‘Just Ask Us. Come and See Us.’[1]

The Participation of Aboriginal Children and Young People in Law and Policy Development

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[1] Tessa (16 year old female), field research conducted in Northern Australia in April-May 2014, Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014). All names used in the documentation of the field research are pseudonyms. Participant’s real names are not used in order to protect their identities. This arrangement is in accordance with the ethical agreements entered into as a part of this study.

Candidate's Declaration

All of the material contained in this thesis is original and has not been accepted for the award of any other degree or diploma at any university. I certify that the thesis is an original piece of research and it has been written by me. Any assistance I have received to undertake this research, and prepare this thesis, is appropriately acknowledged in the text. I certify that all information sources and literature used are appropriately cited in the thesis.

To the best of my knowledge, the thesis contains no material previously published or written by another person, unless this is cited in the text.

The research presented in this thesis was approved by two ethics committees. Firstly, by Macquarie University Human Research Ethics Committee (Human Sciences and Humanities) on 14 September 2012 (reference number 5201200619) to undertake the Scoping Trip in the Northern Territory detailed in chapter 2. Secondly, by both the Macquarie University Human Research Ethics Committee (Human Sciences and Humanities) on 14 October 2013 (reference number 5201300649), and the Central Australian Human Research Ethics Committee on 25 February 2014 (reference number HREC-13-197).

Holly Doel-Mackaway

Dedication

For Richard, my life partner of 25 years and my soul mate. I am grateful for you, and for your unwavering love, support, ideas and patience. Thank you for supporting this dream, for taking the boys out countless times so I could write, and for caring for them, and me so beautifully.

For my treasured boys Eligh and Josiah, I'm sorry it's not a PhD on Lego as you wanted, but I hope you are still proud.

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Abstract

Article 12 of the *United Nations Convention on the Rights of the Child* ('CRC') provides all people under the age of 18 years old with the right to express their views, and have these views considered in all matters affecting them. This provision includes children's right to be involved in the development of laws and policies likely to impact their lives. Australia ratified the CRC in 1990 yet the voices of children and young people, particularly Aboriginal children and young people, remain largely silent in law and policy development processes nationally.

Field research undertaken in 2014 with Aboriginal children and young people in the Northern Territory of Australia highlights the vital role children and young people can play—if afforded the opportunity—in the development of laws and policies affecting them. This study provides the first documented accounts from Aboriginal children and young people detailing their views about the case study for this research: the *Northern Territory Emergency Response* and *Stronger Futures* legislation; as well as their views on how they can be involved in law and policy development in the future.

A child rights-based approach informed by Indigenous research methodologies underpinned the methodological and ethical framework for this cross-cultural research to be undertaken. The thesis concludes by presenting practical suggestions for how a child rights-based approach supports Aboriginal children and young people's involvement in law and policy making. Analysis supports the conclusion that this approach is necessary in order to strengthen Australia's compliance with article 12 of the CRC, and as a mechanism to fulfil and develop Aboriginal children and young people's human rights.

List of Acronyms and Abbreviations

AIATSIS	Australian Institute for Aboriginal and Torres Strait Islander Studies
Australian Constitution	*Commonwealth of Australia Constitution Act 1900* (Imp)
CAHREC	Central Australian Human Research Ethics Committee
CERD	Convention on the Elimination of all Forms of Racial Discrimination
CRBA	Child rights-based approach
CRC	Convention on the Rights of the Child
CYP	Children and young people
FPIC	Free, prior and informed consent
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
INGO	International non-government organisation
Little Children are Sacred Report	Ampe Akelyernemane Meke Mekarle: 'Little Children are Sacred' Report
MQHREC	Macquarie University Human Research Ethics Committee
National Statement	National Statement on Ethical Conduct in Human Research (2012)
NGOs	Non-government organisations
NT	Northern Territory
NTER	Northern Territory Emergency Response
RBA	Rights-based approach

RDA	*Racial Discrimination Act 1975* (Cth)
Stronger Futures in the NT Act	*Stronger Futures in the Northern Territory Act* 2012 (Cth)
UNCERD	United Nations Committee for the Elimination of Racial Discrimination
UNCHR	United Nations Commission on Human Rights
UNCRC	Committee on the Rights of the Child
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNICEF	United Nations Children's Fund
UNCRC's Working Methods	Working Methods for the Participation of Children in the Reporting Process of the Committee on the Rights of the Child

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Terminology

Aboriginal / Indigenous / Aboriginal and Torres Strait Islander Peoples

Throughout the thesis the word 'Aboriginal' is used to identify the research participants and their communities as Australia's First Peoples from mainland Australia, distinct from Torres Strait Islander peoples. The choice to use the word Aboriginal was influenced by the children and young people ('CYP') involved in the research. During the field research most CYP used the word 'Aboriginal' to describe their cultural background. Some CYP used the words 'Aboriginal' and 'Indigenous' interchangeably in reference to themselves, their family, and their community. None of the children identified as Torres Strait Islander. All of the children involved in the research lived in the same region of Northern Australia at the time of the research taking place. However, many of the children involved in the research had also lived in other areas of Australia. Throughout the thesis, where appropriate, the term 'Indigenous' is used when referring to both Aboriginal and Torres Strait Islander peoples. This approach is informed by the Australian Institute of Aboriginal and Torres Strait Islander Studies *Guidelines for Ethical Research in Australian Indigenous Studies* ('*AIATSIS Guidelines*'),[1] particularly principle 1 that states: 'Research in Indigenous studies must recognise the diversity of Indigenous peoples, including their different languages, cultures, histories and perspectives.'[2]

Child, Young Person, Adolescent

Article 1 of the CRC defines a child as any person under the age of 18 years old.[3] Twenty-two Aboriginal people aged between 10 and 17 years old were involved in field research as a part of this project. As the research participants were under the age of 18 years old, they were 'children' for the purposes of international law. However, in practice referring to people aged over 12 years old as

[1] *Guidelines for Ethical Research in Australian Indigenous Studies* (Australian Institute of Aboriginal and Torres Strait Islander Studies, Revised 2nd Edition ed, 2012).
[2] Ibid 2.
[3] *Convention on the Rights of the Child*, opened for signature 20 November 1989, 44 UNTS 25 (entered into force 2 September 1990) art 1. Article 1 provides: 'For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.' This definition is criticised as no longer reflecting the nature of childhood, which it is argued extends beyond the age of 18 years. See for example Philip E Veerman, 'The Ageing of the UN Convention on the Rights of the Child' in Michael Freeman (ed), *The Future of Children's Rights* (Brill Nijhoff and Hotei Publishing, 2014) 17. Veerman argues the need to review the definition of a child in art 1 of the CRC 'in the light of new findings from modern neurobiological science and neuro-imaging' that a case exists 'for expanding the period of special protection of childhood until 24 years of age (because the brain is growing until that age),' as well as expanding the definition of a child 'on the side of the minus nine months before birth.'

'children' is often inappropriate, and may be perceived by them as patronising, or offensive. The words 'young people' or 'youth' are alternative words, and are used throughout this thesis.

Articles 5 and 14 of the CRC stress the 'evolving capacities of the child' referring to enhanced decision-making capacity in the latter years of 'childhood.'[4] Referring to these years as 'childhood' rather than adolescence appears inconsistent with these provisions, at least from a practical perspective relating to the use of appropriate language when working with people between the ages of 12 and 17. In order to resolve this throughout the thesis primary class group participants (aged 10-12 years) are referred to as 'children,' and the secondary class group participants (aged 12-17 years) are referred to as 'young people.'

Information obtained during the Scoping Trip, detailed in chapter 3, emphasised the importance of using appropriate language with CYP who participate in the research. During the Scoping Trip an Indigenous educator said: 'Make sure you don't call a fella who has gone through initiation a boy, he will close down and never talk to you again. He is a man.'[5] I asked this person what term is appropriate to use, and how I would know if a research participant has passed through an Aboriginal ceremony such as the one the participant was referring to. She said, 'You won't know, so just call all of the males "fella" never use the word "boy" unless you are working with young children.'[6]

For this reason, whilst it is sometimes cumbersome, throughout this research the words 'children and young people' ('CYP') are commonly used and refers to both the primary and secondary cohorts of participants.

Personal Pronouns

References stated in the first person, by using the word 'I', is a style of writing observed in several key Indigenous authors' works informing this project, particularly Asmar, Mercier and Page, Nakata and Smith.[7] Professor Susan Page, an Indigenous academic and adjunct supervisor for this project, uses

[4] *Convention on the Rights of the Child* art 4 and 15.
[5] Scoping Trip Interview (No 13) with three Aboriginal Women Employees from an Independent School (Northern Territory, 25 October 2012).
[6] Ibid.
[7] Christine Asmar, Ocean Ripeka Mercier and Susan Page, '"You Do It From Your Core": Priorities, Perceptions and Practices of Research Among Indigenous Academics in Australian and New Zealand Universities' in *Academic Research and Researchers* (Open University Press And Mcgraw-Hill, 2009) 146; Martin Nakata, *Disciplining the Savages Savaging the*

this style of critical reflexivity in her scholarship. My learning from her supervision about the position of the researcher, and from Nakata's literature on standpoint theory, is that the researcher is never neutral.[8] On the contrary, 'researchers' conducting Indigenous related research, especially non-Indigenous people doing Indigenous related research such as myself, need to be aware that this undertaking is embedded with profound political and historical connotations and implications. The use of personal accounts, and references to 'I' is deliberate, and an attempt to make transparent my particular 'standpoint' as a researcher. In a small way this approach seeks to challenge Western research norms, which often falsely attempt to position researchers as objective and impartial. Researchers' 'standpoint' is a feature of some scholarship about Indigenous research methodologies.[9] This style is used in parts of the research, particularly in the chapters about the methodology where issues to do with the researcher being non-Indigenous are examined, and also to contextualise the researchers perspectives which influenced choices made throughout the research.

Disciplines (Aboriginal Studies Press, 2007); Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (Zed books, 2nd ed, 2012).

[8] Martin Nakata, 'An Indigenous Standpoint Theory' in *Disciplining the Savages: Savaging the Disciplines* (Aboriginal Studies Press, 2007) 213.

[9] Ibid; Aileen Moreton-Robinson and Maggie Walter, 'Indigenous Methodologies in Social Research' in *Social Research Methods* (Oxford University Press, 2009).

Part I: Methodology and Legal Foundations

Chapter 1: Introduction

1.1 Research Overview

The *Convention on the Rights of the Child* ('CRC')[1] is the most widely ratified human rights treaty in the world with 195 countries as State parties.[2] Through ratification of the CRC all States are bound as a matter of international law to implement the body of children's rights it contains.[3] The CRC sets out the body of rights that all people under the age of 18 are entitled to globally, and is the 'contemporary context for thinking about the status of children.'[4] The CRC contains provisions relating to children's civil, political, economic, social and cultural rights and was the first international human rights treaty to encompass the full body of human rights in a single instrument. The Committee on the Rights of the Child ('UNCRC'), the body responsible for monitoring the implementation of the CRC, has developed four foundation principles from which children's rights emerge.[5] These are the principles of survival and development, participation, non-discrimination and the best interests of the child.[6]

[1] *Convention on the Rights of the Child* opened for signature 20 November 1989, 44 UNTS 25 (entered into force 2 September 1990) ('*Convention on the Rights of the Child*').
[2] The United States of America is the only country that has not ratified the CRC despite signalling their intention to ratify by signing the CRC on 16 February 1995. Somalia ratified the CRC on 1 October 2015, and South Sudan acceded to the CRC on 30 April 2015. United Nations Human Rights: Office of the High Commissioner for Human Rights, *Committee on the Rights of the Child* <http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en>.
[3] *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) ('*Vienna Convention on the Law of Treaties*') art 26.
[4] David Archard, *Children: Rights and Childhood* (Routledge, Second Edition ed, 2004) 218.
[5] The Committee on the Rights of the Child (UNCRC) is the body of 18 independent experts that monitors implementation of the CRC by its State parties. It also monitors implementation of two Optional Protocols to the Convention, on involvement of children in armed conflict and on the sale of children, child prostitution and child pornography. On 19 December 2011, the UN General Assembly approved a third Optional Protocol on a communications procedure: *Third Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*, opened for signature 28 February 2012, UN Doc A/RES/66/138 (entered into force 14 April 2014). This allows individual children, as well as groups of children, or their representatives, to submit complaints regarding specific violations of their rights under the CRC and its first two optional protocols. The Protocol entered into force in April 2014. United Nations Human Rights: Office of the High Commissioner for Human Rights, *Committee on the Rights of the Child* <http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en>.
[6] The UNCRC outlined the four general principles contained in the CRC in 1991. See Committee on the Rights of the Child, 'General Guidelines Regarding the Form and Content of Initial Reports to be Submitted by States Parties under Article 44, Paragraph 1(a) of the Convention,' UN Doc. CRC/C/5 cited in Ursula Kilkelly, 'Using the Convention on the Rights of the Child in Law and Policy: Two Ways to Improve Compliance' in Dr Antonella Invernizzi and Dr Jane Williams (eds), *The Human Rights of Children: From Visions to Implementation* (Ashgate Publishing Ltd, 2011) 208.

The principle of children's participation is the focus of this thesis and is linked to article 12 of the CRC which provides the right for children to express their views in all matters affecting them, and for these views to be taken into consideration in accordance with the age and maturity of the child. Thus, in 1989, when the CRC came into force and received near universal ratification within a short period of time,[7] a fundamental change occurred at the international level with respect to children's global legal status. From this moment in history children were no longer to be seen but not heard, they were now to be seen and heard.[8] The provisions contained in article 12 of the CRC are responsible for the change in children's legal status after the CRC came into force. Article 12 is widely accepted as the cornerstone of the CRC, as both a right in itself, as well as enabling the fulfilment of other rights in the CRC.[9]

This project seeks to examine the ways in which Australian legislators and policy makers can implement the principle of children's participation by involving Aboriginal CYP in the development of law and policy pertaining to their lives. The Northern Territory Emergency Response ('NTER')[10] and the Stronger Futures legislation[11] (the package of legislation which replaced the NTER) is the case study used in the field research. Field research was conducted with a group of Aboriginal CYP from the Northern Territory ('NT') using this package of legislation as the centrepiece for analysis.

The views of 22 Aboriginal CYP informed the findings set out in this thesis. With the support of their parents, carers and educators this group of CYP welcomed me into their community, and articulated a vision for the inclusion of Aboriginal CYP in the process of law and policy making in Australia. After

[7] Cynthia Price Cohen and Susan Kilbourne, 'Jurisprudence of the Committee on the Rights of the Child: A Guide for Research and Analysis' (1997) 19 *Michigan Journal of International Law* 633, 635.
[8] E Kay M Tisdall, 'Children Should Be Seen and Heard? Children and Young People's Participation in the UK' in in E Kay M Tisdall, Andressa M Gadda and Udi Mandel Butler (eds), *Children and Young People's Participation and Its Transformative Potential: Learning from Across Countries* (Palgrave, 2014) 168; John Tobin, 'Increasingly Seen and Heard: The Constitutional Recognition of Children's Rights' (2005) 21(1) *South African Journal on Human Rights* 86.
[9] Michael Freeman, 'Whither Children: Protection, Participation, Autonomy?' (1994) 22(3) *Manitoba Law Journal* 307, 319.
[10] The following statutes give effect to the Commonwealth Government's Northern Territory Emergency Response: *Northern Territory National Emergency Response Act 2007* (Cth); *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth); *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007* (Cth); *Appropriation (Northern Territory National Emergency Response) Act (No 1) 2007-2008* (Cth); and *Appropriation (Northern Territory National Emergency Response)* Act *(No 2) 2007-2008* (Cth).
[11] The following Commonwealth statutes comprise the Stronger Futures legislation: the *Stronger Futures in the Northern Territory Act 2012* (Cth); the *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012* (Cth) and the *Social Security Legislation Amendment Act 2012* (Cth).

several intensive weeks[12] of yarning with one another, the CYP concluded that governments should ask before implementing measures affecting Aboriginal CYP, and suggested practical measures to allow governments to do this. The depth of knowledge and varying perspectives shared by Aboriginal CYP involved in the field research demonstrates the value of engaging children in legislative design.

This thesis demonstrates that article 12 of the CRC requires governments to involve CYP in decision-making about 'matters affecting' them.[13] This includes in the development of laws and policies about matters affecting them such as the NTER and Stronger Futures legislation. Based on a combination of doctrinal and field research this thesis presents a model for Aboriginal CYP's participation in both research and law and policy development. The proposed model—a child rights-based approach ('CRBA') informed by Indigenous research methodologies—is informed by Lundy's paradigm for children's participation which articulates four pillars of children's participation: 'space, voice, audience and influence.'[14] Lundy's model is described in detail later in the thesis, primarily in chapters 2 and 5.

The underlying premise of the thesis is that the participation of Indigenous CYP—when carried out in a culturally and age appropriate way and based on free, prior and informed consent—is an invaluable resource capable of empowering CYP and informing Indigenous related legislation and policy.

1.1.1 Research Questions

This study spans a range of separate, yet related, schools of thought including Indigenous studies; international child rights and human rights law (including child rights-based theories and practices); sociology and social work. Given the interdisciplinary nature of this inquiry a range of sub-questions are addressed in respective chapters of the thesis, the culmination of which go toward answering the overall thesis question: 'Why and how should Aboriginal CYP participate in the development of law

[12] Field research was conducted over four consecutive weeks totalling twenty days of interaction with CYP. Half of this time was spent getting to know the CYP during classroom time as they carried out the ordinary daily activities in the school setting, as well as conducting information and research preparation and familiarisation sessions prior to the filed research taking place. Field research involved engaging the CYP in yarning circles and making peer-to-peer movies about the research issues on iPads.

[13] *Convention on the Rights of the Child* art 12.

[14] Laura Lundy, '"Voice" is Not Enough: Conceptualising Article 12 of the United Nations Convention on the Rights of the Child' (2007) 33(6) *British Educational Research Journal* 927.

and policy affecting them?' The research answers this question by responding to the following five aspects of the question:

i. What are the ethical and cross-cultural considerations surrounding Aboriginal CYP's participation in research, and in the development of laws and policies?

ii. Does article 12 of the CRC require State parties to involve CYP in the development of laws and policies relating to them?

iii. What is the impact of Western notions of childhood on Aboriginal CYP's participation in law and policy making in Australia?

iv. What did Aboriginal CYP say about the NTER and Stronger Futures legislation?

v. What did Aboriginal CYP say about their participation in the development of future laws and policies?

The following broad areas of inquiry formed the basis of the field research:

- To what extent are Indigenous CYP aware of the NTER and the Stronger Futures legislation?
- Do Indigenous CYP perceive the Intervention and Stronger Futures as 'matters affecting' them?
    - If so, do they believe they should be involved in the development of such legislation and policies and, if so, why and how? If not, why not? and
    - Are there other policies and laws that they believe affect them?

1.1.2 Structure of the Thesis

The thesis is presented in two parts, part I and part II, and is made up of eight chapters. Part I of the thesis (chapters 1 to 5) seeks to introduce the research and overview the methodological and legal foundations of the research. This chapter introduces the thesis topic, overviews the research case study, provides a summary of the fieldwork conducted and sets out the significance of this research.

Chapter 2 details the research methodology (a CRBA informed by Indigenous research methodologies), the methods adopted ('yarning' and 'peer-to-peer interviewing') and the limitations of the research. Chapter 3 illustrates how the 'Scoping Trip,' conducted in 2012 (the first year of the project), enhanced the research design. Chapters 2 and 3 focus on addressing the thesis question with respect to *how* Aboriginal CYP should be involved in decision-making processes. Chapter 4 examines article 12 of the CRC and establishes the legal principle upon which this thesis rests—that children have a legal right to participate in the development of legislation and policies affecting them. Thus, chapter 4 contributes to addressing the thesis question with respect to *why* Aboriginal CYP should be involved in law and policy making processes. Chapter 5 explores how concepts of 'childhood' impact on children's participation in decision-making processes, and Lundy's model of participation is set out as the favoured model for this research.[15]

Part II of the thesis (chapters 6 to 8) seeks to present a range of conclusions about *how* and *why* Aboriginal CYP should be involved in law and policy making. These conclusions are drawn from the qualitative research conducted in 2014 with 22 Aboriginal CYP in the NT. Chapter 6 details CYP's views about two key measures arising from the NTER and Stronger Futures legislation: income management and alcohol regulation. Chapter 7 presents CYP's views about how they could be involved in law and policy development processes and sets out a range of conclusions about how to implement these measures in practice. Chapter 8 concludes the thesis by summarising the thesis findings and presents how this research makes an original contribution to knowledge.

A separate chapter containing a discrete literature review is not included in this thesis. Rather, literature is drawn upon throughout the thesis in order to make appropriate scholarly connections where relevant. The supervision team and I agreed early in the PhD candidature that a conventional literature review chapter would not be included in this thesis. Instead the approach suggested by Wolcott[16] and Silverman,[17] of drawing upon relevant literature throughout the document was implemented. Wolcott questions the usefulness of a formal literature review when documenting

[15] Ibid.
[16] H.F Wolcott, *Writing Up Qualitative Research* (SAGE Publications, 1990), 16-17.
[17] David Silverman, *Doing Qualitative Research: A Practical Handbook* (SAGE Publications, 4th ed, 2013) 349.

qualitative research.[18] He suggests it is not always appropriate to include a dedicated chapter devoted solely to reviewing the literature relevant to the field.[19] He suggests another option is to 'draw upon the literature selectively and appropriately as needed in the telling of their story.'[20] Silverman concurs with Wolcott's view noting however, that not including a literature review chapter may be 'too radical for most students (and their supervisors!).'[21] The non-inclusion of a formal literature review in a separate chapter was not viewed by the supervision team or myself as 'radical', rather the approach taken—to integrate literature throughout the thesis—was assessed as the most efficient and appropriate way of managing this interdisciplinary research endeavour. The principle reason this approach was adopted was due to the wide range of disciplines the thesis draws on including law, international human rights law, Indigenous studies, childhood studies and social work. Where the thesis focuses on a specific discipline, the relevant literature is discussed and analysed.[22]

1.1.3 Research Case Study

In the first year of the PhD candidature it was decided that an inquiry into Aboriginal CYP's views about the NTER and Stronger Futures legislation would form the central case study for this research. The case study was chosen because the NTER and Stronger Futures legislation is a matter affecting Aboriginal CYP and therefore under article 12 of the CRC the Australian Government is duty bound to involve Aboriginal CYP in the development of such laws and policies.[23] The case study therefore is relevant to answering the key thesis question about why and how Aboriginal CYP should participate in law and policy development.

However, other reasons influenced my decision to use the NTER and Stronger Futures legislation as the central case study for this research. When the *Little Children are Sacred Report* was released I had recently commenced working for the NSW Department of Community Services as a manager in the Child Protection and Policy Reform division. Prior to that role I was working as a Children's Rights

[18] Wolcott, above n 16.
[19] Ibid.
[20] Ibid 17.
[21] Silverman, above n 17, 349.
[22] Supervision meeting with Carolyn Adams (Principal Supervisor) and Professor Susan Page (Associate Supervisor) 13 March 2013.
[23] The legal justification for this claim is set out in chapter 4.

Legal Advisor with UNICEF Pacific based in Fiji,[24] working across 14 Pacific Island Countries—particularly in the five least developed countries Solomon Islands, Kiribati, Vanuatu, Samoa and Tuvalu.[25] This work involved partnering with national governments to support the implementation of the CRC in domestic legislation and policy. Thus, at the time of the release of the *Little Children are Sacred Report* my professional focus centred on the application of international children's rights law principles in domestic law and policy initiatives.

My professional experience working in the area of children's rights internationally and domestically, contributed to my motivation to enrol in a PhD at Macquarie University in February 2012. I wanted to pursue the ideas I began to develop whilst working internationally for UNICEF regarding marginalised children's participation in law and policy making in the Australian context, and I envisaged the NTER as a useful case study through which to do this.

In order to assess the viability of proceeding with the proposal to investigate Aboriginal CYP's views about the NTER and Stronger Futures legislation, and in order to seek advice about how to go about this, a five-day Scoping Trip[26] in Northern and Central Australia was undertaken in September and October 2012. During this trip I met with a range of professionals whose work involved Indigenous CYP to discuss the proposed research and seek their ideas about the methodological approach. As a result of this trip a school in the NT agreed to host the field research.[27] During the field research Aboriginal CYP were invited to share their knowledge of, and experiences in relation to, two central packages of legislation: the Stronger Futures legislation and its predecessor the NTER.

[24] Before working for UNICEF I had worked for various government and non-government agencies as a social worker primarily working with women and children who had experienced violence, abuse or neglect. During the latter part of my social work career I studied for a law degree and my first legal role was as a Children's Rights Legal Advisor with UNICEF Pacific in Fiji.
[25] Least Developed Countries (LDCs) are classified by the United Nations as low-income countries experiencing severe structural barriers to sustainable development. In 2005 the LDCs in the Pacific were Solomon Islands, Kiribati, Vanuatu, Samoa and Tuvalu.
[26] The Scoping Trip is detailed in chapter 3.
[27] The name of the school has been withheld in accordance with the conditions for ethical approval stipulated by one of the ethics committees to which this research is subject, the Central Australian Human Research Ethics Committee (CAHREC).

1.1.3.1 The NTER and Stronger Futures Legislation

The NTER and Stronger Futures legislation specifically target Aboriginal people living in the NT, and the impact of these measures on Aboriginal CYP was the focus of the field research. On 15 June 2007 the NT Government publically released the *Ampe Akelyernemane Meke Mekarle: 'Little Children are Sacred' Report ('Little Children are Sacred Report'*) arising from the Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse.[28] Rex Wild QC and Patricia Anderson co-chaired the inquiry and delivered 97 recommendations to address the alleged abuse of Aboriginal children in the NT. These recommendations have only been partly implemented to date by governments.[29] The Report was the purported catalyst for the NTER (also referred to as the 'Intervention') introduced by the Australian Government under Liberal Prime Minister John Howard in June 2007. The NTER was continued by the incoming Labor Government in 2007, under Prime Minister Kevin Rudd, until it was replaced in 2012 with the Stronger Futures legislation under Labor Prime Minister Julia Gillard.[30] At the time of writing the Stronger Futures legislation remains in force under Liberal Prime Minister Malcolm Turnbull. The Stronger Futures laws largely mirror the NTER laws[31] and will continue till 2022.

The Australian Government asserted the NTER was introduced in response to the findings in the *Little Children are Sacred Report*, and on this basis declared a 'national emergency' facing Aboriginal children in the NT.[32] The Australian Government claimed the NTER was necessary in order to address

[28] Rex Wild QC and Pat Anderson, 'Ampe Akelyernemane Meke Mekarle "Little Children are Sacred"', Report of the Northern Territory Board of Inquiry Into the Protection of Aboriginal Children from Sexual Abuse' (Department of the Chief Minister, 2007).
[29] Northern Territory Children's Commissioner, Office of the Children's Commissioner Northern Territory, Annual Report 2011-2012 (2012).
[30] The following statutes give effect to the Commonwealth Government's Northern Territory Emergency Response: *Northern Territory National Emergency Response Act 2007* (Cth); *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth); *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007* (Cth); *Appropriation (Northern Territory National Emergency Response) Act (No 1) 2007-2008* (Cth); and *Appropriation (Northern Territory National Emergency Response)* Act *(No 2) 2007-2008* (Cth).
[31] Shelley Bielefeld, 'History Wars and Stronger Futures Laws: A Stronger Future or Perpetuating Past Paternalism?' (2014) 39(1) *Alternative Law Journal* 15; Alastair Nicholson, Nicole Watson, Alison Vivian, Craig Longman, Terry Priest, Jason De Santolo, Paddy Gibson, Larissa Behrendt and Eva Cox, 'Listening But Not Hearing: A Response to the NTER Stronger Futures Consultations June to August 2011' (Jumbunna Indigenous House of Learning, University of Technology Sydney, 2012) 15.
[32] Mal Brough, Minister for Families, Community Services and Indigenous Affairs, 'National Emergency Response to Protect Aboriginal Children in the NT' (Press Release, 21 June 2007) <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F8ZFN6%22>. See

allegations of child sexual abuse and neglect in NT Aboriginal communities.[33] However, numerous scholars cite discrepancies between the recommendations outlined in the *Little Children are Sacred Report* and the NTER measures imposed, many of which did not relate to addressing child sexual abuse or neglect, such as the changes made under the NTER legislation to land tenure.[34] The *Little Children are Sacred Report* has been criticised for using language such as 'urgent,' contained in one of the key recommendations, which may have contributed to the Australian Government's heavy handed response.[35]

The policies implemented under the NTER affected over 53,000 Indigenous Australians in 73 'prescribed areas' in the NT.[36] The NTER imposed a suite of changes applicable to Aboriginal and Torres Strait Islander people living in the NT, all of which argues Scrymgour were 'shocking—and unexpected.'[37] Under the NTER the army, federal police and police from other states and territories were deployed to give effect to the legislation.[38] For example, the 'North West Mobile Force' operated in the first six months of the NTER. Billings explains the role of North West Mobile Force was to provide:

> logistical support for … child health check teams and helping with community liaison activities. Their supporting role notwithstanding, the presence of the army (which embodies physical force) conveyed the *appearance* of communities living under martial law … The presence of the army in Aboriginal communities instilled anxiety and fear into many of those being 'protected.'[39]

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also Louise Pounder, 'Never Mind Human Rights, Let's Save the Children: The Australian Govenrment's Emergency Intervention in the Northern Territory' (2008) 12(2) *Australian Indigenous Law Review* 2, 2.

[33] Brough, above n 32.

[34] Jon C Altman and Melinda Hinkson, *Coercive Reconciliation: Stabilise, Normalise, Exit Aboriginal Australia* (Arena Publications, 2007); Jon Altman and Susie Russell, 'Too much "Dreaming": Evaluations of the Northern Territory National Emergency Response Intervention 2007-2012' (2012) 3 *Evidence Base* 1, 3; Larissa Behrendt, 'Underlying Legal Issues in the NT Intervention' (2007/2008) Summer 2007/2008 *Bar News* 12; Barry Hindness, 'Unintended Rhetoric: The "Little Children are Sacred" Report' in John Uhr and Ryan Walter (eds), *Studies in Australian Political Rhetoric* (ANU Press, 2014).

[35] Hindness, above n 34, 86 and 94. The author referred to the words 'little' and 'sacred' being used together in the title of the report, as well as the word 'urgent' in one of the key recommendations.

[36] The *Northern Territory National Emergency Response Act (2007)* (Cth) s 4. This section outlines the areas of the Northern Territory subject to this legislation. Reference to 'prescribed areas' was changed with the passage of the Stronger Futures legislation to 'alcohol protected areas.'

[37] Marion Scrymgour, 'Whose National Emergency? Caboolture and Kirribili? or Milikapiti and Mutitjulu?' (paper presented at the Charles Perkins Oration, 2007) 8.

[38] Ibid 9.

[39] Peter Billings, 'Still Paying the Price for Benign Intentions? Contextualizing Contemporary Interventions in the Lives of Aboriginal Peoples' (2009) 33 *Melbourne University Law Review* 1, 24. Billings drew on two sources to arrive at these

Scrymgour notes 'the last time civilian authority was overturned by the military in the NT was in the aftermath of Cyclone Tracy' in 1975.[40] The NT has a measure of self-government, and may pass legislation on certain matters, however given its constitutional status as a 'territory' the Australian Government retains ultimate control of the NT under s122 of the *Commonwealth of Australia Constitution Act (1900)* (Imp) ('*Australian Constitution*') and 'may make laws,' or override NT legislation, using that power.[41]

The changes implemented under the NTER legislation in the NT of Australia included regulating family expenditure through compulsory quarantining of welfare payments; imposing sanctions on welfare recipients that were linked to Aboriginal children's school attendance; regulating alcohol consumption and possession; restricting access to pornography; and making changes to health and education services, law enforcement, and land tenure.[42] Section 122 of the *Australian Constitution*, the 'territories power', which provided the constitutional basis of the NTER legislation, empowers the Federal Parliament to 'make laws for the government of any territory.'[43] The NTER measures were only applicable to people living in the NT of Australia, living in 'prescribed communities.' These areas are predominately populated by Aboriginal people, thus the measures affected very few non-Indigenous Australians.[44] Given these factors, the NTER and Stronger Futures legislation racially target Aboriginal people.[45] The racially targeted nature of the NTER legislation was the ground upon which a complaint was made to the United Nations Committee for the Elimination of Racial Discrimination ('UNCERD') that the NTER legislation contradicted Australia's duty not to

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conclusions firstly Jon C Altman and Melinda Hinkson, *Coercive Reconciliation: Stabilise, Normalise, Exit Aboriginal Australia* (Arena Publications, 2007) 73 and 'The Role of the Army' (Department of Families, Housing, Community Services and Indigenous Affairs, 2009).

[40] Scrymgour, above n 37, 14.

[41] Section 122 of the *Australian Constitution* states: 'The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.'

[42] The Federal Government compulsorily acquired leases over the 73 'prescribed' towns and communities to which the NTER legislation applied.

[43] *Commonwealth of Australia Constitution Act 1900* (Imp) s 122.

[44] Shelley Bielefeld, 'Compulsory Income Management and Indigenous Australians: Delivering Social Justice or Furthering Colonial Domination?' (2012) 35(2) *UNSW Law Journal* 522; Bielefeld, above n 31.

[45] Ibid; Billings, above n 39; Peter Billings (ed), *Indigenous Australians and the Commonwealth Intervention*, Law in Context (2010); Pounder, above n 32.

discriminate on the basis of race under the *International Convention on the Elimination of Racial Discrimination* ('CERD').[46]

The *Racial Discrimination Act 1975* (Cth) ('RDA') [47] gives effect to Australia international law responsibilities under CERD. In order to avoid potential conflict between Australia's responsibilities under CERD and the RDA the Australian Government 'excluded the RDA's application to the Intervention … by declaring that all measures constituting the Northern Territory Intervention were "special measures" for the purposes of the RDA.'[48] Section 8 of the RDA which prohibits racial discrimination in part 2 of that Act, does not apply to 'special measures' as defined in article 1(4) of the CERD.[49] Article 4(1) of CERD sets out the conditions in which a 'special measure' can be applied, namely, 'for the sole purpose of securing adequate advancement of certain racial or ethnic groups.'[50] Scholarly debate concurs that the NTER measures offended the provision contained in the CERD as they were illegitimately categorised as 'special measures,' were disproportionate to achieving the stated aims of addressing child sexual abuse, and were not introduced with the prior consent of the Aboriginal people affected.[51] On this basis a group of Aboriginal people from prescribed communities affected by the NTER legislation made a complaint to the UNCERD requesting it 'invoke its urgent action procedure in relation to the Northern Territory Intervention.'[52]

The UNCERD assessed the complaint and sent an Urgent Action Letter to the Australian Government on 13 March 2008, requesting the Australian Government report measures taken to reinstate the RDA

[46] *International Convention on the Elimination of all Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) ('*Convention on the Elimination of Racial Discrimination*'); Hon Professor Alastair AO RFD QC Nicholson, Michele Harris OAM and Georgina Gartland, 'Loss of Rights: A Submission to the UN Committee on the Elimination of Racial Discrimination' (Concerned Australians, 2010).
[47] *Racial Discrimination Act 1975* (Cth).
[48] Alison Vivian and Ben Schokman, 'The Northern Territory Intervention and the Fabrication of "Special Measures"' (2009) 13(1) *Australian Indigenous Law Review* 78, 78.
[49] *Convention on the Elimination of Racial Discrimination* art 1(4) states: 'Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.'
[50] *Convention on the Elimination of Racial Discrimination* art 1(4).
[51] Vivian and Schokman, above n 48; Gregory Marks, 'Race Discrimination, Special Measures and the Northern Territory Emergency Response' (Amnesty International Australia, 2009); 'The Suspension and Reinstatement of the RDA and Special Measures in the NTER' (Australian Human Rights Commission, 2011); Nicholson et al, above n 46.
[52] Human Rights Law Resource Centre, *Indigenous Rights: Request for Urgent Action on NT Intervention from UNCERD* (March 2009) <http://www.hrlrc.org.au/content/topics/equality/northern-territory-intervention-request-for-urgent-action-cerd/>.

within a four month period.[53] Two years later, in June 2010 the Australian Government passed legislation to remove the suspension of the RDA, effective from 31 December 2010. Despite the reinstatement of the *RDA*, following demands issued by the UNCERD,[54] the NTER measures which racially targeted Aboriginal people through means such as income management and alcohol regulation were not substantially altered. Nicholson concludes, that the reinstatement of the RDA had 'limited effect' as the legislative and policy measures continued to breach Australia's responsibilities under the CERD.[55]

The NTER legislation came into force in 2007, the same year the *United Nations Declaration on the Rights of Indigenous Peoples* ('UNDRIP') was adopted by the General Assembly of the United Nations.[56] The UNDRIP makes it clear that States should:

> Consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.[57]

The 'critical importance of governments committing to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities' was emphasised in the preamble to the recommendations outlined in the *Little Children are Sacred Report*.[58] However, the NTER legislation was not designed in collaboration with Indigenous peoples, and was therefore inconsistent with article 19 of the UNDRIP.

Not only were Aboriginal adults not consulted prior to the introduction of the NTER legislation, but Aboriginal CYP were also not consulted. Notably however, the *Little Children are Sacred Report*,

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[53] A copy of the Urgent Action Letter can be accessed at <http://www.hrlrc.org.au/files/cerd-letter-to-australia130309.pdf>.
[54] Ibid; Nicholson et al, above n 46.
[55] Nicholson et al, above n 46, 8.
[56] *The United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, Supp No 49, UN Doc A/RES/61/295 (13 September 2007) ('*United Nations Declaration on the Rights of Indigenous Peoples')*. The UNDRIP was adopted by the General Assembly of the United Nations on September 13, 2007. It was adopted with 143 countries in support. The United States of America, Canada, New Zealand, and Australia were the only countries to vote against it. The Howard Government opposed the UNDRIP in the General Assembly vote in 2007. On 3 April 2009, the Rudd Government revised this position and formally endorsed the UNDRIP. Whilst the UNDRIP is not legally binding it represents international legal norms and reflects the aspirations of States to uphold, respect and fulfill the human rights of Indigenous peoples.
[57] *United Nations Declaration on the Rights of Indigenous Peoples* art 19.
[58] Wild and Anderson, above n 28, 21.

despite being solely focussed on children's wellbeing did not include perspectives gathered from children themselves, nor did the report call for government consultation specifically with Aboriginal CYP as part of the strategy to respond to the recommendations arising from the report. Six weeks after the release of the *Little Children are Sacred Report* the Australian Government rushed the NTER enabling legislation through parliament 'without consultation' with Indigenous communities. [59] There is no evidence of the involvement of Indigenous CYP in the development of the NTER legislation.[60]

The first recommendation in the *Little Children are Sacred Report*, under the category of governmental leadership,[61] states:

> That Aboriginal child sexual abuse in the Northern Territory be designated as an issue of urgent national significance by both the Australian and Northern Territory governments, and both governments immediately establish a collaborative partnership with a Memorandum of Understanding to specifically address the protection of Aboriginal children from sexual abuse. It is critical that both governments commit to *genuine consultation* with Aboriginal people in designing initiatives for Aboriginal communities.[62]

Nicholson notes that the 'punitive and arbitrary nature of the [NTER] measures was at odds with the consultative approach recommended by the "*Little Children are Sacred Report"*.'[63] In the Concluding Observations on Australia's 2012 report under the CRC, the UNCRC strongly criticised Australia in relation to non-compliance with articles 2, 3, 6 and 12 of the CRC in the NTER legislation.[64] The UNCRC criticised the 'punitive nature of the … *Northern Territory Emergency Response Bill* (2007), including the student enrolment and attendance measure which allows for punitive reductions to welfare payments for parents whose children are truant.'[65] The UNCRC also criticised the Australian Government for 'inadequate consultation and participation of Aboriginal and Torres Strait Islander

[59] Nicholson et al, above n 46, 5. See also Billings, above n 39, 21.
[60] Olga Havnen, 'Office of the Northern Territory Coordinator-General for Remote Services Report' (Northern Territory Government, June 2011 to August 2012).
[61] Wild and Anderson, above n 28, 22.
[62] Ibid (emphasis added).
[63] Nicholson et al, above n 46, 15.
[64] United Nations Committee on the Rights of the Child, 60th Session, *Concluding Observations on Australia's Fourth Periodic Report on the CRC*, CRC/C/AUS/CO/4 (19 June 2012) [29(c)].
[65] Ibid [29(c)].

persons in the policy formulation, decision-making and implementation processes of programmes affecting them.'[66]

When considering Australia's obligations under article 2 of the CRC (the duty to protect all children from discrimination and to take positive action to promote their rights) the UNCRC urged Australia to:

> Thoroughly evaluate the *Northern Territory Emergency Response Bill (NTERB)* (2007), particularly its student enrolment and attendance measure, with a view to ensuring that the NTERB measures are proportionate, and *non-discriminatory* in form as well as effect; and ensure the effective and meaningful participation of Aboriginal and Torres Strait Islander persons in the policy formulation.[67]

In 2012 the Stronger Futures legislation replaced the NTER. However the legislation and policies underlying both the NTER and the Stronger Futures legislation are similar.[68] The *Stronger Futures in the Northern Territory Act* 2012 (Cth) ('*Stronger Futures in the NT Act*') defines the object of the Act as follows: '[to] support Aboriginal people in the Northern Territory to live strong, independent lives, where communities, families and children are safe and healthy.'[69] Nicholson et al says the Stronger Futures legislation 'effectively preserve(d) the legal effect of all that was done under' the NTER legislation.[70] Aboriginal CYP were not involved in the development of these measures, yet the field research detailed in chapters 6 and 7 demonstrate the practical effect of these measures, which directly and indirectly impact Aboriginal CYP in their everyday lives.

1.1.3.2 Income Management—the Basics Card

The 'Basics Card' is a measure arising from the compulsory income management regime established in the NT under the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth) and the *Northern Territory National Emergency Response Act 2007* (Cth) (*'NTNER Act'*); and continued without substantial change under the Stronger Futures legislation through the *Social*

[66] Ibid [29(d)].
[67] United Nations Committee on the Rights of the Child, 60th Session, *Concluding Observations on Australia's Fourth Periodic Report on the CRC*, CRC/C/AUS/CO/4 (19 June 2012) [30 (c)-(d)](emphasis added).
[68] Nicholson et al, above n 46; Sarah Maddison, Alastair Nicholson and Emma Partridge, 'Human Rights Imperatives and the Failings of the Stronger Futures Consultation Process' (2012) 18(2) *Australian Journal of Human Rights* 21.
[69] *Stronger Futures in the Northern Territory Act 2012* (Cth) s 4.
[70] Nicholson et al, above n 31, 90.

Security Legislation Amendment Act 2012 (Cth).[71] Under the NTER legislation the residents of 73 'prescribed communities'—later renamed 'alcohol prohibited areas' under the Stronger Futures legislation[72]—who received welfare payments are subject to compulsory quarantining of approximately 50% of these payments, such that half of welfare payments are not able to be accessed as cash, only via a 'Basics Card.'[73]

Compulsory income management applies to everyone living in prescribed communities in the NT who are recipients of a government welfare payment. The same total amount of welfare money is received, however 50 % of these welfare payments are 'quarantined' for use on 'basics' such as food, housing, clothing and bills. The NTER legislation limited the use of quarantined money to the purchase of goods described as 'priority needs.'[74] Income managed funds cannot be spent on alcohol, cigarettes, gambling or to buy pornography. The Australian Government stated that these income management measures were necessary to 'promote socially responsible behaviour, particularly in relation to the care and education of children.'[75]

1.1.3.3 Alcohol Regulation—the Blue and White Signs

Alcohol consumption in some Aboriginal communities in the NT has been identified as a serious problem and is an issue that affects Aboriginal CYP.[76] The field research conducted for this thesis, detailed in chapters 6 and 7, highlights research participants' views about alcohol use in some Aboriginal communities. A detailed discussion of the nature of alcohol use in Aboriginal communities

[71] The *Social Security Legislation Amendment Act 2012* (Cth) schedule 1, s 6 inserts s 123TGAA into the *Social Security (Administration) Act 1999* (Cth). The *Social Security Legislation Amendment Act 2012* (Cth) schedule 1, ss 23, 25, 27 inserts ss 123UCA(3), 123UCB(4) and 123UCC(4) into the *Social Security (Administration) Act 1999* (Cth). Cited in Bielefeld, above n 31.
[72] *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth) s 123TB(b). The quarantined amount was 50 % of welfare payments, and up to 100 % of lump sum payments such as the baby bonus.
[73] Paddy Gibson, 'Return to the Ration Days: The NT Intervention-Grass-Roots Experience and Resistance: A Discussion Paper' (Jumbunna Indigenous House of Learning, University of Technology Sydney, 2009) 3.
[74] *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth) s 123TB(c); *Social Security (Administration) Act 1999* (Cth) s 123TH(1).
[75] Department of Families, Housing, Community Services and Indigenous Affairs, *Closing the Gap in the Northern Territory: January 2009 to June 2009 Whole of Government Monitoring Report Part One – Overview of Measures (2009)* 34–36 <http://www.fahcsia.gov.au/sites/default/files/documents/05_2012/nter_monitoring_report_p1_1.pdf> ('Monitoring Report, Jan–Jun 2009, Pt 1') 34.
[76] Kristen Smith et al, 'Alcohol Management Plans and Related Alcohol Reforms' (2013) 16 *Indigenous Justice Clearinghouse Brief*.

is not within the ambit of this thesis. However, the thesis does consider the nature and implications of alcohol regulation measures under the NTER and Stronger Futures laws.

