

# Does Your Policy Need An Age Limit?

➤ A guide to Youth Ages  
from the Ministry of Youth Affairs



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Te Tari Taiohi

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Copies are available from the Ministry Youth Affairs.

# Welcome

There is no “magic formula” for deciding on what age young people should be able to do certain things. However, there are common factors that should be considered to avoid discrimination and encourage consistent treatment of young people, and respect for their active participation in society.

This document sets out a framework to help you work with age-related issues when developing policy and law. This is a unique and sometimes “unexplored” area for some organisations - so the advice in this booklet is a starting point to encourage a consistent approach and rationale for choosing age restrictions that affect New Zealand’s young people.

If you have any suggestions or comments, please contact us on 04 471 2158, or email: [info@youthaffairs.govt.nz](mailto:info@youthaffairs.govt.nz). We always welcome feedback and involvement in youth-related issues.

Anne Carter  
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# Our Role

The Ministry of Youth Affairs aims to help young people aged 12 to 25 participate in New Zealand life. We strive to ensure their interests are considered at the very early stages of policy development. This document provides policy makers in New Zealand with a process for assessing youth age issues when planning and developing policy.

## What is a Youth Age?

Youth age refers to the age limits or restrictions within law, policy and practice that affect young people - such as the age they can start to drive, drink alcohol, buy cigarettes or receive income support assistance. There are also less obvious limits such as the ethical and legal requirements that must be considered in relation to consent in child and youth health.

### Did you know...

Many of New Zealand's legal ages can be traced back, through English common law, to Roman times.

- ▶ **From 0-7 years = infantia**  
Children were presumed to lack intelligence and judgement so a guardian (a 'tutor') carried out legal transactions on the child's behalf.
- ▶ **From 7 years - puberty**  
A child was thought to gain intelligence but continue to lack judgement. They could enter into binding transactions only with the authority of the tutor.
- ▶ **12 years for females and 14 years for males**  
This is when the young person gained full legal capacity and had the intelligence and judgement to make rationale choices. They could also have their own children, and the tutor (who was usually a relative) lost their interest in the ward's property.

**Interestingly:** children and young people had another guardian called a 'curator' who provided extra protection and guidance until the young person turned 25. There was also scope for courts to set aside a contract if it was entered into owing to youthful inexperience.

# Youth Age - Why Have It?

Sometimes it makes good sense to use youth ages in New Zealand law and policy. It acknowledges the young person's vulnerability due to their age, with a method to:

- protect them
- empower them
- determine their entitlements and define their responsibilities.

However, confusion can arise when a youth age is developed in response to a specific issue - even if it appears justified. For example the range of ages for gambling may confuse young people. Young people can buy a lotto ticket at any age, buy an Instant Kiwi ticket at 16 years of age, place a bet at the TAB at 18, and enter the gaming area of a casino at age 20. There is no age restriction on internet access to gambling.

We need to ensure we use a consistent, fair approach when including youth ages in New Zealand's policies. The overall effect of a youth age should be considered from a young person's perspective. Following the advice in this document will help ensure youth ages are used:

- effectively in policy
- consistently in the broader policy context
- without discriminating negatively or unjustifiably.

If you would like to discuss your specific policy development with one of our analysts, call the Ministry of Youth Affairs, 04 471 2158 or email us: [info@youthaffairs.govt.nz](mailto:info@youthaffairs.govt.nz)

# Legal Considerations

You first need to ensure that using a youth age is legally justifiable and does not oppose standard legal obligations. The main legal documents are covered below.

## Within New Zealand

The Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990 set standards in relation to age discrimination. The New Zealand Bill of Rights Act 1990 includes the right to freedom from discrimination on all of the prohibited grounds set out in the Human Rights Act 1993. Both of these statutes prohibit 'age' discrimination against those over 16 years of age, except where a statutory exception or exemption applies.

## Internationally

In 1993, New Zealand ratified the United Nations Convention on the Rights of the Child (UNCROC).

