates are also maintained by the Court Services Managers in each District Court. I then searched the five District Courts in Auckland's web pages and emailed five District Court

⁸⁹ My primary supervisor hosts a potluck evening once a month with her previous and current masters and doctoral students. These students come from broad social and employment backgrounds and are a great source of information and for networking and sharing research ideas.

Services Managers. Three Court Service Managers responded and gave me lists of youth advocates for their Court and their contact details. I emailed a Recruitment Notice (see appendix C) and an Information Sheet (see appendix A) to all potential participants from these lists. The Recruitment Notice requested the voluntary participation of potential participants in the study and included my contact details. Potential participants were given two full weeks to consider taking part in the study. When participants voluntarily chose to participate, I emailed them a Consent Form (see appendix B) to complete and email back to me before their interview.

Three youth advocates requested to take part in the study voluntarily. After each interview with these participants, they were asked if they would share my study with their colleagues, and they obliged⁹⁰. I emailed these participants a copy of the Recruitment Notice, Information Sheet, and Consent Form to share with their colleagues. In the Recruitment Notice, potential youth advocate participants were requested to contact me directly if they were interested in participating in the study to ensure confidentiality between my previous and potential participants. From this, I recruited two more youth advocate participants and reached my sample size of five youth advocate participants.

Young People

Initially, I approached “well-situated people”– youth advocates and Emilia (see below) to recruit young people participants.

Youth Advocates

After each interview, I approached each youth advocate and explained my research involving young people. I asked if they might be able to identify young people who might like to participate in my study voluntarily, and if so, could they pass on to each young person, and where necessary, their parent or guardian, recruitment information on my behalf. However, most youth advocates mentioned that they could not identify any young people who might like to participate voluntarily in my study because the young people they had contact with were

⁹⁰ In one setting, a youth advocate, following our interview, asked their onsite colleagues if they would like to take part in my study. One youth advocate was immediately available to take part. So, I conducted two interviews separately on the same day.

undergoing YJ processes. Two youth advocates requested time to think about potential young people participants but eventually replied that they could not think of any young people who could participate in my study. They stated that this was because the young people they had in mind for my research were, in their words, “preliterate”. They perceived that the young people could struggle with participating in my study or that the young person could struggle with understanding consent and assent⁹¹.

Emilia

Emilia is a part of my informal social network. When I contacted her in mid 2019, she had over 10 years of experience as a lay advocate (an individual with standing or mana in a community who can represent whānau/family interests in the Court) and primary support person/guardian for young people in conflict with the law in an area in Auckland. I approached Emilia, and I explained my research involving young people. I discussed with her the possibility of her help in recruiting young people participants. She voluntarily agreed to assist in recruiting participants. I showed Emilia the Recruitment Notice (see appendix C), Recruitment Video⁹², Information Sheets (see appendix A) and Assent/Consent Forms (see appendix B). I asked Emilia to email and, where necessary, physically provide this information to potential participants and their parents or guardians for those young people aged 14 to 15 years within her social networks. I gave Emilia a USB stick with the relevant forms and the recruitment video. I also gave her hard copies of each form. I asked if she could share this information with 10 to 15 young people who might like to participate in the study voluntarily. I also asked her to share this information with their parents or guardians for those young people aged 14 to 16 years.

For young people aged 14 and 15 years. I asked Emilia to provide young people aged 14 to 15 years and their parents or guardian with a Recruitment Notice, Recruitment Video, Information

⁹¹ AUTEK, AUT’s ethics committee, requires assent for under-16s and consent for those 16 years and older. For this study, assent was required for young people participants 14 to 15 years and consent was required for young people 16 to 17 years.

⁹² The recruitment video was used as a method of rapport building and to provide an alternative access to the study, particularly for young people who may struggle with literacy. In the video I introduced myself and explained the information in the recruitment notice using child-friendly language. I asked young people and their parents or guardian to contact me via phone or email if they had any questions at all about the study.

Sheet and parent/guardian Consent Form (see appendix B), as well as a child-friendly Recruitment Notice, Information Sheet (see appendix A) and Assent Form (see appendix B) inviting the young people to participate in the study voluntarily. My contact details were provided in the Recruitment Notice and Information Sheets. With the help of their parents/guardians, young people were asked to contact me directly if they wished to participate voluntarily in my study to prevent any conflict of interest between Emilia and the participants.

For young people aged 16 and 17 years. I asked Emilia to provide the parents or guardians of young people aged 16 to 17 years with a Recruitment Notice (see appendix C) and Information Sheet (see appendix A) to fully inform them about the study and their young person's potential participation. I also asked Emilia to provide young people aged 16 to 17 with a child-friendly Recruitment Notice, Information Sheet, and Consent Form (see appendix B), inviting them to participate in the study voluntarily. My contact details were provided in the Recruitment Notice and Information Sheets. Young people were asked to contact me directly if they wished to participate voluntarily in my study to prevent any conflict of interest between Emilia and the participants. In three months, I had reached a sample size of 12 young people participants. However, one young person withdrew from participating in the study before the interview. As such, 11 young people were recruited to participate voluntarily. The number of responses to participate in this study did not exceed the size sought.

Young people and their parents or guardians were also informed in the Recruitment Notice and Information Sheets that if they wanted to discuss any questions about the study, I would set up a time convenient for them to discuss their questions over the phone. However, no young person participant, parent or guardian made use of this option. The demographic data of all participants are presented below in three tables. Table 2 includes young people participants demographic data; Table 3 includes youth advocates demographic data and Table 4 includes YJ social workers demographic data. Pseudonyms are used to protect the identity of each participant.

Table 2*Demographic Summary of Young People Participants*

	Amiria	Nikau	Grace	David	Rangi	Kauri	Kai	Maverick	Aroha	Tane	Malakai
Gender	Female	Male	Female	Male	Male	Male	Male	Male	Female	Male	Male
Ethnicity	NZ European/ Tongan	Māori	Māori	Māori	Cook Island	Māori	Māori- Niuean	NZ European	Cook Island/ Māori	Māori	NZ European/ Tongan
Age during FGC	16	17	17	14	17	17	15	16	17	15	17
Age now	17	17	18	15	17	17	16	16	17	15	18
Number of FGCs	1	5	> 1	1	3	> 10	1	About 10	3	3	1

Note. > means more than

Table 3*Demographic Summary of Youth Advocates*

	Dahlia	Janet	Lily	Jack	Ana
Gender	Female	Female	Female	Male	Female
Ethnicity	NZ/European	NZ/European	NZ/European	NZ/European	Samoan
Years as a YA	28 years	23 years	1 year and 6 months	13 years	10 years
Other roles before YA	Mediator/Lawyer	Litigation, Civil, Family and Criminal Lawyer	Barrister, Senior Lawyer, Crown Prosecutor	Criminal Defence Lawyer, Solicitor/Partner, Government Solicitor	Criminal Defence Lawyer

Table 4*Demographic Summary of Youth Justice Social Workers*

	Scott	Anahera	Julie	Jay
Gender	Male	Female	Female	Male
Ethnicity	NZ/European	Māori	NZ/European	Indian
Area	New Plymouth District	Waikato District	Bay of Plenty District	Auckland
Years as a YJ Social workers	10 years	2.5 years	10 years (current)	7 years
Other roles before YJSW	Teacher, office admin, security, consultant	Social Worker	Social Worker	Social Worker

Interview Procedure

Pre-Interview with Young People

I whakapapa (genealogy) Māori, I do not claim to be an insider researcher. As such, I wanted to make sure, to the best of my ability, that I could make the interview process accessible to Māori. Before the interview process and before completing my ethics process, I consulted with staff from Te Ara Poutama (School of Māori at AUT) to ensure that my proposed research design was culturally appropriate for any potential young Māori participants.

I also consulted Arihia Stirling (QSM). Arihia is a principal at Te Kura Māori o Nga Tapuwae and a part of my informal social network. Arihia is a well-known member of the Māori community who has extensive experience in Tikanga Māori and working with rangatahi Māori (young Māori). She also serves on the Police Commissioner's Māori Focus Forum. Arihia gave me advice from decades of experience working with and teaching rangatahi. Arihia also provided me with techniques for building rapport with rangatahi Māori, for example, using kai (food and drink).

As previously mentioned, to ensure accessibility to all young people, Sally from Talking Trouble also provided me with information on recruitment processes and techniques for building rapport and conducting interviews with young people. Sally also offered further assistance with conducting interviews with young people if I needed it. I did not, however, need to take Sally up on this offer.

Lastly, young people and, where applicable, their parent(s) or guardian(s) were offered the opportunity to discuss, either by telephone or face-to-face, the research with me before assenting/consenting to participate. This process could also be used to determine if the young person understands what they would be assenting/consenting to. However, no young person, parent or guardian used this option.

Interviews

Interviews were conducted at four separate locations. For young people participants, all interviews were held in a private room of a Real Estate office in West Auckland. This served as a more accessible and neutral environment for young people and, where applicable, their parent/guardian and me as the researcher to conduct interviews. No other employees of the Real Estate knew the young people participants' reasons for visiting, and interviews were conducted in a private room specifically set up to make young people feel comfortable.

Youth advocates interviews were held at either their place of work (in Auckland), at the library in a private room on AUT's South Campus or in a private room of a Real Estate office in West Auckland. For YJ social workers, interviews were held at either their place of work (in Auckland and across the Waikato and Bay of Plenty) or in a private room of a Real Estate office in West Auckland

Interviews with young people. Before starting the interviews with young people, and as previously discussed, I welcomed the young person and their parent or guardian. Five young people's parent(s) or guardian(s) came to the interviews. I had an informal conversation with each young person and the parent/guardian that attended over kai (food and drink). Following this, as I whakapapa to Ngati Tuwharetoa and Ngati Ruaka (Iwi); I am tangata whenua (people of the land) (Tūtira Mai NZ, 2015), I offered to start the interview process with a karakia (prayer) and my mihimihi (greetings) and pepeha (my whakapapa/genealogy) (Tūtira Mai NZ, 2015). This welcomed young people and informed the young people participants of my Māori whakapapa. As six of the young people I interviewed also identified as Māori, the intention of doing this was to help create a sense of belonging. As five young people identified with different cultural backgrounds, I also asked young people participants if they had any protocols that they wanted us to observe. However, no young person used this option. I reviewed the Information Sheet and Assent/Consent form with each young person. Where assent was needed, I included their parent or guardian to also provide their consent to their young person taking part in the study.

When each young person felt comfortable giving their assent or consent, I also gave young people the option to digitally record their consent/assent rather than sign for it. I also gave young people participants and, where applicable, their parents or guardian the opportunity to ask me any questions about the interview process or the study or to withdraw from the study with no consequences whatsoever. Once young people participants felt comfortable going ahead with the interview, they completed their Assent/Consent form. As previously discussed, I also gave each young person a pen and paper to draw on during the interview.

Before I started the interview, I also asked young people for their verbal consent to digitally record the interview. I also asked if it was okay for me to take down some notes during the interview. Using a digital recording device for interviews meant I could spend less time writing and taking notes and more time focusing and listening to the young people's views and observing young people for any signs of discomfort. I used one digital recording device. To test the recording device, I asked each young person to say their name and favourite colour. This was then played back to the young person to ensure the recording device was working. The interviews were then conducted following the applicable interview guide (see appendix G). The interviews with young people lasted between 20 and 45 minutes.

Interviews with YJ personnel (adult) participants. Before starting the interview with each adult participant, I welcomed/introduced myself to each adult participant. I offered to begin the interview with a karakia (prayer) and my mihi (greeting) and pepeha (introducing my Māori ancestry). I also asked adult participants if they had cultural protocols, they wanted us to observe. However, no adult participant used this option. I reviewed the Information Sheet and Consent form with each adult participant. When each adult participant felt comfortable giving their consent, they completed their Consent Form to take part in my study. I also gave adult participants the opportunity to ask me any questions about the interview process or the study or to withdraw from the study with no consequences whatsoever.

Before I started the interview, I asked adult participants for their verbal consent to digitally record the interview. I also asked if it was okay for me to take down some notes during the interview. Using a digital recording device for interviews meant I could spend less time writing

and taking notes and more time focusing and listening to the adults' views. I used one digital recording device. To test the recording device, I asked each adult to say their name and how they felt about the interview. This was then played back to the adult participants to ensure the recording device was working. The interviews were then conducted following the applicable interview guide (see appendix G).

O'Reilly and Dogra (2017) and Patton (2002, 2015) recommend taking notes throughout the interview just in case the recording devices fail or to locate important information later. I sporadically took notes throughout the interview of themes or words that caught my attention. After each interview, I would go for a long walk and reflect on the interview. At times, the discussions I had with young people and YJ personnel were difficult to hear. They revealed, at times, painful experiences of the YJ system and life in general for young people. Walking after each interview helped me to decompress. For self-reflexivity (Tracy, 2013), after my walk, I would take notes in a diary that reflected the interview experience and salient themes throughout each discussion. This diary had no identifiable information about participants or places.

O'Reilly and Dogra (2017) wrote that writing notes after each interview allows the researcher to reflect on the interview. Through my notes, I could express and reflect on the difficult information I heard. I was also able to see what I did well and what I thought I needed to improve for future interviews.

At the end of each interview, participants were presented with a small gift of a \$50 Koha in a gift card form to respect norms of reciprocity and acknowledge their time and information (Marshall & Rossman, 2016). All participants were also given the option to receive a digital summary of my final report at the end of the thesis.

Documentary Analysis

“Documents are literally all around us, they are inescapable, they are an integral part of our daily lives and our public concern”. (McCulloch, 2004, p. 1)

Throughout history, documents have been used as a means for people to record their histories and stories (McCulloch, 2004; Scott, 1991). Documents come in all different forms⁹³, and what can be defined as a ‘document’ has changed over time (McCulloch, 2004; Scott, 1991; Tight, 2019). There is no universally accepted definition, and various definitions have been developed (McCulloch, 2004; Tight, 2019). For example, Scott (1991, p. 12) defined a document as “a written text”. This definition is cited often throughout the literature; however, it restricts documents to those with only written texts. In an expanded definition, Dolowitz et al. (2008, p. 39) define a document as “any written, printed, photographed, painted or recorded material that can be used to provide information or evidence⁹⁴.” Documents exist as “social and historical constructs” (McCulloch, 2004, p. 5). They are created at a particular time, under certain social, historical and political conditions and for a specific audience (Atkinson & Coffey, 2004; Grant, 2019; McCulloch, 2004). They must be read and understood with these contexts in mind (Atkinson & Coffey, 2004; Grant, 2019; McCulloch, 2004).

Documentary analysis is a qualitative research method that involves finding, collecting, analysing, and making sense of documents to give voice and meaning to a phenomenon under study (Ahmed, 2010; Bowen, 2009). Documentary analysis can be used as a standalone research method or supplementary to other methods, such as interviews (Ahmed, 2010; Bowen, 2009). Documentary analysis was used as my second data collection method. The rationale for using documentary analysis was it provided my study access to secondary data that could not be ascertained through interviewing. By analysing specific government documents, I was able to provide some of the historical context, through background information, from successive governments over time, of the changes and developments to the legislation and YJ practice concerning participation for young people in the YJ FGC in New Zealand. I was also able to verify and expand on my interview findings using the secondary data found in the documents analysed. Ahmed (2010) and McCulloch (2004) explain that documents produced without any involvement from the researcher and for different purposes and priorities are secondary data

⁹³ For example, written texts– such as policy reports, diaries, or books to non-written texts–such as photographs, voice recordings, and paintings (Ahmed, 2010; McCulloch, 2004; Tight, 2019).

⁹⁴ For this documentary analysis, only written texts were used.

sources. Secondary data sources can clarify better the issue under investigation (Bowen, 2009; Grant, 2019; McCulloch, 2004; Tight, 2019). They can provide background information and be used to identify changes and developments over time about the phenomena under study that otherwise might not be accessible to the researcher using primary sources (Grant, 2019; Tight, 2019). Documents can also be used to corroborate, verify, or expand findings from other research methods, such as interviews, used in the same study (Bowen, 2009).

Finding and Selecting Documents to Use for Analysis

My study concerns young people’s participation in the YJ FGC. In this setting, young people’s participation and the YJ FGC are regulated by the Oranga Tamariki Act 1989 and put into practice by the government agency Oranga Tamariki. I collected and analysed specific, official, written documents. Grant (2019, p. 61) defines official documents as “those that carry some contractual or legal standing. They may be both historical and contemporary”. These documents include:

- New Zealand Parliamentary Debates on the Oranga Tamariki Act 1989 and amendments made to it since 1986;
- Briefings to the Incoming Minister (BIM) of Oranga Tamariki for 2017 and 2020;
- Annual Departmental Reports for Oranga Tamariki from 2017–2021⁹⁵.

New Zealand parliamentary debates of the Oranga Tamariki Act 1989 and its

amendments. In New Zealand, parliamentary debates (First and Second Readings) are the debates between elected members of the Government and the Opposition on Bills and amendments to legislation (New Zealand Parliament, 2016a). Parliamentary debates are transcribed verbatim by Hansard and stored, as recorded histories, in written digital and hard copy formats (New Zealand Parliament, 2016b). Since 1989, over 25 Bills have been introduced to the New Zealand Parliament to amend the Oranga Tamariki legislation. As of 2022, eight Bills have directly reshaped the legislation⁹⁶.

⁹⁵ See Chapter Seven.

⁹⁶ See Chapter Eight.

For this documentary analysis, I analysed the First and Second Readings of the eight successful Bills/amendments to the Oranga Tamariki Act 1989. The Minister's introductory speech and the first speaker for the Opposition speech were analysed for the First Readings. For the Second Readings, the first four speeches of the first four speakers were analysed. These readings and speeches were chosen because they provide several different perspectives of some members of Parliament between 1986–2022 that indicate what underlies and has led to successive legislative changes of the Oranga Tamariki Act 1989 over time.

The First and Second Readings have archival access meaning they are stored in such a way that they have minimal 'administrative restrictions' and are open to the public (Scott, 1991).

However, accessing the First and Second Readings (parliamentary debates) for the Oranga Tamariki Act 1989 is time intensive. Hard copies cannot be borrowed from any library in New Zealand and can only be browsed in person at select libraries. Digital copies of the debates can be accessed in three ways: For parliamentary debates between 1854–1990, these can be found using the HathiTrust (New Zealand Parliament, 2018a). Parliamentary debates between 1990–2002 can be found using historical Hansard, and from 2003 parliamentary debates can be found using Hansard online (New Zealand Parliament, 2018a). The digital copies available online are in two formats. Some are stored as individual PDFs (New Zealand Parliament, 2016b) and others as verbatim transcripts on the New Zealand Parliament website. The PDF files are large and sometimes contain thousands of pages. Each PDF is arranged by the sitting day the speech was spoken and included many other readings of other Bills for that day (New Zealand Parliament, 2018b). Hansard was designed to make parliamentary debates "accessible" to the public to maintain democracy (New Zealand Parliament, 2016b). While Hansard is accessible, these documents do not have easy accessibility and require a lot of time to search and collect the necessary information.

Briefing to the incoming minister and annual departmental reports for Oranga Tamariki.

The Briefing to the Incoming Minister (BIM) provides an incoming Minister of a government department an introduction to their portfolio and a brief overview of the main areas of policy and policy issues they will be responsible for (Ministry of Business Innovation & Employment,

2022). Annual Departmental reports, on the other hand, provide the House of Representatives and the public with information on the financial and non-financial position of the department for each financial year (Oranga Tamariki, 2021). For this documentary analysis, I analysed the BIMs for Oranga Tamariki for the years 2017 and 2020 and the Annual Departmental Reports for Oranga Tamariki for each year between 2017–2021. Between 2017 and 2019, the Oranga Tamariki Act 1989 underwent significant amendments, some of which provided new legal obligations on legal personnel and employees of Oranga Tamariki to ensure young people’s participation in YJ processes, such as the YJ FGC⁹⁷. The BIMs for 2017 and 2020 and the Annual Departmental Reports for 2017–2021 were selected for analysis because they provide essential information on Oranga Tamariki’s policies and practices during that time and indicate the policy context in which my research and research questions are situated. Lastly, the BIMs and Annual Departmental reports were easy to find and were accessed from Oranga Tamariki’s Website.

It is common practice for governments worldwide to use written documents to record their histories (McCulloch, 2004; Scott, 1991). Scott (1991) wrote that government documents cannot be considered neutral. They are shaped by the political contexts and ideological and cultural assumptions surrounding them (Scott, 1991). McCulloch (2004) and Scott (1991) explain that it is essential to view documents, particularly those produced by government departments, with a critical eye. Similarly, Atkinson and Coffey (2004, p. 58) briefly summarise similar issues by stating that:

[documents] are not transparent representations of organisational routines, decision-making processes or professional diagnoses. They construct particular kinds of representations using their own conventions. Documentary sources are not surrogates for other kinds of data. We cannot, for instance, learn through written records alone how an organisation actually operates day by day. Equally, we cannot treat [documents] – however ‘official’ as firm evidence of what they report ... We have to approach them for what they are and what they are used to accomplish.

Documents can be assessed by considering their authenticity, credibility, representativeness and meaning (Ahmed, 2010; Bowen, 2009; Scott, 1991). Authenticity refers to the originality and

⁹⁷ See Chapter Two.

genuineness of the text (Ahmed, 2010; Scott, 1991). Ahmed (2010) explains that the researcher using documentary analysis must ensure that the documents are genuine. For my study, I accessed most of the documents from their primary source—the Oranga Tamariki Website and Hansard. Two documents for the First and Second Readings had to be accessed via HathiTrust. I checked the authorship's authenticity by ensuring that the group author of each document, for example, Hansard, aligned with their respective source, for example, New Zealand Parliamentary Debates.

Credibility refers to the 'believability' of the source, the information in the document, and whether the information is free of errors and distortion (Ahmed, 2010; Scott, 1991).

Parliamentary debates are the speeches of parliament members on Bills and legislative amendments. The speeches are transcribed, corrected, and published online by professional transcribers working for Hansard (New Zealand Parliament, 2022b). Ahmed (2010) explains that there is always the possibility of errors in typing in documents and distinguishes between misrepresentation and genuine mistakes. Briefings to the Incoming Minister and the Annual Departmental Reports for Oranga Tamariki are compiled and published by Oranga Tamariki and are publicly available. Annual Departmental reports are reviewed by the Parliamentary Finance and Expenditure Select Committee and during the committee stages of Parliament's budget debate. The documents used in this analysis are credible.

Representativeness refers to whether the evidence in the documents is typical of documents like it (Ahmed, 2010; Scott, 1991). This means that the selection of documents used must represent the totality of documents (Scott, 1991). For the New Zealand Parliamentary debates, I analysed the First and Second readings of eight Parliamentary debates for the Oranga Tamariki Act 1989 between 1986–2022. These documents represent the totality of parliamentary debates for the Oranga Tamariki Act 1989. On the other hand, a selection of the BIMs and Annual Departmental Reports for Oranga Tamariki were chosen for analysis. These documents are a representative collection of the BIMs and Annual Departmental Reports for Oranga Tamariki for 2017–2021.

Ahmed (2010) explains that self-critical and publicly available documents can also indicate their representativeness and authenticity. The documents used in this documentary analysis mention many of the failures and successes of government and Oranga Tamariki about the Oranga Tamariki Act 1989 and Oranga Tamariki over time. These documents are also publicly available, and the public can scrutinise the information within these documents. This indicates that the information in the documents has representativeness.

Lastly, meaning refers to whether the content of the documents is clear and understandable for the topic under study (Ahmed, 2010; Scott, 1991). Meaning is literal and interpretative (Ahmed, 2010; Bowen, 2009; Scott, 1991). Scott (1991, p. 30) explains that

. . . the literal meanings of the words in a document give only its ‘face value’ meaning; they are the raw materials from which its real significance must be reconstructed. Interpretive understanding is the end-product... in which the researcher relates the literal meanings to the contexts in which they were produced in order to assess the meaning of the text as a whole.

For this documentary analysis, each document’s contents were checked first to see if its literal meaning was understandable and aligned with the research questions and was appropriate to be included in the study. Content analysis was used to establish the interpretive meanings of the documents⁹⁸.

Limitations of Documentary Analysis

Ahmed (2010) and Bowen (2009) wrote that the documentary analysis method also has limitations. Firstly, documents used in the documentary analysis are not created with the researcher’s specific research framework and questions in mind (Ahmed, 2010). As such, documents may not provide all the information necessary to address the research questions. The documents I used, however, provided enough information to enhance the findings of my research questions. In some instances, the data from the documents supported the findings from my interviews. In others, they contributed to new insights into the phenomenon under study.

⁹⁸ See page 153.

Secondly, documents may be incomplete or inaccurate. All documents I accessed were complete verbatim transcripts (parliament debates) or copies of the BIMs and Annual Departmental reports from Oranga Tamariki. Lastly, documents may not be easy to access or inaccessible (Bowen, 2009; McCulloch, 2004). As I explained earlier, some parliamentary debate documents required investigator skills to gain access—not all parliamentary debates are available on Hansard. Also, the parliamentary debate documents are large files. Access to these files could be limited if the researcher does not have access to a reliable internet connection.

Data Management and Analysis

Interviews

After each interview, the recorded digital data was transferred to a Universal Serial Bus (USB) and deleted from the digital recorder⁹⁹. The USB was stored in a secure cabinet on AUT's City campus. After each interview, I transcribed the digital data from the USB. The digital data was transcribed word for word for each participant using Microsoft Office Word.

Creswell and Creswell (2018) wrote that when researchers transcribe their collected data, it brings them closer to the data and can begin the analysis process by revealing nuances or themes across the data set. Similarly, Patton (2015) wrote that the researcher is immersed in the information by transcribing the data and can better understand the whole data set. Once I transcribed each interview, I sent the participant a copy of their verbatim transcript. All participants had two weeks to revise and, if necessary, make any changes to the transcript where necessary. Young people were also offered the opportunity to return to their place of the interview to go over the interview transcript with me and, where necessary, with a support person and make any changes whatsoever. Three adult participants opted to change some of the information and then emailed me back their interview transcripts. Four young people spoke to me over the phone, after reading their transcripts, and told me what they wanted to be changed

⁹⁹ Young people participants were given the option to receive a digital copy of their interview, however, no young people chose this option.

in their interview transcripts. This indicates that the rapport-building process was effective because four young people felt they could contact and talk to me about their interview data.

Qualitative Content Analysis – Interviews and Documentary Analysis

Qualitative content analysis was used to identify themes within the transcribed data. Patton (2002) and Merriam and Tisdell (2016) explain that qualitative content analysis is a sense-making technique that is inductive and deductive. It involves taking a large amount of data and finding meaning from the information's reoccurring words and salient themes (Patton, 2002).

These words and salient themes are coded and categorised to produce the study's findings. The categories created during the analysis are tested and retested until data saturation by checking if the established categories exist in the following data (Merriam & Tisdell, 2016; Patton, 2002).

The transcribed data from interviews and the documents were organised into separate tables using Microsoft Word. For interviews, participants' responses were organised under each question from the interview guide and inductively analysed. For each participant, I created a table with multiple-columns in Microsoft Word. The first column was labelled: 'interview question'. In this column, I added the interview question from the transcript. The second column was labelled: 'participant response'. In this column, I added the participant's word-for-word response from the transcript. The third column was labelled: 'first thoughts'. In this column, I wrote down my first thoughts about what the participant was saying from their answer to the question. I identified themes that were repeatedly mentioned and interpreted this as meaning it was important. The fourth column was labelled: 'code one'. In this column, I created a code that best summarised and represented the response from the participant. The last column of this table was labelled: 'final code'. A week later, after re-reading, multiple times, each participant's responses, to each question, I wrote down the code that best summarised and represented their response. I then grouped the participants' responses by their code to develop themes for the findings chapter.

For the documentary analysis, a similar table was designed using Microsoft Word and followed the same process. Excerpts from each document were organised under thematic headings or salient themes found throughout the analysis process. The salient themes emerged when they

were mentioned multiple times throughout the different documents by different departments and speakers. Patton (2002) explains that inductive analysis is used to draw out themes and patterns from the participants' responses instead of existing frameworks that can be seen using deductive analysis. This analysis method grounds the researcher in the data and can produce rich descriptions of the phenomena in question (Patton, 2002).

This study also included deductive analysis. Deductive analysis uses existing frameworks to draw patterns and themes from the data (Patton, 2002). The deductive analysis is seen in the interview questions' design and the documents' analysis. The questions in the interview guides were designed with theoretical input from the literature. The theoretical frameworks, for example, children's rights, informed my analysis of the documents I used in my thesis. As such, the theoretical frameworks, the literature review, and the interview guide were used to draw out emerging themes in my interview data and documents. These themes were coded and re-analysed later to ensure that the themes that emerged in my first analysis were still valid.

Measures of Trustworthiness

Triangulation

There is not one method or data source that can fully cover an issue under investigation (Patton, 2015). Using one method or data source can be fraught with potential biases (Heale & Forbes, 2013). Using triangulation, combining research methods or data sources to understand an issue under investigation, can reduce the potential biases of using a singular method of inquiry. It can also enhance the validity and credibility of the findings by allowing for cross-checking of information across the data to check for consistency (Patton, 2015). Triangulation can be seen in studies, for example, that use the same methodology (qualitative inquiry) but have two or more sources of data, for example, documents and interviews (Heale & Forbes, 2013; Patton, 2015).

For my study, I used two types: Data triangulation (that is the use of multiple data sources, interviews, and documents) and theory triangulation (that is the use of different theoretical perspectives to observe the data) (Patton, 2015). Firstly, using two data sources provides cross-

data validity (Patton, 2015). It allows for a more comprehensive understanding of the research findings and to check for consistency across the data, which minimises the potential for bias (Heale & Forbes, 2013; Patton, 2015). Lastly, using multiple theoretical frameworks helped me to understand the research findings from different perspectives. The theoretical frameworks of children's rights, childhood studies and silencing were repeatedly referred to during analysing, coding, and interpreting of the data.

Ethical and Legal Considerations

Auckland University of Technology Ethics Committee approved this study on the 9th of September 2019 (see appendix F). The application number for this study is 19/264, and the expiration date of this ethics application is the 9th of September 2022.

Voluntary Participation and Informed Consent/Assent

Participants' participation and consent/assent to participate in this study are divided into three sections.

For youth justice social workers and youth advocate participants (adults). Voluntary and informed written consent was provided by all adult participants. The Information Sheet (see appendix A) adequately informed adult participants about the study without giving too much information that could bias their responses. The Consent Form (see appendix B) provided adult participants with enough information to ensure that they were fully informed about the interview and research practice. Lastly, adult participants were informed that they could withdraw from the study at any time before the coding of the data (Early March 2020).

Young people participants aged 14 to 15 years provided voluntary, written, or verbal assent¹⁰⁰. Young people in the YJ system are at high risk for oral and written communication challenges (Snow & Sanger, 2011; Sowerbutts et al., 2021). Graham et al. (2013) wrote that young people must have options by which they can provide their assent. Young people participants aged 14 to 15 years were provided with a child-friendly Information Sheet

¹⁰⁰ Sally also provided with examples of, and information for creating Information Sheets and Assent/Consent Forms that use child-friendly language.

(including pictures) (see appendix A) and a video¹⁰¹ of me explaining the study without providing too much information that could bias their responses.

Young people participants aged 14 to 15 years were also provided with a child-friendly Assent Form (see appendix B) with enough information to ensure they were fully informed about the interview and research practice. Young people participants aged 14 to 15 years were also given the option to provide verbal assent (instead of written assent). However, no young person chose this option. Lastly, young people participants aged 14 to 15 years were informed that they could withdraw from the study at any time before the coding of the data (early March 2020).

Young people participants aged 16 to 17 years provided voluntary, informed written/and or verbal consent. The Information Sheet (see appendix A) for young people participants aged 16 to 17 years adequately informed them about the research without giving them too much information that could bias their responses. The Consent Form (see appendix B) provided young people participants aged 16 to 17 with enough information to ensure that they were fully informed about the interview and research practice. Young people aged 16 to 17 were also given the option to provide verbal consent. However, no young person participant aged 16 to 17 years chose this option. Lastly, young people participants aged 16 to 17 years were informed that they could withdraw from the study at any time before the coding of the data (early March 2020).

This research acknowledges parents' and legal guardians' responsibilities to ensure their young person's safety and well-being during the research and their obligations to help their young person exercise their rights to be involved in decision-making processes that affect their lives (Graham et al., 2013; Peart & Holdaway, 1998). All parents and legal guardians were provided with a Recruitment Notice (see appendix C) and Information Sheet (see appendix A), fully

¹⁰¹ The video was provided because of the likelihood that some young people who might like to participate in this study could struggle to read. As such the brief video made it explicitly clear that the young person and their parent(s)/guardian(s) could contact the researcher to go over the forms (either over the phone or in person) or to discuss any questions they have at all about the study with no obligations whatsoever to take part in the research.

informing them about the study and their young person's potential participation. The parents or guardians of young people aged 14 to 15 years were also provided with a Consent Form (see appendix B) to provide their consent for their young person to take part in the study.

Minimising harm

The study was on a particularly controversial topic of young people's participation rights and YJ. Adult participants would not be likely to experience discomfort or embarrassment. When sharing their perceptions, it was possible that young people could experience embarrassment or discomfort in revealing personal information about their participation within the YJ system. I attempted to reassure young people that the study was about investigating their perceptions of their participation rights in the YJ FGC setting and that there were no right or wrong answers. Furthermore, I assured each young person at the beginning of the interview that I was not judging them. They were the expert, and I was there to learn from them and provide a platform to be heard about their experiences of participation within the YJ system.

Before the commencement of each interview, I informed each participant that they did not need to answer any questions that made them feel uncomfortable or embarrassed and that they could choose to skip questions or decide to stop the interview at any time. Further, I assured all participants that all information reported would remain confidential, including any person or organisation. Young people participants were informed that they could bring a support person(s) of their choosing to their interview.

In my role as a researcher, I carefully considered how I would deal with the potential for physical risk to ensure the safety of all participants. With the assistance of my supervisors, I created a Researcher Safety Protocol (see appendix E). This, however, did not need to be used. I also gave careful consideration to how I would deal with the low risk that a young person might disclose information relating to their or others' involvement in, or intention to be involved in, criminal activity which is illegal under New Zealand law, or if they told me any information that warranted concern for theirs or anyone else's safety.

Before they participated in the research, young people participants were informed in the Information Sheets that, as a researcher, I had a duty to ensure the well-being of my participants

during my research. The Information Sheet made clear that they did not need to tell me information about, or illegal behaviours of, themselves or other people during the interview.

The purpose of this study was to focus on their understanding and their experiences. If a young person disclosed participation in, or intention to participate in, criminal activity or information that warranted concern for the individual or others, I would first speak to my supervisors about my concerns. If, after that discussion, it was deemed necessary to contact appropriate authorities, this would first be discussed with the young person and, where necessary, their parent(s)/guardian(s) over the phone. These issues, however, did not arise.

Finally, it was deemed that there were minimal risks to me as the researcher during the research. To manage potential risks, I sent texts and emailed my primary supervisor before each interview, letting her know where I was, and I sent a follow-up text or email to her after each interview. I also took the opportunity to access counselling external to my university to ensure my well-being during the research process.

Confidentiality

Face-to-face studies cannot provide anonymity. All participants' contact information and collected data were kept separate to protect the participants' privacy. However, all collected data was de-identified by using pseudonyms for all participants, and any places (except OT), or other people, mentioned throughout the interviews. Throughout this thesis, all proper nouns (except OT) have been replaced by pseudonyms.

All collected data, written and electronic, was securely stored at AUT's School of Social Sciences and Public Policy. Consent/Assent Forms, and where applicable, digital (Recorded) assent/consent are stored in a locked and secured cabinet in a separate office at AUT's School of Social Sciences and Public Policy. This data will be stored for six years and then erased or shredded. Any data stored on my personal devices will be deleted once the study is completed.

The Treaty of Waitangi

As recommended by the Auckland University of Technology Ethics Committee, I familiarised myself with the *Te Ara Tika Guidelines* (Hudson et al., 2010). This helped to ensure that I honoured the principles of the Treaty of Waitangi: Partnership, Participation, and Protection throughout my study.

Partnership

The design and implementation of this study encouraged the principle of partnership, mutual respect, and benefit. All participants were asked about their perceptions of young people's rights to participation in the YJ FGC setting and were acknowledged as experts on the topic (see p. 126 and 130). Furthermore, all participants were informed that their participation in this study was completely voluntary (see p. 154 to 156). Young people were also provided with the choice to have a support person present during their interviews (see p. 129).

Furthermore, I acknowledged the tino rangatiratanga (self-determination) that whānau/family (parent(s)/guardian(s), family) inherently have in decision-making processes that affect the lives of their young person and the importance of whānau/family when listening to young people's views (The Children's Convention Monitoring Group, 2019) (see p. 137 to 138).

Participation

The role of the participants in this study was to share information on their perceptions of young people's rights to participation in the YJ FGC setting. The participants were not involved in determining the nature of the research, its aims, or methodology. Participants benefitted from this study because it gave all participants a voice in terms of understanding their perceptions on this topic. Noticeably, young people participants mentioned feeling empowered and listened to. Young people participants also improved their knowledge of their rights to participation. Lastly, all participants were given the option of receiving a copy of their interview transcript (once typed), an electronic or hard copy and a one to two-page summary of the thesis findings once completed. Young people participants were also offered to receive a copy of their interview in the original recorded format (see p. 153 to 154).

Protection

There was no deceit involved in the study's design or practice. The study participants were assured confidentiality (see p. 158), and all recorded and collected data were de-identified and stored in a secure place to which only the primary researcher and supervisors can access (see p. 159). Pseudonyms were used to protect the participants' identities in all written material (see p. 159). I paid attention to developing rapport with the participants before their interviews commenced (see p. 126 to 127). Lastly, as the participants come from different cultural backgrounds, I asked each participant if there were any protocols they would like to be observed during the interviews (see p. 144 to 145)

Conclusion

This study used a social constructionist and interpretivist methodology and process evaluation method to investigate young people's and YJ personnel's perceptions of young people's legal rights to participate in the YJ FGC setting. Participants were recruited using purposeful, and snowball sampling and documentary analysis was employed to collect and analyse data from the documents as mentioned earlier. Semi-structured open-ended interviews were used to collect data from participants, and qualitative content analysis, with indicative and deducted analysis, was used. The next two chapters present the most salient findings from this study's documentary analysis and interviews with young people and YJ personnel.

Chapter Seven: Findings of the Documentary Analysis: Oranga Tamariki 1986–2022

Introduction

In 1986, the Minister of Social Welfare, Ann Hercus, introduced the Children and Young Persons Bill to the New Zealand Parliament. The Bill¹⁰² marked the first opportunity for significant amendments to legislation that dealt with the welfare and justice needs of children and young people in New Zealand¹⁰³. Coincidentally, the Bill also provided the opportunity for a parliamentary debate about the legislative direction of child welfare and youth justice (YJ). In 1989, after three years of parliamentary process, the Bill became the CYPFs Act 1989 and established the Children and Young Persons Service (now Oranga Tamariki). In 2017, the title of the Act was amended to the Oranga Tamariki Act 1989 (or Children’s and Young People’s Well-being Act 1989). Since 1993, several Bills have been introduced to Parliament to amend the legislation and make changes to the services of Oranga Tamariki.

In New Zealand, members of Parliament are tasked with “examining bills (proposed laws), making amendments to them and agreeing their final form” (New Zealand Parliament, 2020). For a Bill to become legislation (an Act of Parliament), it goes through a rigorous parliamentary process, including parliamentary debate between elected members of Government and the Opposition (see New Zealand Parliament, 2016a). Parliamentary debates include First and Second Readings¹⁰⁴ (New Zealand Parliament, 2016a). These Readings provide the views of

¹⁰² A Bill is a proposed piece of legislation or amendments to an Act (New Zealand Parliament, 2022a).

¹⁰³ Children and Young Persons Act 1974

¹⁰⁴ The first and second readings are drafted into official transcripts that can be freely accessed by the public via Hansard (New Zealand Parliament, 2022b). Hansard is New Zealand’s database of the official reports of debate in the House and is available digitally and as hardcopies (New Zealand Parliament, 2016b).

members of Parliament on Acts and amendments to those Acts (New Zealand Parliament, 2022b).

Specifically, the First Reading provides the Minister's introductory speech and the speech in reply from the Opposition's spokesperson. The Minister's speech outlines why a Bill is necessary and what the Government intends to accomplish. If the Bill passes the First Reading, it goes to a Select Committee (New Zealand Parliament, 2016a). Public submissions and public hearings about the Bill are held during a Select Committee. Following, any issues raised with the Bill are discussed, and where necessary, recommended changes to the Bill are made (New Zealand Parliament, 2016a). With recommendations from the Select Committee, the Bill goes to a Second Reading (New Zealand Parliament, 2020). The Second Reading is "the main debate on the principles of the bill" and where any changes to the Bill, in respect of submissions that have been heard during the Select Committee, are discussed (New Zealand Parliament, 2020).

This chapter presents the findings from an analysis of the First and Second Readings of amendments to the Oranga Tamariki Act since 1989 that have assented into legislation. Since 1993, over 25 Bills have been introduced to the New Zealand Parliament to amend the Oranga Tamariki legislation. To 2023, the contents of eight Bills have directly reshaped the legislation (see Table 5).

Table 5

First and Second Readings for the Oranga Tamariki Act 1986–2022 and the First and Second Readings for the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill 2021–2022

Year	Amendment	First Reading	Second Reading
1986–1989	No 24: Children and Young Person's Bill (1989)	18 December 1986	11 May 1989
1993-1994	No 121: Children, Young Persons, and Their Families Amendment Bill (1994)	10 August 1993	29 March, 1994; resumed 27
2000–2001	No 3: Children, Young Persons and Their Families Amendment Bill (2000)	25 July 2000	27 Feb 2001
2009–2010	No 2: Children, Young Persons and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act (2010)	18 February 2009	10 February 2010
2016	No 98: Children, Young Person's and Their Families (Advocacy, Workforce, and Age Settings) Amendment Bill (2016)	15 June 2016	1 November 2016
2016–2017	Children, Young Persons, and their Families (Oranga Tamariki Legislation Bill)	13 December 2016	29 June 2017
2019	Oranga Tamariki Legislation Bill	2 April 2019	11 June 2019
2021–2022	Oranga Tamariki Amendment Bill	14 December 2021	27 July 2022

For this chapter, I have chosen to analyse only the First and Second Readings of the eight successful Bills/amendments to this legislation. The Minister's introductory speech and the first speaker for the Opposition speech were analysed for the First Readings. For the Second Readings, the first four speeches of the first four speakers were analysed¹⁰⁵. These speeches were chosen because they provide essential commentary from Parliament members on successive legislation changes over time. For context and clarity, each speaker is identified by their full name and, in brackets, their parliamentary title or speaking position at the time each Bill was debated.

This chapter also includes the findings from an analysis of the YJ sections of the Briefing to the Incoming Minister (BIM)¹⁰⁶ for Oranga Tamariki for the years 2017 and 2020 and the Annual Departmental Reports for Oranga Tamariki from 2017 to 2021. The years 2017–2021 were chosen for these documents because they provide important information on the public policy context in which this research was undertaken.

The findings in this chapter provide a snippet of a rich source of information for understanding the public policy background in which this research has taken place. For YJ, information from government documents can help make sense of how the YJ system, young people in conflict with the law, and their participation rights have been perceived by governments and subsequently governed over time.

¹⁰⁵ The views presented in these speeches do not represent the views of parliament. Instead, they provide an indication of views, ideas, and issues to do with the legislation and Oranga Tamariki at specific points in time.

¹⁰⁶ The BIMs provide an incoming Minister of a government department an introduction to their portfolio and a brief overview of the main areas of policy and policy issues they will be responsible for (Ministry of Business Innovation & Employment, 2022).

Section One

First, Context: What is in a Name?

Throughout the documents used in this analysis, several changes to the name of the government department responsible for the care and protection of children and young people and YJ can be seen (see Table 6).

Table 6

Titles of the Government Department Responsible for the Care and Protection of Children and Young People and Youth Justice Over the Years

Year	Department/Ministry Name
1989–2001 1992–1999	New Zealand Children and Young Person Services (Under the Department of Social Welfare)
2001	Department of Child, Youth and Family Services (CYFs) (Under the Ministry of Social Development [MSD])
2017	Ministry for Vulnerable Children (Under the Ministry of Social Development)
2018	Oranga Tamariki/Ministry for Children (Standalone)

New Zealand’s previous Children’s Commissioner, Judge Andrew Becroft, explained that the name of the government department that represents children and young people across New Zealand is important because “... it reveals [the department’s] underlying assumptions, goals and philosophies” (Becroft, 2016, para. 1). The department responsible for the care and protection of children and young people and YJ has had four, at time contentious, changes to its

name. For example, in 2016, when the New Zealand government said it was renaming the ‘Department of Child, Youth and Family’ to the ‘Ministry of Vulnerable Children’, Judge Andrew Becroft (2016, para. 2–3), wrote:

...The suggested “Ministry for Vulnerable Children” is stigmatising and labelling. It is depressing, even crushing. It focuses on the problem not the solution. We do not call the Ministry of Health the “Ministry of Sick People”. And imagine the reaction to a door knock from a badged Vulnerable Children’s worker.

In the same year, the UN Committee on the Rights of the Child, in its Concluding Observations of New Zealand’s Fifth Periodic Report, wrote, “[c]onsider a different name for the proposed Ministry for Vulnerable Children, and avoid the categorization of children, in law and policy, which may lead to stigmatization” (UN Committee on the Rights of the Child, 2016, p. 2). The newer name, ‘Oranga Tamariki’, “a reference to the well-being or flourishing of children” (Quince, 2019, para. 10), has also been contentious. When translated, the word ‘tamariki’ refers to ‘children’ (Quince, 2019). Noticeably, the title ‘Oranga Tamariki’ is absent of the words ‘young people’ or ‘rangatahi’.