Section 8 of the *Stronger Futures in the NT Act* amends the *Liquor Act 1978* (NT) and establishes a range of alcohol related offences. For example, it is an offence to possess alcohol in an 'alcohol protected area',[77] and it is an offence to supply alcohol in a protected area.[78] The penalty for breaching these sections is a maximum of $17,000 or 6 months in prison, although for an offence involving larger quantities of alcohol the penalties are significantly greater.[79]

Part of the alcohol regulations measures under the NTER, and later continued under the Stronger Futures laws, was the erection of large blue and white warning signs ('blue and white signs') positioned at the entrance to prescribed communities stating in English[80] 'no liquor' and 'no pornography.' These signs outline the penalties for the possession, sale and consumption of alcohol, and the possession and sale of certain pornographic material. Under the Stronger Futures legislation these signs were redesigned to look different, and included some Aboriginal artwork, however, the provisions detailed on them are largely similar to that of the 'blue and white signs' implemented under the NTER legislation pictured in chapter 6 (figure 6.4). These signs were placed at the entrance to 73 prescribed communities in 2007 at the commencement of the NTER.[81]

1.1.3.4 Rationing Measures Undermine Self-Determination

The two interconnected measures contained in the NTER and Stronger Futures laws—income management through the use of a Basics Card and the regulation of alcohol in Aboriginal communities, in particular, the impact of the 'blue and white signs'—are both forms of 'rationing.'

[77] *Stronger Futures in the NT Act* s 75B(1).
[78] Ibid s 75C(1).
[79] Ibid s 5. However, s 75C(7)(a) of the *Stronger Futures in the NT Act* stipulates that if the quantity of alcohol involved in the offence exceeds 1.350 ml the maximum penalty for an offence rises to a maximum of $115,600 or imprisonment for 18 months.
[80] Signs were only produced in English. The signs were not translated into Aboriginal languages spoken in the prescribed areas.
[81] *Northern Territory National Emergency Response Act (2007)* (Cth) s 4. A prescribed area is defined in s4 of this Act as Aboriginal land as per the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), town camps and areas prescribed by the Commonwealth Minister through legislative provision. See Jon Altman, 'The Howard Government's Northern Territory Intervention: Are Neo-Paternalism and Indigenous Development Compatible?' (2007) 16 *Centre for Aboriginal Economic Policy Research, <http://caepr.anu.edu.au/sites/default/files/Publications/topical/Altman_AIATSIS.pdf>* 1, 8.

Government rationing by placing restrictions on Aboriginal peoples' access to cash payments and alcohol in the NT is not new, and dates back to Australia's early colonial laws.[82] Gibson details the impact of colonisation which he says:

> Severely disrupted traditional means of sustenance, and Aboriginal people were denied access to full payments in cash for either waged work or social security. They were provided instead with rations of basic food and clothing.[83]

Gibson, Bielefeld and Rowse detail that the introduction of the NTER and Stronger Futures legislation saw the 're-emergence of "assimilation" as a dominant philosophy guiding government policy in Aboriginal affairs.'[84] Bielefeld says past policies of assimilation were based on similar restrictions as the NTER and Stronger Futures legislation.[85] Rowse describes the practice of 'rationing' as the method used by colonial authorities to financially and socially control Aboriginal people.[86] This method of control commenced under the *Aboriginals Ordinance Act 1911* (Cth) when Aboriginal peoples wages could be paid to a government appointed 'Protector';[87] also under of the *Aboriginals Ordinance Act 1918* (Cth) which gave power to the 'Protector' to manage real and personal property of Aboriginal people, including wages.[88] Rationing was carried out throughout the 20th century during the period of 'assimilation', before the period of 'self-determination' in the early 1970s.[89]

Income management through the Basics Card, and alcohol regulation through the 'blue and white signs' both involve 'rationing.' As stated a number of scholars characterise these measures as a return to pre-1970s policies of 'assimilation'[90] and the policy surrounding the Basics Card is an example of

[82] Bielefeld, above n 31; Gibson, above n 73.
[83] Gibson, above n 73, 8.
[84] Ibid.
[85] Bielefeld, above n 31.
[86] Tim Rowse, *White Flour, White Power: From Rations to Citizenship in Outback Australia* (Cambridge University Press, 1998) chapter 2.
[87] Section 7(1).
[88] Section 43(1)(a). Under *the Aboriginals Ordinance 1918* (Cth) the consent of the Aboriginal person needed to be obtained in order to garner personal or real property, however, consent could 'be overridden if it was deemed "necessary" by colonial authorities.' Cited in Bielefeld, above n 31, 16.
[89] Rowse, above n 86, 13-48 and 107-117.
[90] Billings, above n 39; Paul Toohey, 'Last Drinks: The Impact of the Northern Territory Intervention' (2008) 30(1) *Quarterly Essay* 40; Pounder, above n 32; Bielefeld, above n 31; Nicholson et al, above n 31.

this. The Basics Card has been referred to as the new 'rations card.'[91] Bielefeld says the alcohol management measures under the Stronger Futures laws 'are far more onerous and draconian than what was in place under the *Aboriginals Ordinance Act 1911* (Cth).'[92] She notes that section 4 of the *Stronger Futures in the NT Act* sets out the purpose of the legislation, which 'is to support Aboriginal people in the Northern Territory to live strong, independent lives' yet the legislation, she says, 'promotes an extremely paternalistic approach to alcohol usage and is racially targeted. It is designed to affect the alcohol consumption of Indigenous people.'[93]

1.1.4 International Standards Framework

The CRBA framework adopted in this project emphasises the instrumental value of the CRC in legislative and policy design. Article 12 of the CRC provides that people under the age of 18 years have the right to express their views about 'all matters affecting' them, and for these perspectives to be taken into account when decisions are being made.[94] This thesis demonstrates, in chapter 4 and throughout, that law and policy is a 'matter affecting' Aboriginal CYP and falls inside the scope and intended meaning of article 12 of the CRC.

The adoption of the *Geneva Declaration on the Rights of the Child* by the League of Nations in 1924 signalled the beginning of changes in global attitudes about children's social status and about children's citizenship.[95] Later in 1948, the UN General Assembly passed the *Universal Declaration on Human Rights* in which article 25 specifically refers to childhood as a time where children are 'entitled to special care and assistance.'[96] These measures, combined with the growing body of human rights instruments, provided a platform for the passage of the CRC, which consolidated and enhanced human

[91] Paddy Gibson, 'Working for the Basics Card in the Northern Territory: The Impact of the Northern Territory Emergency Response and Associated Policies on Employment Conditions in NT Aboriginal Communities: Discussion Paper' (Jumbunna Indigenous House of Learning, University of Technology, 2010). See also Gibson, above n 73; Bielefeld, above n 31; Bielefeld, above n 44; Eva Cox and Terry Priest, 'Evidence-Free Policy Making? The Case of Income Management' (2012) 12 *Journal of Indigenous Policy, Jumbunna Indigenous House of Learning, University of Technology.*
[92] Bielefeld, above n 31, 17.
[93] Ibid 17.
[94] Lundy, above n 14, 927.
[95] The *Geneva Declaration on the Rights of the Child* does not articulate in depth the rights of children. Rather, it is a brief document outlining the need to care for children, rather than positioning children as active agents with citizenship rights.
[96] *Universal Declaration of Human Rights*, G.A. Res. 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc. A/RES/217A (III) (10 December 1948).

rights provisions in other human rights instruments, specifying that these rights also relate to children.[97]

Prior to the CRC coming into force CYP's right to participation, as well as the principle that the best interests of the child should be a primary consideration in all actions involving them, had not previously been articulated in international human rights law. These measures have contributed to a significant shift in understanding, over the past 25 years, about children's capacity to participate in decision-making. This change in understanding was reflected by the near universal ratification of the CRC in the early 1990s. The impact of these developments in global understandings about children's citizenship meant that notions that children are not yet complete or 'in process,' or 'becoming rather than being,'[98] were no longer palatable, at least in scholarly debate.[99] This saw the beginning of children being perceived as actors in their own right, capable of understanding and influencing their own lives and environments. Previously espoused views that defined children as 'unfinished products, [which] inspire interest not so much for what they are intrinsically, but for the sake of the adults they will become' were rejected.[100]

Despite global progress supporting CYP's involvement in decision-making, CYP are rarely involved, or at best have limited opportunities to be involved, in the development of policies and legislation affecting their lives.[101] Aboriginal CYP have even less opportunity to engage in legislative and policy design for a range of reasons including language barriers, geographical remoteness and reduced contact with the education system. The status of Aboriginal CYP as citizens in the broader Australian community is different to the status they are given in some remote Indigenous communities where,

[97] UNICEF, 'State of the World's Children: Celebrating 20 Years of the Convention on the Rights of the Child' (9280644424, UNICEF, 2009) 2.
[98] Sarah C White, 'Being, Becoming and Relationship: Conceptual Challenges of a Child Rights Approach in Development' (2002) 14(8) *Journal of International Development* 1095, 1096.
[99] Laura Lundy and Lesley McEvoy, 'Developing Outcomes for Educational Services: A Children's Rights-Based Approach' (2009) 1(1) *Effective Education* 43, 47 citing Jan Mason and Suzanne Hood, 'Exploring Issues of Children as Actors in Social Research' (2011) 33(4) *Children and Youth Services Review* 490.
[100] White, above n 98, 1096.
[101] Mariya Riekkinen, 'Limited Engagement of the Child in Political Issues: The Right Which Evolved at the Universal Level but is Still Unacknolwedged by Most Regional Instruments' (2011) 4(1) *Baltic Journal of Law and Politics* 169; Kirsten Jane Davies, *Intergenerational Democracy: Rethinking Sustainable Development* (Common Ground Publishing, 2012) xviii.

with guidance, 'children are embraced as naturally strong and are positioned as equal members of the community, with the right to act autonomously and to make their own decisions.'[102]

Children's participation rights are more developed in theory than in practice, and the challenge to effectively implement article 12 of the CRC in domestic legislation and practice persists.[103] Despite increasing attempts to meaningfully engaging CYP in public decision-making processes this remains challenging for government and non-government organisations, including for those whose primary focus is on improving the human rights status of children.[104] Local and international non-government organisations such as UNICEF, Save the Children, Plan and Oxfam (among many others) lead by example in this field providing some good examples of how to effectively engage CYP in decision-making processes.[105] These organisations are also active advocates, proposing ways that governments can better engage young people in decision-making.[106] This is also one of the aims of this project—to propose ways in which a CRBA to making laws and policies about Aboriginal CYP can be applied by Australian governments. The findings may also prove useful and relevant to non-government organisations working in this area both nationally and internationally.

Australia is a State party to a wide range of international human rights treaties. Australia's ratification of the following instruments is relevant to the content of this thesis: the CRC, the UNDRIP,[107] the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR'),[108] and the CERD.[109] Notably, Australia maintains a number of reservations against these instruments, some of which apply

[102] A Guilfoyle et al, 'Culturally Strong Childcare Programs for Indigenous Children, Families and Communities' (2010) 35(3) *Australasian Journal of Early Childhood* 68, 69 cited in Rebekah Farmer and Lyn Fasoli, 'You're in New Country: Learning Both Ways: Advice for non-Indigenous Early Childhood Mentors, Trainers and Teachers' (Tafe NSW Western, Batchelor Institute of Indigenous Tertiary Education, Tafe Riverina Institute, Charles Sturt University, 2011) 32.
[103] Lundy, above n 14.
[104] UNICEF, 'State of the World's Children 2014: In Numbers, Every Child Counts. Revealing Disparaties, Advancing Children's Rights' (UNICEF, 2014); Roger A Hart, 'Stepping Back from "The Ladder": Reflections on a Model of Participatory Work with Children' in *Participation and Learning: Perspectives on Education and the Environment, Health and Sustainability* (2008) 19; Meda Couzens, 'Exploring Public Participation as a Vehicle for Child Participation in Governance: A View from South Africa' (2012) 20(4) *International Journal of Children's Rights* 674.
[105] Alana Kapell, '... With Children: Examples of Children's Participation Throughout the World' (Save the Children, Plan International and War Child Holland, 2009).
[106] Kathryn O'Neil (ed), *Getting it Right for Children: A Practitioners' Guide to Child Rights Programming* (Save the Children UK, 2007).
[107] *United Nations Declaration on the Rights of Indigenous Peoples.*
[108] *International Covenant on Economic, Social, and Cultural Rights*, opened for signature 16 December 1966, GA Res 2200A (XXI), UN GAOR, 21st Session, UN Doc A/6316, 999 U.N.T.S. 3 (entered into force 3 January 1976).
[109] *International Convention on the Elimination of all Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969).

to children.[110] In holding these reservations Australia does not agree to comply with those provisions of international law.

The CRC is the primary human rights instrument used for analysis throughout this thesis in addition to the UNDRIP.[111] The correlation between the CRC and the UNDRIP is particularly significant to this research, as the UNDRIP contains specific provisions regarding Indigenous children. These include the right to live free from violence and discrimination (art 22); the right to continuing improvement in social and economic conditions (art 21); the right to education free from discrimination (art 14); the right to education in their own culture and language (art 14).[112] The CRC, likewise, specifically provides for the rights of Indigenous children in article 30 where it imposes an obligation on State parties in relation to Indigenous children. The CRC provides that:

> In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.[113]

The Australian Human Rights Commission voiced concerns about the improper and incomplete implementation of the UNDRIP in the Australian legal system calling for the Declaration to 'be explicitly included in measures under Australia's Human Rights Framework.'[114] The difference between the CRC and the UNDRIP under international law is significant however, and impacts upon the call by the Australian Human Rights Commission for the proper and complete implementation of

[110] Notably, despite instruction from the UNCRC Australia maintains a reservation to art 37(c) of the CRC which requires that child offenders not be detained with adult offenders in correctional facilities. The wording of Australia's reservation is as follows: 'Australia accepts the general principles of article 37. In relation to the second sentence of paragraph (c), the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia. Australia, therefore, ratifies the Convention to the extent that it is unable to comply with the obligation imposed by article 37 (c).' Reservations and Declarations to the CRC can be found at United Nations Treaty Collection, *Convention on the Rights of the Child*, <https://treaties.un.org>.
The Australian Human Rights Commission criticised the Federal Government for maintaining this reservation: Australian Human Rights Commission, 'Information Concerning Australia and the Convention on the Rights of the Child: Australian Human Rights Commission Submission to the Committee on the Rights of the Child' (Australian Human Rights Commission, 2011) 9.
[111] *United Nations Declaration on the Rights of Indigenous Peoples.*
[112] Australian Human Rights Commission, above n 110, 6.
[113] *Convention on the Rights of the Child* art 30.
[114] Australian Human Rights Commission, above n 110, 6.

the UNDRIP. Whereas the CRC imposes binding legal obligations on State parties, the UNDRIP is not a treaty and therefore is not binding under international law.

Article 19 of the UNDRIP provides that States should 'consult and cooperate in good faith' with Indigenous peoples 'in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.'[115] Recommendations in this thesis suggest how to undertake a CRBA to the development of legislation and policy pertaining to Aboriginal CYP. These recommendations are outlined with a view to how this approach accords with Australia's obligations to implement article 12 of the CRC, and adhere to the principles set out in article 19 of the UNDRIP.

This thesis asserts that it is necessary to involve CYP, in particular Aboriginal CYP, in the development of legislation and policy that affects them as a matter of international law. However, the issue of whether it is necessary or desirable for children to be involved in decision-making about matters concerning them is not only a matter of law—social and cultural factors impact on the expression of this right. For example, one of the key reasons the United States of America has not ratified the CRC is due to perceptions that the participation rights provided by article 12 would undermine adult authority over children.[116]

The need to reconceptualise the way the Australian Government perceives 'childhood' is considered in chapter 5. Another body of thought asserts the CRC, and other human rights instruments were developed without adequate global consultation, and are therefore a Western imposition on non-Western traditions, including on the practices of traditional cultures.[117] The question of whether the CRC is imperialist and, if so, the implications of this are examined in chapters 4 and 5. This thesis argues that a CRBA to designing legislation and policy in Australia will facilitate a necessary move

[115] *United Nations Declaration on the Rights of Indigenous Peoples art* 19.
[116] S Kilbourne, 'The Wayward Americans—Why the USA has not Ratified the United Nations Convention on the Rights of the Child' (1998) 10 *Child and Family Law Quarterly* 243.
[117] Stephanie Lawson, 'Global Governance, Human Rights and the 'Problem' of Culture' in Rorden Wilkinson and Steve Hughes (eds), *Global Governance: Critical Perspectives* (Routledge, 2002); Sonia Harris-Short, 'International Human Rights Law: Imperialist, Inept and Ineffective? Cultural Relativism and the UN Convention on the Rights of the Child' (2003) 25 *Human Rights Quarterly* 130.

away from decision-making processes, such as those leading up to the NTER and Stronger Futures legislation, which do not incorporate the views of Aboriginal CYP.

1.1.5 Thesis Conclusions

The thesis seeks to make an original contribution to knowledge in three ways (i) by presenting a legal justification for CYP's right to participate in the formation of law and policy affecting them; (ii) by presenting a group of Aboriginal CYP's views about aspects of the NTER and Stronger Futures legislation, as well as their views about how they could participate in the formation of future laws and policies affecting them; and (iii) by presenting a model for the participation of Aboriginal CYP that is based on a CRBA informed by Indigenous research methodologies.

The thesis arrives at a set of interrelated conclusions from an inquiry into the five sub-questions (see above section 1.1.1) that collectively answer the primary thesis question: 'Why and how should Aboriginal CYP participate in the development of law and policy affecting them?' Sub-questions 1, 2 and 3 are answered in Part I: Methodology and Legal Foundations (chapters 2, 3 and 4). Sub-questions four and five are answered in Part II: Field Research with Aboriginal CYP (chapters 6 and 7). The thesis sub-questions are interrelated and are answered in individual chapters as well as across chapters.

The first set of findings relate to sub-question one: 'What are the ethical and cross-cultural considerations surrounding Aboriginal CYP's participation in research, and in the development of laws and policies?' In order to answer this sub-question a methodology for the involvement of Aboriginal CYP's participation in research, as well as in law and policy development, is developed and detailed in chapter 2. This methodology—a CRBA informed by Indigenous research methodologies—draws on Lundy's model of children's participation and incorporates elements of Indigenous research methodologies.[118] The methodology presents a framework for the involvement of Aboriginal CYP in research, as well as in law and policy making processes that are culturally appropriate, child-friendly and age appropriate.[119] The methodological approach underpins the field

[118] Lundy, above n 14.
[119] Ibid.

research as well as guides and informs the overall project. Information obtained during the Scoping Trip undertaken in 2012, detailed in chapter 3, influenced and enhanced the methodological approach developed for the project, particularly the research methods used in the field research—'yarning' and 'peer-to-peer interviewing.'

In order to answer sub-question two: 'Does article 12 of the CRC require State parties to involve CYP in the development of laws and policies relating to them?' a legal analysis of the meaning of article 12 of the CRC was undertaken, and is outlined in chapter 4. The findings arising from this inquiry demonstrate that governments are duty bound to 'assure' CYP have the opportunity to express their views, and have these views considered in decision-making processes affecting them.[120] The legal duty to involve CYP in the development of laws and policies likely to affect them is determined by applying the three part test required under the *Vienna Convention on the Law of Treaties* ('VCLT').[121] This test includes using statements from the UNCRC and other bodies to determine the meaning of article 12.

The findings relating to sub-question three: 'What is the impact of Western notions of childhood on Aboriginal CYP's participation in law and policy making in Australia?' demonstrate that the relationship between the Australian Government and Aboriginal CYP is based on paternalistic and 'welfare-based' ideas about 'childhood.' This is established in chapter 5 which demonstrates that the NTER and Stronger Futures legislation was based on a welfare-based model of law and policy development rather than a rights-based model. The findings relating to sub-question three show that in order for Aboriginal CYP's right to participate in decision-making to be realised the Australian Government needs to rethink ideas about 'childhood' as the necessary precursor to rethinking ideas about CYP's participation.

Part II details findings arising from field research conducted with Aboriginal CYP in response to sub-questions four and five. These findings are detailed in chapters six and seven of the thesis. Sub-question four asked: 'What did Aboriginal CYP say about the NTER and Stronger Futures

[120] *Convention on the Rights of the Child* art 12.
[121] *Vienna Convention on the Law of Treaties.*

legislation?' and sub-question five asked: 'What did Aboriginal CYP say about their participation in the development of future laws and policies?'

The key findings arising from sub-question four demonstrate that (a) all Aboriginal CYP involved in the research knew about the two key measures arising from the NTER and Stronger Futures legislation—the Basics Card and the blue and white signs; (b) Aboriginal CYP presented nuanced views about the impact of these measures in their lives, and in the lives of people in their community;[122] and (c) the NTER and Stronger Futures legislation is a 'matter affecting' the Aboriginal CYP who participated in this research. The main findings in relation to sub-question five highlight the reasons why Aboriginal CYP said they should be involved in law and policy development about matters affecting them. Aboriginal CYP said they should be involved in law and policy development because of their status as the rightful owners of the land, and because their knowledge about Aboriginal law and culture could assist in producing better quality laws and policies that affect Aboriginal people.

Sub-questions four and five were answered during the field research and together with the other thesis findings, present a comprehensive response to the primary thesis question concerning why, and how, Aboriginal CYP should be involved in the design of law and policy affecting them. These findings also demonstrate Aboriginal CYP's capacity to form and express views about matters affecting them, including matters as complex as the development of law and policy. This finding is significant because it debunks myths associated with the idea that CYP lack the capacity to participate in public decision-making.[123] The findings reveal that adopting a CRBA to involving Aboriginal CYP in research that is culturally sensitive and age appropriate provides the appropriate 'space' for CYP's 'voices' to be listened to and considered.[124] Practical suggestions for how Aboriginal CYP can participate in the interpretation and implementation of article 12 of the CRC, through membership to an 'interpretive community,' is set out in chapter 7.

[122] See chapter 6.
[123] See chapters 5, 6 and 7.
[124] Lundy, above n 14.

1.2 Field Research

A group of 22 Aboriginal CYP living in the NT, aged between 10 and 17 years old, participated in the field research for this project.[125] The overall research group consisted of nine females and 13 males. Ten of these children belonged to the grade 5/6 primary class and were aged between 10 and 11 years old—this group consisted of an even amount of female and male children. The remaining 12 participants were from the grade 7-10 secondary class and were aged between 13 and 17 years old—this group consisted of four females and eight males. Each of the two class groups participated in two pre-research information sessions of approximately one hour each and four discussion groups of approximately one and a half hours each.[126] Thus, in total each class group participated in the research for approximately eight hours, meaning each child on average (with the exception of school absences) participated in the research for eight hours over the course of the initial four week research period during April and May 2014.

Two key sets of data were gathered during the four consecutive weeks of field research: data from group discussions held separately with each class group (the primary and secondary groups); and data from the CYP's peer-to-peer iPad interviews. A total of 86 iPad interviews were recorded during the four week research period and the duration of these videos ranged from ten seconds to seven minutes—the average duration of these videos was 3 minutes and 30 seconds. The majority of these videos involved two children or young people—one of whom was the videographer/interviewer and the other was the interviewee. However, the CYP varied the mode of interviewing according to the conditions that were best suited to their preferences. For example, some interviews were self-filmed with only one child, and in other videos CYP chose to reverse the video and film a discussion rather than an interview. In other iPad videos CYP requested the assistance of an assistant teacher to film them.

[125] All CYP from two separate classes in the one school were invited to participate in this research. These two classes were a primary grades 5/6 composite class and a secondary grades 7-10 composite class.
[126] The first 45 minutes if each discussion group was spent 'yarning' with the whole class group, and in the second 45 minutes CYP made peer-to-peer iPad interviews.

In addition to this most of the CYP who participated in the field research also attended two key events during the research reciprocity and feedback period in November 2014—the lunch and movie screening for CYP[127] and the final child rights information session.[128]

This group of CYP, and the school they attended, was identified during the 2012 Scoping Trip as the most appropriate group of potential research participants, and the most appropriate research site at which to conduct the research. Other potential groups of CYP were identified during the Scoping Trip including CYP attending a boarding school[129] and CYP who frequented a youth support service.[130] These options were assessed by the researcher in consultation with the supervision team as being less appropriate for this research for a range of reasons. One of these reasons concerned the decision not to engage CYP in this research if they were living away from home because the research case study sought CYP's views about the impact of the NTER and Stronger Futures measures in CYP's lives, including in their family contexts. It was decided that the scope of this study would not specifically seek the views of CYP who were primarily living in residential care. The reasons associated with deciding that the research should take place at the chosen school were linked to the following four key factors:

1. **The willingness of the school and School Council to participate in and support the research**. During the Scoping Trip interviews the School Principal of the school and other staff members expressed their desire to be involved in the research.[131] This was later confirmed and endorsed by the School Council.[132] Further, during the Scoping Trip interview the Principal indicated that several Aboriginal Liaison Officers were employed at the school who may be interested in being

[127] See appendix 16. See also sections 2.2.4 and 2.2.6.
[128] See appendix 15.
[129] Scoping Trip Interview (No 2) with the Principal of an Independent School (Northern Territory, 22 October 2012) and Scoping Trip Interview (No 12) with a Principal from an Independent School (Northern Territory, 25 October 2012).
[130] Scoping Trip Interview (No 16) with a non-Indigenous Youth Worker/Policy Officer (Northern Territory, 25 October 2012); Scoping Trip Interview (No 8) with an Indigenous Youth Worker/Project Administrator (Northern Territory, 23 October 2012).
[131] Scoping Trip Interview (No 12) with a Principal from an Independent School (Northern Territory, 25 October 2012) and Scoping Trip Interview (No 13) with three Aboriginal Women Employees from an Independent School (Northern Territory, 25 October 2012).
[132] See appendix 4.

involved in the research.[133] Chapters 2 and 3 highlight the central role the Aboriginal Liaison Officers played in the research process.

2. **Access to a generally consistent group of research participants**. A school environment provided the opportunity to undertake field research over the course of the project with a largely consistent group of participants. Despite fluctuating school attendance across the school population during the Scoping Trip it was suggested that the research cohort would be largely stable during the course of the proposed field research.[134] This contrasted with other options raised and discussed during the Scoping Trip, for example, conducting the research at a youth drop in centre for Aboriginal CYP.[135] The Scoping Trip interviews revealed that it would be more difficult to conduct the research at a youth centre because it was highly likely that the research cohort would vary considerably during the course of the field research and there was minimal staffing to support the research.
3. **Access to a suitable physical space to conduct the field research that was conducive to implementing the chosen research methods** (yarning and peer-to-peer interviewing using iPads). The school offered a large space with a range of different options for where the research could take place. These options included utilising a range of outdoor and indoor spaces suitable to conducting and recording interviews. Other options presented during the Scoping Trip did not offer this opportunity as space at other organisations was limited, or the space was likely to be noisy, and were therefore unsuitable for the research conditions sought for this project.
4. **The requirement that participants be aged ten years or over, yet be under the age of 18 years**. The research sought to engage children who had experienced life before and after the NTER and Stronger Futures measures were put in place. The research also sought to involve people younger than 18 years old given the study focus on article 12 of the CRC, and the definition of the child in article 1 of the CRC as all people under the age of 18.[136] Those in the younger age group, aged 10 and 11, would have been three or four years old when the NTER

[133] Scoping Trip Interview (No 12) with a Principal from an Independent School (Northern Territory, 25 October 2012).
[134] See ibid and Scoping Trip Interview (No 13) with three Aboriginal Women Employees from an Independent School (Northern Territory, 25 October 2012).
[135] See Scoping Trip Interview (No 16) with a non-Indigenous Youth Worker/Policy Officer (Northern Territory, 25 October 2012) and Scoping Trip Interview (No 17) with a non-Indigenous Youth Worker (Northern Territory, 25 October 2012).
[136] *Convention on the Rights of the Child* art 1.

commenced and those in the older age group, aged 12-17, would have been five to 10 years old when the NTER commenced. Engaging a specific cohort of CYP aged between 10-17 was possible at the chosen school because these age ranges were grouped into two separate classes: the 5/6 primary class and the 7-10 secondary class. Had a youth service been chosen as the research site it would have been logistically difficult, although not impossible, to engage only CYP of these ages.

1.2.1 Research Methodology

Seeking CYP views about matters involving them in a way which uphold their rights is a sensitive and difficult undertaking.[137] The breadth of scholarship about how to engage CYP in decision-making assists with this task through the provision of a myriad of possible models and resources to guide researchers, practitioners, agencies and governments when undertaking child participation activities. This research sought to engage a group of Aboriginal CYP in a way which respects their rights as CYP, as well as in a way which is culturally appropriate, sensitive and responsive to their rights as Aboriginal people. In order to do this a CRBA to research informed by Indigenous research methodologies was employed using Lundy's model of participation.[138] The methodology and methods used to carry this out are discussed in detail in chapter 2 and may be applicable to other similar endeavours.

This research presents a synthesis of a CRBA to children's participation and Indigenous research methodologies. The research favours and employs Lundy's model of children's participation,[139] in

[137] Sarah C White and Shyamol A Choudhury, 'The Politics of Child Participation in International Development: The Dilemma of Agency' (2007) 19(4) *The European Journal of Development Research* 529; Laura Lundy and Lesley McEvoy, 'Childhood, the United Nations Convention on the Rights of the Child and Research: What Constitutes a "Rights-Based"Approach?' in *Law and Childhood Studies: Current Legal Issues* (Chapter 6, Oxford University Press, 2012); Laura Lundy and Lesley McEvoy, 'Children's Rights and Research Processes: Assisting Children to (In)formed Views' (2011) 19(1) *Childhood* 129; Tisdall, above n 8; Rachel Hinton, E Kay M Tisdall, Michael Gallagher and Susan Elsley, 'Children's and Young People's Participation in Public Decision-Making' (2008) 16 *International Journal of Childrens Rights* 281.
[138] Lundy, above n 14.
[139] Ibid.

combination with a blend of Nakata's, Rigney's, Bessarab's and Ng'andu's theories on Indigenous research methodologies.[140]

Merging Indigenous research methodologies and a CRBA to research is consistent with the overarching principle of participation articulated in two international human rights law instruments—the CRC and the UNDRIP. The combination of these methodologies is also grounded in the overarching human rights principles of universality, indivisibility, interdependence and inalienability. Children and young people's right to participate in decision-making is a fundamental principle of the CRC, articulated primarily in article 12 of the instrument.[141] Similarly, Indigenous peoples right to self-determination is set out in articles 3 and 4 of the UNDRIP, and Indigenous people's 'right to participation in decision-making in matters which would affect their rights' is set out in articles 18 and 19 of the UNDRIP. The rights articulated in both international instruments are mutually reinforcing and reflective of one another. Importantly, the principle of participation in decision-making is an element of the theoretical makeup of both Indigenous and CRBA research methodologies.

1.2.2 Research Methods

The field research engaged CYP in a series of group discussions using yarning techniques, as well as numerous opportunities for peer-to-peer iPad interviewing. Group interviews were held in the presence of trusted adults, who were generally Aboriginal teacher's assistants employed by the school where the research took place. Information obtained from multiple sources during the Scoping Trip advised that the research should be conducted in the presence of a trusted adult because interviewing Aboriginal CYP alone could be perceived as suspicious by Indigenous communities and may cause CYP to feel uncomfortable. One person I spoke with during the Scoping Trip recommended I only

[140] Martin Nakata, 'An Indigenous Standpoint Theory' in *Disciplining the Savages: Savaging the Disciplines* (Aboriginal Studies Press, 2007); Lester-Irabinna Rigney, 'Indigenist Research and Aboriginal Australia' in Julian Kunnie and Nomalungelo Ivy Goduka (eds), *Indigenous Peoples' Wisdom and Power: Affirming Our Knowledge Through Narratives* (Ashgate Publishing, 2006) 32; Dawn Bessarab and Bridget Ng'andu, 'Yarning About Yarning as a Legitimate Method in Indigenous Research' (2010) 3(1) *Journal of Critical Indigenous Studies* 37.

[141] Children and young people's participation rights are also linked to *Convention on the Rights of the Child* art 13 (freedom of expression) and art 3 (best interests of the child).

speak with Aboriginal CYP with trusted Indigenous adults present, and if needed an interpreter and an Indigenous research assistant.[142]

The result of the methodological framework for this research, combined with the methods used to carry out the research, produces one possible model for Aboriginal CYP's participation in decision-making. This model is relevant for research as well as other processes such as law and policy making. It is hoped that the model presented will be of use to law and policy makers in relation to future laws and policies likely to affect Aboriginal CYP.

1.3 Significance of the Research

This research is significant because it is the first time Aboriginal CYP have been asked their views about the NTER and Stronger Futures legislation. Prior to this research Aboriginal CYP's views about the NTER and Stronger Futures legislation were not represented in academic literature, or in public policy. There is however, a substantial body of academic literature detailing the legal and social impact of the NTER and Stronger Futures legislation on Aboriginal adults in the NT.[143]

A review of the literature dealing with the legislative and policy impact of the NTER and Stronger Futures legislation on Aboriginal people reveals numerous breaches of the CRC by the Australian Government, and inconsistencies with the UNDRIP. These breaches and inconsistencies have been identified and discussed in academic and non-academic fora.[144] Chapter 4 of this thesis establishes that under article 12 of the CRC the Australian Government must ensure the participatory rights of Indigenous CYP and adults are respected when developing legislation and policy that may affect them.

An examination of literature indicates that the NTER and Stronger Futures legislation has had, and continues to have, some detrimental impacts on Indigenous children's experience of human rights such as increases in expressions of public racism toward children's family members, despite reports of

[142] Scoping Trip Interview (No 1) with Indigenous Chief Executive Officer of a Leading Social Justice Agency (Northern Territory, 23 October 2012).
[143] *This Is What We Said: Australian Aboriginal People Give their Views on the Northern Territory Intervention* (Concerned Australians, 2010) 11. Billings, above n 39; Pounder, above n 32, 19.
[144] Billings, above n 39; Alison Vivian, 'Some Human Rights are Worth More than Others: The Northern Territory Intervention and the Alice Springs Town Camps' (2010) 35(1) *Alternative Law Journal* 13; Nicholson et al, above n 31.

positive impacts in areas such as child protection and food security in some communities.[145] Identification of the negative impacts of the NTER and Stronger Futures legislation on CYP's human rights raises the question of how the purported aims of the NTER and Stronger Futures legislation could have been better achieved through the adoption of a CRBA to legislative and policy development—an approach where the participation of Indigenous CYP is fundamental.

This research addresses the following gaps in academic literature by:

- Documenting a group of Aboriginal CYP's views about measures arising from the NTER and Stronger Futures legislation;
- Presenting the ideas put forward by a group of Aboriginal CYP about how the Australian Government could involve them in law and policy making about matters relevant to them; and
- Formulating a CRBA to the development of legislation and policy pertaining to Aboriginal CYP that is consistent with the CRC, as well as culturally sensitive and appropriate.

A CRBA to Indigenous research is the methodological framework designed for, and adopted in this research. This approach integrates two previously discrete bodies of theory and practice—a CRBA to research[146] and Indigenous research methodologies.[147] An exploration of how these theoretical models complement one another is detailed in chapter 2. In brief, the primary justification for combining these methodological approaches exists firstly under international human rights law, and secondly on instrumental and practical grounds.

1.3.1 Children and Young People's Participation in Decision-Making

The active participation of CYP in decision-making about matters affecting them is now regularly supported across a wide range of fields, and across a range of different circumstances.[148] This practice

[145] Behrendt, above n 34; Billings, above n 45; Pounder, above n 32.
[146] Lundy and McEvoy, above n 99.
[147] Karen Lillian Martin, 'Ways of Knowing, Ways of Being, and Ways of Doing: A Theoretical Framework and Methods for Indigenous Re-Search and Indigenist Research' (2003) 76 *Journal of Australian Studies* 203; Stella Coram, 'Rethinking Indigenous Research Approval: The Perspective of a "Stranger"' (2011) 11(2) *Qualitative Research Journal* 38; Rigney, above n 140, 129.
[148] John Tobin, 'Beyond the Supermarket Shelf: Using a Rights Based Approach to Address Children's Health Needs' (2006) 14(3) *International Journal of Children's Rights* 275; Jennifer Skattebol, Peter Saunders, Gerry Redmond, Megan Bedford and Bettina Cass, 'Making a Difference: Building on Young People's Experiences of Economic Adversity' (Social Policy

emphasises the importance not only of listening to CYP, but also incorporating these perspectives into decision-making processes operationalising this practice as a right within the democratic process.[149] Meaningful participation transcends the consultation paradigm—a practice criticised for being tokenistic.[150] The nature and ambit of children's right to participate in decision-making, and the implications of this for children's involvement in public decision-making processes, is increasingly becoming the subject of scholarly debate. This dialogue represents a shift in perception about children's socio-political status in communities, with broad implications for children as citizens.[151] Tobin says:

> As adults, we must work with children to create systems and processes that allow for kids views to be heard; for their views to influence decisions we make that affect them and to explain to them why we have made those decisions.[152]

Using a CRBA this research was conducted in a way that sought to engage Aboriginal CYP as collaborators—as research *agents* not as research *subjects*. Embedded in this approach is the view that children are agents with the capacity to make decisions in accordance with their age and maturity. Further, children, as citizens, are entitled to experience the full body of human rights articulated in the CRC.[153]

Research Centre, UNSW, 2012); Barbara Bennett Woodhouse, 'Enhancing Children's Participation in Policy Formation' (2003) 45 *Arizona Law Review* 751; Smiljka Tomanovic, 'Negotiating Children's Participation and Autonomy within Families' (2003) 11(1) *International Journal of Children's Rights* 51; Mary Ann Powell and Anne B Smith, 'Children's Participation Rights in Research' (2009) 16(1) *Childhood* 124; Antonella Invernizzi and Brian Milne, 'Are Children Entitled to Contribute to International Policy Making? A Critical View of Childrens Participation in the International Campaign for the Elimination of Child Labour' (2002) 10 *International Journal of Childrens Rights* 403; Couzens, above n 104; Elisabeth Barratt Hacking, Robert Barratt and William Scott, 'Engaging Children: Research Issues Around Participation and Environmental Learning' (2007) 13(4) *Environmental Education Research* 529.

[149] Davies, above n 101, Part II.

[150] Hart, above n 104.

[151] Roger A Hart, 'Children's Participation: From Tokenism to Citizenship' (UNICEF Innocenti Research Centre, 1992); Davies, above n 101; Cath Larkins, 'Rethinking Children's Citizenship' (2013) 43(4)(06) *British Journal of Social Work* 821.

[152] Ballarat Council et al, 'Engaging Children in Decision Making: A Guide for Consulting Children' (a combined initiative of Ballarat, Brimbank, Maribyrnong, Melton and Wyndham City Councils, the Western Metro Department of Education and Early Childhood Development (DEECD) and Kurunjang Primary School, 2013) citing John Tobin, Asia Pacific Child Friendly Cities network meeting presentation at Moreland City Council held on 10 August 2012.

[153] Geraldine Van Bueren, 'Acknowledging Children as International Citizens: A Child-Sensitive Communication Mechanism for the Convention on the Rights of the Child' in Dr Antonella Invernizzi and Dr Jane Williams (eds), *The Human Rights of Children: From Visions to Implementation* (Ashgate Publishing Ltd, 2011) 117, 143.

The definition of the term 'citizen' is contested, particularly in relation to how this term applies (or as the case may be, does not apply) to children.[154] In general, the term citizen refers to a person's 'full membership of society' conferring privileges and responsibilities.[155] Traditionally, in the Western world, notions of 'citizenship' have largely excluded children, or at best been formulated in ways which privilege adults.[156] Arce asserts children's capacity to operate as citizens is generally 'denied arguing their incompetence, irrationality and/or immaturity.'[157] Western constructions of childhood, discussed in chapter 5, that emphasise children's welfare neglecting or rejecting children's agency and participation rights, perpetuate the dilution of children's citizenship rights.[158]

Key differences between adult and children's citizenship rights are most evident in regard to adults civil and political rights such as the right to vote, marry and stand for office.[159] Bacon and Frankel identify age qualifications for citizenship rights such as voting, marriage and access to welfare that place limitations on children's citizenship.[160] Children's economic, social and cultural rights, such as the right to education, healthcare, social security and cultural expression are citizenship rights that are more shared between adults and children.[161] Some differences between adults and childrens citizenship rights are appropriate, and desirable, so long as children's agency and right to participate in decision-making is upheld in accordance with article 12 of the CRC and is done so in accordance with children's age and maturity.[162]

In this regard Peleg's 'capability approach' to children's agency and citizenship, as well as Lister's scholarship concerning children's 'lived citizenship'[163] (later elaborated by James[164]) best describes the context in which children's agency is referred to through this dissertation—an approach that is

[154] Kate Bacon and Sam Frankel, 'Rethinking Children's Citizenship: Negotiating Structure, Shaping Meanings' (2014) 22(1) *International Journal of Children's Rights* 21, 22; Matías Cordero Arce, 'Towards an Emancipatory Discourse of Children's Rights' (2012) 20(3) *International Journal of Children's Rights* 365, 366.
[155] Bacon and Frankel, above n 154, 21-22.
[156] Bacon and Frankel, above n 154, 21. For further discussion about this see Arce, above n 154.
[157] Arce, above n 154, 366.
[158] Manfred Liebel, *Children's Rights from Below: Cross-Cultural Perspectives* (Palgrave Macmillan, 2012), chapter 11.
[159] Bacon and Frankel, above n 154, 21.
[160] Ibid 5.
[161] Ibid 2.
[162] Noam Peleg, 'Reconceptualising the Child's Right to Development: Children and the Capability Approach' in Michael Freeman (ed), *The Future of Children's Rights* (Brill Nijhoff and Hotei Publishing, 2014) 386, 396.
[163] Ruth Lister, 'Inclusive Citizenship: Realizing the Potential' (2007) 11(1) *Citizenship Studies* 49.
[164] Allison James, 'To Be (Come) or Not to Be (Come): Understanding Children's Citizenship' (2011) 633(1) *The Annals of the American Academy of Political and Social Science* 167

consistent with the CRBA to Indigenous research used. The consequence of this approach is one where 'respecting children's agency' means respecting children's right to participation, which symbolises children's ability—and right—to make sense of the world around them.'[165]

As outlined in chapter 5 the notion of children as 'becomings'—placing focus on the children's future as adults—denies children's agency and undermines children's right to express their views and have these views considered in decision-making processes.[166] This view of children underpins the welfare-based approach discussed in section 5.3. The welfare-based approach places emphasis on children's care and protection in contrast with a CRBA that emphasises children's citizenship rights to participate in decision-making processes in accordance with the CRC.

The theory and practice surrounding children's agency and children's participation are intertwined and interdependent, both of which, this thesis argues, are fundamental components of children's citizenship rights under article 12 of the CRC. Other rights provided in the CRC support children's participation rights such as children's rights to freedom of expression (article 13); freedom of thought and conscience (article 14) and freedom of association (article 15). Article 12 provides the primary platform upon which international principles of children's citizenship are based, and articles 13, 14 and 15 of the CRC provide additional mechanisms to support this.