### Why is UNCROC Important?

UNCROC sets out the factors that need to be considered when developing law and policy that affects children and young people. By ratifying UNCROC New Zealand has agreed to meet its standards. UNCROC does not override New Zealand law, but the courts may, in some circumstances, review policies where the policy-makers failed to take the relevant provisions of UNCROC into account when devising the policy. To this extent UNCROC can be used by the courts as an aid in the interpretation of legislation.

The principles of UNCROC apply to all children and young people aged up to 18 years. The articles are indivisible and interdependent. This means, for example, that individual articles, such as the right to education or play, should be considered with reference to the principles of non-discrimination, best interests, participation and the right to be guided by parents and family.

UNCROC's interdependent elements include considering:

- the best interests of the child
- the participation of young people in society
- non-discrimination
- role of parents and family in guiding a young person's development
- youth survival and development.

For more information about UNCROC contact Youth Affairs.

# Our Recommended Approach

When you're developing policy that involves young people, we recommend you follow the steps below with a fresh and unbiased approach. We have set out some questions that will be a useful basis for building and testing whether you need a youth age for your policy.

It is necessary to consider both policy and legal considerations. Remember to check compliance with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

All policy submissions to Cabinet and Cabinet Committees must include:

- a statement about any inconsistencies in a proposal with the Human Rights Act 1993
- a summary of the implications; and
- comment on whether or how these issues may be addressed or resolved.

As all proposed legislation is vetted for consistency with the New Zealand Bill of Rights Act, legal discrimination issues may also arise in this context. If you are unsure about the legal issues, you should seek advice from your legal advisers. Issues of compliance with the Human Rights Act and the New Zealand Bill of Rights Act may also be discussed further with the Ministry of Justice.

## Step 1

### Is A Youth Age Really Necessary?

Some policy makers may be tempted to first assume a youth age is needed and then build an argument around that assumption. We recommend you do the reverse.

First assume a youth age is not necessary, then identify:

- the purpose a youth age would serve
- alternative ways to achieve that purpose
- a potentially better alternative (consider costs of testing and compliance).

Consider:

- What is the purpose of using a youth age - to protect, empower, determine entitlements, or define responsibilities?
- What are alternative methods - are there other ways you could achieve the desired results without using age restrictions?
- What is the best alternative - which is the most cost-effective and reasonable solution?

### For Example

The driver licensing regime uses a youth age and tests of competency. A young person may not apply for a driver licence until he or she is 15 years old. The current age was originally linked to the school-leaving age when it too was 15. The aim of this base-line limit is to protect young people (and the public) from the dangers of young people driving before they have adequate maturity and skills. Today, under the graduated driver licensing system, a practical competency test is used in addition to the age limit. A system based only on competency, with no lower age limit, would be more complex and costly to administer, and could pose unreasonable risks to road users generally.

### Step 2

#### Choose The Appropriate Youth Age

If you decide a youth age is appropriate, identify which age group it will affect.

- What age is most likely to achieve the desired purpose?  
What do you want the age to do - protect or empower young people or determine their entitlements? What age will do that? Check with UNCROC or the Ministry of Youth Affairs for guidance.
- Is the youth age likely to be in young people's 'best interests'? Why?  
Define whose 'best interest' is being served and why. What specific areas will it protect or improve? The more specific you can be the better.
- Is the youth age consistent with other ages in similar laws and policies?  
Find out about other similar youth ages and their effect on society (See page 4 for a general guide).
- Does the youth age fit with UNCROC?  
Consider which of UNCROC's articles apply - remember the principles are indivisible and interdependent. Seek advice from your legal advisors or Youth Affairs if you are unsure how UNCROC applies.
- How will the youth age affect young people's ability to have a say in decisions that affect them?  
Think about how the youth age will impact on individual young people.
- Will the youth age help or hinder young people's active participation in society?  
Think about how the youth age will impact on young people's participation as a group in society.
- Does the youth age comply with the Human Rights Act 1993, the New Zealand Bill of Rights Act 1990 and New Zealand's international obligations?  
Make sure you thoroughly clear the youth age in relation to these legal criteria.