Care and Protection and Youth Justice

The ‘Oranga Tamariki Act 1989’ is the overarching legislation for the care and protection of children and young people and YJ (Oranga Tamariki, 2017a, 2020a). ‘Oranga Tamariki’ is the agency responsible for the Act’s implementation (Oranga Tamariki, 2020a). The documents used in this analysis show that over time successive governments and Oranga Tamariki have prioritized care and protection and given overwhelming emphasis and attention to amending and implementing changes for care and protection while paying minimal attention to YJ.

Noticeably, care and protection have had a very public and problematic history (see, for example, Abuse in Care Royal Commission of Inquiry, 2020). The overwhelming emphasis on care and protection could help to explain why successive governments and Oranga Tamariki have not prioritized YJ or made as many amendments to YJ as they have for care and protection.

First and Second Readings: Handling of the Oranga Tamariki Act 1989 by Successive Governments

This section provides examples from the First and Second readings of amendments to the Oranga Tamariki Act 1989, of concerns some members of Parliament have held about the handling of the Act and its amendments by successive governments. These examples show that there is, at times, a significant difference between the government's intentions for legislation and the reality of the legislation in practice. They indicate that successive governments have not always adequately resourced and funded the department responsible for the Act's implementation.

Intentions of the Act Versus the Reality of Implementation

Government responsibility. Since 1993, members of Parliament have voiced concerns about the differences between parliament's intentions for the Oranga Tamariki Act 1989 and the reality of the Act in practice. Concerns with funding and resourcing of the Act appear numerous times throughout the First and Second Readings.

In 1993, Hon. Clive Matthewson (First speaker for Labour) mentioned the importance of the government resourcing the Act to ensure it could work in practice:

If we are going to make this legislation work, we have to apply appropriate resources. There needs to be a commitment to that because, if there is not, these measures will not work. (Matthewson, 1993, p. 538)

Similarly, Hon. Roger Sowry (Third speaker for the government–National) in 1994 talked about the government's responsibility to adequately fund and resource the agencies responsible for implementing the Act:

Quite frankly, it is our responsibility as legislators, and as the providers of the budget---the people who vote the budgets to the Department of Social Welfare and the New Zealand Police. It is our responsibility to make sure that they have the resources to do the job that we legislated for them. So if we were to legislate for something that would require a huge increased workload it would be our responsibility to make sure that the resources followed. (Sowry, 1994, p. 1033)

Department and funding issues. In 1986, Hon. Ann Hercus (Minister of Social Welfare–Labour) stated that the government's intention under the Children and Young Persons Bill was

to place the duty and responsibility for funding and resourcing the Act on the Director General of the DSW:

Much preventative work, however, does not depend on clauses in an Act, but on resources. ... The Bill provides specifically that in consultation with organisations and groups in the community, the Director-General of Social Welfare must ensure that financial and other resources are allocated to individual groups and organisations in the community for preventative and developmental work, and for culturally appropriate programmes. (Hercus, 1986, p. 6513)

In 1993, Hon. Jenny Shipley (Minister of Social Welfare–National) indicated that statutory agencies under the DSW were having issues implementing the Act, particularly for YJ:

The Government believes that the YJ processes of the act have the potential to reduce the crime rate in the long term. It is legislation of which New Zealand can be proud, and it is legislation that enjoys bipartisan support in the House. However, the implementation of the act has been a major challenge for the statutory agencies responsible for giving effect to it, given the extent of the changes and the new processes it introduced. (Shipley, 1993, p. 529)

In 1994, Hon. Clive Matthewson (First speaker for Labour) talked about concerns with the practice and under-resourcing of one of the primary services within the DSW, the Children and Young Persons Service, that was tasked with implementing the Act:

A number of reviews and reports have been carried out on the Children and Young Persons Service and I can tell the House that from my mail and telephone calls there is still some unease about whether the Children and Young Persons Service is managing to carry out the task that Parliament has assigned to it and for which it has voted money, despite stretched resources and extremely difficult circumstances. (Matthewson, 1994, p. 1030)

In the same reading, Hon. Dr Michael Cullen (Fourth speaker for Labour) repeated these concerns and discussed the underfunding of the Children and Young Persons Service:

We know that the children, young persons, and their families information system has been a disaster; that it has turned out to be a complete disaster from beginning to end, and will have to be replaced. (Cullen, 1994, p. 1036)

We know also, contrary to what was stated in the report, that the service is drastically underresourced. There has been only one significant increase in resources in recent years, and that was when I obtained an extra \$20 million funding per annum at the time of the introduction of the legislation ... Funding for the Children and Young Persons Service now is less than it was in 1989. (Cullen, 1994, p. 1036)

In 2010, Hon. Lianne Dalziel (Fourth speaker for Labour) described specific examples of under-resourcing. She talked about the government limiting access to some services for children and young people by attempting to amend the legislation to remove community interventions such as addiction programmes:

A further intervention was to provide more accessible and timely mental health, drug, and alcohol treatment services, with greater use of tikanga Māori-based models. I thought that was very interesting, because the bill we will be dealing with next is a carry-over from legislation that our Government introduced—and guess what? All the provisions about access to addiction programmes have been completely expunged from the bill; they have gone. (Dalziel, 2010 p. 8786)

In 2016, Hon. Jacinda Ardern (First speaker for Labour) talked about the lack of funding for CYF (previously the Children’s and Young Persons Service) that had occurred over time. She emphasised that successive governments had not appropriately resourced CYF and, in effect, the Act:

In fact, in the select committee today that was confirmed when we questioned the Minister over funding for Child, Youth and Family, and she admitted that over the past few years \$52 million has been taken out of Child, Youth and Family in what has been called efficiency savings. But what do those efficiency savings actually represent? These included the holding of vacancies—when social workers left jobs, they certainly were not replaced—the way that holiday pay was paid out, and whether or not programmes were indeed delivered; \$52 million taken out of a department that could not afford it. And what is the proof that it could not afford it? The Minister, this Budget, put \$36 million back in, in 1 year alone, because she has acknowledged that that was needed just to tread water. I make those comments because, although this bill is welcomed and we are pleased about it, we do need to acknowledge that in the here and now we do have a department that continues to be under considerable strain. How can we truly say it has failed when we never resource it to do the job properly in the first place? (Ardern, 2016, para. 15)

Hon. Jacinda Ardern also discussed the ongoing issue of a lack of government funding and resources for the Children’s Commission to do its job effectively:

One point of caution though: we must resource that properly. Currently, the Children’s Commissioner has that responsibility to be a voice for young people, but he has already said that that is one of the things that he has had to step back from because he has not been properly resourced, and his funding has remained static for the last 8 years. (Ardern, 2016, para. 26)

Like Hon. Jacinda Ardern, Hon. Carmel Sepuloni (Fourth speaker for Labour), in another amendment to the legislation in 2016, also talked about the lack of funding for CYF. She questioned the government’s intentions of having children at the centre of policy decisions but not providing the funding to support that model:

In 2016-17, CYFs is forecasting a deficit of up to \$38 million due to demand-driven costs. The new funding of \$35 million allocated for CYFS next year, which included the discontinuation of funding from the previous year, barely covers its deficit alone. ... CYFS had a deficit of \$7.7 million in 2014-15, underwritten by the Ministry of Social Development, and it has an unexpected deficit for the current year of \$11.2 million. So, essentially, just looking at those figures, we can see really clearly that the CYFS department is incredibly under-resourced, and so it is really difficult at times to reconcile the rhetoric that we hear from the Minister in respect to wanting to put children at the centre of all policy decisions and wanting to ensure the best for them and ensure that there is a focus when, actually, the funding is not following. (Sepuloni, 2016, para. 44)

Similarly, in 2017, Hon. Nanaia Mahuta (First speaker for Labour) mentioned the underfunding of community-based services for children and young people in conflict with the law. Like Hon. Jacinda Ardern and Hon. Carmel Sepuloni, Hon. Nanaia Mahuta also talked about the government's lack of funding for services that represent children's and young people's voices:

... while we do have a YJ system that is critically geared towards stopping young people going into the adult justice system, at a community level there is significant underfunding of community-based services at an intervention level for young people to then be leading a positive alternative pathway, rather than a path of offending. (Mahuta, 2017, para. 15)

In terms of advocacy, we believe that advocacy makes, again, a critical difference to improving decisions made for young people, but when we look at the sustainable funding of organisations like VOYCE¹⁰⁷, we are left wondering whether there is a high ambition to put children at the centre if, again, we are not funding at the other end. (Mahuta, 2017, para. 21)

Lastly, in 2016, Hon. Anne Tolley (Minister for Social Development–National) described ongoing operating issues with CYF. Rather than referring directly to funding issues, Minister Tolley referred to process issues and talked about CYF as lacking accountability and not meeting the needs of children and young people:

The report found a number of fundamental issues with operating the model for Child, Youth and Family. The current system does not place children at its centre. It does not meet the needs of vulnerable young people as they move into adulthood. It is fragmented, lacks clear accountability and it is not organised around a common purpose. (Tolley, 2016a, para. 4)

These quotes indicate a pattern of successive governments, at times, underfunding and under-resourcing Oranga Tamariki. They also indicate a history of cyclical tensions and issues within Oranga Tamariki that appear to be ongoing.

¹⁰⁷ VOYCE “are an independent charity organisation that helps to advocate for the approximately 6000 children with care experience (children in foster or whanau care) in New Zealand” (VOYCE, 2021, para. 1).

Talking About Young People in Conflict with the Law

This section provides examples of some of the language used by members of parliament throughout the First and Second Readings to describe young people in conflict with the law.

This section shows, over time, a shift away from members of Parliament using harmful labels to describe young people in conflict with the law from the early 1990s to 2010, to using a neutral label of ‘young people’ when discussing young people in conflict with the law.

Negative Language to Describe Young People in Conflict with the Law

In 1994, Hon. Clive Matthewson (First speaker for Labour) used an example to refer to young people in conflict with the law as villains:

As the Minister quite rightly said, there is a difficult balance to achieve here between wanting to make sure that some young villain who steals a car gets caught and gets dealt with appropriately, and the ideas of human rights that underlie a free society. (Matthewson, 1994, p. 1030)

In 2001, Bob Simcock (First speaker for National) talked about some young people in conflict with the law who were held at YJ facilities as threats and difficult to control:

Anybody who has worked in, or had dealings with these young people’s institutions will understand that from time to time a young person acts out in a way that is a threat to himself or herself, or that is a threat to another person. Sensible, sound reason is not always adequate means of gaining control of such situations. (Simcock, 2001, p. 534)

Similarly, Dr Muriel Newman (Third speaker for ACT NZ) talked about children and young people in conflict with the law who were held at YJ facilities as dangerous:

... Many of them [children and young people] are dangerous both to themselves and to the community ... (Newman, 2001, p. 588)

In 2009 and 2010, Hon. Paula Bennett (Minister for Social Development and Employment–National) also talked about young people in conflict with the law as dangerous. However, she also used the words ‘criminals’, ‘out of control,’ ‘troubled’ and ‘destructive’ to describe young people in conflict with the law:

The bill also deals with young criminals who keep offending and ignore their community-based orders. (Bennett, 2009, p. 1442)

The passing of this bill will provide an opportunity for community groups, Māori, and iwi-based service providers and individuals to step up and make a fundamental, positive difference in the lives of some of our most troubled and destructive young people. (Bennett, 2009, p. 1443)

Let me be very clear... These are 12 or 13-year-olds who are out of control and are a danger to our communities. (Bennett, 2010, p. 8778)

In reply to Hon. Paula Bennett's comments in 2009, Hon. Annette King (First speaker for Labour) also used the words 'hardened young criminals' to describe some young people in conflict with the law:

The Minister has also said that the residential facilities needed for the hardened young criminals will not be ready until the end of 2010. (King, 2009, p. 1444)

Neutral Language to Describe Young People in Conflict with the Law

Lastly, from 2016, young people in conflict with the law, in the First and Second Readings of the Oranga Tamariki Act 1989, have only been referred to by members of Parliament as 'young people':

I have heard much come from the community of late that the Youth Court does not hold young people to account. (Ardern, 2016, para. 23)

... a process to ensure that family group conferences happen at the appropriate time, rules to prioritise the interests of children and other young people who are jointly charged with a young person who is alleged to have committed a schedule 1A offence¹⁰⁸... . (Martin, 2019, para. 5)

These quotes show that the language used to describe and talk about young people in conflict with the law, in Parliament, has changed over time. The language used to talk about young people in conflict with the law can affect how young people view themselves and how society views and treats young people (Youth Rights & Justice, 2021). Removing negative labels to describe young people, especially when discussing YJ legislation and their welfare and well-being, provides a more neutral image of young people and is a less harmful way to talk about young people in conflict with the law (Youth Rights & Justice, 2021).

Who is Responsible for Young People's Offending?

Between 1989 and 2010, throughout the First and Second Readings, some members of parliament indicated responsibility or directly blamed parents, whānau/family or their whānau/family environment for young people coming into conflict with the law. This section

¹⁰⁸ Schedule 1a offences are classed as serious offences under the Oranga Tamariki Act 1989, for example aggravated robbery.

provides examples of how some Parliament members have emphasised that the social environment in which young people exist is the most predominant risk factor for young people's offending overtime.

Legislating Whānau/Family Responsibility

In 1989, Hon. Dr Michael Cullen (Minister of Social Welfare–Labour) described the legislation as needing a greater emphasis on whānau/family as responsible for the care, protection, and keeping their young people out of conflict with the law:

First, the Bill reflects a belief that greater emphasis is needed upon the responsibility of families for the care, protection, and control of children and young persons. (Cullen, 1989, p. 10247)

Similarly, in 1993, Hon. Jenny Shipley (Minister of Social Welfare–National) described the Act as placing primary responsibility on parents and extended whānau/family for their young people's welfare and preventing young people's offending:

The Act focuses on strengthening the family unit to cope with care and protection, and YJ issues, prior to institutional solutions being considered, to ensure that families carry out their responsibilities towards their children, and where necessary, with further support from other family members. (Shipley, 1993, pp. 528–529)

Environment and Whānau/Family

In 1989, Hon. Dr Michael Cullen (Minister of Social Welfare–Labour) also implied that a young person's whānau/family and the social environment might be the reason for a young person's offending:

It may be that a young person offends against the law for reasons related to their family and social circumstances. (Cullen, 1989, p. 10249)

Similarly, in 2009, Hon. Paula Bennett (Minister for Social Development and Employment–National) blamed the environments young people are raised in and the relationships young people have with their parents and whānau/family as causes for their offending:

Many young offenders who receive high-end orders come from backgrounds that may involve chronic alcohol or drug abuse and families that condone antisocial behaviour, where negative peer relationships are too often the norm. (Bennett, 2009, p. 1442)

Many young offenders lack positive adult role models in their families and communities. (Bennett, 2009, p. 1442)

In 2010, Katrina Shanks (Third speaker for National) blamed parents and whānau/family for not raising their young people in a manner she perceived conducive to young people not coming into conflict with the law:

There will be a focus on instilling self-discipline, personal responsibility, and community values. 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. (Shanks, 2010, p. 8783)

Lastly, in 2016, Hon. Jacinda Ardern (First speaker for Labour) indirectly indicated that the environment in which young people and their whānau/family exist can play a role in young people offending:

...it also can include wraparound services for the family that young person has come from and will go back to. It understands that their environment has played a role. (Ardern, 2016, para. 23)

These quotes provide examples of how some members of parliament have viewed the causes of young people's offending. It is important to highlight the views held by some members of parliament, particularly successive Ministers for MSD and Oranga Tamariki, on the role that whānau/family and the social environment young people live in can play in young people's offending. These views can affect how legislation is amended, responds to, and treats young people in conflict with the law and their whānau/family.

Children's Rights and the Oranga Tamariki Act 1989

In 1993, the New Zealand government ratified the UNCRC 1989¹⁰⁹. However, there has been very little inclusion and discussion about the UNCRC and, specifically, young people's rights to participate in amendments and parliamentary debates on amendments to the Oranga Tamariki Act 1989. This section provides examples of discussions by members of Parliament that include children's rights and highlights the lack of discussion around young people's participation rights in the First and Second Readings.

¹⁰⁹ See Chapter Three.

Participation Rights

In 1989, Hon. Dr Michael Cullen (Minister of Social Welfare–Labour) talked about the Bill, that became the CYPFs Act 1989, as focused on children’s well-being and their participation in the sense of having a say in decisions that affect their lives:

This Bill is essentially concerned with the well-being and rights of children and young persons, especially in circumstances in which they may be at risk. It stresses the fundamental rights of children to freedom from harm. It also states that children have a right to a say in decisions that affect them. (Cullen, 1989, p. 10246)

Secondly, it reflects a belief that more attention should be paid to the rights of children and young persons--- the right to safety, the right to protection from abuse and neglect, the right to a say in decisions that affect them, and the right to a fair hearing and to appropriate sanctions when they have offended against the law. (Cullen, 1989, p. 10247)

Although the Act gave children and young people participation rights, following 1986, there was no discussion throughout the First and Second readings about this part of the legislation until 2016. In 2016, Hon. Anne Tolley (Minister for Social Development–National) proposed changes to the legislation and young people’s rights to participate:

The bill has three main objectives... second, it provides vulnerable children and young people with the support needed to express their views and have them heard, both at the individual and at the system level ... (Tolley, 2016a, para. 5)

Hon. Anne Tolley also talked about how children and young people’s participation would be facilitated, in part, by placing duties on select professionals to ensure that children’s and young people’s views were listened to:

This bill also includes duties to ensure that children and young people are encouraged and assisted to participate in any actions and decisions under the Act that may significantly affect them. These duties specify that any views expressed by the child or young person must be taken into account. The duties include that the child or young person be supported to express their views freely when they face any barriers, such as those relating to age, language, or disability. (Tolley, 2016a, para. 9)

These changes will help to ensure our care, protection, and YJ systems are child-centred and responsive to children and young people’s views and need. (Tolley, 2016a, para. 13)

In 2016, in another amendment to the Oranga Tamariki Act, Hon. Anne Tolley (Minister for Social Development–National) again talked about the importance of ensuring the legislation was child-centred and included children and young people’s participation rights, in the sense of their voices:

Ensuring that the voices of children and young people are heard is critical if we want a system that is truly child-centred. (Tolley, 2016b, para. 3)

She also talked about recommendations from the Select Committee to changes around clarifying participation for children and young people and ensuring young people have the support necessary to be able to participate, particularly in family group conference settings:

The committee recommended two minor changes to the provisions covering the participation of children and young persons in the decisions that affect them. The committee has recommended that the bill clarify that participation of children and young people at family group conferences includes not only the conferences themselves but also the preparation for them. This will explicitly recognise that there are a number of decision points during the preparation for a family group conference where children and young people should be able to express their views. (Tolley, 2016b, para. 6)

The bill requires that support must be provided to children or young people who face barriers to expressing their views or being understood. Such barriers could include, for example, age, language, or disability. The committee has recommended an amendment to allow a person supporting a child or young person to express views or to be understood to be present at the proceedings or processes under the Act in order to continue to provide that support, except where this is impracticable or inappropriate. (Tolley, 2016b, para. 7)

Lastly, in 2017, Hon. Anne Tolley (Minister for Children–National) was the only speaker to mention children’s and young people’s voices and consequently being listened to as important:

... this Government is committed to ensuring that our most vulnerable children and young people are at the centre of every decision made about them. They deserve to have a voice, and they absolutely deserve to be listened to. (Tolley, 2017, para. 2)

Since 2016, some members of parliament have pushed for further amendments to the Oranga Tamariki Legislation. However, in YJ, rights issues about the age of majority; minimum age of criminal responsibility; the use of detention and housing young people in conflict with the law with adult offenders and the over-representation of young Māori and Pasifika children and young people in the YJ system persist and appear to be ignored or paid lip service by successive governments (see, for example, MSD, 2021).

Conclusion

The themes from the First and Second Readings are limited, given that there were only eight First and Second readings to draw findings from. However, these findings show how successive governments from 1986 have influenced legislative and policy reforms for young people in

conflict with the law when in contact with Oranga Tamariki. These findings indicate that members of parliament and successive governments over time have placed considerable focus and resources on care and protection of children and young people and largely ignored YJ when amending the Oranga Tamariki Act 1989. The findings also indicate that children and young people's rights have been largely ignored by successive governments in debates on the Oranga Tamariki Act 1989. From the findings, it could be suggested that future governments, when amending legislation, need to give more attention and, where necessary, funding and resources to YJ. Also, future governments should ensure that recent amendments to young people's legal rights to participation in the legislation are put into practice. The next section of this chapter presents the findings from the BIMS for Oranga Tamariki between 2017–2020 and Oranga Tamariki Annual Departmental Reports between 2017–2021.

Section Two: Findings from: The Briefings to the Incoming Minister 2017 and 2020 and Oranga Tamariki Annual Departmental Report 2017-2021

Introduction

In 2017, after several independent reviews noting significant issues with Child, Youth and Family, the Ministry for Vulnerable Children, Oranga Tamariki, was established (Oranga Tamariki, 2017b). Oranga Tamariki was announced as a ‘new’ agency “focused on vulnerable children and young people” (Oranga Tamariki, 2017b, p. 12). The establishment of Oranga Tamariki coincided with major legislative reforms to the governing legislation, the Oranga Tamariki Act 1989¹¹⁰, including changes to young people’s participation in the YJ system (Oranga Tamariki, 2017, 2020b; Oranga Tamariki Act 1989). This section provides the key themes from the BIMs for 2017 and 2020 and Oranga Tamariki’s Annual Departmental Reports for 2017–2021 that indicate the policy context in which this research was undertaken.

Children’s and Young People’s Participation

Since 2017, Oranga Tamariki has emphasised that it is in the process of overhauling its operating model in response to ongoing issues with the agency and to align itself with legislative reform (Oranga Tamariki, 2017a, 2018, 2019, 2020a, 2020b, 2021b). The overhaul included but was not exhaustive of creating a child-centred system in which all children and young people’s voices would be central and embedded into the decision-making processes throughout Oranga Tamariki (Oranga Tamariki, 2017a, p. 14). To aid in this transformation, Oranga Tamariki partnered with VOYCE Whakarongo Mai in 2017, created a new position, “Tamariki Advocate/Deputy Chief Executive Voices of Children”¹¹¹ (Oranga Tamariki, 2017, p.

¹¹⁰ See Chapter Two.

¹¹¹ The Tamariki Advocate/Deputy Chief Executive Voices of Children and the Voices of Children and Young People Team was disestablished in 2021 and nothing has been put in its place (Oranga Tamariki, 2021a).

14) and established the ‘Voice of Children and Young People Team’¹¹² (Oranga Tamariki, 2017). It also launched an annual survey of children’s and young people’s experiences of Oranga Tamariki services in care. Since 2017, it has undertaken research¹¹³ to give voice to children and young people’s views. However, there is no other indication of elevating other aspects of children and young people’s participation.

Since 2017, Oranga Tamariki has emphasised its partnership with VOYCE Whakarongo Mai as its primary mechanism for listening to children’s and young people’s experiences. Oranga Tamariki emphasises VOYCE Whakarongo Mai to show they are committed to ensuring that children and young people’s voices (experiences of Oranga Tamariki) are listened to. However, VOYCE Whakarongo Mai only researches children and young people’s experiences in Oranga Tamariki’s care settings:

Alongside their own work, the Voices team has worked with the independent advocacy service VOYCE Whakarongo Mai. VOYCE Whakarongo Mai is a non-government organisation established to facilitate children and young people having their voices heard within the care system and to use their own stories and concerns to drive positive change. (Oranga Tamariki, 2018, p. 31)

VOYCE Whakarongo Mai’s research does not include the voices of young people who experience other Oranga Tamariki processes, such as the YJ FGC:

In 2019, Oranga Tamariki developed ‘Mana Tamai Objectives’, which included ensuring the participation of children and young people who come into contact with their agency:

Ensuring the participation of tamariki Māori, rangatahi, whānau, hapu, and iwi in decisions affecting them at the earliest opportunity. (Oranga Tamariki, 2019, p. 9)

These principles apply to all children, and we’ll continue to embed these objectives throughout our policies, practices and services over the coming years as we mature as an organisation. (Oranga Tamariki, 2019, p. 9)

In the same year, Oranga Tamariki introduced the ‘Children’s Experience Survey’ (Oranga Tamariki, 2019). This survey is conducted annually and designed as part of Oranga Tamariki’s monitoring system to see how children and young people experience care, in care and protection

¹¹² The Voice of Children and Young People Team was designed to ensure children and young people’s voices were listened to “at an individual and system level” (Oranga Tamariki, 2018, p. 31). However, the only research conducted by the Voice of Children and Young People Team that is mentioned in any of the documents was on children and young people in care and their experiences of education (Oranga Tamariki, 2018).

¹¹³ For example, *‘[w]hat Makes a Good Life?’* (Oranga Tamariki, 2019).

and YJ residences over time (Oranga Tamariki, 2019). In its initial stages, the survey was rolled out in “four waves” over two years (Oranga Tamariki, 2019). The first three waves focused on the experiences of children and young people in care and protection. It was only in the final wave (two years later) that the voices of some young people in YJ residences were included.

This is Oranga Tamariki’s only annual ‘experience’ survey for children and young people.

Oranga Tamariki does not have a yearly survey about children and young people’s experiences, including their participation, in other processes under Oranga Tamariki, such as the YJ FGC.

The analysed documents indicate that since the legislative reforms took place between 2017–2019, Oranga Tamariki has not conducted and has no immediate plans to conduct research on the experiences of young people who have had a YJ FGC, even though legislative reform has effectively changed young people’s access to their participation rights in this setting.

Oranga Tamariki is making improvements to ensure that children’s and young people’s voices are listened to in decision-making processes that affect their lives when in the care of Oranga Tamariki. However, ‘voice’ appears to be the only aspect of children and young people’s participation that they are focusing on. As explained in Chapter Four, children and young people’s rights to participation are much more than just voice.

The documents analysed indicate that Oranga Tamariki heavily relies on VOYCE Whakarongo Mai as its ‘voice’ for the experiences of children and young people in its care. There is, however, an important voice that is missing; young people who experience other YJ processes, such as the YJ FGC. Oranga Tamariki claims to be invested in ensuring that children and young people are listened to about their experiences across their agency. At the same time, however, they appear to ignore and effectively silence the voices and experiences of young people in conflict with the law who have a YJ FGC.

Youth Justice Legislation and Practice

The major legislative reforms to the Oranga Tamariki Act 1989 that took effect from 2017–2019 included changes to the jurisdiction of the Youth Court to have 17-year-olds in the YJ

system and changes to young people's participation. This includes YJ personnel being required to ensure young people are given an opportunity to be heard in proceedings where they are deemed mature enough to do so, and that young people be given a reasonable opportunity to express their views on matters that affect them (Oranga Tamariki Act 1989). The Minister for Oranga Tamariki is responsible for ensuring these changes are implemented into Oranga Tamariki's policies and practices (Oranga Tamariki, 2017, 2020a).

The BIMS and Annual Departmental Reports analysed emphasised and repeatedly mentioned the importance of the changes Oranga Tamariki have/are making to include some 17-year-olds in the YJ system. However, there has been a minimal emphasis on policy or practice changes to ensure young people's participation is promoted and upheld. In the 2018/2019 Annual Departmental Report, Oranga Tamariki outlined some of the significant investments and changes they had made to ensure that the inclusion of some 17-year-olds in the YJ system could be effective:

[I]nvested in 21 new community remand placements including homes at Rotorua, Palmerston North, Dunedin, Hamilton, Auckland (including the Ngā Puhī Mahuru remand service in Te Tai Tokerau. . .). A further two homes in Auckland and one in Tauranga are nearing operational readiness;

[I]ncreased YJ Residence capacity by 10 beds to 156;

[I]nvested in our YJ Residence infrastructure with a programme to make all four residences graffiti-free;

And continued to build the wider YJ workforce to help reduce offending, re-offending and the need for custodial placements, including the expansion of flexible Supported Bail programmes.

To support our people to prepare for this change, we have:

[R]olled out a new induction training programme for YJ residence staff;

[E]mbarked on a programme of induction for all new Family Group Conference co-ordinators, and in service training for existing staff;

[P]rovided speech and language training for our YJ workforce, designed to ensure our ability to engage young people in complex YJ issues is enhanced;

And trained staff in new behavioural management techniques to avoid the use of physical restraint.

We are also piloting:

[A] new approach to restorative practice, Whakamana Tangata, in one YJ residence at Te Maioha o Parekarangi in Rotorua;

And additional mentoring support for tamariki and a co-designed hybrid functional family therapy (FFT) programme in Auckland.

We have increased our focus on victims with a new role created to develop a comprehensive framework to increase engagement, participation and satisfaction of victims experiencing youth crime. Our Family Group Conference (FGC) Co-ordinator training focuses on improving the rates of victim attendance at the FGC (Oranga Tamariki, 2019, p. 51)

Oranga Tamariki stated it was piloting a program to increase the participation and engagement of victims in the YJ FGC process (Oranga Tamariki, 2019). However, in these documents there is no mention or indication of doing the same for young people in conflict with the law in this setting. There is also no mention or indication that Oranga Tamariki will implement a process to check that young people are being listened to, that their views are given due weight, and that the changes to their participation in the legislation are effective in practice.

In the 2020 BIM, Oranga Tamariki reiterated the significance of including some 17-year-olds in the YJ system. The report stated that Oranga Tamariki had successfully included 17 year olds in the YJ system in their first year. Still, it did not provide any evidence of this success or what the department meant by success:

One of the significant legislative changes that came into force on 1 July 2019 was the inclusion of 17 year olds in the YJ system, instead of the adult criminal justice system. While 17 year olds charged with some serious offences continue to be processed through the adult court system, the YJ system has successfully managed the first year of the expansion. It has meant that more young people are responded to in an age appropriate way. (Oranga Tamariki, 2020a, p. 35)

Changes to the Youth Justice Family Group Conference

Throughout these documents, there is minimal discussion about specific changes Oranga Tamariki has made to the YJ FGC policy and practices. More specifically, there is minimal discussion about how the changes to legislation, specifically young people's participation, are being effectively implemented and upheld in YJ FGC settings. Of the changes mentioned in these documents, in 2017/2018, Oranga Tamariki introduced the first iwi-led YJ FGC by Ngāti Porou:

Ngāti Porou became the first iwi in the country to facilitate Family Group Conferences (FGCs) for their young people who had offended. Traditionally FGCs are organised by either a YJ coordinator or an Oranga Tamariki—Ministry for Children social worker. Iwi-led FGCs bring a cultural perspective and ensure rangatahi are supported by their whānau and iwi to make positive changes to their lives. (Oranga Tamariki, 2018, p. 33)

In the following year's reports to 2021, there is no discussion on the outcomes of iwi-led YJ FGCs. In 2020/2021, Oranga Tamariki introduced Family Group Conference Team Leader roles to help implement new Practice Standards¹¹⁴ and to ensure that the rights of tamariki (children) and rangatahi (young people), under Section 7AA¹¹⁵ of the Oranga Tamariki Act 1989, were being implemented (Oranga Tamariki, 2021):

11 new YJ Team Leaders have been appointed during the year and are supporting the regional YJ Teams. There is now more direct supervision of all YJ coordinators in the three YJ Regions and added support to caseloads. Each coordinator is better supported, and a better structure is in place to identify and share good practice. (Oranga Tamariki, 2021, p. 52)

However, no research has been undertaken to see if these changes have improved how YJ coordinators run YJ FGCs across these regions. Noticeably, in the 2020/2021 report, when referring to the performance of Oranga Tamariki's services, the only box not ticked as being achieved for YJ was the "services are well delivered" (Oranga Tamariki, 2021b, p. 37). This indicates that there may be some concerns or issues with YJ services offered by Oranga Tamariki.

Young People's Participation in Youth Justice Processes

The BIMS and Annual Departmental Reports indicate that Oranga Tamariki's focus for 2017–2021 for YJ was on prevention and reducing re-offending (Oranga Tamariki, 2017, 2018, 2019, 2020a, 2020b, 2021). Nothing is written in any of these reports to indicate that Oranga Tamariki intends to focus on young people's participation or their views of their participation in YJ processes, such as the YJ FGC. Throughout the BIMS and Annual Reports, Oranga Tamariki has included some examples where young people's voices have been included in other YJ processes. For example, in 2017/2018, Oranga Tamariki introduced a youth offending intervention program in Huntly, New Zealand, called the 'Oranga Rangatahi Huntly

¹¹⁴ Notably, the practice standards mention ensuring young people have a say in decisions that affect their lives. See <https://practice.orangatamariki.govt.nz/practice-approach/practice-standards/see-and-engage-tamariki/>

¹¹⁵ 7AA of the Oranga Tamariki Act sets out the principles of Mana Tamaiti, whakapapa and Whanaugatanga. It requires Oranga Tamariki to "set measurable outcomes to reduce disparities between Māori and non-Māori" (Oranga Tamariki, 2019, p. 9) in its care.

Programme' (Oranga Tamariki, 2018). In this programme, Oranga Tamariki engaged with young people to understand what they needed, so they did not end up in conflict with the law:

We worked with their whānau to develop a whānau-led plan for each rangatahi. In this situation the voice of the rangatahi was paramount when considering how we addressed their needs. One of the main priorities for the programme was to re-engage all rangatahi into an appropriate education programme; this priority was achieved. In addition, since the programme started 77.5% of young people have not been charged with offending of any kind. (Oranga Tamariki, 2018, p. 26)

In 2017/2018, Oranga Tamariki spent \$1.6 million upgrading its Te Maioha o Parekarangi YJ Residence in Rotorua (Oranga Tamariki, 2018) and gave young people the opportunity to participate in redesigning the residences:

The 30 young people in the facility were part of the redesign process, designing how the space would look and feel, and giving their voice to the process... . This is the first in a nationwide programme to improve the YJ facilities. The upgrades create comfortable, safe and supportive environments for our rangatahi in our residences. (Oranga Tamariki, 2018, p. 26)

The few examples provided across these documents show that young people's voices are included in a preventative (preventing offending) or aftermath (YJ residences) context.

However, there are no examples of young people's voices on their experiences or participation in the YJ FGC context.

Independent Monitoring

On July 1 2019, Oranga Tamariki established its own 'Independent Children's Monitor' to:

monitor the system of state care to ensure organisations that look after our tamariki and rangatahi are doing what they need to do, to enable them to reach their potential and thrive. The Monitor provides assurance to the Minister for Children that the operations and obligations delivered under the Oranga Tamariki Act 1989 and associated regulations are met, including compliance and practice quality through to monitoring outcomes for tamariki and whānau (Oranga Tamariki, 2020b, p. 51).

However, under section 13(1)(b) of the Children's Commissioner Act 2003, these functions were reserved for the New Zealand Children's Commissioner:

The Commissioner has the following functions in relation to the Oranga Tamariki Act 1989

(b) to monitor and assess—

(i) the policies and practices of the department; and

(ii) the policies and practices of any other person, body, or organisation that relate to the performance or exercise by the person, body, or organisation of a function, duty, or power under that Act or regulations made under that Act...

On November 11 2021, the Oversight of Oranga Tamariki System and Children and Young People’s Commission Bill 2022 was introduced to parliament. Effectively, under this Bill, the OCC will have its powers reduced. Children’s Rights Alliance (2022, p. 36) wrote:

[t]he Commissioner requires the independence, mandate and resources needed to effectively monitor, protect and promote children’s rights in accordance with the Committee’s General Comment No. 2 and previous recommendations. Under the Bill, the Children’s Commissioner will no longer monitor the OT system or have powers to investigate.

Despite strong opposition, as of the 29th of August 2022, the Bill is expected to pass into legislation (Children’s Rights Alliance, 2022).

The Children’s Commissioner’s office has effectively monitored and reported on issues with the operations and functions of Oranga Tamariki that have breached children’s and young people’s rights over the last five years¹¹⁶. Professor Jonathan Boston, as cited by Duff (2022), said:

“[it’s] hard to read what’s happened in relation to the Office of the Children’s Commissioner without the sense that a powerful voice was inconvenient for the government. That clearly led to an initiative to mute it. If you respond negatively to criticism by a crown entity and essentially mute that entity, that’s consistent with what Vladimir Putin would do. You hear criticism of yourself, you don’t like it, and you get rid of it. It is seriously concerning”. (Duff, 2022, para. 9–10)

In the documents analysed, Oranga Tamariki has repeatedly cited issues with its organisational and systems processes over time:

When Oranga Tamariki—Ministry for Children was first established on 1 April 2017, we inherited both a significant challenge and a rich whakapapa of insight and vision from the two reports from which we can trace our origins: Puaote-Ata-tu in 1988, and the Expert Advisory Panel in 2015. The challenge facing us – then and now – was not only the process and systemic changes needed, but even more significantly, the need for societal change to reflect that children are our taonga. (Oranga Tamariki, 2019, p. 5)

¹¹⁶ Before this the OCC did monitor Oranga Tamariki but did not publicly report on the findings of this monitoring. See Office of the Children’s Commission publications for examples: <https://www.occ.org.nz/publications/>

There have been a number of attempts across the last 30 years to transform outcomes for tamariki and rangatahi who come into contact with the care and protection and YJ systems. Between 1986 and 2015, 14 reviews and reports of Child, Youth and Family and its predecessor organisations were undertaken. Together, these reviews shared similar themes, including the need for organisational change to increase cultural capability and understanding of Te Ao Māori, ensure greater clarity of responsibility and accountability in decision-making, and greater involvement of communities in decision-making and delivery of services. (Oranga Tamariki, 2020a, p. 8)

Given the repeated pattern of issues Oranga Tamariki has had in effectively running its agency, its history could indicate that removing the independent monitoring powers of the OCC and self-monitoring will lead to more agency issues and breaches of children's and young people's rights. The removal of the Children's Commissioner as an important independent monitor, advocate and voice for children and young people's rights, is silencing a powerful voice of and for children and young people who come into contact with Oranga Tamariki.

The Direction of Youth Justice

In my opinion, we're streets ahead in the delivery of justice services compared to many other countries around the world. We're unique in that we have legislation that embeds the Family Group Conference. And working closely with whānau, hapu and iwi, this gives us solid foundation to do great things for the future of our tamariki, rangatahi and their whānau (Melissa Richards, YJ Manager, Whakatāne). (Oranga Tamariki, 2020b, p. 31)

The 2017 and 2020 BIMs and the Annual Departmental Reports from 2017–2021 for Oranga Tamariki indicate that Oranga Tamariki has implemented several new initiatives and programmes around the prevention of youth offending and reducing reoffending for young people in conflict with the law. Oranga Tamariki can also be seen to have introduced some culturally appropriate processes for young Māori in conflict with the law¹¹⁷. However, as repeatedly stated, what is missing is Oranga Tamariki's support, inclusion and promotion of young people's voices and experiences of Oranga Tamariki's core process for YJ, the YJ FGC.

¹¹⁷ See, for example, Oranga Tamariki (2020b) '*Creating a Te Ao Māori programme for cognitive thinking for young people*'; Oranga Tamariki (2021) the development of a 'new and unique' Māori informed YJ residence. And the Hoani Waititi Marae based programme designed to "facilitate transformational change in the lives of rangatahi and their whānau/family involved in the youth justice system to improve their well-being (As defined by them), and supports them in decision-making that promotes a positive life pathway" (Oranga Tamariki, 2021, p. 57).

Conclusion

Similar to the findings of the Parliamentary debates, the documentary analysis indicates that the department (Oranga Tamariki) responsible for the care and protection and YJ response for children and young people over time have also placed considerable resources and focus on care and protection of children and young people compared with YJ processes overtime. The next chapter presents a summary of the key findings of the interviews with young people and YJ personnel.

Chapter Eight: Interview Findings

Smile. They [adults] rarely smile because their faces are just angry, of course, but that makes you feel worse. Yeah. Just smiling would be a lot better. It would make the youth a lot more comfortable. (Amiria)

Introduction

This chapter presents a summary of the key findings of the interviews in this research, presented thematically. Section One presents young people's views; Section Two presents the views of YJ personnel (youth advocates¹¹⁸ and YJ social workers).

Section One

Young People's Experiences of the Youth Justice Family Group

Conference

To begin the discussion, participants¹¹⁹ were asked several questions to gain an understanding of their overall experiences with their YJ FGC. It is worth noting that while the findings show that young people shared mixed experiences about their YJ FGC, all young people, throughout their interviews, shared examples of negative experiences when participating in their YJ FGC. This suggests that even though young people can reflect positively on their YJ FGC, they can also experience negative aspects of the conference.

¹¹⁸ Youth advocate' and 'lawyer' are used interchangeably because some young people referred to their youth advocate as their lawyer and vice versa.

¹¹⁹ For section one, the word participant refers *only to* the views of young people.

Pre-conference Preparation

When participants were asked, “[d]id you know what was going to happen in your YJ FGC before you had your YJ FGC?”, the majority of participants, in one way or another, mentioned not knowing what would happen in their YJ FGC:

I had no clue. (Amiria)

Nah. I just go there and see what happens. (Nikau)

Um, Nah. (Grace)

Kai and David distinguished between knowing why they were having their YJ FGC but not knowing what would happen or the outcome:

Nah, I had no clue. I just went in there, and they just started talking about, [pause] oh, I knew what I was going there for, but I didn’t know what was going to happen. (Kai)

It was sort of like go there and, well, you were prepared, but not prepared, because you didn’t really know what the outcome was going to be till you got in there. (David)

When participants were asked, “[d]id anyone explain to you what you would have to do during your YJ FGC before you had your YJ FGC?”, eight participants responded with a “no” or implied that there was no explanation provided to them before their YJ FGC:

No. You just walk in. They [YJ coordinator] book a time and date at WINZ [Oranga Tamariki]¹²⁰. (Kai)

Nope. They [YJ coordinator] basically just said that I got a family group conference, and then they said what it was about. Or, they [YJ coordinator] send a letter and say to ring up and book a time. (Maverick)

Nope, [because] everything was going to happen that day. (Tane)

On the other hand, Aroha and Rangī mentioned being told what they would have to do in their YJ FGC:

Yeah. [YJ social worker’s name removed] talked to me before we actually had it. She is the one from Oranga Tamariki. (Rangī)

Aroha specifically mentioned being told what she did not have to do during her YJ FGC.

However, she questioned the accuracy of this. She distinguished between what she had been told Pre-YJ FGC, and what she felt adults expected of her during her YJ FGC:

¹²⁰ The terms WINZ and CYFs were used interchangeably with Oranga Tamariki by young people. Where these terms have been used, Oranga Tamariki has been placed in brackets for consistency.

[Long pause] No. They just said, like, if you don't want to talk, that's fine. Like, they say that, but it's like they make you have to talk [because] then that's why they all came to the meeting to hear what you got to say. So, I don't really believe that one. But, yeah, they say that you just come to talk and stuff. (Aroha)

Aroha when asked, "how did that make you feel?" talked about feeling annoyed at not understanding what adults meant and at the contradictory expectations of adults in her YJ FGC:

Just annoyed. Just the way they say things and the way it doesn't make sense to us. Like, it's like they say that we don't have to talk, but "you're asking me a question, and you keep asking me that question, knowing that I have to reply". So, therefore, I am still talking. . . (Aroha)

Language and Communication

When participants were asked, "[w]as there any part of your YJ FGC that you found hard to understand?" and "[w]ere there any people in your YJ FGC that were hard to understand?", several participants talked about language barriers and unfair or unexpected parts of the YJ FGC. This finding indicated the importance of using language young people can understand.