This thesis submits that children, as citizens, are entitled to express their views about 'all matters' affecting them, including about laws and policies affecting them, and that these views be taken into account in accordance with the child's age and maturity.[167] The question of whether it is necessary to justify CYP's right to participate in decisions affecting them remains contested—some 25 years after the CRC came into force and was ratified by most countries in the world.[168] Some children's rights activists deny there is a case for continued justification of children's participation rights given the wide ratification and thus acceptance of article 12 of the CRC making it a fundamental human right. However, compliance with children's participation rights is largely dependent on adult adherence and

[165] Peleg, above n 162, 404.
[166] Ibid 388.
[167] *Convention on the Rights of the Child* art 12.
[168] At 15 March 2015 the *Convention on the Rights of the Child* had 194 States Parties and 190 signatures. See United Nations Treaty Collection, *Convention on the Rights of the Child: Ratification Status*, <https://treaties.un.org/>.

fulfilment as well as national support. Lundy argues that the requirement to support and promote children's participatory rights is still necessary in order to secure the right.[169] This can be thwarted by governmental or adult reticence to hear and take account of CYP's views because the exercise of children's participation rights is perceived as diluting or conflicting with adult rights.[170] The imperative then is to assist adults to meaningfully engage children and to see the value in doing so.[171]

Many studies demonstrate that children see their participation rights as a primary concern, the absence of which impacts on their other human rights.[172] Arguments in favour of children's participatory rights position this right as a 'barometer for children's rights since, when it is implemented effectively, other rights fall into place naturally.'[173] Participation rights are a 'multiplier of rights' as other rights follow from the exercise of children's participatory rights.[174]

1.3.2 Ethical Engagement of Aboriginal CYP in Research

As scholars and others have come to recognise the value of children as citizens, research practices involving CYP have also changed and developed. In some research sectors, child and youth participants are engaged as 'experts in their own lives', capable of contributing as active research participants, rather than 'objects' of research.[175] Mason and Hood state:

[169] Lundy, above n 14, 940.
[170] Lundy and McEvoy, above n 99, 56 citing M Hill, J Davis, A Prout and K Tisdall, 'Moving the Participation Agenda Forward' (2004) 18 *Children and Society* 77.
[171] Lundy and McEvoy, above n 99, 56.
[172] U Kilkelly, R Kilpatrick and L Lundy, 'Children's Rights in Northern Ireland' (Northern Ireland Commissioner for Children and Young People, 2005) 191; Priscilla Alderson, 'Children as Researchers: Participation Rights and Research Methods' in P Christensen and A James (eds), *Research With Children: Perspectives and Practices* (Routledge, 2008) 276; Melodie Bat et al, 'Ethical Moves: Innovation in Qualitative Research: An Example of an Ethical and Effective Cross-Cultural Research Methodology Using Video' (paper presented at the AARE National Conference: Inspiring Innovative Research in Education, Canberra, 2009).
[173] Lundy, above n 14, 940.
[174] Ibid. However, Lundy did not refer to participatory rights in this sense rather that educational rights, if protected, multiply other rights.
[175] Lundy and McEvoy, above n 99, 47 citing A Clark, 'The Mosaic Approach and Research with Young Children' in M Kellett V Lewis, C Robinson, S Fraser and S Ding (eds), *The Reality of Research with Children and Young People* (Sage, 2004).

> The argument for the focus on children as 'agents' has commonly critiqued an earlier dominant tradition of research, whereby children had been positioned as passive objects of investigation, with their capacity for social agency largely ignored.[176]

The field research undertaken as part of this project is presented as *a* model, not *the* model, for engaging Aboriginal CYP in research, and also as a possible way to engage Aboriginal CYP in law and policy making. The premise upon which this research rests is the capacity of Aboriginal CYP to meaningfully contribute to Australia's legislative and policy makeup. This accords with Indigenous research trends over the past 30 years, elaborated upon by Rigney, when he refers to 'progressive kinds of knowledge seeking methods that privileges the diversity of Indigenous experiences' and to the emerging body of academic knowledge 'that seeks to disrupt the socially constructed identity of the "archetypal Aborigine," as a controlled and oppressed being.'[177] This approach aligns with a CRBA to research by challenging notions of the 'archetypal Aboriginal child,' and positions Aboriginal CYP as experts in their own lives.

This thesis highlights that, aside from some exceptional examples,[178] the meaningful participation of Aboriginal CYP in both qualitative research and governmental decision-making processes about matters involving them is infrequently attempted. Thus, despite a significant, yet small, body of literature documenting the views of Aboriginal CYP about key issues,[179] research *about* Aboriginal CYP, rather than *with* Aboriginal CYP remains the norm in academic research. Likewise, law and policy development *about* Aboriginal CYP rather than *with* Aboriginal CYP remains the norm in governmental decision-making processes. This project aims to contribute to the emerging field of robust, ethically sound, participatory research with Aboriginal CYP.

The project was originally conceived as a project to ascertain Aboriginal CYP's views on the NTER and Stronger Futures legislation. The project retained this aim in addition to investigating the ethical

[176] Jan Mason and Suzanne Hood, above n 99, 490.
[177] Rigney, above n 140, 37.
[178] Katie Wilson and Judith Wilks, 'Research with Indigenous Children and Young People in Schools: Ethical and Methodological Considerations' (2013) 3(2) *Global Studies of Childhood* 142; Farmer and Fasoli, above n 102; and Melodie Bat et al, above n 172.
[179] Wilson and Wilks, above n 178, 153.

engagement of Aboriginal CYP in research and in decision-making processes about matters affecting them. The result is the presentation of field findings revealing Aboriginal CYP's views about both the NTER and the Stronger Futures legislation (see chapter 6), as well as Aboriginal CYP's views on their future involvement in law and policy development (see chapter 7). Chapters 6 and 7 emphasise, among other findings that '[c]hildren's involvement in research is vital in ensuring their right to participate in matters that affect them and in enhancing the value and validity of findings.'[180]

The process of applying for ethics approval from the Macquarie University Human Research Ethics Committee ('MQHREC') as well as the Central Australian Human Research Ethics Committee ('CAHREC') underscored the complex interplay between the importance on one hand of giving 'visibility and legitimacy to the agency and participation of children, while also drawing attention to their protection and provision rights, thus recognising children as both able to and entitled to participate in activities such as research.'[181]

Research processes can pose a risk to Aboriginal CYP however 'the line between gate-keeping intended for the protection of participants and their communities and the risk of sliding into paternalism is a thin one.'[182] The participation of Aboriginal CYP in ethically sound, ethically approved research and governmental decision-making processes presents a vital opportunity to implement article 12 of the CRC in the domestic context. This research provided an avenue for Aboriginal CYP to have their voice heard and taken into consideration. Undue focus on perceived vulnerabilities of Aboriginal CYP create the potential for greater harm as this could contribute further to the marginalisation of this population through lack of voice and participation in matters affecting them. An unfounded emphasis on Aboriginal CYP as passive and vulnerable to abusive research

[180] A Graham, M Powell, N Taylor, D Anderson and R Fitzgerald, 'Ethical Research Involving Children' (UNICEF Office of Research—Innocenti, 2013) 13.
[181] Ibid 12.
[182] Coram, above n 147, 45.

processes[183] fails to acknowledge Aboriginal CYP's right to participate in research, and in doing so deprives Aboriginal CYP of their civic right to contribute to public decision-making.[184]

In the mid-1990s the idea that children can contribute to the generation of 'meaningful research data' challenged previously held 'adultist views of children as less than competent to make sense of the adult world.'[185] Oakley's analysis that 'adultist' views inhibit the participation rights of children accord with emerging social science scholarship concerning diverse experiences of childhood, and the implications of these experiences in the formation of a child's world view.[186] This thesis is based on the premise that '"childhood" is an historically and culturally variable social phenomenon … that children are competent social agents and creators of meaning in their own right.'[187]

The potential for research to actively engage CYP is not limited to methodological considerations and strengthening data collection, but importantly 'children's agency in research may lead to more inclusive policy practices.'[188] Indeed, this is the purpose of this project, to concurrently engage Aboriginal CYP in voicing their views about a significant matter affecting them, and through the revelation of these views potentially impact on the way government decisions about matters affecting Aboriginal CYP are made.

This thesis supports the premise that children's engagement in decision-making processes is not only required by article 12 of the CRC, and therefore the responsibility of State parties, but desirable as an intrinsic part of democratic processes where the voices of CYP are prioritised along with those of adults.[189] This is not a model to simply *hear* the voices of CYP and provide a *forum* for their voice to be heard, as this does not constitute meaningful participation. Rather, the research approach aims to

[183] Wilson and Wilks, above n 178, 153
[184] John Tobin, 'Understanding Children's Rights: A Vision Beyond Vulnerability' (2015) 84(2) *Nordic Journal of International Law* 155.
[185] A Oakley, 'Women and Children First and Last: Parallels and Differences Between Children's and Women's Studies' in B Mayall (ed), *Children's Childhoods: Observed and Experienced* (Falmer Press, 1994) 13, 25.
[186] Ibid; White, above n 98, 1097; Robert Van Krieken, 'Childhood in Australian Sociology and Society' (2010) 58(2) *Current Sociology* 232.
[187] Harriot Beazley et al, 'The Right to be Properly Researched: Research with Children in a Messy, Real World' (2009) 7(4) *Children's Geographies* 365, 366 citing P Aries, *Centuries of Childhood: A Social History of Family Life* (Vintage, 1962); J Qvortrup, 'Childhood as a Social Phnomnenon: An Introduction to a Series of National Reports' (European Centre, 1991)and A James and A Prout (eds), *Constructing and Reconstructing Childhood: Contemporary Issues in the Sociological Study of Childhood* (Falmer Press, 1990).
[188] Jan Mason and Suzanne Hood, above n 99, 490.
[189] Davies, above n 101.

abide by the words of article 12 of the CRC and 'give due weight' to CYP's perspectives in decisions about them. A child with a disability commented on the insignificance of merely having a voice in a study conducted by Crow et al: 'People let me speak and say what I feel because they have to, but then ignore what I say because it's not what they want to do.'[190]

The preparatory activities carried out prior to the formal field research were a critical element of undertaking ethical research with Aboriginal CYP. Additionally, the model used to seek consent from CYP, as well as their caregivers, is inextricably linked to undertaking ethical research with Aboriginal people. These measures are outlined in detail in chapter 2.

[190] Moira Moran, 'Exploring the Possibilities of Children's Voice' in Annie Woods (ed), *Child -Initiated Play and Learning: Planning for Possibilities in the Early Years* (Routledge, 2013) 37, 38.

Chapter 2: Methodology and Methods—A CRBA Informed by Indigenous Research Methodologies

This project required the development of a model of children's participation that is sensitive to, and upholds participant's rights as CYP,[1] as well as participant's rights as Aboriginal people.[2] The design of this model drew from two discrete, yet for the purpose of this research, complementary theoretical disciplines: a child rights-based approach ('CRBA') to research and Indigenous research methodologies. The different lens on research methodology offered by a CRBA and Indigenous research methodologies align and mitigate the respective theoretical gaps in each producing a culturally sensitive model for Aboriginal CYP's participation in research.

This chapter seeks to demonstrate how these theoretical frameworks operate together to form a solid foundation for the research methodology and methods adopted for this project. Section 2.1 describes and justifies the methodological approach developed for this project—a CRBA to research informed by Indigenous research methodologies. This approach is the result of an amalgamation of Lundy's CRBA to research,[3] with elements of Indigenous research methodologies, particularly Nakata's 'Indigenous standpoint theory'[4] and Rigney's 'Indigenous convergence theory.'[5] This section sets out how a CRBA informed by Indigenous research methodologies is an effective, culturally sensitive and appropriate model for the involvement of Aboriginal CYP in this project, as well as other similar projects.

[1] *Convention on the Rights of the Child, opened for signature 20 November 1989, 44 UNTS 25 (entered into force 2 September 1990) ('Convention on the Rights of the Child');* National Health and Medical Research Council, the Australian Research Council and the Australian Vice-Chancellors' Committee, 'National Statement on Ethical Conduct in Human Research' (2007, updated December 2013) (*'The National Statement'*).
[2] *The United Nations Declaration on the Rights of Indigenous Peoples,* GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, Supp No 49, UN Doc A/RES/61/295 (13 September 2007) ('*United Nations Declaration on the Rights of Indigenous Peoples')*; *The National Statement,* above n 1.
[3] Laura Lundy, '"Voice" is Not Enough: Conceptualising Article 12 of the United Nations Convention on the Rights of the Child' (2007) 33(6) *British Educational Research Journal* 927. See also Laura Lundy and Lesley McEvoy, 'Childhood, the United Nations Convention on the Rights of the Child and Research: What Constitutes a "Rights-Based"Approach?' in *Law and Childhood Studies: Current Legal Issues* (Chapter 6, Oxford University Press, 2012).
[4] Martin Nakata, *Disciplining the Savages: Savaging the Disciplines* (Aboriginal Studies Press, 2007), chapter 11.
[5] Lester-Irabinna Rigney, 'Indigenist Research and Aboriginal Australia' in Julian Kunnie and Nomalungelo Ivy Goduka (eds), *Indigenous Peoples' Wisdom and Power: Affirming Our Knowledge Through Narratives* (Ashgate Publishing, 2006) 32.

Section 2.2 details the implementation of the methodological approach through the chosen research methods, and the how the methodology influenced and informed the field research. This includes an analysis of the use of play-based techniques used in the research, and the preparatory activities undertaken to implement the methodology. The preparatory activities were undertaken over a period of time before the research sessions commenced. The preparatory activities were dedicated to 'getting to know' the CYP and informing them about the nature and scope of the research. These preparatory activities were linked to the model of consent adopted to seek free, prior and informed consent from CYP as well as their parents and carers.

Section 2.2 then details the research methods used—'yarning' and 'peer-to-peer interviewing using iPads'; as well as the reciprocity arrangements entered into, and how these are consistent with both a CRBA to research and Indigenous research methodologies. Section 2.3 outlines how research data was managed and analysed.

The chapter concludes in section 2.4 with an overview of the three key limitations of this research. These limitations are that the researcher is an outsider to the location where the research was conducted; the researcher is non-Indigenous; and the implications of conducting research with CYP in a school setting. This chapter seeks to demonstrate that the methodological approach adopted and designed for this research, as well as the methods implemented, is consistent with article 12 of the CRC.

2.1 Methodology

The body of theory concerning CRBA's to research presents models of children's participation in research, and practical guidance on ethical research methods, which are consistent with the rights provided in the CRC. However, the involvement of Aboriginal CYP in research according to a CRBA is not comprehensively considered in literature, nor in Lundy's model of participation.[6] Indigenous research methodologies draw attention to the manner in which research is undertaken, who is doing the research, why the research is being undertaken, and what benefits Aboriginal people and

[6] Lundy, above n 3. See also Lundy and McEvoy, above n 3.

Aboriginal communities gain from being involved.[7] However, Indigenous research methodologies do not offer theoretical perspectives on the involvement of Aboriginal CYP in research. The methodology developed for this research seeks to provide a framework for the involvement of Aboriginal CYP in research using a CRBA as well as Indigenous research methodologies.

The research methods and methodology adopted, place an emphasis on 'how research with children is carried out, rather than on results, although taking into consideration the way methodology and method affect results.'[8] When CYP speak and offer their perspectives on any given issue the significance of who is asking, the location where CYP are being asked, who is present and the context for those contributions are as important as the meaning associated with the words spoken.[9]

An array of factors influenced the development of the methodological framework for this research, including a literature review spanning the various disciplines this project encompasses;[10] learnings gained through the cross-disciplinary nature of the supervision process (law and Indigenous studies); attendance at relevant conferences and forums;[11] and consultations with professionals in the field about the proposed field research. The overall project was informed and guided by the principles articulated in the *National Statement on Ethical Conduct in Human Research* ('*National Statement'*),[12] and the *Guidelines for Ethical Research in Australian Indigenous Studies* ('*AIATSIS Guidelines'*).[13]

[7] Aileen Moreton-Robinson and Maggie Walter, 'Indigenous Methodologies in Social Research' in *Social Research Methods* (Oxford University Press, 2009); Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (Zed books, 2nd ed, 2012). See also *Guidelines for Ethical Research in Australian Indigenous Studies* (Australian Institute of Aboriginal and Torres Strait Islander Studies, Revised 2nd Edition ed, 2012) ('*AIATSIS Guidelines'*) 2.
[8] Harriot Beazley et al, 'The Right to be Properly Researched: Research with Children in a Messy, Real World' (2009) 7(4) *Children's Geographies* 365, 366.
[9] Ibid.
[10] Law and Indigenous studies are the primary disciplines informing the methodological approach for this project.
[11] Particularly the National Indigenous Studies (AIATSIS) Conference, 'Breaking Barriers in Indigenous Research and Thinking,' March 2014, Canberra; and Holly Doel-Mackaway, 'Cross-Cultural Research with Indigenous Children: Engagement and Creativity' (paper presented at the 9th Global Conference: Creative Engagements, 'Thinking with Children', Prague, Czech Republic 14-16 March 2014) (see appendix 17).
[12] The *National Statement*, above n 1, section 1.1 (research merit and integrity) 12.
[13] *AIATSIS Guidelines*, above n 7.

2.1.1 A Child Rights-Based Approach

2.1.1.1 A 'Child Rights-Based Approach' and a 'Rights-Based Approach'

The theory and practice of a CRBA emerged from the broader human rights-based approach ('RBA').[14] A RBA refers to the way 'duty-bearers', such as governments or agencies (including researchers using State funding),[15] undertake activities which have human rights implications for 'rights-holders', such as individuals or groups of people.[16] Activities include programme work undertaken by governments and non-government organisations ('NGOs'), legislative and policy developed by governments, as well as other endeavours, such as research, that concern the human rights of those affected.

The concept of a RBA was coined by the international development sector, between 1997 and 2005.[17] Many academic commentators in this field agree that the rise of the RBA to international development emerged in the mid-1990s.[18] These commentators accept that the then UN Secretary-General, Kofi Annan's direction to all UN agencies in 1997 to mainstream a RBA in development work was a key driver linking international development work with human rights principles.[19]

Since the mid-1990s however, a RBA has been applied more broadly, extending to the 'developed' world and national, rather than only international, concerns.[20] This thesis seeks to demonstrate that the

[14] Joachim Theis, *Promoting Rights-Based Approaches: Experiences and Ideas from Asia and the Pacific* (Save the Children Sweden, 2004).
[15] Laura Lundy and Lesley McEvoy, 'Children's Rights and Research Processes: Assisting Children to (In)formed Views' (2011) 19(1) *Childhood* 129, 130.
[16] Theis, above n 14.
[17] Ibid.
[18] Philip Alston and Mary Robinson, 'The Challenges of Ensuring the Mutuality of Human Rights and Development Endeavours' in *Human Rights and Development* (Oxford University Press, 2005) 1, 2; John Tobin, 'Understanding a Human Rights Based Approach to Matters Involving Children: Conceptual Foundations and Strategic Considerations' in Antonella Invernizzi and Jane Williams (eds), *Children's Human Rights: From Visions to Implementation* (Ashgate Publishing, 2011) 61, 63.
[19] M Santos-Pais, 'A Human Rights Conceptual Framework for UNICEF' (1999) *Innocenti Essays No 9*; Susan Appleyard, 'A Rights-Based Approach to Development: What the Policy Documents of the UN, Development Cooperation and NGO Agencies Say' (OHCHR Asia-Pacific, 2002).
[20] Many scholars no longer refer to 'developed' and 'developing' countries, opting instead to challenge the presumptions and dichotomy associated with these terms by using the terms 'minority world' and 'majority world.' See E Kay M Tisdall, 'Governance and Participation' in Barry Percy-Smith and Nigel Thomas (eds), *A Handbook of Children and Young People's Participation: Perspectives from Theory and Practice* (Routledge, 2009); E Kay M Tisdall, 'The Transformation of Participation? Exploring the Potential of "Transformative Participation" for Theory and Practice around Children and Young People's Participation' (2013) 3(2) *Global Studies of Childhood* 183; Matías Cordero Arce, 'Maturing Children's Rights Theory' (2015) 23(2) *International Journal of Children's Rights* 283; Matías Cordero Arce, 'Towards an Emancipatory Discourse of Children's Rights' (2012) 20(3) *International Journal of Children's Rights* 365.

application of a RBA to matters involving children is relevant in Australia—an argument that has already been explored in the literature.[21] The emergence of academic scholarship advocating the application of a RBA to matters involving children in the national context, including in Australia, represents a shift in perspective about the usefulness of this approach domestically.[22]

There is no single definition of a RBA; broadly however, the aim of the approach is to advance human rights by building the capacity of governments to implement human rights in practice, policy and legislation and for rights-holders to experience the rights set out in the body of international law.[23] Some commentators say the theoretical flexibility of a RBA is one of the strengths of the approach.[24] In contrast, other scholars claim that a RBA lacks 'conceptual rigor and clarity'[25] such that the implementation of the approach is:

> so vague and flexible that any individual or organisation can claim they are adopting a rights-based approach and there is no means by which to assess whether the use of such an approach is authentic. In such circumstances it becomes impossible to distinguish a human rights approach from other policy approaches.[26]

Robust debate aimed at addressing these theoretical deficiencies is underway in academia.[27]

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[21] Tobin, above n 18.
[22] John Tobin, 'Seeking to Persuade: A Constructive Approach to Human Rights Treaty Implementation' (2010) 23 *Harvard Human Rights Journal* 1; Terri Libesman, 'Can International Law Imagine the World of Indigenous Children?' (2007) 15(2) *International Journal of Children's Rights* 283; Lundy, above n 3.
[23] A L Sarelin, 'Human Rights Based Approach to Development Cooperation, HIV/AIDS and Food Security' (2007) 29(2) *Human Rights Quarterly* 460; D Kennedy, 'The International Human Rights Movement: Part of the Problem?' (2002) 15(1) *Harvard Human Rights Journal* 101.
[24] G Lansdown, 'What's the Difference? Implications of a Child Focus in Rights Based Programming: Discussion Paper Prepared for Save the Children' (2005); Theis, above n 14, 6.
[25] M Darrow and A Tomas, 'Power, Capture, and Conflict: A Call for Human Rights Accountability in Development Cooperation' (2005) *Human Rights*, 537 cited in Tobin, above n 18, 1; Dorothy Rozga, 'Applying a Human Rights Based Approach to Programming: Experiences of UNICEF' (paper presented at the Workshop on Human Rights, Assets and Livelihood Security, and Sustainable Development London, UK, 2001).
[26] Tobin, above n 18, 3 citing M Koskenniemi, 'Human Rights Mainstreaming as a Project of Power' *Unpublished paper 5 February 2006 (copy on file with author)*.
[27] John Tobin, 'Beyond the Supermarket Shelf: Using a Rights Based Approach to Address Children's Health Needs' (2006) 14(3) *International Journal of Children's Rights* 275; P Uvin, 'From the Right to Development to the Rights-Based Approach: How "Human Rights" Entered Development' (2007) 17(4) *Development in Practice* 597; 'Global Evaluation of the Application of the Human Rights-Based Approach to UNICEF Programming' (UNICEF, 2012); Sarelin, above n 23; United Nations Population Fund, 'A Human Rights Based Approach to Programming: Practical Information and Training Materials' (2010); Stephen P Marks, 'The Human Rights Framework for Development: Five Approaches' (this is a revised and expanded version of a paper first published in 2001 in the Working Paper Series of the François-Xavier Bagnoud Center, 2003); L T Munro, 'The "Human Rights-Based Approach to Programming": A Contradiction in Terms?' in S Hickey D Mitlin and VA Sterling (eds), *Rights, Wrongs and Realities: Reflections on the Rights-based Approach* (Kumarian Press, 2009) 187; C Nyamu-Musembi and A Cornwall, 'What is the 'Rights-Based Approach' all about? Perspectives from International Development Agencies' (2004) *Institute of Development Studies Working Paper 234*.

2.1.1.2 What is a Child Rights-Based Approach?

In the context of this research a CRBA seeks to embed CYP's participation not only in the research process, but also formulate a model for CYP's participation in the development of legal and policy frameworks.[28]

A CRBA acknowledges that CYP have agency, and have the capacity to participate 'in the process of the construction of meaning' about their own lives.[29] A fundamental defining element of a CRBA is the recognition and promotion of children as 'rights-holders'[30] and places concomitant responsibilities on the State as the 'duty-bearer'[31] for the fulfillment and realisation of children's rights.[32] A CRBA can be described as the 'child-in-environment' approach.[33] A CRBA to research builds on the fundamental human rights principles and standards contained in the body of human rights law through the amalgamation of the four foundation principles of the CRC (survival and development, participation, non-discrimination and best interests of the child)[34] with the core human rights principles (universality, indivisibility, inalienability and interconnectedness).[35]

Conceptualisations of children under a CRBA contrast conceptualisations of children according to a child welfare-based, or service provision based approach. A welfare-based approach centres on the identification of major factors such as education or poverty and examines how children are affected. A welfare-based approach (detailed further in chapter 5) positions children as passive and in need of care and protection,[36] often at the expense of children's agency and autonomy.[37] Lundy and McEvoy

[28] Terri Libesman, 'A Human Rights Framework for Contemporary Aboriginal and Torres Strait Islander Children's Wellbeing' (2008) 12 *Australian Indigenous Law Review* 68; Lundy, above n 3.
[29] S Fraser and C Robinson, 'Doing Research with Children and Young People' in V Lewis S Fraser, S Ding, M Kellett and C Robinson (eds), *Paradigms and Philosophies* (Sage, 2004) 59, 76.
[30] John Tobin, 'Justifying Children's Rights' (2013) 21 *International Journal of Children's Rights* 395, 397.
[31] Charles R Beitz, *The Idea of Human Rights* (Oxford University Press, 2009); J Donnelly, 'The Relative Universality of Human Rights' (2007) 29(2) *Human Rights Quarterly* 281.
[32] Lundy and McEvoy, above n 3, 79-80.
[33] Sarah Maguire, 'A Study of the Child Rights Climate Within the UK's Department for International Development', Save the Children UK, World Vision UK, Plan International, Voluntary Services Overseas, ChildHope, Amnesty International, Antislavery International, UNICEF UK, UK Department for International Development, 2007, 12.
[34] Tobin, above n 27.
[35] Ibid.
[36] Indeed children have the right to care and protection. This thesis does not assert that children are not vulnerable to harm. However, this thesis does assert that children's agency and human rights are undermined by overemphasising children's care and protection rights in preference to the comprehensive body of rights articulated in the CRC.

articulate the key difference between a rights-based approach and a welfare-based approach. They say the adoption of a rights-based approach to matters involving children places:

> an emphasis on entitlement rather than need and enables those who hold rights to demand a response from those who have both the duty and the power to effect change. Rights are thus a key resource for those who lack power; particularly children who are often powerless in their interactions with adults.[38]

A CRBA stems from a RBA, yet focusses specifically on how the rights contained in the CRC can be implemented in practice, in order for the standards articulated in the CRC to 'guide the development of policies relating to children.'[39] Whilst a CRBA and a RBA are similar, there are key differences—a CRBA specifically seeks to realise the provisions enumerated in the CRC. Therefore a CRBA 'extends and develops … a traditional human rights framework … The core principles of the children's rights approach [are] … non-discrimination, best interests, survival and development and participation.'[40]

The focus of this research is on the principle of children's participation set out in article 12 of the CRC. The larger body of principles contained in international human rights law are incorporated into the text of the CRC. Thus, a RBA and a CRBA are complimentary, and largely reflective of one another. Indeed, a RBA is sometimes used in academic literature in preference to a CRBA when examining matters involving children.[41] However, given the CYP involved in the field research were aged between 10 and 17 years old, and the emphasis in this thesis is on the rights of CYP, a CRBA offers a more refined approach than a RBA. This is because a CRBA more precisely targets the nature of this research and permits a nuanced focus on children's human rights.

Defining a CRBA is not simple. Maguire offers one approach, stating that a CRBA:

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[37] John Eekelaar, 'The Importance of Thinking that Children Have Rights' (1992) 6 *International Journal of Law and the Family* 221; John Eekelaar, 'Naturalism or Pragmatism? Towards an Expansive View of Human Rights' (2011) 10(2) *Journal of Human Rights* 230.
[38] Lundy and McEvoy, above n 3, 91.
[39] John Tobin, 'Children's Rights in Australia: Confronting the Challenges' in M Castan and P Gerber (eds), *Contemporary Perspectives on Human Rights Law in Australia* (2013) 275, 276.
[40] Philip Alston and John Tobin, 'Laying The Foundations For Children's Rights: An Independent Study of Some Key Legal and Institutional Aspects of the Impact of the Convention on the Rights of the Child ' (UNICEF Innocenti Research Centre, 2005) 38.
[41] Tobin, above n 27.

> analyses children's experience, finds out what is happening to their rights and then bases the development intervention on this information … Adherence to children rights principles, then, means that children's rights are deliberately, not coincidently, promoted, protected and fulfilled.[42]

According to Save the Children a CRBA means:

> Using the principles of child rights to plan, manage, implement and monitor programs with the overall goal of improving the position of children so that all boys and girls can fully enjoy their rights and can live in societies that acknowledge and respect children's rights.[43]

The definition of a CRBA adopted in this thesis draws from these approaches and others, in particular, Lundy and McEvoy's application of a CRBA to research involving children,[44] as well as Lundy's CRBA to children's participation in decision-making processes.[45] A CRBA 'emphasises the importance not only of listening to children, but of using their perspectives in making decisions on matters affecting them.'[46] A CRBA to research means 'children being participants in research; using methods that make it easy for them to express their opinions, views and experiences; being protected from harm that might result from taking part in research conducted by researchers who use quality, scientific methods and analysis.'[47]

Lundy's CRBA to children's participation provides a structure for the implementation of four interconnected elements of article 12 of the CRC, referred to in this thesis as the *four pillars of article 12*: 'space, voice, audience and influence.'[48] Lundy highlights that 'voice is not enough,' that article 12 demands more than CYP simply having the opportunity to express their views.[49] Lundy's model stresses the respective elements of children's participation rights contained in article 12, and the rights and duties arising from this provision for 'rights-holders' (children) and 'duty-bearers' (adults

[42] Maguire, above n 33, 12.
[43] Kathryn O'Neil (ed), 'Getting it Right for Children: A Practitioners Guide to Child Rights Programming', Save the Children, 2007, 5.
[44] Lundy and McEvoy, above n 3.
[45] Lundy, above n 3; Elizabeth Welty and Laura Lundy, 'A Children's Rights-Based Approach to Involving Children in Decision Making' (2013) 12(03) *Journal of Science Communication* 1.
[46] Jennifer Skattebol, Peter Saunders, Gerry Redmond, Megan Bedford and Bettina Cass, 'Making a Difference: Building on Young People's Experiences of Economic Adversity' (Social Policy Research Centre, UNSW, 2012).
[47] Beazley et al, above n 8, 370.
[48] Lundy, above n 3, 927-929.
[49] Ibid.

responsible for respecting, protecting and fulfilling children's rights). Article 12 requires a safe and inclusive 'space' or opportunity (pillar 1) for children to freely 'voice' their views in a manner that is appropriate to, or chosen by the child (pillar 2); these views must be listened to by the appropriate 'audience' (pillar 3); and these views must 'influence' the decisions made (pillar 4).[50]

For the reasons explained above a CRBA to CYP's participation in this research, as well as in relation to participation in law and policy making, is the most appropriate methodological framework for this project. However, as expressed in chapter 1 a CRBA does not offer a methodological framework for the ethical involvement of Aboriginal CYP in research processes, nor does a CRBA provide theoretical insights or practice guidelines in relation to undertaking Indigenous related research, particularly for a non-Indigenous researcher.[51] Thus, it was necessary to use a range of Indigenous research methodologies to inform and further develop the CRBA for use in this project. The following section discusses the Indigenous research methodologies that were applied.

2.1.2 Indigenous Research Methodologies

As discussed Lundy's model of children's participation does not provide theoretical parameters for the involvement of Aboriginal CYP, or their families and communities, in research.[52] Thus, it was necessary to examine whether elements of Indigenous research methodologies could inform the CRBA. Of primary concern in conducting this project was to carry it out in a way that optimised the likelihood of research participants and their community deriving benefit from the research, as well as participants having a positive overall experience as a result of contributing to the research. This research was primarily concerned with highlighting and privileging Aboriginal CYP's perspectives and knowledge.[53] This included awareness that Indigenous Knowledge may be shared, whilst not

[50] Ibid 933; Welty and Lundy, above n 45, 2.
[51] David Bridges, 'The Ethics of Outsider Research' (2001) 35(3) *Journal of Philosophy of Education* 371; Karen Lillian Martin, *Please Knock Before You Enter: Aboriginal Regulation of Outsiders and the Implications for Researchers* (Post Pressed Brisbane, 2008).
[52] Lundy, above n 3.
[53] Vicki Saunders, Roianne West and Kim Usher, 'Applying Indigenist Research Methodologies in Health Research: Experineces in the Borderlands' (2010) 39 (Supplement) *Australian Journal of Indigenous Education* 14.

directly sought. Thus, the adoption of methodologies which appropriately respect Indigenous Knowledge was prioritised from the outset.[54]

A fundamental aim of this research was to strive to avoid perpetuating negative elements of Western style research methodologies and methods. It is hoped that this research will contribute to promoting Indigenous people's rights, particularly Aboriginal CYP's rights. In undertaking the research, I strove to understand, and implement elements of Indigenous research methodologies, acknowledging the diversity of approaches in this body of thought and practice.

Through the implementation of an Indigenous research methodology which focusses on CYP's participation the research sought to avoid Moreton-Robinson and Walters' conclusion that '[T]here is a quantifiable absence of Indigenous knowledges, perspectives and understandings in the dominant research practice.'[55]

Twenty-two CYP participated in the field research—all of whom identified as Aboriginal. These CYP contributed their views about the NTER and Stronger Futures legislation, and how young Aboriginal people can be involved in law and policy making. However, this group of people do not speak for all Aboriginal CYP.[56] This study does not suggest that the views expressed by the research participants are representative of all Aboriginal CYP. This research took place in one school, in one local area in the NT, with a small group of Aboriginal CYP who spoke one, or more, of four Aboriginal languages: Central and Eastern Arrernte, Western Arrernte, Warlpiri, or Luritja.

2.1.2.1 The Impact of Western Colonialist Research

Western research methodologies have historically undervalued Indigenous Knowledge and 'anthropologised'[57] Indigenous people. Indigenous Australians are a highly researched population,[58]

[54] Ibid.
[55] Moreton-Robinson and Walter, above n 7, 1.
[56] Katie Wilson and Judith Wilks, 'Research with Indigenous Children and Young People in Schools: Ethical and Methodological Considerations' (2013) 3(2) *Global Studies of Childhood* 142, 147.
[57] Term expressed by a participant during Scoping Trip Interview (No 9) with a Legal Professional (Northern Territory, 25 October 2012).
[58] Lester-Irabinna Rigney, 'Internationalisation of an Indigenous Anti-Colonial Cultural Critique of Research Methodologies: A Guide to Indigenist Research Methodology and its Principles' (1997) 14(2) *Journal for Native American Studies* 109, 109.

and research involving Indigenous peoples has often failed to provide 'demonstrable benefits' and in many cases caused significant harm.[59]

> This inadequacy has led to the gross exploitation of Indigenous peoples being involved in an invasive and disrespectful 'experimentation', the theft of beliefs and knowledge, and the portrayal of their societies and cultures in a way that merely reflects the values, prejudice and preoccupation of the vague entity that has come to be known as 'the West.'[60]

Denzin and Lincoln detail the impact of Western, colonialist research on Indigenous people. They say 'sadly, qualitative research, in many if not all of its forms (observation, participation, interviewing, ethnography), serves as a metaphor for colonial knowledge, for power, and for truth.'[61] Denzin and Lincoln discuss the manner in which Western, colonialist based research 'provides the foundation for reports about and representations of "the Other". In the colonial context, research becomes an objective way of representing the dark-skinned Other to the white world.'[62]

Western colonialist research *on* Indigenous peoples, the vast majority of which has been, and continues to be, conducted by non-Indigenous researchers, has a long history of imposing significant, detrimental impacts on Indigenous people, including perpetuating discrimination.[63] Moreton-Robinson and Walter express the subjectification of Indigenous peoples through Western colonialist research as follows:

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[59] J Henry, T Dunbar, A Arnott, M Scrimgeour, S Matthews, L Murakami-Gold and A Chamberlain, 'Indigenous Research Reform Agenda: Rethinking Research Methodologies' (Cooperative Research Centre for Aboriginal and Tropical Health Links, 2002) 5.

[60] Jonathan Kingsley, Rebecca Phillips and Mardie Townsend, 'Using a Qualitative Approach to Research to Build Trust Between a non-Aboriginal Researcher and Aboriginal Participants (Australia)' (2010) 10(1) *Qualitative Research Journal* 2, 4 quoting K Humphrey, 'Indigenous Health and "Western Research": Discussion Paper' (VicHealth Koori Health Research and Communiy Development Unit, 2000) 5.

[61] Norman Denzin and Yvonna Lincoln, *The SAGE Handbook of Qualitative Research* (Sage Publications, 2005) 1.

[62] Ibid.

[63] Odette Mazel, 'Development in the 'First World': Alleviating Indigenous Disadvantage in Australia - the Dilemma of Difference' (2009) 18(2) *Griffith Law Review* 475; Lana Ray, 'Deciphering the "Indigenous" in Indigenous Methodologies' (2012) 8(1) *AlterNative: An International Journal of Indigenous Peoples* 85, 88.

> The Indigenous subject is historically the object of such research; the research gaze aimed at Indigenous people, culture and lives is usually informed by Western traditions and conceived and interpreted by non-Indigenous researchers.[64]

The following section discusses the emergence of Indigenous research methodologies and informs the methodology adopted for this project.

2.1.2.2 The Emergence of Indigenous Research Methodologies

In the 1970s discourse about the shortcomings of traditional Western, colonialist research and its negative impact on Indigenous peoples motivated 'the emergence of Indigenous Studies as a discipline.'[65] Indigenous scholars critiqued and rejected the application of Western research methodologies in relation to research involving Indigenous people.[66] As a result Indigenous research methodologies have emerged as a discrete body of knowledge, providing a theoretical basis for research, as well as guidance about how to appropriately undertake research involving Indigenous people.[67]

Until the 1990s traditional Western colonialist research was the dominant methodology used to undertake research *on* rather than *with* Indigenous peoples.[68] Indigenous research methodologies are an emerging area of thought and practice and will continue to develop in theory and in practice. There is no singular Indigenous research methodology; rather Indigenous methodologies encompass a range of different approaches to research.[69] Indigenous research methodologies encompass 'theory, approach, ethos and methods.'[70] Smith, in her ground-breaking book *Decolonizing Methodologies* articulated the non-objective, politicised and Western dominated nature of social research that disregards traditional knowledge held by Indigenous people privileging Western knowledge.[71] Smith's

[64] Moreton-Robinson and Walter, above n 7, 1.
[65] Ray, above n 63, 88.
[66] Smith, above n 7, chapters 1 and 2; Rigney, above n 58; Dawn Bessarab and Bridget Ng'andu, 'Yarning About Yarning as a Legitimate Method in Indigenous Research' (2010) 3(1) *Journal of Critical Indigenous Studies* 37; Stella Coram, 'Rethinking Indigenous Research Approval: The Perspective of a "Stranger"' (2011) 11(2) *Qualitative Research Journal* 38.
[67] Saunders et al, above n 53, 1.
[68] Ray, above n 63, 88.
[69] Ibid 86.
[70] Ibid.
[71] Smith, above n 7, 4.

book was the catalyst for the emergence of a body of scholarship about Indigenous research, and the formalisation of Indigenous research methodologies in academia—a departure from the confines of colonial research frameworks that previously persisted.[72]

The Australian Institute of Aboriginal and Torres Strait Islander Studies developed the *AIATSIS Guidelines*[73] to address the negative experiences many Indigenous communities have had with respect to social research, and guide future research involving Indigenous people. The *AIATSIS Guidelines* attempt to change the pervasive research culture that disempowers Indigenous Australians through a 'lack of community control, benefits and influence on the interpretation of data.'[74] They are an important source of guidance over the course of this project. The *AIATSIS Guidelines*, along with the *National Statement* articulate the requirement that research with Indigenous people must be respectful, include reciprocity arrangements, and be conducted with integrity.[75] Smith, however, suggests that it is important to understand how a concept such as 'respect' is interpreted in a particular Indigenous community and that this requires the researcher to understand the community prior to undertaking research.[76]

2.1.2.3 Indigenous Standpoint Theory

In keeping with the Indigenous research framework adopted throughout this project Nakata's Indigenous standpoint theory[77]—which builds on feminist standpoint theory[78]—offered an appropriate and helpful lens to understand Aboriginal CYP as 'knowers' and for 'investigating the social relations within which [they] as "knowers" know.'[79] Nakata stresses that the word 'standpoint', according to his theory, cannot be substituted for a person's 'perspective or viewpoint.'[80] Standpoint theory is a method of inquiry 'utilised by a diversity of marginalised groups whose accounts of experience were excluded

[72] Ray, above n 63, 88.
[73] *AIATSIS Guidelines*, above n 7.
[74] Kingsley, Phillips and Townsend, above n 60, 4.
[75] The *National Statement*, above n 1, chapter 4.7; *AIATSIS Guidelines*, above n 7, principle 11, 11.
[76] Linda Tuhiwai Smith, 'On Tricky Ground: Researching the Native in the Age of Uncertainty' in Norman Denzin and Yvonna Lincoln (eds), *The Sage Handbook of Qualitative Research* (Sage, 3rd ed, 2005) 85.
[77] Nakata, above n 4, chapter 11, 213-217.
[78] Dorothy E Smith, *The Everyday World as Problematic: A Feminist Sociology* (University of Toronto Press, 1987).
[79] Nakata, above n 4, 214 citing Gaile Pohlhaus, 'Knowing Communities: An Investigation of Harding's Standpoint Epistemology' (2002) 16(3) *Social Epistemology* 283, 287.
[80] Nakata, above n 4, 213.

or subjugated within intellectual knowledge production.'[81] This approach is not about the 'space' as Lundy's approach provides to 'voice' experiences, rather it is about the inclusion of otherwise subjugated accounts.[82] Thus, Indigenous standpoint theory is based on the following premise:

> [F]irst the social position of the knower is epistemically significant; where the knower is socially positioned will both make possible and delimit knowledge. Second, more objective knowledge is not a product of mere observation or a disinterested perspective on the world, but is achieved by struggling to understand one's experience through a critical stance on the social order within which knowledge is produced.[83]

Thus, Indigenous standpoint theory is primarily about the inclusion of otherwise excluded experiences and accounts in the body of academic knowledge.[84] The theory does not focus on the narrative of those accounts, rather it ascribes status and meaning to those giving the accounts as valuable contributions to 'intellectual knowledge production.'[85] It is for this reason that Nakata's standpoint theory is particularly useful in this research. As mentioned already CYP's views about the NTER and Stronger Futures legislation are not represented in academic or non-academic literature, and have been therefore 'excluded or subjugated within intellectual knowledge production.'[86] According to Nakata's standpoint theory the content of what Aboriginal CYP said in the field research is secondary to the fact that their 'standpoint' has been 'produced' in this research.[87] This approach blends well with the four pillars of children's participation articulated in Lundy's model.[88] Lundy's model is concerned with the content of the views expressed by the CYP involved in this research—CYP's 'voice', as well as focussed on the 'audience' who may hear these views, and the 'influence' these views can have on law and policy making concerning Aboriginal CYP in the future.[89]

Applying a CRBA informed by Nakata's standpoint theory assisted my understanding of the

[81] Ibid.
[82] Ibid.
[83] Pohlhaus, above n 79, 285 cited in Nakata, above n 4, 214.
[84] Nakata, above n 4, 214.
[85] Ibid.
[86] Ibid.
[87] See chapters 6 and 7.
[88] Lundy, above n 3.
[89] Ibid; Welty and Lundy, above n 45.

worldview of the research participants, their communities and the school in which the research took place. Indigenous standpoint theory provided a means to perceive and seek to understand Aboriginal CYP as 'knowers', their knowledge derived from the social position in which they are embedded, as well as to critically reflect on how these perspectives are *produced* in their social context.[90] Indigenous standpoint theory provides a basis on which to consider and analyse Aboriginal CYP's participation in this research; their engagement with a previously unknown researcher; and their views on the factors under consideration in this project.

Indigenous standpoint theory assisted with debunking myths about CYP's capacity to be involved in decision-making and as active agents in research. Prior to undertaking the research several people, both within and outside of academia, as well as individuals interviewed during the Scoping Trip offered the view that children lacked capacity to express their views on serious matters such as law and policy. These comments included: 'What will Aboriginal children know about legislation?'[91] and 'I don't think the children will even know what the Intervention is.'[92] Nakata's standpoint theory provided a position from which to understand children as 'knowers', which complements the principles of a CRBA which seeks, values and recognises CYP's views. Not only did Indigenous standpoint theory assist me in understanding research participants as experts in their own lives and communities, but it placed CYP in an empowered position in the research process. This position was one where, for example, CYP had the choice about whether, how and when they wanted to participate, how they wanted their research data collected and depicted, and whether they wanted this represented in the final findings.

2.1.2.4 Convergence Indigenous Methodologies

The work of several Indigenous scholars[93] has proven particularly useful in this research, not only because these scholars provide a framework to challenge oppressive elements of Western research methodologies, but because these scholars present ways to use both Western and Indigenous research

[90] Nakata, above n 4, 213-217 (emphasis added).
[91] Scoping Trip Interview (No 9) with a Legal Professional (Northern Territory, 25 October 2012).
[92] Scoping Trip Interview (No 11) with the Principal of a Remote NT Government School (Northern Territory, 25 October 2012).
[93] Ray, above n 63; Smith, above n 7; Rigney, above n 58, 109; Nakata, above n 4, part 2 and part 3.

methodologies. These insights were particularly useful for this endeavour given my non-Indigenous status; my desire to implement some elements of both Western and Indigenous research methodologies; and the need to develop a culturally sensitive and appropriate framework to involve CYP in field work for this project. The reasons why the theoretical approaches to Indigenous research articulated by these scholars were implemented in this project are explored below.

