

LORI-LEA WAIROA TE WINI

First Applicant

COURTNEY PAULINE CHURCHWARD

Second Applicant

v

THE KING

The Respondent

SUBMISSIONS ON BEHALF OF THE LAW ASSOCIATION INTERVENING COUNSEL

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Intervening counsel certify that this submission contains
no suppressed information and is suitable for publication

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MAY IT PLEASE THE COURT:

1. The Law Association of New Zealand (TLANZ) has been granted leave to intervene in this appeal. These submissions address two matters of general application for consideration by the Court in addition to those advanced by the applicants:
 - 1.1. The inclusion of two further factors in determining whether leave ought to be given to appeal out of time. These are youth and the risk of impingement on unalienable rights.
 - 1.2. Whether the manifest injustice test pursuant to s 102 of the Sentencing Act 2002 ought to be considered first for young offenders where s 104 of the Act is engaged.

Policy considerations for youth offenders facing life

International obligations and application in New Zealand

2. Article 37 of the United Nations Convention on the Rights of the Child (UNCRC) discusses the rights of children in the criminal justice system.¹ Most relevant are arts. 37(a) and 37(b)² which state that imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time. The Sentencing Act 2002 prohibits the courts from imposing a sentence of home detention or imprisonment on a young person other than in cases of serious offending.³ Any sentence imposed must be the least restrictive in the circumstances.
3. The United Nations Committee on the Rights of the Child (CRC) has strongly recommended that states abolish all forms of life imprisonment, including indeterminate sentences, for all offences committed by young people under

¹ United Nations Convention on the Rights of the Child, art 1. UNCRC defines a child as every human being below the age of 18 years.

² United Nations Convention on the Rights of the Child, art 37.

³ Sentencing Act 2002, ss [15B](#) and [18](#).

18 years at the time of the offence.⁴ The CRC reminds states that life imprisonment makes it “very difficult, if not impossible” to achieve the aims of reintegration.⁵ The United Nations Committee Against Torture has found that life imprisonment and lengthy sentences, are grossly disproportionate and therefore cruel, inhuman or degrading when imposed on a child.⁶ Due to the inherent vulnerability of children, sentences must promote rehabilitation and re-entry into society.⁷

4. International approaches vary, however, there is the overall acceptance that youth is a significant factor considered in sentencing for murder.⁸ The Office of the Children’s Commissioner recommended that the Government prohibit the use of life sentences for young people under the age of 18, stating life sentences on young people are manifestly unjust.⁹ The Law Commission acknowledges the severity of preventive measures means they are inappropriate for children and young people.¹⁰ Given our international obligations, this Court has noted that youth principles are a primary consideration to be given powerful weight.¹¹

Recognition of youth principles in New Zealand

5. The well-established principles in *Churchward v R*¹² reflect scientific evidence that youth extends until around 25 years of age, when executive functioning is

⁴ Law Commission, *Public Safety and serious offenders: a review of preventive detention and post-sentence orders* (NZLC IP51, 2023) at 5.39. Citing United Nations Committee on the Rights of the Child *General Comments No. 24 on Children’s Rights in the Child Justice System* CRC/C/GC/24 (18 September 2019) at [81].

⁵ United Nations Committee on the Rights of the Child *General Comments No. 24 on Children’s Rights in the Child Justice System* CRC/C/GC/24 (18 September 2019) at [81].

⁶ Juan E. Mendez *Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* A/HRC/28/68 (5 March 2015) at [74].

⁷ Juan E. Mendez *Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* A/HRC/28/68 (5 March 2015) at [74].

⁸ *Dickey v R* [2023] NZCA 2 [124] – [141].

⁹ *The New Zealand Children’s Commissioner’s Report to the United Nations Committee on the Rights of the Child: New Zealand’s Sixth Periodic Review under the United Nations Conventions of the Rights of the Child* (The Children’s Commissioner, 15 August 2022) at 73-75.

¹⁰ Law Commission *Here ora Preventive measures in reformed law* (NZLC R149, 2025) at 7.20.(under 18 years of age).

¹¹ *M (SC 13/2023) v R* [2024] NZSC 29 at [66]. This was found in the context of the statutory framework of the Criminal Procedure Act 2011, however, this must also be the case for the Sentencing Act 2002.