### Step 3

#### Can You Justify The Youth Age?

- Does it discriminate against young people?  
Please don't assume it is acceptable to treat young people differently just because of their age.
- Does the youth age withhold, limit access or create age-related barriers to opportunities, benefits or advantages for young people?  
This includes indirect links to opportunities - you will need to consider a wide variety of possibilities here. Contact your legal advisors, Human Rights Commission, Youth Affairs or Ministry of Justice for more help.
- Will the youth age affect certain groups of young people more than others (indirect discrimination)?  
An example of this could include concerns that raising the driving age would impact disproportionately on rural young people.

If you answer yes to any of the above questions, you will need to justify using a youth age by answering these questions:

- Do the predicted benefits of the policy override the potential problems of using a youth age?
- Is the result of not using a youth age more serious than the result of not meeting the above criteria?
- Does the use of the youth age fall within one of the exceptions or exemptions to the Human Rights Act 1993 or the New Zealand Bill of Rights Act 1990?

These questions help justify both the policy and legal aspects around the use of youth ages. In some cases there are legal requirements which require certain legal tests to be applied. We suggest you seek legal advice if in doubt.

We caution against assuming that discrimination is appropriate because it only affects young people.

#### Trend Watch:

Young people in New Zealand today are hearing mixed messages about their place in society. A trend towards prolonged adolescence sees young people:

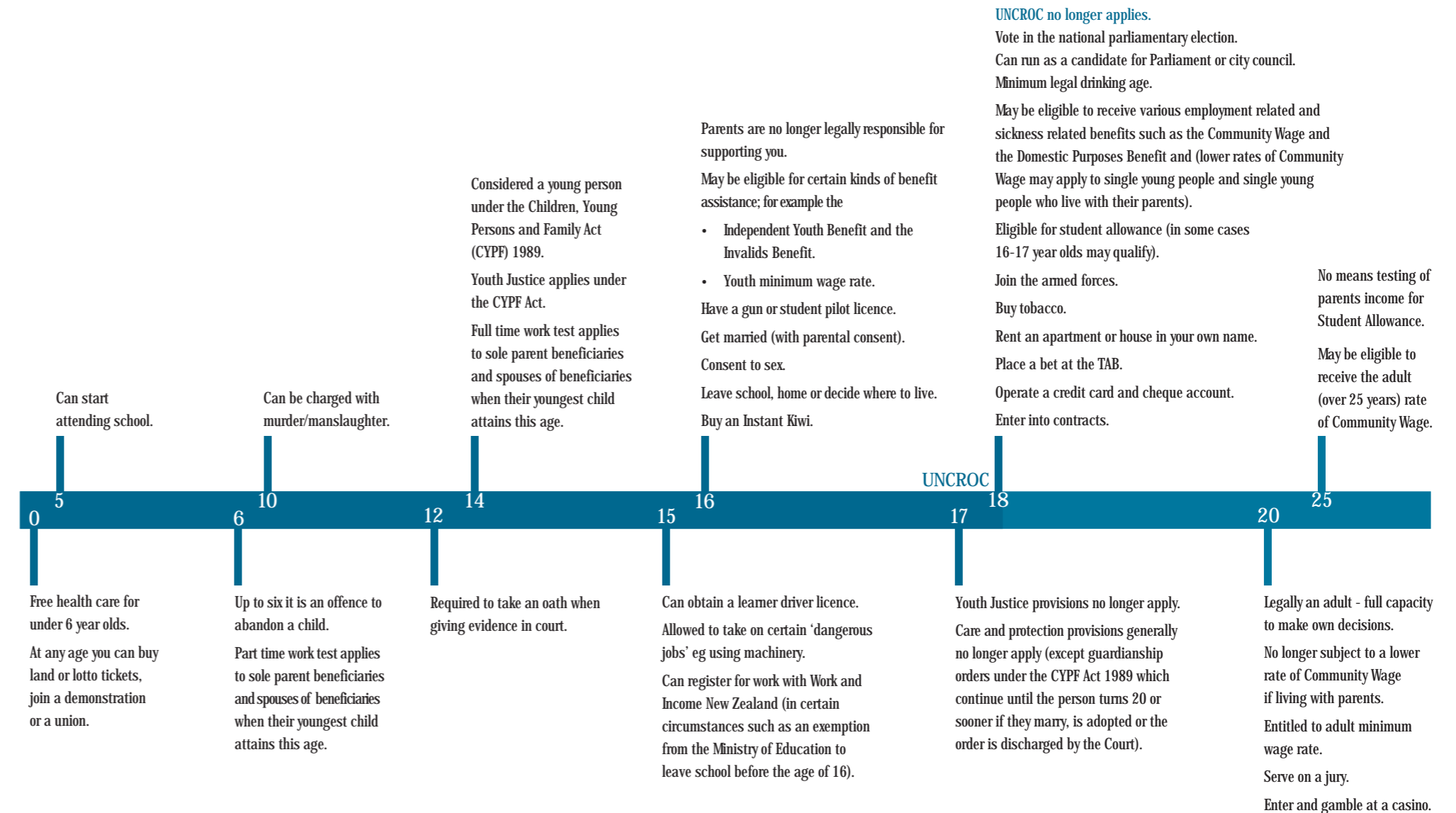
- staying at school or education longer
- being financially reliant on their parents much longer
- getting married and having their own children later in life.