Field research was carried out with the awareness that Indigenous Australian's have historically been the 'subjects' of research rather than participants in control of research processes, methods and interpretation of data.[94] Ray states that Indigenous methodologies are 'motivated by anti-colonial and anti-oppressive agendas, and work toward establishing an equitable relationship with the state.'[95] This agenda accords with a CRBA and the priority in this approach regarding CYP's relationship with the State, ensuring the duty-bearer / rights-holder relationship is based on the provisions contained in the CRC.

There is a tension inherent in reconciling Western research methodologies with Indigenous research methodologies. This articulated by Wilson and Wilks as follows:

> The epistemology and ontology embedded in Western academic social science research paradigms emerged from a scientific, rationalistic background, utilising methods that emphasised validity, objectivity, reliability, and the discovery, measurement and classification of knowledge. Indigenous research methodologies are based on epistemology, ontology and axiology (values) that emphasise reciprocity (giving back to the community), relationships and relational connections within the research process (Wilson, 2008; Moreton-Robinson and Walter, 2009). Western-based research focuses on the outcomes, whereas Indigenous research takes a 'wholistic' view (Greves, 2009), placing value on the research process and building relationships (Smith, 1999; Dudgeon et al, 2010).[96]

Ray attempts to resolve the tension between Western and Indigenous research methodologies by providing a model for social research referred to as 'convergence Indigenous methodology.'[97]

[94] Rigney, above n 58, 109.
[95] Ray, above n 63, 86.
[96] Wilks and Wilson, above n 56, 143.
[97] Ray, above n 63, 91-94.

Convergence Indigenous methodology accepts that some Western research methodologies, such as data collection, statistical analysis, and 'the interview' are useful and can be carried out in a way that values Indigenous Knowledge.[98] This approach rejects elements of Western research methodology to the extent that these methods devalue Indigenous Knowledge.[99] For example, using an Indigenous methodology the interpretation and documentation of research findings should be carried out in collaboration with research participants in an attempt to ensure the research process is mutualised, collaborative and accurately reflects Indigenous Knowledge. In a typical Western research paradigm analysis of findings is done by the researcher without the involvement of the participants.

An example of how this approach was implemented in this project relates to the scope CYP had over the research process. Children and young people had a large measure of control over the iPad peer-to-peer video interviews, as well as some degree of control over what was discussed during the yarning discussions. This is discussed further in chapter 6, however in brief, CYP were provided with a general research topic for discussion and groups of two were given an iPad to then make a short movie of their response to the discussion topic. Participants chose how they raised and responded to the issues, and how they wanted to be depicted in each of the individual videos. Children and young people were provided with information in the pre-research sessions about how to capture, review, delete, and re-shoot clips independently until the video represented what they wanted to say, how they wanted to look and how they wanted to respond to the research topics. These peer-to-peer videos were then combined into a 'movie' which formed part of the reciprocity arrangement and was shown at the school to the CYP, their parents/carers, and relevant school staff in November 2014. The final 'movie' is not included in the thesis because it was made as part of the reciprocity arrangements in accordance with the ethical agreements entered into. However, information from the 'movie' contained in the respective peer-to-peer interviews were used as a primary source of data—this data is documented in chapters 6 and 7.

[98] Ibid.
[99] Ibid.

I was responsible for editing the final movie. However, during the course of editing I spoke via Skype with both the primary and secondary class groups and with the respective class teachers by email, and negotiated how the research findings were to be represented, and what issues were to be included and excluded. When I returned to the research site in November 2014 all participants and their parents and carers were invited to attend the 'movie screening' and asked if any elements of the movie did not depict their views accurately, or if they did not like any elements of the movie. Most agreed that the movie accurately represented their views, however, one child requested the deletion of a particular image of herself, which was subsequently edited out.

Western research methods were not excluded in the work undertaken. Some elements of that tradition, such as 'the interview', were employed, although significantly modified by incorporating Indigenous research methodologies. For example, face-to-face traditional interviews were not conducted, rather CYP and I sat on the ground in circles and discussed the research topics using discussion starters and yarning,[100] or participants went separately to discuss in small groups and make iPad videos of their responses. Direct questions were at times used, particularly if CYP were struggling with understanding elements of the research topics, but generally the field research was carried out through the use of informal conversations, not formal interviews. Thus, a blend of Indigenous and Western research methodologies was implemented. Ray's theory of the convergence of Western and Indigenous research methodologies provided a template for how to fuse these traditions.[101]

Convergence Indigenous methodology also has some similarities to a CRBA to research, and is particularly relevant to research undertaken by a non-Indigenous researcher, with Indigenous CYP. Ray explains that a convergence Indigenous approach to research 'is rooted in Indigenous epistemology that uses processes associated with participatory research.'[102] A key element of CRBA to research is the participation of CYP in the research process, and for the methods employed to be developmentally appropriate and child-friendly.[103] A convergence Indigenous approach accords with a

[100] See appendix 11, 12 and 13.
[101] Ray, above n 63.
[102] Ibid 91 citing P Colorado, 'Bridging Native Science and Western Science' (1988) 21(2/3) *Convergence* 49.
[103] Lundy and McEvoy, above n 3, 83-86.

CRBA as these approaches emphasise children's and Indigenous people's active role in the research process.[104] A convergence Indigenous methodology emphasises the 'relational' elements of conducting research and 'uses relational accountability as a guide to conduct research.'[105] This approach, when applied to research with CYP, emphasises the responsibility of the researcher to build rapport with participants, as an essential element of any work with CYP.

The relational focus of both methodological approaches acts as an equalising mechanism, and helps to minimise power differentials between the researcher and child participants. In this respect the fusion of convergence Indigenous methodologies and a CRBA challenge a common characteristic of some Western research paradigms which Nakata says positions researchers as the 'knower,' and the researched as 'subjects.'[106] A CRBA to research with CYP that is informed by Indigenous research methodologies seeks to counter inherent power imbalances between adult researchers and child participants. The aim of this approach seeks to ensure that the research space is as collaborative and non-hierarchical as possible.[107] There is a more detailed discussion of how convergence Indigenous methodology was applied in practice in section 2.2 below.

2.1.2.5 Theoretical and Practical Considerations

As stated the CRBA to research adopted drew heavily on Indigenous research methodologies and in doing so this study sought to implement a decolonised approach to research[108] and attempted to ensure that research participants were not subjected to inappropriate research methods that perpetuated colonialist research practices. However, the fusion of these two approaches—a CRBA and Indigenous research methodologies—does give rise to a set of potential conflicts both theoretically and practically.

[104] Ray, above n 63; S Wilson, *Research is Ceremony: Indigenous Research Methods* (Halifax & Winnipeg, Fernwood Publishing, 2008); Lundy and McEvoy, above n 3.
[105] Ray, above n 63, 91.
[106] Nakata, above n 4, 214. See also Martin Nakata, 'The Cultural Interface' (2007) 36 *The Australian Journal of Indigenous Education* 7.
[107] Lundy and McEvoy, above n 3, 83-86.
[108] Smith, above n 7, particularly chapters 2, 3 and 7; Rigney, above n 5; Rigney, above n 58; Dawn Bessarab and Bridget Ng'andu, 'Yarning About Yarning as a Legitimate Method in Indigenous Research' (2010) 3(1) *Journal of Critical Indigenous Studies* 37; and Coram, above n 66.

Valentin and Miernert comment that the evolution of children's rights was, and is, a movement steeped in Western imperialism, and suggest that the ongoing theory and practice of children's rights remains a largely colonialist endeavour that serves to espouse 'problematic taken-for-granted ideas … in a narrow Northern context [that is] politically legitimized through universal rights.'[109] Harris-Short concurs with this criticism questioning the cultural legitimacy of the CRC upon which a CRBA is based and says: 'The text of the CRC is still marked by a heavy Western bias.'[110] Arce agrees stating the CRC is 'a product of Western ideas about human rights and children.'[111] These criticisms suggest the amalgamation of a CRBA with Indigenous research methodologies could give rise to theoretical and practical incompatibilities given Indigenous research methodologies strong focus on challenging colonialist approaches.

The potential for these approaches to conflict, and how to mitigate the impact of any such conflicts, was considered in the process of developing the methodological framework for this project. Chapter 4 elaborates the process involved when drafting the CRC acknowledging the various deficiencies involved in this process, namely the non-involvement of children in the drafting process, and the difficulties associated with drafting a children's rights treaty which encompassed international cultural perspectives.[112] Chapter 4 concludes however, that the CRC, despite its deficiencies, is a robust human rights instrument that has been endorsed internationally through near universal ratification and provides a solid basis upon which to progress and promote children's human rights.

Never the less it is acknowledged that the fusion of CRBA and Indigenous research methodologies presents a range of challenges some of which are made clear in the thesis. For example, section 2.2.3 highlights how the yarning technique was implemented and the manner in which Indigenous as well as Western research methodologies were used, and the way in which potential conflicts between the two approaches were addressed. In addition, section 2.2.5 highlights some theoretical conflicts between the peer-to-peer interviewing and the yarning method and how these conflicts were resolved during the

[109] Karen Valentin and Lotte Meinert, 'The Adult North and the Young South: Reflections on the Civilizing Mission of Children's Rights' (2009) 25(3) *Anthropology Today* 23, 24.
[110] Sonia Harris-Short, 'Listening to "The Other"? The Convention on the Rights of the Child' (2001) 2(2) *Melbourne Journal of International Law* 304, 351.
[111] Arce (2012), above n 20, 372.
[112] See section 4.3.1.

field research.

This research reflects Asmar, Mercier and Page's description about their research when they state that 'despite being philosophically influenced by the literature on Indigenous methodologies, our *methods* are empirical and arguably "Western".'[113] As outlined above a combination of Indigenous and Western research methodologies was used and a range of Indigenous scholarship influenced how this was carried out in a cross-cultural context.[114] Given the researcher is non-Indigenous and comes from a Western legal tradition the methodology sought to implement a 'convergence' of Western and Indigenous research methodologies drawing from both traditions and acknowledging the limitations associated with a non-Indigenous researcher implementing Indigenous research methods.[115]

2.1.2.6 Conclusion

Many scholars have discussed the racist elements of the NTER and Stronger Futures legislation.[116] The purpose of this research is not to add to that body of literature—although elements of this thesis will do so—but rather to propose ways in which Aboriginal CYP can meaningfully engage in the process of developing legislation and policies pertaining to them in a way that reflects the rights outlined in the CRC, as well as the principles contained in the UNDRIP.

The history of colonialist research involving Indigenous Australians represented a theoretical and practical challenge to a non-Indigenous researcher, particularly in relation to research epistemologies regarding who has 'control' of the knowledge. The approach adopted in this project was to recognise that Western research methodologies have dominated, and continue to dominate, Indigenous related

[113] Christine Asmar, Ocean Ripeka Mercier and Susan Page, '"You Do It From Your Core": Priorities, Perceptions and Practices of Research Among Indigenous Academics in Australian and New Zealand Universities' in *Academic Research and Researchers* (Open University Press And Mcgraw-Hill, 2009) 146, 149.
[114] Ray, above n 63; Smith, above n 18; Rigney, above n 58, 109; Martin Nakata, *Disciplining the Savages Savaging the Disciplines* (Aboriginal Studies Press, 2007), part 2 and part 3.
[115] See section 2.1.2.4.
[116] Alastair Nicholson, Nicole Watson, Alison Vivian, Craig Longman, Terry Priest, Jason De Santolo, Paddy Gibson, Larissa Behrendt and Eva Cox, 'Listening But Not Hearing: A Response to the NTER Stronger Futures Consultations June to August 2011' (Jumbunna Indigenous House of Learning, University of Technology Sydney, 2012); Peter Billings, 'Still Paying the Price for Benign Intentions? Contextualizing Contemporary Interventions in the Lives of Aboriginal Peoples' (2009) 33 *Melbourne University Law Review* 1; Alison Vivian and Ben Schokman, 'The Northern Territory Intervention and the Fabrication of "Special Measures"' (2009) 13(1) *Australian Indigenous Law Review* 78; Larissa Behrendt, 'Underlying Legal Issues in the NT Intervention' (2007/2008) Summer 2007/2008 *Bar News* 12.

academic research.[117] As a non-Indigenous researcher, I attempted to ensure that this project did not involve inappropriate colonialist methodologies. The choice of research methods, for example, yarning and peer-to-peer interviewing, discussed in detail below, were used to reflect a CRBA to research informed by convergence Indigenous methodologies and were used in order to maintain respect for, and an acknowledgement of, Indigenous Knowledge throughout the research process.

This chapter has thus far provided an account of a CRBA to research, and discussed ways in which Indigenous methodologies can be used to inform this approach. This integrated theoretical approach is the foundation of the model for Aboriginal CYP's participation in this research, as well as a template for Aboriginal CYP's involvement in law and policy development.

2.1.3 A CRBA Informed by Indigenous Research Methodologies

The theories underpinning this research were chosen because they complement one another and provide a solid framework for the thesis. In addition, the theoretical approach adopted provided a sound basis for the involvement of Aboriginal CYP in the field work component of this research. A CRBA to research using Lundy's model for children's participation, supported by standpoint theory and Indigenous convergence research methodologies, provided a methodological approach based on article 12 of the CRC, as well as setting in place theoretical parameters for the involvement of Aboriginal CYP in the research.

2.2 Methods

This section 2.2, discusses the ways in which the research methodologies discussed in section 2.1, were applied and implemented in the design and execution of the project. These elements are considered in chronological order by first considering the preparatory activities that were undertaken, how consent was sought, the yarning method, peer-to-peer interviewing, and reciprocity arrangements. Whilst this chapter discusses the methodological approach and the methods used separately, this is

[117] Ray, above n 63, 88.

only for structural reasons, in practice the methodological approach and the methods used were less linear, and theoretical considerations were embedded throughout all research activities.

2.2.1 Child-Centred Play in Research

A CRBA to research engages *with* children, and does not do research *on* children[118]—Indigenous methodologies demand the same in relation to the involvement of Aboriginal people in research.[119] If CYP are to be involved in research premised on a CRBA the research process, not only the research outcomes, must offer something to them—it must be child-centred.[120] A fundamental tenet of a CRBA to research is engaging with child participants in ways that are meaningful, appropriate and enjoyable for them.[121] The importance of play in children's lives—for their development, and for their emotional wellbeing is well-known.[122] Given the centrality of play in children's lives, and the commitment of a CRBA to using a variety of child-centred methods to optimise children's participation in the research process, play should feature as a core element of CRBA to research, as it did in this research. An overarching technique used when interacting with CYP during the time I was in the field was the use of play-based mediums.[123] Creative mediums were integrated into the research process as a way to facilitate building rapport with CYP,[124] and provided tools for CYP to understand the research, as well as in response to information obtained during the Scoping Trip about ensuring CYP did not feel singled out in the research process (see chapter 3). The activities and methods elaborated below all involved various play-based and child-centred techniques. These include the use of play dough for modelling during yarning groups (figure 2.1 below); Magnetix for construction during yarning groups (figure 2.2); photography (figure 2.3); videography (figure 2.4); poster making (figure 2.5 below); as

[118] John Barker and Susie Weller, '"Is It Fun?" Developing Children Centred Research Methods' (2003) 23(1/2) *International Journal of Sociology and Social Policy* 33, 33.
[119] Coram, above n 66.
[120] Barker and Weller, above n 118.
[121] Laura Lundy, Lesley McEvoy and Bronagh Byrne, 'Working with Young Children as Co-Researchers: An Approach Informed by the United Nations Convention on the Rights of the Child' (2011) 22(5) *Early Education & Development* 714.
[122] Barker and Weller, above n 118; Angeline S Lillard et al, 'The Impact of Pretend Play on Children's Development: A Review of the Evidence' (2013) 139(1) *Psychological Bulletin* 1; Justine Howard and Karen McInnes, 'The Impact of Children's Perception of an Activity as Play Rather than not Play on Emotional Well-Being' (2013) 39(5) *Child: Care, Health and Development* 737.
[123] Violet Oaklander, *Windows to our Children: A Gestalt Therapy Approach to Children and Adolescents* (Real People Press Utah, 1978). The researcher's prior professional experience as a play therapist with children assisted in the integration of play-based research methods.
[124] Doel-Mackaway, above n 11.

well as reciprocity and the provision of food (figure 2.6). Utilising these various methods is consistent with a CRBA to research, and in particular focusses on children's right to freedom of expression provided by article 13 of the CRC. Article 13 provides children with the right to freedom of expression in appropriate ways, such as 'orally, in writing or in print, in the form of art, or through any other media of the child's choice.'[125]

Figure 2.1: 10 Year Old Child Modelling Something that is Important to Him—'My Family'[126]

Figure 2.2: 10 Year Old Child Modelling Something that is Important to Him—'I Like Toys, and Robots … and Dreamtime and Culture Dance'[127]

[125] *Convention on the Rights of the Child* art 13. The UNCRC also supports this approach see UN Committee on the Rights of the Child, General Comment No 5, 'General Measures of Implementation for the Convention on the Rights of the Child,' UN Doc CRC/GC/2003/5 (27 Nov 2003) [12].
[126] Ryan (10 year old male), Primary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014).
[127] Jacob (10 year old male), Primary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014).

Figure 2.3: Experimental Photography, Testing the Functionality of the iPads[128]

Figure 2.4: Making an iPad Video[129]

[128] Nathaniel (14 year old male), Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).
[129] Ryan (10 year old male), Primary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014).

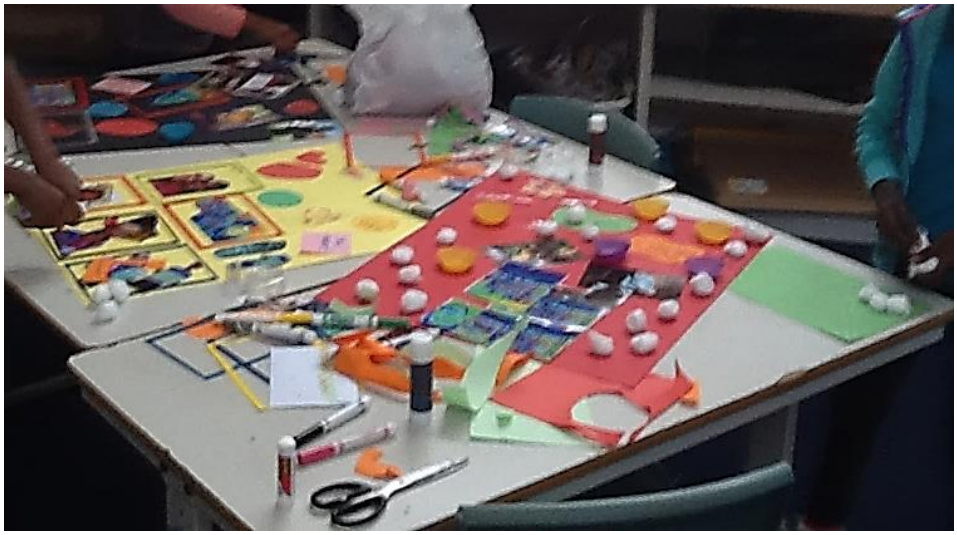

Figure 2.5: Poster Making: Part of the Reciprocity Arrangements[130]

Figure 2.6: Research Party: Part of the Reciprocity Arrangements[131]

All efforts were made to ensure this research engaged Aboriginal CYP as 'participants' in control of the research process, methods and interpretation of data, rather than as 'subjects' of the research.[132] A CRBA to research seeks to mitigate power differentials between the researcher and CYP involved,[133]

[130] Secondary Class Group Discussion, Field Research Session 4 (of 4) (Northern Territory, 23 May 2014).
[131] Ibid.
[132] Rigney, above n 58, 109.
[133] Lundy, McEvoy and Byrne, above n 121, 732-733; P Alderson and V Morrow, *The Ethics of Research with Children and Young People: A Practical Handbook* (SAGE Publications, 2011).

as do Indigenous research methodologies.[134] Power differences between children and adults 'can never be overcome, but must be constantly analysed and made visible' in the research process.[135] However, strategies to reduce this imbalance were implemented in this research, and are detailed in section 2.2.

Indigenous research methodologies, and a CRBA to research, recognise the fallacy inherent in some traditional Western approaches to research that claim the researcher is *objective*.[136] This research is premised on the use of play as a medium to address, or at least mitigate, power differentials in the research process. This approach endeavours to engage CYP in play whilst concurrently also engaging the researcher in play. This means traditional Western colonialist approaches which position the researcher as 'the knower' or the expert are broken down, and research participants are encouraged to freely express their ideas, freely communicate with the researcher, and in doing so influence the research process.[137] Figure 2.7 indicates my focus on play in the research setting, as well as focus on ensuring CYP felt comfortable to communicate in child-centred ways with me.

[134] Karen Lillian Martin, 'Ways of Knowing, Ways of Being, and Ways of Doing: A Theoretical Framework and Methods for Indigenous Re-Search and Indigenist Research' (2003) 76 *Journal of Australian Studies* 203, 14-15; Ray, above n 63, 91; Moreton-Robinson and Walter, above n 7, 7-12.
[135] Barker and Weller, above n 118, 51.
[136] Ibid; Smith, above n 7, chapter 2.
[137] Nakata, above n 4, 214; Samia Michail and Mary Kellett, 'Child-Led Research in the Context of Australian Social Welfare Practice' (2013) 20 *Child & Family Social Work*, 387, 388-389; Wilson and Wilks, above n 56, 145.

Figure 2.7: Photograph taken by Samantha[138]

Drawing from literature about the importance of play in children's lives, another important element of undertaking CRBA to research is making sure the researcher behaves in ways that are child-centred, and has a sense of fun, when conducting the research.[139] Creatively engaging with CYP in a culturally appropriate manner was fundamental to the success of this endeavour. Other than the creative opportunities the research offered, in particular the use of iPads for making videos, there were few reasons why CYP would want to be involved in the research. A CRBA to research requires that the methods used are appropriately adapted to CYP, and that these methods engage participants in a child-friendly way.[140] The research environment was designed to be engaging and respond to the varying interests, aptitudes and cultural backgrounds of the CYP involved. Group discussions using 'yarning' techniques,[141] as well as peer-to-peer video interviewing using iPads, were the methods used to

[138] Samantha (16 year old female), Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014).
[139] Barker and Weller, above n 118.
[140] Doel-Mackaway, above n 11; Cath Larkins et al, 'Support for Children's Protagonism' (2015) 23(2) *International Journal of Children's Rights* 332, 342.
[141] Ray, above n 63, 85; Rigney, above n 58, 109; Smith, above n 7.

creatively engage CYP in the research, in ways that were consistent with the methodological basis for this study.

2.2.2 Preparatory Activities

Prior to undertaking the formal discussions with CYP about the issues the thesis sought to answer, information sessions were undertaken with the potential participants and their parents or carers. The information sessions sought to provide CYP, their parents and carers with information about the nature of the research and the implications of their involvement prior to their consent being sought.[142] This approach is consistent with using a CRBA to conducting research in that it prepares and informs potential participants about whether they wish to participate in the research, as well as provides the necessary foundation for CYP to meaningfully engage with the subject.[143] This section overviews the three key ways I sought to prepare CYP to engage in the field research by (a) getting to know the CYP, (b) equipping CYP to participate in the research and (c) seeking free, prior and informed consent.

2.2.2.1 Getting to Know CYP

A CRBA to research, as well as Indigenous research methodologies places an onus of responsibility on the researcher to ensure research is carried out in a way that that upholds the rights of child participants to 'be properly researched.'[144] Part of this responsibility is to build appropriate rapport, and give potential research participants the opportunity to clearly understand the research, and get to know the researcher, before being asked to provide their consent to participate in the research.[145] These elements support CYP's optimal participation in the research process.[146]

[142] See appendix 10(i) and 10(ii).
[143] Lundy, McEvoy and Byrne, above n 121; Wilson and Wilks, above n 56; Beazley et al, above n 8; Kay Tisdall, John M Davis and Michael Gallagher, *Researching with Children and Young People: Research Design, Methods and Analysis* (Sage, 2008).
[144] Beazley et al, above n 8, 365.
[145] Merle Spriggs, *Understanding Consent in Research Involving Children: The Ethical Issues: A Handbook for Human Research Ethics Committees and Researchers* (Children's Bioethics Centre, The Royal Children's Hospital, 2010).
[146] Beazley et al, above n 8; Lundy, McEvoy and Byrne, above n 121; Lundy and McEvoy, above n 15.

The first two weeks of the field research was spent getting to know the CYP during their normal school routine. I was present in either of the classrooms for the duration of the school days assisting CYP and teachers with general school work and school activities. An equal amount of time was spent in both the grade 5/6 classroom and in the grade 7-10 classroom. Spending two weeks getting to know the CYP assisted potential participants to become comfortable expressing themselves about the respective issues the research explored, such as how laws and policies could be designed in collaboration with them.

2.2.2.2 Equipping CYP to Participate in the Research

A CRBA to research requires investigators to ensure CYP's participation is meaningful and that CYP are adequately equipped to contribute to the research.[147] This is a fundamental element of a CRBA to research and is supported by the contributions CYP made during the United Nations Special Session on Children's Rights ('*Special Session*') in 2002.[148] At the *Special Session* CYP outlined a range of prerequisites necessary to establish an environment in which they could effectively participate. These conditions included having sufficient time to understand the issues; being provided with child-friendly information and documentation; and making sure adults involved are provided with sufficient training to understand and overcome any resistance about children's participation in the Special Session.[149]

In keeping with the CRBA preparatory activities, in the form of 'information sessions,' were undertaken with the children, their parents and teachers prior to the field research.[150] The proportion of time spent undertaking pre-research preparatory activities reflects the importance of doing so. Fifty percent of the time spent in the field was used to undertake these activities, and the other 50 percent used to undertake the field research with CYP.

The pre-research capacity building activities constitute a form of field research, however, these activities were primarily designed to facilitate and equip CYP to engage in the research in a

[147] Laura Lundy, 'United Nations Convention on the Rights of the Child and Child Well-Being' in *Handbook of Child Well-Being* (Springer, 2014) 2439, 2450.
[148] United Nations, *Special Session on Children* (2002) <http://www.unicef.org/specialsession/under-18/index.html>.
[149] Barbara Bennett Woodhouse, 'Enhancing Children's Participation in Policy Formation' (2003) 45 *Arizona Law Review* 751, 756-758.
[150] See appendix 10(i) and 10(ii).

meaningful and informed way. Preparatory activities focussed on providing background information about the research topics, and providing time for the CYP to consider the information before the field research commenced as well as arrive at an informed decision about whether or not to participate.

The research was conducted at the school over four consecutive weeks in April and May 2014, then for an additional four days in November 2014. The pre-research activities were undertaken over two weeks followed by the field research in the next two weeks. This approach is consistent with Lundy and McEvoy's CRBA to research because in order for CYP to participate in a meaningful CYP need to know the ambit and nature of the research being conducted.[151] This approach sought to assist the CYP to become comfortable expressing themselves and provided background information on the issues the research was to explore. This also 'assist[ed] them in applying their ideas to situations beyond [and within] their own experience'[152]—such as how laws and policies could be designed in collaboration with them.

In the first week I spent time getting to know the CYP in their classrooms. In the second week potential research participants were introduced to iPads (which were used during the field research to make peer-to-peer interviews), and the CYP and I made short sample videos for instructional purposes. A one hour child rights information session was conducted with each class group at the beginning of this week, then at the end of the week a second information session was conducted with each class group.[153] The second information session covered children's right to participate in decision-making and overviewed the elements of the NTER and Stronger Futures legislation relevant to the research inquiry. The consent seeking process was outlined during the first information session, and again in the second information session. In each of these sessions iPad's were used to familiarise potential participants with the use of this technology.

The information sessions provided an opportunity for CYP to participate on a more even footing, as all children were provided with general information about the subject area. The information sessions,

[151] Lundy and McEvoy, above n 15; Lundy and McEvoy, above n 3.
[152] Laura Lundy and Lesley McEvoy, 'Developing Outcomes for Educational Services: A Children's Rights-Based Approach' (2009) 1(1) *Effective Education* 43, 49.
[153] See appendix 10(i) and 10(ii).

while useful, were undertaken on two separate occasions, with varying attendances. Thus, not all of the CYP who eventually participated in the field research participated in the information sessions. In order to assist CYP who had not participated in an information session and for the added benefit of reinforcing the learning carried out during the information sessions, repeat mini-information sessions about relevant topics were undertaken at the beginning of each field research interaction.

A parent and carer information afternoon tea was held during the first week of the pre-research activities.[154] Thirteen parents, carers and children, as well as the Aboriginal Liaison Officer and the School Principal attended this session. At this session the Aboriginal Liaison Officer and I overviewed the research as well as the process to seek consent, and answered questions from parents and carers about the research.

The information provided in this section gives a short summary of the pre-research activities and explains the theoretical justification for these activities. Further details about the pre-research activities undertaken are provided in chapter 6 (section 6.1.1).[155]

2.2.2.3 Seeking Free, Prior and Informed Consent

The range of ethical considerations associated with seeking consent from Aboriginal CYP and their parents and carers are multi-faceted because seeking free, prior and informed consent is a complex and sensitive pursuit.[156] In this project considerable efforts were made to ensure, as far as possible, that the consent provided by CYP, parents and carers was free and informed. This approach is based on an acknowledgement of the history of Western research involving Indigenous people being carried out without the appropriate involvement of Indigenous people in the research process and without obtaining free, prior and informed consent.[157] This section details problems associated with seeking consent and overviews how the model of consent for this project was formulated and implemented, and how problems associated with seeking consent were mitigated.

[154] See appendix 6.
[155] See also appendix 5.
[156] Coram, above n 66; Paul Howorth, 'Ensuring Indigenous Consent' (2013) 125 *Arena Magazine (Melbourne, Vic)* 14.
[157] Lyn Fasoli and Ranu James, 'Researching Remote Aboriginal Children's Services: It's All About Rules' (2008) 33(4) *Ngoonjook: A Journal of Australian Indigenous Issues* 26, 32.

i. Problems with Seeking Consent

Research carried out by James and Fasoli with Aboriginal children in the NT revealed many Indigenous people, including children, believe there is no option to refuse involvement in social research.[158] The question of whether people have freely consented to participate in research, and are adequately informed to make the decision to participate in research is vexed.[159] It is possible this limitation is inherent in most qualitative research conducted, and exacerbated in the process of conducting cross-cultural research with Aboriginal CYP. However, ensuring consent is 'free' and 'informed', even when provided under the required conditions, remains. This is because it is difficult to assess whether people experience indirect or direct pressure to participate in research, and if so from where this pressure is exerted. This consideration takes into account the dynamics of power differences, in this research not only between the researcher and the families involved, but also the dynamics between the school staff members and the families, during the process of seeking consent. Being confident that the consent obtained from children involved in this research was truly 'free' and 'informed' was problematic. Inherent power dynamics associated with the researcher and child relationship may have impacted on the consent provided by CYP.[160] However, strategies to mitigate the negative impacts of this power imbalance were put in place. These strategies included the above mentioned pre-research activities, and ensuring ongoing consent was sought from CYP throughout the research process. For example, spending two weeks getting to know the potential research participants, in their classrooms, provided an opportunity for the CYP to assess whether or not to participate in the research. During this time information sessions about the research and what would be involved for the participants was undertaken. This provided an opportunity for me to get to know the CYP and establish a level of rapport.[161] When conducting the field work, I emphasised to CYP that their

[158] Ibid 32.
[159] Fay Fletcher et al, '"No Lone Person:" The Ethics Consent Process As An Ethical Dilemma In Carrying Out Community-Based Participatory Research With A First Nations Community' (2012) 9(2) *Pimatisiwin: A Journal of Aboriginal & Indigenous Community Health*; Howorth, above n 156; Spriggs, above n 145.
[160] Spriggs, above n 145.
[161] Kingsley, Phillips and Townsend, above n 60, 4.

participation was voluntary, and that they could withdraw at any time throughout the process without any negative consequence or repercussions.[162]

ii. Advice Received about Seeking Consent

The chosen model to seek consent was developed after careful consideration and after receiving advice from various sources. This included advice received during the Scoping Trip; from extensive deliberations with the supervision team; after seeking specialist advice from several academics with experience conducting empirical research;[163] and through liaison with the two ethics committees involved in approving this research.[164]

Consideration of the appropriate model to seek consent occurred during the first two years of the project when the research design was being formulated. This began at the commencement of the project in 2012 till the field research took place in 2014. During this time a range of approaches to seeking prior, free and informed consent were explored, and it became clear that there were a range of ways consent could have been sought. For example, I originally intended to visit families and seek consent from caregivers accompanied by the Aboriginal Liaison Officers from the school—during the Scoping Trip this mode of seeking consent was suggested by the School Principal.[165] In this interview the Principal suggested I go with the Aboriginal Liaison Officer during the morning and afternoon 'bus runs' that transported the CYP from their homes to the school and back again in the afternoon. It was suggested that on these 'bus runs' I would talk with parents and carers at their homes about the research seeking their consent for CYP to participate in the research. One of the benefits of this approach was the ability to have confidence in how the research was explained to parents and carers, and to be able to ensure the research was explained in a consistent manner. However, a significant

[162] Fasoli and James, above n 157, 32.
[163] The PhD supervision team and I sought specialist advice from the following people about their experiences seeking consent from participants in their own research: Professor Michelle Trudgett (University of Technology Sydney, Centre for the Advancement of Indigenous Knowledges), Associate Professor Lisa Wynn (Macquarie University, Anthropology) and Dr Tobia Fattore (Macquarie University, Sociology). A member of CAHREC, Associate Professor Kerry Taylor (Poche Centre for Indigenous Health), also provided advice on the design of the consent procedure. This advice influenced the model for seeking consent from parents and carers, as well as from the CYP involved in this research.
[164] The MQHREC and the CAHREC, who oversaw this research, provided detailed advice on appropriate methods to seek free, prior and informed consent from children, young people, parents and carers.
[165] Scoping Trip Interview (No 12) with a Principal from an Independent School (Northern Territory, 25 October 2012).

drawback of this approach was that my only language is English and I would not be able to communicate about the research in Aboriginal language.

After weighing up the benefits and risks associated with directly seeking consent from parents and carers in their community, and at their places of residence, it was decided that this approach was inconsistent with potential participants and their parents and carers privacy, as well as culturally inappropriate. On this basis I chose to seek consent from parents and carers indirectly—through the Aboriginal Liaison Officers from the school. The advantage of this approach was that the Aboriginal Liaison Officers were able to communicate the research in several Aboriginal languages with parents and carers (and CYP if they were present during these conversations) before the research took place. This approach to seeking consent increased the likelihood that CYP, parents and carers would be informed about the research given that for many CYP, and particularly their parents and carers, English was their fourth or fifth language.[166] This approach also minimised risk in relation to the privacy of participants and their families.

iii. What Methods Were Used to Seek Consent?

A range of measures were undertaken in order to achieve free, prior and informed consent including, initial contact with parents and carers, as well as with CYP, being made by staff from the school; conducting pre-research activities with potential participants; ensuring parents and carers had several opportunities to learn about and understand the research; and seeking ongoing consent from the CYP involved in the research. Consent to participate in the field research for this project was sought from parents and carers initially, and then from CYP. Children and young people's ongoing consent was regularly re-negotiated with the CYP throughout the course of the research in accordance with the *National Statement* and the *AIATSIS Guidelines*.[167]

[166] Information received during the Scoping Trip: Scoping Trip Interview (No 12) with a Principal from an Independent School (Northern Territory, 25 October 2012) and Scoping Trip Interview (No 13) with three Aboriginal women employees from a non-government school (Northern Territory, 25 October 2012).
[167] The *National Statement*, above n 1; *AIATSIS Guidelines*, above n 7.

The model for consent included seeking consent from parents and carers with the assistance of known school staff members— the Aboriginal Liaison Officers. The researcher and the senior Aboriginal Liaison Officer negotiated how consent was to be sought, and the appropriate arrangements were made. This included the researcher providing the Aboriginal Liaison Officers with the Information Statements who then distributed these to the CYP to give to their parents and carers. The Aboriginal Liaison Officers provided additional Information Statements to parents and carers during the daily bus route to and from the school if required. The Aboriginal Liaison Officers explained the purpose of the research, in accordance with the Information Statements, and answered CYP's, parents and carers questions about the research. These explanations were provided to parents and carers over the course of a month, in March 2014, prior to the field research taking place. When the Aboriginal Liaison Officers spoke with parents and carers about the research either English and/or an Aboriginal language was used.[168] After the Information Statements were distributed parents and carers were given time to consider whether they wanted their child or young person to be involved in the research. Several weeks later the Aboriginal Liaison Officers sought consent from caregivers and asked if they wanted their child or young person to be involved in the research and if so whether they would sign the consent form.[169] Obtaining consent in this way was adopted as the least invasive, yet informative, method. It was considered the most culturally appropriate method given varied levels of English literacy in the respective communities. Furthermore, if the researcher sought consent directly from parents and carers at their residences this would constitute a breach of privacy.

Seeking initial consent from CYP as well as their parents and carers was a key element of the model of consent. However, equally important was the process of seeking CYP's ongoing consent to be involved in the research. In order to gauge ongoing consent the researcher undertook 'constant reflexivity about student positions in relationship to a non-Aboriginal or Torres Strait Islander researcher.'[170] During each research session CYP were provided with the opportunity to review their

[168] These arrangements were negotiated between the researcher and the Aboriginal Liaison Officer several months before the research took place, as well as discussed throughout the consent seeking phase. The lead Aboriginal Liaison Officer kept a list of families who had received the forms and an explanation accompanying the forms. See appendix 8 for the parent and carer information and consent form.
[169] See appendix 8.
[170] Wilson and Wilks, above n 56, 147-148.

involvement in the research, particularly the nature of their involvement at that particular time. For example, at the beginning of each session the researcher asked CYP whether they would still like to be involved, and reminded them that their participation in the research was not part of their school work, and they were not compelled to be involved. Participants demonstrated their understanding that their ongoing involvement in the research was voluntary at every stage. For example, while the research was being conducted I emphasised to the CYP that they were free to come and go from the discussion group and return to their classroom if they wished, and many did exactly this. Several times throughout the research various CYP decided to leave and return to the classroom, generally these CYP left only briefly and returned to resume participation in the research.

Seeking ongoing consent from CYP is consistent with researchers responsibilities outlined in principle 6 of the *AIATSIS Guidelines*[171] and section 2 of the *National Statement*.[172] During the field research CYP frequently provided varying degrees of consent to the research being undertaken. For example, many CYP throughout the research process, whilst happy to be involved in the research, did not want to have their photograph taken on a particular day, yet on another day were happy for photographs to be taken. This demonstrated that seeking consent is a process that must be undertaken on a continuing basis during the research, in particular with young research participants.

After receiving the information and consent form, and having the research explained by the Aboriginal Liaison Officer, many parents and CYP consented to be involved in the research, with a few exceptions.[173] During the preparatory stage of the research, several CYP either through their teacher, or directly to me, said they did not want to be involved. One young person said her father did not want her to be involved for undisclosed reasons. While the research was being conducted CYP came and went freely from the discussion groups as they wished. On the whole however, the majority of participants attended the full duration of the discussion groups unless they were called away by a

[171] *AIATSIS Guidelines*, above n 7, 6.
[172] The *National Statement*, above n 1.
[173] One parent did not consent to their child being involved in the research and demonstrated this by writing 'no' on the consent form. Several CYP said they did not want to be involved. Some CYP approached the researcher during the pre-research sessions and said they did not want to be involved, and other CYP may have demonstrated this by not returning the consent form. Although, several CYP were not able to participate in the research because they did not return the form and said they had forgotten to do so despite wanting to be involved in the research.

school staff member for another reason, such as to attend a specific class. Of note however, was that no parent or child, who provided their consent, refused any of the three levels of consent offered on the consent form below in figure 2.8. All parents or carers who provided their consent agreed to their child or young person being involved in audio-recording, to taking and being the subject of photographs, and to making a video. There was no discrepancy between the levels of consent provided by the parents or carers, meaning all parents and carers consented to all elements of the research.

The approach to seeking consent outlined above was adopted because it was assessed as being the most culturally appropriate way to seek free, prior and informed consent from CYP and their parents and carers.

iv. Information and Consent Forms

Information and consent forms for CYP, as well as information and consent forms for parents and carers, were developed in accordance with the *National Statement.*[174] These forms were presented to and approved by both the ethics committees (MQHREC and CAHREC) overseeing this project.[175]

Parent/Carer Consent Form

I *(insert parent's name)* _____ have read, or have had read to me, and understand the information above. Any questions I have asked have been answered. I agree for my child to participate in this research, knowing that I can withdraw, or my child can withdraw, from further participation in the research at any time without any consequence.

I **agree / do not agree** (please circle one) to the researcher **audio-recording the discussions** involving my child.

I **agree / do not agree** (please circle one) to the researcher **taking photograph's** during the research involving my child.

I **agree / do not agree** (please circle one) to my child making and featuring in a video during the research.

Figure 2.8: Excerpt from Parent/Carer Research Consent Form [176]

[174] The *National Statement*, above n 1.
[175] See appendix 7, 8 and 9.

During the information sessions conducted in the two weeks prior to the formal field research sessions it became apparent that communicating with the CYP was best carried out using pictures as an aid to convey the purpose and focus of the research. Exclusive use of the ethically approved Information Statement was inappropriate because many potential participants and their families and carers were not literate in written English, and in some instances parents or carers did not speak English. Thus, an amendment was sought from, and granted by, CAHREC to use a pictorial adaptation of the written Information Statement with the CYP.[177] These forms detailed in pictures (and some text) information about the researcher, what the research was about, what was being asked of the CYP in the research, how long the research would take, what activities were involved and what benefits CYP were likely to derive from being involved. In the pre-research information sessions this was explained to CYP and they were asked if they agreed to these separate elements. If they agreed to participate they placed a 'tick' next to the respective image indicating their consent. Children and young people were also provided with written consent forms if they preferred to sign these instead of the pictorial consent forms. In general the children in the primary class group 'ticked' the pictorial consent form, and the young people in the secondary class signed the written consent form.[178] Many CYP did both—that is, signed the written consent form as well as 'ticked' the pictorial consent form. In addition all CYP provided verbal consent to participate in the research.

v. Concluding Remarks

The methodology for seeking consent from CYP and their parents and carers was based on the 'general requirements for consent' set out in the *National Statement.*[179] These requirements emphasise that 'consent should be a voluntary choice, and should be based on sufficient information and adequate understanding of both the proposed research and the implications of participation in it.'[180] Thus, consent must be freely given, be provided before the research commences and be based on an

[176] See appendix 8.
[177] See appendix 9.
[178] See appendix 7.
[179] The *National Statement* above n 1, chapter 2.2, 19.
[180] Ibid.

informed understanding of the nature of the research and any risks involved in taking part in the research.[181]

The manner in which consent for CYP to participate in this research was sought and obtained complied with the requirements for free, prior and informed consent stipulated in the *National Statement*.[182] The involvement of Aboriginal staff from the school and their role in talking with parents and carers about the research was a key factor in providing a sound ethical basis for parents and carers to make an informed decision about whether or not to permit their child or young person to be involved in this research. During these interactions it was emphasised to parents and carers that CYP's involvement in the research was voluntary and not associated with their school work, and that no negative consequence would occur if they chose not to participate.

Furthermore, the time spent by the researcher talking with CYP about the nature of the research, about the fact that the CYP were not compelled to participate, that it was not part of their school work, and that no negative consequences would eventuate if CYP chose not to participate were also key elements of seeking free, prior and informed consent.

The difficulties associated with obtaining informed consent outlined at the beginning of this section were mitigated in practice. At the beginning of every session the research revised the purpose of the research, and the ambit of the research. Whilst these revisions were not as complete as the information sessions held in the first two weeks of the field research, they served to reiterate to participants key information about the research, in an attempt to ensure their consent was both free and informed. In addition, at the beginning of every research session with CYP ongoing consent was discussed and sought. On each occasion it was emphasised to CYP that their involvement in the research was voluntary and they could withdraw at any time without consequence. On the basis of this information and the manner in which this was implemented in practice I believe that the model developed to seek consent was the most ethically and culturally appropriate model given the cross-cultural setting in which consent was being sought.

[181] Ibid.
[182] Ibid.