¹² *Churchward v R* [2011] NZCA 531.

fully developed.¹³ The Youth Court and Pilot Courts for young adults reflect this.¹⁴ In *Dickey v R*, the Court of Appeal accepted expanded research findings. They relevantly include that all young people suffer from cognitive deficits; and all will eventually develop fully to overcome them.¹⁵ Youth is the only mental impairment which an offender is guaranteed to recover from. In this way, youth risk is dynamic.

Youth risk and rehabilitation

6. Young people have a greater capacity for rehabilitation.¹⁶ Rehabilitation in prison is resource dependant and primarily informed by the parole eligibility date.¹⁷ This is despite the Court's view that rehabilitative programmes should be undertaken "sooner rather than later".¹⁸ Young offenders ought to access rehabilitation as soon as possible given their greater capacity for rehabilitation.¹⁹ The reality of indeterminate sentences for adolescents is that they are accessing rehabilitation as adults.²⁰ Late access fails to capitalise on the amenability of adolescents to rehabilitation. It has the opposite effect.²¹ The adolescents brain continues to develop in a punitive environment.²² Delay

¹³ See Sara Johnson, Robert Blum and Jay Giedd "Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy" (2009) *J Adolesc Health* 45(3) at 216–221; Professor Sir Peter Gluckman *It's never too early, never too late: A discussion paper on preventing youth offending in New Zealand* (Office of the Prime Minister's Chief Science Advisor, Discussion Paper, 12 June 2018) at page 6. See also Nessa Lynch *Young Adults in the Criminal Justice System in Aotearoa New Zealand: A Principled Framework for Reform* (Michael and Suzanne Borrin Foundation, April 2022)

¹⁴ Law Commission, *Public Safety and serious offenders: a review of preventive detention and post-sentence orders* (NZLC IP51, 2023) at 5.25(c).

¹⁵ *Dickey v R* [2023] NZCA 2 at [76]–[87]

¹⁶ *G v R* [2026] NZSC 19 at [38(d)] See also *Diaz v R* [2021] NZCA 426 at [37]. *Churchward v R* [2011] NZCA 531 at [77], *R v Chankau* [2007] NZCA 587 at [26].

¹⁷ *Briggs v R* [2020] NZCA 453 at [45]. The Court of Appeal accepted that Mr Briggs had been unable to access significant and comprehensive rehabilitative programmes because his parole eligibility date was years away.

¹⁸ *Briggs v R* [2020] NZCA 453 at [45].

¹⁹ *Churchward v R* [2011] NZCA 531 at [77]. *R v Chankau* [2007] NZCA 587 at [26].

²⁰ Office of the Inspectorate "Young people and young adults in Corrections' custody; Thematic report" December 2024, page 166 at [1072]. A small percentage of young adults in prison are receiving rehabilitation interventions in prison, between 2022 to 2023 only 241 prisoners under 25 years old had completed a rehabilitation programme. The then Chair of the New Zealand Parole Board, Sir Ron Young commented to the Office of the Inspectorate "often they are just broken kids, and we are really letting them down".

²¹ Law Commission, *Public Safety and serious offenders: a review of preventive detention and post-sentence orders* (NZLC IP51, 2023) at 5.20.

²² Justice Committee *Young Adults in the Criminal Justice System: Eighth Report of Session 2017–2019* (House of Commons, HC 419, 12 June 2018) at [48]. It is an unfortunate reality that young defendants within the custodial environment may commit further violent offending. See *Ngamoki*

in access to rehabilitation is also exacerbated by transitions from Youth Justice residences to Corrections' custody.²³

7. New Zealand studies have found that violent offenders released from a prison sentence for homicide or sex offences had lower violent offence reconviction rates than inmates released from prison for all other violent offences.²⁴ Age is inherently relevant to risk, decreasing with age.²⁵ It is difficult to predict risk in the future for young offenders.

5.30 Risk assessment measures have "limited temporal validity and moderate predicative accuracy" during adolescence. While it is possible to estimate risk over the short term with some degree of accuracy, "estimates of long-term risk are more problematic". This "might be a result of the unstable nature of attitudes, behaviour, and relationships in this versatile age period". Given the ongoing development of the brain, the same concerns are likely to apply to young adults.²⁶

Murder and youth culpability

8. Murder is the only offence in which there is a presumption of life imprisonment. Murder is rare offence. Murders committed by youth offenders are a minority.²⁷ The presumption reflects the value placed upon the sanctity of human life by Parliament.²⁸ It undeniably reflects the interests in public protection in a free and democratic society. The Courts have commented that sentences less than life imprisonment for murder are likely to be reached in

v R [2022] NZCA 171, *Grant v R* [2017] NZCA 614, *R v Sanders* [2019] NZHC 164 and *R v Nuku* [2018] NZHC 2510. This is compounded by negative peer influences, gang influence and pressure, as well as a lack of meaningful activities and slow access to rehabilitation.