Nikau, Grace and David talked about, at times, struggling to understand what adults meant, for example:

[Long pause] Yep, a few things [pause]. At times I didn't really understand [pause] certain things they [adults] would talk about. They were a bit confusing. (Nikau)

Just when they [adults] talk around you. It's like they talk their own words and you can't understand it. (Grace)

Yeah, when they talk about you, sometimes, they say things that are hard to get. (David)

Further to this, Kai, Aroha and Maverick, in another part of their interviews, mentioned that they did not like when adults used words they did not understand or words that made things sound worse than the young person perceived them to be:

Yeah, the fancy words. That's what I didn't like. Yeah. They [adults] use like big words, and they are hard to understand. (Kai)

. . . It is the big words that muck us up, and we don't even know what you are talking about. You need to keep it real and just be like, "so, you're an idiot for doing this right, right?" Like, you need to say it how we would understand it . . . (Aroha)

. . . Sometimes, I feel like they put little bits in the story to make it worse. It's rat shit as. They [adults] just use fancy words and that to make it sound the worse they can. (Maverick)

Six participants mentioned struggling to understand, and being frustrated by, what could be termed unfair content and outcomes of their YJ FGC. Kauri mentioned not understanding why unexpected charges were part of his Summary of Facts:

. . . It was more like charges because there were some charges on there that were supposed to be dropped. (Kauri)

Rangi, with his experience of multiple YJ FGCs, talked about the plan as being, at times, fair and unfair:

Um, sometimes it's like, um, the plans can be a bit unfair, but sometimes they all good. (Rangi)

In another part of his interview, Rangi explained that unfair plans are when young people are given more than they expect in terms of reparations. He also implied that sometimes adults' views of crime prevention for youth could clash with young people's views of what will prevent them from committing a crime:

Sometimes [expletive] is unfair, and they load you up with hours, so they think you are busy, so you won't get back into the system, but it just doesn't work like that, eh? (Rangi)

At times, Malakai, at times, also talked about reparations as, at times, being unfair. Like Rangi, he referred to being given more hours than he thought he needed:

Like it gave me ... pretty much more than what I needed. Like, my hours, community hours like that's what I felt anyways, in my opinion. They gave me 200 hours, maximum 400. So, they gave me half of that. (Malakai)

Maverick, on the other hand, expressed frustration at not understanding why he was repeatedly given the same reparations for multiple YJ FGC plans:

. . . I know that they know that I got a bit of like anger problems, but like, they put me in anger management programs so many times throughout all my FGCs, and I've been there and done them and stuff, and it's like they don't even work. It's like pointless, and they [adults] always try to get me to do it, but I don't want to do stuff I have already done before . . . it doesn't work! (Maverick)

Maverick further explained that while he understood that he needed to make amends, he did not think he should have to undertake the same reparations:

. . . I understand I done something wrong; I should pay or do something right, but not anger management. (Maverick)

Usefulness of the Youth Justice Family Group Conference

When participants were asked, “[d]id you find the YJ FGC useful?”, all participants provided mixed responses. Four participants explained that the YJ FGC was useful in creating plans or clearing charges:

Oh, kind of. Like, for the plan . . . (Rangi)

Yes and no. It was only [useful] because they made a plan, you know, to help me out . . . (Malakai)

Um, not really, just basically clears my charges and gets me out of trouble. Oh, so yeah, it’s useful in a way to clear it and stuff. (Maverick)

Yeah, [because] a couple of weeks later, I got discharged [laughs]. (Tane)

Two participants were uncertain if the YJ FGC was useful for them:

I don’t know, eh? Yeah, I don’t know about that one. (David)

Like David, Kai was unsure if the YJ FGC was useful for him. He further explained that the outcome of the YJ FGC was something he did not want to experience again:

Um, yeah, I don’t really know. Because I was on it for ages, just for something little. I don’t want to go through that stuff again, it was like half a year till I got my 282¹²¹, or whatever that thing is called. It was ages. (Kai)

Five participants did not think the YJ FGC was useful for them at all. Grace and Aroha talked about and grappled with having expectations placed on them in the YJ FGC:

Not at all [laughs]. It didn’t get me anywhere. It really felt like I had to come up with a plan, prove myself to them, to just get out of the system. (Grace)

No. Not at all, to be honest. It’s like, I find, it’s the most stupidest thing, to be honest. Like, you have someone tell you that you need to make goals when you don’t even know yourself, but they [adults] want to know your goals. So, you have to think of a goal on the spot, even though they have probably caught you at a time where you don’t even know what you wanna do, but no, “what’s your goals?” and “if you got no goals then make something”. It’s just too much pressure . . . (Aroha)

Likeable Process for Some Young People, an Unlikeable Process

When participants were asked, “[w]as there anything you liked about your YJ FGC?” and “[d]o you think the YJ FGC can be a good thing?”, five participants reflected positively on specific parts of their YJ FGC.

¹²¹ A 282 is the option for the court to discharge the charges against a young person.

Nikau described his last YJ FGC as a likeable experience. He mentioned his YJ FGC as an opportunity to talk with his whānau/family about his future and as a welcoming setting:

Yep, so my family and I can sit down and talk about what I should do. (Nikau)

Hmm [long pause] yep, just a bit welcoming. (Nikau)

The welcoming side of it? (Interviewer)

Yep, they [YJ personnel] welcome you. (Nikau)

Tane mentioned his plan as a positive aspect of the YJ FGC:

Um, the plan that we did pretty much. (Tane)

Aroha talked about authentic YJ personnel as a likeable part of her YJ FGC. She mentioned her YAO [police officer] as a likeable person in her YJ FGC:

I liked, like, don't get me wrong, you get your good people, eh? Like, I loved my YAO [name removed]. He was real, to be honest. And, that's all I wanted was someone to be real . . . (Aroha)

When participants were asked, “[w]as there anything you didn't like about your YJ FGC?” and “[d]o you think the YJ FGC can be a bad thing?”, several participants spoke negatively of their YJ FGC experience:

Malakai and Kai referred to the YJ FGC as “boring”. Kai also mentioned taking his whānau/family to Oranga Tamariki as difficult. However, I did not probe Kai to explain why it was hard:

. . . It was pretty boring. (Malakai)

. . . It was boring. Taking your family there, to WINZ [Oranga Tamariki], it's hard. (Kai)

Maverick and Grace referred to the experience of their YJ FGC as mentally taxing:

. . . It just brings stress . . . (Maverick)

. . . The whole intimidating thing, the pressure. (Grace)

Nikau, on the other hand, referred to the disorganisation of YJ personnel, pre-YJ FGC, as a bad thing because it meant the process was extra time-consuming:

. . . Sometimes, they [Oranga Tamariki] muck you around, and you have to wait for ages outside. (Nikau)

Amiria, like Nikau, also talked about disorganised YJ personnel as a bad thing. She surmised that disorganisation by YJ personnel in the YJ FGC can hinder young people's perception of the importance of their YJ FGC:

Yeah! Um, it's messy. Um, I think that maybe if they, you know, if they [adults] had all the information there and didn't look so messy, [pause] while the younger people are there, then maybe they [young people] would feel like, I don't know like they [adults] are actually putting their foot down, they [adults] are going to be on top of you knowing if you are following your plan and stuff, but with everything being messy it's just like it isn't really important, I guess, in their [adults] eyes, younger people feel that. (Amiria)

Although Aroha previously talked about her YAO as a good aspect of her YJ FGC, Aroha also talked about feeling judged and uncared for by other adults in her YJ FGC. She made an impassioned plea for adults in the YJ FGC to take the time to understand young people and to help them:

. . . You're treated like you're mental when really you just want someone to listen. I just want you to not judge me, to help me. Just think "that is why you are doing this, and we can overcome it some way". They [adults] need to do this better. Just because it didn't happen to you doesn't mean it doesn't matter. Just because it doesn't apply to you doesn't mean it isn't a worry. (Aroha)

Young People's Participation

Young People View Participation as Personal Contributions and Reciprocal Actions

When participants were asked, "[w]hat do you think of when I say the word participation?" and "[w]hat does participation mean to you in the YJ FGC?", all participants provided various examples that describe participation as both a personal contribution and reciprocal interaction. Nine participants talked about participation in terms of what they could personally contribute or do:

Um, I guess what I've given, what I bring to the table. (Amiria)

Eh, the chance to tell them how it is, speak my mind. (Rangi)

[Long pause] Um, like, going, going to it and just taking part in it. (Nikau)

To do something, to be part of it. (Maverick)

Like, listening. (Kauri)

Um, when you say participation, I think of [long pause] just getting involved with something . . . So, you like commit and join in on something. (Aroha)

In the YJ FGC setting, two participants described participation in terms of reciprocity: what they and other attendees could do:

Talking eye to eye, to my face, so they hear me, and I hear them. (David)

[Laughter] Hm, to sit there and listen to [them], and yeah admit to what I've done, I guess. (Malakai)

The Act of Participation

When participants were asked, “[w]hat do you think is the best way for a young person to participate in the YJ FGC?”, several participants emphasised that the best way to participate is to talk. However, four participants also provided examples of other options to make young people’s participation more viable and comfortable in the YJ FGC setting:

[Pause] Yeah, I reckon we should just speak up more. (Nikau)

[Pause] Have a go what they [young people] want to say, I guess. (David)

Let them [young people] speak more or help them speak up. (Rangi)

Kauri, Tane, Malakai and Aroha suggested alternative methods to face-to-face talking such as drawing, writing or taking part in the YJ FGC via video link:

Yeah, I don’t know. Ah, yeah, they should talk or draw. (Kauri)

Draw. (Tane)

I think [long pause] that [long pause] like maybe get a recording or something, you could draw or um not with everyone in the room at once... (Aroha)

I’d just if we had the option because some people are shy, and some people don’t want to be around; they don’t like coming together with their family. So, something else like writing or video link. (Malakai)

When participants were asked, “[w]hat do you think about the idea that young people can share their views in the YJ FGC in any way they feel comfortable, like talking, drawing, or singing, just as long as it does not hurt another person?”, all participants liked this idea. Three young people emphasised this as a good idea because it gave young people options:

Definitely! Um, it would make, I guess, it would make many people comfortable and want to, um, you know, give their ideas if they could [pause] not just having to speak like there are other choices. Because if you are feeling uncomfortable and don’t want to speak, there should be other choices. (Amiria)

Yeah, that’s pretty cool! [pause] they got choices. (Nikau)

Yea, good idea means you get heard in a way that you know (Rangi).

Young People's Participation as Tokenism

When participants were asked, “[d]id you feel that you got to participate in your YJ FGC?”, Participants provided mixed responses. Three participants felt they got to participate, at one time or another, in their YJ FGC:

Yeah, definitely. (Amiria)

Yeah, I said my piece. (David)

Yeah, I got to speak my mind. (Rangi)

On the other hand, several participants referred to the idea of token participation and silencing. Amiria, Aroha and Maverick were uncertain about their participation in their YJ FGCs. They implied that, at times, their participation was either ignored or taken away from them by adults. They also referred to the idea of power imbalances within the YJ FGC in favour of adults:

Partly, ah yeah, but partly no cause [pause] mostly no actually, because I felt like they [the YJ coordinator] did take over, and I've been to other FGCs, so even though that other young person wasn't shy like me, yeah, they [the YJ coordinator] still took over. (Amiria)

In a way yes, in a way, because I got to tell my story, but at the end of the day it's not you who calls the shots, eh, like if you are going to pay a fine they are going to tell you are going to pay a fine if you are going to jail, you are going to jail. You can only tell your story. So, I guess I did. (Aroha)

Yeah, cause I am the one that talks sometimes. I tell them what I want to do and what's a reasonable time, and stuff. But, like [because] the cop asked me “Oh, what's a short plan for you?” and because my social worker said, “probably three months at the minimum”. So, I said, “three months at the minimum” and the cops goes, “Oh, I was going to give you one month but since you said that I will give you three months blah, blah” and I was like, man, you could have given me one month! Yeah, asking me then telling me what he was going to do. (Maverick)

Grace, in another part of her interview, also implied her participation as tokenistic and that adults actively silenced her. She talked about not being able to say everything she wanted to say and inferred that adults had, at times, spoken about her and around her, rather than with her:

It's unfair, to be honest. It's like the meeting is about us, but we [young people] don't really get a say. We probably feel like we [young people] have to prove ourselves to them. They [adults] should have a group conversation, instead of amongst themselves. (Grace)

When participants were asked, “[i]n what part of your YJ FGC you think you got to participate the most?”, all the participants talked about the creation of their plans. However, three participants, again, implied their participation was limited or contingent on adults:

I think maybe during the plan part; I gave a few of my ideas, that was about it.
(Amiria)

[Pause] Probably the plan [pause], just asking questions and being there. (Nikau)

For me, when I did my plan, talk about my plan. Because if I don't talk, they [adults] are just going to do it all for me. So, I tell them what I want to do, like an apology letter, hours, um, like, like a course like [inaudible] or something like that . . . (Maverick)

Barriers to Young People's Participation

When participants were asked, “[d]id you feel that you got to say everything that you wanted to say?”, several participants talked about pre-conceived perceptions and physical barriers as impeding them from saying everything they wanted to say.

Grace mentioned that she told adults what she thought they wanted to hear, implying she did not always say what she wanted to say:

I said what they wanted to hear, so I could get out of there. (Grace)

Rangi and Maverick, on the other hand, talked about the physical presence and participation of the police as a hindrance to them saying everything they wanted to say. Maverick, again, implied that there were power imbalances in what and who would be listened too. He talked about his statement being incorrect and being unable to challenge what the police had written:

Nah, not really because there is some things you can't say because the cops are there. (Rangi)

Nah, I wanted to say more like with the story about what I've done and how they [the police] put little bits and pieces in there, and I would try and say, “that's not true”, but it was already there already written down and stuff, and you can't change that. (Maverick)

Kai talked about both personal [cognitive impairment] and physical barriers [people and the setting] impeding his ability to say everything he wanted to say:

Yeah, but I wanted to like talk, about what I was thinking, but I couldn't like just say it because when I was around people, I don't know, I can't like explain [expletive]. I fob out, and my vocab gets all messed up. Like, it kind of puts me on the spot, and that office and I was put on the spot, and that's how I felt. I couldn't really talk like I would just talk and then my vocab would just stuff up. Because I have dyslexia . . . (Kai)

Aroha, in another part of her interview, like Kai, mentioned, personal barriers as, at times, silencing her from saying everything she wanted to say. In a defeated tone, she also mentioned that when she did talk, she felt unheard:

. . . I have had so many times where I've tried to talk to them [adults], but you just get so angry because you can't really explain to them because they are not going to listen anyways, it doesn't really make a difference. (Aroha)

She went on to explain, more specifically, the personal and physical barriers that impeded her ability to say everything she wanted to say:

I get real bad anxiety talking in front of heaps of people. I just don't talk. I just sit there. And go really quiet, when really, I can talk for ages, it's just the environment. (Aroha)

Adults as Enablers and Discouragers' of Young People's Participation

When participants were asked, "[w]as there anyone in the YJ FGC who encouraged you to talk?", all participants talked about both YJ personnel and whānau/family as enabling them to talk in their YJ FGC.

Nikau and Tane mentioned their parents as encouraging them to talk, especially when they were not engaged in the conversations:

My Dad, because I wasn't talking. (Tane)

Um yeah, Mum tried, but I was too shy then. (Nikau)

Grace, David and Amiria mentioned YJ personnel as encouraging them to talk:

Yep. The police. (Grace)

Yea, my social worker, eh? . . . (David)

Yeah, my lawyer. (Amiria)

Amiria, in another part of her interview, explained that her lawyer would ask her questions to encourage her to express her points of view:

So, well, they will ask you, you know, "are you capable of doing this?" and if you say "yeah" then that's obviously going to be part of it". (Amiria)

Lastly, Maverick and Aroha talked about the body language used by YJ personnel as discouraging. They explained that, at times, YJ personnel body language was intimidating and made them feel like they had to talk, rather than being encouraged to talk:

Um, the lady that runs the FGC [YJ coordinator] she would just, like, look at me. She was trying to make me talk, yeah, she tried to make me talk. She was like, the way she would just always look at me and just like she was talking to me because she is the one writing it down. (Maverick)

[Long pause] Yep, yeah. They [adults], a lot of times, they all just look at you, eh. “So, it’s your turn now”, and you’re just like “okay, so I did this” or they [adults] like hint you on “you done?” or “So, you robbed the thing blah blah blah” and you’re just like, “obviously, that’s why we are all here . . . (Aroha)

Further to this, when participants were asked, “[d]id anyone stop you from talking in your YJ FGC?” and “[d]o you think adults can stop young people from taking part in their YJ FGC?”, six participants talked about YJ personnel and whānau/family as discouraging them from talking and taking part in their YJ FGC.

Rangi mentioned his Dad as stopping him from talking. He implied that his Dad stopped him from talking as a form of protection:

Yeah, my Dad, cause I just get angry. (Rangi)

Maverick mentioned his Mum and his YAO as stopping him from talking:

Um, [long pause] I think, probably, my Mum or the cop. (Maverick)

Grace mentioned that her social worker stopped her from talking and talked for her:

Yeah, my social worker sometimes. She would just speak for me. (Grace)

Nikau mentioned that his social worker and other adults stopped him from talking. He also mentioned being shy:

Yeah, my social worker [pause], adults there, um yeah, just a bit shy. (Nikau)

It cannot be said if Grace or Nikau asked their YJ social worker to talk on their behalf because the researcher did not probe the participants on this point.

Aroha reiterated how the intimidating/physical presence and body language of some YJ personnel made her feel uncomfortable when she spoke:

No, no one stop me, but I felt like one of the CYFS [Oranga Tamariki] people [YJ coordinator] I had to deal with made me feel a bit intimidated, just the way she was. She was really big and scary, and the way she looks at you is like a death look. I didn’t want to say anything in case I pissed her off. I was like “oh my gosh she looks angry as, and I don’t want to make things worse for me” . . . (Aroha)

Amiria and Kai also talked about adults as intimidating. They implied how this could hinder young people’s participation in their YJ FGC:

Yeah, definitely. [pause] Just by, um, I don’t know, I guess you can just feel intimidated by them because they are a lot older than you, and they know more than you. (Amiria)

They can scare you, like intimidate you. (Kai)

Nikau and David talked about adults ignoring them and making them feel uncomfortable as a way of preventing young people from participating in their YJ FGC:

Yep, by sort of ignoring us, me. (Nikau)

Yep. They make you feel uncomfortable and like talk about you. Who would wanna talk in that? (David)

Article 12: A Good Idea

To understand participants' views of their participation rights, in the context of the YJ FGC setting, participants were given a child-friendly version of Article 12 of the UNCRC to read (see appendix J), and then asked, “[w]hat do you think about Article 12 and that young people should be part of the conversations in their YJ FGC?”, all except one participant, strongly agreed that young people should be part of the conversations had in the YJ FGC and should be listened to:

I think it is good; it's a good idea. (Aroha)

One hundred per cent. (Grace)

Yeah, I reckon its good. Definite. (Kauri)

Yeah, in my FGC I do. I think it's good . . . (Maverick)

Amiria liked Article 12. She made the point that for YJ FGCs to work, young people's inclusion in conversations around, and agreeance to, their plans are important:

Yeah, definitely, because obviously if you want them [young people] to be finished with the Courts, they obviously have to agree to what they are going to do. So, yeah, I think that's good. (Amiria)

Nikau also liked the idea of Article 12 and the idea that young people should be listened to:

Yeah, I like it. I like it says we should be listened to. (Nikau)

While Malakai also liked the idea that young people should be listened to, he also talked about this right as context-dependent for young people, especially when dealing with the police:

Ah, yeah that's good. We are never heard from by police, with police and that, nup. When they arrest you, you do what they want, and that's it. Yeah, some of them, you know, you get some good cops, and you get some cops that are just power trolls. (Malakai)

Rangi described Article 12 as fair. He talked about the need for young people to have more of a say, in what he implied was a setting in favour of the views of adults:

Yeah, fair. I think they should have more say. Because most of the time, you only get a bit to say, and then they [adults] do and say everything else for your plan.
(Rangi)

Article 13: Important, But Limited Experience of This Right

Participants were given a child-friendly version of Article 13 of the UNCRC to read (see appendix J), and then asked a series of questions relating to Article 13, to gain an understanding of their views of children's participation rights in the context of the YJ FGC setting. All participants liked the idea of Article 13. However, several participants expressed having limited opportunities to exercise their Article 13 rights in the context of their YJFGCs.

When participants were asked, "[w]hat do you think about Article 13 and the idea that someone should tell young people what will happen in their YJ FGC before they have it?", all participants liked the idea of being informed pre-YJ FGC. However, eight participants referred to having no experience of this. Further to this, four participants also identified pre-YJ FGC fears such as feeling scared, nervous, or stereotyped and silencing, being ignored. Three participants implied these are commonly held concerns of young people pre-YJ FGC:

I think that's a good idea because obviously they [young people] wouldn't be so um scared, intimidated [pause]. (Amiria)

Yeah, I like that too. Yeah, instead of just sitting there all nervous. (Nikau)

Yeah, I agree. It should be done, but it is not always the case, eh. It needs a change, eh. (David)

Yeah, definitely it's needed. I feel like they [Oranga Tamariki] just ignore us, and slide us under the carpet, just another Māori or Polynesian running through the system. (Grace)

. . . Yeah, cuz a lot of young people, you know, they run away before the FGC because they are scared, but if they knew what was gonna happen they might be calm about it, they might be alright . . . (Malakai)

Noticeably, three participants also mentioned Article 13 as useful for young people experiencing the YJ FGC for the first time.

Rangi and Maverick liked Article 13. They talked about Article 13 as useful for young people experiencing their first YJ FGC. Rangi mentioned that this could help young people prepare for their YJ FGC:

Yeah, I think, um, that would be better because if it is your first time, you might not know what is happening and then if someone properly explains it then you can go in all prepared. (Rangi)

Yeah, I think they should. Like, you know, for someone that is going to have their first time ever in an FGC; I reckon someone should come around a week before, that should be someone's job to be going over and just to tell them what is going to happen. Eh, that could be a new job for someone, eh? (Maverick)

Malakai also liked Article 13. He specifically mentioned it as necessary for young people experiencing the YJ FGC for the first time. Noticeably, he also mentioned age, ethnicity and language as potential factors supporting the need for pre-YJ FGC discussions with young people:

Yeah, that's a good idea. Cuz a lot of youth, you know, especially if it is their first time, they don't understand and because they are so young, you know, their parents may not understand either, especially if they are Pacific Islander or whatever, you know, there's a language barrier, so they don't understand the kids themselves. So, if someone wants to tell them, you know, explain to them what is happening it would be alright, they wouldn't be as freaked out, yeah . . . (Malakai)

Pre-Conference Communication with Youth Justice Personnel

When participants were asked, “[w]hat do you think about the idea that young people can ask questions about their YJ FGC before they have it?”, all but one participant agreed that they should be able to ask questions before they have their YJ FGC.

Amiria liked the idea of being able to ask questions beforehand. She mentioned this would allow her to know what to expect:

[Laughs] That is definitely a good idea, for me as well because I am shy, I want to know everything before I get into it. (Amiria)

Grace mentioned that being able to ask questions would be fair:

One hundred per cent, that's only fair. (Grace)

Kai agreed young people should be able to ask questions before their YJ FGC. He implied that if young people do not ask questions, YJ personnel will not tell them the answers:

Yeah, because that youth lady [YJ coordinator] didn't tell me how long I would be there, and it was long. I don't want to go through that again. (Kai)

Malakai talked about this as a good idea and mentioned social workers as someone young people could ask questions to:

Yeah, that's good, you can ask your um, like, the social worker or whatever. (Malakai)

However, when participants were asked, “[d]id you get to ask questions before your YJ FGC, nine participants expressed that they did not get the opportunity to ask questions before their YJ FGC.

Amiria, again, referred to the process as disorganised, and as hindering her ability to ask questions before her YJ FGC:

No, it was kinda like I said it was everywhere, messy. (Amiria)

Grace said she did not get the opportunity to ask any questions before her YJ FGC. She also made the distinction of being told, rather than being asked or able to ask:

Nah, just got told by the OT [Oranga Tamariki] person [YJ coordinator] that my FGC was today and, in this room, and stuff. (Grace)

Support in the Youth Justice Family Group Conference

Support is People and Action

When participants were asked, “[w]hat does the word support mean to you?”, seven participants talked about support as a person being physically present, who can provide comfort and aid, to young people:

Um, just someone being there to comfort you, I guess. (Amiria)

Somebody being there for you. (Rangi)

Just make sure you have support people, people who help you. (Kauri)

Support [pause] support to me doesn’t mean “are you okay”, like someone saying the same words, it’s someone showing that to you, that are being there, that are actually, like, when you need help, they are there. Support is people being there when you need them. It’s just fulfilling up to that, not saying “I can help you” and then you don’t see them for eight months and they pop out of nowhere and say, “I can help you now”. Well no, you can’t help me. I don’t want your support. I don’t need your support, thank you. (Aroha)

Support is Familiar People

When participants were asked, “[w]as there anything about your YJ FGC that made you feel supported?”, seven participants talked about the presence of familiar people as a source of support during their YJ FGC:

Yeah, having my family there. (Grace)

[Fidgeting] Um, yep, just my family being there. (Tane)

Yeah, having my family there and having my mentor the Māori guy [name removed], he is mean as. We did heaps of things together. (Kai)

Yep, like I mean, my social worker. (Malakai)

Yeah, actually my lawyer she made me [pause] she is the only one. (Amiria)

Amiria when asked, “[w]hen you say she supported you, how did she support you? What did she do?”, talked about her youth advocate as encouraging her to develop her voice, while also providing her with support and comfort to do so:

Just like encouraging me when I would hide away, she would be like “no, no, no speak up if that’s not what you want, or if that’s not actually what you’re gonna do just tell us now”. Yeah, just little things like that made me feel comfortable. Like, I had someone there that actually cared instead of all these random people that I didn’t know. (Amiria)

Support is Important to Young People

When participants were asked, “[d]o you think having support people is important in the YJ FGC?”, all participants agreed that having supportive people was an important part of the YJ FGC process.

Amiria mentioned support, from these people, was important to her because it made her feel comfortable and able to share her views more freely:

Definitely, um like I said, it makes you more comfortable which makes you want to say what you think. (Amiria)

Kai talked about support from these people as a good thing because they can show other adults a positive side of that young person:

Yeah, it was good to have lots of family there because they were talking for me, talking about me, making me sound like a good boy. (Kai)

Aroha talked about support from these people as a good thing because they can advocate for the young person when the young person cannot express their view:

Yep, it definitely is. Especially, um, when you just can’t speak for yourself my family was always there for me, to pick me up, saying “she means this, she is just having a cry right now, but’s it’s okay. She means this, just leave her. This is what she meant . . .” [laughs]. It is good to have people who support you straight up . . . (Aroha)

Further to this, when participants were asked, “[w]hat do you think about having support people at the YJ FGC? Is it a good thing?”, all participants talked about having support people at the YJ FGC as a good thing.

Nikau and Grace mentioned supportive people as a good thing because they can provide young people with comfort in, what they implied can be, an uncomfortable setting:

Yeah, [pause] You can talk to them, and it makes you more comfortable there.
(Nikau)

Yep, a good thing, gives a little comfort. Like it's good them just being there, just being present. (Grace)

Malakai provided a different perspective saying that it can also be a negative experience for young people. He mentioned young people should have a choice in who their support people are:

Yeah, it depends on the family, I guess, you know if the family is violent and that or mad, then nah. It depends on the young person. If they want their family there then yeah, they should have the choice, you know. (Malakai)

Young People's Views of Youth Justice Personnel in the Youth Justice Family Group Conference Setting

Participants were asked several questions about their youth advocates, YJ social workers and YJ coordinators to gain an understanding of what young people knew, and thought, about some of the gatekeepers to their experience of, and participation in, the YJ FGC.

Young People View Youth Advocates as Protectors of a Fair Process

When participants were asked, “[i]magine you had to explain to someone, who has no clue, what your youth advocate does, what would you tell them they do?”, seven participants described their youth advocate as information gatherers and protectors of the process.

Interestingly, two participants referred to their youth advocate in the context of the Youth Court setting rather than the YJ FGC:

She was all good; she was mean [good]. If something was misunderstood, she would just stand up and just correct them; that's why I liked her as my lawyer. And, like, she says things like I would say. Like, things I would agree on for her to say. (Kai)

She just gets your side of the story of what you say has happened, and obviously she will like voice that in court for you, and when you go to your conference, she's obviously the one to be like “no” or “yes”, or that is actually what is going to happen. (Amiria)

She makes sure they are not selling me dreams and yeah, just keeps you on track with what is going on and then reports it back to the judge. (Kauri)

They just help you. Whatever you want to say to the judge she will say it for you. (Tane)

In another part of his interview, Nikau talked about his youth advocate helping him to be listened to, when other adults would not listen:

. . . Sometimes they [adults] don't listen, and they go along with what they want, but in a good way, your lawyer is there, and she helps you. (Nikau)

Youth Advocates: The Good and Not So Good

When participants were asked, “[d]o you think having a lawyer [youth advocate] at your YJ FGC is a good thing?” and “[d]o you think having a lawyer at the YJ FGC can be a bad thing?”, all participants mentioned it was good to have a youth advocate at the YJ FGC. However, three participants also mentioned that youth advocates could also hinder the process.

Amiria liked having a youth advocate at her YJ FGC. She talked about the youth advocate as a comforter:

No, I don't think so [pause] just because she was like there to say those little words that would make me a little bit more comfortable. They [youth advocates] are good. (Amiria)

Malakai and Kauri also liked having a youth advocate at their YJ FGC. They talked about youth advocates as able to ensure the process and outcomes are fair for young people:

Well, just in case, you know, the police and that say something that's wrong, he [youth advocate] could correct them. Like, they could say “Oh, you are going to get this much more community hours than you are supposed to” he [youth advocate] can be there to correct them and be like, “No, he only is going to have this much”. (Malakai)

Yep, because the police they try to trick you and the lawyer is there to stop that. (Kauri)

Nikau, Aroha and Rangi agreed it was a good thing to have a youth advocate at the YJ FGC.

However, they also mentioned that youth advocates can hinder the process when their representation of the young person is perceived to be disingenuous, they do not listen to or help the young person, or when the young person perceives their youth advocate to be stupid:

Yeah, when they not being real, they forced to be there. (Nikau)

Yes. If they don't listen to you or help you. (Aroha)

Um, yep oh sometimes. Yeah, because sometimes they can be a bit stupid. (Rangi)

Youth Justice Social Workers: A Mixed View

When participants were asked, “[i]f you had to explain to someone, who has no clue, what a YJ social worker does, what would you tell them?”, all participants provided a mixed response.

Three participants described YJ social workers as YJ personnel who help them:

Um, I’d say that [long pause] they help you with things that I need to do in my plan, sort of support with my plan. (Nikau)

She helps with all, like, course, your reports, and yeah. (Kauri)

They help you like if you got no clothes, you can ask them for a clothes grant. (Tane)

On the other hand, Grace talked about YJ social workers as unhelpful and there as representatives of the State, while Aroha talked about YJ social workers as having no specific role:

They work for Oranga Tamariki, and they don’t help you, they just do their job. They’re like the messenger between OT [Oranga Tamariki] and you. (Grace)

Eek [rolls eyes] the exact same job everyone else does; they do nothing else, to be honest. They are just the same as everyone else; they ask you the same questions “How does that make you feel?” [and] “How can I help you?”, just like everyone else in the room. They are just like the YAO, just like everyone else just with a different name. (Aroha)

Youth Justice Social Workers Need to Be Present in the Conference

When participants were asked, “[d]id you have a YJ social worker at your YJ ?” and “[d]o you think having a YJ social worker at the YJ is a good thing?”, three participants talked about YJ social workers as being present and helpful in their YJ FGC. However, eight participants talked about YJ social workers as absent and unhelpful.

Noticeably, almost all participants were appointed a YJ social worker. However, eight young people commented that while they had been appointed a YJ social worker, their YJ social worker was absent during their YJ FGC. Given that YJ social workers are not statutory members of the YJ FGC, this may explain why the YJ social workers of five participants’ were absent during their YJ FGC:

Yes, but sometimes they are not there because they might have had to go do something else. So, they are just not there. Like they should treat their people, like who they are looking after, like be there. (Maverick)

I did, but at the time of my FGC, she wasn’t there. (Tane)

Further to this, participants talked about YJ social workers as a good thing, but reiterated the need for them to be present to do their job for young people effectively:

. . . Even though mine were [expletive], they are voice. (Grace)

If they turn up and are there for you, then yeah. (Maverick)

Yeah, but some of the social workers are just, like real slow with their job, they take their time, and they don't respond fast enough. (Malakai)

Aroha further explained that young people should also have a choice to have a YJ social worker:

The only way they are going to help you is if they know what your situation is. So, in my eyes, they need to be there. It's just, if you don't need them then they don't need to be there, but if you need help then obviously, they have to be there. They don't give you a choice eh, you have to get a social worker. (Aroha)

A Youth Justice Coordinator: “Who is That?”

When participants were asked, “[d]id you know what a YJ coordinator was before you had your YJ FGC?” and “[i]f you had to explain to someone, who has no clue, what a YJ coordinator does, what would you tell them?”, nine participants had no idea what a YJ coordinator was before their YJ FGC. Several struggled during their interview to recall what a YJ coordinator does.

For example, Nikau, David and Malakai had no idea what it is a YJ coordinator is or what they do:

Um, what's a youth justice coordinator again? (Nikau)

I couldn't tell you. I don't know, eh. (David)

Um, I don't really know. (Malakai)

Kai questioned if a YJ coordinator was like a social worker:

Is that like a social worker? (Kai)

Maverick, in response to another part of his interview, mentioned he did not know who the YJ coordinator was:

I didn't even know who that person was. Is that the whiteboard person? (Maverick)

Amiria, Rangi, and Tane, while being uncertain, were, however, able to describe parts of the role of a YJ coordinator:

I am guessing; I honestly don't even know what that is. I am just guessing it was the lady who was writing on the board that works there. I am guessing, she's the one that pretty much ran it all. (Amiria)

She's like the one that organises the FGC, gets a hold of everyone, gives them the time and dates and place and all that. (Rangi)

Like doing my plan. Like, should I go for school, and she would ask "what should we do next for Tane if he gets discharged?" (Tane)

Youth Justice Coordinators Pre and Post Conference Interactions with Young People

When participants were asked, "[d]id you have much to do with your YJ coordinator before your YJ FGC?" and "[w]hat about after your YJ FGC, did you have much to do with your YJ coordinator then?", all participants responded with a variation of "no". Three participants mentioned interacting with their YJ coordinator for the first time at their YJ FGC:

Nah, just met them on the spot, eh. (David)

Nah, I didn't like her. She's only there when you have the FGC you don't see them after. (Kauri)

Nah. The only time I seen that person was when they were writing all that we were saying on the board . . . (Maverick)

Lastly, Amiria summarised the sentiments of all participants on post-YJ FGC interactions with YJ coordinators:

Nah, it was just "see ya", that was it. Done and dusted. (Amiria)

Youth Justice Coordinators are Essential for the Process to Work

When participants were asked, "[d]o you think having a YJ coordinator at a YJ FGC is a good thing?", the majority of participants thought YJ coordinators were good to have in the YJ FGC. Given the previous responses on YJ coordinators, it was surprising to see that several participants thought YJ coordinators were good to have in the YJ FGC. This suggests that even though participants had minimal interaction with their YJ coordinator, they were still able to understand the importance of the YJ coordinators' role in the YJ FGC.

Rangi, Nikau and Kauri mentioned YJ coordinators' as a good part of the YJ FGC. Rangi and Nikau mentioned they could ensure the process is followed:

Yep, because then I feel the FGC can be done properly. (Rangi)

Yeah [long pause] so, they can um, they are like the main person in the FGC, eh? [pause] So, they can write all the stuff of what's going on and suggest what I can do and that. (Nikau)

Yeah, I guess. (Kauri)

Amiria, on the other hand, appeared to confuse her role and the role of her YJ coordinator.

Amiria mentioned having the YJ coordinator in her YJ FGC as good because the YJ coordinator was able to run the process. At the same time, she also mentioned this was not good because it minimised the participation and role she thought she should have:

[Long pause] Partly yes, and partly no, because she pretty much just ran the whole thing, but that is meant to be what we [young people] are supposed to do. (Amiria)

When Amiria was asked, “Do you think she should have let you run the family group conference?” Amiria explained that the process can be stressful for young people and can feel forced. Amiria mentioned that, to make the process more comfortable for young people, young people should be given the opportunity to be more involved in leading the process:

Yeah, I feel like maybe if they just not like dump it on us, but if they really sit back and let us write everything, and stand there and talk then maybe you know then it would work out a bit better. Instead, they take over, and it all feels forced. (Amiria)

Practice, Process and People Hindering the Conference

When participants were asked, “[i]magine you had to explain to one of your mates, who has no clue, what happens in the YJ FGC, what would you tell them?”, all participants provided mixed responses. Four participants viewed the YJ FGC as a process that lacked structure and was, at times, intimidating.

Amiria talked about YJ personnel not being prepared with information in her YJ FGC. She explained that when YJ personnel were unprepared, it made her feel intimidated:

It’s messy. Yeah. It’s definitely not, um [pause], what’s the word? Like [pause] it’s just everywhere, the information, everywhere. Like, they [adults] come in and out of the doors because they don’t know this or that, so they have to go get the information and come back and it just, it just takes a while. (Amiria)

I found that [pause] what’s the word? [pause] I felt intimidated just because of them not knowing everything . . . (Amiria)

David and Malakai, on the other hand, referred to the idea of not knowing what to expect, and for young people to take it upon themselves to find out what they need to know, what they were getting into and what they can ask before they got to their YJ FGC:

. . . I wasn’t prepared. So, know what you stand for, I guess, before you get in there. Like, before you go shopping, know what you are getting. (David)

Um [pause], ask, ask, oh if you want to, then ask to, like, have it somewhere where you want it like at home or wherever you want, you know. Wherever you feel comfortable, because they don't mention to you that, you know, "we can go where you want". They just, if you don't ask them, they won't tell you. (Malakai)

Tane also mentioned not knowing what to expect about who would be at his YJ FGC. He mentioned this made him feel uncomfortable:

So, when I walked in, I thought I was like not comfortable because I didn't know who was going to be there. (Tane)

Changes for the Youth Justice Family Group Conference

Change the Venue and the Setup

Oranga Tamariki: One Size Fits All Location and Setup

To ease participants into the interview, participants were given the option to draw, from memory, the setup of the room where their YJ FGC was held, which all did. Participant's drawings share a remarkable resemblance (see Figure 1 and Figure 2). All participants mentioned Oranga Tamariki buildings as the location of their YJ FGC possibly explaining the similarity in drawings.

When participants were asked, "[i]magine you had to completely change the YJ FGC, would you change anything?", and "[i]f you could give adults advice, in the YJ FGC, to help young people feel supported to take part what would you tell them?", all participants were emphatically clear on what they would change about the YJ FGC. They also talked about advice they would give to adults to support young people to take part in their YJ FGC.

Three participants talked about changing the venue and setting of the YJ FGC:

The setting, yeah, and just the setting really. I just didn't like it there. (Malakai)

Kai and Maverick agreed that the venue should be changed. However, they also agreed the process of the YJ FGC should be changed. They provided examples of including kai (food) in the room where the YJ FGC is held, and how the room could be set up to help youth feel more comfortable:

Change the whole thing. How they have it, and where they do it. I don't want to do it at WINZ [Oranga Tamariki]. Yeah, and something to nibble on, you don't want to be full-on talking and eating just nibbling. (Kai)

WINZ [Oranga Tamriki] is pretty horey eh, like why on top of WINZS [Oranga Tamariki]? Um, and like I would also get a table with chairs and sit around it. Like the boards all good, it is helpful to put it all there so everyone can see it. But I reckon a long table with chairs around it, and some food and drink. Or chips and dips. (Maverick)

When asked, "Where would be a good place to have a YJ FGC?" Maverick and Kai provided examples of youth facilities, external to Oranga Tamariki, as comfortable spaces to hold a YJ FGC:

Yeah, somewhere for FGCs, not somewhere above WINZ [Oranga Tamariki]. Like, you know, walking towards the elevator and look to the left and there is heaps of beneficials looking at you and they're all like, "look there is some naughty kids" [because] in that CYFs [Oranga Tamariki] place you feel locked in and it's like, especially when they took me there when I was 11, and they just locked me in this room, and then I got taken to a boys home. Like bad memories, eh. [pause] Um, or somewhere like Zeal¹²², yo. That's like for youth and stuff. (Maverick)

You could have like, like, you know TYMS¹²³ kinda like their factory something like that; it would feel more comfortable. Not somewhere where it feels uncomfortable. (Kai)

In response to an earlier question, Amiria and Maverick mentioned that for youth to feel comfortable, the setup of the YJ FGC needs to be changed:

[Long pause] Change the setting. I just, for me, I don't like how they centre the seating. It's like in a half-circle around the board. Um, to me that makes me feel intimidated. Like, seeing everyone just staring at me like I am the centre of attention. I don't like that. (Amiria)

Maverick also reiterated having food as a possible way of helping young people feel comfortable:

Oh yo, we would have a feed. Yo, like how you guys have pizza here that's all good! Like some pizza or a drink while we are having a meeting. They shouldn't treat you like something else; you are still normal people. Not just in chairs in a circle with nothing in the middle. I would rather sit at a table or couch, or at least some water and cups and something. Makes you feel comfortable, yeah. (Maverick)

Provide More Support for Young People and Treat Them Equally

Five participants talked about wanting more support people present in the YJ FGC setting.

¹²² Zeal is a youth support organisation that provides in person and online safe spaces, programmes, and workshops for young people to engage. See <https://zeal.nz/whoiszeal/>

¹²³ TYMS is a youth mentoring services for young Māori and Pasifika people. See <http://www.tyms.org.nz/>

David talked about more support as having more whānau/family involved:

Yeah, I would want more family there ... (David)

Grace talked about support as having more people involved, who are there solely for the young person:

. . . Have more support people there who are actually on your side, and not in-between. (Grace)

Amiria also talked about wanting more support in the YJ FGC. However, her idea of more support is having YJ social workers more involved and present while young people navigate the YJ system:

[Laugh] Yep. [pause]. Cause obviously when I went, I never saw my social worker. I never saw her the whole entire time I was going through the Courts. I would change that. You need to have your social worker and your lawyer there at the same time, because many other young people only have their lawyers there, cause the social workers are always fluffing around elsewhere. So, I kinda felt like she [social worker] didn't really care. So, I feel like having your social worker and lawyer there at the same time is like more supportive for you . . . (Amiria)

When participants were asked, “[i]f you could give adults advice, in the YJ FGC, to help young people feel supported to take part what would you tell them?”, eight participants mentioned that they would tell adults to show them support and to treat them the same as they treat others:

Just support us, eh. (Nikau)

[Laughter] Don't be mad when you are listening to what I've done, just be supportive, you know. (Malakai)

Talk to us like you're a friend, that's like my mentor. I can talk to him, and I feel comfortable. (Kai)

Um, be nice. Talk to us like we are human. Like, it's the first time I am meeting you, and I am talking to you like I know you, [because] you treat me mutually. Like, they could make me feel comfortable. (Maverick)

Encourage and Support Young People's Participation

Six participants stated that for young people to feel supported in the YJ FGC setting young people need to be encouraged, by adults, to take part; be informed by adults about the process pre-YJ FGC, and to be listened to by adults.

Nikau talked about wanting better communication from YJ personnel Pre-YJ FGC, so he was not afraid when he had his YJ FGC:

The FGC [long pause], I don't know, nothing [pause], maybe just talk to us before it eh, so we not so scared when we go in (Nikau).

David, Grace, Rangi and Kauri talked about wanting adults to support young people's participation by encouraging young people to talk, allowing them to talk and to be listened to:

I want for everyone to have a fair go, to say what they want to say. (David)

Let them [young people] speak for themselves. Hear them out and then act on it. (Grace)

Just encourage them [young people] to speak up. (Rangi)

Just listen to our ideas. (Kauri)

Aroha mentioned that adults could take the time to be self-reflexive and to remember what it was like to be young and to show empathy towards young people:

I'd say put yourself in their [young people] shoes and see where they are coming from before you think of what you would've done. Because it is harder than you think. Everyone's got an opinion, but it takes a solid person to understand why someone else did something. That's solid. That's when people like talking to people like that, not someone who always has an opinion. (Aroha)

This section revealed that young people in this study have varying views of the YJ FGC process, their participation in this process, and of YJ personnel who are part of the YJ FGC. From the participant's responses it can also be seen that there may be some changes Oranga Tamariki could make that would help young people, at least in this study, to feel able to exercise their participation rights more often in their YJ FGC, for example changing the setting where the YJ FGC is held. The next section of this chapter presents the key findings of YJ personnel.

Section Two

Listen to the young person. You may not agree with what they are saying, but listen to what they are saying, understand why they are saying it, and work with it. It is basic stuff. (Jack)

Introduction

This section presents a summary of the key findings of YJ personnel participant's (youth advocates (YA) and YJ social workers (YJSW))¹²⁴. As can be seen the nature of YJ personnel

¹²⁴ For section two, the word participant refers *only to* the views of youth advocates and YJ social workers. Also, for this section the words youth advocate and YJ social worker have been abbreviated after each participants name to indicate their role.

jobs, the venue for the YJ FGC, the adults involved in the conference and the preparation of YJ personnel before the conference can positively and negatively affect young people's access to and experience of their participation rights in this setting.

This study was designed to elicit an understanding of participants' perceptions of young people's participation rights in the YJ FGC setting. At times, participants digressed to talk about different aspects of their jobs, and young people's participation rights in other YJ settings, such as Youth Court. Although this was not designed to be part of this study, it has provided insight into the diversified and entwined nature of the participants' jobs and young people's participation rights within the YJ system in New Zealand.

Youth Justice Personnel's Reflections: The Youth Justice Family Group Conference and their Jobs

Participants were asked questions to elicit an understanding of their experiences and perceptions of the YJ FGC and their jobs. Participants talked about their jobs as multifaceted or demanding, and the setting as dominated by YJ personnel and technical language.

The Venue and Youth Justice Personnel

Participants' were asked to draw or describe the YJ FGC setup/setting. Noticeably, the drawings provided by YJ personnel participants were near identical to those provided by young people participants¹²⁵.

¹²⁵ For more examples see (appendix I).