2.2.3 Yarning Method

The legitimacy of yarning as a method in qualitative research has been questioned on the basis of a 'lack of clarity and uncertainty about how conversation might achieve the purpose of research.'[183] However, Bessarab and Ng'andu[184] as well as other Indigenous authors and academics,[185] have established this method as a credible way to value Indigenous Knowledge, and a means to effectively interrogate a research topic and achieve sound research results.[186] Yarning, as a research tool, is described as:

> [A]n informal and relaxed discussion through which both the researcher and participant journey together visiting places and topics of interest relevant to the research study. Yarning is a process that requires the researcher to develop and build a relationship that is accountable to Indigenous people participating in the research.[187]

The use of the yarning method is consistent with Indigenous research methodologies given yarning is 'an Indigenous form of conversation',[188] and a widespread preferred mode of communication in many Aboriginal communities between adults and children.[189] A growing body of literature supports the assertion that a large proportion of Indigenous people, adults and children, prefer to communicate informally through 'yarning' rather than talking formally and face-to-face in a typical Western research 'interview' style setting.[190] Yarning is increasingly being accepted in international academic

[183] Bessarab and Ng'andu, above n 66. In the year 2000 some academics challenged Bessarab's use of the yarning method, as a part of her Doctoral research, as a non-bona fide research method.
[184] Ibid 39.
[185] Bronwyn Freidricks, Melissa Walker, Kyly Mills and Debra Anderson, '"Yarning" as a Method for Community-Based Health Research With Indigenous Women: The Indigenous Women's Wellness Research Program' (2013) *Health Care for Women International* 1, 66; Margaret Kovach, 'Conversational Method in Indigenous Research' (2010) 5(1) *First Peoples Child & Family Review* 40.
[186] Bessarab and Ng'andu, above n 66; Freidricks et al, above n 185; Beverley Fluckiger, Pat Diamond and Will Jones, 'Yarning Space: Leading Literacy Learning Through Family-School Partnerships' (2012) 37(3) *Australasian Journal of Early Childhood* 53.
[187] Bessarab and Ng'andu, above n 66, 38.
[188] Ibid 37.
[189] Ibid.
[190] Ibid.

fora as both a robust method of undertaking research and valuing Indigenous Knowledge, as well as an appropriate process to ethically engage Indigenous people in qualitative field research.[191]

The use of yarning in this research is linked to a CRBA as yarning creates a system for Aboriginal CYP to express their views, in accordance with article 12 of the CRC, in a culturally appropriate way. The use of the yarning method is consistent with advice received from a series of conversations held with professionals as a part of the Scoping Trip.[192] The yarning method is also consistent with a CRBA informed by convergence Indigenous methodologies, and is discussed in detail in chapter 3.

2.2.3.1 Implementing the Yarning Method

Field research utilised a yarning style of research inquiry and CYP were invited to participate in informal yarning groups. The purpose was not to replicate traditional yarning circles but to provide the opportunity for the research space to reflect some of the elements of yarning methods. These were conducted at the school in an 'un-school-like' way,[193] outside the formal classroom, where CYP and the researcher were seated in a circle, either on the ground or sitting on chairs. Discussion starters were used to introduce general topics for discussion without the use of a direct question.[194]

The discussion starters are a group of statements about the research topic to be used as a means to stimulate, rather than prescribe discussion. For example, one discussion starter was: 'A lot of people think everyone has the right to say what they think about things. I have spoken to a lot of kids and most of them like being asked what they think about things.'[195] The intention was to pause, allow the statement to resonate with the CYP, and wait to see if conversation flowed. This method was successful on occasion, however, often when the researcher attempted the yarning technique CYP appeared confused, and on various occasions several expressed their confusion by laughing, pausing,

[191] Devi Dee Mucina, 'Story as Research Methodology' (2011) 7(1) *AlterNative: An International Journal of Indigenous Peoples* 1; Bessarab and Ng'andu, above n 66, 39; Fluckiger, Diamond and Jones, above n 186; Freidricks et al, above n 185.
[192] Scoping Trip Interview (No 1) with Indigenous Chief Executive Officer of a Leading Social Justice Agency (Northern Territory, 23 October 2012); Scoping Trip Interview (No 2) with the Principal of an Independent School (Northern Territory, 22 October 2012); Scoping Trip Interview (No 13) with three Aboriginal Women Employees from an Independent School (Northern Territory, 25 October 2012); Scoping Trip Interview (No 17) with a non-Indigenous Youth Worker (Northern Territory, 25 October 2012).
[193] Lundy and McEvoy, above n 152, 48.
[194] See appendix 11, 12 and 13.
[195] See appendix 12 and 13.

or having a quizzical facial expression. There were several instances where a child or young person asked: 'What question do we have to answer?' On many occasions, unless I asked a direct question, CYP appeared unsure of what was being asked of them, and the discussion starters appeared to create more confusion, rather than promote thought and conversation.

In response to this, after the first research session the researcher developed different discussion starters and handed these out to CYP in the following research sessions.[196] The revised discussion starters included pictures to aid understanding, and were included to promote discussion.[197] This approach successfully engaged participants, for example, in the third field research session the following question was posed to the CYP: 'Do you think the government should ask your opinion before deciding on important things about you?' Under the question were two pictures—one of Adam Giles (the Chief Minister of the NT and Leader of the Country Liberal Party and Northern Territory Premier) and the other was a picture of Federal Parliament in session.[198] In response to this visual clue and accompanying question the majority of CYP recognised who Adam Giles was; identified him as a member of parliament; and associated the picture of Federal Parliament with 'the place where laws are made.'[199] These outcomes demonstrate the adaptation of the yarning method was successful and led to CYP being able to more fully express their views.

The yarning method seeks to avoid asking direct questions, unlike traditional classroom teaching methods which regularly engage CYP in direct question and answer scenarios. Regularly, however, during the field research discussions it was difficult to avoid the direct question and answer method. Often during the research, CYP said they did not understand what they were being asked to do, or what question they were being asked. This led to me becoming more specific about the research questions and to lead discussion more than intended, and certainly more than the yarning method as described in the literature anticipates.[200] However, key elements of the yarning method were applied including: the physical placement of the discussions, outside in an informal setting; CYP gathered in a

[196] Ibid.
[197] See appendix 12.
[198] See appendix 13.
[199] Ethan (11 year old male), Primary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 15 May 2014).
[200] Bessarab and Ng'andu, above n 66.

circle; and discussion was interspersed with laughter and casual conversation which was not always directly related to the research topic. As mentioned above the discussion starters that were prepared in advance to support the implementation of the yarning method were generally ineffective.

Upon commencement of the field research it was clear that the CYP had varied, often contrasting, understandings of the issues the research examined. The main issues discussed during the field research were children's rights, particularly the right to participate in decision-making; law, including 'white-fella law', and 'black-fella law'; and CYP's understanding of, and thoughts about, the NTER and Stronger Futures legislation and policies. Varied understanding about the issues involved in the research were not entirely due to the age range of the CYP (between 10 and 17 years old), as many 10 year old children demonstrated sophisticated knowledge of the Australian political landscape. For example a 10 year old male, when shown a picture of the Hon Adam Giles and Prime Minister Tony Abbott, said 'I know who they are. That's Tony Abbott and Adam Giles. Them the fellas who stay in that place [pointing to the picture of Parliament House] and make the law.'[201] When the same pictures were shown to the older cohort some young people did not recognise one or other of the men shown in the pictures, although most did, and most recognised Parliament House as the site where 'white-fellas make laws, not black-fella law though.'[202]

Whilst many hallmarks of the classroom were not present in the research environment—such as a physical room, blackboard, desks, books and a teacher—never the less the research environment reflected many elements of the classroom and may have acted as a barrier to implementing the yarning technique. The presence of a non-Indigenous adult, the research site being situated at the CYP's school, and the requirement to sit (albeit on the ground outdoors) and yarn may have been interpreted by the CYP as 'doing work', similar to classroom work. The yarning method was not able to be undertaken in this research in the same way as described by Bessarab and Ng'andu however, the implementation of the yarning technique was not intended to replicate Bessarab and Ng'andu's

[201] Ibid.
[202] Chris (17 year old male), Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014).

method, rather to reflect key elements of it.[203] In particular discussions were carried out in an informal, relaxed manner, sitting in a circle outside the classroom. Notably, the manner in which the CYP adapted the video interviewing method to be more reflective of the yarning method incorporated Indigenous methodologies into the field research to a greater degree than was anticipated. Bessarab and Ng'andu's yarning technique was adapted to fit within the research context, and was successfully adapted using a CRBA to yarning with Aboriginal CYP.[204]

2.2.4 Peer-To-Peer Interviewing Using iPads

In addition to seeking CYP's views through yarning methods, participant led peer-to-peer video interviewing using iPads was also undertaken. This research method was used in order to present a platform which is engaging and relevant to Aboriginal CYP, and also a means to record CYP's views. Peer-to-peer interviewing has been used by other researchers working with young Indigenous participants and is considered as an effective medium to creatively engage young people in research.[205] Children and young people were invited to make videos addressing the research topics[206] with a peer using an iPad. These individual videos were then made into a 'movie' and a screening of the movie was held at the school as part of reporting the research results in November 2014.

During the Scoping Trip the Principal of the school informed me that the secondary CYP had recently completed a course in movie-making. At the time, October 2012, I had been reading about the importance of technology in Aboriginal youth populations,[207] and the global connectedness many Indigenous young people experienced through the use of technology, including with other youth via social media.[208] Given the CYP had recently completed a course in movie-making, the Principal supported the idea of incorporating the use of technology, iPads, in the research process. Further, the

[203] Bessarab and Ng'andu, above n 66.
[204] Ibid.
[205] Melodie Bat et al, 'Ethical Moves: Innovation in Qualitative Research: An Example of an Ethical and Effective Cross-Cultural Research Methodology Using Video' (paper presented at the AARE National Conference: Inspiring Innovative Research in Education, Canberra, 2009).
[206] See appendix 10(i) and 10(ii).
[207] Inge Birgita Kral, 'Plugged In: Remote Australian Indigenous Youth and Digital Culture' (Centre for Aboriginal Economic Policy Research, 2010). See also Marla Weston, Dianne Biin and Brenda Pohl, 'Digital Storytelling: A Case Study of Aboriginal Youth Engaging in Technology' (paper presented at the World Conference on Educational Multimedia, Hypermedia and Telecommunications, 2013).
[208] Kral, above n 207.

use of iPads would scaffold previous learning about movie-making and expose the CYP to iPads, a form of technology many participants had not previously experienced. Participants explored the iPads and their functionality, learning the limits of the technological boundaries of the iPads rapidly. This experience accords with evidence reported in the literature regarding the speed and aptitude of young people in relation to technological literacy.[209]

Literature supports the assertion that technological influences are having a profound, often enriching, impact on Indigenous young people's lives engendering a sense of 'their "belongingness" to globalised youth culture.'[210] Indigenous youth in remote areas are at a unique point in history where they are introducing their communities to technology and negotiating new forms of oral and written communication.[211] Indigenous youth, like most young people in the modern world, are particularly interested in using and engaging with digital technology.[212] Knowledge of, proficiency with, and access to digital technologies is a high priority for this cohort.[213] In order to facilitate creative engagement with Indigenous CYP it is important to tap into this interest in digital technology as a 'meaningful and relevant' research tool.[214]

The use of peer-to-peer interviewing aligns with the methodological approach adopted in this research—a CRBA informed by Indigenous research methodologies. This is an example of the implementation of Ray's convergence methodology because elements of both Western and Indigenous methodologies are employed by the CYP in order to make an iPad video —interviewing (a Western research method) as well as 'yarning' (an Indigenous research method).[215]

Peer-to-peer interviewing is also consistent with a CRBA to research because it facilitates the incorporation of elements of child-led research and fosters a level of control by CYP over the research

[209] Weston, Biin and Pohl, above n 207.
[210] Kral, above n 207, 14.
[211] Ibid.
[212] Ibid.
[213] Ibid.
[214] Ibid. See also Fatima Pirbhai-Illich, 'Aboriginal Students Engaging and Struggling with Critical Multiliteracies: Engaging Diverse Students Requires Tapping Into Their Interest in Using Digital Media, Accepting Their Lived Experiences, and Inviting Them to use Their Funds of Knowledge in Multiliteracies' (2010) 54(4)(12/01) *Journal of Adolescent and Adult Literacy* 257, 257.
[215] Ray, above n 63.

process.[216] Peer-to-peer interviewing was not originally anticipated as aligning with Indigenous research methodologies given the origins of this method are akin to Western research methodologies, namely 'the interview.' However, in the course of the research the CYP undertook the iPad interviewing in ways that incorporated yarning techniques and therefore reflected Indigenous research methodologies.

2.2.5 Using Peer-To-Peer Interviewing and the Yarning Method Together

There were some inconsistencies between using a yarning research method and video interviewing. Namely, that the definition of an 'interview' is the use of direct questions, which is inconsistent with the open discussion style upon which yarning, is based.[217] This challenge was not able to be resolved theoretically in the design of the project; however, this was resolved by the CYP in the course of the field research. Children and young people applied creative ways to incorporate yarning techniques in the peer-to-peer interviews. For example, many CYP set up the iPads to record sound, but not record people's faces, others positioned the iPads on tables, or rocks, and made a one-on-one video involving only them. These creative expressions demonstrate the child-friendly research environment and flexibility offered by a CRBA informed by Indigenous research methodologies. This is consistent with arguments made above about CYP playing an active role in the research process—these arguments are developed further in chapter 5.

2.2.6 Reciprocity

Reciprocity—the principle of mutual benefit arising from research is not well understood or practiced in the Australian research sector,[218] yet is an essential element of any research involving Aboriginal people.[219] The *AIATSIS Guidelines* were developed in order to address pervasive Western research culture, which has disempowered Indigenous Australians through a 'lack of community control,

[216] Bat et al, above n 205; Welty and Lundy, above n 45.
[217] Bessarab and Ng'andu, above n 66.
[218] Ray, above n 63.
[219] *AIATSIS Guidelines*, above n 7, principle 1. See also ibid.

benefits and influence on the interpretation of data.'[220] An important principle contained in the *AIATSIS Guidelines* is that research with Indigenous people must benefit Indigenous people.[221] Reciprocity is defined in the *AIATSIS Guidelines* as mutually beneficial research that benefits and aligns with the goals and values of the population involved,[222] and means 'to give and take for the mutual benefit of those engaging in a shared activity.'[223] Thus, research should be designed to incorporate ways to appropriately acknowledge and thank Aboriginal CYP for their involvement.[224]

Principles 6, 7, 8, 10 and 11 of the *AIATSIS Guidelines* articulate the requirement for all research involving Indigenous people to be done in a collaborative, consultative manner ensuring mutual benefit for the researcher and Indigenous people involved.[225] Embedding reciprocity within research processes involving Indigenous people is a fundamental component of implementing Indigenous research methodology.[226]

2.2.6.1 Reciprocity Arrangements

The reciprocity arrangements for this project were based on the direction provided by the *AIATSIS Guidelines* that all research involving Indigenous people must be done in a collaborative, consultative manner ensuring mutual benefit for the researcher and Indigenous people involved.[227] Further, reciprocity arrangements were based on asking the question: 'What do the CYP, their parents/carers, and the school gain from participating in this study?' This question was partly answered by advice received during the Scoping Trip, the details of this are provided in chapter 3. In summary, information from the Scoping Trip revealed that in order to show the minimum form of reciprocity and courtesy, all research meetings with Aboriginal CYP should involve food, and be made fun through the use of technology and music to engage CYP.[228] Food, fun, music and technology were

[220] Kingsley, Phillips and Townsend, above n 60, 4.
[221] *AIATSIS Guidelines*, above n 7, principle 11, 13-14.
[222] *AIATSIS Guidelines*, above n 7, 13-14.
[223] Simone Ulalka Tur, Faye Rosas Blanch and Christopher Wilson, 'Developing a Collaborative Approach to Standpoint in Indigenous Australian Research' (2010) 39 *Australian Journal of Indigenous Education* 58, 39.
[224] *AIATSIS Guidelines*, above n 7.
[225] Ibid.
[226] Ibid principle 1; Rigney, above n 58; Smith, above n 7.
[227] *AIATSIS Guidelines*, above n 7.
[228] Scoping Trip Interview (No 16) with a Policy Officer (Northern Territory, 25 October 2012); Scoping Trip Interview (No 17) with a Youth Worker (Northern Territory, 25 October 2012).

incorporated into all research interactions with CYP, as well as with the staff and parents who attended research related meetings at the school. Importantly though, and consistent with a CRBA informed by Indigenous research methodologies, during the research CYP were asked about, and provided their views about, how they would like to be thanked for participating in the research. Most of these suggestions focussed on CYP's desire to make the 'movie' and have a party with food at the end of the research. This was carried out in the final week of the field work during the feedback visit in November 2014.

Ensuring demonstrable benefits were gained by Aboriginal CYP, their parents/carers, and the school staff was a key objective throughout this endeavour. Reciprocity arrangements were both ongoing throughout the research, as well as formalised at the beginning and end of the research. The presence of a researcher, particularly a non-Indigenous researcher, in an Aboriginal community can be inconvenient, obtrusive and interfere with normal life for the people involved in the research.[229] Minimising the potential for the research to impact negatively in Indigenous communities is fundamental to undertaking research with Indigenous communities in an ethical manner. Fasoli and James say researchers should 'try to be of use' such that the time spent by Indigenous people and service providers contributing to the research can in some way be repaid by the researcher in kind by, for example, assisting with or attending an event.[230] Throughout the field research period, approximately five weeks, I assisted with normal classroom activities, being guided by the teachers and assistant teachers. This involved assisting the CYP with their classroom work and assisting CYP with particular areas of learning as instructed by the teacher.

2.2.6.2 Ongoing Reciprocity

Ongoing reciprocity was implemented in relation to CYP who participated in the research by using child-centred and fun research methods that the CYP were interested in. These included taking photographs and making videos using one of the 15 iPads available to CYP; yarning whilst

[229] Fasoli and James, above n 157, 39.
[230] Ibid.

constructing with play dough or Magnetix and eating food chosen by the CYP during research sessions.

Additionally, I attempted to provide ongoing thanks, by trying to 'be of use' in the research setting, as Fasoli and James encourage. I did this by asking the class teachers how I could best contribute during my time at the school. The teachers requested I assist in the daily operations of the classroom, in much the same way as the assistant teachers. This meant I was involved in all of the activities the class undertook, including with general school work, offering support to CYP where requested, assisting in the kitchen with the weekly cooking program, participating in sporting activities, attending school assemblies, and attending the daily morning staff meetings. I was involved in these activities throughout the five week period of time the field research was conducted.

2.2.6.3 Final Reciprocity

At the end of the field research four forms of reciprocity were undertaken. Firstly, in the final research sessions CYP made posters using photographs of their participation in the research. Secondly, a 'movie screening' of the combined iPad movies made by the CYP was shown. Thirdly, 'children's rights sessions' were conducted with the CYP. Finally, several functions involving food were held to thank the CYP, their parents and carers and the school staff for their involvement in the research.

In May 2014, in the final research sessions with both cohorts separately involved making posters using approximately 300 photographs the CYP had taken during the course of the research.[231] This activity was designed as a way to thank and acknowledge CYP's participation in the research, as well as reinforce the issues raised in the research about children's rights.

Reciprocity was also provided in November 2014 when the researcher returned to show the primary and secondary class groups the 'movie' that was a combination of all CYP's iPad videos and represented their involvement in the research. The movie also provided a child-friendly summary of the research findings and was designed as a creative way to report the results of the study back to the

[231] Primary Class Group Discussion, Field Research Session 4 (of 4) (Northern Territory, 22 May 2014); Secondary Class Group Discussion, Field Research Session 4 (of 4) (Northern Territory, 23 May 2014).

CYP, their families and to the school. The movie was shown firstly to the CYP and relevant teachers, then separately to parents and carers. After both screenings the CYP, as well as their parents and carers, discussed the research and the issues raised by the CYP in the movie. After the movie was shown a celebratory combined party for the primary and secondary classes was held to thank the CYP for participating in the research.[232] In addition to the final party for the CYP and their teachers two other 'thank you lunches' were held to acknowledge firstly the parents and carers for supporting their children to be involved in the research, and secondly the school staff for assisting with the research.[233] The Aboriginal Liaison Officer suggested serving 'bush tucker' at the parent/carer and staff functions and with funding from Macquarie University this menu was served as an attempt to thank parents, carers, and school staff in a culturally appropriate way.

Whilst the idea to make the 'movie' was mine, during the research the CYP expressed they liked this idea and were enthusiastic about making this movie, the screening of which concluded the research. The CYP demonstrated they were excited about this prospect by being enthusiastic about experimenting with the iPads throughout each research session and talking excitedly about the 'movie screening.' Children and young people provided input about the food they would like during each research session. For example, several children said they would like 'strawberries' or 'grapes'[234] during the research sessions, and several young people suggested the idea of having a 'party', including a lot of food, at the end of the research when the movie was to be shown.[235]

The School Principal and the two class teachers suggested the researcher deliver 'child rights sessions' as a way of thanking the school and the CYP for being involved in the research. This was undertaken with the full primary and secondary classes in the final research interaction in November 2014, as a way to support the CYP to understand children's rights.[236]

[232] The food served at this party, and all food served to CYP during the field research, was low in sugar and complied with the specific directions for the provision of food stipulated by the CAHREC when approving this research.
[233] See appendix 16 and 14.
[234] Primary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014).
[235] Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014).
[236] See appendix 15.

2.2.6.4 Future Reciprocity

The reciprocity arrangements were designed to have a lasting impact for research participants, the school and the wider community;[237] as well as having broader positive implications in relation to supporting a CRBA to legislative and policy decision-making processes applicable to Indigenous communities.[238]

This research sought to build the capacity of Indigenous CYP to understand and engage with legislative and policy development processes.[239] This knowledge supported the CYP involved in the research to be better equipped to make a contribution to social policy debates, particularly in relation to matters affecting them.[240] The potential future benefits for the CYP as a result of being involved in the research extend beyond the field interactions mentioned above and included heightened awareness of children's rights as rights that apply to themselves and all children globally.[241] The materials used to deliver the children's rights sessions were given to the school to use, adapt and add to as they saw fit.[242] For the CYP involved in the research an awareness of children's rights supports their agency and involvement in decision-making processes in their public and private lives, as well as provides a body of information upon which these CYP are better placed to claim their rights in circumstances where their human rights are breached.[243]

In addition to building CYP's awareness of children's rights, the future publication of this research seeks to support the advancement of Aboriginal children's human rights in legislative and policy making processes. The researcher will seek to publish the findings of this research in scholarly journals the result of which has the potential to lead to future change in the way laws that affect Aboriginal CYP are made. To date there are no publications representing Aboriginal CYP's views about the effect of the NTER and the Stronger Futures measures on their lives. This research presents

[237] Rigney, above n 5, 32; Coram, above n 66.
[238] Libesman, above n 22; Laura Lundy, Ursula Kilkelly and Bronagh Byrne, 'Incorporation of the United Nations Convention on the Rights of the Child in Law: A Comparative Review' (2013) 21 *International Journal of Children's Rights* 442.
[239] Wilson and Wilks, above n 56.
[240] Lundy and McEvoy, above n 15.
[241] Lundy, McEvoy and Byrne, above n 121.
[242] See appendices 10(i), 10(ii) and 15.
[243] Lundy and McEvoy, above n 15.

a small group of CYP's views on some of the measures arising from the NTER and Stronger Futures legislation, as well as presents a range of key ways legislators and policy makers can involve Aboriginal CYP in the development of laws and policies affecting them.

The researcher hopes that the future publication of this research proves useful to legislators and policy makers by providing a clear basis for why and how Aboriginal children's human rights can be appropriately considered and advanced by Australian governments in the future development of policy and legislation. In this way the participants in this research, and the wider Indigenous population of Australia, should benefit from this research project.

The reciprocity arrangements for this research were designed to comply with the requirements set out in the *AIATSIS Guidelines* and the *National Statement*.[244] The reciprocity measures implemented were influenced by several factors: the views of the CYP who participated in the research, the advice received during the Scoping Trip, and through liaison with the School Principal, the School Council, the class teachers and assistant teachers. The research sought to ensure the benefits arising from the research were mutual to both the researcher and the CYP and endeavoured to ensure demonstrable benefits were gained by the CYP involved in the research. These benefits were negotiated with the CYP, the school and the School Council throughout the course of the research.

2.2.7 Methods Conclusion

A wide range of methods were used during the field research that sought to maximise CYP's meaningful participation. These methods align with the theoretical basis of this research—a CRBA informed by Indigenous research methodology. The methods employed sought to ensure the research was child-centred and involved play-based activities. In addition the preparatory activities undertaken were designed to build rapport between the researcher and the CYP by spending time 'getting to know' them, and equipping CYP to participate in the research through the pre-research information activities. Furthermore, the model adopted for seeking consent from CYP, as well as from the CYP's parents and carers, supported the implementation of the research methods and was developed in

[244] *AIATSIS Guidelines*, above n 7; *National Statement,* above n 1.

accordance with ethical guidelines that was further underpinned and informed by advice received during the Scoping Trip and from other academic researchers.

For the reasons explained above I believe that the research methods used, yarning and peer-to-peer interviewing, were the most ethically and culturally appropriate methods to use in this research context given the cross-cultural research setting. I also believe that the implementation of these methods was successful as these methods were child-friendly, relevant and enabled CYP to influence and to some degree direct the research process consistent with a CRBA to research.[245] In addition, the arrangements made in collaboration with CYP to thank them, their families and the school community for their contributions to the research further contributes to the implementation of a CRBA to research informed by Indigenous research methodologies.[246]

2.3 Field Work: Data Management and Analysis

Chapters 3, 6 and 7 detail the two distinct, yet related field work endeavours undertaken during the course of the PhD candidature—the 2012 Scoping Trip and the 2014 field research conducted with Aboriginal CYP.

Scoping Trip—2012

The Scoping Trip engaged 19 adult professionals whose work focussed on Aboriginal CYP in a series of 16 semi-structured interviews of approximately one and a half hours each (14 of these were held face-to-face in the Northern Territory, and two were held via telephone).[247] Most of these professionals were identified from the participants in the meetings conducted by Rex Wild and Patricia Anderson when preparing the *Little Children are Sacred Report.*[248] In addition several potential Scoping Trip participants were identified by the researcher and project supervisors given past professional experience or knowledge about these individuals.

[245] Lundy and McEvoy, above n 15; Welty and Lundy, above n 45.
[246] *AIATSIS Guidelines*, above n 7.
[247] See appendix 18. See also chapter 3 (particularly section 3.1).
[248] Rex Wild QC and Pat Anderson, 'Ampe Akelyernemane Meke Mekarle "Little Children are Sacred"', Report of the Northern Territory Board of Inquiry Into the Protection of Aboriginal Children from Sexual Abuse' (Department of the Chief Minister, 2007), appendix 4, 308.

Field Research—2014

The 2014 field research involved 22 CYP: nine females and 13 males aged between 10 and 17 years old. Section 1.2 outlines how CYP were identified to participate in the field research and section 2.2 details the manner in which data was collected via discussion groups using 'yarning' as well as via peer-to-peer interviewing using iPads including the total time CYP spent in the research setting. This section overviews the systems and procedures used to systematically manage and analyse this data.

Transcribing and NVivo

Early in the PhD candidature, prior to undertaking any field work, it became clear that the proposed field work endeavours would likely yield a large body of data and managing and analysing this body of data could be difficult to do without a computer-assisted aid. The researcher attended various training courses including a 3-day intensive course on NVivo,[249] discussed the matter in supervision, interrogated relevant literature[250] and consulted with a range of experienced qualitative researchers seeking recommendations about how best to manage and analyse field data. Based on these inquiries the researcher decided NVivo was the most appropriate tool to use given the programs particular focus on employing a coding based analysis technique that aids the researcher to generate a network to analyse interrelated data.[251] Another computer-assisted data analysis software program called SPSS, made by IBM, was considered. However, it was decided that SPSS was better suited to projects where quantitative research methods were employed.

In accordance with the ethical agreements entered into with the MQHREC to undertake the Scoping Trip, then subsequently with both the MQHREC and the CAHREC to undertake the field research with CYP, permission was sought and granted by all field work participants to digitally record the Scoping Trip as well as the field work conversations. The researcher used these recordings to

[249] A computer software package by QSR International.
[250] David Silverman, *Doing Qualitative Research: A Practical Handbook* (SAGE Publications, 4th ed, 2013); Patricia Bazeley and Kristi Jackson, *Qualitative Data Analysis with NVivo* (Sage Publications, 2013) particularly chapters 3, 4 and 6; Pat Bazeley, 'Analysing Qualitative Data: More than "Identifying Themes"' (2009) 2 (2) *Malaysian Journal of Qualitative Research* 6; Norman Denzin and Yvonna Lincoln, *The SAGE Handbook of Qualitative Research* (Sage Publications, 2005).
[251] Helen Marshall, 'What Do We Do When We Code Data?' (2002) 2(1) *Qualitative Research Journal* 56, 56; Bazeley, above n 250.

transcribe the conversations verbatim; making no alterations to the language participant's used. This approach is consistent with methodological foundation of the project (a CRBA informed by Indigenous research methodologies) that emphasises the importance of accurately recording and representing participant's contributions to the research.[252] Thus, all of the field research group discussions with CYP, as well as the Scoping Trip interviews with adults were digitally recorded using a Dictaphone and then transcribed. In addition, all of the iPad interviews with CYP were transcribed using the audio-visual footage. These transcriptions were uploaded into the NVivo software program which was then used to store, manage and analyse the data.

Computer-aided data management and analysis is becoming more accepted within the academy[253] despite 'vigorous debate' about whether this 'will improve or harm qualitative methods in general.'[254] The researcher found NVivo to be an effective data management tool that was particularly useful for managing data, facilitating the retrieval of data (through mechanisms such as the NVivo 'query' function) and assisted in the process of generating common themes and trends within and across the data sets through the generation of a series of electronic codes based on certain categories (called 'nodes' in NVivo). The combination of these 'nodes' create a 'node hierarchy' where data was then cross-referenced and analysed in relation to other nodes. The researcher retained full autonomy about how and which 'nodes' to create, NVivo simply stored these nodes electronically and provided a range of functions that enabled quick and easy access to research data across the whole data set. In practice this involved the researcher coding all of the data gathered and allocating this content to a particular category—generating a node. Coding the whole corpus of data ensured all research participants contributions were included and carefully considered in the analysis process such that no data was excluded from consideration in the data analysis process.

[252] Lundy, McEvoy and Byrne, above n 121; Smith, above n 7, chapter 11; Rigney, above n 58.
[253] Trena Paulus and Kristi Jackson, 'The Future of Qualitative Data Analysis Software: Moving Beyond "Outsider" Critiques toward a Thoughtful Research Agenda' (paper presented at the The Qualitative Report 7th Annual Conference: The Futures of Qualitative Inquiries, Florida, USA, 14-16 January 2016); Uwe Flick, *An Introduction to Qualitative Research* (Sage, 4th ed, 2009) 358-372; Bazeley and Jackson, above n 250; and Clive Seale, 'Using Computers to Analyse Qualitative Data' in Silverman, above n 250.
[254] Marshall, above n 251, 59. See also Seale, above n 253, 164 for an elaboration of the limitations of computer-assisted data software programs.

Marshall says 'any qualitative project requires coding as a precursor to and as part of the analysis.'[255] In order to reach conclusions about the data gathered each data set needed to be considered as a whole. This process involved deciding on how to classify data and generate NVivo nodes and Bazeley's three-step formula for qualitative analysis was adopted—'describe, compare, relate'.[256] This method emphasises the importance of not simply describing the data including important demographic information then categorising this data into one or several themes, but then taking the additional analytical step of comparing this data against other data (in NVivo this is done by associating *child node(s)* to a *parent node(s)*). The first step the researcher took during the analysis process was to initially associate all research data with a category or several categories. This created a large body of categories (child nodes). These nodes were then examined against one another and overarching concepts relevant to these child nodes were established (parent nodes).

Some examples of parent and child nodes are:

- 'law' (parent node)—(child nodes) 'who made the law' / 'white-fella and black-fella law' / 'ways the law affects CYP'
- 'participation' (parent node)—(child nodes) 'CYP's views about why it is important to say what they think' / 'CYP experiences of expressing their views at home and in school' / 'CYP views about participating in making laws' / 'if the government asked what rules or laws CYP would make or change' / 'people identified by CYP who listen to them'
- 'Intervention and Stronger Future's legislation' (parent node)—(child nodes) 'Basics Card descriptions' / 'Basics Card and racism' / 'CYP's views about the Basics Card' / 'Blue and white signs descriptions' / 'CYP's views about alcohol restrictions'.

These categories (child nodes) and concepts (parent nodes) were then reviewed and where necessary revised and re-coded. The final step in the process was to 'relate' these results to existing literature on the particular topic, including 'using divergent views to challenge generalisations'.[257]

[255] Marshall, above n 251, 56.
[256] Bazeley, above n 250, 10.
[257] Ibid 12.

2.4 Limitations and Mitigation

This research is a first step in understanding Aboriginal CYP's perspectives about the NTER and the Stronger Futures legislation, and the impact of these policies on Aboriginal CYP's lives. The project also explored ways Aboriginal CYP could participate in the development of future legislation and policy initiatives that are likely to impact on their lives. This section provides an analysis of the major limitations of the research and how these were mitigated; as well as how these barriers impacted on the research.

In undertaking this project a number of limitations on both the research and the researcher were understood and anticipated. As stated earlier in this chapter a major challenge for this research was to avoid perpetuating the negative impact colonialist research on Indigenous people, and develop a CRBA informed by Indigenous research methodologies.[258] The adoption of a range of theoretical approaches, including a convergence methodological approach, provided the means to do this.

The primary limitations of this research were threefold and concerned: (a) doing 'outsider' research; (b) being a non-Indigenous researcher and (c) undertaking the research at a school. These limitations, and the means used to mitigate the impact of these limitations on the research are explored below.

2.4.1 Doing 'Outsider' Research

One of the limitations and risks associated with this research was the fact that I am an outsider to the community in which the field research took place, as well as my status as a non-Indigenous researcher (this is addressed in the following section). There are problems associated with both 'insider' and 'outsider' research and these have been discussed by Smith.[259] Limitations associated with insider research relate to the 'intricacies of the researcher/researched relation[ship]'; how both resume prior patterns of relationship after the research is conducted; and whether prior experience of one another

[258] Norman Denzin, Yvonna Lincoln and Linda Tuhiwai Smith (eds), *Handbook of Critical and Indigenous Methodologies* (Sage, 2008); Mazel above n 63.
[259] Smith, above n 7, chapter 7.

taints or enhances the research.[260] Smith summarises the problems associated with outsider research as follows:

> The outside 'expert' role has been and continues to be problematic for indigenous communities. As non-indigenous experts have claimed considerable acceptability amongst their own colleagues and peers, government officials and society on the basis of the research, indigenous voices have been silenced or 'Othered' in the process.[261]

Bridges however, claims outsider research that is premised upon collaborative, 'genuine and respectful enquiry,' can contribute to the ethical enhancement of knowledge in a way that is beneficial both to the researcher and the research community. He says:

> The claim 'nothing about us without us' ought to be an ethical as well as an epistemological truism in educational research as a statement about the kind of relationship which should obtain between researcher and participants. [262]

My status as an outsider researcher is a limiting factor of this research. However, through the implementation of a CRBA informed by Indigenous research methodologies, the impact of these limitations on the research process, and the participants, were minimised. The aim of the project was to provide opportunities for Aboriginal CYP to express their views, as required by article 12 of the CRC, and assist with '"giving voice to" neglected or disenfranchised sections of the community.'[263] Reinharz concludes that outsider research does not disempower research participants if it is done in an empowering way. He says:

> To listen to people is to empower them. But if you want to hear it, you have to go hear it, in their space, or in a safe place …
>
> Second, you have to be a person someone else can talk to, and you have to be able to create a context where the person can speak and you can listen. That means we have to study who we are in relation to those we study …

[260] Ibid 140.
[261] Ibid.
[262] Bridges, above n 51, 384
[263] Ibid 384.

> Third, you will have to be willing to hear what someone is saying, even when it violates your expectations or threatens your interests. In other words, if you want someone to tell it like it is, you have to hear it like it is.[264]

The CRBA and Indigenous research methodology and methods adopted in this project align with Reinharz criteria for conducting outsider research. The research approach sought to empower Aboriginal CYP to express their views in accordance with article 12 of the CRC, and I tried to create a child-centred research environment where CYP could freely express their views. Before conducting the field research I sought to learn about the community and I gathered insights and understandings about the *rules* for undertaking outsider research as a result of the series of interviews that took place during the Scoping Trip.[265] The information obtained during the Scoping Trip played a significant role in mitigating some of the potential risks of doing outsider research. The people who spoke with me provided valuable advice about how to design the research methodology as well as suggested methods to engage Aboriginal CYP in the research in culturally appropriate and child-friendly ways.

This information concurs with Fasoli and James' conclusion that conducting research with Indigenous communities is 'all about rules.'[266] This includes rules about seeking research permission from relevant bodies, and the 'unspoken and unwritten' rules that arise in the course of cross-cultural research.[267] Being an outsider to the research community involved careful navigation of how best to undertake research in an ethical, culturally relevant, appropriate and safe manner—and a manner that is respectful of the rules operating in the research community.

During the process of seeking ethical approval to undertake the research my liaison with the School Council also provided valuable information about the rules associated with undertaking the research. The School Council was partly comprised of Aboriginal Elders in local communities from which Aboriginal CYP attending the school were a part. It was during these negotiations, as well as the Scoping Trip interview conducted with the School Principal, as well as other Scoping Trip interviews

[264] Bridges, above n 51, 380-381 citing S Reinharz, 'The Concept of Voice' (paper presented at the Human Diversity: Perspectives on People Context Conference, University of Meryland, 1988).
[265] See chapter 3.
[266] Fasoli and James, above n 157, 34.
[267] Ibid. See also Nakata, above n 106, 195.

that I learned about the importance of using research methods that do not single out CYP, or 'shame' them in any way.[268] This is elaborated in full in the following chapter, however, in addition to learning about the importance of not 'shaming' Aboriginal CYP during research processes the time I spent 'getting to know' CYP before the research was conducted also played a key role in learning about the community and its rules, as well as learn appropriate ways to speak with, and relate to Aboriginal CYP. This time also provided the opportunity for potential research participants to get to know me.

Being an outsider was a limitation of this research, however, I implemented a range of measures to minimise the potential negative impact of this limitation on the research. These included seeking advice from 19 professionals during the Scoping Trip; drawing on theoretical insights about doing outsider research; ongoing and close liaison throughout the PhD candidature with the School Principal, the Aboriginal Liaison Officer and the School Council (some members of the School Council were Aboriginal Elders in the community)—this enabled me to learn about the community, its rules, and appropriate ways to engage Aboriginal CYP in research; and extensive, long term liaison with the two human research ethics committees governing this project (MQHREC and CAHREC). These measures sought to minimise the risks associated with undertaking outsider research with Aboriginal CYP and enabled the research to proceed in the best manner possible.

2.4.2 Being a Non-Indigenous Researcher

My non-Indigenous status, and predominant experience with Western values and traditions, is significant in relation to this endeavour. My history, experiences, culture, race and values influence every element of this research and cannot be excluded as salient factors in the research decisions made throughout. Being non-Indigenous is another form of being an 'outsider' to the cultural context in which the research takes place, thus this section of discussion extends on the issues raised in the previous section.

[268] Scoping Trip Interview (No 12) with a Principal from an Independent School (Northern Territory, 25 October 2012); Scoping Trip Interview (No 13) with three Aboriginal Women Employees from an Independent School (Northern Territory, 25 October 2012); Scoping Trip Interview (No 17) with a non-Indigenous Youth Worker (Northern Territory, 25 October 2012).

Rigney articulates the nature and consequences of the 'scientific scrutiny of Indigenous peoples' through research endeavours which have 'poked, prodded, measured, tested and compared data toward understanding Indigenous cultures and human nature.'[269] The culmination of this research enterprise, Rigney claims, is 'the extraction, storage and control over Indigenous knowledges' unsurprisingly resulting in apprehension and caution toward research by Indigenous communities globally.[270] Rigney cites the works of Smith[271] and Brady,[272] as well as others,[273] to support these assertions. In 2006, Rigney reasserted the problem of non-Indigenous people undertaking research with and about Aboriginal people through a 'white' lens. He highlighted the impact exploitative research practices have had on the subjectification of Aboriginal people when he said:

> The story about Aborigines told by whites using only white people's imaginations. Aboriginal voices do not contribute to this story … the Aborigines always become what the white man imagines them to be.[274]

Fasoli and James state:

> One unspoken rule is that research involving Indigenous people should be done only by Indigenous researchers. If non-Indigenous researchers want to do cross-cultural research they must work in collaboration with Indigenous researchers.[275]

Nakata's discussion about the 'Indigenous and non-Indigenous divide' and 'Indigenous and non-Indigenous dualities', however, suggests collaboration, mutual understanding and knowledge sharing among non-Indigenous and Indigenous people is key to achieving just outcomes for Aboriginal people.[276] Fasoli and James, as well as Nakata, indicate that research conducted by a non-Indigenous

[269] Rigney, above n 58, 109.
[270] Ibid.
[271] Smith, above n 7.
[272] Wendy Brady, 'Beam Me Up Scotty! Communicating Across World Views on Knowledge Principles and Procedures for the Conduct of Aboriginal and Torres Strait Islander Research' (paper presented at the National Aboriginal and Torres Strait Islander Higher Education Conference Proceedings, University of Southern Queensland, Toowoomba, 1992).
[273] James Joseph Scheurich and Michelle D Young, 'Coloring Epistemologies: Are our Research Epistemologies Racially Biased?' (1997) 26(4) *Educational Researcher* 4.
[274] Rigney, above n 5, 35 citing Chris Walton and Michael Christie, 'Aboriginal Literature and Critical Pedagogies' (1994) 10 *Ngoonjook: A Journal of Australian Indigenous Issues* 65, 82.
[275] Fasoli and James, above n 157, 34.
[276] Martin Nakata, keynote address at the National Indigenous Studies (AIATSIS) Conference, 'Breaking Barriers in Indigenous Research and Thinking,' March 2014, Canberra.

researcher, if done in collaboration with Indigenous peoples in accordance with ethical standards is a means to break down dichotomies between Indigenous and non-Indigenous peoples.

Rigney's scholarship during the period 1997 to 2006 reveals positive trends regarding Indigenous related research including conferences and forums organised by AIATSIS, highlighting the significance of the development of the *AIATSIS Guidelines*.[277] He reports 'the rise of Indigenous research by Indigenous Australian scholars has brought new ways of knowing the past and the call for protection of such knowledge for the benefit of Indigenous people themselves.'[278]

2.4.2.1 Mitigating Risk Associated with Being a Non-Indigenous Researcher

Various strategies were adopted to mitigate the risk associated with my status as a non-Indigenous researcher. This included seeking advice about the best way to conduct cross-cultural research during the Scoping Trip;[279] allowing sufficient time to get to know the CYP before the formal research sessions commenced; learning the rules of the community prior to conducting the field research; and seeking advice from Indigenous academics.

Research decisions were also influenced by the three supervisors overseeing and guiding this project. An Indigenous member of the supervision team, Professor Susan Page, played a key role in monitoring the implementation of the *AIATSIS Guidelines* and the theoretical foundation of the project. In order to mitigate the effect on the research process and findings, as well as on Indigenous participants, field support from local Indigenous researchers was sought and utilised.

Whilst the issues of being non-Indigenous and an outsider to the community, are interconnected, there are also some fundamental differences between these two issues. An Indigenous person, who is not part of the research community, would still be an outsider, yet Indigenous status potentially provides an opportunity to connect with the research participants in a deeper way, particularly if the same Aboriginal language is spoken by the researcher and the participants.

[277] Rigney, above n 5, 33-35.
[278] Ibid 34.
[279] See chapter 3.

Most of the teacher's assistants at the school were Indigenous. The relationship I observed teacher's assistants had with the CYP appeared different to that of the relationship I observed between the teachers and the CYP. This could be due to many reasons however; the fact that the Aboriginal teacher's assistants regularly communicated with CYP in an Aboriginal language is likely to alter the educational experience of the CYP. Scholarship on the significance of Aboriginal language use in educational setting supports this conclusion.[280] The use of Aboriginal language with children permitted a level of engagement that transcended the limitations the English language imposed in the education context. For example, when children were speaking in the research groups they would regularly use a word in Arrernte[281] which is a generic and respectful word to refer to an Aboriginal person who has passed away. The CYP explained cultural rules associated with not saying a person's name after they have passed away. I asked a child what that word meant and the teacher's assistant and a child together described that the word is used to refer to 'someone who has passed because we are not allowed to say their name.'[282] Often CYP spoke in language, sometimes at length. This is but one example of how my non-Indigenous status, and the fact that I do not speak any Aboriginal languages, limited my ability to deeply engage with the children in this research despite attempts to mitigate this limitation.

A comprehensive range of measures to mitigate the effect of these limitations on the research process, findings and participants were undertaken. These included conducting the Scoping Trip with Indigenous and non-Indigenous people in the NT; conducting pre-research activities at the school including getting to know the CYP, their community, their parents and carers prior to conducting the research; establishing a strong working relationship with the Aboriginal Liaisons Officers at the school to assist with seeking consent and assist with the research in general; utilising culturally appropriate research methods, and implementing the *AIATSIS Guidelines* and adhering to the *National Statement*

[280] Jeannie Herbert et al, 'Indigenous Secondary Education in the Northern Territory: Building for the Future' (2014) 43(02) *The Australian Journal of Indigenous Education* 85; Lester-Irabinna Rigney, 'Indigenous Education: The Challenge of Change' (2010) 16(4) *Every Child* 1; Brady, above n 272.
[281] The CYP attending the school speak one or more of four Aboriginal languages: Central and Eastern Arrernte, Western Arrernte, Warlpiri or Luritja.
[282] Ethan (11 year old male) and Toby (Aboriginal teacher's assistant), Primary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 15 May 2014).

throughout the research.[283] Despite being a non-Indigenous researcher these measures reduced the influence of this limitation on the research process.