On the other hand they are expected to behave as adults and are given increased responsibility:

- lowering the drinking age to 18 years
- from 10 years may be tried as adults for some crimes.

# Youth Age Timeline

Some of the youth ages that exist in law and policy are:



## Step 4

### Seek Young People's Contributions

It's important to involve young people in the decision-making process. Even where a parent or the State has 'control', young people still have a right to be heard and taken seriously when decisions are made that affect them.

Encouraging young people's participation has many benefits, including:

- better understanding of the 'best interests' of young people
- gaining valuable information from young people and making better, more informed decisions
- avoiding legal issues later - ensuring compliance with the Human Rights Act 1993 and other legally binding obligations
- helping ensure that Government gives active consideration to its obligations under the United Nations Convention on the Rights of the Child
- avoiding the assumption that, as adults, "we know best"
- young people are more likely to comply with policies that take into account their views.

There are many different ways young people can be consulted including focus groups, surveys, interviews and research. Consider as early as possible how to involve young people and contact Youth Affairs if you want information or advice.

## Step 5

### Be Clear About Why You Have Chosen A Youth Age

Set out clearly the rationale for, and the implications of, the youth age you choose in reports to Ministers or Cabinet.

Explain why you have chosen the youth age you recommend, together with the results of consultation and other options considered.

The Ministry of Youth Affairs - Here to Help

We have a wide range of experience working with age-related issues. We may be able to help you or point you in the right direction for other services.

If you would like to discuss and issue or a particular policy you're working on, please contact us, phone: 04 471 2158, email: info@youthaffairs.govt.nz.

Thank you

Thank you for acknowledging our role in affecting youth age policy and taking the time to read this document. Using a uniform approach ensures a consistent and fair result will be achieved in all New Zealand's policy and law development.

Useful References

Contact the Human Rights Commission or Ministry of Justice for advice and information about discrimination under the Human Rights Act 1993.

Cabinet Office Manual (in particular Cabinet Office Circular CO (98) 19)

Consent in Child and Youth Health: information for practitioners, Ministry of Health, 1998

Implementation Handbook for the Convention on the Rights of the Child, UNICEF 1998 - copies can be ordered from UNICEF International through their website www.unicef.org

United Nations Convention on the Rights of the Child - copies available from Ministry of Youth Affairs