Figure 1

Maverick (Young Person's) Drawing of the YJ FGC Set Up

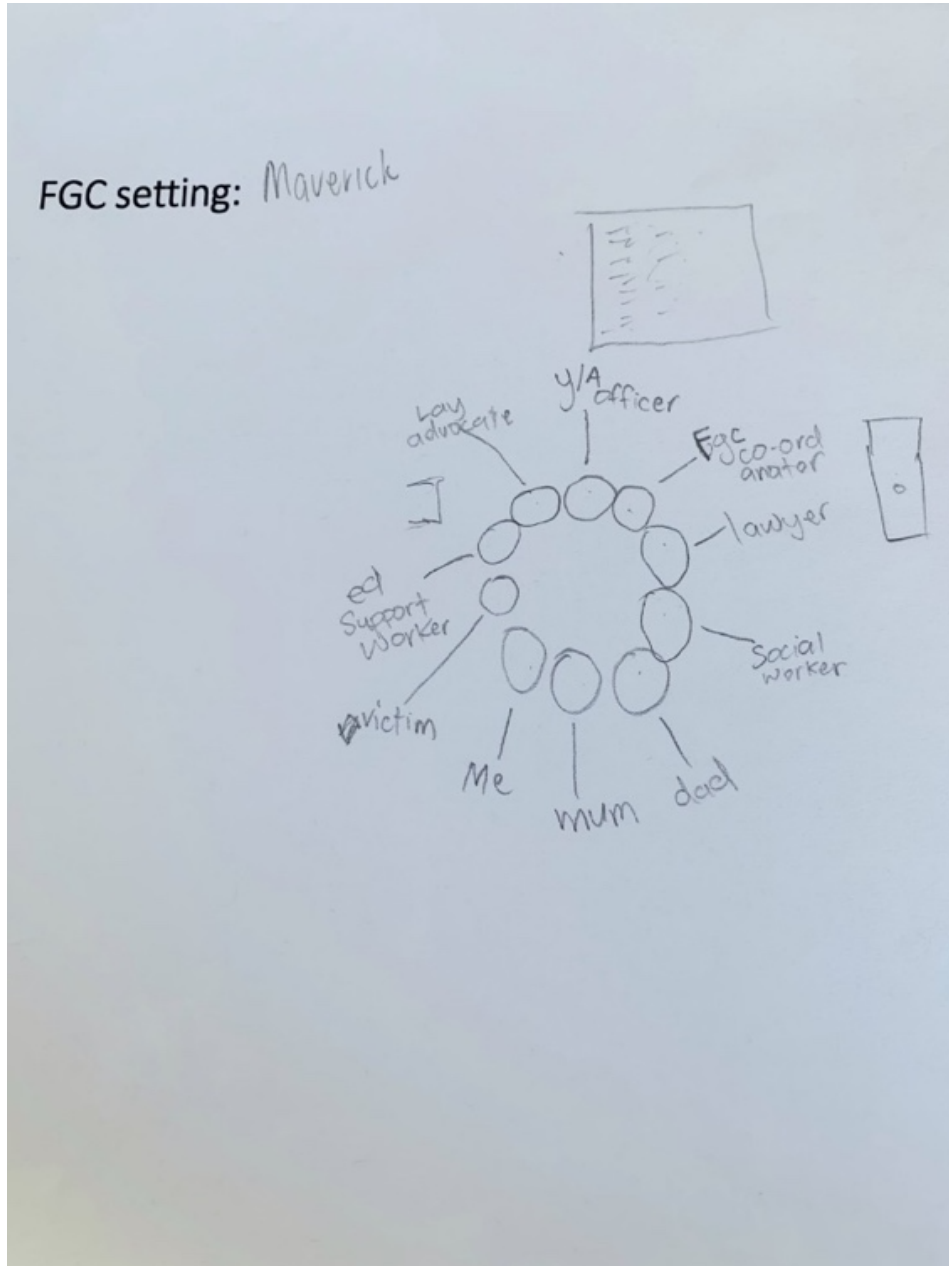
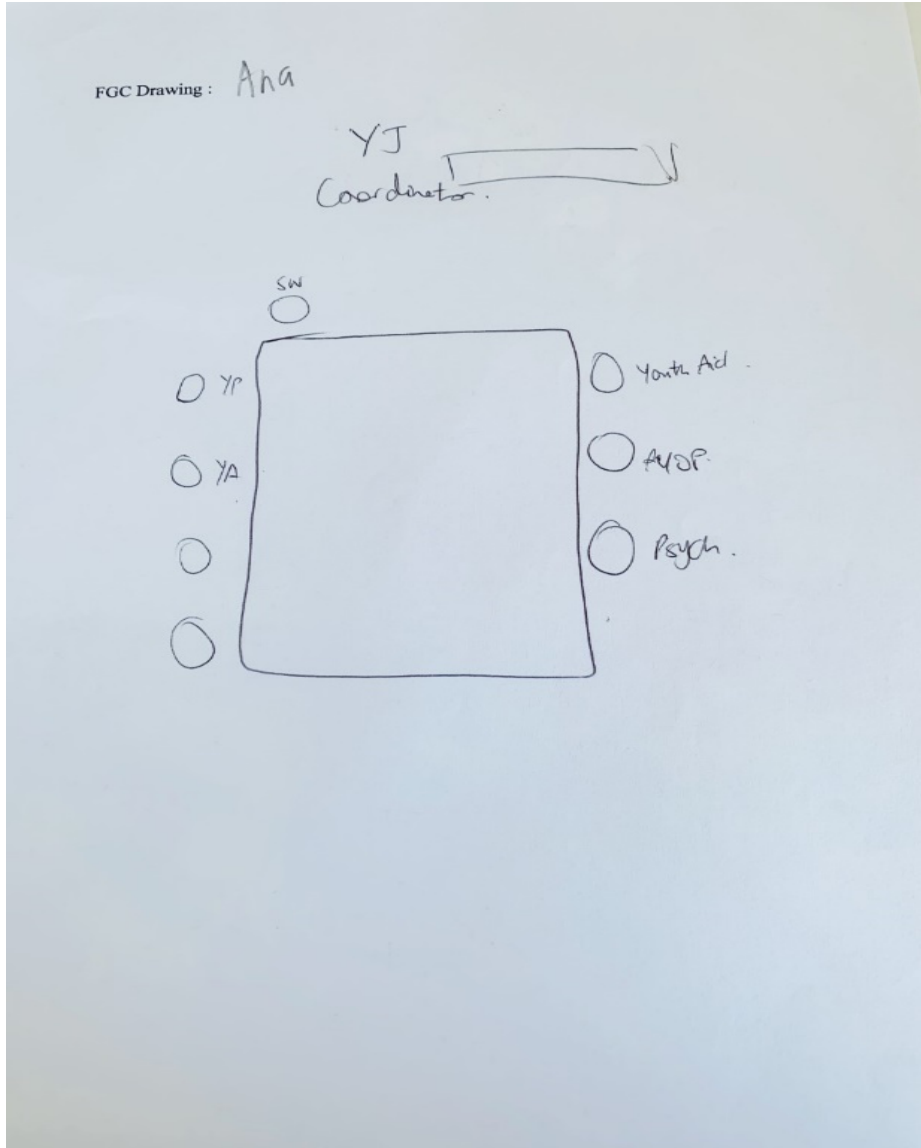


Figure 2

Ana (YJ Personnel) Drawing of the YJ FGC Set Up



Further to this, when participants described the YJ FGC setup/setting, several participants described or implied that it is a setting dominated by YJ personnel. Julie described the setup of the room. She also talked about the presence of numerous YJ personnel:

So, probably a room similar to this [TV on the wall, round table and a few chairs]. . . You'll have a parent, hopefully [laughter], usually 'a' parent . . . ¹²⁶ and the young person. You'll have your youth advocate, sometimes lay advocates are coming along, then you'll have MoE; someone from Ministry of Education possibly there, our police, and our coordinator and a social worker. . . . Usually there's sometimes a care and protection social worker . . . there as well . . . (Julie, YJSW)

Ana, while drawing the setup of the conference, mentioned numerous YJ personnel as being in the room: when asked, “[s]o, by the looks of it, there are quite a lot of people present in the YJ FGC?”, she described YJ personnel as, at times, pre-dominating the setting. She also mentioned that the number of whānau/family present can vary as well:

Yeah, there can be for [district removed] our ones not really. I've been to one out [name removed], and you can walk into a full room with 10 plus people, and half of them are just from agencies. But, usually, for [area removed] . . . they might have someone from RYOP¹²⁷, and if they have had a report a Section 333¹²⁸ then the psychologist might be there, . . . it depends on how much family the young person has, sometimes it is just one person, the parents, but that is generally what it would look like. (Ana, YA)

Anahera and Scott also talked about the venue and the presence of numerous YJ personnel. However, they went further and explained some of the adverse effects that the venue and pre-dominating YJ personnel can have on young people and their whānau/family:

Right. . . . I was in three the other day . . . it's normally, in [area removed], . . . at the police house. So, it's not a place where whānau really want to go cause they know, when they're over there, . . . they are already out of their element, and their environment. . . . When they come in there's . . . the police . . . the lawyer . . . other people . . . professionals and . . . they're coming into this space, which is kind of already uncommon to them, . . . in front of people, they may feel intimidated by. . . . Sometimes, it's not the best place for them to feel comfortable. (Anahera, YJSW)

¹²⁶ Repair words have been removed from participants direct quotes for ease of reading. See (appendix K) for a comparison of quotes *with* repair words.

¹²⁷ Reducing Youth Offending Programme (RYOP) is an Oranga Tamariki crime prevention programme for young people.

¹²⁸ A Section 333 is a medical, psychiatric, or psychological report under Section 333 of the Oranga Tamariki Act 1989.

... I think the environment can be quite intimidating ..., especially when, . . . , it is such a professionally top-loaded situation. I mean, you're going to a government building for an official meeting, with a whole bunch of professionals, including the police. . . . That's a scary situation. . . . I wouldn't want to talk in a situation like that. I'd probably shut down if that was me. So, I can definitely understand why young people do as well. (Scott, YJSW)

Multifaceted and Administratively Demanding Jobs

Participants were asked to describe their jobs as either a youth advocate or YJ social worker.

Noticeably, but not unexpected, the two YJ personnel participant groups provided two unique responses. Youth advocate participants described their job in terms of its legality and its multifaceted nature:

Okay [long pause], as a court-appointed lawyer [pause], specifically to act for the young person, [pause] to give them advice, in relation to the charges that they're facing [pause]. . . . To advocate for the best position for them, . . . and to interact with the other people that are involved with them . . . it is a hybrid type of role as a lawyer, between being a family lawyer and a criminal lawyer. (Janet, YA)

It is a quasi-role because what we always get told is "don't be a social worker, you're not a social worker", and that is one of the first things we all need to remember. We are there to focus on the law, the applicability of the law, and making sure that the process is followed correctly. But we do sometimes end up straying . . . just in terms of the young person's welfare, because you can't . . . look at it as something where you just focus purely on the legal aspect. (Lily, YA)

On the other hand, three YJ social worker participants described their job in terms of its challenging and demanding administrative nature, with one representative example describing it as:

Yeah, a very intense job. ... I didn't find the family at all difficult to work with. . . . I always got on very, very, well with the families . . . there was always a sense of gratefulness for me being there, trying to help the young people out. . . . It was a very, very, intense job in terms of caseload, and especially in terms of paperwork. . . . The paperwork constitutes probably 70% of the job. . . . Which is something I wasn't really prepared for when I first started the job. . . . I was thinking . . . you would be out in the frontline, doing all this, doing all that, but [deep breath] just the paperwork burden was incredible. It really tied you to your desk, rather than you being out and . . . helping the families. (Scott, YJSW)

Jay, however, also mentioned the successes he experienced in his work:

It was challenging; it was demanding, and, it was a lot of pressure. . . . Cause you are responsible for writing up the plans, review the plans . . . so, it was definitely challenging, but . . . the team was really supportive, very helpful, and we could actually see we were making some difference. . . . We were able to advocate for young people in the court, with the police, with the lawyers . . . I think we managed to make some difference, at least for a small percentage of people. (Jay, YJSW)

Julie also talked about the demanding nature of the administrative side of her job. However, she talked about this in terms of the psychological impact this can have on YJ social workers:

So, when I was doing YJ ... my job was to monitor plans, write reports, basically continually think of different things that is going to make a difference about this kid to stop offending. Ultimately, I don't want them going to District Court. It can be never-ending. You gotta be constantly thinking because a lot of things don't work, so you have to keep trying. Your head is constantly going. (Julie, YJSW)

When YJ social worker participants were asked if there was anything they could have changed about their job and what would it be, two participants specifically talked about relieving administrative pressures and having access to more resources to do their job effectively:

... The paperwork. I think if that could change, then we would be a lot more effective in the role. ... When you're spending 70% of your time in front of the computer instead of 70% of your time with the young people and their families ... it's all ass about-face really ... (Scott, YJSW)

... in some cases, we know of, the home is not a safe place for young people, and we are always struggling to find appropriate placements. ... We always talked about having good therapeutic homes, where all the resources are there, and we don't have to struggle for getting funding for counselling because we know trauma is a big, big, issue for these young people. When they come to us, it is never resolved, and I don't think if it was resolved, they would end up in YJ. So, I think there needs to be more resources ... (Jay, YJSW)

Technical and Confusing Language

Participants were asked for their views on what they think young people find hard to understand in the YJ FGC process. Noticeably, several participants talked about the use of technical language, by YJ personnel, as confusing or difficult for young people to understand:

A lot of the jargon. ... I find that when they [YJ personnel] draw pictures, they [young people] understand it a bit more, but sometimes, especially if it's a first one, as soon as they [YJ personnel] start talking, rangatahi [young people] will switch off. ... You gotta make sure it's ... snippets of things and you've got to give them breaks because they are not going to remember everything, they [young people] just sit in there seeing everyone looking at them. ... (Anahera, YJSW)

Julie talked about the language used by YJ personnel as problematic. She described new YJ personnel as, at times, being confused by the language other YJ personnel would use:

Yep. Lots of it. Yep, the language. We forget how hard it is, and what I love is when new people ... come into the FGCs, and ... they're professionals, or they have just started with an agency, and they're confused, and they're pointing it out to us, and it's like "Oh my god". But this is our world, and we just expect these families to know, what's going on ... it's terrible. (Julie, YJSW)

Dahlia also talked about YJ personnel language as problematic, but more specifically, she talked about the Summary of Facts:

[Long pause] In this kid's case, reading the bloody Summary of Facts. (Dahlia, YA)

When Dahlia was asked, "Is it complicated?", Dahlia explained that it was written in a way that young people cannot understand:

Well, it's just not stuff that these kids can recognise . . . (Dahlia, YA)

Janet and Lily, in response to another part of their interviews, also talked about the complicated language used in the Summary of Facts. Like Dahlia, they explained that it is in language that can be difficult for adults and young people to understand:

It's not conducive to people who read English understanding, Jazz. It is . . . police speak. (Janet, YA)

. . . the first thing is the Summary of Facts sometimes is written in language it shouldn't be written in, it is far too complicated, you know, "decamped from the scene", or things like that, which is just not appropriate language for a young person, or actually any person . . . (Lily, YA)

Perceptions of Young People's Participation Rights in the Youth

Justice Family Group Conference Setting

Participants were asked questions around their perceptions of young people's participation rights and young people's experiences of these rights in the YJ FGC setting. All participants talked about negative, positive and challenging aspects as presented below.

How Youth Justice Personnel Define Young People's Participation

Participants were asked to define what they thought participation looked like for young people in the YJ FGC setting. Participants provided a mixed response. Four participants talked about young people's participation in this setting as an action or the ability to understand and contribute:

Being there and getting to talk . . . (Dahlia, YA)

The ability to understand the process, the information being given to the FGC, and the respective views of all the parties. The understanding and confidence to express their own views and attitudes towards any interventions that are proposed. Ultimately, the knowledge that they have been a part of formulating the eventual FGC plan. (Jack, YA)

While Lily also mentioned participation as, in part, understanding the process, she also implied that young people's ability to participate, at times, must be enabled by adults. She mentioned, for young people to participate, adults must provide the necessary information and explain the process in a way that young people can understand:

Well, it is understanding the process, which is the first step to ensuring participation. . . . being clear what the process is about, so knowing what is going to be happening that day, rather than having it sprung on them. . . . It's making sure that it is in a time frame, setting, where all participants are introduced to them, they know who they are, they know about confidentiality, and that is one of the good things that is explained, is the confidentiality in the process, and that is obviously one of the things that a YJ coordinator is quite good at explaining. I think it is useful for the young person to have an idea for how long the meeting is going to take too, but it is just sort of ensures their participation, there is information that the young person needs to be given, both on the day, and beforehand. (Lily, YA)

Scott talked about young people's participation as an active speaking role. However, he described the YJ FGC setting as what could be described a silencing mechanism that, at times, is counterintuitive to young people being able to actively speak up:

Well, . . . , the idea of participation is supposed to be an active role . . . actively participating, discussing what you've done, how you got there, and why you got there. That said, I think that a lot of young people get to the FGC and they close down. . . . they feel obviously embarrassed about the situation and being in it. They don't want to talk, especially in front of a whole big group of strangers and victims, because it is hard for them to be in front of their victims and face up to what they have done, understandably of course. . . . I think that a lot of the time the young people don't know how to deal with it, they don't know what to say, and their family don't either. . . . A lot of people have difficulty with public speaking in the first place, let alone in a situation which is that loaded, to begin with. (Scott, YJSW)

On the other hand, Anahera, Julie and Ana talked about young people's participation as restricted, prescribed or non-existent:

[Long pause] It's not really much at all, they [adults] just ask questions . . . "So, what do you want to do?", "Will you do this?" . . . but it's kind of already figured out for them [young people]. . . . It's all lined up for them, what the tick box things are, like community work and the families just need to tweak it, and they're like, "Out of these three which would you like to do? LSV¹²⁹, employment? Or course?", and it's like, "Are those the only things you offer?" . . . (Anahera, YJSW)

¹²⁹ LSV is a limited-service volunteer programme, a free six-week motivational programme, run by the New Zealand Defence Force.

Yeah, no, it's not good. . . . They [young people] don't understand the process. It is stock . . . I think that is part of the reason I moved away; it became such a routine. I can tell you what the plan is going to be. Apology letters, community work, go to school . . . "Where are you going to live?" It became stock standard and . . . meaningless didn't actually look at the kid as an individual or address their needs . . . (Julie, YJSW)

While Ana mentioned young people's participation as prescribed for them, she also talked about barriers to non-participation. She mentioned the presence of numerous adults in YJ FGC setting:

Yeah, the young person doesn't really participate much, because it is a room full of adults, so they don't want to talk, . . . It's only when we have family time, and everyone leaves the room that they might say something to a family member . . . like, "Nah, I don't wanna", but they won't talk, when everybody is in the room, very rarely, they will just sit there. [Pause] Um, well actually just being there because we've had ones just leave the room. . . . Remaining there and turning up that is participation. I guess from a young person points of view; I guess they would feel like they don't have much say and it is being decided for them. (Ana, YA)

Competing Rights: Rights to Participate Versus Rights to Protection

When participants were asked if they thought there should be any part of the YJ FGC that should not include young people, five participants emphasised the importance of always including young people. However, four participants also talked about times where it could be necessary to exclude young people. They described what could be called a competition of rights; between rights to participation and rights to protection.

Janet and Anahera talked about the YJ FGC as a setting for and about young people that should always include young people:

[Long pause] No, because if you are getting to a stage where there are parts of it that the young person shouldn't be included in, it is not part of the FGC, the young person has to be present. If the young person is not there, then it is a different meeting . . . (Janet, YA)

. . . No, if it's FGC, it should always include young people because then they know nothing has been hidden, and there is no pre-planning, stuff like that. (Anahera, YA)

While Scott shared similar sentiments to Janet and Anahera, he mentioned that there might be some situations where young people could be excluded. What those situations are, are unknown as the researcher did not prompt the participant with further questions:

. . . realistically the entire process is supposed to be about them. . . . I don't necessarily think that there is anything that shouldn't really involve them. . . . If it was a situation about myself, I would want to know what is going on. . . . I think that's really quite important. I mean [pause] there may be some situations where they shouldn't be involved, but for the most part, I think it is about them so should include them. (Scott, YJSW)

Similarly, Lily mentioned that young people should not be excluded from any part of their YJ FGC. However, she also mentioned that if there are protection issues young people can be excluded from those discussions:

No, I don't because . . . I think is very important . . . that the young person is not feeling that they are excluded at all from the process that is about them, and I do not think [pause] unless it is for . . . things to do with mental impairments or anything like that, if there is something, or safety, then yes. I suppose you have to be flexible. (Lily, YA)

Dahlia, Ana and Jay talked exclusively about occasions where excluding young people from their YJ FGC may occur. They alluded to the idea of exclusion of young people as protecting their best interests and welfare:

Very occasionally, especially when we have a psychiatric assessment or something like that or there is stuff to do with . . . historic abuse or . . . suicidal ideation. . . . We don't want to stir all of that up for them . . . (Dahlia, YA)

. . . only if, if you are talking about a young person at risk . . . and what's best for them and if that risk involves . . . family or where they are staying, then those discussions could be held without them. Because, sometimes, they can be quite sensitive issues. (Ana, YA)

. . . If it comes to a stage where the family members . . . from [the] parent's side and Mum's side, could be arguments and blame each other . . . I think that's not the venue for that to happen . . . the coordinator can stop that from happening . . . We shouldn't put the young person in a position so that they have to leave the FGC. I think adults have to remember that it's the opportunity for the young person, it's their FGC . . . their problems they can deal in a different venue. (Jay, YJSW)

Youth Justice Personnel's Perceptions of Young People's Experiences of Their Participation Rights in This Setting

When participants were asked if all young people have the same opportunities to exercise their participation rights during their YJ FGC all participants provided a mixed response.

Janet talked about young people having the same opportunities to engage with their participation rights in this setting as a matter of legal process. However, she implied that young people's experience of their participation rights is dependent on both young people and adults in the YJ FGC:

Yep, I mean the difference is going to be different personalities, different families, different coordinators, but generally, their voice is allowed to be heard, and that's one of the things that is now part of the FGC outcome, that they will get asked that – even if their voice may be somewhat unrealistic. (Janet, YA)

Jack mentioned that it was the role of the youth advocate to ensure young people have the same access to their participation rights:

. . . they should if they have competent counsel. (Jack, YA)

Anahera mentioned that young people's opportunities to engage with their participation rights in this setting is dependent on being informed that they have participation rights:

. . . it depends on if they know . . . they can participate, then they will, but if they don't know they probably won't. (Anahera, YJSW)

Lily and Scott, on the other hand, did not think that all young people have the same opportunities to engage with their participation rights in this setting. Lily talked about numerous factors as hindering young people's opportunities to access these rights. She spoke about YJ personnel as, at times, hindering their access:

No . . . it depends on who the young person is, the makeup of the setting. . . . There is certainly some YAOs that are better than others in terms of their approach. . . . Some come in with very rigid viewpoints as to what is going to be happening, and what the police position is, and that's not conducive to the process. It depends who the YJ coordinator is as well; a lot of the time some are better than others . . . so it does depend a lot . . . on who is making up the FGC, who is there, and how prepared everyone is for what's about to take place. (Lily, YA)

Scott talked specifically about YAOs as, at times, riding roughshod over some young people's opportunities to engage with their participation rights:

. . . no, I don't think they do. . . . I think that there are some young people who are . . . well known to the police, and I think they get a little bit steamrolled from time to time, this sort of "Oh, it's that kid again", . . . I think that's an issue. (Scott, YJSW)

Not All Young People are Informed or Know What Their Participation Rights Are

When participants were asked if they think young people know they have participation rights in the YJ FGC setting, several participants talked about perceiving young people to be uninformed about their participation rights.

Scott and Anahera were unsure if young people know what their participation rights are. They mentioned that young people's participation rights are not explicitly explained to them by YJ personnel:

No, . . . I don't think that they have their rights explicitly explained to them very well, or very often. Again, our FGC coordinator was always pretty good . . . but even then, I don't think their rights come out particularly well. (Scott, YJSW)

I don't think they do; I think they think they are going in there for a grilling all the time . . . it's, "come on now, you're gonna own up to this, you're going to be made accountable", but they're not. I don't think it's explained to them that it's a process that needs to have their input, their participation in, because I know a lot of the kids they shut off. (Anahera, YJSW)

Jack talked about young people not knowing what their participation rights are unless they have had previous experience of the YJ FGC. He mentioned that some young people can become normalised to being ignored by adults and embarrassed by the process:

No . . . unless they have been to an FGC before because they are so used to having adults tell them what to do, and they are so used to their opinions and views being ignored that they reach the stage of, "What is the point?". . . . A lot of young people are very, very, shy and embarrassed by the process . . . (Jack, YA)

Jay was uncertain whether young people know what their participation rights are. He also conflated young people's responsibility with young people's right:

[Pause] I don't know they know their right, but they know . . . they have to be there; otherwise, they can get in trouble, but they know it's their right to be there. (Jay, YJSW)

Encouraging Young People's Participation as an Advantage

When participants were asked if they thought there were any advantages to young people being encouraged to participate in their YJ FGC, several participants talked about positive aspects to young people being encouraged to take part in their YJ FGC.

Lily, Jack and Dahlia talked about encouraging young people to participate in their YJ FGC as advantageous because it provides young people with the opportunity to have a say on outcomes that will affect their life:

Definitely . . . it is their future, what they can gain from participation in the FGC is about what steps can be taken to address what might have led them to do what they did. And, a lot of it is about making sure it is a safe space so that they can talk about things, like "I was drunk at the time", "I done drugs at the time" . . . "I need, maybe, that drug and alcohol counselling would be appropriate" . . . there is just so many things that need to be . . . unpacked, . . . looked at. If the young person isn't, there is no point in talking around them, that's why we are having the whole conference in the first place is to look at their future, and how to get them to a place where they can be the best young person they can be. (Lily, YA)

Jack mentioned that it allows young people to take ownership of their decisions:

Yeah, absolutely, because they own the outcome. And, they should feel they own the outcome at the end of it. (Jack, YA)

Dahlia alluded to the notion of young people's participation as vital because of the positive effect it can have on a young person:

One hundred per cent, otherwise it is just a process through which they are put, rather than something that is going to have a therapeutic effect on them. (Dahlia, YA)

Scott talked about young people's participation in their YJ FGC as an essential part of the process because it holds the process to account, ensures its intentions are adhered to and ensures young people have an active role in creating their plans:

I think there are definite advantages to encouraging young people to take part in the FGC process. The FGC process is supposed to be family-led and child/young person-centred. Oranga Tamariki is supposed to be focused on child-centred social work practice, so it makes sense to me that children and young people should have their voices heard during any meeting that involves making decisions about them and their well-being. Buy-in is a necessary part of making any plan work, and if young people are not involved in the FGC, then it is more likely that they won't buy into any plans made about them. (Scott, YJSW)

Encouraging Young People's Participation as a Disadvantage

When participants were asked if they thought there were any disadvantages to young people being encouraged to participate in their conference, several participants, again, implied the idea of discouraging participation in favour of protecting the young person or their welfare.

Dahlia, Jack, and Julie talked about encouraging young people's participation as disadvantageous when young people's behaviours or opinions offend people or jeopardise their conference:

Well, if they talk too openly, they might drop themselves in, they can't incriminate themselves as to other offences . . . in a family group conference, theoretically. Though, I have seen police act on things young people have said in a conference, even though they are not meant to, but . . . they tend not to talk up. It's a rare kid that gets to talk from the heart . . . (Dahlia, YA)

[Long pause] Only if their demeanour or participation is misconstrued, and I have seen that with young people who are very shy or embarrassed or autistic clients because they are not able to display remorse, or even guilt, in the way that we expect them to, they can be badly judged. Sometimes, by victims, more often by the YAOs. (Jack, YA)

. . . you always get the character who thinks he knows it all. He knows the law, and he's denying it, and you're like "Oh boy, that worked for you once before [laughter] it's not going to work again", or . . . they've watched too much TV [laughter], and they're being all staunch and stuff [laughter], and you're like "Aw, mate, you realise this is gonna take twice as long now" . . . (Julie, YJSW)

Lily and Scott, on the other hand, talked about adult's lack of preparation as disadvantageous to encouraging young people's participation in their YJ FGC. They talked about poor time management as problematic and creating a negative experience for young people:

[Long pause] It can be detrimental to them if it is not properly prepared for, managed; it can be incredibly frustrating, particularly that one that went for two and half hours, it was just totally ridiculous. It can be a negative experience for that young person if it is just not . . . prepared for, if the people involved are not as prepared as they should be. (Lily, YA)

Scott mentioned that adults should be able to run the YJ FGC in a time frame that also includes young people's participation:

I think that the only disadvantages to encouraging young people's participation lie in the length of time being extended for the FGC, the potential for the FGC to become emotionally charged, and for the possibility of the young person not buying into the FGC plan; if decisions are made that don't fit with their views and wishes. Personally, I don't think that these are reasons not to have young people participate, rather they are reasons for FGCs to be run better by the professionals involved. (Scott, YJSW)

Article 12: A Must, but at Times Difficult to Implement

Participants were shown a copy of Article 12 of the UNCRC (see appendix J) and asked what they thought about the idea that young people should be included in the decision-making processes on decisions that affect them in their YJ FGC. Without hesitation, all participants agreed that young people should be included in the decisions that are made about them and for them in the YJ FGC. However, six participants also mentioned some of the difficulties that can arise in implementing this.

Janet agreed with Article 12. She talked about the YJ FGC as a process designed for and about young people. She also made a distinction between care and protection conferences and YJ FGCs:

It's all about them; it is not about anyone else; it is all about them. . . . So, a YJ conference should be only about one young person in that conference; it is not a care and protection conference, it is not about more than one child or any relationships that they have within a whānau, it is about that young person . . . (Janet, YA)

Lily liked Article 12. However, she talked about the difference between young people having this right and being able to exercise this right and the difficulty in achieving the latter. She talked about how it is everyone's role in the YJ FGC to ensure each young person can exercise this right:

Well, . . . , in terms of this, yes. . . . I think, the main thing is to make sure that young person actually has their voice, not only that they have a right to say what they think should happen, but that they actually say it, and that is the role of everyone at the conference to make sure that that happens. And that is one of the difficulties because of the size of some conferences, and with the number of strangers, that it can become difficult . . . (Lily, YA)

Dahlia agreed with Article 12 in this setting. She mentioned, however, at times, young people's and adult's expectations of the YJ FGC outcome can clash:

I 100% agree with that. . . . What they think should happen to them and what society thinks should happen to them, you know, us crusty old . . . professionals in the family group conference should happen to them, are often way apart. (Dahlia, YA)

Jack thought Article 12 was critical. He mentioned it is the duty of the youth advocate to ensure that young people are listened to, even when then young person's view conflicts with adult's:

It is critical. Even if it was not enshrined in international treaties, it's part of your duty as counsel to ensure that your client's instructions are heard. You may not agree with them, and that's tough, but your client has a got a right to express views or opinions that you don't necessarily agree with (Jack, YA)

Scott, Julie and Jay agreed that Article 12 is important. However, they also talked about young people not being able to exercise this right in the YJ FGC.

Scott talked about Article 12 as paramount. He mentioned that the purpose of the YJ FGC is for young people and their whānau/family to be involved and listened to. However, he mentioned young people's experience of being heard varies in the YJ FGC:

I think that's really paramount. That's really what the FGC is supposed to be about, hearing the young person's voice and hearing the familys voice as to what they need to make sustainable change. That said, I've seen it happen, and I've seen it not. . . . I've seen the young people voice their opinions, and not be able to voice their opinions, and I've seen them voice their opinions and not have that heard either. So, it's a really mixed bag sometimes. (Scott, YJSW)

Julie agreed with Article 12. She mentioned, however, that this does not always happen. She also mentioned that young people can lack the confidence to exercise this right:

Yeah, absolutely they should be. It's a process that is happening to them, so they need to know what it is and understand and be heard, but . . . it's not happening. They're kids; they're not confident enough to say anything. (Julie, YJSW)

Jay talked about Article 12 as being readily used in the YJ FGC setting. However, like Julie, he talked about the lack of confidence, sometimes experienced by young people, as a barrier to their being able to exercise this right:

They get that opportunity to speak in the FGC, and also, they [adults] seek their [young people's] agreement about the plan . . . I think, also it depends on individuals how confident they are to share their views, and also agree or disagree with their plans. It comes down to their confidence; some young people just accept it because they just want to get out of the meeting. (Jay, YJSW)

Article 13: A Good Idea, but an Irregular Occurrence

Participants were shown a copy of Article 13 of the UNCRC (see appendix J) and asked questions to elicit an understanding of their perception of ways in which young people engage with Article 13 in their YJ FGC.

When participants were asked what they thought about the idea that young people can share information in the YJ FGC, in any way they feel comfortable, as long as it does not offend or hurt another person, all participants agreed with this idea. However, three participants also talked about young people sharing information as an irregular occurrence.

Julie and Jack mentioned that young people could express their views, in any way they felt comfortable, in the YJ FGC:

Yep, they can do that . . . (Julie, YJSW)

. . . well, it is not really a problem in the FGC setting because it is a privileged environment . . . (Jack, YA)

Dahlia, Scott and Julie talked about Article 13 as a great idea and essential. However, they mentioned that it is rare to see a young person share their views in their own way:

Oh, that would be great. I would love that! I don't ever see it, other than in just words coming out. . . . occasionally in apologies, someone will write a poem, or draw an artwork, or do a carving or something like that, but that is really rare. . . . That's a one per-center! (Dahlia, YA)

Scott mentioned that both young people and adults could act as a barrier to young people expressing their views and being listened to:

. . . I think that is very important. But, again, I don't necessarily think that happens all the time. For a variety of reasons, one: young people shutting down, two: people not actually letting them voice their opinions and so on . . . (Scott, YJSW)

Julie liked this idea, but she talked about this as an irregular occurrence in the YJ FGC. She made a distinction between young people sharing information in the YJ FGC, during the creation of their plans and in Youth Court:

. . . I think that's a good idea. I haven't see it occur so much in the FGC, but usually in plans, . . . they've got the option of; I think somebody's gone to court and sung a song, . . . or they can do a piece of artwork, or do some baking, or, . . . just different ideas like that. Or make a project instead of an apology letter. . . . I've seen that be part of the plans. (Julie, YJSW)

Anahera talked about this as a good idea for young people to feel heard. However, she alluded to a difference in YJ personnel views/practice of how this right should be exercised:

. . . one of the kids he doesn't like reading, as soon as you put anything in front of him that's words, he [pulls a face], but he is really good at expressing himself, . . . and I told the FGC coordinator maybe we can get him to do . . . a video that he can . . . give to his victims, and she was like "No, no, no, no", and I am like "What do you mean?" . . . that's the easiest thing for him, and he was like, "No, it's either verbal or written", and I am like, "Well he can't do any of them, he is too scared to talk to anyone, apart from the people he is sitting with, and he doesn't read or write" . . . (Anahera, YJSW)

Pre-Conference Preparation: Critical to Facilitating Young People's Participation

When participants were asked what they thought about the idea of someone telling young people what will happen in their YJ FGC before it happens, six participants talked about pre-conference preparation as essential to effective facilitation of young people's participation.

Noticeably, participants also talked about YJ coordinators or social workers as gatekeepers of this practice:

You mean, prepare them for what is going to happen? All the time! Good preparation of an FGC will have involved a coordinator meeting with the whānau and the young person so that they know exactly what is involved and who is getting invited . . . (Janet, YA)

Yep, that's what happens. The YJ coordinator is supposed to have informed them, . . . what the FGC is about and what happens. On the Oranga Tamariki website, there is a video that they can watch . . . And I tell young people if they have got access to computers which, again, some families don't, that that's something they can see, and also as my role as youth advocate is to tell them what is going to be happening at the FGC. (Lily, YA)

That should already be happening by the coordinators; it's their role to prepare the young people and whānau for the conference. The social worker can support this as well by preparing the whānau when they visit pre-FGC. (Julie)

I think it is good for them to be informed, what they can expect, and we hope they can prepare and that there is a social worker or support people who can prepare them to go through that process. (Jay, YJSW)

In response to another part of her interview, Ana talked about the importance of YJ coordinators effectively managing the YJ FGC process. She implied that when the process is not effectively managed, it has the potential to hinder young people's participation and experience of the YJ FGC:

Yeah, I think a lot of that hinges on the coordinator, if they are not running the FGC properly, then things can get out of hand. People might be talking that shouldn't be talking or carrying on about things that are not relevant to the process. I think the coordinator makes a big difference, a huge difference in how things go. If they don't coordinate then, it is just kind of like a mess really. Because they are running the meeting, and if they just want to tick the boxes and go through them and . . . some just say some things to young people which are not helpful. There might be an offhand comment about . . . what they have done, even to the young person or even to the family, and it is really uncomfortable. . . . A coordinator can make a huge difference . . . I think whether the coordinator is good or not, it makes a huge difference, and there are big variations. (Ana, YA)

Facilitating Young People's Participation Through Communication and Interaction With Young People

When participants were asked how they facilitated young people to take part in their YJ FGC's, all participants emphasised the idea of talking to young people to ensure they understand what is happening around them and to them. Five participants also talked about asking young people questions or spending time building rapport with young people before their conference, as a means of facilitating their participation in their conference.

Julie and Scott talked about asking young people questions to encourage their understanding and participation:

. . . I would always look at them, "Do you understand what is happening?" "Do you agree with this?" So, I would constantly ask them, you know, and try and drag them into being part of it [laughter]. (Julie, YJSW)

Scott also talked about adults advocating for young people. He mentioned that sometimes young people need adults they trust to advocate, on their behalf, their views:

. . . I would tend to prompt them if I thought they were not having the opportunity to speak when I could see that they wanted to. I'd say "Look, what are you wanting to say?", "What's your opinion?", "What are you trying to get out?" . . . sometimes you could see them clamp down, and you know that they just need a little bit of a nudge to say, "Hey, c'mon, what are you wanting to let people know?" . . . sometimes someone just needs to be their voice and advocate for them on their behalf. And, I know, that is supposed to be the lawyer's role, to a point. . . . Sometimes they just need someone that they trust that little bit more. (Scott, YJSW)

Lily also mentioned ensuring her clients understood what was happening to them and around them. She also talked about shared responsibility. She explained that to facilitate a successful plan for young people, everyone needs to share the responsibility of creating achievable outcomes. However, she shared her frustrations of, at times, not having enough information to make plans successful:

I certainly make sure that they understand what is going on. We also have the specific time to make sure that, when we have family time, . . . before any plans worked out, that it is actually something that the young person understands, that they would be able to achieve, that they feel comfortable with. . . . A lot of the time it is tricky because it is finding places for young people to do community work, where it is not available through the marae. It is really tricky to find places for young people to have suitable community work to do, and that is something I think . . . is really [pause] part of the whole process is that the young person rights the wrong, and yet there should be a pool of places where young people could go and, a lot of it relies on the family trying to think of places to do, or go to . . . a lot of it is trying to come up with something where it shouldn't be as difficult as it is. There should be more information available for what young people can do. (Lily, YA)

Jay and Anahera, on the other hand, talked about pre-conference interactions of building and maintaining rapport with young people as a means of facilitating young people's participation in the YJ FGC:

I spent time with them before the FGC, talk to them through the process, and talk to them about my findings, and explain to them this is what I am going to recommend and the reason why I am going to make those recommendations. I encourage them to speak and, if they feel anything bad or anxious or anything to speak to the coordinator or take a break. And, it happens in FGCs where we give a break to young people because sometimes it gets too much. (Jay, YJSW)

Before I go in, I would . . . really concentrate on them [young people], everyone else would be talking about their stuff, and I would be like, "Hey, what you doing? I haven't seen you in a long time, just remember when you get in there . . . shake hands, sit up straight, answer the questions", just things like that. . . . I like to be upfront with them, and they do, they sit up, and I say, "If there is anything you need to do, I can explain it to you". I do have a phrase that I use for all the kids, and it's "Don't be a dick", "Don't be a dick" [laughter]. I'll write it on their basketballs . . . "At the end of the day, don't be a dick", and they respond to that . . . And, we've got community constables here, . . . they do neighbourhood policing . . ., they are really good, they get to know them, and they have fun with them, and that makes a difference. When you speak their language, and you take the time out to be with them (Anahera, YJSW)

Supporting and Hindering Young People's Participation in the Conference

Participants were asked questions on their perceptions of what supports and hinders young people's participation in the YJ FGC setting. Several participants mostly talked about adults as hindering young people's participation. When participants were asked if they thought that there were people in the YJ FGC that played a role in supporting young people to take part, six participants provided examples of adults as capable of supporting young people to take part in their YJ FGC.

Anahera and Jay talked about support people as essential to young people being able to take part. Anahera also mentioned YJ coordinators as essential to ensuring the right support people are invited to the conference:

[Laughs] I hope so. I hope the FGC coordinator has taken into account all the people who are willing to support that kid, cause they are the ones that invite us . . . and if they miss out on that one crucial person, well, what's the point in having it? (Anahera, YJSW)

Definitely, to create that atmosphere for young people to feel they belong and that this a safe process to support them, it is very important. (Jay, YJSW)

Lily talked about whānau/family, youth advocates and YAOs as support people. She mentioned that YAOs, who have a history with a young person, can provide a positive view of the young person's progress:

Yes, family members, obviously their youth advocate. It depends on who the YAO is too; they can be quite useful! If they have known the young person for a long time and they can talk positively about the changes they have seen the young person make if it is an FGC . . . where there has been something else that has occurred which has required us to go back to the FGC, it depends. It can, certain family members can, particularly if they've prepared as well, and they know what is about to happen to. (Lily, YA)

Ana and Dahlia also mentioned whānau/family. However, they talked about whānau/family as both supportive and unsupportive of young people. Dahlia mentioned that sometimes the friends of young people are better suited as support people for young people:

. . . hopefully the family members. Although . . . when you meet their family members, you . . . realise why they are there. And, so sometimes . . . it's about them, rather than the . . . young person. . . I think, well for me. I am trying to make sure that the young person is, that their rights are being looked after and it's not turning into . . . whatever, the family issues [are]. (Ana, YA)

That is what the whānau is there for, that is what any social workers or education . . . supporters [are] there for. . . . they get their mates there sometimes, though . . . coordinators seem a bit reluctant, to have peers there, and sometimes they are better at looking after the kid's rights than the whānau. (Dahlia, YA)

When asked, “[w]hy don’t coordinators want their peers there?”, Dahlia talked about peers as potentially negatively influencing or distracting young people:

The officials do not want them there because, firstly, the young person goes a bit cocky and shows off and, secondly, they might act up together. And I have certainly seen that. (Dahlia, YA)

Janet also mentioned whānau/family, and lay advocates and social workers. Noticeably, she viewed social workers as information givers, rather than supporters of the young person:

I think the lay advocates and the family do that, social workers sometimes, but the social workers are generally at the FGC as an information giver or collector for the purposes of what reports they are going to have to put forward later on. (Janet, YA)

When YJ social workers were asked if they thought that they played an important role in supporting young people, four YJ social workers talked about being unsure of how important their support is in the YJ FGC:

Scott talked about it depending on the YJ social worker’s style of support.

. . . I don’t really know that they do so much. I think it depends on the social worker because each social worker has their own particular style. I’ve seen social workers who act like they should be the lawyer . . . and they will jump about and do a little song and dance, and I’ve seen other social workers, much like myself, who see it more as an honour to be involved in the FGC and will sit back and not jump about quite so much and wait their turn to say their piece. . . . I think it is quite situational dependent. (Scott, YJSW)

Anahera talked about YJ social workers as supporting young people. However, she talked about YJ social workers as constrained by the process as to what support they can give:

I think they still do . . . they’re the ones that have to follow through with stuff, but it’s just things can be changed within the practice itself. . . . Social workers are there because, obviously, they do want to do that job, and I am sure they have got a bit of passion still in them, but if they were able to express themselves, with their own values, . . . that’s what drives us to do our best work; then we would be able to be a better practitioner. (Anahera, YJSW)

Making Young People the Centre of the Process

When participants were asked what piece of advice they would give to other adults in the YJ FGC to support young people, several participants talked about the idea of advising adults to

place the young person at the centre of the process and to focus on the young person's concerns and not their own:

I think, not to go in there with your own agendas, that the most important person in that room is the young person, and putting them on a different path to the one they are going down, and that has got nothing to do with your own personal baggage that you might have. (Ana, YA)

Just remind them about, this is the process for young people, you are there as a support, the young people should be the focus, not the adults and not their problems . . . (Jay, YJSW)

[Laughter] Listen carefully and keep your mouth shut . . . speak only when spoken to. . . . I think that's the issue really. I think people being . . . opinionated . . . and needing to have their say because they are the adult . . . that's not really why we are there. Sometimes you just have to wait for those people to have their say, or blow off whatever steam they need to get rid of. (Janet, YA)

Scott and Anahera, on the other hand, talked about advising adults to take a step back and allow young people to express their views:

Probably just calm the [expletive] down. . . . Just, calm down. Don't be so overbearing, and let the kid express what is going on for them because you typically don't know. (Scott, YJSW)

Anahera also mentioned she would advise adults to remember what it was like to be transitioning from adolescents to adulthood and the tensions that can arise with that:

I would say to them to remember what it was like to be their age . . . before all the chaotic stuff that being an adult is. And sometimes we've all done dumb things, and you just gotta remember we get over these dumb things and these kids will get over their dumb things too if they are respected and treated right. And, if they are respected, and especially teenagers coming into adulthood, they need to feel like they are becoming an adult, but [that] they have also got that support and safety as a child. You know, so, yeah, we want them to know that safety is there so they can run to that. So, just remember what it was like. (Anahera, YJSW)

Adults Can Hinder Young People's Participation

When participants were asked if they thought there were any YJ FGC processes that hinder young people's participation, participants did not talk about a specific process. Instead, five participants mentioned the presence of adults as hindering young people's participation, while four participants mentioned the presence of YAOs as, sometimes problematic.