2.4.3 Research at a School

Undertaking the research at a school posed potential risks, namely that the CYP may have perceived their involvement in the research as part of their school work. Furthermore, CYP who are invited to participate in research based at a school may do so due to the perception that their participation is mandatory, and if they do so the power dynamic between the researcher and the CYP may negatively impact on CYP's experience of, and ability to participate in, the research.[284] This has implications for obtaining free and informed consent from CYP. This problem is noted by Lundy and McEvoy who suggest research being conducted in schools should be done so in as 'un-school-like' way as possible.[285] They suggest deinstitutionalising the research setting from the school environment by carrying out the research in the least formal room or space available, keeping discussions informal, and making sure there are many opportunities for children to influence how the meetings are conducted.[286]

This advice was implemented during the field research and measures were taken to foster an environment where CYP could freely express their views using mediums associated with play.[287] This was done by (a) making attempts to de-institutionalise the school research setting by using the playground to conduct the research; and (b) using child-friendly participatory research methods to mitigate power differentials between the researcher and the CYP throughout the field research. Children and young people held a high degree of autonomy over how they could express themselves using these tools. The use of play oriented research materials such as Lego, magnets, play dough and iPad's are generally not used in the classroom and were used in the field research as a means to

[283] *AIATSIS Guidelines*, above n 7; The *National Statement*, above n 1.
[284] Mary Ann Powell and Anne B Smith, 'Children's Participation Rights in Research' (2009) 16(1) *Childhood* 124; A Graham, M Powell, N Taylor, D Anderson and R Fitzgerald, 'Ethical Research Involving Children' (UNICEF Office of Research—Innocenti, 2013); Harriot Beazley et al, 'The Right to be Properly Researched: Research with Children in a Messy, Real World' (2009) 7(4) *Children's Geographies* 365.
[285] Lundy and McEvoy, above n 152, 48.
[286] Ibid.
[287] See section 2.2.1; Lundy and McEvoy, above n 3, 84.

differentiate research meetings from the classroom setting. The use of these mediums in research involving children has been shown to mitigate power differentials between adults and CYP in the research process,[288] and these methods were incorporated into the research design in order to assist CYP to freely participate in the research and to mitigate the effect of adult/child power differentials in the research setting.[289] In response to advice received on the Scoping Trip healthy food was also provided during all of the research sessions, which also contributed to distinguishing the research environment as a non-school work activity.

Most school environments, including the school environment where this research took place, are highly structured settings which require a high degree of compliance with the school rules by CYP. This leads to a well-known phenomenon of school institutionalisation.[290] This is a complex phenomenon, with some elements linked to the power differential between teachers and students where children, for example, respond almost robotically to the sound of a bell, and behave in particular ways in a school setting. According to Goouch, 'institutionalised behaviour soon becomes mainstream and those deviating often become a problem.'[291] Goouch describes a pattern relevant to the research cohort, particularly the secondary students, where in the early years of education the relationship between students and teachers is characterised as more of a learning partnership where power is shared.[292] This changes as children progress through schooling to a point where 'this relationship changes rather dramatically as power, decision-making, agendas for learning are all often the domain of the teacher alone.'[293] Thus, conducting research in a school setting is not ideal for a wide range of reasons including that the power held by adults in comparison with CYP in school settings is often markedly unequal. Qualitative research which seeks to engage CYP to express their

[288] Melodie Bat et al, above n 205.
[289] See section 8.4 for an example of how the researcher used participant photography as a means to minimise adult/child power differential in the research setting. See also Lundy and McEvoy, above n 3, 85 where Lundy and McEvoy articulate the strengths of a CRBA to address the power differential between adults and children in a research setting. This is elaborated further above in section 2.1.1.2.
[290] Kathy Goouch, 'Supporting Children's Development and Learning' in Tina Bruce (ed), *Supporting Children's Development and Learning* (Sage Publications London, 2010) 230.
[291] Ibid.
[292] Ibid.
[293] Ibid.

views requires the use of methods that enable CYP to feel comfortable to express themselves. The methods adopted to carry out this research sought to do this.

Further, conducting qualitative research at a school conflates the education context with another purpose—that of conducting research on an unrelated topic to classroom learning. Whilst research is often undertaken in schools, any one school is rarely exposed to research processes such that CYP are highly familiar with this as a means of seeking their opinions or experiences about a given issue. Whilst the research was conducted in a school, the recommendations set out in the literature to mitigate the challenges associated with this were observed, and the research was conducted, as far as was possible, in an 'un-school-like way.'[294] This involved using research methods aimed at reducing the power differential between CYP and myself and sought to create a research environment where communication was carried out in a non-threatening, informal, fun and culturally appropriate fashion.

Whilst the school setting operated as a limitation on this research the supervision team and I decided, after considering the advice obtained from the Scoping Trip that the school setting offered the most conducive environment to carry out the research. This was because a school environment provided a safe space to conduct the research; a consistent cohort of potential participants; the school infrastructure was robust and could support the conduct of ethically sound research (for example by providing support to seek free, prior and informed consent from parents and carers); and school staff were willing to support me during the research process—this ensured that the CYP had a trusted adult present during the research interactions.

2.5 Conclusion

The methodological approach and methods adopted to undertake this research were carefully chosen to optimise the opportunity for Aboriginal CYP to meaningfully participate in the project in a child-friendly and culturally sensitive way. A CRBA, in combination with convergence Indigenous research methodologies, was the overarching theoretical framework informing this project. The main tenet of

[294] Lundy and McEvoy, above n 152, 48.

the CRBA is the importance and value of children's participation rights enshrined in the CRC. The approach also emphasised the importance of using Indigenous methodologies when undertaking research with Aboriginal CYP, an approach that values the cultural background and traditions of Aboriginal CYP and in doing so seeks to avoid the pitfalls of traditional Western modes of inquiry.

The research also sought to demonstrate how a non-Indigenous researcher can appropriately engage Aboriginal CYP in cross-cultural research about laws and policies which impact on them. This approach may provide a model for other cross-cultural research with Aboriginal CYP. The methodological approach and chosen research methods sought to provide a platform to foster a safe, cross-cultural, and creative environment for Indigenous CYP to participate in the field research. The research design also sought to effectively and ethically elicit young Aboriginal CYP's views about the research case study—the NTER and the Stronger Futures legislation— as well as CYP's views about their involvement in the development of future legislation and policies likely to impact on their lives.

Chapter 3: Refining the Research Methodology—The 2012 Scoping Trip

3.1 Introduction

This chapter describes the process and outcomes of a preparatory Scoping Trip undertaken in 2012, which influenced and enhanced the methodological design underpinning this project. A five-day Scoping Trip was undertaken in September/October 2012 during which the researcher conducted 16 interviews with 19 experienced professionals in the NT.[1] The Scoping Trip was necessary because the cross-cultural, ethical and methodological considerations of the project required thorough consideration before proceeding to engage Aboriginal CYP in the proposed field research. Furthermore, the thesis poses five sub-questions, one of which requires an examination of the ethical and cross-cultural considerations of engaging Aboriginal CYP in research, and in law and policy making processes, in order to contribute to answering the primary thesis question.[2] Thus, the primary focus of the Scoping Trip and of this chapter is to answer sub-question one: 'What are the ethical and cross-cultural considerations surrounding Aboriginal CYP's participation in research and in the development of laws and policies affecting them?'[3] The answer to this question contributes to answering the overall thesis question: 'Why and how should Aboriginal CYP participate in the development of law and policy affecting them?'

In order to answer these questions this chapter presents the findings arising from 16 interviews with 19 professionals based in the NT, whose work involves direct or indirect involvement with Aboriginal CYP. The purpose of the Scoping Trip was to consult with relevant professionals about the proposed field research with Aboriginal CYP and seek their ideas about how it could be carried out in an ethically robust manner, in keeping with a CRBA to research informed by Indigenous methodologies.

[1] See appendix 18: List of Scoping Trip Interviews. One of the 16 interviews was held with two people plus the researcher, and another one of the interviews was held with three people plus the researcher. All other interviews were one-on-one with the researcher. In order to protect participant's privacy the people who participated in a Scoping Trip interview are referred to by their position, not by their name.
[2] See chapter 1 (section 1.1.1).
[3] Ibid.

Participants in the Scoping Trip gave their views on how best to undertake the proposed research with Aboriginal CYP, as well as their views on the proposed methodological framework.

The professionals who were invited to participate in a Scoping Trip interview were identified from the preliminary literature review undertaken as a part of this study. The list of respondents who took part in the research to produce the *Little Children are Sacred Report* was used as a primary source to identify potential interviewees.[4] A selected group of these people, together with other potential participants identified by members of the supervision panel, were approached to participate in a Scoping Trip interview. These professionals were engaged in working with Aboriginal CYP across a range of sectors including government, non-government, education and youth services. Scoping Trip participants were selected on the basis of their long term, or high-level experience, working with Aboriginal CYP's issues.

Consulting with these people supported this research in a range of ways. It provided a means to establish connections, and build relationships with potential research participants; an opportunity to discuss the project and proposed methodology with experts working with Aboriginal CYP; and an opportunity to ascertain whether the respective agencies would be interested in being further involved in the project.

Ethical approval was obtained from MQHREC to undertake the Scoping Trip in September 2012.[5] Agencies and individuals were invited to participate by the Dean of the Macquarie Law School.[6] The following set of open-ended questions were approved by the MQHREC and were used in the interviews:

- Can you suggest effective ways for me to identify and make contact with Indigenous children and their parents to ask them to participate in my research?

[4] Rex Wild QC and Pat Anderson, 'Ampe Akelyernemane Meke Mekarle "Little Children are Sacred"', Report of the Northern Territory Board of Inquiry Into the Protection of Aboriginal Children from Sexual Abuse' (Department of the Chief Minister, 2007), appendix 4, 308.
[5] See appendix 1(i) ref no: 5201200619. Advice was sought and received from CAHREC that additional ethical approval from CAHREC was not required to undertake the Scoping Trip.
[6] See appendix 2.

- Do you have any suggestions for how I might most effectively engage and communicate with Indigenous children and their parents on an ongoing basis through the course of my research?
- What potential risks do you think are involved in undertaking this research and can you suggest ways I could minimise those risks?
- What barriers or hurdles, for example, in relation to language or culture am I likely to encounter in conducting this research? Can you suggest ways of overcoming these barriers?
- Can you suggest ways I can thank child and adult participants, and their communities, for their contribution to this research?
- Would your agency / school be interested in participating further in this research? [7]

Fourteen of the 16 conversations were held face-to-face, and two were held by telephone. Permission was sought to digitally record the conversations, and these recordings were used to transcribe the conversations. NVivo software was used to code the themes arising from these conversations, such as advice provided about the proposed methodological approach, the research methods, and other key issues participants wanted to discuss.[8] Participants came from diverse backgrounds and diverse professional roles. General information about the group is provided below without providing identifying details, or breaching confidentiality or ethical requirements:

- Cultural identity: five people identified as Aboriginal, two people identified as Maori and 12 people identified as non-Indigenous;
- Professional Roles: four school Principals; three NGO peak body CEO's; one Aboriginal peak body Director; two NGO operations managers; four project officers; two youth workers; two government Commissioner's; and one legal professional;
- Gender disaggregation: thirteen women and six men.

[7] Ibid. The invitation letter (appendix 2) included these questions.
[8] Pat Bazeley, 'Analysing Qualitative Data: More than "Identifying Themes"' (2009) 2(2) *Malaysian Journal of Qualitative Research* 6.

During PhD supervision in 2012[9] it was identified that liaison with relevant professionals in Northern and Central Australia was necessary in order to 'discuss the proposed research and seek input about how best to proceed with the research design and proposed methodology', and 'establish key contacts and build relationships with people in the Northern Territory.'[10] Thus, it was decided that I should undertake the Scoping Trip, as this was the most effective way to resolve these research issues.

The overall project, of which the Scoping Trip was a part, was informed and guided by the principles articulated in both the *National Statement*[11] and the *AIATSIS Guidelines*.[12] The researcher and the supervision team believed the proposed research was 'justifiable by [its] potential benefit.'[13] This was confirmed by the MQHREC who approved the Scoping Trip,[14] and later approved the field research with Aboriginal CYP.[15] However, we sought to test this belief by consulting with relevant professionals in the field. The *National Statement* anticipates the need, in some circumstances, to undertake pre-research consultations in order to assess the potential benefit and value of the proposed research;[16] and the *AIATSIS Guidelines* encourages this practice.[17]

As stated in chapter 1, in addition to the requirements of the *National Statement* this project is underpinned by the principles articulated in the *AIATSIS Guidelines*.[18] Four of these principles underscore the centrality of ensuring appropriate consultation is undertaken prior to, and throughout, the research process.[19] The opening statement in the *AIATSIS Guidelines* states: 'At every stage, research with and about Indigenous peoples must be founded on a process of meaningful engagement

[9] Team supervision refers to meetings between the researcher and the three supervisors for this project: Carolyn Adams, Professor Susan Page and Professor John Tobin.
[10] See appendix 2.
[11] National Health and Medical Research Council, the Australian Research Council and the Australian Vice-Chancellors' Committee, 'National Statement on Ethical Conduct in Human Research' (2007, updated December 2013) (*'The National Statement'*), section 1.1: research merit and integrity, 12.
[12] *Guidelines for Ethical Research in Australian Indigenous Studies* (Australian Institute of Aboriginal and Torres Strait Islander Studies, Revised 2nd Edition ed, 2012) (*'AIATSIS Guidelines'*).
[13] *National Statement*, above n 11, section1.1: research merit and integrity, 12.
[14] The MQHREC approved the application to undertake the Scoping Trip (ref: 5201200619) with 'commendation' (see appendix 1 (iii)) noting the thoroughness of the way in which the application was prepared, and the attention given to the ethical issues involved in undertaking the peoposed research.
[15] Both the MQHREC (ref: 5201300649) and the CAHREC (ref: HREC-13-197) approved the field research for this project.
[16] The *National Statement*, above n 11.
[17] *AIATSIS Guidelines*, above n 12.
[18] Ibid.
[19] Ibid principles 6, 7, 8 and 9. These principles in the AIATSIS Guidelines are as follows: 'Principle 6: Consultation, negotiation and free, prior and informed consent are the foundations for research with or about Indigenous peoples'; 'Principle 7: Responsibility for consultation and negotiation is ongoing'; 'Principle 8: Consultation and negotiation should achieve mutual understanding about the proposed research'; and 'Principle 9: Negotiation should result in a formal agreement for the conduct of a research project.'

and reciprocity between the researcher and Indigenous people.'[20] The Scoping Trip was the first practical step taken to facilitate the process of meaningful engagement with Aboriginal people, and to find the appropriate environment to carry out the field research. Thus, the purpose of the Scoping Trip was to seek advice from professionals working in the field in order to identify an appropriate research site; establish community contacts and build relationships; refine and consolidate the methodological framework being considered; and assist in the development of culturally and age appropriate research methods.[21] The information provided through these consultations confirmed the value of proceeding with this project and the proposed line of inquiry; enhanced the development of the methodological framework for the research; and provided an evidence base for the suggested methods for carrying out the research.

After the Scoping Trip the decision was made within the supervision team to undertake the research with CYP aged 10-17 at a particular school in the NT. The Principal and three other staff members at this school participated in a meeting as part of the Scoping Trip, and expressed interest in involving the CYP at the school in the field research, should they and their families consent to participate.

The remainder of this chapter examines the significance of the findings obtained as a result of the Scoping Trip, and how these influenced the methodological framework and research methods adopted for the overall project.

3.2 Key Learning from the Scoping Trip

None of the professionals consulted during the Scoping Trip were aware of any documented research regarding Aboriginal CYP's views about the NTER or the Stronger Futures legislation. This confirmed the information gathered from the literature reviewed, and underlined the importance of seeking and documenting those views. Further, all of those consulted during the Scoping Trip were of the view that the research would be a positive step toward enhancing the rights of Aboriginal CYP to participate in law and policy making on issues affecting them, such as the NTER and Stronger Futures

[20] Ibid 1.
[21] The methodological framework is discussed in chapter 2 of this thesis.

legislation. These comments were supported with advice about how to ensure the research was carried out ethically and effectively.

Notably, one person questioned the focus of the research on Aboriginal CYP's involvement in law and policy, such as the NTER and Stronger Futures legislation. This participant referred to the legislation as 'white-fella law,' and asked why Aboriginal CYP would want to be involved in making these laws, when such laws discriminate against them.[22] This person suggested that the research should not be restricted to an examination of 'white-fella law', rather, it should concurrently examine how CYP are involved in customary law processes and offer a cross-cultural approach to Aboriginal CYP's involvement in law and policy making. While this suggestion was interesting, it was beyond the scope of the proposed research. This research does not seek to compare and contrast the development of Australian legislation with Aboriginal customary law.

Comprehensive advice about the ethical and practical aspects of carrying out research with Aboriginal CYP was provided during the Scoping Trip. The ethical considerations concerned effective pre-research preparation, for example, ensuring adequate time is spent getting to know the CYP and their community before conducting the field research. These suggestions significantly influenced the methodological approach to the research. Through these consultations valuable insights were obtained about how to best engage with Aboriginal CYP, as well as appropriate research methods aimed at enhancing communication with Aboriginal CYP, their families and their communities. This included understanding some common characteristics Aboriginal CYP share (such as feeling 'shamed,' described more fully below), and considering methods to ensure research practices are appropriate, engaging and complimentary to young Aboriginal people's cultural norms, background and interests.

[22] Scoping Trip Interview (No 9) with a Legal Professional (Northern Territory, 25 October 2012).

One of the key points arising from the consultations was the correlation between the nature and quality of pre-research preparation, and the quality of the research outcomes—a view supported by Farmer and Fasoli.[23] One Scoping Trip participant reflected this view when she said:

> [I]t is often not that well understood in consulting, and this is where the critical work is actually done, before you actually go and speak to people … you need to know the community, you need to know the people, you need to know what will work. Otherwise what will happen is that you will go out and they will say nothing.[24]

All of the professionals consulted during the Scoping Trip emphasised the importance of undertaking pre-research preparation to mitigate challenges that may arise when doing cross-cultural research.[25] These include the difficulties associated with undertaking this project as a non-Indigenous researcher, and ensuring the research is mutually beneficial to the researcher, the research participants and the research community.[26] Failing to perform appropriate pre-research activities would compromise the quality of the research for a range of reasons, including that Aboriginal CYP may be unlikely to want to participate in the research, and may be reluctant to disclose information. The key recommendations arising from the Scoping Trip relate to suggestions for how to enhance the research methodology and the methods to use during the research. These elements are discussed in detail below.

3.2.1 Enhancing the Research Methodology

Advice received during the Scoping Trip influenced the methodological foundations of this study in a range of significant ways. Firstly, by suggesting a range of means to mitigate cross-cultural research barriers; secondly, by developing the theoretical basis of the project; and thirdly, by ensuring the research is mutually beneficial and appropriate reciprocity arrangements are made.

[23] Rebekah Farmer and Lyn Fasoli, 'You're in New Country: Learning Both Ways: Advice for non-Indigenous Early Childhood Mentors, Trainers and Teachers' (Tafe NSW Western, Batchelor Institute of Indigenous Tertiary Education, Tafe Riverina Institute, Charles Sturt University, 2011) 5.
[24] Scoping Trip Interview (No 6) with a Northern Territory Government Executive and a Northern Territory Policy Officer (Northern Territory, 23 October 2012).
[25] Jonathan Kingsley, Rebecca Phillips and Mardie Townsend, 'Using a Qualitative Approach to Research to Build Trust Between a non-Aboriginal Researcher and Aboriginal Participants (Australia)' (2010) 10(1) *Qualitative Research Journal* 2.
[26] *AIATSIS Guidelines*, above n 12, principle 11.

3.2.1.1 Mitigating Cross-Cultural Research Barriers

During the Scoping Trip two key issues emerged in relation to potential cross-cultural barriers to undertaking this research. These were, firstly, my status as a non-Indigenous researcher and secondly, the fact that I was not living in the area where the research was to take place and I was therefore planning to conduct 'outsider research.'[27] Several participants suggested that undertaking research with Aboriginal people as a non-Indigenous researcher, and implementing Indigenous research methodologies, was controversial and that, if it was attempted, it should be carried out under strict conditions.[28] Secondly, advice was received about mitigating the challenges associated with undertaking 'outsider' research. This advice centred on ensuring I developed a deep understanding of the research community in advance of the research, and ensuring I sought appropriate permission to conduct the research.[29]

i. Being Non-Indigenous and Conducting 'Outsider' Researcher

Conversations held during the Scoping Trip identified my status as a non-Indigenous researcher as a key challenge and limitation of this research. Participants in the Scoping Trip suggested a range of strategies to reduce the impact of this on the research process, on the CYP and on the research findings. This advice played a significant role in minimising the potential detrimental impacts of my non-Indigenous status on the research. A detailed discussion of how my status as a non-Indigenous researcher was addressed in the methodological approach for this project discussed in chapter 2.[30] For the purpose of this section, however, key strategies about how to mitigate the potential challenges associated with being a non-Indigenous researcher, obtained during the Scoping Trip, are discussed. These ideas focussed on two main factors (a) as an outsider ensuring I get to know the community; and (b) seeking appropriate permission, from the appropriate people, to do the research.

[27] Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (Zed books, 2nd ed, 2012) chapter 7; David Bridges, 'The Ethics of Outsider Research' (2001) 35(3) *Journal of Philosophy of Education* 371; Karen Lillian Martin, *Please Knock Before You Enter: Aboriginal Regulation of Outsiders and the Implications for Researchers* (Post Pressed Brisbane, 2008).
[28] Scoping Trip Interview (No 13) with three Aboriginal Women Employees from an Independent School (Northern Territory, 25 October 2012); Scoping Trip Interview (No 1) with Indigenous Chief Executive Officer of a Leading Social Justice Agency (Northern Territory, 23 October 2012).
[29] Scoping Trip Interview (No 19) with the Director of a Women's Advocacy NGO (Northern Territory, 26 October 2012).
[30] See chapter 2 (section 2.4).

The professionals consulted were mainly of the view that despite these limitations this research was valuable and viable. This contrasts with a body of scholarly thought suggesting that only Indigenous researchers should conduct research with Indigenous people,[31] and accords with academic scholarship, including that of Fasoli and Farmer,[32] which includes guidelines for non-Indigenous researchers about how to ethically engage Indigenous people in research.[33]

Scoping Trip participants suggested that it is possible to undertake and produce valuable research with Aboriginal CYP despite being a non-Indigenous researcher. This view accords with academic scholarship on convergence Indigenous methodology, combining both Indigenous and Western research methodologies and deriving strength from both.[34]

The primary suggestion in relation to mitigating the potential negative effects of being non-Indigenous arising from the Scoping Trip were to ensure I understood the community in which the research was to take place, and that I sought the appropriate permissions to undertake the research.

ii. Getting to Know the Community and Conducting Outsider Research

During the Scoping Trip advice was provided about the onus upon me to undertake robust pre-research preparation to overcome the range of cross-cultural communication problems I was likely to encounter during the field research. This included building my understanding of the specific culture and background of the community in which the research was to take place, and ensuring the appropriate permission was sought from within the community, such as from Elders, community organisations, parents and carers.

[31] Lyn Fasoli and Ranu James, 'Researching Remote Aboriginal Children's Services: It's All About Rules' (2008) 33(4) *Ngoonjook: A Journal of Australian Indigenous Issues* 26, 28.
[32] Farmer and Fasoli, above n 23.
[33] Kingsley, Phillips and Townsend, above n 25, 17; Jon Austin and John Williams-Mozley, 'An Alternative View of Mixed Methods Research: Learning with and from Indigenous Ways of Knowing' (paper presented at the Proceedings of the 5th Biennial International Indigenous Development Research Conference, 2012); Farmer and Fasoli, above n 23; Elora Way, 'Understanding Research Fatigue in the Context of Community-University Relations' (Local Knowledge: Worcester Area Community-Based Research, 2013).
[34] Austin and Williams-Mozley, above n 33; Stella Coram, 'Rethinking Indigenous Research Approval: The Perspective of a "Stranger"' (2011) 11(2) *Qualitative Research Journal* 38, 41; Lana Ray, 'Deciphering the "Indigenous" in Indigenous Methodologies' (2012) 8(1) *AlterNative: An International Journal of Indigenous Peoples* 85, 89. This approach is discussed in detail in chapter 2 (section 2.1.2).

After the Scoping Trip the process for obtaining the correct permissions to undertake the research was clearer. This was in part due to the fact that a particular school was chosen as the most appropriate research site as a result of the assessment made after the Scoping Trip. Liaison with the school afterwards indicated the appropriate channel for obtaining permission was through the School Council, the membership of which included community representatives of the Aboriginal communities the school serves. A proposal outlining the research aims and objectives was put before the School Council[35] and, after some questions about the research were answered by the researcher, the School Council provided permission for the research to proceed and for consent to be sought from CYP, parents and carers to participate in the research.

Advice was also provided during the Scoping Trip about the importance of spending time in the community to learn 'what the norms in that community are, and who to talk to.'[36] Many participants described researchers or consultants who 'fly in, and fly out' as a negative form of contact with Indigenous communities, which rarely produces demonstrable benefits for Indigenous people.[37] One participant discussed the problems associated with the 'fly in, fly out' model, and cautioned against allowing non-Indigenous people to determine the 'right person' to seek research permission from or involve in research. This participant said:

> [M]ost people when they go out to do consultations or research or whatever it might be, don't really allocate the preparation time. They just say 'we've got 20 interviews, three days and we can do it' because each interview might be an hour, without going, 'okay well maybe I need to see what the community is like and how it operates through a couple of days and just meet people, and find out who

[35] See appendix 3.
[36] Scoping Trip Interview (No 6) with a Northern Territory Government Executive and a Northern Territory Policy Officer (Northern Territory, 23 October 2012).
[37] Pauline Guerin and Bernard Guerin, 'Social Effects of Fly-In-Fly-Out and Drive-In-Drive-Out Services for Remote Indigenous Communities' (2009) 21(2) *The Australian Community Psychologist* 7, 7; Scoping Trip Interview (No 1) with Indigenous Chief Executive Officer of a Leading Social Justice Agency (Northern Territory, 23 October 2012); Scoping Trip Interview (No 4) with a non-Indigenous Executive Director of a Peak Welfare Agency (Northern Territory, 23 October 2012); Scoping Trip Interview (No 19) with the Director of a Women's Advocacy NGO (Northern Territory, 26 October 2012); Scoping Trip September-October, 2012; Scoping Trip Interview (No 6) with a Northern Territory Government Executive and a Northern Territory Policy Officer (Northern Territory, 23 October 2012).

> is the right person rather than trusting that white-fella or that white-fella to tell me who's the right person.' [38]

iii. Seeking Appropriate Permissions to Undertake the Research

The issue of who to talk to in Aboriginal communities is controversial. It is controversial within Aboriginal communities because of complexities associated with *who gets to speak* and it is controversial in the context of Western knowledge systems that place importance on 'who can know,' rather than 'what can be known.'[39] When advice was sought during the Scoping Trip about how to access the 'right' people to talk to about undertaking the research the same person as above said:

> [T]here aren't actually 'the right people', because there are so many different voices. Even if you disagree with that person that person has the right to speak and voice their opinion. So it's important to talk to all the community members who can represent all of those other views.[40]

This person emphasised the importance of regular visits to the research location prior to undertaking the field research. She said:

> [F]rom day one you go to everything, anything you can be involved in. If you are seen as someone who is trying, people are much more open.[41]

Other views expressed during the Scoping Trip canvassed the politicised nature of 'who gets to speak' in communities, and the gender and age implications of 'having a voice' in communities.[42] Consulting with this group of people revealed that there are differences among Aboriginal communities with respect to whether community decision-making is gendered and ageist—that is, to what extent men, women and children are able to participate in community decision-making processes. Respective conversations held during the Scoping Trip with several Indigenous and non-Indigenous participants indicated that the nature and degree to which children and women participate in community decision-

[38] Scoping Trip Interview (No 17) with a non-Indigenous Youth Worker (Northern Territory, 25 October 2012).
[39] Martin Nakata, 'The Cultural Interface' (2007) 36 *The Australian Journal of Indigenous Education* 7, 12.
[40] Scoping Trip Interview (No 17) with a non-Indigenous Youth Worker (Northern Territory, 25 October 2012).
[41] Ibid.
[42] Scoping Trip Interview (No 1) with Indigenous Chief Executive Officer of a Leading Social Justice Agency (Northern Territory, 23 October 2012); Scoping Trip Interview (No 13) with three Aboriginal Women Employees from an Independent School (Northern Territory, 25 October 2012).

making varies across communities.[43] In some communities women play a leading role in community decision-making processes, and in others women's role in decision-making is not encouraged or facilitated. A non-Aboriginal, non-government organisation CEO said of the NTER and Stronger Futures legislation in relation to Aboriginal people's 'voice' about the legislation. She said:

> I do think that governments are putting restrictions on communities without communities having a voice in that. Communities should be able to make community decisions about whether there is alcohol, and what kind of alcohol and what hours, and whatever. I heard somebody talking last week and I agree that, to say that we are going to go back to community and ask what they want, it depends who gets a voice in that. And sometimes only the men for example, may get that voice, and do we actually hear the voice of women and children who may be the ones that suffer the effects if alcohol is reintroduced.[44]

Discussions with a non-Indigenous School Principal, and a non-Indigenous legal professional, indicated Aboriginal CYP are engaged in community decision-making processes for the development of Aboriginal customary law at a young age 'from around two years old.'[45] This suggests that Aboriginal CYP may engage in community decision-making in the respective locations where these professionals work. However, this information was not provided by Aboriginal people during the Scoping Trip, and further research about the nature and form of Aboriginal CYP's participation in community decision-making is required. This was not within the scope of this project, although some Aboriginal CYP spoke, in the field research, about their active role in community decision-making.[46]

These community variances and differences are reflected in the literature, in particular by Farmer and Fasoli who in 2011 stated that:

[43] Scoping Trip Interview (No 1) with Indigenous Chief Executive Officer of a Leading Social Justice Agency (Northern Territory, 23 October 2012); Scoping Trip Interview (No 4) with a non-Indigenous Executive Director of a Peak Welfare Agency (Northern Territory, 23 October 2012); Scoping Trip Interview (No 10) with the Commissioner of a NT Children's Agency (Northern Territory, 25 October 2012); Scoping Trip Interview (No 13) with three Aboriginal Women Employees from an Independent School (Northern Territory, 25 October 2012).
[44] Scoping Trip Interview (No 4) with a non-Indigenous Executive Director of a Peak Welfare Agency (Northern Territory, 23 October 2012).
[45] Scoping Trip Interview (No 9) with a Legal Professional (Northern Territory, 25 October 2012); Scoping Trip Interview (No 12) with a Principal from an Independent School (Northern Territory, 25 October 2012).
[46] See chapters 6 and 7.

> When you're going into different community, you're in a different world, not your part of Australia. We got our own law, way of working, how we do things, how the community is set up. People have to be aware ... go and talk with the right people.[47]

The Scoping Trip exposed the complexities associated with doing cross-cultural research with CYP as an outsider and as a non-Indigenous researcher. Of particular utility however, was the information provided during the Scoping Trip about how to minimise the potentially negative impact of my non-Indigenous, and outsider, status on the research by understanding the community in which the research was to take place, and seeking the appropriate permissions to carry out the research. One of the key ways I implemented this advice was through the establishment of a close working relationship with key personnel at the school including the Aboriginal Liaison Officers, the Principal, the class teachers, and assistant teachers. Additionally, forming links with the School Council to properly brief them about the nature of the research, and seek permission for the research to take place, forged the way for the Aboriginal Liaison Officers to assist me to seek permission from the CYP to participate in the research. Seeking and obtaining approval from the School Council was fundamental to this research taking place and provided the appropriate authority and permission for the research to proceed. Further, the School Council approval of the research empowered school staff to be involved in the research, as well as provided surety for parents and carers that the School Council was aware of and supported the research proposal.

The school where the research took place was largely chosen because this location presented a practical and safe place to engage CYP in research. During the Scoping Trip many participants said obtaining consent for Aboriginal CYP to participate in research would be difficult if participants were not based at an existing organisation, such as a school. The parameters of who to consult about conducting research within the school context were less complicated in comparison to a less structured context. The added complexity and difficulties associated with obtaining free, prior and informed consent if the research had been conducted at a youth centre, for example, was also a consideration. Several representatives from the youth sector were consulted during the Scoping Trip and whilst they

[47] Farmer and Fasoli, above n 23, 9.

provided invaluable advice about effective engagement of youth in research, the information they provided about how to engage youth from their service in the research presented challenges that would not have been able to be overcome to the same degree as in the school setting.[48] These Scoping Trip participants said the transient population of youth centres, and the logistic difficulties associated with seeking consent from their parents and carers, was likely to make the task of seeking consent more complex than the project could accommodate.[49]

As discussed in chapter 2, one of the limitations of this research was the use of a school as the research site.[50] Selecting a less structured site, such as a youth centre, would have overcome to a certain degree, some of the research limitations outlined in chapter 2 associated with the adult/child power dynamics, and the highly structured environment at a school. However, it was decided that the challenges of seeking free, prior and informed consent, and the potential for a fluctuating research cohort in a youth centre, were not conducive to this research. On balance, it was decided that a school environment would be more suitable for this research endeavour.

iv. Conducting the Research in the Presence of a Known and Trusted Adult

As stated in chapter 2 the field research engaged research participants in a series of group discussions using two primary research methods—yarning and peer-to-peer interviewing using iPads. Acting on advice received from various participants to the Scoping Trip during these field interactions a known adult (usually an Aboriginal teacher's assistant) was always present. One person during the Scoping Trip recommended I only speak with Aboriginal CYP with trusted Indigenous adults present in the room, as well as an interpreter and an Indigenous research assistant. She said:

[48] Scoping Trip Interview (No 8) with an Indigenous Youth Worker/Project Administrator (Northern Territory, 23 October 2012); Scoping Trip Interview (No 16) with a non-Indigenous Youth Worker/Policy Officer (Northern Territory, 25 October 2012); Scoping Trip Interview (No 17) with a non-Indigenous Youth Worker (Northern Territory, 25 October 2012).
[49] Ibid.
[50] See chapter 2 (section 2.4).

> If you're going to question them I think it's better to have maybe a family member, or if it's going to be done here an Aboriginal teacher assistant or a language teacher. Because then they feel a lot more comfortable in that group and can speak more openly.[51]

This advice was reflected in numerous other conversations held during the Scoping Trip.[52] For example the Chief Executive Officer of a non-government legal agency, and an Indigenous person, said:

> You should have trusted adults there. Because being a parent in a remote community, as soon as a white person comes in and starts talking to young kids, alarm bells go off … Is she gonna take my kids away? That would be the first thing they would think. If you go there and find out who the key Elders are, and there are people who have been doing this stuff for a long time, and they could be the ones who would come to those meetings and the parents go okay so and so said it is okay. So then you've got that confidence there for the parent.[53]

The majority of field research interactions were attended by an Aboriginal teaching assistant known to the children.[54] The teaching assistants played an active role in the research process and participated in the discussions assisting the CYP to express their views and clarify concepts when necessary, sometimes in Aboriginal language. The advice received during the Scoping Trip influenced the manner in which the field discussions took place and contributed to promoting a safe research environment for CYP.

3.2.1.2 Developing the Research Methodology

One participant in the Scoping Trip, a legal professional, highlighted the importance of challenging Western research methodologies that have historically undervalued Indigenous Knowledge and

[51] Scoping Trip Interview (No 13) with three Aboriginal Women Employees from an Independent School (Northern Territory, 25 October 2012).
[52] Scoping Trip Interview (No 1) with Indigenous Chief Executive Officer of a Leading Social Justice Agency (Northern Territory, 23 October 2012); Scoping Trip Interview (No 13) with three Aboriginal Women Employees from an Independent School (Northern Territory, 25 October 2012); Scoping Trip Interview (No 8) with an Indigenous Youth Worker/Project Administrator (Northern Territory, 23 October 2012).
[53] Scoping Trip Interview (No 1) with Indigenous Chief Executive Officer of a Leading Social Justice Agency (Northern Territory, 23 October 2012).
[54] One field discussion—Primary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014)—was attended by a non-Indigenous teacher's assistant due to staff availability. All other field interactions were attended by at least one Indigenous staff member.

'anthropologised' Indigenous people.[55] This person stressed the importance of understanding the history of Indigenous research in Australia and the complexities associated with non-Indigenous people conducting research with Aboriginal people. A similar statement from a high-level non-Indigenous government administrator, with a long term career working with Indigenous people in the NT, emphasised the importance of being open and communicating my moral and value perspectives in order to facilitate clear communication with Aboriginal people—both in terms of methods used, and the interpretation of the data. She said:

> So things like child rearing I've just found the value in being able to say well listen I'm not an Indigenous person. These are the kind of values that come with me regarding children. You know in my culture a child sits up in the chair and eats their food when they're told to eat it, and does what their mummy tells them. That is considered a good parent child relationship, in which you might get a response from them and they might giggle and laugh and go 'oh really'? If they don't understand that cultural exchange, if they don't understand where you're coming from, then you'll get very black and white answers I've found. Whereas if you actually share that information they then start to understand where you're coming from and they actually tell you what the differences are which to me is the key. You know 'the reason we do it this way is because of X Y and Z' so you get that deeper richer information. Otherwise the risk is you're going to get answers like, like if you ask someone 'How do you feel about the Basics Card' they may go 'I hate it.'[56]

Several Scoping Trip participants spoke about the lack of consultation with Aboriginal people before laws about them are made in the NT, and the consequence that many laws do not appropriately relate to Aboriginal people.[57] A Scoping Trip participant suggested being open with Aboriginal research participants about my predominantly 'white' experience, and encouraged me to acknowledge the different cultural and racial perspectives between myself and Aboriginal CYP.[58] This contribution

[55] Scoping Trip Interview (No 9) with a Legal Professional (Northern Territory, 25 October 2012).
[56] Scoping Trip Interview (No 6) with a Northern Territory Government Executive and a Northern Territory Policy Officer (Northern Territory, 23 October 2012).
[57] Scoping Trip Interview (No 8) with an Indigenous Youth Worker/Project Administrator (Northern Territory, 23 October 2012); Scoping Trip Interview (No 6) with a Northern Territory Government Executive and a Northern Territory Policy Officer (Northern Territory, 23 October 2012); Scoping Trip Interview (No 13) with three Aboriginal Women Employees from an Independent School (Northern Territory, 25 October 2012); Scoping Trip Interview (No 4) with a non-Indigenous Executive Director of a Peak Welfare Agency (Northern Territory, 23 October 2012).
[58] Scoping Trip Interview (No 1) with Indigenous Chief Executive Officer of a Leading Social Justice Agency (Northern Territory, 23 October 2012).

emphasised the requirement to challenge Western research traditions and understand the 'standpoint' of the Aboriginal CYP who would participate in the research, and to be aware of the cultural differences and power dynamics associated with doing cross-cultural research.[59]

After the feedback obtained during the Scoping Trip, and upon deeper examination of Nakata's Indigenous standpoint theory and Ray's convergence theory, it was discovered that these theories offered a useful framework for acknowledging research participants as 'knowers,' and examining the process of their engagement, as well as my engagement, in the research.[60] The Scoping Trip provided confirmation that the proposed methodological approach was appropriate. This approach, as outlined in chapter 2 is a CRBA informed by Indigenous research methodologies, in particular standpoint theory and Indigenous convergence theory. The Scoping Trip confirmed that the proposed approach was age appropriate, culturally sensitive and provided a framework to manage and mitigate the implications of being a non-Indigenous researcher.

3.2.1.3 Developing Reciprocity Arrangements

The theoretical underpinnings and importance of negotiating and undertaking appropriate reciprocity in research involving CYP and Aboriginal people are addressed in chapter 2.[61] This section outlines how the Scoping Trip influenced model of reciprocity adopted.

The importance of adhering to, and being directed by the *AIATSIS Guidelines*[62] to ensure research is mutually beneficial was reinforced by Scoping Trip participants.[63] This project aimed to ensure demonstrable benefits were gained by Indigenous research participants and their communities. These benefits were decided by the research participants throughout the course of the research and included:

[59] Joanna Zubrzycki, 'Educating Australian Social Workers in the Post-Apology Era: The Potential Offered by a "Whiteness" Lens' (2011) 11 *Journal of Social Work* 159; Carole Ferrier, 'The Uses of Whiteness Theory in Critical Discourses of Race' (2013) *Journal of the Association for the Study of Australian Literature* 163 and Genine Hook, 'Towards a Decolonising Pedagogy: Understanding Australian Indigenous Studies Through Critical Whiteness Theory and Film Pedagogy' (2012) 41(02) *The Australian Journal of Indigenous Education* 110.
[60] Ray, above n 34; Martin Nakata, 'An Indigenous Standpoint Theory' in *Disciplining the Savages: Savaging the Disciplines* (Aboriginal Studies Press, 2007) chapter 11.
[61] See chapter 2 (section 2.2.6).
[62] *AIATSIS Guidelines*, above n 12.
[63] Scoping Trip Interview (No 4) with a non-Indigenous Executive Director of a Peak Welfare Agency (Northern Territory, 23 October 2012); Scoping Trip Interview (No 6) with a Northern Territory Government Executive and a Northern Territory Policy Officer (Northern Territory, 23 October 2012); Scoping Trip Interview (No 19) with the Director of a Women's Advocacy NGO (Northern Territory, 26 October 2012); Scoping Trip Interview (No 17) with a non-Indigenous Youth Worker (Northern Territory, 25 October 2012).

providing CYP with a range of opportunities to engage with technology, namely iPads; child rights awareness raising sessions; the production of a 'movie' representing the CYP's participation in the research; and holding a series of events for the CYP, their teachers and their parents and carers where the movie was shown and food was provided.

Indigenous peoples across the world are a highly researched population, and Indigenous Australians are not exempt from this level of inquiry.[64] Research has often failed to benefit Aboriginal people, and in many cases has caused significant harm.[65] During the Scoping Trip a participant commented about the over-research of Indigenous peoples[66] in Australia. She said:

> I think one thing to realise is that Aboriginal people have been really, really researched. So people probably aren't expecting that you can solve the world's problems. If anything, they'll be like 'here is just another white-fella who wants to get information to further what she needs to do, and we will never see her again, and it will mean nothing for us, so what's the point?' That's probably more common attitude which is why you really need to work with people who are already in the community and have established relationships, and have a plan of how that information is going to go back and talk to people about it.[67]

Several Scoping Trip participants spoke about ways they had embedded reciprocity arrangements into their research designs. Most of these comments focussed on the importance of meaningfully reporting research findings back to research participants, and underlined the significance of acknowledging people's participation in research.[68] One person described the process of reporting research results to a community, whilst concurrently offering reciprocity for research involvement. She said:

> Some of the things that we did back when we did some research was taking it back to the community and presenting it at a movie night. So we would have a big barbecue and we would present some stuff

[64] Lester-Irabinna Rigney, 'Internationalisation of an Indigenous Anti-Colonial Cultural Critique of Research Methodologies: A Guide to Indigenist Research Methodology and its Principles' (1997) 14(2) *Journal for Native American Studies* 109, 109.
[65] J Henry, T Dunbar, A Arnott, M Scrimgeour, S Matthews, L Murakami-Gold and A Chamberlain, 'Indigenous Research Reform Agenda: Rethinking Research Methodologies' (Cooperative Research Centre for Aboriginal and Tropical Health Links, 2002) 5, cited in Fasoli and James, above n 31, 30.
[66] The question of whether Indigenous CYP are 'over-researched' was not addressed by this participant.
[67] Scoping Trip Interview (No 17) with a non-Indigenous Youth Worker (Northern Territory, 25 October 2012).
[68] Scoping Trip Interview (No 13) with three Aboriginal Women Employees from an Independent School (Northern Territory, 25 October 2012); Scoping Trip Interview (No 1) with Indigenous Chief Executive Officer of a Leading Social Justice Agency (Northern Territory, 23 October 2012); Scoping Trip Interview (No 17) with a non-Indigenous Youth Worker (Northern Territory, 25 October 2012).