²³ Office of the Inspectorate "Young people and young adults in Corrections' custody; Thematic report" December 2024, [page 96 at \[495\]](#).

²⁴ John Anderson "Recidivism of paroled murderers as a factor in the utility of life imprisonment" (2002) 31(2) *Curr. Issues Crim. Justice* 255 [at 8](#). Citing P Spier 'Reconviction and reimprisonment rates for released prisoners', *Research Findings* No 1, Ministry of Justice, Wellington. Additionally, only a very small proportion of all released inmates are reconvicted for very serious offences, and the type and seriousness of the offence that a person was imprisoned for is not a reliable predictor of the likelihood that they will commit a serious offence in future.

²⁵ *Grant v R* [2017] NZCA 614 [at \[32\]](#). Australian expert, Professor Ogloff, told the Court that young people will typically be identified as being higher risk than older people. As such, it is of critical importance to consider age, development, and context when considering the level of risk that an individual poses for reoffending.

²⁶ Law Commission, *Public Safety and serious offenders: a review of preventive detention and post-sentence orders* (NZLC IP51, 2023) [at 5.30](#).

²⁷ Ministry of Justice "ANZSOC v2.0.0. [Table 2d](#): Number of people with finalised charges for murder offences, by gender, ethnicity and age, 2016-2025" (17 March 2026) Ministry of Justice Research & Data <www.justice.govt.nz> Over the past 10 years a total of 30 adolescents under the age of 19 have been convicted of murder out of the 322 murder convictions over this period.

²⁸ *R v Van Hemert* [2021] NZCA 261 [at \[35\]](#).

exceptional cases only.²⁹ While such cases will be exceptional, they need not be rare.³⁰ The manifest injustice test confers discretion for cases of murder at the lowest end of the range of culpability of offending.³¹ The term manifestly unjust is not defined in the Act. However, it has been found to mean that the injustice in imposing life imprisonment must be clear.³²

9. Parliament set out some circumstances which may displace the presumption such as mercy killings, failed suicide pacts and where the accused is a 'battered defendant'.³³ The common thread of those examples is lowered culpability of the offender. There may be cases where the circumstances of a murder may not be so warranting of denunciation and the mental or intellectual impairment of the offender may be so mitigating of moral culpability that, absent issues of future risks to public safety, it would be manifestly unjust to impose a sentence of life imprisonment.³⁴ This is applicable to youth. It is acknowledged that in some cases a youth offender will satisfy what was anticipated in the "worst murders".³⁵ Even so, there is a real risk that imposing life imprisonment on young people would not only be manifestly unjust, but also a breach of s 9 of the New Zealand Bill of Rights Act 1990 (NZBORA). This is an unalienable right.³⁶

²⁹ *R v Van Hemert* [2021] NZCA 261 at [36] citing *R v Rapira* [2003] 3 NZLR 794 (CA) at [121]. Prior to 2022 the presumption had been displaced, and a finite sentence imposed in 11 cases. *R v Reid* HC Auckland CRI-2008-090-2203, 4 February 2008; *R v Wihongi* [2011] NZCA 592, [2012] 1 NZLR 775; *R v Rihia* [2012] NZHC 2720; *R v Nelson* [2012] NZHC 3570; *R v Innes* [2014] NZHC 2780; *R v Cunnard* [2014] NZCA 138; *R v Knox* [2016] NZHC 3136; *R v Lawrence* [2021] NZHC 2992; *R v Madams* [2017] NZHC 81; *R v Cole* [2017] NZHC 517. Two of these defendants were acquitted on appeal: *Baker v R* [2015] NZCA 306 and (indirectly) *McNaughton v R* [2013] NZCA 657.

³⁰ *R v Williams* [2005] 2 NZLR 506 (CA) at [57], [59] and [67].

³¹ *R v Williams* [2005] 2 NZLR 506 (CA) at [30].

³² *R v Van Hemert* [2021] NZCA 261 at [62] citing *R v Rapira* [2003] 3 NZLR 794 at [121].