Dahlia and Scott talked about the inclusion of adults at times hindering young people's sense of self which also affected their ability to take part:

Oh, being in a room filled with adults, you are the only young person there, and they are all talking about you, and it makes them feel whakamā (shame), or whatever, . . . they clam up . . . because they feel stupid. (Dahlia, YA)

Scott suggested that the formality of the process and preconceived attitudes can hinder young people's participation:

. . . I . . . think that the formality and tendency for professionals to take control of the FGC can . . . be a problem. Most young people shut down when faced with authoritative figures with the whole, "seen and not heard" mentally coming into play. (Scott, YJSW)

In response to another part of his interview, Scott talked about YAOs as, at times, hindering young people's participation in their YJ FGC. He talked about the problematic nature of YAOs attending a YJ FGC with a prescribed view:

. . . in terms of hindrance, I definitely think that the YAO—the police presence, hinders young people's voice. Especially when the police are saying, "this is our bottom line, and this is what we think you should be doing", and that's part of that top-heavy approach, and prescriptive approach is police saying, "well, this is what we think you should be doing, and you should be writing an apology letter, and you should be doing x amount of community service hours", and that pre-empts the family's ability to make the decisions for themselves because they're being prescribed what they should be doing by a YAO who "thinks" they know what should be happening. (Scott, YJSW)

Similarly, Jack talked about the problematic nature of YAOs having a prescribed view of the outcome of the YJ FGC and how this can hinder young people's participation:

I've got no problem with YAOs expressing a view, or even differing with a view after whānau have had their time. It's just that I can't stand it when you know they have arrived at the FGC with a view. Normally, they have been instructed to hold this view, and no matter what is said, what is done, no matter the wonderful progress that the FGC can make, no matter what the victim says sometimes – that is the outcome. It is infuriating. (Jack, YA)

Similarly, Lily and Jay also talked about YAOs as, at times, hindering young people from participating in their YJ FGC. Lily also questioned the process of having YAOs read the Summary of Facts. She mentioned that she had seen several young people react negatively when YAOs had read the Summary of Facts:

... in terms of how the process goes ... quite often it is the police who read the Summary of Facts and then the young person either accepts or denies, and it may not be the best person to actually read out the Summary of Facts. ... I think that certainly ... is something I am conscious of, making sure that when the police are reading the Summary of Facts that the young person has seen it, understands it ... but ... it may be better that the youth advocate reads it, rather than the police. I don't know whether there is any adaptability for that, ... I don't know whether it hinders the process by the police reading it, or maybe it could be the YJ coordinator who reads it. I have certainly seen some young people get their backs up a bit. (Lily, YA)

Jay also mentioned the behaviour of YAOs in the YJ FGC as hindering the participation of young people:

I know police do their job, but it's a lot of threats going on, "[i]f you don't do this, this will happen", "You will be removed", and they can ... see the police blaming the parents and the family ... (Jay, YJSW)

Whānau/Family Can Support and Hinder Young People's Participation

When participants were asked which YJ FGC processes they thought supported young people's participation, several participants talked about the presence of whānau/family and whānau/family time (plan creation) as both supportive and unsupportive of young people's participation.

Dahlia talked about the presence of whānau/family as supportive of young people's participation. She also mentioned young people being informed and seeing the effect their offending has had on the victim(s) as supportive of their participation:

[Long pause] Having the whānau there, ... being told about it beforehand, being briefed on it beforehand, ... and, for me, seeing the reality, seeing if a victim's there and you see the real hurt in their eyes, that's an effect you can have. So, that is an advantage. (Dahlia, YA)

Anahera also talked about having family there as a support mechanism for young people's participation. However, she mentioned that at times, there could be a conflict between YJ personnel and young people's views of what whānau/family means and is:

Yeah, family, but they don't let you [young people] choose the family that come there, most of the time. ... a lot of the rangatahi here in [neighbourhood removed], their family is not their Mum and Dad ... their family is sometimes their bro, or their Uncle down the road or, someone who is not even related to them, like a teacher ... it's not always Mum and Dad ... (Anahera, YJSW)

Julie mentioned whānau/family time. However, she also talked about the unsupportive side of having whānau/family time, and the conflicts of views that can arise:

. . . yeah, cause they even have a whānau time, but I think, sometimes, that can disadvantage a kid because the whānau start taking over and telling them . . . , “You need to do 200 hours of community work” and it’s like, “Well, no, actually, it’s just 20”, but . . . they are trying to overcompensate for the naughtiness of the kid . . . because they are all whakamā (shame), but we’ve got to be real in the time frame they can do this and what our priorities are. (Julie, YJSW)

Scott, on the other hand, was unsure if the YJ FGC supports young people’s participation while they are taking part in it:

[Long pause] I am not really sure, to be honest with you. I can’t think of any particular process, as such, which helps support them. . . . With it being such a top-heavy situation, I don’t think it is overly supportive of them and what they’re wanting to say and their opinions. . . . In terms of outcomes, yes . . . the entire plan is supposed to be there to support that young person, but I don’t think the process of the FGC actually really supports them in the FGC. (Scott, YJSW)

When participants were asked if they thought there were any people present in YJ FGC that could hinder young people from accessing their participation rights, three participants talked, again, about whānau/family as hindering young people’s access to and exercise of their participation rights:

Sometimes their own families, . . . I don’t think anybody else is going to hinder that. It really is just dysfunctional family situations that would cause that, but generally, you wouldn’t see that. (Janet, YA)

Yep, usually their families [laughter]. . . I’ve seen [long pause] families with wider families who have come along, who don’t actually know the kid, that well and they’re giving opinions, and they’re saying this and that, and they’re siding with the police . . . it just makes it hard. And, their opinion is valued. (Julie, YJSW)

Lastly, Jack explained that he thought that whānau/family do not intentionally deny their young person their rights: but, a lack of understanding of the importance of young people’s participation in their YJ FGC can act as a hindrance:

Sometimes there can be dominant whānau members, and they will sometimes talk over the child or upbraid the young person. Generally speaking, they are not doing that through any ill [pause] conceived ideas. They just don’t understand. So, it is just a question of explaining, “well, look, you’ve got your view, and that’s fantastic, but we have got to hear what X has to say about that”. (Jack, YA)

Future Focus: Legislative, Policy and Process Changes

Finally, participants were asked questions to elicit their personal views of future legislative, policy or processes changes for YJ FGC. When participants were asked if there was anything, they would change about the YJ FGC, and if there were any practices or processes that could be

used to make young people feel included in their conference, participants talked about three key themes of venue, preparation and support people.

Change the Venue

One of the key changes participants would make to support young people's participation is to change the venue where the YJ FGCs take place. Several participants talked about, or implied, the YJ FGC setting of Oranga Tamariki as a negative setting for young people and their whānau/family. Three participants mentioned a need for a neutral alternative setting:

. . . see, some of them are sort of more where the FGCs are held because sometimes it is not conducive going to an Oranga Tamariki office, where there are people screaming and shouting about various other issues at the front counter. . . . And, you know, some of these are in the MSD [Ministry of Social Development] offices, where people are going to deal with different issues and, . . . , then there is where the Oranga Tamariki part is, and it is maybe not the best venue, sometimes. (Lily, YA)

. . . the biggest thing for me would be trying not to have them in the office [OT]. It's just trying to get them out to different places, where the family feel more comfortable, but also for us being more flexible for when we have them, and . . . working around . . . what the family's needs are, instead of making them all traipse up there with their kids, . . . , to the office, then try and entertain their kids as well as. . . . We need to be a lot more flexible. (Julie, YJSW)

Jack agreed also talked about the venue of YJ residences [also managed by Oranga Tamariki] for YJ FGCS. He mentioned they could be restrictive and, at times, an unpleasant setting for whānau/family and young people. He suggested the use of a marae for YJ FGC as an alternative:

Yep! Venue! The FGCs are always at Oranga Tamariki offices, or at the YJ residence. OT [Oranga Tamariki] offices are not happy places for a lot of our families . . . [name of YJ facility removed] that is a harder one. I don't like having FGCs there. The process is restrictive right from the start. Whānau turn up, they're not searched, but they're not treated terribly well. They are told, . . . , they can't take their hats, their sunglasses, their phones and keys in—so it is a restrictive and unpleasant experience right from the start. It would be so nice to be able to have FGCs off-site, but I understand that raises security issues. [Pause] One thing that has been done in the past is instead of having the FGCs in the interview rooms, is have them in the [name of YJ facility removed] marae, in the whare there. It's a little nicer. And, the other thing is, . . . , if we are dealing with Māori families, why not have them at a marae? Why not? (Jack, YA)

When asked, “[i]s it [holding a YJ FGC at Oranga Tamariki] potentially a convenience thing for YJ coordinators?”, Jack agreed that was the reason why YJ FGCs are held at Oranga Tamariki.

He also mentioned that YJ FGCs should be held in a comfortable setting for young people and whānau/family:

That's why it is done, that's the only reason for it. They should be held at a place that puts whānau, and the young person at ease. . . . I've heard at [area removed] they have them at police stations, I mean how inappropriate is that? (Jack, YA)

Lastly, although Scott did not directly talk about changing the setting in response to the questions above, when he answered the prompts of, “[d]o you think that’s helpful? To be welcoming, to have biscuits and tea, rather than having no food or drinks?” and “[i]s it an option not to have the YJ FGC at Oranga Tamariki?”, Scott also talked about needing to find an alternative setting to Oranga Tamariki. He mentioned the setting as a stressful environment. However, he struggled with deciding where a better alternative for whānau/family would be. He talked about financial restrictions as, at times, creating difficulties for finding alternative settings:

You're going to a government building with a whole bunch of government employees, and it is a very stressful situation, whether there is cookies or not. . . . I think, if they were in a more familiar environment, . . ., I don't want to say at home but, . . ., even if they were, I think that would be much more relaxing for them, but then they could see that more as an invasion of their privacy, so it's a little bit difficult to gauge that. But I do think; there needs to be something done to make it a little easier for them. (Scott, YJSW)

Absolutely. There have been a number of FGCs where we've booked other places, like the Salvation Army. They have rooms that we rent out. And, typically, that's a more relaxed atmosphere because they are going somewhere that might not be familiar, but isn't as imposing as going to Oranga Tamariki, . . ., but it comes down to finances because we always have to pay those places to be able to hold those things. Not that that should be a problem but, . . ., organising stuff always seems to be an issue. (Scott, YJSW)

Better Organisation and Preparation

Four participants also talked about YJ personnel as needing to be better organised and prepared before and during the YJ FGC.

Lily, repeatedly, throughout her interview, talked about better organisation of the YJ FGC. She mentioned the potential for a pre-conference to organise YJ FGCs better:

. . . how well organised it is, [long pause] . . . perhaps there could be a pre-conference and then the actual conference. That might be something . . . (Lily, YA)

Like Lily, Anahera also mentioned the potential for a pre-YJ FGC process. However, she talked explicitly about the idea of a whānau hui (family meeting with Oranga Tamariki before a YJ

FGC). She mentioned that a whānau hui would allow for young people to be prepared for their YJ FGC. She also alluded to the idea of better organisation with respect to the time frames in which YJ FGC are held:

Yeah, . . . whānau hui in the beginning to . . . really answer those questions before they go in so that when they go in, they are not going in there not knowing what to expect. Especially, when it comes to the Summary of Facts because sometimes the first time the Summary of Facts is being read is at the police station [YJ FGC], and it could have been months ago. Sometimes, it is a lot of months ago. . . . It has to be quicker. (Anahera, YJSW)

Similarly, Dahlia alluded to having better organisation pre-YJ FGC. She talked about this in terms of the unpredictability of the time frames in which a YJ FGC is held after arrest. She emphasised an under-resourced, in terms of staff, Oranga Tamariki as the reason for this:

I would hold it quicker. At least two weeks before you get to it . . . and sometimes longer. . . . They are really under-resourced [staff], Oranga Tamariki is really under-resourced and, . . ., the longer the wait, the less real, whatever happens, is at the conference [for young people]. (Dahlia, YA)

Lastly, Julie mentioned YJ personnel needing to invest more time, pre-YJ FGC to attend YJ FGC's with all the information needed for them to be successful:

. . . I would just like more preparation. . . . my view is if you've got a child offender or, . . ., your 14-year-old, let's do a damn good one. Let's do one FGC make it absolutely amazing. Have everyone we need there and actually come up with some genuinely good plans. . . . Take some time, get the education reports, get the health reports, have everything we need to try and come up with the best plans. (Julie, YJSW)

More Whānau/Family and Support People

Lastly, several participants talked about including more whānau/family and support people in the YJ FGC setting, primarily as a means to facilitate young people's and their whānau/family participation.

Jack talked about having more support people such as whānau/family to ensure the YJ FGC is the process it was designed to be:

[Long pause] Participation of others is key and, so often, we will have an FGC and young person and Mum will be there, it would be really cool to get more whānau support, and to think outside the box. Maybe, Mum is the only one that has been contacted, but . . . it just so happens that he has a really cool Aunty who lives in Opotiki or Kaeo, "Can we get them down here?" Or "can we at least get them to phone in?" Just more support, so it feels like an FGC, and not just Mum and young person versus the police. (Jack, YA)

Similarly, Scott talked about having more whānau/family at YJ FGCs. However, he also mentioned inherent tensions that can exist between disconnected whānau/family, Oranga Tamariki, and the whānau/family feelings towards Oranga Tamariki:

I'd also like to see a larger participation by wider family members, but that's a really difficult situation because it's very hard to one: find out who those extended family members are because a lot of the families are ashamed of what is happening and they don't want to go there, and two: there is a lot of disjointedness inside of families who are involved with Oranga Tamariki. So, they may have family issues or family rifts, which is typically why they are in the situations they are in. (Scott, YJSW)

Lastly, Ana talked about having more mentors (support people) present in the YJ FGC setting. She talked about the relationship that young people can form with their mentors and how this can help young people to feel comfortable in their YJ FGC:

. . . I think, sometimes when they have had a mentor, but . . . and, they really connect with that mentor because they are usually quite close to their age and they feel more comfortable with them. I do notice when we have another FGC, and the mentor is there, the young person is more relaxed, and there is a person there they can relate to, who they know as a mentor, but also a professional and they feel comfortable. (Ana, YA)

Conclusion

The findings show that, for the most part, young people and YJ personnel in this study share similar perceptions of young people's participation rights in the YJ FGC setting. Both young people and YJ personnel think it is important for young people to have participation rights and that all young people should be able to share their views in the conference setting in different ways, such as through talking, writing, or making a video. However, the findings also show that enabling and facilitating young people's participation in the conference setting faces significant, personal (such as cognitive or speech-language difficulties), physical (such as the presence of the police) and structural/institutional challenges (such as silencing embedded in the system, lack of a uniform process and the use of complex language by YJ personnel).

Both young people and YJ personnel talked about or implied that young people's participation can be passive, silenced and, at times, non-existent. Also, both young people and YJ personnel in this study indicated that young people can miss out on important parts of the YJ FGC process, namely pre-conference preparation. It was suggested that YJ FGCs can also be

disorganized and lack structure. Young people and YJ personnel indicate, however, that pre-conference preparation and preparation of YJ personnel are important parts of the YJ FGC process for ensuring and facilitating young people's participation during their conference.

The findings indicate that the YJ FGC setting is often top-heavy with YJ personnel, who, at times, can use their position and powers to hinder a young person's participation in this setting. The findings also suggest that young people and YJ personnel believe that young people need to have more support people present in their YJ FGC to support young people taking part in their conference. Seven young people talked about YJ personnel or their whānau/family as their support people. However, young people and YJ personnel also provided examples where YJ personnel and whānau/family hindered young people's rights to participate.

Lastly, the findings suggest that there is a need to change the venue setting and set up of the YJ FGC so that young people and their whānau/family can feel more comfortable in this setting. Nine young people and all YJ personnel talked about Oranga Tamariki offices as uncomfortable settings for a YJ FGC. The next chapter draws together the findings discussed in this chapter and Chapter Seven.

Chapter Nine: Discussion and Conclusion

Introduction

This chapter draws together the interview and documentary analysis findings of this study and the literature in which this study is situated. It critically discusses the key findings (themes) and their contribution and importance concerning the research questions, theory, and previous research, as presented in the literature review.

This chapter also introduces the Children and Young Person Silencing Cyclone (CYPSC). I developed this model by drawing from the interview findings and the literature on silence used in this study. This model emphasises that silence and participation are interrelated. Silence, in my view, can affect young people's experiences of sharing their views and participation during the YJ FGC process. While this model was developed from the views of young people in this study in a particular setting, time, and place, it may have broader application to other settings in which children and young people participate. This chapter also discusses the practical implications of the study, its strengths and limitations, and recommendations for future research. The next sections are divided by and discussed under each overarching research question (see Introduction Chapter) for this study.

Key Findings: Young People

The first research question of this study is, “[w]hat are some young people’s experiences of their YJ FGC?” From the interviews with young people, three pervasive themes emerged.

Pre-Conference Preparation

Nine young people in this study reported having no experience of pre-conference preparation with YJ personnel. The UN Committee on the Rights of the Child (2009) stresses the

importance of preparation for children and young people involved in any judicial or administrative decision-making process, as part of fully implementing Article 12 in practice. In the New Zealand context, pre-conference preparation includes, but is not exhaustive of, YJ coordinators informing young people about what will happen at their conference and giving young people the opportunity to ask questions (OCC, 2017b). Section 250(1)(c) Oranga Tamariki Act 1989 also legally obligates YJ coordinators to consult with young people about the YJ FGC procedure before their conference and to 'give effect', where practical, to young people's views during this practice.

However, nine young people in this study also stated that no one had talked to them before their conference about what would happen or what they would be expected to do at their conference. The current study also found that nine young people did not get to ask YJ personnel questions before their conference. A majority of young people said they would have liked to ask YJ personnel questions before their conference. Amiria said that it would have been a good idea for her to have the opportunity to ask YJ personnel questions because she is shy. Asking questions about her conferences would have allowed her to know what to expect.

This finding is similar to the findings of previous New Zealand studies by Maxwell et al. (2004) and the OCC (2017b)– that is, at least in the New Zealand context, the practice of pre-conference preparation of young people does not always happen.

However, this finding is not consistent with some of the earlier international literature. Campbell et al. (2005), Hayes and Daly (2004), and Wagland et al. (2013) found that most young people did experience pre-conference preparation with YJ personnel. Interestingly, from the international (Australia, South Africa, America and the UK) studies cited, no study reported 100% of all young people participants experiencing pre-conference preparation. This indicates that, at times, the inconsistent practice of pre-conference preparation with young people could be an issue in other jurisdictions.

In the New Zealand context, Maxwell et al. (2004) and the OCC (2017b) indicate that the likely explanations for inconsistent pre-conference practice are a lack of funding, insufficient people budget, and a lack of training and support to facilitate this process. Such criticisms are not new.

Similar criticisms have been well documented in the New Zealand literature since 1992 (Mason & Department of Social Welfare, 1992; M. J. A. Brown, 2000).

Anderson and Parkinson (2018) and Suzuki (2020) wrote that a precursor to young people's engagement and participation in their conference is the pre-conference preparation process for young people. It seems possible that without pre-conference preparation, some young people's engagement and participation during their conference could be limited.

Experience of the Youth Justice Family Group Conference

Another key finding of this study was that young people hold mixed opinions about the experience of the YJ FGC. Similar to the findings presented by Maxwell and Morris (1993) and Hodgson (2020), four young people in this study found the overall experience of the conference as useful and likeable. For example, when discussing the usefulness of the YJ FGC, Maverick spoke about the conference as useful to clear his charges and get him out of trouble. Nikau, when talking about what he liked about the conference, spoke about the conference as a likeable experience because he felt welcomed and had the opportunity to sit down and talk with his family about his plan. On the other hand, five young people in this study talked about their experience of the conference as useless. They said the experience made them feel shame, judged, intimidated, uncomfortable or stressed and placed too much expectation on them. For example, Aroha expressed feeling uncared for and judged by adults during her conference. She made an impassioned plea for adults to take the time to understand young people and to help them overcome their offences.

These findings show that even though young people in this study experienced the same legislative process of a YJ FGC, young people can hold very different perceptions of their experience of this process. There are several possible explanations for this result, such as how young people remember the process, what young people experienced when in the conference setting, how fair young people thought the process was, and how young people were treated and treated others in this setting.

Young People's Views of the Youth Justice Family Group Conference Process

The last key finding to address the first research question is that all young people spoke negatively about the conference process during their interviews. Young people in this study used words like 'boring', 'hard', 'stressful', 'intimidating/intimidated', 'messy' and 'mucked around', to describe what they did not like about the conference process. Similarly, in other parts of their interviews, young people used words like: 'intimidating', 'stressful', 'scary', 'pressure' and 'uncomfortable' to describe parts of YJ FGC.

The literature explains that the YJ FGC was designed to empower young people and enhance their well-being (Maxwell & Morris, 2006; Watt, 2003). Given that all young people, at one time or another, talked negatively about the YJ FGC, and several young people repeatedly used the word 'intimidating', this finding raises questions about how well the YJ FGC empowers young people and enhances their well-being. It seems possible that if the YJ FGC evokes mostly negative feelings and memories from young people, the process may not always be conducive to empowering and enhancing their well-being in this setting.

Young People's Participation

The second research question is, "[w]hat does participation mean to young people?" From the interviews with young people, four pervasive themes emerged.

Participation as a Multifaceted Concept

It emerged from the findings that young people in this study see their participation as a multifaceted concept in the YJ FGC. When describing their participation and giving examples of what participation looks like, young people offered several, at times, slightly different descriptions and examples. Nine young people described participation as something they could personally contribute, such as speaking their mind or attending and taking part in their conference. Two young people described participation as a reciprocal interaction, for example, listening to adults and having adults listen to them. Also, when explaining how young people can participate, eight young people in this study mentioned they could participate by talking.

This is not surprising, given that young people are often expected to participate in their conferences using verbal communication (Morris & Maxwell, 1998; Snow & Sanger, 2011).

However, what was surprising is that four young people also mentioned alternative ways of participating, such as by drawing, writing or making recordings, for example, a video, to play in their YJ FGC. Three of the four young people who suggested alternative methods of participation had experienced more than one YJ FGC. It is possible that through multiple YJ FGCs, these young people got to experience alternative forms of participation.

The literature states there is a lack of consensus and clarity around what participation means and looks like for young people (Rap, 2013), and there is no universally accepted definition of participation (Lansdown, 2009; Malone & Hartung, 2010). Consistent with the literature, young people in this study did not provide a consensus or one definition of participation. At the same time, eight young people did mention talking about how they could participate. However, because four young people also mentioned alternative ways to participate, this finding supports the view that participation for children and young people cannot be simply categorised as ‘the child’s voice’ (Lundy, 2007). Instead, the concept of participation is multifaceted and requires the recognition, among other things, that young people should have the opportunity to use different methods to communicate their views and participate in decision-making processes that affect their lives (Lundy, 2007).

Participation Facilitated by Adults

It also emerged in this study that several young people sometimes saw their participation in their YJ FGC as being controlled by adults and as being tokenistic. When discussing young people’s perceptions of their participation in their conference, several young people were uncertain whether they fully participated. Nine young people described having their participation hindered by adults in the conference, particularly YJ personnel. Grace and Nikau, for example, talked about their participation as what can be described as tokenistic and being actively silenced by adults:

It's unfair, to be honest. It's like the meeting is about us, but we [young people] don't really get a say. We probably feel like we [young people] have to prove ourselves to them. They [adults] should have a group conversation, instead of amongst themselves. (Grace)

Yep, by sort of ignoring us, me. (Nikau)

This finding is consistent with several previous studies that report that some young people did not feel they fully participated in their conference (Maxwell & Morris, 1993; Maxwell et al., 2004; OCC, 2017b; Smithson et al., 2020). Previous studies also indicate that some young people have felt ignored by adults or left out of conversations and decision-making processes in YJ settings (Maxwell & Morris, 1993; Maxwell et al., 2004; OCC, 2017b; Smithson et al., 2020).

The OCC (2017b) and Lansdown (2011) wrote that young people's participation rights are often ignored or not fully realised in YJ practices and legislation. In the New Zealand context, several possible explanations exist for this finding. For example, prior to 2017, the governing legislation for the YJ system did not place an explicit legal duty on YJ personnel to ensure that young people were encouraged to, or given the opportunity to be heard in YJ processes. It is possible that when the young people in this study had their YJ FGCs, the legislative requirement that YJ personnel ensure young people are encouraged and given the opportunity to be listened to in YJ proceedings was new legislation, and practice. Mayall (2000, p. 252) reminds us that structures (such as legislation) in which young people access their participation rights are also "rooted in past events, interactions and beliefs". Given that, prior to 2017, there was no explicit legal duty on YJ personnel to encourage or seek young people's participation in their YJ FGC, the hindering of some young people's experiences of their participation rights could be a case of 'old habits [or old attitudes] die hard'.

Additionally, in the New Zealand context, research has shown that prior to 2017, there was no specific guidance on how YJ personnel could facilitate and assist young people to realise their participation rights (OCC, 2017b). In November 2017, Oranga Tamariki introduced Oranga Tamariki practice standards as the benchmark for guidance for YJ personnel, employed by Oranga Tamariki, who interact with children and young people. While this guidance is freely available via Oranga Tamariki's website, from this study it can be seen that in practice there are

variations and barriers to ensuring young people's participation in the YJ FGC process. It could be stated that the inconsistencies in practice, even with practice standards, could also be a likely explanation for some young people not fully experiencing their participation rights in this setting.

Article 12: A Good Idea

Another key finding of this study is that all except one young person strongly agreed that Article 12 was a good idea. They agreed with the idea that young people should be part of the conversations during their YJ FGC and should be heard and have their views taken seriously. Amiria pointed out that for conferences to work, young people need to be included in the conversations about their offending and reparations. This finding suggests that, at least in this study, young people see participation, under Article 12 as an act of reciprocity.

This finding is consistent with the 'influence' section of Lundy's (2007) model of participation. Lundy (2007) explains that it is not enough for adults to listen to children and young people; they must also take what children say seriously. This finding is also consistent with the idea of young people's agency. The concept of agency recognises that young people can shape and contribute to decision-making processes through participation (Freeman, 2007; James & James, 2012). However, it also recognises that the ability to do this can be affected by adults who have an integral role in providing opportunities for young people to participate and exercise their agency (Mayall, 2000; Woodhead, 2009).

Lynch (2016) explains that the YJ FGC was created as a decision-making process that takes the responsibility of deciding the best course of action in response to young people's offending to *young people* and other conference attendees. It seems that for Article 12 and the intentions of the YJ FGC to be effective in practice, a process of reciprocity needs to happen where young people have the opportunity to share the responsibility of decision-making and, in turn, that adults take the time to listen to young people.

Article 13: A Good Idea That Faces Barriers

The last key finding to address the second research question was that all young people in this study thought Article 13 was a good idea. All young people liked the idea of young people being informed about what would happen at their conference before they had their conference. However, as previously indicated in the first key finding, nine young people talked about having no experience with this. Studies by Campbell et al. (2005), Maxwell and Kingi (2001) and Trimboli (2000) have shown that when young people are informed and prepared by YJ personnel for their YJ FGC, they are more likely to report greater participation and satisfaction with their conference experience. Nine young people in this study did not experience pre-conference preparation. This could explain why some young people reported less participation and often talked negatively about their conferencing experience(s).

How Often Do Young People Feel Able to Participate?

The third research question of this study is “[t]o what extent do young people feel able to participate in YJ FGC?” From the interviews with young people, three pervasive themes emerged.

People and Physical Barriers

The current study found that all young people directly talked about or implied that people and physical barriers, at times, hindered their ability to participate meaningfully in their YJ FGC. For example, when discussing if young people got to say everything they wanted and if anyone stopped them from talking during their conference, six young people talked about what can be described as people and physical barriers hindering their ability to say everything they wanted to say. People included YJ personnel and whānau/family members. The physical barriers included the setting of the conference.

For example, Rangi and Maverick talked about the YAO (police) and their presence in the conference setting as a hindrance to being able to say everything they wanted. Although Maverick mentioned talking a lot during his conference, he mentioned that when talking to the

YAO he would withhold information because what he had to say could get him in trouble with the YAO. In the literature, Spyrou (2016) refers to young people withholding their views as wavering silence. That is, young people waver back and forth between sharing and limiting what they say when they are unsure about discussing controversial or emotional content with others.

Maverick and Malakai (in another part of their interviews) also referred to power imbalances between young people and the YAO that often led to the YAO determining who and what would be listened to. Interestingly, several YJ personnel, who took part in this study, also mentioned power imbalances, and provided examples of YAOs running roughshod over the views of young people, whānau/family, and other YJ personnel.

This finding supports the view in the literature on privileged silences in which an individual, in this case, a police officer, can ignore another's view (young person) because they have a position of privilege (being a police officer) in society (Mazzei, 2003). This finding is also consistent with the view that positions of privilege also include power imbalances (Hanna, 2022; Pahmp, 2021). Hooper (2013) wrote that power imbalances are inherent in YJ FGC settings. Wyness (2015) explains that in child/young person-adult relationships, there can be profound power imbalances in favour of adults. The adult-child/young person relationship positions adults as powerful and children and young people as powerless (Wyness, 2015). It seems that in the YJ FGC setting, some adults may hold positions of privilege and power that enable them to hinder young people from being able to express their views fully.

Smithson et al. (2020), The Commission for Children and Young People (2021) and Hodgson (2020) confirm that YJ personnel, who can be said to hold positions of privilege and power can hinder young people's participation in their conference. For example, some YJ personnel do not give young people the opportunity to share their views (Hodgson, 2020), or when young people are given the opportunity to share their views, adults can, at times, ignore and do not listen to their views (Hodgson, 2020; The Commission for Children and Young People, 2021, Smithson et al., 2020).

Hart and Thompson (2009) explain that the idea of participation, in which adults have to facilitate, include, and listen to young people and take what they say seriously, has struggled for recognition across societies and cultures. Viewing young people as capable of asserting their own views can be perceived as allowing a young person's opinion to override adults' and whānau/family obligations to determine what is best for the young person (Tisdall et al., 2004). In this study, however, when young people discussed adults stopping them from talking during their YJ FGC, five young people inferred that adults stopped them from talking to protect or support young people in their conference discussions. For example, Rangi talked about his dad stopping him from talking when he knew Rangi was angry or could incriminate himself. It was implied that if Rangi talked, it could be contrary to his best interest.

The UN Committee on the Rights of the Child (2009) recommends that 'wherever possible' young people should be heard directly. However, in circumstances where expressing a view could be contrary to the young person's best interests, adults also have a duty and responsibility to guide young people in exercising that right (UN Committee on the Rights of the Child, 2009). It is probable that parents, like Rangi's dad, intuitively understand this and may protect their young person's best interests over their right to express their views.

Adults as Support

Another key finding of this study is that all young people saw support from adults as integral to their ability to participate fully in their YJ FGC. Young people, in this study, defined support as people being physically present and who can provide comfort and aid to young people when needed. Young people also provided examples of familiar people, such as whānau/family, youth advocates and YJ social workers, as their source of support during their conference.

When describing why support was important to young people, six young people in this study explained that supportive people helped them feel comfortable and able to talk and share their views. Four young people also explained that when they felt they could not express their views, supportive people, such as whānau/family, were helpful because they could step in and advocate for the young person. This finding is consistent with Lansdown (2011), who wrote that young people who can form a view must also have the opportunity to decide how that view will be

shared. As mentioned before, Article 12 (2) of the UNCRC states that young people can express their views in a YJ setting directly (by themselves) (Lundy et al., 2019) or, when young people feel unable to express their view, through a representative such as a young person's parent(s) or lawyer (youth advocate) (UN Committee on the Rights of the Child, 2009). It seems that young people in this study intuitively recognise that adults can help young people to express their views or can speak for young people (UN Committee on the Rights of the Child, 2009).

Cleland and Quince (2014) explain that in Māori culture, young people are viewed as an integral part of the whānau/family and community, and their participation is viewed as a collective idea and responsibility rather than an individual one. It is possible that young people in this study, seven of whom identify as Māori, recognise that supportive people, such as whānau/family, also play an integral role in their ability to realise their participation rights in this setting fully.

The Conference Plan and Young People's Participation

The last key finding to address the third research question is that all the young people in this study identified the creation of their plan as the part of the conference in which they got to have their say and their views taken seriously. This finding is consistent with a previous Australian study by Trimboli (2000), who found that 89.2% of young people felt that their views had played the most part in deciding the outcome of their plan. The literature on the social construction of childhood and agency, conveys that young people play an important role in helping co-construct the world around them (Morrow, 2011). To state that young people have agency is to acknowledge that they are competent and have the capacity to act and understand meanings they create in their own lives (James & Prout, 1997). Adults enabling young people's agency in creating the young person's plan acknowledges young people's agency as an important part of the YJ FGC decision-making processes.

However, three young people in this study also stated that their participation during the creation of their plan was limited or that adults decided the outcome of their plan. This finding is consistent with those of a previous South African study by Tshem (2009), who found that some young people participants in their study (70%) had adults decide the outcome of their plan without the young person's input. In an American study, Merkel-Holguin et al. (2019) found

that when young people are restricted in sharing their views or given limited options for outcomes for their group conference plans, this could affect their feelings about being able to fully express themselves in their conference.

Parkinson (2007) and Trivasse (2017) explain that young people's participation in creating their plans is integral to young people understanding the consequences of their offending. They also explain that young people's participation is crucial to the young person complying with the plan and reducing reoffending. It seems that if young people's agency is not enabled or young people are excluded or limited in their participation and ability to express their views in this decision-making process, they may be limited from fully appreciating or understanding the consequences of their offending.

Key Findings: Youth Justice Personnel

The fourth research question of this study is, "[w]hat are the perceptions of key YJ personnel in respect of young people's participatory rights?" From the interviews with YJ personnel, five pervasive themes emerged.

Youth Justice Personnel's Views of Young People's Participation

The current study found that YJ personnel have mixed perceptions about what they think young people's participation looks like in the YJ FGC setting. Like the responses provided by young people in this study, four YJ personnel described young people's participation as an action, such as being present or contributing to their conference through speaking. Lily, a youth advocate, went a step further and explained that another important part of young people's participation is young people understanding the process and any information they are given. She placed the responsibility for providing understanding on adults. She explained that adults should give young people information about the YJ FGC process in a way that young people can understand. Lily may hold this view because as a youth advocate, part of her job is to ensure young people have an adequate and informed understanding of, for example, legal jargon and the YJ FGC processes (Cleland, 2012; Morris et al., 1997).

On the other hand, four YJ personnel perceived young people's participation in the YJ FGC to be silenced, restricted or prescribed and non-existent. Scott, a YJ social worker, said that young people's participation should be an active role. However, he explained that the YJ FGC setup, and the number of people present, can hinder young people actively participating. Scott explained that too many people in the room could cause young people to shut down. Similarly, Anahera, Julie and Ana alluded to young people's participation being restricted by the number of people in the room.

Lundy's (2007) model of participation says that the audience a young person has is integral to ensuring young people's participation. The audience must be accountable and willing to listen to young people. According to Lundy's (2007) model of participation, young people also need space in which adults encourage young people to share their views. It is probable that if the audience and space are not conducive to young people feeling comfortable, their meaningful participation and sharing of their views could be limited. To date, no research speaks to the barriers of too many people in the YJ FGC setting, at least in the New Zealand context.

Questions remain about how this affects young people's participation and what can be done to alleviate this concern for young people.

Lastly, Anahera and Julie, both YJ social workers, described young people's participation in the YJ FGC as a tick-box process, their participation is already decided for them. This finding seems to support the views shared by all young people in this study that their participation, at times, was controlled by adults or felt tokenistic. It seems possible that if young people's participation is prescribed, controlled, or decided for them, this denies them the full realisation of their participation rights. It can also deny young people the opportunity to choose whether to participate and share their views in their conference, which is also an important part of their participation (Lundy, 2007).

Young People's Rights to Participation and Protection: A Competing Idea

Another key finding that emerged from the interviews with YJ personnel is that the majority of YJ personnel see young people's rights to participation in Article 12, at times, competing with their rights to protection Article 13. Four YJ personnel provided examples that suggest there are

parts of the YJ FGC, usually conversations, that young people should not participate in. Youth justice personnel, however, emphasised that the only time a young person should be excluded is when it is a matter of protecting their best interests as outlined in Article 3 of the UNCRC. The literature would suggest that the views YJ personnel hold are consistent with Eekelaar's (1992) view that giving young people rights to autonomy has limits; in some situations, such as the YJ FGC, some young people will require adults, such as YJ personnel, to intervene to ensure the young person's best interests are protected.

This was emphasised in another part of the interviews with YJ personnel when discussing the disadvantages of encouraging young people's participation in the conference setting. All YJ personnel again talked about the importance of, at times, protecting young people or their welfare over their participation rights. For example, Dahlia, a youth advocate, talked about encouraging young people to participate as disadvantageous when the young person's behaviour or opinions could jeopardise their conference:

Well, if they talk too openly, they might drop themselves in, they can't incriminate themselves as to other offences ... in a family group conference, theoretically. Though, I have seen police act on things young people have said in a conference, even though they are not meant to . . .

As previously stated, the UN Committee on the Rights of the Child (2009) has placed a duty and responsibility on adults to guide young people in the exercise of their participation, especially when expressing their views could be contrary to the young person's best interests. It could be suggested, however, that if YJ personnel apply the best interest principle to exclude young people from some conversations about their offending and do not consult young people about why, this constrains young people's agency. The literature shows that young people's agency is relational and can be constrained by interactions with adults (Wyness, 2015). Adults play an integral role in young people's realisation of their participation rights and the exercise of their agency; when adults decide what is and what is not 'best' for young people without consulting young people, they take away a young person's ability to be part of these conversations and to also have a voice about what is and what is not best for them.

Youth Justice Personnel's Views of Young People's Knowledge About Participation

It also emerged from this study that several YJ personnel perceive that young people do not know their participation rights and are usually not told about their rights to participate in the YJ FGC setting. Scott and Anahera, YJ social workers, discussed being unsure if young people know their participation rights. They explained that their rights to participate are not explicitly explained to them in the YJ FGC process. Similarly, Jack, a youth advocate, mentioned that he did not think that young people knew their participation rights. Jack stated that young people would only know their participation rights if they had previously experienced a YJ FGC. This implies that participation rights may be explained to young people in some YJ FGC settings.

As there are no studies that have directly asked young people if they are told about their rights or what they know about participation rights in the YJ FGC setting, and, there are no New Zealand studies that have asked YJ personnel what they think about young people's participation in the YJ FGC setting, support from previous studies for this finding cannot be provided.

The literature, however, explains that the New Zealand government has been slow to fully implement the UNCRC in New Zealand law and policy (Ludbrook, 2009). Equally, the New Zealand legislature has been slow to enable legislation for Article 12 to take full effect. It was only in 2017 that the governing legislation for young people in conflict with the law was amended to give more effect to Article 12. It is part of the government's obligation as a signatory to the UNCRC 1989 "to make the principles and provisions of the Convention widely known...to adults and children alike" (Article 42). It could be suggested that if domestic legislation and policy are slow to give effect to children's rights, and because YJ legislation such as the Oranga Tamariki Act 1989 was devoid of young people's participation rights for so long, society and equally young people cannot be expected to know what young people's participation rights are and the practical aspects of how they can be realised.

It is also possible that because, as previously discussed, there is a lack of policy/practice guidelines that address the 'how' and 'what' of young people's participation rights for YJ personnel, young people are less likely to be informed by YJ personnel of their participation

rights. It could be suggested that if young people are not informed about their participation rights, the intentions of the recent legislative changes to the Oranga Tamariki Act 1989 concerning their participation are not being met.

Article 12: A Must but Difficult to Enable

Another key finding of this study was that all YJ personnel agreed with Article 12 and that young people should be included in the decisions made about them in the conference setting. However, several YJ personnel also discussed difficulties implementing Article 12. All YJ personnel mentioned, at least one of these examples, young people, adults, and processes as barriers to young people expressing their views and having those views listened to. Lily (a youth advocate) and Scott (a YJ social worker), for example, also talked about adults as responsible for enabling this right for young people, but also how difficult it can be to get adults to facilitate young people to exercise this right in the conference setting. Inherent in Article 12 are adult's obligations to consider young people's views and to facilitate this right to be fully realised (Lansdown, 2011; Lundy et al., 2019).

Lily shared similar sentiments to those previously mentioned, she explained that the number of people/strangers present in the conference can make it difficult, at times, to facilitate young people to exercise this right. Lily said that it is the role of everyone in the conference to ensure young people share their views and have a voice. However, Lily explained that it can be difficult when there are too many people, particularly strangers, to make this happen at the conference. She implied that young people would not share their views with people they did not know. This finding is supported by Metzger et al. (2018), who found that some young people would not communicate in YJ settings, such as the YJ FGC, when they felt unsafe or did not trust the adults.

On the other hand, Scott described the discrepancy in YJ coordinators practice of ensuring young people's participation as making it difficult, at times, to facilitate this right for young people. Youth Justice coordinators are gatekeepers and facilitators of young people's participation in the YJ FGC setting (Maxwell et al., 2004; OCC, 2017b). However, as previously mentioned, the reoccurring lack of funding, under-resourcing, and a lack of guidance

on facilitating young people's participation for YJ coordinators may be part of why there are discrepancies in facilitating and enabling young people's rights to participate in this setting.

An earlier New Zealand study by Slater (2015) indicates that there can also be other issues in the YJ FGC setting that hinder YJ personnel, particularly YJ coordinators, from facilitating and enabling young people to participate. For example, Slater (2015) described pejorative language and inaccuracies in police Summary of Facts, as often offending young people and their whānau/family. Slater (2015) explained that this could adversely affect the YJ coordinator's ability to build rapport with young people and encourage participation.

On the other hand, Julie and Jay talked about young people's lack of confidence as a barrier to facilitating, and young people exercising, this right. Similarly, Maxwell and Morris (1993) found that some young people did not participate in decision-making processes in the YJ FGC when they felt shame or embarrassment. This finding supports the idea that even with effective models of participation, legislative reform, and processes in place to enable young people to participate, young people can still struggle to have their rights to participation met in YJ processes (Carswell et al., 2013, Kilkelly, 2008b).

In another part of the interviews, all YJ personnel offered examples of how they can enable young people to exercise their participation rights. They talked about communicating and interacting with young people as an important tool for facilitating their participation in their conference setting. Five YJ personnel talked about asking young people questions to encourage young people's understanding and participation. Other YJ personnel talked about the importance of building rapport with young people pre-conference to facilitate young people's participation in the conference.

It could be suggested that the views of YJ personnel in this study have of Article 12 mostly support and conform to the principles underlining Article 12. All of the YJ personnel agreed that young people should be included in the decisions about them in the conference setting, and they all suggested ideas that implied they do and could facilitate, and enable this right for young people. However, it could also be suggested that many barriers can limit YJ personnel from always facilitating and enabling this right for young people.

Article 13: A Good Idea but An Irregular Occurrence

The last key finding to address the fourth research question is that all YJ personnel, at least in this study, agreed that young people should be able to share information in the YJ FGC in any way they feel comfortable, as long as it does not offend another person. However, when discussing the application of Article 13, three YJ personnel talked about young people sharing information as something rare. For example, Dahlia (a youth advocate), Scott and Julie (YJ social workers) mentioned that it is rare to see a young person share their views. Scott, for example, explained that this sometimes does not happen because young people shut down, or when they share their views, they are not listened to. Anahera (a YJ social worker), on the other hand, talked about YJ personnel having different views on how young people should share information. She explained that these differing views can act a barrier to young people sharing. The literature shows that YJ personnel can contribute to helping young people form and express their views (Rap, 2013). However, as indicated by young people in this study, they need to feel comfortable in the YJ FGC setting to be able to do so/express their opinions. It could be suggested that when YJ personnel hold different points of view from each other, this could affect young people's ability to share their views in any way they feel comfortable. The literature shows that when young people can express themselves in YJ processes, their views become a powerful force for fulfilling their rights and also for improvements and reform in YJ systems around the world (UN Committee on the Rights of the Child, 2007).

Key Findings: The Youth Justice Family Group Conference Process - Supports and Hindrances

The fifth research question of this study is, “[i]n what ways do YJ FGC processes support and hinder young people's participatory rights?” From the interviews with young people and YJ personnel, two key findings and one model emerged to answer this question and are presented below.

Complex, Technical and Confusing Language as Barriers to Young People's Participation

Another key finding shared between YJ personnel and young people is that the language used by YJ personnel in the YJ FGC process can significantly hinder young people's ability to understand and participate in their conferences. Five YJ personnel talked about complex/technical language as words young people cannot recognise or understand. Julie, a YJ personnel participant, pointed out that, at times, even YJ personnel can struggle to understand the technical language used by other YJ personnel.

Similarly, at least in this cohort, all young people found it hard to understand the 'fancy'/complex language YJ personnel used when talking to or about young people during their conference. For example, Nikau, Grace and David talked about not understanding what adults meant when they used words that were hard to understand or words that made things sound worse than they were. This finding supports the claim that young people, in YJ systems, can have difficulty understanding and comprehending communication when the language used by adults is complex (Metzger et al., 2018). This finding is similar to those observed in earlier studies by Metzger et al. (2018) and Riley and Hayes (2018). Their studies found that the majority of the young people that they conducted the research with had difficulty understanding complex language that was used by YJ personnel.

Other studies show that young people involved in YJ systems worldwide tend to have communication difficulties, for example, difficulty interpreting and understanding verbal and non-verbal communication (Bryan et al., 2007; Lount et al., 2018; Sowerbutts et al., 2021). However, how YJ systems and processes, like the YJ FGC, are designed, young people are still expected to listen, understand, and respond to all communication (Lount et al., 2018; Snow & Sanger, 2011; Sowerbutts et al., 2021). Becroft (2014) explains that young people cannot meaningfully participate in conversations around their offending when they do not understand what is being said or asked of them. This finding raises questions about what words and phrases young people find challenging to understand. Also, how YJ personnel can make technical/complex language accessible for young people to understand. It seems reasonable to

suggest that by using technical/complex language, YJ personnel can make the YJ FGC conversations difficult for young people to participate in.

The UN Committee on the Rights of the Child (2009) stressed that proceedings like the YJ FGC must be accessible to young people as part of fully realising their rights. Part of making proceedings accessible is adults using child-friendly language (UN Committee on the Rights of the Child, 2009), making it possible for young people to understand and participate more effectively in their conference. The use of technical/complex language in the YJ FGC setting may be a barrier to young people's full realisation of their participation rights.