> with some photos from our time out there, and it was just a fun event, and it was just a couple of key images, this is what is come out of the research, boom, boom, boom, without going into any detail really. It was just the key findings, there was music, there might be a disco afterwards, and it's just fun and light. People see that you come back and see that you care enough to come back.[69]

This approach to reporting findings to communities was reflected by several other participants during the Scoping Trip. One participant suggested similar ways to report findings such as the production of useful educational materials in child, youth and community friendly formats that relate to contexts beyond the research setting. When discussing how to report research findings back to communities she said:

> Not bound hundred page reports. Pictures of the kids, simplified … A3 resources that are really clear visually. If you can present that back it's actually a learning tool too, like advocacy. Then people also own it and then they can understand it.[70]

This participant, an Aboriginal executive from a non-government organisation, elaborated on this and discussed how her organisation had thanked research participants in the past. She said:

> We put all the pictures on a big tin sheet out the front of the school. You could do something like that that they were really proud of. You could do a booklet or put all of the pictures into a poster. Just something, they would really love that. If you got the kids to write their own thing, and you can do it yourself at Big W you know now. You can make your own booklets and it costs 10 bucks. So it can just be a simple thing like that.[71]

The same participant, when asked about negotiating with communities about how to thank these communities for their participation, stressed the importance of asking participants how they would like to be thanked for engaging in the research. She said:

> You could speak to the Elders there … They are so used to everybody wanting, wanting, wanting all the time. You know people coming in all the time. Just talk to them you know and ask them 'do you think it

[69] Scoping Trip Interview (No 17) with a non-Indigenous Youth Worker (Northern Territory, 25 October 2012).
[70] Scoping Trip Interview (No 4) with a non-Indigenous Executive Director of a Peak Welfare Agency (Northern Territory, 23 October 2012).
[71] Ibid.

> would be appropriate if we made this little book or whatever'? Just see what their opinion is because each community will be different.[72]

Several Scoping Trip participants reflected their experience of doing research with CYP, and commented that a useful and necessary tool to engage CYP is the provision of food during the research. A participant said, '[i]t seems like a trivial thing but in my experience it's actually quite vital is to actually provide food.'[73] The provision of food demonstrates hospitality and to a degree a minimal form of reciprocity, and is necessary to keep energy levels up where CYP aged between 10 and 17 years are engaged in research activities spanning more than an hour.[74] On this basis I provided fruit and drink to CYP and included a meal in the reciprocity arrangements with CYP, parents and carers and staff.

The interviews held during the Scoping Trip provided clear direction about the ethical implications of carrying out this research and how to embed this advice into the projects methodological framework. The learnings arising from these interviews stressed the importance of complying with the *AIATSIS Guidelines* in a range of ways. Firstly, the need to mitigate cross-cultural research barriers by building my understanding of the community, and seeking the appropriate permissions to undertake the research. Secondly, by developing the theoretical and methodological basis of the project. Finally, by ensuring the research is mutually beneficial, and by embedding reciprocity arrangements in the research methodology. Details about how reciprocity was incorporated into the research design are provided in chapter 2.

The information obtained during the Scoping Trip also impacted on the way the research was conducted, that is, on the methods that were implemented. These are detailed below.

[72] Ibid.
[73] Scoping Trip Interview (No 6) with a Northern Territory Government Executive and a Northern Territory Policy Officer (Northern Territory, 23 October 2012).
[74] Field research sessions with the primary class were on average 50-70 minutes long and research sessions with the secondary group were on average 60-90 minutes long.

3.2.2 Informing the Research Methods

The Scoping Trip highlighted key concepts to understand, and potential pitfalls to avoid, when undertaking research with Aboriginal CYP. These issues centred on culturally appropriate ways to build rapport, and specific research methods to use with Aboriginal CYP. Scoping Trip participants focussed on methods to best communicate with Aboriginal CYP, and their families and communities. These methods were based on an understanding of characteristics Aboriginal CYP often demonstrate, and methods for talking with Aboriginal CYP which complement their cultural norms, background and interests.

3.2.2.1 Ways to Build Rapport

Advice received during the Scoping Trip, from several Aboriginal and non-Aboriginal people, emphasised the importance of ensuring CYP are afforded the opportunity to get to know me in a way that is meaningful to them. Information obtained from two separate Scoping Trip interviews suggested being open with CYP about my life, particularly talking about where I come from and some details about my family.[75] These participants said it is culturally appropriate to share these personal details and helps Aboriginal CYP get to know me. Further, that these two factors relevant to my identity are of particular significance to Aboriginal CYP and their communities.[76] This advice indicates that Aboriginal CYP, as well as Aboriginal adults in the school, would be interested to know these details about me, and sharing this information would assist in breaking down the researcher and participant dichotomy mentioned earlier.[77] In addition, these Scoping Trip interviews revealed that information such as where I lived, and whether I had any children, would likely influence whether CYP would want to participate, not because of the nature of the personal details, but because sharing this information would demonstrate my willingness to get to know the community.[78] Several Scoping Trip

[75] Scoping Trip Interview (No 2) with the Principal of an Independent School (Northern Territory, 22 October 2012); Scoping Trip Interview (No 13) with three Aboriginal Women Employees from an Independent School (Northern Territory, 25 October 2012).
[76] Ibid.
[77] See chapter 2 (section 2.1.2).
[78] Scoping Trip Interview (No 2) with the Principal of an Independent School (Northern Territory, 22 October 2012); Scoping Trip Interview (No 13) with three Aboriginal Women Employees from an Independent School (Northern Territory, 25 October 2012).

participants also said that revealing and discussing the place where I live would likely play an important role in Aboriginal CYP's understanding of who I am in relation to land, and is a significant identifying characteristic that is important to share with the CYP.[79] This advice was relevant to, and played out, during all stages of the field research. For example, during the third research session, with the secondary class group, the following conversation depicted the interest the CYP had about where I lived:[80]

> Nathaniel (14 year old male): Holly, where you from?
>
> Holly: Sydney.
>
> Brody (16 year old male): What does Sydney look like?
>
> Nathaniel: It's got them three houses near the Sydney Harbour Bridge.
>
> Holly: It's not got a lot of bush like this, it's a city.
>
> Brody: And there's a bridge eh?
>
> Holly: Yeah the Sydney Harbour Bridge.
>
> James (17 year old male): And it's really noisy.[81]

The methodological focus on story telling through yarning, a form of narrative inquiry,[82] was consistent with sharing this information with the CYP and their community. Given the research asked CYP to provide information about their lives, and how the packages of legislation and policies the research examines, affects their lives a level of personal disclosure on my part was appropriate. This approach is also the basis of the use of first person references in this thesis. Whilst the practice of using 'I' in academic writing is uncommon in the discipline of law, it is considered acceptable academic practice within Indigenous studies.[83] Various Indigenous studies scholars accept the

[79] Scoping Trip Interview (No 13) with three Aboriginal Women Employees from an Independent School (Northern Territory, 25 October 2012).
[80] I had told participants about where I lived during the information sessions early in the field research. I use this example to highlight the significance, even later in the research, of where I lived to the CYP.
[81] Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).
[82] See chapter 2 (section 2.2.3).
[83] Laurel Richardson, *Fields of Play: Constructing an Academic Life* (Rutgers University Press, 1997) 2.

relevance of the author's moral and experiential framework as fundamental to why the research is being conducted, and how it is to be conducted.[84] Richardson emphasises this when she said:

> We are restrained and limited by the kinds of cultural stories available to us. Academics are given the 'story line' that the 'I' should be suppressed in their writing, that they should accept homogenization and adopt the all-knowing, all-powerful voice of the academy. But contemporary philosophical thought raises problems that exceed and undermine the academic story line. We are always present in our texts, no matter how we try to suppress ourselves.[85]

Advice received during the Scoping Trip accords with Richardson's approach as well as accords with my choices about how I explained my presence during this research with CYP, including the relevance of my life experiences and the impact of these experiences on the way I conducted this research.

3.2.2.2 Understand Key Concepts to Avoid Potential Pitfalls

i. Being Sensitive to Cultural Differences

The information provided during the Scoping Trip concurs with academic literature citing Aboriginal CYP's experience of growing up in Australia as markedly different to the experiences of non-Aboriginal CYP.[86] The importance of understanding the nature of Aboriginal childhoods, and the implications of this for engaging Aboriginal CYP in ethically robust research, was a recurring theme discussed during the Scoping Trip interviews. A conversation with a youth worker for example, highlighted the importance of non-Aboriginal visitors in communities behaving in ways that respect cultural practices.[87] These behaviours include the importance of non-Indigenous guests to communities suspending judgements about a range of issues including, for example, Aboriginal practices. The youth worker spoke about a non-Indigenous government officer who was removed from a community due to culturally inappropriate behaviour. She said: 'One of them got kicked out of the

[84] Nakata, above n 60; Smith, above n 27; and Dawn Bessarab and Bridget Ng'andu, 'Yarning About Yarning as a Legitimate Method in Indigenous Research' (2010) 3(1) *Journal of Critical Indigenous Studies* 37.
[85] Richardson, above n 83, 2.
[86] Sue Kruske, Suzanne Belton, Molly Wardaguga and Concepta Narjic, 'Growing Up Our Way: The First Year of Life in Remote Aboriginal Australia' (2012) 22(6)(06) *Qualitative Health Research* 777, 777; Ute Eickelkamp, *Growing up in Central Australia: New Anthropological Studies of Aboriginal Childhood and Adolescence* (Berghahn Books, 2013).
[87] Scoping Trip Interview (No 17) with a non-Indigenous Youth Worker (Northern Territory, 25 October 2012).

community because he was so rude and abrasive and didn't understand cultural issues.'[88] This advice emphasised the importance not only of appropriate behaviour when undertaking cross-cultural research, but of ensuring I understand the cultural context in which the research operates.

ii. Talking About Human Rights in Communities

Another recurring theme arising from the Scoping Trip centred on the human rights basis of the project, which could present a range of cross-cultural considerations when communicating with Aboriginal CYP and their communities. A NT government executive discussed the importance of positioning rights-based discussions in the context of the community at large, rather than as an individual's right to participate. She stressed the centrality of the overlay of culture when engaging Aboriginal CYP in human rights related research. She said:

> So I think the difficulty is when you talk about rights, particularly in an Indigenous setting, it's almost at odds with some of the cultural values because it is so hierarchical and it is a communal response to things. The notion of rights is very individually based.[89]

The Scoping Trip revealed that community perceptions about human rights—specifically the value of Aboriginal CYP participation in decision-making—was likely to be controversial in some communities. A participant said, 'there aren't that many people that believe that kids should be listened to.'[90] However, responses from other participants emphasised that communicating the purpose of the research, as a way to hear directly from Aboriginal CYP about the impact of federal legislation and policy, will be encouraged, understood and accepted. This was expressed by an Indigenous non-government executive when she said:

> You just need to explain to them. Say we just want to hear it first-hand from them [the children]. You will get support for that.[91]

[88] Ibid.
[89] Scoping Trip Interview (No 6) with a Northern Territory Government Executive and a Northern Territory Policy Officer (Northern Territory, 23 October 2012).
[90] Scoping Trip Interview (No 17) with a non-Indigenous Youth Worker (Northern Territory, 25 October 2012).
[91] Scoping Trip Interview (No 1) with Indigenous Chief Executive Officer of a Leading Social Justice Agency (Northern Territory, 23 October 2012).

Some of the Scoping Trip discussions suggested Aboriginal CYP have limited knowledge about human rights, thus talking with CYP about what is meant by 'rights' was factored into the pre-research information sessions held with the CYP at the school.[92]

> It's about understanding what the right is. Really if we're talking about young Indigenous people and understanding their rights … that level of awareness and knowledge of the benchmark of their rights would be more feeling based on 'the way I feel when this happens.' Some things they will know it's not right, other things I don't know. I think there's a lack of awareness in terms of people's basic human rights from an Indigenous perspective.[93]

A non-Aboriginal government executive laid out a clear warning about talking about rights in communities, especially in relation to Aboriginal CYP. She highlighted a potential contradiction between Western and Aboriginal culture with respect to human rights, and arguments about the applicability of human rights in collective cultures.[94] She said

> So to talk about rights people go well it might even be seen as divisive … To try and engage with somebody who might effectively not have a voice, and has never had a voice, and has been told since day one 'you won't have a voice' and you're at this end of the hierarchy. It's really difficult to get around.[95]

This view emphasised the need to ensure the research methodology incorporated a broad view of the applicability of children's rights to communities and to all children, not only in relation to specific children. This information was relevant when designing the information sessions for both classes on children's rights to ensure discussion of rights was contextualised both within the limits of this research topic, and in relation to the everyday lives of the young participants in the context of their community.[96] Nakata's standpoint theory provided a useful framework to undertake this task, and encouraged me to design the information sessions with the social and cultural perspectives of the

[92] See appendix 10(i) and 10(ii).
[93] Scoping Trip Interview (No 6) with a Northern Territory Government Executive and a Northern Territory Policy Officer (Northern Territory, 23 October 2012).
[94] Daniel Moeckli, Sangeeta Shah, Sandesh Sivakumaran and David Harris (eds), *International Human Rights Law* (Oxford University Press, 2013) 62.
[95] Scoping Trip Interview (No 6) with a Northern Territory Government Executive and a Northern Territory Policy Officer (Northern Territory, 23 October 2012).
[96] See appendix 10(i) and 10(ii).

participants in mind.[97] Furthermore, the Scoping Trip emphasised the requirement to allow sufficient time to become known in the research community, and provide opportunities for potential participants to learn about the research topic prior to their participation in the field research. In order to put this into practice, several Scoping Trip participants suggested I visit the research site prior to undertaking the field research, and consult with the community, including Aboriginal CYP, about the proposed research before engaging directly with them as research participants.[98]

iii. Aboriginal CYP's Experiences of 'Shame'

The experience of shame was articulated by several Scoping Trip participants as a powerful factor which could limit the free participation of Aboriginal CYP in this research. Many Scoping Trip participants described Aboriginal CYP as 'shy.'[99] One participant expressed this as follows:

> What I think from what I see is Aboriginal kids are really shy and they don't like talking to people, non-Indigenous people, because they feel really shy. It depends on the child. Some children have confidence and some of them don't.[100]

The concept of 'shame' was also discussed as a particularly prevalent experience for Aboriginal CYP. A participant described an Aboriginal student expressing shame in a school context as follows:

> I have had to say to teachers here when they say, 'I got cross with this student and I said, "Look me in the eye", you can't do that it is not culturally appropriate. Particularly across gender you can't do that at all. Sometimes when they're shamed they'll even pull up their shirt, blouse over their eyes so they are not looking at you, because there's that shame there. But you can't worry about that, you just have to try talking generally. I try sitting next to them, without looking at them, and just talking. That's the way, the only way I can find. I would, and I would suggest you do too, ask if an Indigenous person, a teacher

[97] Nakata, above n 60.
[98] Scoping Trip Interview (No 1) with Indigenous Chief Executive Officer of a Leading Social Justice Agency (Northern Territory, 23 October 2012); Scoping Trip Interview (No 13) with three Aboriginal Women Employees from an Independent School (Northern Territory, 25 October 2012); Scoping Trip Interview (No 11) with the Principal of a Remote NT Government School (Northern Territory, 25 October 2012); Scoping Trip Interview (No 17) with a non-Indigenous Youth Worker (Northern Territory, 25 October 2012); Scoping Trip Interview (No 16) with a non-Indigenous Youth Worker/Policy Officer (Northern Territory, 25 October 2012); Scoping Trip Interview (No 8) with an Indigenous Youth Worker/Project Administrator (Northern Territory, 23 October 2012).
[99] Scoping Trip Interview (No 2) with the Principal of an Independent School (Northern Territory, 22 October 2012).
[100] Scoping Trip Interview (No 13) with three Aboriginal Women Employees from an Independent School (Northern Territory, 25 October 2012).

> or assistant teacher, would sit with me and talk with me where I can. Particularly with girls it's good to have a woman too because she can communicate, and if they can, use language.[101]

Shame is not restricted to situations of conflict or discipline, and it is distinct from the feeling of being *ashamed*. Information gathered during the Scoping Trip indicated that shame, as experienced by Aboriginal CYP, is associated with being singled out of the group and being uncomfortably positioned in the spotlight, or attracting individual attention. Participants described Aboriginal CYP feeling shamed if they are asked questions in the presence of particular adults, 'they might be shamed to say it in front of the youth worker or something.'[102] This is relevant to the research process and being aware of who is present when talking with Aboriginal CYP.

Furthermore, participants indicated that some Aboriginal CYP can be deferential to adults in positions of authority. A Scoping Trip participant, a Principal from a non-government school, described a situation where a teacher in his school encouraged an Aboriginal student to enrol in a course—a course the student was not interested in studying. The Principal explained that the young person felt shamed, and wanted to hide the fact that he did not want to do the course to the teacher. The Principal described the conversation he had with this young person and reflected upon this interaction as follows:

> I said 'Peter you've been dropped off at [a local education institution] to do construction' (he hadn't been attending the course for eight weeks) 'Why stop?' He said, 'Well as soon as the [school] car goes I go and see my aunty, sister and cousin in [a town nearby].' I said 'Well why do you do that?' He said 'Because of the shame.' I said 'What you mean?' He said 'Because Miss such and such desperately wanted me to do this course and I didn't tell her cause I didn't want to shame her, but I don't want to do construction.' It was the shame associated with wanting to accommodate and make someone else feel good. I said 'Well what do you want to do?' He said 'Well the assumption is that because I can't read and write I'm put into a VET course. I don't want to do VET, I want to learn how to read and write.'
>
> So one of these teenagers is saying to me that there's an assumption that through our f'd up paternalistic attitude that we know what's good for them! They don't have that voice and so they do it to

[101] Scoping Trip Interview (No 12) with a Principal from an Independent School (Northern Territory, 25 October 2012).
[102] Scoping Trip Interview (No 17) with a non-Indigenous Youth Worker (Northern Territory, 25 October 2012).

> accommodate us, to make us happy but the end result is bad. I had kids that were doing aquaculture as a certificate two qualification and they come from the desert country! 'Why did you do it I asked?' 'Oh well Miss such and such said it was a good idea at the time.' 'Well what are you going to do with that?' 'Don't know.' 'Where you asked?' 'No I wasn't asked.'[103]

Information gathered during the Scoping Trip, such as the information detailed above, stressed the importance of ensuring the research questions and questioning methods are culturally appropriate. This information taught me about the importance of understanding the dynamics of shame that may arise in the research context, and mitigating the risk of this occurring by not singling out certain participants, nor asking direct questions that may contribute to shaming participants.

The Scoping Trip revealed that in order to support the free participation of Aboriginal CYP in this research a variety of methods to seek Aboriginal CYP's perspectives on the research topic needed to be employed. Two research methods were discussed during the Scoping Trip— yarning methods, and the use of peer-to-peer interviewing using digital technology. Advice provided during the Scoping Trip about how to implement these methods is discussed below.

3.2.2.3 Communication and Research Methods

Scoping Trip participants suggested a range of communication methods to effectively and appropriately interact with Aboriginal CYP during the field research. These included non-direct discussion methods such as yarning,[104] and the use of peer-to-peer interviewing using digital technology.[105] The peer-to-peer method is designed to optimise Aboriginal CYP's involvement in the research, and mitigate the potential for CYP to feel shame by using peer-to-peer interviewing strategies, rather than using adult to child/young person interviewing. Practical considerations such as

[103] Scoping Trip Interview (No 2) with the Principal of an Independent School (Northern Territory, 22 October 2012).
[104] Scoping Trip Interview (No 12) with a Principal from an Independent School (Northern Territory, 25 October 2012); Scoping Trip Interview (No 13) with three Aboriginal Women Employees from an Independent School (Northern Territory, 25 October 2012). See also Dawn Bessarab, Cindy Solonec, Tammy Gibbs, Deborah Lehmann and Michael Wright, 'Not Just Scholars but Leaders: Learning Circles in Indigenous Health Research' (Telethon Institute for Child Health Research, Curtin University of Technology, University of Western Australia and Combined Universities Centre for Rural Health, 2009) 9.
[105] Scoping Trip Interview (No 12) with a Principal from an Independent School (Northern Territory, 25 October 2012); Scoping Trip Interview (No 1) with Indigenous Chief Executive Officer of a Leading Social Justice Agency (Northern Territory, 23 October 2012); Scoping Trip Interview (No 17) with a non-Indigenous Youth Worker (Northern Territory, 25 October 2012); Scoping Trip Interview (No 8) with an Indigenous Youth Worker/Project Administrator (Northern Territory, 23 October 2012).

the choice of location, the presence of trusted adults during the research, and the provision of food were also discussed.

i. Yarning Method

Many participants in the Scoping Trip consultations reported that in their experience Aboriginal people prefer to communicate informally through 'yarning,' rather than talking formally face-to-face in a typical Western research style interview setting.[106] The use of yarning as a research method has been established as a robust research tool, and is academically embedded as a part of Indigenous research methodologies.[107]

Yarning, in the context of this research, is a method designed to 'inquire into the ways people make meaning of their lives as narratives' and in doing so engage with the research topics through storytelling.[108] A Scoping Trip participant reflected the value of using the yarning method when he said:

> The direct question method is wrong. It's not the way to go with Indigenous people. Direct questions can be considered rude. It's hard for us in a white society to understand that, I have to explain to my teachers. That is because in teaching it's the most common method, to ask questions. But Aboriginal people won't always give the answers if they know you have got them anyhow, or if there is shame in giving a reply or other things. So they don't always respond to direct question.
>
> The best way with Indigenous people is yarning, as they call it. It's just sitting talking. Sitting side-by-side, rather than confronting, opposite, and better sit in a circle or side-by-side.[109]

The Scoping Trip revealed that yarning is also a culturally relevant and appropriate research method for use with Aboriginal CYP. This method assists with developing rapport with the research

[106] Scoping Trip Interview (No 1) with Indigenous Chief Executive Officer of a Leading Social Justice Agency (Northern Territory, 23 October 2012); Scoping Trip Interview (No 6) with a Northern Territory Government Executive and a Northern Territory Policy Officer (Northern Territory, 23 October 2012); Scoping Trip Interview (No 12) with a Principal from an Independent School (Northern Territory, 25 October 2012); Scoping Trip Interview (No 13) with three Aboriginal Women Employees from an Independent School (Northern Territory, 25 October 2012).
[107] Bronwyn Freidricks, Melissa Walker, Kyly Mills and Debra Anderson, '"Yarning" as a Method for Community-Based Health Research With Indigenous Women: The Indigenous Women's Wellness Research Program' (2013) *Health Care for Women International* 1.
[108] Beverley Fluckiger, Pat Diamond and Will Jones, 'Yarning Space: Leading Literacy Learning Through Family-School Partnerships' (2012) 37(3) *Australasian Journal of Early Childhood* 53, 54.
[109] Scoping Trip Interview (No 12) with a Principal from an Independent School (Northern Territory, 25 October 2012).

participants as it is a non-direct method of communicating where participants and the researcher sit in a circle and discuss a general theme. Thus, researchers who use this method rarely face participants; instead sit side-by-side, often without eye contact between the researcher and participants. Yarning is a non-threatening research method that reduces the risk of participants experiencing shame in the research environment.

ii. Peer-To-Peer Interviewing Using iPads

The Scoping Trip discussions revealed Aboriginal CYP are particularly interested in engaging with digital technology,[110] and this is an appropriate and effective medium to use in social research. Information provided during the consultations supported findings in the literature that assert that technology is both a 'meaningful and relevant' tool to undertake research with Aboriginal CYP.[111] These interviews provided some evidence that suggested, but did not reveal, the extent to which technology is shaping Aboriginal CYP's lives and engendering a sense of 'their "belongingness" to globalised youth culture.'[112] Further, the use of digital technology is a way to build rapport and engage CYP in a mode of research that interests CYP and facilitates child and youth led research methods such as peer-to-peer video interviewing. Literature supports the conclusion that technological influences are having a profound, often enriching impact on Aboriginal CYP's lives[113] and is intrinsically linked to Aboriginal people's opportunities for civic participation.[114] Aboriginal CYP's digital literacy provides an opportunity to utilise these capacities in the research context to provide a contemporary and engaging research environment.

However, consistent with the body of research on this issue the Scoping Trip interviews revealed some negative implications of the use of digital technology, particularly cyber-bullying on social media,

[110] Scoping Trip Interview (No 12) with a Principal from an Independent School (Northern Territory, 25 October 2012); Scoping Trip Interview (No 16) with a non-Indigenous Youth Worker/Policy Officer (Northern Territory, 25 October 2012).
[111] Inge Birgita Kral, 'Plugged In: Remote Australian Indigenous Youth and Digital Culture' (Centre for Aboriginal Economic Policy Research, 2010) 14.
[112] Ibid.
[113] Ibid.
[114] Amy Antonio, 'Democratising the Digital Divide: Civics and Citizenship Curriculum, Australian Aboriginal Communities and Social Media' (2013) 31(1) *The Social Educator* 35.

involving Aboriginal CYP.[115] A Scoping Trip participant explained how adept Aboriginal CYP are with digital technology as follows:

> The kids in the communities are pretty smart. Even though they don't have the great level of literacy and numeracy skills they can pick up an iPhone and they can find anything on Google. They know computers back to front. You'd be amazed when you go just how good they are with all this stuff.[116]

Another participant spoke about the high levels digital technological usage in remote regions in Australia when she said:

> Technology I think would actually work quite well with some of those groups depending on what you used. The remote communities I think have some of the highest uptake of technology.[117]

Information obtained during the Scoping Trip interviews confirmed the importance of using technology during the field research as an effective way to build rapport with CYP, as well as an important tool to engage Aboriginal CYP in the research in a relevant, contemporary and creative way.

3.3 Conclusion

Information and insights obtained during the five-day Scoping Trip in September and October 2012 positively enhanced the research methodology and methods, and confirmed the viability and value of conducting the research. The purpose of the trip was twofold: firstly, to seek an appropriate site to conduct the research, and secondly to seek advice about the proposed research from of a range of professionals working directly or indirectly with Aboriginal CYP in the NT. The views expressed during the Scoping Trip interviews about the proposed research methods and methodology were largely consistent with academic literature relating to Indigenous research methodologies, and with scholarship about conducting qualitative research with Aboriginal CYP.

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[115] Scoping Trip Interview (No 19) with the Director of a Women's Advocacy NGO (Northern Territory, 26 October 2012); Scoping Trip Interview (No 4) with a non-Indigenous Executive Director of a Peak Welfare Agency (Northern Territory, 23 October 2012). See also Megan Price and John Dalgleish, 'Cyberbullying: Experiences, Impacts and Coping Strategies as Described by Australian Young People' (2010) 29(2) *Youth Studies Australia* 51.

[116] Scoping Trip Interview (No 4) with a non-Indigenous Executive Director of a Peak Welfare Agency (Northern Territory, 23 October 2012).

[117] Scoping Trip Interview (No 6) with a Northern Territory Government Executive and a Northern Territory Policy Officer (Northern Territory, 23 October 2012).

The Scoping Trip provided essential information in order to ensure that principles 6, 7, 8 and 9 of the *AIATSIS Guidelines* were implemented.[118] The series of discussions held during the Scoping Trip provided an opportunity for me to consult with a range of experienced professionals before the research began, and contributed to fostering a climate of ongoing collaboration and consultation with the proposed research community.[119] This approach was consistent with the requirements articulated in the *National Statement* that states: 'What constitutes potential benefit and whether it justifies research may sometimes require consultation with the relevant communities.'[120] The views expressed during the Scoping Trip confirmed that the proposed research could potentially benefit participants and their communities, as well as the broader Australian community. Thus, the Scoping Trip provided a firm basis for the proposed research to proceed, and highlighted the range of ethical and methodological issues relevant to undertaking the planned field research with Aboriginal CYP.

The range of ethical and methodological issues associated with conducting this research, identified during the Scoping Trip, included the importance of overcoming cross-cultural research barriers that were likely to arise, as well as ensuring that the research was mutually beneficial and that appropriate reciprocity arrangements were built into the research design. Advice was provided about ways to undertake ethically robust research as a non-Indigenous researcher with Aboriginal CYP, and ways to build my awareness of the cultural context of the community where the research would take place.

Finally, the Scoping Trip revealed a range of ways to appropriately and effectively undertake field research through an understanding of how the research topic—children's participation—fits within the cultural norms and practices of Indigenous communities. The interviews confirmed that utilising yarning methods, as well as incorporating the use of digital technologies, were appropriate and effective methods for undertaking semi-structured group discussions with Aboriginal CYP. The Scoping Trip underlined that although the proposed research required careful consideration, the research project was valuable and viable, and the research methods and methodology for the field research had a firm foundation.

[118] *AIATSIS Guidelines*, above n 12
[119] Ibid.
[120] The *National Statement*, above n 11, section 1.1: research merit and integrity, 12.

Chapter 4: Does Article 12 of the CRC Require States to Involve Children in Law and Policy Development?

4.1 Introduction

> *Children should be consulted in the formulation of legislation and policy … and involved in the drafting, development and implementation of related plans and programmes*.[1] (United Nations Committee on the Rights of the Child, 2009)

Domestic legislation and policy governs a vast range of matters affecting CYP, including matters affecting Aboriginal CYP. However, CYP are rarely afforded the opportunity to be involved in the design of these initiatives.[2] The NTER and Stronger Futures legislation is an example of Australian Federal legislation affecting Aboriginal CYP, yet Aboriginal CYP were not involved in the development of this legislation or associated policies.[3] The Committee on the Rights of the Child ('UNCRC') Concluding Observations on Australia's Fourth Periodic Report on the CRC note the non-participation of Indigenous Australians in the development of the NTER legislation.[4] These comments express concern about the 'punitive nature of the State Party's *Northern Territory Emergency Response Bill*'[5] and about 'inadequate consultation and participation of Aboriginal and Torres Strait Islander persons in the policy formulation, decision-making and implementation processes of programmes affecting them.'[6] In their concluding remarks the UNCRC pointed to the need for Australia to 'combat discriminatory disparities,'[7] and to 'ensure the effective and meaningful participation of Aboriginal and Torres Strait Islander persons in the policy formation, decision-making

[1] UN Committee on the Rights of the Child, General Comment No 12, 'The Right of the Child to be Heard,' UN Doc CRC/C/GC/12 (1 July 2009) [122] (emphasis added).
[2] Barbara Bennett Woodhouse, 'Enhancing Children's Participation in Policy Formation' (2003) 45 *Arizona Law Review* 751, 751-752.
[3] See chapter 1 (section 1.1).
[4] United Nations Committee on the Rights of the Child, 60th Session, *Concluding Observations on Australia's Fourth Periodic Report on the CRC*, CRC/C/AUS/CO/4 (19 June 2012) [29(c)]. The UNCRC did not specifically mention the non-participation of Aboriginal or Torres Strait Islander children in the development of these laws.
[5] Ibid [29(c)].
[6] Ibid [29(d)].
[7] Ibid [30].

and implementation processes of programmes affecting them.'[8] In addition, and as will be outlined below, the UNCRC, as well as the Human Rights Committee ('HRC'), have made several statements about the incompatibility of elements of the NTER and Stronger Futures legislation with the CRC, and other human rights instruments.

Respecting children's views, and taking account of these views in decision-making processes, are essential steps in facilitating 'children's participation,' a foundation concept that runs throughout the text of the CRC. Article 12 of the CRC requires States to 'assure' children who are 'capable of forming' their 'own views the right to express those views freely in all matters affecting the child'; and that such views be 'given due weight in accordance with the age and maturity' of the child.[9] As a State party to the CRC Australia is therefore duty bound to 'assure' people under the age of 18 have the right to contribute in relation to 'all matters affecting' them, and for these contributions to be considered in decision-making processes.

However, does article 12 of the CRC confer a right for children to contribute to making child related law and policy, and impose a duty on State parties to fulfil this right?[10] The primary purpose of this chapter is to answer this question by examining the nature and scope of article 12 of the CRC, and Australia's duties under this provision. The following issues are examined: children's rights before the CRC (section 4.2); the development of children's rights under the CRC (section 4.3); and the meaning and scope of article 12 of the CRC (section 4.4). This chapter concludes that article 12 imposes a duty on States to involve CYP in the development of laws and polices likely to affect them.

4.2 The Rights of the Child before the CRC

The *Geneva Declaration on the Rights of the Child* ('*1924 Declaration*')[11] adopted in 1924 by the League of Nations, was a statement of principles regarding the welfare of the child 'recognising the

[8] Ibid [30(d)].
[9] *Convention on the Rights of the Child* opened for signature 20 November 1989, 44 UNTS 25 (entered into force 2 September 1990) ('*Convention on the Rights of the Child*') art 12.
[10] Thesis sub-question (ii), see chapter 1 (section 1.1.1).
[11] *Geneva Declaration of the Rights of the Child of 1924*, adopted Sept 26, 1924, League of Nations OJ Spec, Supp. 21, (1924).

economic, social and psychological needs of the child.'[12] The *1924 Declaration* did not place binding legal obligations on State parties, and did not include reference to children's participation rights.[13] Thirty-four years later the United Nations adopted the 1959 *Declaration on the Rights of the Child* ('*1959 Declaration*')[14] which consisted of 10 principles including the right to name, nationality, adequate nutrition, housing, medical care, education and recreation, among others.[15] Thus, children's participation rights were not included in the *1959 Declaration* nor the *1924 Declaration*. Whilst the *1959 Declaration* was a significant step in the lead up to placing children's rights on the international agenda, it was not sufficiently influential in galvanising support to include children's rights in mainstream human rights discourse and practice.[16]

In 1978 Poland submitted a draft resolution for a children's convention (which was largely based on the *1959 Declaration*[17]*)* to the United Nations Commission on Human Rights ('UNCHR') at its 34th session. Like the 1924 and 1959 Declarations, this document did not include a provision relating to children's right to participate in decision-making.[18] However, Poland's 1978 initiative sparked a series of preliminary consultations with UN member States, and international agencies, culminating in the UNCHR's decision in 1979 to set up an open-ended *ad hoc* Working Group ('Working Group') to explore the question of a convention on children's rights.[19]

Cantwell highlights the pre and post CRC rights climate for children. He says, 'it is clear that the general perception in the run-up to the drafting of the CRC was that children's issues did not fall within the scope of human rights.'[20] Rather, children's rights prior to the drafting of the CRC were implemented in a sporadic, inconsistent manner, largely based on notions of 'charity' and 'doing good' for children—not on the basis of a legal duty to recognise and implement rights.[21] The

[12] Aisling Parkes, *Children and International Human Rights Law: The Right of the Child to be Heard* (Routledge, 2013) 50.
[13] Ibid.
[14] *United Nations Declaration on the Rights of the Child*, GA Res 1386 (XIV), 14 UN GAOR, UN Doc A/4354 (20 November 1959).
[15] Parkes, above n 12, 50.
[16] Nigel Cantwell, 'Are Children's Rights Still Human?' in Dr Antonella Invernizzi and Dr Jane Williams (eds), *Human Rights of Children: From Visions to Implementation* (Ashgate, 2011) 37, 38.
[17] Parkes, above n 12, 50.
[18] Cantwell, above n 16, 37. See also Parkes, above n 12, 50.
[19] Cantwell, above n 16, 37.
[20] Ibid 38.
[21] Ibid.

consequence of this was that 'children's issues and human rights were … two rather different worlds.'[22] Hilary Clinton's (then Rodham) 1973 assessment that 'children's rights is a slogan in search of definition' summarised the context for children's rights in the 1970s—an emerging, yet undeveloped, area of thought, law and practice.[23] Clinton identified the need for a theory of children's rights and for the legal status of children to change 'by extending more adult rights to children and by recognizing certain unique needs and interests of children as legally enforceable rights.'[24]

In the 1970s, prior to the drafting of the CRC, 'children's liberationist' scholarship emerged calling for States to acknowledge and protect children's rights.[25] This body of thought was based on evolving notions of the meaning and nature of 'childhood',[26] and a rejection of persistent attitudes based on sentimentality, and non-inclusion of children in the human rights framework.[27]

4.3 The CRC—History, Drafting and Provisions

> *Historically, the embryonic development of children not merely as citizens, but as active citizens of the world, participating in helping develop global legislation regarding their own autonomy, began with the drafting of the CRC.*[28]

The introduction of the CRC provided the foundation for a global movement acknowledging children as individuals and holders of human rights, rather than 'mini-persons with mini-human rights.'[29] The rights articulated in the CRC fundamentally altered, and progressed,[30] the relationship between CYP and the State because the CRC 'brought about a qualitative transformation in the status of children as

[22] Cantwell, above n 16, 39.
[23] Hillary Rodham, 'Children Under the Law' (1973) 43(4) *Harvard Educational Review* 487, 487.
[24] Ibid.
[25] Ibid; Brian Milne, *The History and Theory of Children's Citizenship in Contemporary Societies* (Springer, 2013) 241 citing Paul Adams, Nan Berger, Michael Duane, Leila Berg, Alexander S Neill, and Robert Ollendorff, *Children's Rights: Toward the Liberation of the Child* (Praeger, 1971); Richard Farson, *Birthrights* (Collier Macmillan, 1974); John Holt, *Escape from Childhood* (Penguin, 1975); Shulamith Firestone, *The Dialectic of Sex: The Case for Feminist Revolution* (Jonathon Cape, 1970).
[26] Milne, above n 25. See also the discussion of childhood and participation in chapter 5.
[27] Cantwell, above n 16, 38; Philip Alston and John Tobin, 'Laying The Foundations For Children's Rights: An Independent Study of Some Key Legal and Institutional Aspects of the Impact of the Convention on the Rights of the Child ' (UNICEF Innocenti Research Centre, 2005); John Eekelaar, 'The Emergence of Children's Rights' (1986) 6(2) *Oxford Joumal of Legal Studies* 161.
[28] Geraldine Van Bueren, 'Acknowledging Children as International Citizens: A Child-Sensitive Communication Mechanism for the Convention on the Rights of the Child' in Dr Antonella Invernizzi and Dr Jane Williams (eds), *The Human Rights of Children: From Visions to Implementation* (Ashgate Publishing Ltd, 2011) 117, 117.
[29] Jean Zermatten, Anastasia Panayotidis and Jane Connors (eds), *18 Candles: The Convention on the Rights of the Child Reaches Majority* (Institut International des Droits de L'enfant (IDE), 2007) 15.
[30] Parkes, above n 12, 27.

the holders of rights.'[31] The CRC defined a new status for children and 'marked the beginning of a universal rights-based approach toward the child,'[32] one which perceives children as holders of rights themselves, rather than protection being available to children via adult rights, namely parental rights. The CRC is a key milestone positively altering children's legal, social and political status.

The CRC is the most highly ratified human rights treaty globally enjoying near universal ratification with 195 State parties. Somalia ratified the CRC on 1 October 2015, and South Sudan acceded to the CRC on 30 April 2015, leaving the United States of America as the only country that has not ratified the instrument.[33] Given the near global ratification of the CRC it is now the most appropriate legal instrument and 'unavoidable starting point for any discussion of the legal rights of children.'[34] When the CRC came into force it represented a 'new vision for children' and provided, for the first time, a body of legally enforceable rights for children.[35] However, despite near universal ratification of the CRC, domestic implementation and enforceability of the rights it contains remain underdeveloped. Tobin says, '(a)lthough the CRC has attained almost universal ratification, its incorporation into domestic law remains the exception rather than the norm,' and that, consequently, the rights provided for in the CRC 'are rarely enforceable in domestic courts.'[36]

Children's right to participate in all matters affecting them—the principle articulated in article 12—is the lynchpin of the CRC,[37] and lies at the heart of the provisions contained in the CRC.[38] Children's right to participate in matters affecting them is described by the UNCRC as one of the four foundational principles of the Convention,[39] along with the three other foundational principles: the

[31] Alston and Tobin, above n 27, ix.
[32] Parkes, above n 12, 5.
[33] United Nations Human Rights: Office of the High Commissioner for Human Rights, *Committee on the Rights of the Child* <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>. The United States of America is the only country which has not ratified the CRC despite signalling their intention to ratify by formally signing the CRC on 16 February 1995.
[34] David Archard, *Children: Rights and Childhood* (Routledge, 3rd Edition ed, 2015) 107.
[35] I Byrne, 'Participation: the Forgotton "P" in the Convention on the Rights of the Child' (2003) 14 *Interrights Bulletin* 45, 45.
[36] John Tobin, 'Judging the Judges: Are they Adopting the Rights Approach in Matters Involving Children?' (2009) 33(2) *Melbourne University Law Review* 580, 581 and 620.
[37] Michael Freeman, 'Whither Children: Protection, Participation, Autonomy?' (1994) 22(3) *Manitoba Law Journal* 307, 319.
[38] John Tobin, 'Understanding a Human Rights Based Approach to Matters Involving Children: Conceptual Foundations and Strategic Considerations' in Antonella Invernizzi and Jane Williams (eds), *Children's Human Rights: From Visions to Implementation* (Ashgate Publishing, 2011) 61.
[39] UN Committee on the Rights of the Child, General Comment No 12, 'The Right of the Child to be Heard,' UN Doc CRC/C/GC/12 (1 July 2009) 5.

right to non-discrimination; the right to life and development; and the best interests of the child.[40] In the words of the UNCRC, article 12 'establishes not only a right in itself, but should also be considered in the interpretation and implementation of all other rights.'[41] Thus, article 12 is a right as well as an enabling principle that facilitates the fulfilment of other rights contained in the CRC.[42] Importantly, the rights emanating from article 12 have 'pushed the boundaries beyond protection and provision rights to those of participation.'[43] Thus, the introduction of the CRC shifted the children's rights movement away from a focus on protecting and providing for children (a 'welfare-based approach'—this is detailed further in chapter 5), to a focus on children as active agents with the right to participate in decision-making.[44]

4.3.1 Drafting History of the CRC

The Working Group drafted the CRC from 1979-1989 largely led by the Chair, Professor Adam Lopatka from Poland. His primary focus in chairing the Working Group was to achieve consensus among the delegation, and at times this required making compromises which dissatisfied some members of the Group.[45] The process of drafting the CRC involved lively—often highly conflictual—debates about which rights should be included and excluded, and the nature and form of the provisions. Cantwell details numerous occasions when the Working Group could not reach consensus about the content of the CRC, and notes that at times the inability to agree on the text threatened to terminate the drafting process.[46]

[40] The UNCRC outlined the four general principles contained in the CRC in 1991, see: Committee on the Rights of the Child, 'General Guidelines Regarding the Form and Content of Initial Reports to be Submitted by States Parties under Article 44, Paragraph 1(a) of the Convention,' UN Doc. CRC/C/5 cited in Ursula Kilkelly, 'Using the Convention on the Rights of the Child in Law and Policy: Two Ways to Improve Compliance' in Dr Antonella Invernizzi and Dr Jane Williams (eds), *The Human Rights of Children: From Visions to Implementation* (Ashgate Publishing Ltd, 2011) 208.
[41] UN Committee on the Rights of the Child, General Comment No 12, 'The Right of the Child to be Heard,' UN Doc CRC/C/GC/12 (1 July 2009).
[42] Henk Van Beers et al, 'Creating an Enabling Environment: Capacity Building in Children's Participation' (Save the Children Sweden, Viet Nam 2000-2004, 2006). See also Parkes, above n 12, 276.
[43] Kay EM Tisdall, 'Is the Honeymoon Over? Children and Young People's Participation in Public Decision-Making' (2008) 16(3) *International Journal of Children's Rights* 343, 343.
[44] Milne, above n 25, 30.
[45] Nigel Cantwell, 'Words that Speak Volumes' in Jean Zermatten, Anastasia Panayotidis and Jane Connors (eds), *18 Candles: The Convention on the Rights of the Child Reaches Majority* (Institut International des Droits de L'enfant (IDE), 2007) 21, 25.
[46] Ibid 25.

During the drafting the difficulty of designing a document representing the rights of children globally, which encompassed international cultural perspectives regarding children's lives, was almost insurmountable.[47] These difficulties were however eventually overcome, and 10 years after the Working Group was formed the CRC opened for signature in 1989, and came into force in 1990.

The development of the CRC was a remarkable achievement in the history of children's rights. The text did more than stipulate a catalogue of children's rights, it set in motion a new way of conceptualising children and the position children hold in global society. As Cantwell explains:

> Welfare, development and protection were established once and for all as human rights issues. And out of this, among other things, emerged the child participation ethic now so fundamental to rights-based work.[48]

Freeman notes that, despite the importance placed on including children's participation rights in article 12, children were not involved in the drafting process.[49] Freeman suggests the non-participation of children produced flaws in the text of the CRC as it did not, and still does not, encompass the range of issues important to CYP.[50] Tobin agrees, he says 'the drafting process was dominated by Western States and completely excluded children.'[51] Arce concludes that the Working Group's Western-centric 'paternalistic' view of childhood—reflected in the text of the CRC positioning children as '*becoming*s, and "not-yets"'—prevented children from participating in the drafting of the text.[52] The non-participation of children in the drafting of the CRC was not an oversight, according to Arce, but indicative of the philosophical perspective on childhood held by the Working Group.[53]

[47] Cantwell, above n 45.
[48] Cantwell, above n 45, 29.
[49] Michael Freeman, 'The Future of Children's Rights' (2000) 14 *Children and Society* 277, 282.
[50] Ibid.
[51] John Tobin, 'Children's Rights in Australia: Confronting the Challenges' in M Castan and P Gerber (eds), *Contemporary Perspectives on Human Rights Law in Australia* (2013) 275, 297.
[52] Matías Cordero Arce, 'Maturing Children's Rights Theory' (2015) 23(2) *International Journal of Children's Rights* 283, 297.
[53] Ibid.