³³ Sentencing and Parole Reform Bill 2002 (148-2) (select committee report) at 8.

³⁴ *R v O'Brien* (2003) 20 CRNZ 572 (CA) at [36], cited with approval in *R v Van Hemert* [2021] NZCA 261 at [78].

³⁵ Sentencing and Parole Reform Bill 2002 (148-2) (select committee report) at 8.

³⁶ See above at [4].

Leave to appeal: Youth and the risk of impingement on unalienable rights under the New Zealand Bill of Rights Act 1990 (NZBORA)

10. The first appeal court may extend the time allowed for filing a notice of appeal.³⁷ The touchstone for granting an application to appeal out of time is the interests of justice in the particular case.³⁸ *R v Knight* sets out the relevant factors.³⁹ Normally, the key factors are whether the delay is adequately explained and the merits of the proposed appeal.⁴⁰ The Court of Appeal in *R v Lee* confirmed the consideration where the liberty of the subject is involved.⁴¹ Fresh evidence can be significant.⁴² The courts will only entertain an appeal that is many years out of time in exceptional circumstances.⁴³ Appeals have been heard almost two decades out of time.⁴⁴ The Court of Appeal recently declined an appeal against sentence 20 years out of time for a youth offender seeking to displace life imprisonment.⁴⁵
11. The decision making of young people makes it more likely that they will not avail themselves of their appeal rights in time. This reflects a lack of consequential thinking. There is a real risk that young people do not consider the consequences of not appealing in time. Inclusion of youth (at the time of the proceedings) as a factor favouring leave to appeal is recommended.⁴⁶
12. There is a risk that a sentence of life imprisonment for youth will impinge on s 9 NZBORA, the right not to be subject to disproportionately severe punishment.⁴⁷ While any sentence found to impinge on s 9 NZBORA will necessarily be manifestly unjust, it is accepted that the contrary is not

³⁷ Criminal Procedure Act 2011, s 248(3).

³⁸ *R v Knight* [1998] 1 NZLR 583 (CA) at 587; and *R v Lee* [2006] 3 NZLR 42 (CA) at [95] – [99].

³⁹ *R v Knight* [1998] 1 NZLR 583 (CA) at 589.

⁴⁰ *R v Slavich* [2008] NZCA 116 at [14]. See also *Palmer v R* [2011] NZSC 25 at [2]; *McGeachin v R* [2017] NZSC 16 at [4]–[5]; and *F (SC 129/2016) v R* [2017] NZSC 34 at [15].

⁴¹ *R v Lee* [2006] 3 NZLR 42 (CA) at [95]–[99].

⁴² *Beckham v R* [2014] NZCA 476 at [38]; and *S (SC 39/2017) v R* [2017] NZSC 169 at [7]–[9].

⁴³ *Butcher v R* [2015] NZCA 102 at [7].

⁴⁴ *Ellis v R* [2019] NZSC 83. This Court granted leave to appeal 19 years out of time on the basis that it was in the interests of justice and fresh evidence had recently become available.

⁴⁵ *Kingz v R* [2025] NZCA 390 at [28]. The Court of Appeal noted that 20 years was far beyond anything the court had previously accepted in other *Dickey* appeals.

⁴⁶ Particularly, in the wake of *Dickey v R* [2023] NZCA 2.

⁴⁷ *Dickey v R* [2023] NZCA 2 at [110]–[111]. See also *Fitzgerald v R* [2021] NZSC 131 at [3]. See also [38] and [78] per Winkelmann CJ, [241] per Glazebrook J and [160] per O'Regan and Arnold JJ.

necessarily so.⁴⁸ Inclusion of appeals where any unalienable right is said to be breached by the decision under the appeal as a factor favouring leave is warranted.

Manifest injustice test pursuant to s 102 of the Sentencing Act 2002 ought to be considered first for young offenders where s 104 is engaged.

Youth culpability and the sentencing exercise

13. An offender's culpability is determined at stage one of the sentencing exercise. Where mental illness or disability are present, this can be reflected in a lower starting point at stage one and in mitigation at stage two of the sentencing exercise.⁴⁹ This is not double counting.⁵⁰ It reflects s 8(1)(a) of the Sentencing Act 2002, which requires the Court to take into account the gravity of the offending in the particular case, including the degree of culpability of the offender. This Court has recently acknowledged that age is an implicit feature of s 8(1)(a).⁵¹ Where there is a causal relationship between an offender's age and their offending, this goes directly to assessing their overall culpability.⁵²
14. Youth is ordinarily considered at the second stage of sentencing as a personal mitigating factor.⁵³ Judicial application of youth discounts are inconsistent, both in terms of whether a discount is provided and to what level.⁵⁴ This means that the objective seriousness of an offence when setting the starting point is not reduced by an offender's age.⁵⁵ It is noted that flexibility for youth

⁴⁸ *Dickey v R* [2023] NZCA 2 at [110]-[111].