Silence in the Process: The Children and Young Person Silencing Cyclone

The last key finding to address question five of this study is that throughout the interviews, all young people and YJ personnel talked about or implied that the concept of silence is pervasive and, at times, hinders young people from expressing their views and participating in their YJ FGC. Silence can be seen throughout the key findings already discussed. For example, the use of technical language by YJ personnel and young people not being listened to or ignored by adults in the conference setting are some examples of silence experienced by young people in this study.

From the findings of this study, it became clear that young people's experiences of participation in the YJ FGC setting cannot be fully understood without looking at silence. As Chapter Five explains, silence is inherent in the social, cultural, political, and legal structures that make up young people's lives. Silence, from the literature I have drawn upon, presents itself as something that can be chosen and not chosen (see Chapter Five). Very little research, however, has explored silence as part of fully understanding young people's voices and experiences of participation (Hanna, 2021; Lewis, 2010; Spyrou, 2016).

From the findings with young people and YJ personnel and employing/drawing upon the literature on silence, I have created the Children and Young Person Silencing Cyclone (CYPSC). This model emphasises that silence, which, in my view, exists both externally and internally in the YJ FGC process, can affect young people's experiences of sharing their views and participation in this setting. It is essential to acknowledge that this model was created using

the views of a specific cohort (young people and YJ personnel in this study) within a specific setting (YJ FGC process in New Zealand) and at a specific time in history (during 2019–2020). However, this model could be adapted and used in other research settings to understand young people's participation further.

Figure 3

The Children and Young Person’s Silencing Cyclone Model

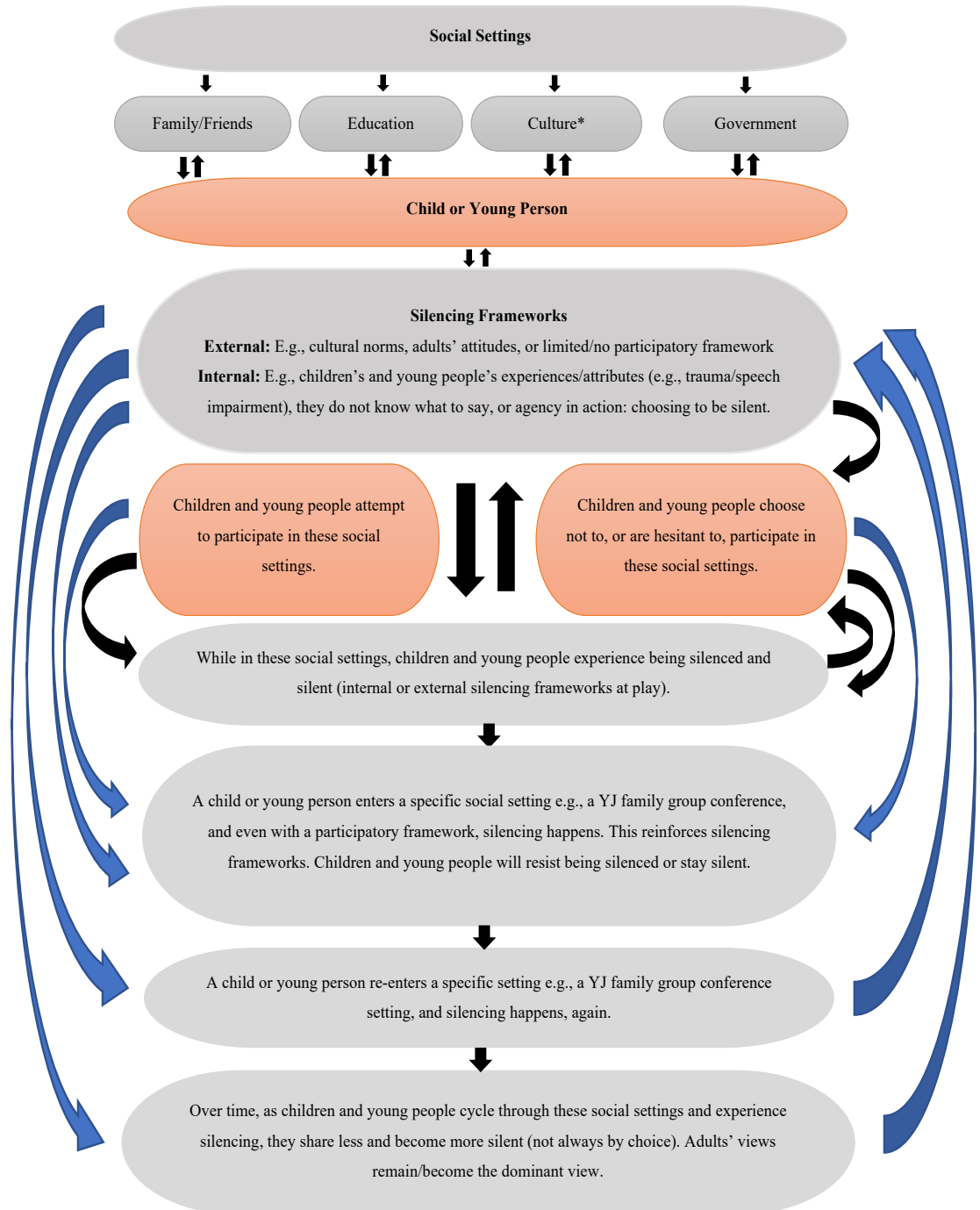


Figure 3 draws from both the findings of this study and the literature on silence. The model shows that children and young people's experiences of silencing are not centralised around only moral or controversial issues, as can be seen in Noelle-Neumann's SST (Noelle-Neumann, 1974). This model is not devoid of acknowledging other factors for silencing, such as cultural factors or personal attributes (for example, speech impairment). It does not emphasise the fear of social isolation as the only cause for silencing, and it does not see silence as purely a negative concept—something unintentional (conditioned), an act of enforced disempowerment and control (to be silenced) (Hanna, 2021; 2022; Spyrou, 2016).

This model acknowledges silencing as a cyclical phenomenon inherent in social, cultural, political, and legal structures that make up children's and young people's lives. The model reflects that children and young people exist within interrelated, adult-centric social structures (Mayall, 2000; Shier, 2012; Wyness, 2015). For this model, social structures have been narrowed down to family and friends (social/community), education (social), culture (cultural/religious) and government (political/legal and economic). These themes were drawn from participants' shared experiences and the literature on childhood studies and youth justice. Within these structures exist participatory and silencing frameworks.

The participatory frameworks (for example, Article 12 enshrined into the Oranga Tamariki Act 1989) are designed to enable and encourage participation, while the silencing frameworks (for example, social attitudes, such as the child should be seen and not heard) reinforce and create silence that can hinder young people's participation. These frameworks are not isolated to one structure; they overlap with other structures, for example, cultural beliefs, values, other attitudes, practices, policies, laws, past experiences, and personal attributes. Within these structures, silencing is viewed as a two-way process—children and young people can be silent and silenced (see Hanna, 2022).

Figure 3 places silence in the context of children's and young people's participation (sharing their views on any matter that affects their lives). It shows that children are born into a world with silencing and participatory frameworks. From a very young age, children, depending on context, experience agency and silencing and act both within and across social structures. The model also

shows that the more times a child or young person experiences silencing, the less they will share their views, and the more likely they will conform or be silent. For example, in this study, Maverick mentioned repeatedly being silenced throughout his YJ FGC. He explained that over time he stopped sharing what he wanted. This maintains the cycle of adults' power and authority over children and young people and adults' views as dominant. Hence, although participatory frameworks may be integrated into a process (for example, the YJ FGC through legislation) and designed to encourage children and young people to participate, existing silencing frameworks and repeated experiences of these frameworks may mean that silencing still happens.

The CYPSC views silence as cyclical and shows it overlaps with the social structures that make up children's and young people's lives. Silence is not just something that *happened* to children and young people; it is *happening* to children and young people. I argue that although children and young people should be seen as agentic beings with a voice and should be provided with opportunities to participate and to choose not to participate (be silent), children and young people exist in an adult-centric world, where silence is powerful and actively used by adults and children to constrain, shape and control children's and young people's lives (Pamph, 2021).

For young people in the YJ FGC setting, the model suggests that some young people enter the YJ FGC already silenced and can also be silenced throughout the process. In this model, to be silenced is the intentional/unintentional and indirect act of taking away agency or disempowering a child, young person, or adult. For example, a cultural practice of adults speaking for children may take away a child's agency, or a child or young person may have a cognitive or speech impairment that restricts their ability to express views. It could be pervasive attitudes such as "*if you have nothing nice to say, then do not say anything at all*" or more apparent acts such as verbally silencing children and young people by saying ("*shut up*"), or by denying a young person their agency for example not giving them a chance to answer a question for themselves.

Some young people may gravitate toward choosing to be silent, especially those who have repeated negative experiences of Oranga Tamariki or with YJ personnel. In this model, to be silent is an act of agency. It can be expressed in many ways such as, but not limited to, refusing

to answer a question, pulling faces, body language, and how the question is responded to; maybe a child or young person withholds information. This model could be part of what helps to explain why participatory frameworks for children and young people, on paper, do not always work in practice. Silence should be considered interrelated with children's and young people's participation.

Key Findings: Youth Justice Personnel Supporting and Hindering Young People's Participation

The sixth research question of this study is, “[i]n what ways do key YJ personnel support and hinder young people's participatory rights?” From the interviews with YJ personnel, three pervasive themes emerged.

Communication and Interaction with Young People

The first key finding that emerged related to research question six of this study was that all YJ personnel saw the idea of talking to young people and ensuring that young people understood what was happening by asking them questions as the best way to support and facilitate young people's participation in the YJ FGC. For example, Julie mentioned that she would ask young people questions like, “do you understand what is happening?” and “do you agree with that?” to include young people while also checking that they understood what was being said or asked of them. While Anahera talked about asking young people questions before the conference began to build rapport with young people as a way facilitate their participation later:

Before I go in, I would . . . really concentrate on them [young people], everyone else would be talking about their stuff, and I would be like, “hey, what you doing? I haven't seen you in a long time, just remember when you get in there... shake hands, sit up straight, answer the questions” . . . I like to be upfront with them, and they do, they sit up, and I say, “If there is anything you need to do, I can explain it to you”.

This finding is consistent with a previous study by Slater (2009, 2015), who found that some YJ personnel, namely YJ coordinators, thought it was important to talk to young people on their level and to ask young people questions as ways to include young people in their YJ FGC. Indeed, young people in this study, at least, support this idea. Kai, for example, mentioned that

he would be able to share his view and feel more comfortable if YJ personnel spoke to him like a friend:

Talk to us like you're a friend. That's like my mentor. I can talk to him, and I feel comfortable.

Peterson-Badali and Broeking (2009) explain that what YJ personnel think about young people's participation can shape how they include young people in YJ processes. Since the 2017 legislative changes to young people's participation in the Oranga Tamariki Act 1989, there has been no research in New Zealand that has asked any YJ personnel their perceptions of how they facilitate and support young people to take part in their YJ FGC, or what YJ personnel think of young people's participation in this setting. This finding provides new information on what some YJ personnel think is the best way to support and facilitate young people's participation in this setting. It is probable that when young people are spoken to in a way they understand and are included in their YJ FGC by YJ personnel, they are more likely to feel part of their conference process and supported to share their views and take part.

Preparation for the Youth Justice Family Group Conference

Another key finding of this current study is that a lack of pre-conference preparation and preparation of young people for the YJ FGC by YJ personnel can hinder them from taking part in their YJ FGC. As previously discussed, young people talked about a lack of pre-conference preparation as hindering their participation in their conference. However, young people and YJ personnel also talked about the "messy" side of the conference and disorganised and unprepared YJ personnel as also hindering young people's participation in this setting. For example, Scott explained that when conferences are not prepared for by YJ personnel and are disorganised, they can run for a long time. He implied that to hurry along the conferences, some young people had decisions made for them by YJ personnel. Scott mentioned that these decisions did not always fit the young person's views and the young person's views were not acted upon. Similarly, Julie mentioned that she would like to see more preparation for the conferences so that YJ personnel can work with the young person to create a plan that would genuinely work. She implied that without better preparation, the plans created do not always work for young people.

During another part of their interviews, all YJ personnel in this study mentioned administrative pressures (such as overwhelming amounts of paperwork) affecting their ability to do their job properly. Two YJ personnel also talked about the under-resourcing of YJ personnel employed by Oranga Tamariki (for example, YJ coordinators and YJ social workers), affecting their abilities to do their jobs effectively. Youth justice coordinators who have a central role in organising, convening, managing and mediating the conference process and participants (Suzuki & Wood, 2017) were often mentioned as not preparing young people for their conferences. This view is consistent with the findings of the OCC (2017b), which showed that YJ coordinators often did not have any pre-conference preparation with young people.

The literature in Chapter Two shows numerous examples of successive governments under-resourcing and underfunding Oranga Tamariki and its predecessor to effectively enable their employees to do their jobs in care and protection and YJ (MSD, 2016; Lynch, 2016). It seems that the lack of preparation by YJ personnel could be linked to administrative, resourcing, and systemic issues within the department that employs them to do their job. It could be stated that if YJ personnel, like YJ coordinators, who have a central role in the process, cannot do their jobs effectively because of constraints outside of their control, young people might miss out on parts of the YJ FGC process, such as preparation, which is also important to facilitate and support their participation during their conference.

The Number of Youth Justice Personnel in the Conference Setting

Another key finding of this study is that when YJ personnel were asked to describe the YJ FGC setup and setting, several YJ personnel talked about the conference setup as top-heavy with YJ personnel. Scott and Anahera, for example, talked about the setup being intimidating and scary for young people and their whānau/family because of the number of YJ personnel that can be in the room. Scott added that if he had to enter a setting with many YJ personnel, he would probably “shut down”.

A report by MSD (2016) found that the young people and whānau/family they surveyed who had experienced a YJ FGC felt alienated from the process and perceived the YJ FGC to be overly adversarial. All young people in this study also talked about or provided examples that

inferred the YJ FGC setup/setting can be intimidating and scary. The UN Committee on the Rights of the Child (2009) stressed that young people cannot be listened to properly in hostile, insensitive, or intimidating environments. It could be suggested that the pre-dominance of YJ personnel may make the process intimidating, feel more adversarial than restorative, and may not be conducive to young people's participation.

Youth Aid Officers and the Summary of Facts

The last key finding to address question six of this study is that four YJ personnel talked about the presence of YAOs (the police) and the reading of the Summary of Facts as hindering young people's participation rights in the YJ FGC. As mentioned in Chapter Three, YAOs are police who are trained to work specifically with young people in conflict with the law (Cleland & Quince, 2014; YouthLaw, 2020). However, as previously discussed, three young people talked about their presence in the conference setting as stopping them from saying everything they wanted to say. Equally, four YJ personnel in this study talked about or provided examples of YAOs and their reading of the Summary of Facts as hindering young people's participation. For example, Lily and Janet (a youth advocate) talked about the Summary of Facts as using language that is not conducive to young people's or any person's understanding. In another part of her interview, Lily explained that she had seen many young people "get their backs up" when YAOs read the Summary of Facts.

Scott, Jack and Jay (a YJ social worker) talked about the problematic nature of YAOs and how their presence can hinder young people from saying everything they want to say. Scott and Jack explained that it was not uncommon for YAOs to attend YJ FGCs with a prescribed approach of what will happen and the conference's outcome. Scott and Jack further explained that YAOs rarely move from their prescribed positions. Umbreit and Armour (2011) explain that the New Zealand YJ FGC model is designed to be non-scripted and focuses on consensus group decision-making. It could be suggested that if YAOs use a prescribed approach, they are not following the intention of the YJ FGC model.

Maxwell and Morris (2006) explain that the underlying intention of the YJ FGC provisions is to limit State powers in dealing with offending by empowering families (including young people)

and returning to them their autonomy and responsibilities within a legal framework to resolve their young person's offending. As YAOs are representatives of the State, it could be suggested that their presence and role in the YJ FGC may, at times, undermine the underlying intentions of the YJ FGC and may silence or hinder young people from expressing their views and taking part in their conferences.

To date, no research in New Zealand has been undertaken with YAOs to understand their perceptions of their role in the YJ FGC and their role in supporting and facilitating young people's participation. As such, questions remain about how they see young people's participation in this setting.

Key Findings: Legislative, Policy and Process Changes

The last research question of this study is, "[w]hat legislative, policy and process changes are required to further support or recognise young people's participatory rights?" The answers to these questions are drawn from the documentary analysis and interviews with all participants.

Change the Venue and the Setup

It emerged from the findings that five young people and five YJ personnel said they would change the venue and the setup of the YJ FGC to help young people and whānau/family feel more comfortable. Participants used words like "uncomfortable", "unpleasant", "intimidating", "restrictive", and "stressful" to describe what it was like having a YJ FGC at Oranga Tamariki offices. Three young people mentioned they would change the room's setup, as the current set up (see drawings) is intimidating and uncomfortable, and they would include kai as a way of welcoming and easing young people and whānau/family into the setting.

Two young people suggested examples of alternative places for holding YJ FGCs, for example, at YJ facilities external to Oranga Tamariki (for example, Zeal). Similarly, Jack a YJ personnel suggested alternative places, such as holding YJ FGCs on a marae or at the Salvation Army. However, Scott, a YJ social worker, mentioned that YJ FGCs are often not held external to Oranga Tamariki because of the cost of using alternative places.

The BIMs and Annual Departmental Reports for Oranga Tamariki referred to in Chapter Seven indicate that Oranga Tamariki has made very few practice or policy changes to the YJ family group conference process, even after significant legislative changes in 2017. It could be suggested that a future practice and policy change would be moving the YJ FGC to alternative locations, such as those suggested by participants in this study. This could help to ensure young people and their whānau/family feel more comfortable in this setting. As indicated by young people in this study, the more comfortable they feel in a YJ FGC setting, the more likely they are to share their views and participate in the process.

Provide More Support People for Young People to Participate

Another key finding of the current study is that majority of young people and YJ personnel suggested that more support, in the form of whānau/family and other people (such as mentors), is needed in the YJ FGC setting to facilitate and enable young people to participate. Jack, a youth advocate, mentioned that it is necessary to ensure the process is as it was designed to be—a group, consensus decision-making, young person, and whānau-centred model of justice (Cleland & Quince, 2014; Lynch, 2016; Maxwell & Morris, 2006). Five young people in this study also mentioned that it would be nice to have more whānau/family present and people who are on “their side” to support them, such as a mentor. Several young people also talked about wanting YJ personnel to talk and listen to them more to show support and encourage their participation.

The views held by young people and YJ personnel in this study are consistent with the view in the literature that whānau/family and the community play an important role in the YJ FGC, especially in helping young people to take responsibility for their crimes and to prevent future reoffending (Cleland & Quince, 2014; Henwood & Stratford, 2014). Their views are also consistent with Lundy (2007), who wrote that part of young people experiencing effective participation is having an audience that will listen to young people. It could be suggested that if young people have more support people at the YJ FGC, young people may be more likely to take part in their conference.

Resourcing and Funding the Implementation of the Oranga Tamariki Act 1989

From the documentary analysis and the interviews with all of the participants in this study, it is indicated that successive governments have struggled, at times, to put the intentions of the Oranga Tamariki Act 1989 into practice. The literature supports this view and indicates a history of cyclical tensions and ongoing issues with funding and resourcing Oranga Tamariki Act 1989 and Oranga Tamariki (see Mason & Department of Social Welfare, 1992; M. J. A. Brown, 2000; MSD, 2016).

The literature also shows that Oranga Tamariki and its predecessors have been heavily criticised for failing to meet the needs of children and young people in New Zealand (MSD, 2016). The BIMs reviewed in this study indicate that Oranga Tamariki is often disestablishing and restructuring itself (Oranga Tamariki, 2017, 2020b). For example, since 2017, Oranga Tamariki has emphasised that it is overhauling its operating model in response to ongoing issues with the agency and aligning itself with legislative reform (Oranga Tamariki, 2017, 2018, 2019, 2021b). If the department responsible for YJ responses is underfunded, under-resourced, and constantly in the process of reinvention, their staff, such as YJ coordinators and YJ social workers, cannot be expected to do their jobs effectively. It seems possible that young people's experiences of the processes it offers, such as the YJ FGC, could also be significantly hindered by these ongoing issues. Indeed, from the interviews with young people and YJ personnel, young people's experience of their YJ FGC and, in turn, their participation in this setting has, in some instances, already been affected. For example, nine young people mentioned that they did not experience pre-conference preparation and barely had any contact with their YJ social worker. The government needs to ensure that the work and practices that the Act requires, is adequately resourced and that Oranga Tamariki is funded and properly resourced to meet its obligations to children and young people.

Focusing on Children's Rights in Legislative, Policy and Practice Changes

Another key finding of this study is that the First and Second Readings of amendments to the Oranga Tamariki Act 1989 indicate that successive governments have paid little attention to children's rights over time. In 1993, New Zealand ratified the UNCRC. In doing so, it has a

legal obligation to bring its domestic laws and policies into line with that Convention. However, as shown in the First and Second Readings, very few members of Parliament have raised young people's participation rights or children's rights in discussions around amendments to the Oranga Tamariki Act 1989. Ludbrook (2009) explains that the New Zealand government has been slow to ensure the full implementation of the UNCRC in New Zealand law and policy. For example, it was only in 2017 that the New Zealand Parliament amended the Oranga Tamariki legislation to fully realise Article 12 in practice for children and young people in the YJ system. The UN Committee on the Rights of the Child, which monitors the progress States make in implementing the UNCRC in their laws, policy, and practice, have repeatedly raised children's rights concerns in their periodic reports to the New Zealand government (A. B. Smith, 2016), for example, on the over-representation of young Māori and Pasifika in the criminal justice system. This is a historical, as emphasised in the Puaote-Ata-Tu (Daybreak) report in 1988, and an ongoing issue for the New Zealand government to address. The New Zealand government needs to work on addressing and finding solutions for the repeated concerns identified by the UN Committee on the Rights of the Child. This would ensure that they make progress on these areas of concern relating to children's rights in New Zealand.

Focusing on Young People's Voice and Participation in the Youth Justice System

The last key finding to address the last research question is that the BIMs and Annual Departmental Reports for Oranga Tamariki, between 2017 and 2020, indicate that Oranga Tamariki is neglecting to focus on young people's participation in YJ settings. Throughout these documents, there is minimal discussion about specific changes Oranga Tamariki has made to YJ FGC policy and practices. This is supported by the findings of the First and Second Readings of the Oranga Tamariki Act and its amendments, also used in this study, that indicate, since 1989, successive governments and the department responsible for care and protection and YJ have focused on legislative, policy and practice changes for care and protection with minimal attention paid to YJ. For example, since 2017, Oranga Tamariki has partnered with VOYCE Whakarongo Mai to show it is committed to ensuring children and young people's voices (of their experiences of Oranga Tamariki) are listened to (Oranga Tamariki, 2017, 2018). However,

VOYCE Whakarongo Mai's work with Oranga Tamariki focuses on care and protection and does not include the voices and experiences of young people in the YJ sphere (Oranga Tamariki, 2017).

The current study and previous New Zealand studies mentioned throughout this discussion (for example, OCC, 2017b) have indicated that some young people in the YJ FGC setting do not fully experience their rights to participation. The BIMs and Annual Departmental Reports reviewed in this study do not indicate that any future processes are planned to check that young people in the YJ system have had their needs and rights to participation met. Oranga Tamariki needs to review its policy and processes around young people's participation in the YJ system. Otherwise, as history has shown, it runs the risk of the Act's intentions not playing out in practice.

Practical Implications

The current findings of this study show that young people's participation in the YJ FGC setting, although prescribed by the Oranga Tamariki Act 1989, is not always realised in practice. All young people and YJ personnel, at one point or another, indicated that young people's participation could be silenced or taken away. The findings also indicate that young people and YJ personnel are not always sure of what young people's rights to participate entail, and how this can be enabled and facilitated in practice. Indeed, the findings have evidenced discrepancies in the practice of YJ FGCs, particularly in ensuring every young person experiences pre-conference preparation, and that young people's participation, as outlined in the government legislation, is fully realised in this setting.

The New Zealand government is legally obligated as a signatory to the UNCRC (1989) to ensure that children's rights are widely known. More specifically, Oranga Tamariki, the government Ministry responsible for implementing the YJ FGC, is legally obligated to ensure that young people know about the YJ FGC process before they have their YJ FGC. Part of this preparation is informing young people about their participation. Oranga Tamariki needs to ensure it has a uniformly applied pre-conference process. Part of this process could be

proactively ensuring the dissemination of information to young people, before their YJ FGC, about their YJ FGC and participation in this setting.

As young people are the target groups of this process, Oranga Tamariki could provide young people with an information package with words, pictures and a digital recording or a link to an interactive website that is child-friendly. These documents/digital recordings and website should explain to young people and their whānau/family young people's rights to participation and what will happen during the conference. Also, this package should include information about what should not happen at their conference—for example, not being listened to, feeling ignored or not having pre-conference preparation and what young people and their whānau/family can do and whom they can turn to when this happens.

Also, as YJ personnel play a key role in facilitating young people's participation in their YJ FGC, Oranga Tamariki needs to ensure that all YJ personnel who take part in the YJ FGC have the skills and knowledge to be able to ensure young people's rights to participate can be fully realised. Oranga Tamariki should provide its staff and other YJ personnel who participate in the YJ FGCs (such as youth advocates) with more resources and training to help YJ personnel understand and facilitate changes necessary in their professional practice that aligns with the legislative changes for young people's participation. For example, given that communication barriers are a significant finding of this study, communication assistants could have a prominent and ongoing role in the YJ FGC process to help young people and YJ personnel communicate effectively. Youth justice personnel could be provided ongoing training on how to communicate with young people to facilitate young people to exercise their participation rights.

This study also highlighted silencing issues inherent to the YJ FGC. As seen in the CYPSC, young people and YJ personnel discussed or indicated that different types of silencing could occur during the YJ FGC that can hinder young people's participation in this process. Oranga Tamariki should review its policies, practices, and processes to identify what enables silencing. This could lead to creating and facilitating new policy and practice changes to prevent silencing that hinders young people's full participation in their YJ FGC.

Strengths and Limitations

The first strength of this study is that it is the first study of its kind in New Zealand to give young people and YJ personnel an opportunity to express and have a voice on their perceptions of young people's participation rights in the YJ family group conference setting since the legislative changes to young people's participation in the guiding legislation between 2017–2019.

Another strength of this study is that a silencing model has been produced drawing upon the perspectives of participants and the literature on silence used in this study. This model can be used to show how young people's participation can be affected by silence. Although this model was created within the New Zealand YJ FGC context and for young people in conflict with the law, this model can be amended to have broader application to young people's participation in other participatory settings. As this research has demonstrated, silence and participation should be looked at together to be able to fully realise young people's participation in this setting.

The last strength of this study is that it used a process evaluation methodology with two methods of qualitative inquiry: documentary analysis and face-to-face semi-structured interviews with young people and YJ personnel. This methodology allowed for collecting information from documents central to understanding the historical and ongoing legislative and policy sphere in which the YJ FGC exists and operates. It also allowed for the collection of information from participants' perceptions. The combination of these data sources has identified strengths and weaknesses in the YJ FGC process and provided recommendations for improving young people's participation in this setting.

The first limitation of this study is that the sample size is not representative of all young people and YJ personnel in New Zealand. For this study, 11 young people (three female and eight male participations) aged between 15 and 18 years who identified as either New Zealand Māori, Pasifika (Cook Island, Tongan or Niuean) or New Zealand European took part in this study. For YJ personnel, five youth advocates (four female and one male participant) and four YJ social workers (two female and two male participants) who identified as either New Zealand Māori,

New Zealand European, Samoan, or Indian also took part in this study. This study cannot claim that the shared views represent those of all young people and all YJ personnel. However, it indicates some significant shared concerns about young people's participation and the YJ FGC process in New Zealand.

Another limitation of this study is that the documents used in the documentary analysis were selective and cannot be said to represent all documents, particularly for Oranga Tamariki. While this study cannot claim that the information from the documents used represents all documents about Oranga Tamariki's YJ FGC process and future plans for young people's participation in this setting, the BIMS for 2017–2021 and the Annual Departmental Reports for the same period do indicate some barriers and challenges to Oranga Tamariki ensuring the full realisation of young people's participation rights in this setting.

Lastly, the recruitment of participants for this research proved to be incredibly challenging. Gatekeeping by Oranga Tamariki made it impossible to access YJ coordinators and incredibly difficult to access YJ social workers. As discussed in the methodology chapter, YJ social workers are also employees of Oranga Tamariki. As such, six YJ social workers who originally stated they would like to participate in my study took back their consent when they realised they could not participate as an employee of Oranga Tamariki. It was also difficult to access young people. I was able to recruit 11 young people for this study, I had set out to recruit 10 to 15 young people. It is possible, given the topic of the study, that some young people may have felt that they could not contribute or had nothing to contribute.

Recommendations for Future Research

For future research, this study could be expanded upon in several ways. Firstly, future research could expand on the CYPSC model by integrating research questions that directly ask participants about their experiences and perceptions of silencing in the YJ FGC setting and other domains, such as education. Secondly, future research could include a larger and more demographically diverse cohort of participants. Future research could also look to recruit participants from geographical locations outside of Auckland to include other urban and rural

areas of New Zealand. Thirdly, future research could include more YJ personnel perspectives, such as YJ coordinators' views and YAOs' views. Fourthly, future research could focus on young people's perspectives of how complex language used by YJ personnel affects their participation in their YJ FGC. Fifthly, this research focused on young people's perceptions of their participation in the YJ FGC setting; future research could focus on young people's perceptions of how or if the YJ FGC empowers and enhances their long-term well-being (for example, after their YJ FGC).

This study found a lack of department guidance regarding how YJ personnel in New Zealand can enable and facilitate young people's participation in the YJ FGC setting. Future research could investigate YJ personnel's views of what they know about young people's participation, their training, and how they enable and facilitate young people's participation in the YJ FGC setting and also how young people's perspectives could inform and influence change, design and reform (as per the Lundy 2007 model). Lastly, from the findings of this study, there is also scope for further evidence-based research that asks young people what they think is the best way to be included in designing training materials for adult practitioners, and that asks young people their views on designing child and youth-appropriate information and material that can be shared with other children and young people to help in the preparation phase of the YJ FGC.

Conclusion

. . . You're treated like you're mental when really you just want someone to listen. I just want you to not judge me, to help me. Just think "that is why you are doing this, and we can overcome it some way". They [adults] need to do this better. Just because it didn't happen to you doesn't mean it doesn't matter. Just because it doesn't apply to you doesn't mean it isn't a worry. (Aroha)

This study aimed to investigate young people's and YJ personnel's perceptions of young people's legal rights to participate in the YJ FGC setting in Aotearoa, New Zealand. This study utilised the seven research questions mentioned above to find that young people's and YJ personnel's perceptions of young people's rights to participate in the YJ FGC are complex, and young people's rights to participate in practice are not always realised. All young people in this study pointed out that, at one time or another, during their YJ FGC, their participation was non-

existent. The interviews with young people show that what was important to them was existing practices and processes that many did not experience or have fully realised, such as pre-conference preparation, being listened to by adults, having support people present in their YJ FGC, being able to understand what is being said about and to them and holding YJ FGCs anywhere but Oranga Tamariki.

Young people's views were supported by YJ personnel's perceptions. All YJ personnel in this study, throughout their interviews, talked about the lack of participation of young people in YJ FGC settings, young people, at times, being ignored or not listened to by adults in the conference setting, as well as some of the challenges they faced in facilitating young people to participate. Six YJ personnel also talked about the importance of holding the YJ FGC away from Oranga Tamariki offices and the importance of young people being able to understand what is being said about and to them in the conference setting having more support people present in their YJ FGC.

As is evident from the findings of the documentary analysis, significant historical and ongoing barriers surround the YJ FGC process and Oranga Tamariki. These include, but are not exhaustive of, under-funding and under-resourcing the Oranga Tamariki Act 1989 and Oranga Tamariki; the lack of government focus on children's participation rights in parliamentary debates of amendments to the Oranga Tamariki Act over time and the lack of focus and future policy or practice changes by Oranga Tamariki for young people's participation in the YJ FGC setting. Additionally, the documentary analysis findings also show that since 1989 successive New Zealand Governments have primarily ignored and, in turn, silenced children's rights and participation rights in parliamentary debates on amendments to the Oranga Tamariki Act 1989. Only recently, in 2017, have children's and young people's participation rights been enshrined in this piece of domestic legislation.

As aforementioned, the CYPSC model highlights silence as a pervasive construct in and around the YJ FGC setting and for young people's participation. I have suggested that young people's participation and silence go hand in hand. In light of the research findings my view is that, the construct of silence can be used to expand upon what is known about young people's

participation in the YJ FGC setting and to contribute to fully understanding children and young people's participation.

Lastly, even though the Oranga Tamariki Act 1989 now enshrines Article 12, this study indicates that there are new and persistent ongoing challenges to ensuring that all young people who have a YJ FGC, get to experience their rights in full. As recommended, the New Zealand government, as a signatory to the UNCRC 1989, and having implemented Oranga Tamariki, as the Ministry responsible for enacting the Oranga Tamariki Act 1989 and the well-being and empowerment of children and young people, must make every effort to abide by their obligations to uphold and inform everyone about children's rights. More specifically, Oranga Tamariki must fulfil its legal obligations to ensure that all young people who experience a YJ FGC have their rights to participate fully realised.

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Appendices

Appendix A: Information Sheet(s)

Information Sheet dated 23rd of July 2019: Young people aged 14 to 15

Kia ora



My name is Jasmin (you can call me Jazz). I am a student at Auckland's University of Technology, and I am studying youth justice family group conferences (YJFGC).

My Study



I am talking to 10 to 15 young people who are 14 to 17 years old and have taken part in a YJFGC. I want to find out from young people what it is like to take part in one. I am also talking to youth advocates, youth justice coordinators and youth justice social workers.

To take part in my study you will need to have:

- Taken part in a YJFGC in the past six months,
- Be comfortable talking about your experiences in English,
- Be happy to meet and do an interview at an AUT City Campus office or a private office in a real estate agency in West Auckland,
- Freely (voluntarily) choose to take part,
- Have a parent or guardian who is happy to give their consent for you to take part.



I want to hear about the times you took part in your YJFGC and about the times that you didn't.



Invitation

I invite you to take part in a face-to-face talk with me.



What I hear from you can help me to improve the YJFGC experience for young people in New Zealand.



You will be given a koha (gift) for taking part in this talk

How can you take part?



Please read or talk about this information sheet carefully with your parent(s) or guardian(s). If you are not sure about anything to do with the study, or you have any questions for me, you can talk to your parent(s) or guardian(s), or you can contact me, so I can answer any questions you have.



You **don't** have to take part in this study – you can say “no”! If you decide not to take part that's okay – nothing else will happen.



Just so you know, if I have too many people who want to take part in my study, I will have to pick people of different ethnicities, ages, sexes and genders so I can get any many different people as possible. If you don't get picked you will be thanked for your time.

What will happen in the interview?



You and your parent(s) or guardian will decide where the interview takes place – either in an office in central city Auckland (at AUT) or in an office in West Auckland



Before we start our talk, I will talk to you about what will happen, and I will ask you if you still want to take part in the talk with me. It is okay if you decide that you do not want to take part on the day of our talk. Also, if you have any cultural practices (like a karakia) you would like us to do before we start, we can do them together.



I will ask you some questions about your experiences of your YJFGC. I will not be asking you questions about your alleged offending or anyone else's offending.



I will write some notes about what you say during the interview and I will also record the interview, so I can write it up later, but only if that's okay with you.



You have two weeks to decide if you would like to take part in this study. Our talk will take about one and half hours of your time, and we can take a break during our talk whenever you want to.

Taking part is your choice



Taking part in this study is **your choice**, but you will need to ask your parent(s)/guardian(s) if they are okay with you taking part in this study. Please talk to your parent(s)/guardian(s) about this. You can also contact me, if you have any questions about me or the study.



If you choose to take part, you do not have to start or finish our talk, you can skip questions you do not want to answer, and you can stop the interview whenever you want without needing to give a reason why.

Support person



You are very welcome to bring a support person with you to our talk, but just remember they need to be over the age of 20.

Privacy



The only people who will know you did this talk are your support person, parent(s)/guardian(s), you and me. I will make sure that anything you say cannot identify you, you will be given a fake name for anything I write about from our talk.



If you say something during our talk that makes me worried for your safety or wellbeing, I may need to talk to people who can help you and make sure you are okay, but I will talk to you and your parent(s)/guardian(s) over the phone before I do this.



When we are talking it is important that you do not talk about any illegal behaviour you or another person have taken part in or want to take part in. If you do talk about this, I will have to talk to my supervisors, and if we decide we need to talk to people who can help you, we will talk to you and your parent(s)/guardian(s) over the phone before we do this.



Everything we talk about and I write down during our talk will be kept safely so only I can look at it. All documents and recordings related to this study will be kept locked and safe. I may need to use what we talk about in the future for other things, like a journal article (like what you see in newspapers) or at a conference (a room filled with people I talk to).

After the interview



If it's okay with you, I will call you within a week after our talk to see how you are and to answer any questions you might have. I will also call you or send you an email every six months until I finish my thesis to let you know how it is all going, but only if you want me to.

How your interview information will be used



What you talk about during the interview will be written up in my thesis (that big book)



Also, what we talk about may be used in the future for journal articles, research reports, or conferences. I will make sure that anything I do report on or tell others will not identify you.

<p>I want to take part in this interview</p> <input type="checkbox"/>	<p>I don't want to take part in this interview</p> <input type="checkbox"/>
<p>Thank you, please make sure you go through and sign the assent form with your parent or guardian.</p>	<p>Thank you for taking the time to read this.</p>

Contact details

Jazz Robson	0211499974 Or (09 921 9999 ext 8409)	Fdh0535@aut.ac.nz
Marilyn Waring	09 921 9999 ext 9661	mwaring@aut.ac.nz

Any concerns regarding the nature of this project should be notified in the first instance to the Project Supervisor, Marilyn Waring, Faculty of Culture & Society, AUT, mwaring@aut.ac.nz and 09 921 9999 ext 9661

Concerns regarding the conduct of the research should be notified to the Executive Secretary of ATEC, Kate O'Connor, ethics@aut.ac.nz, 921 9999 ext 6038.

Approved by the Auckland University of Technology Ethics Committee on *09 September 2019*, ATEC Reference number *19/264*.

Young people Information Sheet 16 to 17 years

Date Information Sheet Produced:

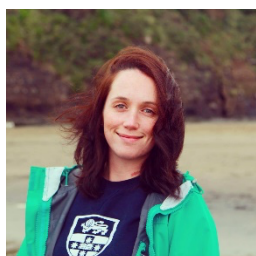
23rd of July 2019

Project Title

“Do I really have rights to participate?” Perceptions of young people and of youth justice personnel of young people’s rights to participation in Youth Justice Family Group Conferences in Aotearoa New Zealand



An Invitation



Tēnā Koe my name is Jasmin Robson; you can call me Jazz. I am a student at AUT University. As part of my studies, I am talking to young people who have been in a youth justice family group conferences (YJFGC). I want to find out from young people what it is like to take part in one. For example, do young people really get listened to in their family group conference? Did other people really listen to them? I am also talking to youth advocates, youth justice coordinators, and youth justice social workers. For my study my supervisors are Professor Marilyn Waring, Associate Professor Sharyn Graham Davies, and Dr Kirsten Hanna.

Although I am not a young person who has been personally involved with the youth justice system, I am interested in what **you** as the expert think about taking part in a YJFGC.

I would like to invite you to take part in my study—this would mean meeting with me, so I can ask you questions about your views. So the meeting will be like an interview. Taking part in this interview is completely voluntary—it’s completely up to you. If you want to take part, I’ll ask you to sign a form to show you have agreed (a consent form); you can also tell me that you would like to take part, but with your permission I will need to record this. Just so you know, you can change your mind later and pull out of the study, as long as this happens before I finish collecting data. If you later decide to pull out, it’s not a big deal at all—nothing else will happen. But if you do want to take part, I’d really appreciate hearing your views.

What is the purpose of this study?

I’m doing this study because I want to learn from the experts (that’s you) about your views about young people taking part in their YJFGC. I will also talk to youth advocates, youth justice coordinators and youth justice social workers about this. I also want to give young people a voice so other academics and experts can read and learn about your views. One day this could help change the YJFGC experience for other young people. At the end of the study, I’ll write a book (a thesis) which will be part of my doctoral degree. I may use some of the information you share in other ways—such as writing it up in academic journal articles or in conference presentations. The purpose of talking to you is not to judge you or to know why you had a family group conference; I just want to know what you think about them.

How was I chosen and why am I being invited to take part in this study?

I spoke with your youth advocate or Emilia (**change depending on who**) about my study. I have asked them to share this information sheet with any young person who might be interested in taking part in this study. I am looking for young people aged between 14 and 17 years who:

- Have taken part in a YJFGC in the past six months,
- Are comfortable talking about their experiences in English,

- Are happy to meet and do an interview at an AUT City Campus office or a private office in a real estate agency in West Auckland,
- Freely (voluntarily) choose to take part, and
- Are happy to give their consent to take part.

I hope to talk to 10 to 15 young people for my study; I also hope to talk to young people of different ethnicities, ages/sexes/genders/sexualities

How do I agree to take part in this research?

You can discuss this study and the possibility of taking part with your parents or guardian if you would like to. But they do not need to give their permission for you to take part. If you freely decide that you want to take part, please read and fill out the consent form (this is attached) and then contact me to arrange a time to meet. My mobile number and email address are at the end of this information sheet.

It's really important that you make your decision freely—you only take part if you want to. If you decide you don't want to take part, that's fine—nothing more will happen. And even if you decide to take part, you can change your mind later (but only if you change your mind before I finish collecting data). If you do change your mind and want to pull out of the study, we can talk about what happens with any information you've already given me—for example, you might decide you don't want me to use the information at all or you might decide it's OK for me to use the information. The choice will be yours. But this has to happen before I finish collecting my data.

What will happen in this research?

If you agree to take part, we will meet so I can interview you to ask questions about your views about young people taking part in YJFGCs. The meeting/interview will last around one and half hours. If it's OK with you, I will record our talk on a digital recorder and later I will type it up. I will also take notes. When I've finished typing up what you said, I'll send it to you so you can make any changes to it that you want. You will need to send me the changes within two weeks. If I don't hear from you within two weeks, that will mean that you don't want to make any changes. After I've interviewed young people, youth advocates, youth justice coordinators, and youth justice social workers I'll analyse what everyone has said and write this up as a book (thesis). I may also use some of the information to write academic journal articles and/or conference presentations.

What are the discomforts and risks?

I don't think that taking part in this study will put you at any risk physically. You will be the expert in our discussion—you know your views better than anyone else! I want to ask questions so I can *learn* from you, not judge you. I also want young people to be heard so that other people can learn from you.

You may feel embarrassed or uncomfortable talking about your experiences in the youth justice system. But if you decide to take part in the interview, you don't have to answer all of the questions—you can skip the ones you don't want to answer. You can also stop the interview at any time and I'll totally respect your decision (and nothing bad will happen if you stop the interview).

There is a low risk that you might talk to me about information relating to you taking part in, or wanting to take part in, activity which is illegal under New Zealand law. You might also talk to me about someone else taking part in, or wanting to take part in, activity that is also illegal under New Zealand law, or you may talk to me about things that may make me worried for your safety. If you talk to me about any of these things, I will first speak to my supervisors about my concerns. If we make the decision that we need to talk to other people who can help you, we will talk to you about this, over the phone, first,

How will these discomforts and risks be alleviated?

You are most welcome to contact me to ask any questions at all about me or the study before you make your decision about taking part in this study. You can also ask me any questions

about the study before, during, and after our interview. You can choose a support person(s) to bring with you to our interview; that's only if you want to, but they must be over the age of 20. If you have any cultural or other special requirements that you would like us to do before the interview, please let me know before the interview. You don't have to answer any of the questions I ask. You can choose to stop our interview whenever you want to, and you can withdraw from the study any time before I finish all my interviews, and that's perfectly okay to do so. If you feel any discomfort at all, please ask me to stop

the interview, and if you think you need someone to talk to, Youthline, Lifeline, Kidsline and OUTline offer free counselling support for young people. These can be accessed using the following contact details

Youthline: 0800 376 633 or Free text 234

For more information please see: <https://www.youthline.co.nz/>

Lifeline: 0800 LIFELINE (0800 54 33 54) or free text HELP (4357)

For more information please see: <https://www.lifeline.org.nz/contact-us>

Kidsline: 0800 54 37 54

For more information please see: http://www.kidsline.org.nz/Home_312.aspx

OUTline: 0800 688 5463

For more information please see: <http://www.outline.org.nz/free-helpline-service/>

What are the benefits?

Participants: This study will give you a chance to be heard about your experiences of taking part in a YJFGC.

Researcher: I will benefit from my study by getting a postgraduate qualification (doctorate). My study will also help me to understand young people's rights to participation from young people's, youth advocates' and youth justice coordinators' point of view, and will increase my experience with this sort of research.

Wider community: *The findings of this study may help individuals and organisations who are interested in how young people experience their participation rights. It may also help the government by showing them where their laws are helping young people experience their participations rights and where they are not doing so well. How will my privacy be protected?*

Your identity (your name and anything that can identify you) and the identity of any other people or places will remain strictly confidential to you, me, and any support person(s) you choose to bring to your interview. Just so you know, my supervisors will not know who you are. None of the information I collect from this study will be linked to your name; you will instead be given a fake name.