⁴⁹ See *Asiata v R* [2020] NZCA 53 and *L v R* [2019] NZCA 676 (intellectual disability and culpability)

⁵⁰ *L (CA719/17) v R* [2019] NZCA 676 at [48] (factitious disorder by proxy); *Orchard v R* [2019] NZCA 529 (mental illness as a factor reducing culpability).

⁵¹ *G v R* [2026] NZSC 19 at [47].

⁵² See also Sentencing Young People: Sentencing Guideline (Scottish Sentencing Council, effective from 26 January 2022). In November 2021 the Scottish High Court approved a sentencing guideline that applies to the sentencing of any person who is under the age of 25 at the date of their guilty plea or finding of guilt. It explains that the youth of the offender should be taken into account in assessing *culpability*. Custodial sentences are a last resort.

⁵³ Section 9(2)(a) of the Sentencing Act 2002. See *R v Mako* [2000] 2 NZLR 170 (CA); *Overton v R* [2011] NZCA 648 at [22]; and *R v E (CA362/06)* [2007] NZCA 133 at [19].

⁵⁴ Kelci Alderton-Armstrong "The Judicial Approach to the Youth Discount in Aotearoa New Zealand" [2024] NZ L Rev 1. The author conducted an analysis of sentencing decisions concluding current judicial use of the youth discount is inconsistent, both in terms of when a discount is provided, and the extent of the discount generally.

⁵⁵ *Pouwhare v R* [2010] NZCA 268 at [91].

discounts at stage two has since been narrowed by legislative change.⁵⁶ It is argued that where there is a clear causal link, that youth could be considered as part of the culpability assessment. Impulsivity, lack of consequential thinking, and vulnerability to external pressures are better considered as relevant to culpability. The disproportionate impact of prison on youth and capacity for rehabilitation remain appropriate in mitigation.⁵⁷

A broader approach to culpability for youth

15. In *Diaz v R*, his Honour Justice Goddard (dissenting) stated that youth sentencing requires a broad assessment of overall culpability to determine what the “right” outcome should be. Goddard J noted that this was point worthy of the Permanent Court.⁵⁸

[61]It seems arguable that in such cases the court should begin by asking whether a sentence of home detention or imprisonment is the least restrictive outcome that is appropriate in the circumstances, or whether some less restrictive option is appropriate. If no less restrictive option is appropriate, so the choice is between home detention and imprisonment, the court would then ask whether a compelling justification has been made out for imposing a sentence of imprisonment rather than a sentence of home detention. That would require identification of relevant sentencing objectives, and some rational basis (such as empirical studies or expert evidence) for concluding that those objectives would be better advanced by imprisonment than home detention.

[62] If this approach were adopted, the guideline tariff for terms of imprisonment would become relevant only if the court concluded that imprisonment had been shown to be the least restrictive available outcome. Conversely, if one takes the guideline tariff as a starting point for the sentencing analysis, it is possible to arrive at a sentence of imprisonment — as the Judge did in this case — without ever directly confronting the question of whether imprisonment can be justified. **It is at least arguable that there is a conceptual difficulty in taking as one's starting point the “last resort” of imprisonment, then assessing discounts to determine whether departure from that last resort can be justified. And a rigid application of that approach could lead to an unsatisfactory result.** In a borderline case, a sentencing judge applying the usual methodology who considers that home detention is appropriate may of course be tempted to reverse engineer the available discounts to arrive at their preferred result: that is understandable, but seems less direct and less transparent than engaging directly with the question of whether the last resort of imprisonment can be justified.⁵⁹

16. His Honour Justice Cooke, referencing *Diaz*, delivered a minority decision in *Shute v R*. He endorsed that sentencing calculations ought not be applied mechanically without regard to their significance in terms of Sentencing Act

⁵⁶ Sentencing Act 2002, s 9Q. See also ss 9B, 9C and 9R.

⁵⁷ *Churchward v R* [2011] NZCA 531 at [77](b) and (c).