What are the costs of participating in this research?

It will not cost you any money to take part in this study. Your interview will take about 1.5 hours of your time. You get to choose where we have the interview (either an office in central Auckland (AUT) and an office in Massey, West Auckland). You can also have your travel to and from the interview paid for up to \$25. With your permission, I will make a follow up phone call to see if you have any questions about the research at all, and every six months after our interview I will contact you to let you know how the thesis is going until it is finished. If you freely and voluntarily choose to take part in this study a koha (gift) will be provided as a thank you for your time and for sharing your experiences with me.

What opportunity do I have to consider this invitation?

You will have two weeks to consider taking part in the study. If you would like to voluntarily take part in this study, or you want to know more information to help you consider taking part in this study, you are most welcome to contact me by email, phone or in person. We can meet at the office in West Auckland if you would like to talk about anything in person before you make your decision.

Just so you know, if I have too many people who agree to take part in my study, I will have to pick a mix of ethnicities, genders, sexes, and ages so I get a mix of everyone. Young people who are not chosen for the study will be sincerely thanked for their time.

Will I receive feedback on the results of this research?

Yes. When I have finished writing my book (thesis), I will give you a 1-2 page electronic or hard copy summary of my studies findings, if you would like one.

What do I do if I have concerns about this research?

Any concerns regarding the nature of this project should be notified in the first instance to the Project Supervisor, *Marilyn Waring, Faculty of Culture & Society, AUT, mwaring@aut.ac.nz and 09 921 9999 ext 9661*

Concerns regarding the conduct of the research should be notified to the Executive Secretary of AUTEK, Kate O'Connor, ethics@aut.ac.nz , 921 9999 ext 6038.

Whom do I contact for further information about this research?

Please keep this Information Sheet and a copy of the Consent/Assents Forms for your future reference. You are also able to contact the research team as follows:

Research Contact Details

Jasmin Robson [fdh0535@aut.ac.nz] [Ph: 0211499974]

Project Supervisor Contact Details:

Marilyn Waring, Faculty of Culture & Society, AUT, mwaring@aut.ac.nz and 09 921 9999 ext 9661

Approved by the Auckland University of Technology Ethics Committee on *09 September 2019*, AUTEK Reference number *19/264*.

Parent/Guardian Information Sheet



Date Information Sheet Produced:

23rd of July 2019

Project Title

“Do I really have rights to participate?” Perceptions of young people and of youth justice personnel of young people’s rights to participation in Youth Justice Family Group Conferences in Aotearoa New Zealand

An Invitation

Tēnā Koe. My name is Jasmin Robson (Jazz) and I am a doctoral student at AUT University. Under the supervision of Professor Marilyn Waring, Associate Professor Sharyn Graham Davies, and Dr Kirsten Hanna, I am completing a thesis which explores young people’s, youth justice coordinators’, youth advocates’, and youth justice social workers’ perceptions of young people’s participation rights, specifically within the youth justice family group conference (YJFGC) setting in New Zealand.

Although I am not a young person and I have not been personally involved with the youth justice system, I am interested in what young people aged 14 to 17 years think about their participation rights in the youth justice system.

I would like to invite your young person to participate in my study via a face-to-face interview. Their taking part in this study is completely voluntary; if they agree to take part in the study, their assent/consent to participate is renegotiable throughout the research process, so I’ll keep checking that they’re happy to continue. Your young person can withdraw from the study at any time before the data collection is finished and it is perfectly okay for them to. The contribution of their time and information would be acknowledged and greatly appreciated.

What is the purpose of this research?

The purpose of this research is to investigate young people’s, youth justice coordinators’, youth advocates’, and youth justice social workers’ views of young people’s participation rights in YJFGCs. Its purpose is also to give young people a voice within the academic literature, regarding their participation rights. The end result will be a thesis which will go towards my doctoral degree. Some of the information may also be used for other academic publications, such as academic journal articles or conference presentations. Please note that this study is not an evaluation of your young person’s involvement in the youth justice system and is not designed to judge them; it is about listening to them and exploring their views on their participatory rights, from their experiences of the YJFGC.

How was I/my young person identified and why is my young person being invited to participate in this research?

I spoke with your young person’s youth advocate or Emilia (**change depending on who**) about my research and I asked them to share this information sheet, and the young person’s information sheet, with any parent(s) or guardian(s) of a young person who they thought might like to voluntarily participate in this study. I am wanting to speak to young people aged between 14 and 17 years who:

- Have taken part in a YJFGC in the past six months,
- Are comfortable discussing their views and experiences in English,
- Are comfortable taking part in an interview in an AUT City Campus office or a private office in a real estate agency in West Auckland,
- Freely choose to take part in this study and freely assent/consent to do so,

- And, if the young person is aged 14 or 15, whose parent/guardian consents to the young person taking part in the study.

I hope to recruit 10 to 15 young people to take part in this study; I also hope to get people of different ethnicities/ages/sexes/genders/sexualities to make sure as many people are included as possible.

How do I agree to participate in this research?

Young people aged 14 to 15 years: If your young person is aged 14 to 15 years, to take part in this study, they will need to read and discuss their information sheet and assent forms with you (please see attached) and the possibility of taking part in this study. Your young person will need to give their own assent by either signing their assent form or giving verbal assent to the researcher which, with their permission, will be recorded. Lastly, they will also need your consent to take part. If your young person would like to take part in this study, please complete the attached consent/assent forms and then contact me to arrange an interview time (please see below for contact details).

Young people aged 16 to 17 years: If your young person is aged 16 to 17 years, they can discuss this study and the possibility of taking part with you, but they do not need your consent to take part. If your young person would like to take part in this study, please discuss this information and the possibility of them taking part in this study with them.

All young people: Your young person taking part in this study is completely voluntary (it is their choice) and whether or not they choose to take part will neither advantage nor disadvantage for them. They are able to withdraw from the study at any time. If they choose to withdraw from the study, then they will have the choice between having any data that belongs to them removed or allowing it to continue to be used. However, once the findings have been produced, removal of their data may not be possible.

What will happen in this research?

If your young person agrees to take part, I will interview them to explore their views of young people's participation rights; the interview will last around one and half hours. I will record the interview using a digital recorder, if your young person gives me permission to do so; I will then type up the interview. I will also take notes. Additionally, I will give your young person a copy of their typed-up interview. Your young person will have two weeks to make any corrections or changes to the typed-up interview and to return it to me. If, however, at the end of the two-week period the interview is not returned, I will assume that there are no changes to be made. I will write up the findings in a thesis and may also use the information in academic journal articles and conference presentations.

What are the discomforts and risks?

Your young person is the expert on this topic. I am not there to judge them, but to learn from them, and give them a platform to be heard about their experiences of taking part in their YJFGC.

The questions I will ask in the interview are about your young person's experiences and views of their participation rights in their previous YJFGC and how these rights played out in the YJFGC. Your young person may feel embarrassment or discomfort in revealing information about being involved in the youth justice system. If your young person chooses to take part in this interview, they do not need to answer any questions that make them feel uncomfortable or embarrassed. They can skip any question they like, and they can stop the interview at any time with no consequences whatsoever.

There is a low risk that your young person might tell me information relating to their involvement in, or intention to be involved in, activity which is illegal under New Zealand law, or they may tell me information that raises concern for their safety and wellbeing. If your young person discloses information of taking part in or intending to take part in criminal activity or information that raises concern, I will first speak to my supervisors about my concerns. If we decide this needs to be discussed with appropriate authorities, we will discuss this over the phone with you and your young person first.

How will these discomforts and risks be alleviated?

You and your young person are most welcome to contact me to ask any questions at all about the research or your young person taking part, before consenting to take part and during the research process. Your young person can choose a support person(s) and to bring them to the interview, but the support person must be over the age of 20. Furthermore, if your young person has any cultural or other special requirements that your young person would like observed during the interview, please let me know before the interview. Your young person can refuse to answer any of the questions asked. You or your young person can withdraw from study (up to the time that data collection is finished) and that's perfectly okay to do.

If your young person feels any discomfort whatsoever, LifeLine, Kidsline and OUTline (LGBTQI+) offer free counselling support for young people. These can be accessed using the following contact details

Youthline: 0800 376 633 or Free text 234

For more information please see: <https://www.youthline.co.nz/>

Lifeline: 0800 LIFELINE (0800 54 33 54) or free text HELP (4357)

For more information please see: <https://www.lifeline.org.nz/contact-us>

Kidsline: 0800 54 37 54

For more information please see: http://www.kidsline.org.nz/Home_312.aspx

OUTline: 0800 688 5463

For more information please see: <http://www.outline.org.nz/free-helpline-service/>

What are the benefits?

Participants: Your young person will benefit from this research as it aims to give your young person a voice in the academic literature in terms of their understanding of young people's participation rights in the YJFGC setting.

Researcher: I will benefit from my research by gaining a postgraduate qualification (doctorate). My study will also help me to understand young people's rights to participation from young people's, youth advocates' and youth justice coordinators' point of view, and will increase my experience in qualitative research.

Wider community: The findings of this study may be of benefit to individuals and organisations that have an interest in how young people exercise their participation rights. It may also benefit the government by shining light on areas of law, policy, and practice that may enable or hinder the implementation of recent changes to the Oranga Tamariki Act 1989 and the government's ability to fulfil its obligations under the United Nations Convention on the Rights of the Child.

How will my privacy be protected?

Your young person's identity and the identity of any other people or places the young person mentions will remain strictly confidential. Similarly, my supervisors will not know your young person's identity. None of the information I collect from the study will be attributed to your young person's name; your young person will instead be given a fake name.

What are the costs of participating in this research?

It will not cost you or your young person any money to take part in this research. In total this research will require about one and half hours of your young person's time. I will interview young people either at a private office space at AUT's City Campus in Auckland, or at a private office at Propertex Real Estate, Massey, West Auckland, during the day, at a time and on a day that is convenient to you. Your young person's travel to and from the interview can also be compensated up to \$25. With your permission, and the permission of your young person, I will

also do a follow-up/check-in phone call with your young person after the interview, and contact them every six months thereafter, till the thesis is completed, to let them know how the thesis is going. Your young person can ask me any questions they like about the interview, the research process, and what will happen with their information. Please discuss these options with your young person. If your young person voluntarily chooses to take part in this research, they will receive a koha (gift) as a thank you for their time and for sharing their experiences with me.

What opportunity do I have to consider this invitation?

You and your young person have two weeks to consider whether to take part in the study. If your young person would like to voluntarily take part in this study or you or your young person require more information to help you decide, you are most welcome to contact me.

Please note that if I have too many participants who agree to take part in my study, I will have to purposely select participants so that I can ensure that my study has a maximum variation of participants (e.g., a mix of ethnicities, sexualities, genders, sexes). Participants who are not chosen for the study will be sincerely thanked for their time.

Will I receive feedback on the results of this research?

Yes. I will provide your young person with a 1-2 page electronic or hard copy summary of the thesis findings, if they wish to receive one.

What do I do if I have concerns about this research?

Any concerns regarding the nature of this project should be notified in the first instance to the Project Supervisor, *Marilyn Waring, Faculty of Culture & Society, AUT, mwaring@aut.ac.nz and 09 921 9999 ext 9661*

Concerns regarding the conduct of the research should be notified to the Executive Secretary of AUTEK, Kate O'Connor, *ethics@aut.ac.nz*, 921 9999 ext 6038.

Whom do I contact for further information about this research?

Please keep this Information Sheet your young persons Information Sheet and a copy of the Consent/Assents Forms for your future reference. You are also able to contact the research team as follows:

Researchers Contact Details:

Jasmin Robson [fdh0535@aut.ac.nz] [Ph: 0211499974]

Project Supervisor Contact Details:

Marilyn Waring, Faculty of Culture & Society, AUT, mwaring@aut.ac.nz and 09 921 9999 ext 9661

Approved by the Auckland University of Technology Ethics Committee on 09 September 2019, AUTEK Reference number 19/264.

Participant Information Sheet

Youth advocates

Date Information Sheet Produced:

23rd of July 2019

Project Title



“Do I really have rights to participate?” Perceptions of young people and of youth justice personnel of young people’s rights to participation in Youth Justice Family Group Conferences in Aotearoa New Zealand

An Invitation

Tēnā Koe. My name is Jasmin Robson (Jazz) and I am a doctoral student at AUT University. Under the supervision of Professor Marilyn Waring, Associate Professor Sharyn Graham Davies, and Dr Kirsten Hanna, I am completing a thesis which explores young people’s, youth justice coordinators’, youth advocates’, and youth justice social workers’ perceptions of young people’s participation rights, specifically within the youth justice family group conference setting in New Zealand.

Although I am not a youth advocate, I am interested in what youth advocates think about young people’s participation rights.

I would like to invite you to participate in my study via a face-to-face interview. Your participation is completely voluntary, and you can withdraw from the study at any point in time before the completion of the data collection without any adverse consequences whatsoever. The contribution of your time and information would be acknowledged and greatly appreciated.

What is the purpose of this research?

The purpose of this research is to explore young people’s, youth advocates’, youth justice coordinators’, and youth justice social workers’ views of young people’s participation rights within the Youth Justice Family Group Conference setting. Its purpose is also to give New Zealand youth advocates a voice within the literature, regarding young people’s participation rights. The end result will be a thesis which will go towards my doctoral degree. Some of the information may also be used for other academic publications in academic journals or conference presentations. Please note that this study is not an evaluation of you as a youth advocate; it is about exploring your perceptions of young people’s participatory rights, in the youth justice family group setting.

How was I identified and why am I being invited to participate in this research?

Youth advocates who are registered members of District Courts in New Zealand have been invited to participate in this study. I am seeking youth advocates who are over the age of 20 years, who do not have a working relationship with me, and who are comfortable being interviewed in English. I hope to recruit five youth advocates to participate in this study.

How do I agree to participate in this research?

To participate in this research please complete the attached consent form and then contact me to arrange an interview time (please see below for contact details). Your participation in this research is voluntary, whether or not you choose to participate will neither advantage nor disadvantage you. You are able to withdraw from the study at any time. If you choose to withdraw from the study, then you will be offered the choice between having any data that belongs to you removed or allowing it to continue to be used. However, once the findings have been produced, removal of your data may not be possible.

What will happen in this research?

Youth advocates who agree to participate will be interviewed to explore their perceptions of young people's participation rights; the interview will last around one and half hours. Interviews will be recorded using a digital recorder, with your permission, and the interview transcribed. I will also take notes. Additionally, I will provide you with a copy of the transcribed interview. You will have two weeks to make any corrections or amendments to the transcript and to return the transcript to me. If, however, at the end of the two-week period your transcript is not returned I will assume that there are no changes to be made. The findings will be written up as a thesis and may also be submitted to academic journals and presented at conferences.

What are the discomforts and risks?

It is not anticipated that there will be any discomforts or risks associated with this research. The questions I will ask in the interview are about your perceptions of your role as a youth advocate, young people's participation rights and how these rights play out in the youth justice family group conference setting.

How will these discomforts and risks be alleviated?

Your participation in this study is completely voluntary. You are most welcome to bring a support person(s) with you to the interview, but they must be over the age of 20. Furthermore, if you have any cultural or other special requirements that you would like observed during the interview, please let me know before the interview. You can decline to answer any of the questions asked. You can also pull out of the study (up to the completion of the data collection) without any adverse consequences whatsoever.

In the event that you feel any discomfort whatsoever, AUT Health Counselling and Wellbeing offers three free sessions of confidential counselling support for adult participants in an AUT research project. These sessions are only available for issues that have arisen directly as a result of participation in the research, and are not for other general counselling needs. To access these services, you will need to:

drop into our centres at WB219 or AS104 or phone 921 9992 City Campus or 921 9998 North Shore campus to make an appointment. Appointments for South Campus can be made by calling 921 9992

let the receptionist know that you are a research participant, and provide the title of my research and my name and contact details as given in this Information Sheet

You can find out more information about AUT counsellors and counselling on <http://www.aut.ac.nz/being-a-student/current-postgraduates/your-health-and-wellbeing/counselling>

What are the benefits?

Participants: You will benefit from this research as it will give you a voice in the academic literature in terms of your understanding of young people's participation rights in the YJFGC setting.

Researcher: I will benefit from my research by gaining a postgraduate qualification (doctorate). My study will also help me to understand young people's rights to participation from young people's, youth advocates' and youth justice coordinators' point of view, and will increase my experience in qualitative research.

Wider community: The findings of this study may be of benefit to individuals and organisations that have an interest in how young people exercise their participation rights. It may also benefit the government by shining light on areas of law, policy, and practice that may enable or hinder the implementation of recent changes to the Oranga Tamariki Act 1989 and the government's ability to fulfil its obligations under the United Nations Convention on the Rights of the Child.

How will my privacy be protected?

Your identity and the identity of any other people or places mentioned during the interview will remain strictly confidential. Similarly, my supervisors will not know your identity. Indeed, none of the information I collect from the study will be attributed to your name; you will instead be assigned with a pseudonym.

What are the costs of participating in this research?

It will not cost you any money to participate in this research. In total this research will require approximately one and half hours of your time. The interviews will be conducted at either a private office space located at AUT City Campus in Auckland, or your place of work at a time that is convenient to you. If you travel to and from the interview, your travel expenses can also be compensated up to \$25. If you voluntarily chose to take part in this research a koha (gift) will be provided as a thank you for your time and for sharing your experiences with me.

What opportunity do I have to consider this invitation?

You will have two full weeks to consider participating in the study. If you would like to voluntarily take part in this study or you require more information to help you consider participating in this study, you are most welcome to contact me.

Please note that if I have too many participants who are agree to participate in my study, I will have to purposely select participants so that I can ensure that my study has a maximum variation of participants (e.g., a mix of ethnicities, sexualities, genders, sexes). Participants who are not chosen for the study will be sincerely thanked for their time.

Will I receive feedback on the results of this research?

Yes. I will provide you with a 1-2 page electronic or hard copy summary of the thesis findings, if you wish to receive one.

What do I do if I have concerns about this research?

Any concerns regarding the nature of this project should be notified in the first instance to the Project Supervisor, *Marilyn Waring, Faculty of Culture & Society, AUT, mwaring@aut.ac.nz and 09 921 9999 ext 9661*

Concerns regarding the conduct of the research should be notified to the Executive Secretary of AUTEK, Kate O'Connor, ethics@aut.ac.nz , 921 9999 ext 6038.

Whom do I contact for further information about this research?

Please keep this Information Sheet and a copy of the Consent Form for your future reference. You are also able to contact the research team as follows:

Research Contact Details:

Jasmin Robson [fdh0535@aut.ac.nz] [Ph: 0211499974]

Project Supervisor Contact Details:

Marilyn Waring, Faculty of Culture & Society, AUT, mwaring@aut.ac.nz and 09 921 9999 ext 9661

Approved by the Auckland University of Technology Ethics Committee on 09 September 2019, AUTEK Reference number 19/264.

Participant Information Sheet

Youth justice social workers

Date Information Sheet Produced:

23rd of July 2019



Project Title

“Do I really have rights to participate?” Perceptions of young people and of youth justice personnel of young people’s rights to participation in Youth Justice Family Group Conferences in Aotearoa New Zealand

An Invitation

Tēnā Koe. My name is Jasmin Robson (Jazz) and I am a doctoral student at AUT University. Under the supervision of, Professor Marilyn Waring, Associate Professor Sharyn Graham Davies, and Dr Kirsten Hanna, I am completing a thesis which explores young people’s, youth justice coordinators’, youth advocates’, and youth justice social workers’ perceptions of young people’s participation rights, specifically within the youth justice family group conference setting in New Zealand.

Although I am not a social worker, I am interested in what youth justice social workers think about young people’s participation rights.

I would like to invite you to participate in my study via a face-to-face interview. Your participation is completely voluntary, and you can withdraw from the study at any point in time before the completion of the data collection without any adverse consequences whatsoever. The contribution of your time and information would be acknowledged and greatly appreciated.

What is the purpose of this research?

The purpose of this research is to explore young people’s, youth justice coordinators’, youth advocates’, and youth justice social workers’ perceptions of young people’s participation rights within the Youth Justice Family Group Conference setting. Its purpose is also to give New Zealand youth justice social workers a voice within the literature, regarding young people’s participation rights. The end result will be a thesis which will go towards my doctoral degree. Some of the information may also be used for other academic publications, such as academic journal articles and conference presentations. Please note that this study is not an evaluation of you as a youth justice social worker, nor is this research designed to gain information about the practices of your employer, or previous employer, Oranga Tamariki; it is about investigating your perceptions of young people’s participatory rights, in the YJFGC setting.

How was I identified and why am I being invited to participate in this research?

Youth justice social workers who have previously worked for Oranga Tamariki have been invited to participate in this study. I am seeking social workers who are over the age of 20 years, who do not have a working relationship with me, and who are comfortable being interviewed in English. I hope to recruit five youth justice social workers to participate in this study.

How do I agree to participate in this research?

To participate in this research please complete the attached consent form and then contact me to arrange an interview time (please see below for contact details). Your participation in this research is voluntary, whether or not you choose to participate will neither advantage nor disadvantage you. You are able to withdraw from the study at any time. If you choose to withdraw from the study, then you will be offered the choice between having any data that belongs to you removed or allowing it to continue to be used. However, once the findings have been produced, removal of your data may not be possible.

What will happen in this research?

Youth justice social workers who agree to participate will be interviewed to explore their perceptions of young people's participation rights; the interview will last around one hour. Interviews will be recorded using a digital recorder, with your permission, and the interview transcribed. I will also take notes. Additionally, I will provide you with a copy of the transcribed interview. You will have two weeks to make any corrections or amendments to the transcript and to return the transcript to me. If, however, at the end of the two-week period your transcript is not returned, I will assume that there are no changes to be made. The findings will be written up as a thesis and may also be submitted to academic journals and/or presented at conferences.

What are the discomforts and risks?

It is not anticipated that there will be any discomforts or risks associated with this research. The questions I will ask in the interview are about your perceptions of your role as a youth justice social worker, young people's participation rights and how these rights play out in the youth justice family group conference setting.

How will these discomforts and risks be alleviated?

Your participation in this study is completely voluntary. You are most welcome to bring a support person(s) with you to the interview, but they must be over the age of 20. Furthermore, if you have any cultural or other special requirements that you would like observed during the interview, please let me know before the interview. You can decline to answer any of the questions asked. You can also pull out of the study (up to the completion of the data collection) without any adverse consequences whatsoever.

In the event that you feel any discomfort whatsoever, AUT Health Counselling and Wellbeing offers three free sessions of confidential counselling support for adult participants in an AUT research project. These sessions are only available for issues that have arisen directly as a result of participation in the research, and are not for other general counselling needs. To access these services, you will need to:

drop into our centres at WB219 or AS104 or phone 921 9992 City Campus or 921 9998 North Shore campus to make an appointment. Appointments for South Campus can be made by calling 921 9992

let the receptionist know that you are a research participant, and provide the title of my research and my name and contact details as given in this Information Sheet

You can find out more information about AUT counsellors and counselling on <http://www.aut.ac.nz/being-a-student/current-postgraduates/your-health-and-wellbeing/counselling>

What are the benefits?

Participants: You will benefit from this research as it will give you a voice in the academic literature in terms of your understanding of young people's participation rights in the YJFGC setting.

Researcher: I will benefit from my research by gaining a postgraduate qualification (doctorate). My study will also help me to understand young people's rights to participation from young people's, youth advocates', youth justice coordinators' and youth justice social workers' point of view, and will increase my experience in qualitative research.

Wider community: The findings of this study may be of benefit to individuals and organisations that have an interest in how young people exercise their participation rights. It may also benefit the government by shining light on areas of law, policy, and practice that may enable or hinder the implementation of recent changes to the Oranga Tamariki Act 1989 and the government's ability to fulfil its obligations under the United Nations Convention on the Rights of the Child

How will my privacy be protected?

Your identity and the identity of any other people or places mentioned during the interview will remain strictly confidential. Similarly, my supervisors will not know your identity. Indeed, none of the information I collect from the study will be attributed to your name; you will instead be assigned a pseudonym.

What are the costs of participating in this research?

It will not cost you any money to participate in this research. In total this research will require approximately one hour of your time. The interviews will be conducted at either your place of work, a private office space located at AUT City Campus in Auckland, or at a private office located in a real estate building in West Auckland. Your travel to and from the interview can also be compensated up to \$25. If you voluntarily chose to take part in this research a koha (gift) will be provided as a thank you for your time and for sharing your experiences with me.

What opportunity do I have to consider this invitation?

You will have two full weeks to consider participating in the study. If you would like to voluntarily take part in this study, or you require more information to help you consider participating in this study, you are most welcome to contact me.

Please note that if I have too many participants who agree to participate in my study, I will have to purposely select participants so that I can ensure that my study has a maximum variation of participants (e.g., a mix of ethnicities, sexualities, genders, sexes). Participants who are not chosen for the study will be sincerely thanked for their time.

Will I receive feedback on the results of this research?

Yes. I will provide you with a 1-2 page electronic or hard copy summary of the thesis findings, if you wish to receive one.

What do I do if I have concerns about this research?

Any concerns regarding the nature of this project should be notified in the first instance to the Project Supervisor, *Marilyn Waring, Faculty of Culture & Society, AUT, mwaring@aut.ac.nz and 09 921 9999 ext 9661*

Concerns regarding the conduct of the research should be notified to the Executive Secretary of AUTEK, Kate O'Connor, *ethics@aut.ac.nz*, 921 9999 ext 6038.

Whom do I contact for further information about this research?

Please keep this Information Sheet and a copy of the Consent Form for your future reference. You are also able to contact the research team as follows:

Research Contact details:

Jasmin Robson [fdh0535@aut.ac.nz] [Ph: 0211499974]

Project Supervisor Contact Details:

Marilyn Waring, Faculty of Culture & Society, AUT, mwaring@aut.ac.nz and 09 921 9999 ext 9661

Approved by the Auckland University of Technology Ethics Committee on 09 September 2019, AUTEK Reference number 19/264

Appendix B: Consent/Assent Form(s)

Parent/Guardian Consent Form

Interviews

Proxy consent from parent(s) or guardian(s) of young people aged 14 to 15 years

Project title: “Do I really have rights to participate?” Perceptions of young people and of youth justice personnel of young people’s rights to participation in Youth Justice Family Group Conferences in Aotearoa New Zealand

Project Supervisor: **Marilyn Waring**

Researcher: **Jasmin Robson**



- I have read and understood the information provided about this research project in the Information Sheet dated 23rd of July 2019.
- I have had an opportunity to ask questions and to have them answered.
- I have discussed the child-friendly information sheet and assent form with my young person.
- I understand that my young person may bring a support person, who is over 20 years old, to the interview if they wish to and that my young person gets to choose who this person(s) is.
- I understand that notes will be taken during the interviews and that they will also be audio-taped, with my young person’s permission, and transcribed.
- I understand that my young person and I will decide together where their interview will take place, and that we have the option between an AUT City Campus office and a private office space located in West Auckland.
- I understand that my young person participating in this study is voluntary (their choice), but that I may remove my young person, or any information that I or they have provided from this project at any time before completion of data collection, without being disadvantaged in any way.
- I understand that my young person can choose to opt-out/remove themselves from this research any time before the completion of data collection without any consequences whatsoever. If my young person chooses to opt-out/remove themselves from this research, then my young person and I will be offered the choice between having any data that is identifiable as belonging to my young person removed or allowing it to continue to be used. However, once the findings have been produced, removal of their data may not be possible.
- I understand that the researcher will, with my young person’s permission, do a phone call follow up after the interview to discuss any questions about the interview, the research process, or what will happen with the information she collected.
- I understand that the researcher will, with my young person’s permission, contact my young person every six months until the thesis is finished to let them know how the thesis is going.
- I understand that if my young person discloses information relating to their involvement in, or intention to be involved in, criminal activity, or information about another person’s involvement in activity which is illegal under New Zealand law, or they discuss any information that makes the researcher concerned for their safety, that the researcher will discuss this first with her supervisor. If they decide this needs to be discussed with appropriate authorities, that this will be discussed with myself and my young person first.

- I agree to my young person taking part in this research.

- I would like to receive (please tick one:)
 - a hard copy summary of the thesis findings when it is completed
 - an electronic copy summary of the thesis findings when it is completed
 - neither of these

Young person's name/s :
.....
.....
.....

Parent/Guardian's
signature:.....

Parent/Guardian's name:
.....

Parent/Guardian's Contact Details (if appropriate):
.....
.....

Date:

*Approved by the Auckland University of Technology Ethics Committee on 09 September 2019
AUTEK Reference number 19/264*

Assent Form

Young people aged 14 to 15 years

Interviews

Project title: “Do I really have rights to participate?” Perceptions of young people and of youth justice personnel of young people’s rights to participation in Youth Justice Family Group Conferences in Aotearoa New Zealand



Project Supervisor: **Marilyn Waring**

Researcher: **Jasmin Robson**

- I have read with my parent(s) or guardian(s), and understood, the sheet telling me what will happen in this study and why it is important, dated the 23rd of July 2019.
- I have been able to ask questions and to have them answered.
- I understand that I can bring a support person(s) to the interview if I want to, and that I get to choose who this support person(s) is.
- I understand that the researcher will take notes in the interview and she will tape the interview, if I agree to this.
- I understand that I get to help choose where my interview will happen, and that I have the choice between an office in Central Auckland (AUT City Campus) and an office in West Auckland.
- I understand that taking part in this study is my choice and that I can stop being part of this study any time before the researcher has finished all her interviews, and that it is OK for me to do this.
- I understand that only the researcher, my parent(s) or guardian(s) and any support person I choose to take to my interview will know my real name, and anything that can let other people know who I am. I also understand that the researcher will give me a fake name in her written research so other people don’t know who I am.
- If I stop being part of the study, I understand that I will get the choice between having any information that belongs to me taken out or letting the researcher keep using it. I also understand that sometimes, if the results of the study have been written, some information about me may not be able to be taken out.
- I understand that the researcher will, with my parent(s)/guardian(s) permission and my permission, do a phone call follow up after the interview to talk about any questions I might have about the interview or what will happen with the information she collected.
- I understand that the researcher will, with my permission, contact me every six months until the thesis is finished to let them know how the thesis is going.
- I understand that if I tell the researcher information about taking part in, or wanting to take part in activities that break the law, or information about other people breaking the law, or information that makes the researcher worried for my safety, that this may need to be talked about with me, my parent(s)/guardian(s) first, then other people who are qualified to help me.
- I agree to take part in this study.
- I would like to tell the researcher that I want to take part, and I understand that the researcher will record this.
- I would like the researcher to contact me every six months to let me know how the thesis is going
- I would like to be given (please tick one:)

- a hard copy summary of the research findings when it is completed

- an electronic copy summary of the research findings when it is completed
- neither of these

Participant's signature:

.....

Participant's name:

.....

Participant Contact Details (if appropriate):

.....
.....
.....
.....

Date:

***Approved by the Auckland University of Technology Ethics Committee on 09 September 2019
AUTEC Reference number 19/264***

Note: The Participant should retain a copy of this form.

Consent Form



Young people aged 16 to 17 years

Interviews

Project title: “Do I really have rights to participate?” Perceptions of young people and of youth justice personnel of young people’s rights to participation in Youth Justice Family Group Conferences in Aotearoa New Zealand

Project Supervisor: **Marilyn Waring**

Researcher: **Jasmin Robson**

- I have read and understood the sheet telling me what will happen in this study and why it is important, dated 23rd of July 2019.
- I understand that I don’t need my parent(s)/guardian(s) permission to take part in this study.
- I have been able to ask questions and to have them answered.
- I understand that I can bring a support person(s) to the interview if I want to and that I get to choose who this support person(s) is.
- I understand that notes will be taken during the interview and that they will also be recorded with a device with my permission.
- I understand that I get to choose where my interview will happen, and that I have the choice between an AUT City Campus office and a private office in a real estate building in West Auckland.
- I understand that taking part in this study is my choice and that I can stop being part of this study any time before the researcher has finished all her interviews, and that it is perfectly ok for me to do this.
- I understand my real name and anything that can identify me will only be known to the researcher and any support person(s) I choose to bring to my interview. I also understand that the researcher will give me a fake name in her written research, so other people don’t know who I am.
- If I stop being part of the study, I understand that I will have the choice between having any information that belongs to me taken out or letting the researcher keep using it. I also understand that sometimes, if the results of the study have been written, some information about me cannot be taken out.
- I understand that the researcher will, with my permission, do a phone call follow up after the interview to discuss any questions I might have about the interview, the research process, or what will happen with the information she collected.
- I understand that the researcher will, with my permission, contact me every six months until the thesis is finished to let them know how the thesis is going.
- I understand that if I tell the researcher information about taking part in, or wanting to take part in, activities that break the law, information about other people breaking the law, or information that causes the researcher to be worried for my safety that this may need to be talked about with me, my parent(s)/guardian(s) first, then other people who are qualified to help me.
- I agree to take part in this study.

- I would like to tell the researcher that I want to take part, and I understand that the researcher will record this.
- I would like the researcher to contact me every six months to let me know how the thesis is going
- I would like to be given (please tick one:)
 - a hard copy summary of the research findings when it is completed
 - an electronic copy summary of the research findings when it is completed
 - neither of these

Participant’s signature:

.....

Participant’s name:

.....

Participant Contact Details (if appropriate):

.....
.....
.....
.....

Date:

***Approved by the Auckland University of Technology Ethics Committee on 09 September 2019
AUTEK Reference number 19/264***

Note: The Participant should retain a copy of this form.

Consent Form

Interviews

Youth advocates

Project title: “Do I really have rights to participate?” Perceptions of young people and of youth justice personnel of young people’s rights to participation in Youth Justice Family Group Conferences in Aotearoa New Zealand

Project Supervisor: **Marilyn Waring**

Researcher: **Jasmin Robson**



- I have read and understood the information provided about this research project in the Information Sheet dated 23rd of July 2019.
- I have had an opportunity to ask questions and to have them answered.
- I understand that I may bring a support person to the interview if I wish to.
- I understand that notes will be taken during the interviews and that they will also be audio-taped, with my permission, and transcribed.
- I understand that taking part in this study is voluntary and that I may withdraw myself or any information that I have provided from this project at any time prior to completion of data collection, without being disadvantaged in any way.
- If I withdraw, I understand that all relevant information including tapes and transcripts, or parts thereof, will be destroyed. However, once the findings have been produced, removal of my data may not be possible.
- I agree to take part in this research.
- I would like to receive (please tick one:):
 - a hard copy summary of the thesis findings when it is completed
 - an electronic copy summary of the thesis findings when it is completed
 - neither of these

Participant’s signature:

.....

Participant’s name:

.....

Participant’s Contact Details (if appropriate):

.....
.....
.....
.....

Date:

*Approved by the Auckland University of Technology Ethics Committee on 09 September 2019
AUTEK Reference number 19/264*

Consent Form

Interviews

youth justice social workers

Project title: “Do I really have rights to participate?” Perceptions of young people and of youth justice personnel of young people’s rights to participation in Youth Justice Family Group Conferences in Aotearoa New Zealand

Project Supervisor: **Marilyn Waring**

Researcher: **Jasmin Robson**



- I have read and understood the information provided about this research project in the Information Sheet dated 23rd of July 2019.
- I have had an opportunity to ask questions and to have them answered.
- I understand that I may bring a support person to the interview if I wish to.
- I understand that notes will be taken during the interviews and that they will also be audio-taped, with my permission, and transcribed.
- I understand that taking part in this study is voluntary and that I may withdraw myself or any information that I have provided from this project at any time prior to completion of data collection, without being disadvantaged in any way.
- If I withdraw, I understand that all relevant information including tapes and transcripts, or parts thereof, will be destroyed. However, once the findings have been produced, removal of my data may not be possible.
- I agree to take part in this research.
- I would like to receive (please tick one:):
 - a hard copy summary of the thesis findings when it is completed
 - an electronic copy summary of the thesis findings when it is completed
 - neither of these

Participant’s signature:

.....

Participant’s name:

.....

Participant’s Contact Details (if appropriate):

.....
.....
.....
.....

Date:

*Approved by the Auckland University of Technology Ethics Committee on 09 September 2019
AUTEC Reference number 19/264*

Appendix C: Recruitment Email/Letter(s)

Recruitment Email/Letter to Parent(s)/Guardian(s) and Young People aged 14 to 15 years via Emilia

Hi everyone, this is an invitation I am sending on behalf of my friend Jazz to voluntarily participate in her doctoral research. If you could please read the following and if you would like to participate or have any questions please contact her using the information provided, thanks.

Tēnā koe parent(s) or guardian(s),

My name is Jasmin Robson (Jazz) and I am a Doctoral student at AUT University where I am researching young people's and youth justice personnel's perceptions of young people's rights to participation within the youth justice family group conference environment.



AUT ethics committee has approved the study [9th of September 2019/ 19/264].

This study will involve interviewing 10 to 15 young people aged 14 to 17 years who

- Have participated in a youth justice family group conference in the past six months; and
- Who are comfortable being interviewed in English; and
- Who are comfortable being interview in an AUT City Campus office or a private office located in a real estate office in West Auckland; and
- Who freely choose to participate and consent to take part in this research, also with the consent of their parent(s) or guardian(s)

I have been talking to **Emilia** about my research, and I have asked her to share this email/letter and video addressed to your young person, with any parent(s) or guardian(s) of a young person aged 14 to 15 years that she thought might like to have a discussion with their young person about their participating in this research. As your young person is below the age of 16, they will need your consent/permission to participate in this research, as well as to provide their own consent/permission to participate.

I have attached another letter/email below and a video recording addressed to your young person, and an information sheet that I would ask you to share and discuss with your young person. These forms will tell you and your young person everything you both need to know about this research and what will happen if your young person freely chooses to participate in this research. The video provides a brief overview of the letter/email addressed to your young person.

If you and your young person might be interested in your young person voluntarily participating in this study or you have any questions at all about the forms or the research, I'd be grateful if you could contact me by email (fdh0535@aut.ac.nz) or phone on either (0211499974) or (09 921 9999 ext 8409)

With thanks in advance for your time

Ngā mihi

Jazz

Supervisor: Marilyn Waring

Researcher: Jasmin Robson

Contact number: 09 921 9999 ext 9661

Contact number: 0211499974

Email: mwaring@aut.ac.nz

Email: fdh0535@aut.ac.nz

Recruitment Email/Letter for Young People Aged 14 and 15 years Via Emilia

Hi everyone, this is an invitation I am sending on behalf of my friend Jazz to voluntarily participate in her doctoral research. If you could please read the following and if you would like to participate or have any questions please contact her using the information provided, thanks.

Tēnā koe,

My name is Jasmin Robson, you can call me Jazz. I am a student at AUT University and I am studying youth justice family group conferences.



As part of my studies, I am talking to young people who have done a youth justice family group conference. I want to find out from young people what it is like to take part in one. For example, do young people really get listened to in their family group conference? Did other people really listen to them? I am also talking to youth advocates and youth justice coordinators.

For my study, I will invite around 10 to 15 teenagers (14 to 17 years) to talk to me about family group conferences. I want to talk to young people who:

- Have done a youth justice family group conference in the past six months; and
- Are happy to talk in English; and
- Are happy to meet with me to talk in the central city (at AUT University) or in an office in West Auckland; and
- Freely choose to take part in this study (who only take part if they want to); and
- Whose parent(s) or guardian(s) agree they can take part

How come you got this invitation? Well, I have been talking to **Emilia** about my study and she agreed to send this email/letter and video to any young person who might be interested in taking part in this study.

Do you want to take part in my study? To help you decide, here are some points to think about:

- You don't have to take part in this study – you can say “no”! If you decide not to take part that's okay – nothing else will happen.
- Emilia will not know if you take part or not. She will only know if you tell her or ask her to come with you when we talk.
- There's more information about the study on the information sheet I have attached to this email/letter. Please discuss this with your parent(s) or guardian(s) first.

If you think you want to take part or if you have any questions about me or the study, you can call/text me on 0211499974 or email me at (fdh0535@aut.ac.nz). I'd be really happy to answer any of your questions.

By the way, a committee at AUT has checked my study to make sure it's OK and safe. They said it's fine [9th of September 2019/ 19/264].

With thanks in advance for your time

Ngā mihi

Jazz

Supervisor: Marilyn Waring

Researcher: Jasmin Robson

Contact number: 09 921 9999 ext 9661

Contact number: 0211499974

Email: mwaring@aut.ac.nz

Email: fdh0535@aut.ac.nz

Recruitment Email/Letter for Young People Aged 16 and 17 Years via Emilia

Hi everyone, this is an invitation I am sending on behalf of my friend Jazz to voluntarily participate in her student research. If you could please read the following and if you would like to participate or have any questions please contact her using the information provided, thanks.

Tēnā koe,

My name is Jasmin Robson, you can call me Jazz. I am a student at AUT University and I am studying youth justice family group conferences.



As part of my studies, I am talking to young people who have done a youth justice family group conference. I want to find out from young people what it is like to take part in one. For example, do young people really get listened to in their family group conference? Did other people really listen to them? I am also talking to youth advocates and youth justice coordinators.

For my study, I will invite around 10 to 15 teenagers (14 to 17 years) to talk to me about family group conferences. I want to talk to young people who:

- Have done a youth justice family group conference in the past six months; and
- Are happy to talk in English; and
- Are happy to meet with me to talk in the central city (at AUT University) or in an office in West Auckland; and
- Freely choose to take part in this study (who only take part if they want to)

How come you got this invitation? Well, I have been talking to **Emilia** about my study and she agreed to send this email/letter and video to any young person who might be interested in taking part in this study.

Do you want to take part in my study? To help you decide, here are some points to think about:

- You don't have to take part in this study – you can say “no”! If you decide not to take part that's okay – nothing else will happen.
- Emilia will not know if you take part or not. She will only know if you tell her or ask her to come with you when we talk.
- There's more information about the study on the information sheet I have attached to this email/letter. You can discuss this with your parent(s) or guardian(s) first if you want to.

If you think you want to take part or if you have any questions about me or the study, you can call/text me on 0211499974 or email me at (fdh0535@aut.ac.nz). I'd be really happy to answer any of your questions.

By the way, a committee at AUT has checked my study to make sure it's OK and safe. They said it's fine [9th of September 2019/ 19/264].

With thanks in advance for your time

Ngā mihi

Jazz

Supervisor: Marilyn Waring

Researcher: Jasmin Robson

Contact number: 09 921 9999 ext 9661

Contact number: 0211499974

Email: mwaring@aut.ac.nz

Email: fdh0535@aut.ac.nz

Recruitment Email: Youth Justice Social Workers and Youth Justice Coordinators

Tēnā koe,



My name is Jasmin Robson (Jazz) and I am a Doctoral student at AUT University where I am researching young people's and youth justice personnel's perceptions of young people's rights to participation within the youth justice family group conference environment.

This study will involve interviewing up to five youth justice social workers and five youth justice coordinators who have previously been employed with Oranga Tamariki, and who are comfortable being interviewed in English, to explore their views on young people's participation rights. AUT ethics committee has approved the study [9th of September 2019 - 19/264].

I was wondering whether you might like to voluntarily participate in my study?

If this sounds of interest, I'd be grateful if you could contact me by email (fdh0535@aut.ac.nz) or phone on either (0211499974) or (09 921 9999 ext 8409)

With thanks in advance for your time

Ngā mihi

Jazz

Supervisor: Marilyn Waring

Contact number: 09 921 9999 ext 9661

Email: mwaring@aut.ac.nz

Researcher: Jasmin Robson

Contact number: 0211499974

Email: fdh0535@aut.ac.nz

Appendix D:Confidentiality Agreement

Confidentiality Agreement



Project title: “Do I really have rights to participate?” Perceptions of young people and of youth justice personnel of young people’s rights to participation in Youth Justice Family Group Conferences in Aotearoa New Zealand

Project Supervisor: **Marilyn Waring**

Researcher: **Jasmin Robson**

- I understand that everything I hear, or is discussed, in the interviews with participants and the researcher for this study is confidential.
- I understand that the content of the interview can only be discussed with the young person or researcher.

Support person’s signature:

.....

Support person’s name:

.....

Translator’s Contact Details (if appropriate):

.....
.....
.....
.....

Date:

Project Supervisor’s Contact Details (if appropriate):

.....
.....
.....

***Approved by the Auckland University of Technology Ethics Committee on 09 September 2019
AUTEK Reference number 19/264***

Note: The Intermediary should retain a copy of this form.

Appendix E: Researcher Safety Protocol

Auckland University of Technology Ethics Committee (AUTEK)

Guide for drafting a Researcher Safety Protocol



Project title and brief description:

Title: “Do I really have rights to participate?” Perceptions of young people and of youth justice personnel of young people’s rights to participation in Youth Justice Family Group Conferences in Aotearoa New Zealand

Brief description: This study will investigate the perceptions of young people and of youth justice personnel, in relation to young people’s participation rights within the legal setting of a youth justice family group conference (YJ FGC). While there is a significant body of research on children’s and professional’s views of children’s participation rights in care and protection family group conferences (FGCs), there are surprisingly few studies investigating young people’s and youth justice personnel’s perceptions of participation rights in YJFGC settings, even though those perceptions may influence how participatory rights are understood and exercised by young people.

The current study intends to bring the voices of young people and the perspectives of youth justice personnel, about young people’s participation, to the literature, filling a significant existing gap. Understanding young people’s and youth justice personnel’s perceptions of participation rights in YJFGCs will illuminate how young people’s abilities to exercise their legal rights to participation may be facilitate or hindered in this setting.

Applicant

Professor Marilyn Waring

Primary Researcher

Jasmin Robson

Where is the research being undertaken?

The research will be taking place in either

- *AUT City Campus private office space*
- *Private office space of youth advocates who work in Auckland*
- *Private office space of Propertex located in Massey, West Auckland*

Who is likely to be present at the research location?

- *AUT City campus – staff and students of AUT in the broader research location (the building)*
- *Private office space of the youth advocates – will most likely have other employees and members of the public present in the broader research location (the building)*
- *Propertex will most likely have present the business owner and office manager (who will also be the support person for the researcher), a property manager and letting agent.*

What access permissions are needed to undertake the research at the chosen location?

- *AUT – Ethics approval to conduct the research on its premises*
- *Youth advocates private office space – the youth advocates permission*
- *Propertex - As the primary researcher’s immediate family own Propertex, she has spoken to them, and they have given her permission to use a private, safe, office space located within the real estate for her interviews.*

What maps and guides has the researcher consulted to ensure familiarity with the locations?

- *The only location the researcher is not familiar with is the private offices of youth advocates.*
 - *For the locations that the researcher is not familiar with she will consult Google Maps once she is provided with the exact locations for each interview. The researcher and a companion will do a drive by during the day of any unfamiliar locations to assess the surroundings and safety of the area.*

What reliable local public transport is available?

- *The researcher has her own vehicle and will drive to these locations to conduct all the interviews.*

Where is it safe to use private cars and leave them in the area?

- *The researcher will park in either a paid public parking area, or wherever parking is available.*

What local rendezvous or contact points are available for researchers?

- *AUT*
- *Private offices of youth advocates: unknown at this stage.*
- *Propertex will be the contact point.*

How close to your research location are hotels or safe accommodation?

- *As the research will be conducted in the Auckland area, she will not need access to hotels or safe accommodation.*

Who will be collecting the data and interacting with participants?

Who will be accompanying the researcher?

- *For any unfamiliar research locations (youth advocates offices) the researcher will have a companion accompany her to the research locations. The companion will wait around the area in a café or in the car.*
- *The primary researcher will also provide her primary supervisor with a schedule of the locations, days, start time and expected finish time of each interview. She will call or text her supervisor before and after each interview to let her know she is safe.*

How will the safety of any dependent children accompanying the researcher be assured?

- *N/A*

How will the safety of any translators, interpreters, intermediaries or transcribers be assured?

- *N/A*

How familiar is the researcher with the social or cultural context of the research?

What level of familiarity does the researcher have with the social context of the participants and the research? and What level of familiarity does the researcher have with the cultural context of the participants and the research?

- *The primary researcher has had no contact with the youth justice system. She is tangata whenua (Ngāti tuwharetoa and Ngāti Raukawa), and has had extensive interactions with Pacifica and Māori students as an equity mentor for AUT. She has also worked with children and young people as a caregiver (nanny) for 15 years, and has also interacted with youth advocates and YJCs in their work environment/academic settings.*

What consultation has taken place?

- *To ensure the research design is culturally appropriate for any potential Māori participants the primary researcher has consulted with Elisa Duder (Ethics representative for **Te Ara Poutama – The Faculty of Māori & Indigenous Development**) on her research design and methodology.*

- To ensure the research design is appropriate the primary researcher has consulted with Dr Chris Jenkin (Ethics representative **The Faculty of Culture & Society**) on her research design and methodology.
- *The primary researcher has spoken with Emilia about the research design as well as the risk to her personal safety. As a respected member of the West Auckland community, with extensive experience in communicating with and helping the whānau of, and young people in conflict with the law, Emilia has suggested that with the research design, and advice from Arihia, the research poses minimal risk to all involved in the research. Emilia also stated*
 - *“A lot of these kids have gone through a lot of institutional trauma. No one wants to hear what they have got to say about that trauma, and when I say institutional trauma I am referring to the Pākehā justice system. A lot of them see the justice system as a Pākehā process that presents as being about them but is not about them or designed for them. They get asked lots of questions by Pākehā people, who they think are out to trip them up and lock them up. As you present as Pākehā, make clear to them your Whakapapa, show them and their whānau respect, and assure them that you are not there to judge them or to trip them up. They will respect you for those things and just knowing you want to listen to them, I think, would be a real empowering experience for them.”*
- *The primary researcher has also spoken with Arihia Stirling (QSM) principal at Te Kura Māori o Nga Tapuwae. She is a well-known member of the Māori community, who has extensive experience in Tikanga Māori and working with rangatahi Māori. She has also worked as a community volunteer for Nga Manu Korero, Māori male mentoring programmes, school and home education initiatives, and many other community initiatives. She also serves on the Police Commissioner’s Māori forum. She provided the primary researcher with experienced advice and techniques for building rapport with rangatahi Māori – her advice (which the researcher will follow):*
 - *“Always know what ethnicity your clients are and greet them accordingly Maori – Kia ora – Samoan – Talofa really basic but such an icebreaker, breaks them looking at you as a Pākehā.*
 - *Smile at their whanau and acknowledge them with the elders first, by just reaching out to shake their hand first. Be confident in this behaviour so you don’t look fearful of them.*
 - *Speak strong and clear but gently and assuring, look at them with kindness without judgement.*
 - *Find a way for you to listen to them first up, what this does is it gives them the idea that you are willing to respect them*
 - *Speak their language – don’t use big words – ask gently if there is anything that you can explain for me so that they are confident in what you are saying.*
 - *Acknowledge that you may not know some things when you don’t, but you are willing to find out and get back to them and then do exactly that.*
 - *Re-cap what they have told you well, so they bury the suspicion that you (Pākehā) are trying to catch them out doing something wrong etc.*
 - *Always complete what you promised you will do.*
 - *Learn a small prayer and a small mihi so you can participate in the culture, when it is called for – probably one of the best pieces of advice I can give you.*
 - *Be honest and sincere in all your dealings with whanau.*
 - *Common sense and kindness when dealing with people who have or are suffering trauma and institutional racism of all kinds is the best practice.”*

- The primary researcher also met and spoke with Sally Kedge, the Coordinator and Director of Talking Trouble Aotearoa NZ, who is also a speech language therapist and is classed as an expert in working with/interviewing young people in the youth justice system of Aotearoa. She provided the primary researcher with information on recruitment processes, and techniques for building rapport and conducting interviews with young people. Sally has offered further assistance with this part of the research should the primary researcher require it.

What language support is needed?

- *They need to be comfortable with speaking in English*

What local tensions are there?

- *The researcher spoke with Emilia about the potential for young people to be affiliated with gangs. She said given the potential cohort it is highly likely some of them will have affiliations with gangs. She said young people's affiliations with gangs would not put the researcher at risk, as my research is not judging their gang affiliations or discussing anything about their involvement in gangs. However, to prevent the potential possibility of any tensions rising from this, she will distribute the recruitment emails/information sheet/video to young people within her social network who do not have any known gang affiliations.*

How strongly active are any cultural, religious or racial divisions?

- *There are no known active cultural or religious divisions.*
- *Although the researcher is tangata whenua, she looks Pākehā. Most of the potential young people will likely present as Māori or Pasifika. The researcher will be sure to identify her whakapapa to these young people and will make it very clear that she is not there to judge these young people.*

What do local sources, such as the police or local leaders, say about risks in the research area?

- *I have spoken with Emilia and Arihia who are both well-known in their local areas of West Auckland South Auckland, and who both have extensive experience of working with and supporting young people in conflict with the law and their whānau. Both have advised that there is minimal risk to the researcher for this research and that the areas in which the research will be undertaken are considered safe.*
- *Emilia also pointed out that the research location of Propertex is only 1km away from a local community police station in the unlikely event anyone's safety is compromised.*

Which local 'community leaders' have been spoken with to explain the research and gain their endorsement?

- *See above*

Does the research involve sports or activities that may be hazardous in nature?

- *N/A*

What safety protocols are in place?

- ***Interviews with youth advocates***
 - *Prior to the interviews that take place in the private office space of youth advocates the researcher will have a list of days, times, and addresses of where the interviews will be taking place and will give this information to her primary supervisor. Before and at the completion of each interview the primary researcher will text/call her supervisor to let her*

know she is safe. Also, the researcher will take a companion with her, who will have this list of information and the expected time the interview should finish. The companion will wait close by in a café. If reasonable time has passed and they have not heard from the researcher they will text the researcher if they do not get a reply, they will call the researcher, if they get no reply, they will contact the police.

- **Interviews with YJC/social workers**
 - *Prior to the interviews that take place in the private office space provided by AUT, the researcher will have a list of days, times, and the office in which the interviews will be taking place and will give this information to her primary supervisor. Before and at the completion of each interview the primary researcher will text/call her supervisor to let her know she is safe. The researcher will also have AUT security contact number in her phone in the unlikely event she needs their assistance.*
- **Interviews with young people**
 - *Prior to the interviews that take place at Propertex the researcher will have a list of days and times of when the interviews will be taking place. She will give this information to her primary supervisor. Before and at the completion of each interview the primary researcher will text/call her supervisor to let her know she is safe. She will also advise the owner of Propertex of the days, times, and expected lengths of interviews to be undertaken. If the researcher feels, at any point during the interview, she is at risk of harm she will remove herself from the interview room, speak with the owner/manager of Propertex and phone her primary supervisor.*
- **General protocol**
 - *In the unlikely event the researcher fears for her safety: If the researcher is prevented from leaving the interview, a technique that can be used is to tell the interviewee that the researcher needs to make a phone call to cancel their next appointment as she will be late, and people will worry. The researcher will then phone her primary supervisor and mention a code word that means danger, and this will signal the primary supervisor to call the police. If the researcher does not call/text her primary supervisor following the completion of each interview, this will signal the primary supervisor to first text/call the researcher, if she does not get a reply she will assume the researcher is in danger and will call the police.*

Will sufficient qualified personnel be in attendance to supervise the activity or respond swiftly to any emergency?

- *The researcher will have a support person close by for interviews located in youth advocates offices and at Propertex.*
- *For interviews located at AUT, security will be able to respond swiftly.*

What level of access to support is available?

Who will be available to provide assistance should it be required?

- *Interviews at youth advocates private offices: the general public or other staff in the building at the time, the primary researcher's companion (in person), and the primary supervisor via phone*

- **Interviews at AUT:** Security or other staff
- **Interviews at Propertex:** The owner/manager of Propertex and the primary supervisor via phone

How will the researcher ensure that those providing support will be aware of any need that arises?

- **Interviews at youth advocates private offices:** The primary researcher will inform the companion/primary supervisor of the safety protocol (as previously mentioned) and that this is to be followed if the researcher does not respond.
- **Interviews at AUT:** Security
- **Interviews at Propertex:** The primary researcher will inform the owner of Propertex that she may require their support to ask an interviewee to leave the premises or to contact the police, if she is placed at risk of any immediate harm.

What will those providing support do if it is needed?

- The companion/primary supervisor will contact the Police if necessary
- The owner of Propertex will ask the interviewee, and where applicable their support person, to leave the premises and, if necessary, will contact the Police.

What emergency plans are in place? Who can help?

What training or support is needed and how will it be accessed?

- N/A

What University policies are relevant to your project? Have you read and understood them?

- Having a safety protocol in place and following it.

How have significant local actors, such as statutory and community organisations been contacted?

- N/A

Who has been in touch with potential participants and what advice have they given?

- Potential participants will be contacted via the primary researcher, or on behalf of the primary researcher, by Oranga Tamariki, youth advocates, or Emilia

Who else is aware of the researcher's itinerary and research schedule?

- The primary supervisor and companion will be made aware of the researcher's itinerary and research schedule for interviews with youth advocates
- The primary supervisor will be made aware of the researcher's itinerary and research schedule for interviews at AUT
- The primary supervisor and the owner/manager of Propertex will be made aware of the researcher's itinerary and research schedule for interviews at Propertex

How will the researcher keep key support people informed of what is happening?

- Either in person, via text, or a phone call

How will key support people react if the agreed contact protocols are not followed?

- Contact appropriate authorities

Don't forget to update your safety protocol regularly:

Date for next review

Unknown at this stage

Appendix F: AUTECH Approval



9 September 2019

Marilyn Waring
Faculty of Culture and Society

Dear Marilyn

Re Ethics Application: **19/264 Do I really have rights to participate? Perceptions of young people and of youth justice personnel of young people's rights to participation in Youth Justice Family Conferences in Aotearoa New Zealand**

Thank you for providing evidence as requested, which satisfies the points raised by the Auckland University of Technology Ethics Committee (AUTECH).

Your ethics application has been approved for three years until 9 September 2022.

Standard Conditions of Approval

1. The research is to be undertaken in accordance with the [Auckland University of Technology Code of Conduct for Research](#) and as approved by AUTECH in this application.
2. A progress report is due annually on the anniversary of the approval date, using the EA2 form.
3. A final report is due at the expiration of the approval period, or, upon completion of project, using the EA3 form.
4. Any amendments to the project must be approved by AUTECH prior to being implemented. Amendments can be requested using the EA2 form.
5. Any serious or unexpected adverse events must be reported to AUTECH Secretariat as a matter of priority.
6. Any unforeseen events that might affect continued ethical acceptability of the project should also be reported to the AUTECH Secretariat as a matter of priority.
7. It is your responsibility to ensure that the spelling and grammar of documents being provided to participants or external organisations is of a high standard.

AUTECH grants ethical approval only. You are responsible for obtaining management approval for access for your research from any institution or organisation at which your research is being conducted. When the research is undertaken outside New Zealand, you need to meet all ethical, legal, and locality obligations or requirements for those jurisdictions.

Please quote the application number and title on all future correspondence related to this project.

For any enquiries please contact ethics@aut.ac.nz. The forms mentioned above are available online through <http://www.aut.ac.nz/research/researchethics>

Yours sincerely,

A handwritten signature in black ink, appearing to read 'K O'Connor'.

Kate O'Connor

Executive Manager

Auckland University of Technology Ethics Committee

Cc: dh0535@aut.ac.nz; Sharyn Graham Davies; Kirsten Hanna

Appendix G: Interview Guides

Indicative questions for young people aged 14 to 17 years

Introductory questions

1. Before we start, do you have any questions about today's interview or about the study?
2. Here is a blank piece of paper and a pen. I was wondering if you could please draw for me what the room looks like in the FGC?
3. I use the words youth justice family group conference, but do you call it something else?
4. **[OPTIONAL]** Have you seen any good movies lately?
 - a. Prompt: If they say yes, what was it called? Do you think I should see it?
 - b. Prompt: If they say no, have you seen any really bad ones lately?

Thank you, now I am going to give you a piece of paper with three questions. These questions are about you. Okay? We can go over it together if you like?

paper questions

Thank you. I am now going to ask you some questions about your experiences of the YJFGC.

Experiences of the YJFGC

1. How many FGCs have you had?
 - a. Prompt: If they have had one, how old were you then?
 - b. Prompt: If they have had more than one: Ok, I want to talk about the latest one. How old were you then?
2. Can you walk me through what happened from the beginning to the end of your last YJFGC?
3. Before your (last) FGC did you know what, was going to happen in the FGC?
 - a. Prompt: If yes, how did you know what happens? What did you know?
4. Did anyone explain to you what *you* would have to do during your (latest) FGC before you had your FGC?
 - a. Prompt: If yes, what did they tell you?
 - b. Prompt: Was what they told you helpful?
5. Imagine you had to explain to someone, who has no clue, what happens in an FGC. What would you tell them?
6. Did you get to ask anyone to come to your FGC?
 - a. Prompt: If yes, who did you ask to come?
7. Did you find the FGC was useful for you?
 - a. Prompt: If yes, why was it useful?
 - b. Prompt: If no, why wasn't it useful?
8. Was there any part of your FGC that you found hard to understand?
 - a. Prompt: If yes, can you explain to me what was difficult about it?
9. Were there any people in your FGC that were hard to understand?
10. Was there anything you liked about your FGC?
 - a. Prompt: tell me more about that?
11. Was there anything you didn't like about your FGC?
 - a. Prompt: tell me more about that?
12. Do you think that the FGC is a good thing?
 - a. Prompt: If yes: How come—why are they a good thing?
13. Do you think the FGC can be a bad thing?
 - a. Prompt: If yes: How come —why are they a bad thing?

Thank you, we have finished talking about your FGC experience. Now I want to talk to you about your participation in your FGC. Are you okay to continue? Remember it is perfectly okay if you do not want to, we can even take a break now if you would like?

Participation

1. What do you think of when I say the word “participation”?
2. What does participation mean to you?
3. Did you feel that you got to participate in your FGC?
4. In what part of your FGC do you think you got to participate the most?
 - a. Prompt: Your plan? Introduction? If any?
5. Did you feel like you got to say everything you wanted to say?
 - a. Prompt: If no, what stopped you from saying what you wanted to say?
6. Did anyone in your FGC encourage you to talk or tell you when to talk?
 - a. Prompt: If yes, who encouraged you to talk?
 - b. Prompt: How come, do you think, they encouraged you to talk?
7. Did anyone stop you from talking during your FGC?
 - a. Prompt: If yes, can you tell me more about that – why did they stop you from talking?
8. Do you think adults can stop young people from talking in the FGC?
 - a. Prompt: If yes, how can they stop you?
9. Do you think adults should support young people’s participation in the FGC?
 - a. Prompt: If yes, which adults? And why?
10. What do you think is the best way for young people to participate in the FGC?
 - a. Prompt: For example, talking or drawing

Thank you. I want to show you a piece of paper you can read it on your own or, if you like, we can read it together. Then I am going to ask you a couple of questions, okay?

Scenario for participation

1. [*Show participants Article 12 of the UNCRC and then explain that it is about young people having the right to give their opinion and for adults to listen and take their views seriously; it it’s not saying that young people get the final say, but that their opinion is heard and taken into account when a decision is made*]
 - a. What do you think about Article 12 and its idea that young people should be part of the conversation about decisions in the FGC that affect them?
2. [*Show participants Article 13 of the UNCRC and then explain that it is about young people having the right to find out information and to share what they think with others, by talking, drawing, writing or in any other way that does not harm or offend another person*]
 - a. What do you think about Article 13 and its idea that someone should tell young people what will happen in their FGC before it happens?
 - b. What do you think about the idea that young people can ask questions about their FGC?
 - c. What do you think about the idea that young people can share that information in any way they feel comfortable?

Thank you. I am now going to ask you some questions about having people support you during the FGC, but before we get to that would you like to take a break? Are you okay to continue? Do you have any questions for me so far?

Support from the process in YJFGCs

1. What does the word **support** mean to you?
2. Was there anything about the FGC that made you feel supported?
3. Was there anything about the FGC that made you feel unsupported?
4. Do you think the FGC is made to support young people to participate?
 - a. Prompt: If yes, in what way does the FGC do this?
 - b. Prompt: If no, how come?

5. Did you have any support people at your FGC, like family/whānau, friends or a social worker?
 - a. Prompt: If yes, do you think these people were supportive during your FGC?
6. Do you think having support from these people is important in the FGC?
 - a. Prompt: If yes, in what way(s) did they support you?
7. What do you think about having support people at your FGC?
 - a. Prompt: Is it a good or bad thing?
 - b. Prompt: How come?

Thank you, now I am going to ask you some questions about your YJC and youth advocate (if you have one).

Support from personnel in YJFGCs

1. Did you have a YA for your FGC?
 - a. If they did not have an YA skip to the questions about social workers.
2. Imagine you had to explain to someone, who has no clue, what a YA does, what would you tell them?
3. Do you think having a YA at the FGC is a good thing?
 - a. Prompt: How come?
4. Do you think having a YA at the FGC is a bad thing?
 - b. Prompt: How come?
5. Do you think YA should support young in the FGC?
 - a. Prompt: If yes, in what ways should they support young people?
 - b. Prompt: If no, why not?
6. Did you have a social worker at your FGC?
 - a. If they did not have a social worker skip to questions about the YJCs
7. Imagine you had to explain to someone, who has no clue, what a social worker does, what would you tell them?
8. Do you think having a social worker at the FGC is a good thing?
 - a. Prompt: How come?
9. Do you think having a social worker at the FGC is a bad thing?
 - c. Prompt: How come?
10. Do you think social worker should support young in the FGC?
 - a. Prompt: If yes, in what ways should they support young people?
 - b. Prompt: If no, why not?
11. Did you know what a YJC was before you had your FGC?
12. Imagine you had to explain to someone, who has no clue, what a YJC does, what would you tell them?
13. Did you have much to do with the YJC before your FGC?
 - c. Prompt: If yes, what did you do with them?
14. Did you have much to do with the YJC after your FGC?
 - a. Prompt: If yes, what did you do with them?
15. Did the YJC include you in your FGC?
 - a. Prompt: If yes, in what way did s/he include you?
16. Did the YJC encourage you to talk in your FGC?
 - d. Prompt: When did they encourage you to talk?
17. Do you think having a YJC at the FGC is a good thing?
 - a. Prompt: If yes, how come?
18. Do you think having a YJC at the FGC is a bad thing?
 - a. Prompt: If yes, how come?

Thank you, we are almost to the end, only four questions to go. These questions are about the law and policy and your views on how you would change them.

Legislative changes

1. Imagine you had the chance to change the FGC, would you change anything?
 - e. If yes, what would you change?
2. Is there anything you would change about the role of the YJC or YA?
 - f. Prompt: If yes, what would you change?
3. If you could give adults, in the FGC, advice to help young people feel supported to take part in their FGC, what would you tell them?
4. If you could give advice to young people who are about to have an FGC, what would you tell them?
5. Are there any other questions that you think I should have asked?

Thank you so much, we have now finished the interview. Do you have any questions for me?

Okay, so if over the next few days you have any questions at all about the study you can contact me, and just so you remember I will send you a copy of what we talked about today in the next few weeks for any changes you may wish to make and I will also be doing a follow up phone call with you, like we talked about, in the next two weeks.

Indicative questions for youth advocates (YA)

Introductory questions

1. Before we start, do you have any questions for me about today's interview or about the research?
2. What do you think is the best part of your job?
3. Here is a blank piece of paper and a pen. I was wondering if you could please draw for me what the room looks like in the FGC?

Thank you. I am now going to give you a piece of paper that has three questions about you on it. They are mostly demographic questions. Okay?

[Give the participant the piece of paper]

Thank you. I am now going to ask you some general questions about your role as a YA

1. I only know what the books tell me about the role of a YA, how would you describe your role as a YA?
2. When you meet a young person for the first time, do you explain your YA role to them?
 - a. Prompt: If yes, what do you tell them?
 - b. Prompt: If no, how come?
3. Can you tell me what your role as YA is in the FGC setting?
4. Are there any advantages to your role as a YA in the FGC setting?
 - a. Prompt: If yes, can you give me an example of one?
5. Are there any disadvantages to your role as a YA in the FGC?
 - a. Prompt: If yes, can you give me an example of one?
6. What skills do you think a YA needs in the FGC setting?
7. Do YAs' require any specific training to represent a young person?
 - a. Prompt: If yes, what kind of training do they get?
 - b. Prompt: If no, do you think training is needed?
 - c. Prompt: if yes/no, why?

Thank you. I would now like to ask you a couple of questions about the FGC process.

FGC process

1. From your own experiences, could you tell me a little bit about the FGC process?
 - a. Prompt: What happens in an FGC?
2. Do you think the FGC is a useful process for young people in conflict with the law?
 - a. Prompt: If yes, how come?
 - b. Prompt: If no, how come?
3. Do you think there are any parts of the FGC process that young people find hard to understand?
 - a. Prompt: If yes, what parts?

Thank you. I would now like to ask you some questions about young people's participation rights from your perspective.

Participation

1. I know what the texts book say about participation rights of young people, but I am far more interested in what you think about participation. How would you define the word participation, for young people, in the context of the FGC setting?

Now, before we continue with participation questions - I have two sections of the UNCRC on participation that I would like to get your thoughts on.

1. *[Show participants Article 12 of the UNCRC and then explain that it is about young people having the right to give their opinion and for adults to listen and take their views seriously; it it's not saying that young people get the final say, but that their opinion is heard and taken into account when a decision is made]*
 - a. What do you think about Article 12 and its idea that young people should be part of the conversation about decisions in the FGC that affect them?

1. *[Show participants Article 13 of the UNCRC and then explain that it is about young people having the right to find out information and to share what they think with others, by talking, drawing, writing or in any other way that does not harm or offend another person]*
 - a. What do you think about the idea that young people can share that information in any way they feel comfortable?
 - b. What do you think about the idea that someone should tell young people what will happen in their FGC, before it happens?
 - c. What do you think about the idea that young people can ask questions about their FGC?
2. Do you think young people know about their participation rights in the FGC setting?
 - a. Prompt: If yes, what makes you think that they know what their participation rights are?
3. Do you think it is important for young people to know what their participation rights are in the FGC setting?
 - a. Prompt: How come do you think this is important?
4. Do you think *all* young people are given the same opportunity to engage with their rights to participation in the FGC setting?
 - a. Prompt: If no, how come?
5. Do you think there are people present in the FGC that play a role in supporting young people's participation rights?
 - a. Prompt: If yes, who?
 - b. Prompt: In what ways do these people support young people's participation?
6. Do you think there are people present in the FGC setting that can hinder young people's access to their participation rights?
 - a. Prompt: If yes, who?
 - b. Prompt: In what ways do these people hinder young people's participation?
7. Do you know if there are any clause in the Oranga Tamariki Act 1989 that places a statutory requirement on you to facilitate young people's participation in the FGC setting?
 - a. Prompt: If yes, could you tell me a little bit more about what these are?
8. In what ways, if any, do you facilitate young people's participation during their FGC?
9. Do you think there are any advantages for young people being encouraged to participate in their FGC?
 - a. Prompt: If yes, what are the advantages?
10. Do you think there are any disadvantages for young people participating in an FGC?
 - a. Prompt: If yes, what are the disadvantages?

11. Do you think there are any parts of the FGC that should not include young people?

Thank you. I would now like to ask you some questions about the FGC process, and people that may support or hinder young people's experience of their participation rights

Support and hinder

1. What FGC processes do you think support young people's participation?
2. What FGC processes do you think hinder young people's participation?
3. Are there any FGC processes that you would change to support young people's participation in their FGC?
 - a. Prompt: If yes, could you tell me more about that?
4. Do you think any of the FGC processes make participation rights for young people difficult to enable?
 - a. Prompt: If yes, in what ways are they difficult to enable?
5. Do you think YAs' and YJCs' play an important role in supporting young people's participation rights in the FGC setting?
 - a. Prompt: If yes, in what ways do these people support young people's participation?
 - b. Prompt: If no, how come?
6. Do you think YAs' and YJCs' can hinder young people's access to their participation rights?
 - a. Prompt: If yes, how?

Thank you. We are now at the last set of questions. These are about the law/policy and process.

Legislative changes

1. Is there anything you would change about the FGC process?
 - a. Prompt: If yes, what would you change and why?
2. Is there anything you would change about the statutory requirements of the Oranga Tamariki Act 1989 to support young people's participation in their FGC?
 - a. Prompt: If yes, what would you change?
3. Do you think there are other practices or process that could be used to make sure young people feel included in their FGC?
 - a. Prompt: If yes, could you tell me a little bit more about that
4. If you could give any advice to a young person about to have an FGC, what would you tell them?
5. If you could give adults, in the FGC, advice to help young people feel supported to take part in their FGC, what would you tell them?
6. Are there any question's that you can think of that I have not asked?

Thank you. We have now finished our interview. Do you have any questions for me?

Okay, so if over the next few days you have any questions at all for me about the research you can contact me. I will send you a copy of your transcript in the next few weeks for any changes you may wish to make.

Indicative interview guide for youth justice social workers

Introductory questions: Youth justice social worker

1. Before we start, do you have any questions for me about today's interview or about the research?
2. What is/was the best part of your job as a YJ social worker?

[Give the participant the demographic questions on paper]

1. Could I get you describe what the setting of a typical YJFGC looks like?
2. How would you describe the job of a YJ social worker?
3. How do you/did see your role as a YJ social worker in the FGC?
4. When you meet/met a young person, for the first time, do you explain your role as a YJ social worker to them?
 - a. Prompt: If yes, what do you tell them?
5. Are there/were there any advantages to your role as a YJ social worker in the FGC setting?
 - a. Prompt: If yes, what are they/were they?
6. Are there/were there any disadvantages to your role as a YJ social worker in the FGC?
 - a. Prompt: If yes, what are they/were they?
7. What would you say is/was the most important part of your role as a YJ social worker?
8. Is there anything you would change/have changed about your role as a YJ social worker?
9. What skills do you think a YJ social worker needs to be able to fulfil their role in the FGC?

FGC process

1. Does/can you remember if the Oranga Tamariki Act 1989 set out any statutory processes you must/had to follow when attending an FGC?
 - a. Prompt: If yes, what are/were some of these statutory processes?
2. Do you think the FGC is a useful process for young people in conflict with the law?
 - a. Prompt: If yes, why is it a useful process for young people in conflict with the law?
 - b. Prompt: If no, how come?
3. Do you think there are any parts of the FGC process that young people find hard to understand?
 - a. Prompt: If yes, what parts?

Participation

1. I know what the texts book say about participation rights of young people, but I am far more interested in what you think about participation. How would you define the word participation, for young people, in the context of the FGC setting?
-
1. [*Show participants Article 12 of the UNCRC and then explain that it is about young people having the right to give their opinion and for adults to listen and take their views seriously; it it's not saying that young people get the final say, but that their opinion is heard and taken into account when a decision is made*]

- a. What do you think about Article 12 and its idea that young people should be part of the conversation about decisions in the FGC that affect them?
2. *[Show participants Article 13 of the UNCRC and then explain that it is about young people having the right to find out information and to share what they think with others, by talking, drawing, writing or in any other way that does not harm or offend another person]*
 - a. What do you think about the idea that young people can share that information in any way they feel comfortable?
 - b. What do you think about the idea that someone should tell young people what will happen in their FGC, before it happens?
 - c. What do you think about the idea that young people can ask questions about their FGC?
1. Do you think young people know about their participation rights in the FGC setting?
 - a. Prompt: If yes, what makes you think that they know what their participation rights are?
2. Do you think it is important for young people to know what their participation rights are in the FGC setting?
 - a. Prompt: How come do you think this is important?
3. Do you think *all* young people are given the same opportunity to engage with their rights to participation in the FGC setting?
 - a. Prompt: If no, how come?
4. Do you think there are people present in the FGC that play a role in supporting young people's participation rights?
 - a. Prompt: If yes, who?
 - b. Prompt: In what ways do these people support young people's participation?
5. Do you think there are people present in the FGC setting that can hinder young people's access to their participation rights?
 - a. Prompt: If yes, who?
 - b. Prompt: In what ways do these people hinder young people's participation?
6. In what ways, if any, do you facilitate young people's participation during their FGC?
7. Do you think there are any advantages for young people being encouraged to participate in their FGC?
 - a. Prompt: If yes, what are the advantages?
8. Do you think there are any disadvantages for young people participating in an FGC?
 - b. Prompt: If yes, what are the disadvantages?
9. Do you think there are any parts of the FGC that should not include young people?

Support and hinder

1. What FGC processes do you think support young people's participation?
2. What FGC processes do you think hinder young people's participation?
3. Are there any FGC process that you would change to support young people's participation in their FGC?
 - a. Prompt: If yes, could you tell me more about that?

4. Do you think any of the FGC processes make participation rights for young people difficult to enable?
 - a. Prompt: If yes, in what ways are they difficult to enable?
5. Do you think YJSWs' play an important role in supporting young people's participation rights in the FGC setting?
 - b. Prompt: If yes, in what ways do these people support young people's participation?
6. Do you think YJSWs' can hinder young people's access to their participation rights?
 - a. Prompt: If yes, how?

Legislative changes

1. Is there anything you would change about the FGC process?
 - a. Prompt: If yes, what would you change and why?
2. Do you think there are other practices or process that could be used to make sure young people feel included in their FGC?
 - a. Prompt: If yes, could you tell me a little bit more about that
3. If you could give any advice to adults in the FGC setting to support young people, what would you tell them?
4. If you could give any advice to a young person about to have an FGC what would you tell them?

Thank you.

Okay, so if over the next few days you have any questions at all for me about the research you can contact me. I will send you a copy of your transcript in the next few weeks for any changes you may wish to make.

Appendix H: Young People Participant Descriptions

Young people

Amiria is 17 years old. She is shy at first but then talkative when she is comfortable. She did not finish high school and currently shares the role of caring for her younger siblings with her Mum. She has experienced one YJ FGC but says she is familiar with the YJ system and has attended or supported her friends through many of their YJ FGCs. She says she hopes to find her role in life and dreams of one day being “someone”.

Malakai is 18 years old. He is confident and appears older than his years. He did not finish high school but currently works as an apprentice. Malakai says he has had many run-ins with the YJ system but personally experienced only one YJ FGC. Malakai talks about being familiar with the YJ system¹³⁰ and, at times, supporting his mates through their YJ FGC.

Nikau is 16 years old. He is reserved, shy, and speaks, looking at the ground in a quiet tone. He did not finish high school and, around the time of his interview, had been released from his fifth stay in a YJ residence. Nikau has also been in and out of state care. He says most of his immediate family are in prison or YJ residences. Nikau is creative and likes to draw. He hopes, one day, to have a life away from state care and the YJ system.

Grace is 18 years old. She is strong in her opinions and uses humour to talk about painful experiences. She did not finish high school, but true to her humorous personality, she laughs it off and says, “I don’t need it anyways. I got street smarts. You can’t teach that shit”. Grace has experienced more than one YJ FGC. She lives with her Mum and younger siblings and, one day, hopes to find a job.

David is 15 years old. He presents as shy but is not afraid to speak his mind when he has an opinion. He is currently not in high school and is not sure if he will go back. David has experienced one YJ FGC and is unsure if that will be his last. He lives between places and hopes one day to find something he likes to do that will make him money.

Rangi is 17 years old. He is confident and firm when sharing his views. He did not finish high school but attends courses provided for him through his YJ FGC plans. Rangi has experienced three YJ FGCs and laughs off the experiences as just a

¹³⁰ Familiarity with the YJ system does not imply that these young people are necessarily competent with all aspects of YJ that they experienced. Rather, this is how they described, in part, their interaction with the YJ system.

normal part of his “kind of life”. He talks about being familiar with the police and the YJ system.

Kauri is 17 years old. He is quiet, says very little and is observant of his environment. Kauri did not finish high school and is living between places. Kauri has experienced over 10 YJ FGCs and is familiar with the YJ and care and protection systems. He says, “[i]t’s just life, eh?”.

Kai is 16 years old. He is polite and shakes hands to introduce himself. Kai did not finish high school but likes being at home, where he has strong support from his whānau, especially his grandparents. Kai has experienced one YJ FGC and says, with certainty, he is done with crime because he never wants to go through the YJ FGC process again.

Maverick is 16 years old. Maverick is well-mannered, polite and a confident speaker. Maverick did not finish high school but attends courses provided for him through his YJ FGC plans. Maverick has experienced about 10 YJ FGCs’ and has been in state care. He asks many questions and says he mostly gets into trouble with the law because of his anger issues. When he finishes his courses, he wants to get a job to have financial security.

Aroha is 17 years old. She has a strong persona with a harrowing story. Aroha did not finish high school and has been in and out of state care from a young age. She says she became a mother at 14 years of age but had her daughter removed from her care at birth. Aroha has experienced three YJ FGCs. She is [at the time of the interview] filling requirements that will allow her to have her daughter in her care. She hopes to, one day, be a mum to her daughter and find a fulfilling job.

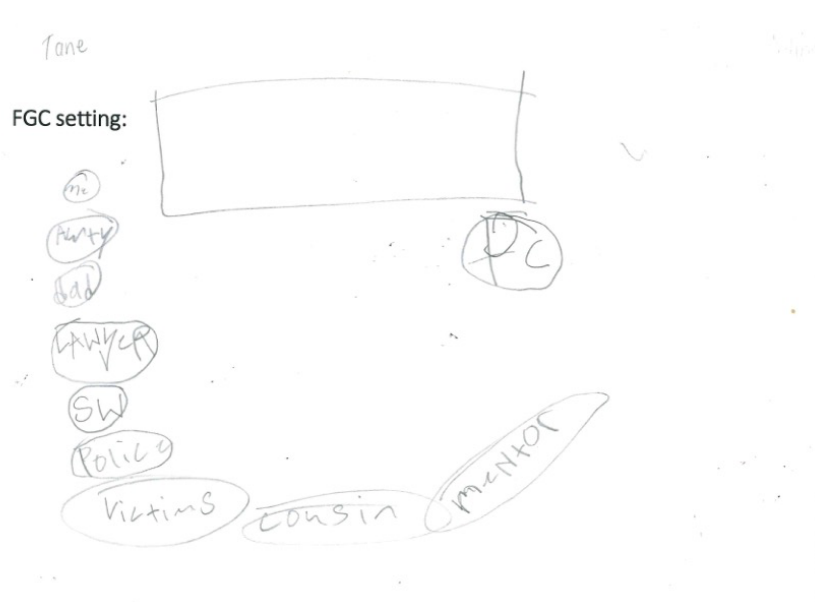
Tane is 15 years old. He has a quiet voice but is curious about everything around him. He asks lots of questions but does not understand big words, and he likes when adults talk clearly or draw pictures to explain things to him. Tane is yet to go to high school and is starting his first year of high school in early 2020. Tane says most of his immediate family is in prison, and he lives with a supportive extended family. Tane has experienced three YJ FGCs and nervously laughs about them.

Appendix I: Participant Drawings

Young person participant David's drawing of the YJ FGC setting



Young person participant Tane drawing of the YJ FGC setting



Appendix J: Article 12 and Article 13 of the UNCRC Exemplar

Article 12

Young people have the right to voice their opinions and have these taken into account in decisions that affect them.

Article 13

Young people have the right to find out things and share what they think with others, by talking, writing, or in any other way they are comfortable with, unless it harms or offends another person.

Appendix K: Quotes with Repairs.

The following provides some examples to show participants direct quotes *before* removing the highlighted repair words, as demonstrated by the use of ellipsis points in the thesis.

Example A

Right. So, I was just in one the other day, well actually I was in three the other day, but um so, it's normally, in [area removed], we do, it's at the police house. So, it's not a place where whānau really want to go cause they know, when they're over there, it's, um, kind of, you know, they are already out of their element, and their environment. Um, and then when they come in there's like the police there, the lawyer there, other people, you know, professionals and then they're coming into this space which is kind of already uncommon to them, you know, in front of people they may feel intimidated by. And, it's [pause] sometimes it's not the best place for them to feel comfortable. (Anahera)

Example B

Um, [deep breath and long pause], I think the environment can be quite intimidating. Ah, especially when, again, it is such a professionally top load situation. I mean, you're going to a government building for an official meeting, with a whole bunch of professionals, including the police. Um, that's a scary situation. And, you know, I wouldn't want to talk in a situation like that, I'd probably shut down if that was me. So, I can definitely understand why young people do as well. (Scott)

Example C

It was challenging, it was demanding, and, it was a lot of pressure, um, cause you are responsible for writing up the plans, review the plans and, um, so, it was definitely challenging, but like I mentioned before the team was really supportive, very helpful, and we could actually see we were making some difference. Um, and we were able to advocate for young people in the court, with the police, with the lawyers. Um, so I think we managed to make some difference, at least for a small percentage of people. (Jay)

Example D

No, I don't because it's, um, that is one of the things I think is very important is that the young person is not feeling that they are excluded at all from the process that is about them, and I do not think [pause] unless it is for some reason, in relation to, um, but separate meetings can be arranged if it is things to do with mental impairments, or anything like that, if there is something, or safety, then yes. I suppose you have to be flexible. (Lily)

Appendix L: Personal Reflections on the Interviewing Process with Young People

Pilot Interviews

- Conducting two pilot interviews with young people was a brilliant way to figure out what questions young people could struggle with in an interview and also gave me some insight into the nature of my future participants. For example, when I did my first pilot interview, I asked the first participant if she would change anything about the interview questions; she said: “Nah, nothing. They are heaps easy to answer because they make sense, and heaps of young people would want to do this because it makes you feel like an adult cares and listens, and like it’s hard to find adults that really care or listen to youths like us. But, what adults forget, is we really are smart. We have stuff to say that matters and could be like useful. We might not be book-smart or school smart, but that doesn’t mean that we aren’t smart. A lot of us depended on ourselves from day one and supported ourselves from day one. We know how to survive, and that’s like a different kind of smart”.
- Both pilot participants said the questions were easy to answer, did not make them feel intimidated or uncomfortable, and that young people would be okay to answer them. One young person suggested some words might be difficult for young people to understand; for example, ‘YJ FGC’ is just known as FGC to them, and a ‘youth advocate’ is known to them as a ‘lawyer’. So, I changed the wording of these questions to reflect that. This young person also suggested a new research question: “What makes you continue to commit crime, even though you have had an FGC?” I could not ask this question because that would be an assumption on my part that they keep committing crime – I guess, from her experience of her peers, she has experienced some of them reoffending after their FGCs.
- I picked up on some exciting/food-for-thought themes from my pilot interviews and amended my interview questions where young people made suggestions. I could see how helpful those changes could be—for example, rewording YJ FGC to FGC when informally talking with young people. I strongly recommend doing pilot interviews for anyone interviewing young people.

Conducting the Interviews

Rapport Building

- Building rapport is, I think, something I am good at. I know what it is like to feel vulnerable and nervous in a new environment, so I made sure that I relaxed each young person participant in the interview setting with some general chit-chat. Notably, when I interviewed young people participants, I dressed casually (for example, in a hoody and jeans). I did not want the young people participants to feel intimidated. At the end of one interview, one participant told me she is usually reserved when speaking to professionals because of past negative experiences. She said that from the moment she saw me, she thought I was cool and liked my sneakers. She said that she felt comfortable because I did not make her feel intimidated or present myself as “better than her” and because I spoke to her kindly and took an interest in her interests. She liked that we had chit-chat before the interview.
- Another important part of rapport building was providing kai for each young person. Young people participants loved this aspect of the interview process. Two

young people participants stated that if kai was offered during the YJ FGC, young people and their whānau would feel much more comfortable in that setting.

- When it came to the rapport-building questions in the interview guide, I found these nearly useless when I started the interview. I had already built rapport with each young person by casually talking to them when they arrived at the office. It seemed odd to me that, after building that rapport, I would say, “I would like to ask you some questions about any good or bad movies you have recently seen”. It didn’t flow. So, I made these questions optional and determined by the amount of rapport I had built with each young person whether the rapport questions needed to be used.

Pre-interview

- The introduction to the research, that is: going over the consent/assent forms and information sheet/any questions they may have, took roughly 10 to 15 minutes per young person. I did notice that young people did not seem to be bothered with this process, even though as adults we see it is important and required. Four young people asked if this was necessary and stated that they were cool with everything and just wanted to get on with answering the questions. When reflecting on being a young person, I could see from their perspective why some young people felt this way, but understood from an adult’s perspective why this is such a necessary part of doing research with young people.

Doing the Interviews

- Sometimes, my interview schedule would require two or three interviews in one day. Conducting three interviews in one day was far more exhausting than I expected. On reflection, one to two interviews per day is more than enough. As a researcher I feel you need time to reflect on and to process what you’ve heard.
- The answering of the interview questions for young people took about 35 minutes. This was a lot shorter than I thought it would be. Many young participants would answer the questions quickly or give a ‘yes’ or ‘no’ answer. On the other hand, the interviews with the YJ personnel took about 45 minutes. Some of the answers to the questions by YJ personnel were a page in length when transcribed.
- Doing interviews is hard. I do not think researchers can fully prepare for interviewing vulnerable populations. There are so many unexpected things that can be heard in these settings and so many unexpected things that can happen. For example, I have a sensitive nature and I take on board what people say and mull over it. If I am honest, it was sometimes difficult to hear some of what the young people had to say. All of the young people I interviewed have had harrowing lives. I admire their strength in trying to right the wrongs that life has dealt them. Their stories, many of which were heart breaking also humbled me. No amount of reading research text books could have fully prepared me for sitting in front of a young person who is describing traumatic experiences that could break an adult, let alone a child or young person, and knowing they have lived these experiences is a lot to sit with. It was also hard to hear what the YJ personnel had to say. At times, I noticed much overlap between young people’s experiences and what YJ personnel said young people sometimes experience. For example, most young people mentioned something along the lines of feeling intimidated or scared in the FGC setting. Similarly, some of the YJ personnel remarked that young people often look scared and say that they fear the process.
- Something else I realised is that removing emotion in an interview setting can be difficult. Researchers are human too. Sometimes, during the interviews, I had tears in my eyes at what participants told me. My heart broke for their journeys, and I think the realisation that our system can and has really let some young people down, especially when they need the help the most, made me reflect on my work. This was not an easy load to carry.

- I also found it difficult to take notes during all of the interviews. I thought it was far more important to show each young person that I was fully attentive to what they were saying. If there was anything that stood out during the interview, I would either write it down quickly or, once I had finished the interview, I wrote it down from memory.
- Following each interview, I would go for a long walk and mull over what I had heard in the interviews. I found this to be a handy tool for reflecting on the process. I was also able to think about my privilege and my life. The interviews with young people also made me reflect on my childhood and the opportunities I was given and the opportunities I now have to help make a difference in this space. Interviews with young people made me more determined to be part of the change to the system that ensures young people get a YJ FGC process that leaves them better than when they entered the YJ system.

Transcribing

- I transcribed all interviews the day after each interview. Not doing it directly after each interview gave me a “mental break” from everything I had been listening to and processing. Hearing and typing the interviews with fresh ears and eyes also presented some new codes and themes that I had not noticed while reflecting. However, while I still advocate that doing your transcribing is a good idea, it does take a long time. It took me about two hours per interview to transcribe 40 minutes’ worth of discussion. This is something to think about for future research.