⁵⁸ *Diaz v R* [2021] NZCA 426 at [70].

⁵⁹ *Diaz v R* [2021] NZCA 426 at [61]-[62] per Goddard J in minority (emphasis added).

principles and the ultimate end sentence.⁶⁰ Cooke J would have allowed the appeal and substituted a home-detention sentence for Ms Shute.

How should s 104 of the Sentencing Act 2002 be considered when manifest injustice is being assessed for youth?

17. The current sentencing methodology requires not only a consideration of whether s 104 is engaged, but a determination of the appropriate MPI that would be imposed in order to consider whether it would be manifesting unjust to impose 17 years.⁶¹ Only after that, the Court then considers whether life imprisonment is displaced under s 102. The approach in *Dickey* requires the court to always give careful consideration to whether life imprisonment is manifestly unjust when sentencing a young person for murder.⁶² As *Dickey* acknowledged, manifest injustice under *both* s 104 and s 102 are not a matter of calculation, but an overall impression.⁶³ The assessment to be undertaken is a broad evaluative exercise like that endorsed by Goddard J in *Diaz* and Cooke J in *Shute*.
18. The disparity between youth culpability and the starting point in sentencing is stark when s 104 is engaged. This is most apparent when a defence of lack of intent (as a feature of youth, mental illness or disability) is rejected at trial and s 104 is triggered at sentencing. Despite lower culpability, the presence of factors triggering s 104 triggers placement within the worst category of cases.⁶⁴ In this case (at trial and on appeal), the defence was a lack of intent because of their youth, founded on a poor understanding of the true risks of violence. Despite this, guilt catapulted these youth offenders into the category of the worst murders.
19. The approach to determining the appropriate MPI under s 104 is an overall impression. The current process is artificial with large MPI deductions awarded

⁶⁰ *Shute v R* [2024] NZCA 334 at [134] per Cooke J dissenting.

⁶¹ *R v Williams* [2005] 2 NZLR 506 (CA); *R v Smith* [2021] NZCA 318 at [43-45]; *Taylor v R* [2025] NZCA 693; *Webster v R* [2025] NZCA 679.

⁶² *Dickey v R* [2023] NZCA 2 at [177].

⁶³ *Dickey v R* [2023] NZCA 2 at [159] and [194]; *R v Williams* [2005] 2 NZLR 506 (CA) at [67].

⁶⁴ *Thompson v R* SC76/2024 (infanticide and s 104). *Webster v R* SC3/2026 (lack of intent and 104).

at the s 104-stage.⁶⁵ It adds little to the sentencing exercise for youth where manifest injustice under s 102 will inevitably be considered. In reality, the Courts undertake a global evaluation of all of the circumstances of the offending and the youth offender. This mirrors the exercise in s 102. It is accepted that where s 104 factors exist, it is less likely the manifest injustice threshold in s 102 will be met.⁶⁶ *Dickey* confirmed that when assessing manifest injustice, the court must have regard to the full register of sentencing purposes, principles and factors in the Sentencing Act, in particular, ss 7, 8 and 9.⁶⁷ Manifest injustice under s 102 does not need to be found in both the circumstances of the offending and the circumstances of the offender. One element may dominate the other and neither has the power to veto the other.⁶⁸ This reflects the prominence of lesser youth culpability in the s 102 assessment.

20. The Supreme Court has an opportunity to acknowledge lower youth culpability by changing the approach to youth sentencing. This could be done by addressing manifest in justice under s 102 first. In considering the overall gravity of the offending, consideration would be given to any s 104 factors present. This is the logical progression of a rights consistent approach for youth sentencing in line with domestic and international obligations and consistent with the development of caselaw in youth sentencing.

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⁶⁵ In *R v Smith* [2021] NZCA 318 and *Taylor v R* [2025] NZCA 693, the 17-year MPI was reduced to 10 years under s 104. In *Webster v R* [2025] NZCA 679 it was reduced to 12 years under s 104.

⁶⁶ *R v Smith* [2021] NZCA 318 [43]-[44].

⁶⁷ *Dickey v R* [2023] NZCA 2 at [103]-[107], [167], [195] endorsing *R v Rapira* [2003] 3 NZLR 794 (CA) at [121].

⁶⁸ *Van Hemert v R* [2023] NZSC 116 at [57]; endorsed by *Webster v R* [2025] NZCA 679 at [88].