On the other hand Van Bueren,[54] one of the original drafters of the CRC and member of the Working Group, details her first-hand experience of being present when children spoke to the Working Group during the drafting process.[55] She notes children's participation 'was more *ad hoc* than structured, and occasional rather than comprehensive'[56] yet she attributes significance to these contributions because 'for the first time the global community … acknowledged the value not only of children speaking on their own behalf but also, as citizens of the world, speaking on behalf of their fellow children globally.'[57]

There may have been *ad hoc* or indirect contributions from children in the drafting process however, there are no records in the formal drafting history that children contributed to forming the text of the CRC.[58] Van Bueren's reflections indicate minimal participation by children and suggest the drafting process of the CRC was the first time any international instrument had been influenced by children.[59]

The UNCRC now recognises that children have a right to participate in UN processes and have produced the 'Working Methods for the Participation of Children in the Reporting Process of the Committee on the Rights of the Child' ('*UNCRC's Working Methods*').[60] This provides detailed guidance on how to involve children in any children's participation activity. The development of the *UNCRC's Working Methods* indicates how interpretations of article 12 have evolved since the CRC was drafted.

The development of the CRC not only provided an international human rights legal instrument, but a global mechanism for children's rights education and awareness raising.[61] Most notably, the CRC provided a platform for 'innovative collaboration for children both in civil society and at the intergovernmental level, as well as between the two.'[62] The climate in which the CRC was adopted

[54] Van Bueren, above n 28. Geraldine Van Bueren is Professor of International Human Rights Law at Queen Mary, University of London and Visiting Fellow at Kellogg College, Oxford.
[55] Van Bueren, above n 28, 118 see footnote 2.
[56] Ibid 117-118.
[57] Ibid 143.
[58] Freeman, above n 49, 282.
[59] Van Bueren, above n 28, 117.
[60] UN Committee on the Rights of the Child, 'Working Methods for the Participation of Children in the Reporting Process of the Committee on the Rights of the Child,' UN Doc CRC/C/66/2 (16 October 2014).
[61] Cantwell, above n 16.
[62] Cantwell, above n 16, 41.

was a 'period of optimism': the Berlin Wall had fallen 11 days before the CRC was adopted on 20 November 1989, and 'the Cold War seemed to come to an end.'[63]

4.3.2 Overview of the CRC Provisions

The object and purpose of the CRC is the realisation of rights for all children everywhere, and at all times.[64] The CRC enshrines children's civil, political, economic, social and cultural rights and was the first international treaty to incorporate the comprehensive body of human rights in one document.[65] The text of the CRC draws on the provisions contained in the International Bill of Human Rights.[66] Articles 13–16 of the CRC[67] are designed to extend to children the rights articulated in both the *International Covenant on Civil and Political Rights* ('ICCPR')[68] and the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR').[69] Cantwell, on the status of the CRC in the body of treaty law, said:

> The Convention is extraordinarily comprehensive in scope. It covers all the traditionally defined areas of human rights—civil, political, economic, social and cultural. In doing so, however it has shied away from distinguishing between these areas and, on the contrary, has happily tended to underscore the indivisibility, mutual reinforcement and equal importance of all rights.[70]

[63] Philip E Veerman, 'The Ageing of the UN Convention on the Rights of the Child' in Michael Freeman (ed), *The Future of Children's Rights* (Brill Nijhoff and Hotei Publishing, 2014) 610.
[64] *Convention on the Rights of the Child* preamble.
[65] Other human rights treaties, such as *the International Covenant on Civil and Political Rights, opened for signature December 19 1966, 999 UNTS 85 (entered into force March 23, 1976)* and the *International Covenant on Economic, Social, and Cultural Rights*, opened for signature 16 December 1966, GA Res 2200A (XXI), UN GAOR, 21st Session, UN Doc A/6316, 999 U.N.T.S. 3 (entered into force 3 January 1976) deal separately with two respective sub-sets of human rights.
[66] Milne, above n 25, 241. This is made up of the: *Universal Declaration of Human Rights*, G.A. Res. 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc. A/RES/217A (III) (10 December 1948); the *International Covenant on Economic, Social, and Cultural Rights*, opened for signature 16 December 1966, GA Res 2200A (XXI), UN GAOR, 21st Session, UN Doc A/6316, 999 U.N.T.S. 3 (entered into force 3 January 1976); and the *International Covenant on Civil and Political Rights*, opened for signature December 19 1966, 999 UNTS 85 (entered into force March 23, 1976).
[67] *Convention on the Rights of the Child* art 13 (the right to freedom of expression); art 14 (the right to freedom of thought, conscience and religion); art 15 (the right to freedom of association) and art 16 (the right to protection of privacy).
[68] *International Covenant on Civil and Political Rights*, opened for signature December 19 1966, 999 UNTS 85 (entered into force March 23, 1976).
[69] *International Covenant on Economic, Social, and Cultural Rights*, opened for signature 16 December 1966, GA Res 2200A (XXI), UN GAOR, 21st Session, UN Doc A/6316, 999 U.N.T.S. 3 (entered into force 3 January 1976); Milne, above n 25, 238.
[70] Nigel Cantwell, 'The Origins, Development and Significance of the United Nations Convention on the Rights of the Child' in Sharon Detrick, Jakob Egbert Doek and Nigel Cantwell (eds), *The United Nations Convention on the Rights of the Child: A Guide to the 'Travaux Préparatoires'* (Martinus Nijhoff Publishers, 1992) 27.

4.3.2.1 Definition of a Child

Article 1 of the CRC defines a child as 'every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.'[71] The wording of article 1 of the CRC references 'children,' not 'young people' or 'youth.' It is acknowledged, that there are inherent problems associated with the definition of a child in the CRC.[72] Cantwell, for example, is critical of the use of the term 'child' in the CRC because of its tendency to 'infantilise' adolescents.[73] He argues that the definition contributes to marginalising 'children's rights' and promoting 'continued acceptance of sentimentalism' with respect to children's rights, creating a special category of rights for children divorced from the broader human rights discourse.[74] The sentimentalisation of children's rights, argues Cantwell, is based on notions of charity and 'a situation reminiscent of the pre-CRC era of "children's rights" rather than moving forward by building on the essential "human rights of children."'[75]

To a degree these criticisms of the CRC are accepted however, the definition of a child offered by the CRC can be appropriately adapted to reflect the rights of adolescents in practice. For example, following advice received during the Scoping Trip,[76] participants who were 12 years of age and older were not referred to as children, rather as 'young people.' Participants in the Scoping Trip cautioned against referring to young participants as children as some of the older cohort of participants were perceived as 'men' in their community, as they had passed through cultural ceremonies which meant they were no longer considered to be children.[77] This approach acknowledged the different developmental stages of participants, and sought to be culturally sensitive.

[71] *Convention on the Rights of the Child* art 1.
[72] Veerman, above n 63, 587. Veerman discusses the need to 'take a fresh look at article 1' of the CRC, stating the rights of people before birth as well as in adolescence, and beyond the age of 18 years need to be incorporated into the *Convention on the Rights of the Child*.
[73] Cantwell, above n 16, 43.
[74] Ibid 43.
[75] Ibid.
[76] See chapter 3.
[77] Scoping Trip Interview (No 13) with three Aboriginal Women Employees from an Independent School (Northern Territory, 25 October 2012).

4.3.2.2 The 3 P's: Protection, Provision and Participation

Shortly after the CRC was drafted Hammarberg grouped the rights contained in the instrument into three categories which have since been referred to as the 'three p's': *protection*, *provision* and *participation*.[78] Protection rights include: protection from violence, abuse and neglect (article 19) as well as protection from sexual and other forms of exploitation (article 34 and 36); protection when children are separated from their parents (article 9) or when children are deprived of a family environment (article 20); protection of privacy (article 16); protection from child labour (article 32); protection from torture, degrading treatment and deprivation of liberty (article 37); and protection from involvement in armed conflict (article 38).

Provision rights include: provision of health and health services (article 24); provision of social security (article 26) and the right to an adequate standard of living (article 27); provision of education (article 28); and provision of leisure, play and culture (article 31).

Participatory rights are articulated in article 12 and supported by the rights to: freedom of expression (article 13) as well as freedom of thought, conscience and religion (article 14); freedom of association and peaceful assembly (article 15); and freedom of information (article 17).

The remaining provisions contained in the CRC provide instruction on the measures State parties are required to take in order to implement the treaty (article 4); how State parties are required to make known their obligations under the CRC (article 42); the role of the UNCRC in monitoring implementation (article 43) and the reporting process (article 44).[79]

4.3.2.3 Reservations and Declarations

Article 19 of the *Vienna Convention on the Law of Treaties* ('VCLT'),[80] and article 51(2) of the CRC, provide for States to make reservations when ratifying the treaty that exclude or modify the legal

[78] Thomas Hammarberg, 'The UN Convention on the Rights of the Child and How to Make it Work' 12(97) *Human Rights Quarterly* 97, 100.
[79] Parkes, above n 12, 6.
[80] *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980).

effect of certain treaty provisions for that State. Reservations are permissible under article 19 of the VCLT so long as they are not 'incompatible with the object and purpose' of the treaty.[81] A declaration is a statement by a State party upon ratification about how a treaty provision is to be interpreted in that State. A declaration may, or may not, amount to a reservation depending on whether it is intended to exclude or modify the legal effect of the treaty.

No State party lodged a reservation expressly in relation to article 12 when ratifying the CRC.[82] However several States have entered declarations or reservations to the CRC, which impact on the implementation of children's participatory rights in those jurisdictions. Some of these reservations and declarations are incompatible with children's participation rights and, given the centrality of these rights in the CRC, incompatible with the object and purpose of the CRC.[83]

For example, Brunei Darussalam, and Iran lodged *reservations* to the CRC that were intended to apply to the CRC generally and thus, also to article 12. Brunei Darussalam lodged a reservation to the CRC which is intended to limit the legal effect of the treaty in that State to the extent that any 'provisions of the said Convention which may be contrary to the Constitution … and to the beliefs and principles of Islam.'[84] Iran's reservation to the CRC states that it 'reserves the right not to apply any provisions or articles of the Convention that are incompatible with Islamic Laws.'[85] Parkes notes these reservations, whilst not specifically reservations directly limiting the operation of article 12 in those States, may indirectly impact on children's participation rights given that 'traditional beliefs clearly limit the extent to which children express their views, in practice this means that article 12 falls within the scope of the reservation.'[86]

[81] *Vienna Convention on the Law of Treaties* art 19; *Convention on the Rights of the Child* art 51 (2).
[82] Australia has not made a reservation, or a declaration in relation to article 12 of the CRC. Australia has however, made a reservation to article 37(c) of the CRC claiming it is not always feasible, given the 'geography and demography of Australia' to comply with the requirement to have separate juvenile detention facilities (*Convention on the Rights of the Child*, Australia's reservation to article 37 (c)).
[83] Parkes, above n 12, 87-88.
[84] See United Nations Treaty Collection, *Convention on the Rights of the Child: Reservations and Declarations to the UN Convention on the Rights of the Child*, <https://treaties.un.org> cited in ibid 87.
[85] *Convention on the Rights of the Child*, Reservation by Brunei Darussalam cited in Parkes, above n 12, 87. Reservations and Declarations to the CRC can be found at United Nations Treaty Collection, *Convention on the Rights of the Child* <https://treaties.un.org>.
[86] Parkes, above n 12, 87.

Poland, Singapore and Kiribati have made *declarations* which have the effect of limiting children's participation rights in the family, and in public life. These declarations stipulate that the provisions contained in the CRC will only be implemented in those States to the degree to which they align with the cultural beliefs and practices surrounding respect for parental authority.[87] Kiribati for example, lodged a declaration defining the meaning of articles 12-16 in that State as being 'exercised with respect for parental authority in accordance with the Kiribati customs and traditions regarding the place of the child within and outside the family.'[88] These declarations appear to exclude or modify the legal effect of the CRC and to limit children's participation rights in these States. The UNCRC has called for States to 'review and withdraw restrictive declarations and reservations to article 12' in order to give effect to the object and purpose of the CRC, and for these States to comply with their international obligations.[89]

4.3.2.4 Monitoring the Implementation of the CRC

Freeman highlights the importance of the legal claims available to children under international human rights law.[90] Freeman says:

> Rights without remedies are of symbolic importance, nothing more … Rights offer fora for action. Without rights the excluded can appeal to the charitable nature of others, they can request, they can beg … hope that others will be benevolent or co-operative … But they cannot demand: they lack the entitlement to do so.[91]

Part II of the CRC (articles 42-45) outlines the mechanisms States must adhere to in order to comply with treaty obligations. Article 42 requires States to 'make the principles and provisions of the Convention widely known … to adults and children alike.'[92] Article 43 provides that the UNCRC has the role of 'examining the progress made by States Parties in achieving the realisation of the

[87] Ibid 87-88.
[88] *Convention on the Rights of the Child*, declaration by Kiribati cited in Parkes, above n 12, 87. Reservations and Declarations to the CRC can be found at United Nations Treaty Collection, *Convention on the Rights of the Child* <https://treaties.un.org>.
[89] UN Committee on the Rights of the Child, General Comment No 12, 'The Right of the Child to be Heard,' UN Doc CRC/C/GC/12 (1 July 2009) [49].
[90] Michael Freeman, 'The Value and Values of Children's Rights' in Dr Antonella Invernizzi and Dr Jane Williams (eds), *The Human Rights of Children: From Visions to Implementation* (Ashgate Publishing Ltd, 2011) 22-23.
[91] Ibid.
[92] *Convention on the Rights of the Child* art 42.

obligations' in the CRC.[93] The UNCRC is comprised of 18 independent children's rights experts.[94] The principle mechanism for monitoring the implementation of the CRC is the treaty reporting process outlined in article 44 of the CRC. The UNCRC is also responsible for monitoring compliance with the three optional protocols to the CRC: the *First Optional Protocol to the CRC on Children in Armed Conflict* ('*First Optional Protocol to the CRC*');[95] the *Second Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography* ('*Second Optional Protocol to the CRC*');[96] and the *Third Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure* ('*Third Optional Protocol to the CRC*').[97]

State parties are required to report periodically to the UNCRC on steps taken that 'give effect to the rights recognised' and 'on the progress made on the enjoyment of those rights.'[98] These reports must indicate if there are any 'factors and difficulties' affecting the fulfilment of the rights under the CRC,[99] and are required within two years of ratification and thereafter every 5 years.[100] The UNCRC considers State parties reports, and alternate[101] reports from NGOs in sessions held three times per year in Geneva. Government and non-government delegations from the State parties attend these sessions.

After the reports relating to each State party are considered, the UNCRC issues two key documents: Summary Records[102] and Concluding Observations.[103] Concluding Observations acknowledge progress made to align national legislation and policy with the CRC, and highlight ways the State

[93] *Convention on the Rights of the Child* art 43.
[94] Established under art 43.
[95] *First Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, adopted and opened for signature 25 May 2000, UN Doc A/RES/54/263 (entered into force 12 February 2002).
[96] *Second Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, adopted and opened for signature 25 May 2002, UN Doc A/RES/54/263 (entered into force 18 January 2002).
[97] *Third Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*, opened for signature 28 February 2012, UN Doc A/RES/66/138 (entered into force 14 April 2014).
[98] *Convention on the Rights of the Child* art 44.
[99] *Convention on the Rights of the Child* art 44 (2).
[100] *Convention on the Rights of the Child* art 44 (1(a) and (b)).
[101] Non-governmental alternate reports are often referred to in practice, and in literature, as 'shadow reports.' However, during my work with UNICEF I had the opportunity to work briefly with the then Chair of the UNCRC, Professor Yanghee Lee, who stated that the UNCRC preferred the use of the term 'alternate report' in preference to 'shadow report' as the former is consistent with article 43 of the CRC which values NGO participation in the reporting process, not as ancillary to the reporting process. The function of NGO alternate reports is to act as a check and balance on State party reporting.
[102] This document details the discussions which took place between the State Party delegation and the UNCRC.
[103] Concluding Observations outline the UNCRC's response to the Government and NGO reports considered in relation to the measures taken to implement the CRC.

party may amend or improve domestic compliance.[104] They are non-binding on State parties; however, they are publically available and offer guidance to State parties about how to better implement children's rights in the respective jurisdictions.

In addition, in 1992 the UNCRC decided to hold biannual General Days of Discussion. The aim of these discussions is to assist State party implementation of the CRC by providing in depth comment on, and interpretation of, specific provisions in the CRC.[105] The UNCRC has held 21 Days of Discussion, and since 2001 issued 18 General Comments arising from these discussions including one on Indigenous children's rights in 2003,[106] and one on children's right to be heard in 2009.[107] The UNCRC's General Comments provide clarification and interpretation about particular articles of the CRC, as well as about children's rights themes, and provide State parties with enhanced analysis of the measures ratifying States must take to comply with the CRC.[108]

The UNCRC encourages broad ranging participation in their meetings by representatives of State parties, NGOs, the United Nations, and National Human Rights Institutions as well as promotes the participation of children and experts. For example, a group of children participated in the deliberations at the *10th Anniversary Commemorative Meeting* of the UNCRC in 1999, and submitted a range of proposals directly to the UNCRC.[109] Whilst the UNCRC did not adopt the delegate's proposal to include children on the panel of Committee members, the UNCRC formally encouraged children's direct participation in the reporting process. The following statement by the UNCRC details this support:

[104] Parkes, above n 12, 10.
[105] Ibid.
[106] UN Committee on the Rights of the Child, General Comment No 11, 'Indigenous Children and their Rights under the Convention,' UN Doc CRC/C/GC/11 (2009).
[107] UN Committee on the Rights of the Child, General Comment No 12, 'The Right of the Child to be Heard,' UN Doc CRC/C/GC/12 (1 July 2009).
[108] Urshula Kilkelly, 'Operationalising Children's Rights: Lessons from Research' (2006) 4(1) *Journal of Children's Services* 35, 41.
[109] UN Committee on the Rights of the Child, *10th Anniversary Commemorative Meeting*, UN Doc CRC/C/90 (November 1999) [291(x)]. Parkes, above n 12, 254. One of the proposals from the children's delegation at this meeting was the recommendation to establish a World Parliament for children.

> The Committee encourages states parties, non-governmental organisations, and others preparing reports, to include the views of children, in particular on the status of children's rights and the impact of the Convention on their lives, in monitoring and reporting on the implementation of the Convention.[110]

4.3.2.5 Communication Mechanism: Optional Protocol to the CRC

Freeman has expressed the view that the future of children's rights lies in the ability to claim these rights and seek remedies for their non-fulfilment,[111] and notes that 'remedies require the injection of resources.'[112] The *Third Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure* ('*Third Optional Protocol to the CRC'*) came into force in 2014, and provides a new participation mechanism for children to communicate with the UNCRC about instances where their rights are not being fulfilled, or are being abrogated.[113] Through this mechanism children's rights—in particular children's participation rights—attained a level of legal status not previously enjoyed during the 25 year life of the CRC. There is now an individual communications procedure available in relation to each of the nine 'core' human rights treaties.[114] The *Third Optional Protocol to the CRC* established an avenue for children, whose rights have been violated in States who are party to the Protocol, to communicate this to the UNCRC. The Protocol provides a mechanism for individual children, groups of children (or their representatives), to make a complaint to the UNCRC under certain conditions.[115]

During the CRC drafting process States rejected the proposal to incorporate a complaints mechanism in the text of the treaty, such that individual or group complaints were not 'optional' but part of the

[110] UN Committee on the Rights of the Child, *10th Anniversary Commemorative Meeting*, UN Doc CRC/C/90 (November 1999). See also Parkes, above n 12, 248, for examples of 'children's reports' submitted to the UNCRC by children in the Netherlands, Germany and Sweden.
[111] Michael Freeman, *The Future of Children's Rights* (Brill Nijhoff and Hotei Publishing, 2014) 9.
[112] Ibid.
[113] *Third Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*, opened for signature 28 February 2012, UN Doc A/RES/66/138 (entered into force 14 April 2014).
[114] United Nations Human Rights, *Human Rights Treaty Bodies—Individual Communications* (2015) <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx>.
[115] *Third Optional Protocol to the Convention on the Rights of the Child*. An individual child, a group of affected children (or their representative), whose rights have been violated under the CRC (or Optional Protocols 1 and 2 to the CRC) may lodge a complaint, known as a 'communication' to the UNCRC. This right only exists for complainants if the country where the violation occurred is a State party to the Third Optional Protocol to the CRC (art 5). Anonymous communications are inadmissible (art 7) and all domestic remedies must have been exhausted (art 7) prior to lodging a 'complaint'.

body of the treaty.[116] It is probably because including a complaint mechanism in the original text of the CRC would have resulted in fewer States ratifying the treaty, although it may have avoided the current situation were very few States have ratified the *Third Optional Protocol to the CRC*.[117] At the time of writing the *Third Optional Protocol to the CRC* had only 17 State parties, and Australia is not one of these.[118]

4.3.2.6 Criticisms of the CRC

A key failing of the CRC is the scant reference to the rights of Indigenous CYP—a group of people globally whose interests require particular attention and legal protection. The CRC specifically mentions Indigenous children's rights in article 29, under the general measures of implementation, and in article 30 which provides for an Indigenous child's right to 'enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.'[119] Although Indigenous children's participation rights were not specifically raised during the drafting process, the reference to 'all children' in article 12 makes it clear that Indigenous children are encompassed by the provision.

A growing body of literature from modern children's rights theorists identifies a range of other problems associated with the CRC and the presumptions upon which it was drafted. These criticisms include challenging conceptions of childhood embedded in the CRC;[120] identifying paternalism in the text of the CRC that hinders children's agency and therefore their participation;[121] the imposition of a *one size fits all* approach to the 'child' rather than to 'children' limiting children's diverse experiences and respective cultural contexts;[122] and the weak framework for children's citizenship, which among other implications confines children's agency in decision-making processes.[123]

[116] Van Bueren, above n 28, 122.
[117] See United Nations Treaty Collection, *Convention on the Rights of the Child*, <https://treaties.un.org>.
[118] Ibid.
[119] *Convention on the Rights of the Child* arts 29 and 30.
[120] Matías Cordero Arce, 'Towards an Emancipatory Discourse of Children's Rights' (2012) 20(3) *International Journal of Children's Rights* 365.
[121] Archard, above n 34, 107-123.
[122] John Tobin, 'Understanding Children's Rights: A Vision Beyond Vulnerability' (2015) 84(2) *Nordic Journal of International Law* 155.
[123] Milne, above n 25.

Despite the CRC's 'gaps and inadequacies',[124] and whilst compromises on the content were made during the drafting of the CRC, the CRC remains the most complete statement of children's rights globally. In addition, it is possible to argue that the CRC has the capacity to evolve based on a model of treaty interpretation developed by scholars: the 'interpretive community.' Under this model Aboriginal CYP would actively participate in the interpretation of the CRC and make recommendations for its implementation.[125] Under this model Aboriginal CYP, like all members of the community, contribute to treaty interpretation as equals, and all members views are given 'due weight.'[126] This approach is discussed in chapter 7.

4.4 Article 12 of the CRC

When the CRC came into force in 1990 this marked the first point in history where State parties became duty bound under international law to 'assure' children's right to express their views; and to give these views 'due weight' in decision-making processes affecting the child.[127] Children and young people had the right to freedom of expression before the CRC came into force under article 19 of the ICCPR and other international instruments.[128] However, through article 12 and other associated provisions, the CRC provides a specific child focussed mandate to State parties to respect, and give due weight, to CYP's views in decision-making processes. The participation rights set out in article 12 are supported by other rights in the instrument, namely the rights to freedom of expression;[129] freedom of thought, conscience and religion;[130] and the right to access appropriate information.[131] Children's participatory rights are indirectly linked to three other foundation principles of the CRC: the right to

[124] Kilkelly, above n 40, 211.
[125] Ian Johnstone, 'The Power of Interpretive Communities' in Michael Barnett and Raymond Duvall (eds), *Power in Global Governance* (2004) vol 98, 185; Ian Johnstone, 'Treaty Interpretation: The Authority of Interpretive Communities' (1990) 12 *Michigan Journal of International Law* 371; John Tobin, 'Seeking to Persuade: A Constructive Approach to Human Rights Treaty Implementation' (2010) 23 *Harvard Human Rights Journal* 1; Stanley Eugene Fish, *Is There a Text In this Class? The Authority of Interpretive Communities* (Harvard University Press, 1980).
[126] *Convention on the Rights of the Child* art 12.
[127] Ibid.
[128] *International Covenant on Civil and Political Rights*, opened for signature December 19 1966, 999 UNTS 85 (entered into force March 23, 1976).
[129] *Convention on the Rights of the Child* art 13.
[130] Ibid art 14.
[131] Ibid art 17.

non-discrimination;[132] the right to life and development,[133] and the best interests of the child principle.[134] Article 12 of the CRC sets out the principle of children's participation as follows:

> 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 child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.[135]

This section of the chapter provides an analysis of the legal requirements of article 12 of the CRC. It is also important to examine how those legal requirements can be implemented in practice and this aspect is addressed in chapters 6 and 7, which demonstrate that the NTER and Stronger Futures legislation and policy directly, as well as indirectly, impacts on Aboriginal CYP's daily lives, and is a 'matter affecting' them within the meaning of article 12 of the CRC.[136] Field research highlights CYP were—to borrow the words of article 12—'capable of forming,' and 'freely expressing' their 'own views' about the legislation.[137] However, these views were not sought nor given 'due weight' in the development of this legislation and policy.[138] Thus, this chapter, in concert with chapters 6 and 7, provide evidence that the non-participation of Aboriginal CYP in the development of the NTER and Stronger Futures legislation constitutes a breach of Australia's international human rights law duty under article 12 of the CRC.

[132] Ibid art 2.
[133] Ibid art 6.
[134] Ibid art 3.
[135] *Convention on the Rights of the Child.* This is the text of art 12, as adopted by the Working Group at the second reading in 1989, UN Doc E/CN.4/1989/29/Rev.1 at 7 cited in Parkes, above n 12, 53.
[136] See chapters 6 and 7.
[137] *Convention on the Rights of the Child* art 12.
[138] Ibid.

4.4.1 Interpreting Article 12

There are various 'rules' for the interpretation of treaties including the 'textual approach, the restrictive approach, the teleological approach, and the effectiveness approach.'[139] The VCLT[140] only supports the textual approach, as does the jurisprudence of the International Court of Justice ('ICJ').[141]

Interpretations of international human rights law may evolve over time. The ICJ, whilst supporting the textual approach outlined in the VCLT, has determined that within the parameters of the VCLT 'an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation,' rather than the time of drafting or adoption.[142] This approach permits some latitude in the interpretation of treaty provisions thereby loosening what commentators refer to as the 'straightjacket of article 31(1)' of the VCLT.[143] Never the less, the appropriate starting point to determine the meaning of a treaty provision is the framework provided in the VCLT, and this is the approach adopted below.

4.4.1.1 VCLT Framework for Treaty Interpretation

Article 26 of the VCLT states: 'Every treaty in force is binding upon the parties to it and must be performed by them in good faith.'[144] The VCLT sets out a three part framework for assessing the meaning of a treaty. The first step to determine the meaning of a treaty provision is to apply the *general rule* provided by article 31(1).[145] The general rule stipulates that '[a] treaty shall be interpreted in good faith in accordance with the *ordinary meaning* to be given to the terms of the treaty in their context and in the light of its object and purpose.'[146] Thus, in accordance with the principles of 'indivisibility, interdependence and interconnectedness of all human rights' the meaning of separate provisions in the CRC 'can only be understood when they are read and interpreted in conjunction with

[139] James Crawford, *Brownlie's Principles of Public International Law* (Oxford University Press, 2012) 379.
[140] *Vienna Convention on the Law of Treaties.*
[141] Crawford, above n 139, 379.
[142] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* (Advisory Opinion) [1971] ICJ Rep 16 [53].
[143] Tobin, above n 125; Joseph Weiler, 'Prolegomena to a Meso-Theory of Treaty Interpretation at the Turn of the Century' (paper presented at the IILJ International Legal Theory Colloquim: Interpretation and Judgment in International Law, NYU Law School, 14 February 2008).
[144] *Vienna Convention on the Law of Treaties* art 26.
[145] *Vienna Convention on the Law of Treaties.*
[146] Ibid (emphasis added) art 31 (1).

the other rights protected in the Convention.'[147] After the general rule has been applied article 32 of the VCLT states: 'Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty … in order to confirm the meaning resulting from the application of article 31.'[148]

Article 32(a) and (b) further provide that supplementary materials may be referred to if the ordinary meaning under article 31 is 'ambiguous or obscure' or 'leads to a result which is manifestly absurd or unreasonable.'[149] Thus, the VCLT permits reference to the drafting history of the treaty, and statements from UN monitoring bodies, such as the UNCRC, in order to determine the meaning of a provision where the application of the general rule is unclear.[150] Further, in order to determine the rules of international law the ICJ, under article 38(1)(d) of the *Statute of the International Court of Justice*, can refer to the 'teachings of the most highly qualified publicists' as a legitimate subsidiary means of interpretation.[151] The term 'publicists' refers to leading academics of international law.

This section examines the meaning and scope of article 12 of the CRC from these three perspectives (i) the 'ordinary meaning' of the text, in accordance with the VCLT; (ii) the history of drafting the CRC, in particular, the deliberations which took place when drafting article 12; and (iii) an analysis of the contemporary meaning according to the UNCRC and other authorities interpretation of, and recommendations about, children's participation in law and policy making according to article 12 of the CRC.

4.4.2 Meaning of Article 12

Ascertaining the meaning and scope of article 12 of the CRC is not an easy undertaking—a difficulty that is not peculiar to the CRC, as most international human rights laws are 'invariably vague and ambiguous' leading to interpretation and implementation problems.[152] Interpretations of rights evolve

[147] Laura Lundy, '"Voice" is Not Enough: Conceptualising Article 12 of the United Nations Convention on the Rights of the Child' (2007) 33(6) *British Educational Research Journal* 927, 932.
[148] *Vienna Convention on the Law of Treaties* art 32(a)(b).
[149] Ibid.
[150] Ibid. Seealso Tobin, above n 125, 29 and 49.
[151] *Statute of the International Court of Justice* art 38(1)(d).
[152] Tobin, above n 125, 1.

over time, and within jurisdictions. Statements from the UNCRC about article 12, since the drafting of the CRC, reflect and are evidence of these developments. These statements are discussed below.

This section is based on the premise that there is no *single* or *correct* way to interpret and implement article 12 of the CRC.[153] Children's participation will be understood and applied differently across and within jurisdictions, and these interpretations will develop over time. However, it is possible to ascertain some meaning from the text, and understand the rights the text affords CYP, as well as the duties the text imposes on States. The following examination of the scope and meaning of article 12 is provided in order to assess if article 12 places a duty on States to engage CYP in law and policy development. The result of this examination presents *a* preferred meaning of article 12 in relation to whether the provision places a duty on States to involve CYP in law and policy development.

Applying the VCLT formula is not without difficulty given the complexity of the requirement to take as the first test the 'ordinary meaning' of the terms of a treaty, in their context and in light of the object and purpose of the treaty. To this end the 'object and purpose'[154] of the CRC, its preamble, the deliberations of the Working Group when drafting the treaty, and comments from bodies such as the UNCRC assist with the interpretation of article 12.

The ordinary meaning of article 12 articulates a specific right in and of itself, and is also instructive in relation to how the other rights contained in the CRC are to be implemented. Parkes says:

> Article 12 operates as both a substantive right as well as a procedural right. It has been acknowledged that article 12 is substantive as it recognises that children are entitled to be actors in their everyday lives and have a right to contribute to any decisions affecting them.[155]

Article 12 is a substantive right because it provides a basis for children's agency and contributions to decisions about their lives. Article 12 is also however, a procedural right. This arises 'from the fact

[153] Ibid.
[154] *Vienna Convention on the Law of Treaties* art 31.
[155] Parkes, above n 12, 54.

that children are empowered to challenge and to take action in promoting and protecting their rights, including all of the other rights of the child recognised under the CRC.'[156]

Three extracts of text from article 12 below are relevant to determining whether the provision provides children with the right to participate in law and policy making. These elements of the text were chosen because their meaning was discussed by the Working Group when drafting the provision, and have been discussed since then by the UNCRC in various contexts. Ascertaining the meaning of the following words of article 12 of the CRC is the aim of this section. These words are:

(i) '**shall assure** to the child who is **capable of forming his or her own views';**

(ii) 'the views of the child being **given due weight in accordance with the age and maturity of the child,'** and

(iii) 'the right to express those views freely in **all matters affecting the child.'**[157]

4.4.2.1 'Shall Assure to the Child Capable of Forming His or Her Own Views'

i. Ordinary Meaning

Application of the general rule under article 31(1) of the VCLT requires that the meaning of the words 'shall assure' and 'capable of forming his or her own views' be interpreted in accordance with their 'context' as well as the 'object and purpose' of the CRC.[158] The CRC established a universally agreed set of standards and obligations to protect children's human rights globally, and the object and purpose of the CRC is the realisation of rights for all children everywhere, and at all times.[159]

The scope of article 12 is wide and the wording of the provision, by virtue of the words 'shall assure,' emphasises the legal duty of State parties to fulfil the participatory rights of all children. The ordinary meaning of the words, 'shall assure' refer to the duty of States to provide each child 'capable of

[156] Ibid.
[157] *Convention on the Rights of the Child* art 12 (emphasis added).
[158] *Vienna Convention on the Law of Treaties* art 31(1).
[159] *Convention on the Rights of the Child* preamble.

forming his or her own view' the opportunity to express his or her views, and the obligation to give these views consideration in decision-making.

Lundy provides insight into the ordinary meaning of the words 'capable of forming his or her own views' noting that 'while there may be an element of uncertainty about what constitutes the capacity to form a view' the right to express these views is not connected to 'the age and maturity of the child.'[160] Under article 12 the 'age and maturity of the child' is relevant only to determining the 'due weight' of these views in the decision-making process (discussed below in 4.4.2.2).[161] Thus, 'children's right to express their views is not dependent upon their capacity to express a mature view; it is dependent only on their ability to form a view, mature or not.'[162]

ii. The Intention of the Drafters

Application of the general rule above does not produce an absurd result; however, it may be construed as producing an 'obscure' result. Therefore, recourse to the provisions contained in article 32 of the VCLT is useful to further articulate the meaning of the words 'shall assure' and 'capable of forming his or her own views.' For this purpose the drafting history relevant to article 12 details the framers intentions when developing the provision.

The history of the lead up to what is now article 12 of the CRC is relevant to understand the intention of the framers of article 12. In 1980 Poland submitted a proposal to the UN Commission on Human Rights at its 36th session.[163] In that submission Poland included a specific reference to children's participatory rights, article 7, which later became the basis of article 12.[164] It said:

[160] Lundy, above n 147, 935.
[161] Ibid.
[162] Ibid.
[163] Parkes, above n 12, 28.
[164] Ibid.

> The State 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.[165]

This marked the first time the United Nations had been asked to consider children's participation rights. A range of iterations of this proposal were considered by the Working Group during their deliberations. Each iteration carried implications for the development of children's participatory rights. The development of children's participation rights during the drafting process is demonstrated by the Australian member's amendment to the Polish proposal, which read as follows:

> The States parties to the present Convention *shall assure* to the child the right to express his opinion in matters concerning his own person, and in particular marriage, choice of occupation, medical treatment, education and recreation. In all such matters *the wishes* of the child shall be given due weight in accordance with his age and maturity.[166]

Notably, the Australian representative successfully petitioned for the inclusion of stronger language—'shall assure' rather than 'shall enable'—a recommendation which was accepted by the Working Group and included in the text of article 12.[167] This suggests that the intended meaning of the words 'shall assure' when the provision was drafted was designed to place a binding duty on State parties to provide CYP with the opportunity to express their views on matters affecting them.

iii. Other Supplementary Sources

The UNCRC defines the 'literal' meaning of the words 'shall assure' in their General Comment No 12, 'The Right of the Child to Be Heard' ('*General Comment on the Right to Be Heard*')[168] as follows:

> [A] legal term of special strength, which leaves no leeway for State parties' discretion. Accordingly, State parties are under strict obligation to undertake appropriate measures to fully implement this right

[165] UN Doc E/CN.4/1349 art 7 at 3 (1980) cited in Sharon Detrick, Jakob Egbert Doek, Nigel Cantwell, *The United Nations Convention on the Rights of the Child: A Guide to the 'Travaux Préparatoires'* (Martinus Nijhoff Publishers, 1992) 224 (emphasis added).
[166] UN Doc E/CN.4/L.1575 para 74 (1981) 13-14 cited in Parkes, above n 12, 28 (emphasis added).
[167] Parkes, above n 12, 29.
[168] UN Committee on the Rights of the Child, General Comment No 12, 'The Right of the Child to be Heard,' UN Doc CRC/C/GC/12 (1 July 2009) [19].

> for all children. This obligation contains two elements in order to ensure that mechanisms are in place to solicit the views of the child in all matters affecting her or him and to give due weight to those views.[169]

Article 12 contains two key caveats limiting children's participatory rights.[170] These caveats have attracted criticism for infantilising children,[171] being discriminatory on the basis of age,[172] and for being *adultist* by embedding paternalism in the text of the provision.[173] The first caveat is the provision limiting children's participatory rights to a child who is 'capable of forming his or her own views.'[174] The second caveat states that these views will be given due weight in decision-making processes 'in accordance with the age and maturity of the child.'[175] Thus, article 12 stipulates that children's participatory rights extend only to children who are deemed capable of forming their own views; and the potential influence of these views are subject to a 'dual test', 'in accordance with the age and maturity of the child.'[176]

Whilst these caveats have attracted academic criticism, the UNCRC is clear about the ambit of these caveats and has cautioned State parties not to unduly limit the operation of article 12 through inappropriate application of these qualifications.[177] The UNCRC asserts the rights provided by article 12 apply to children of all ages[178] and State parties are obliged to assess children's capacity to form views in the widest possible manner.[179] In General Comment No 7, 'Implementing Child Rights in Early Childhood,' the UNCRC said young children:

[169] Ibid [19(a)(i)].
[170] Lundy, above n 147, 931.
[171] Arce, above n 120, 378.
[172] Veerman, above n 63; Arce, above n 52.
[173] Arce, above n 120, 374.
[174] Milne, above n 25, 241.
[175] *Convention on the Rights of the Child* art 12.
[176] Kilkelly, above n 40, 209.
[177] UN Committee on the Rights of the Child, General Comment No 7, 'Implemeting Child Rights in Early Childhood,' UN Doc CRC/C/GC/7 (1 November 2005) [14].
[178] Ibid; *Convention on the Rights of the Child* art 12.
[179] UN Committee on the Rights of the Child, General Comment No 12, 'The Right of the Child to be Heard,' UN Doc CRC/C/GC/12 (1 July 2009) [20].

> [M]ake choices and communicate their feelings, ideas and wishes in numerous ways, long before they are able to communicate through the conventions of spoken or written language.[180]

The UNCRC, in their *General Comment on the Right to Be Heard* say the words 'capable of forming his or her own views' 'should not be seen as a limitation, but rather as an obligation for State parties to assess the capacity of the child to form an autonomous opinion to the greatest extent possible.'[181] The UNCRC guides States to begin with the presumption that children have the capacity to form their own views, and recognise children's right to do so.[182] Importantly, the UNCRC say States must refrain from requiring children to prove their capacity to form their views, and instead 'assess the capacity of the child to form an autonomous opinion to the greatest extent possible.'[183]

These comments from the UNCRC support the idea that children's participatory rights do not commence when a child becomes verbal, or when a child becomes verbally competent. Rather, the UNCRC asserts in the statement above that children's ability to participate in decision-making arises well in advance of the onset of verbal skills.

The most recent comment from the UNCRC, whilst in draft, supports the idea that children should participate in the development of laws and policies that may affect them. The draft General Comment No 19, 'On Public Spending and the Rights of the Child', says States should 'hear children's views regularly … in relation to public budget related laws, policies and programmes that may affect them.'[184] In this comment the UNCRC further elaborate State's responsibility to fund the meaningful participation of children in child related law and policy development '[i]n particular, States should consult with children who face difficulties in making themselves heard, including children in situations of vulnerability.'[185]

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[180] UN Committee on the Rights of the Child, General Comment No 7, 'Implemeting Child Rights in Early Childhood,' UN Doc CRC/C/GC/7 (1 November 2005) [14].
[181] UN Committee on the Rights of the Child, General Comment No 12, 'The Right of the Child to be Heard,' UN Doc CRC/C/GC/12 (1 July 2009) [20].
[182] Ibid.
[183] Ibid.
[184] UN Committee on the Rights of the Child, *Draft General Comment No 19*, 'On Public Spending and the Rights of the Child (Article 4),' UN Doc CRC/C/GC/19 (draft version June 11, 2015) [60].
[185] Ibid.

4.4.2.2 Giving the Views of the Child 'Due Weight'

i. Ordinary Meaning

Applying the VCLT general rule[186] the ordinary meaning of the words 'due weight' in article 12 refers to State's duty to take into account children's views in matters affecting them, and to attribute 'due weight' to these views in accordance with the 'age and maturity of the child.'[187] The meaning of 'due' in 'due weight' is unclear.[188] However, the object and purpose of the CRC is the realisation of rights for all children everywhere, and at all times.[189] Under the VCLT the meaning of 'due weight' should be determined in accordance with the 'context' as well as the 'object and purpose' of the treaty.[190] The scope of article 12 is wide, and the participation rights it provides are linked to other provisions in the CRC. Children's participation rights are situated as one of the four foundation principles of the CRC.[191] Therefore the ordinary meaning of the words 'due weight' suggest these words should be interpreted to mean a degree of influence in proportion to the maturity of the child.

The result of the application of the general rule however, produces an obscure result owing to the imprecise meaning of 'due' in 'due weight.'[192] In order to resolve this, the intentions of the drafters and statements from the UNCRC need to be considered.

ii. The Intention of the Drafters

There is not a large body of information about the deliberations that took place when the Working Group was drafting the words 'due weight.' However, as mentioned above, when the Working Group were drafting article 12 the suggestion for 'the wishes' of the child to be given due weight was rejected in favour of 'the views of the child being given due weight.'[193]

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[186] *Vienna Convention on the Law of Treaties* art 31(1).
[187] *Convention on the Rights of the Child* art 12.
[188] Lundy, above n 147, 937.
[189] *Convention on the Rights of the Child* preamble.
[190] *Vienna Convention on the Law of Treaties* art 31(1).
[191] The UNCRC outlined the four general principles contained in the CRC in 1991. See Committee on the Rights of the Child, 'General Guidelines Regarding the Form and Content of Initial Reports to be Submitted by States Parties under Article 44, Paragraph 1(a) of the Convention,' UN Doc. CRC/C/5 cited in Kilkelly, above n 40, 208.
[192] *Convention on the Rights of the Child* art 12.
[193] Parkes, above n 12, 29.

iii. Other Supplementary Sources

The UNCRC in their *General Comment on the Right to Be Heard* clarify the meaning of the words 'due weight' in article 12.[194] The UNCRC explains that this element of article 12 'stipulates that simply listening to the child is insufficient; the views of the child have to be seriously considered when the child is capable of forming her or his own views.'[195] With reference to the word 'maturity', the UNCRC states that a child's biological age alone does not 'determine the significance of a child's views.' [196] Maturity, in this context, 'refers to the ability to understand and assess the implications of a particular matter.'[197] The UNCRC states that an assessment of a child's capacity to form a view needs to be done on a 'case-by-case' basis.[198]

Under article 12 the 'age and maturity of the child' is relevant to determining the 'due weight' of these views, that is the degree to which children's views should influence decisions about matters affecting the child. The 'due weight' CYP's views should be afforded in relation to law and policy making is not articulated in article 12, and an examination of the UNCRC statements about this appear to be confined to a model where State parties 'should consult' with children.

Tobin argues however, that article 12 provides a basis for much more than children's right to be consulted about matters affecting them—that article 12 provides opportunities for children to be active decision makers, not only participants in decision-making.[199] Invernezzi and Williams assert restricting children's role in decision-making to consultation is inconsistent with the intentions of the framers of the CRC.[200] Furthermore, Tobin suggests Archard's interpretation of the CRC, which asserts adults 'retain final authority over children,' is 'neither a necessary nor persuasive interpretation of this instrument.'[201] Tobin argues that the wording of article 12 is sufficiently open, such that, under the

[194] UN Committee on the Rights of the Child, General Comment No 12, 'The Right of the Child to be Heard,' UN Doc CRC/C/GC/12 (1 July 2009) [28].
[195] Ibid.
[196] Ibid [29].
[197] Ibid [30].
[198] Ibid [29].
[199] Tobin, above n 122.
[200] Dr Antonella Invernizzi and Dr Jane Williams (eds), *The Human Rights of Children: From Visions to Implementation* (Ashgate Publishing Ltd, 2011) 29.
[201] John Tobin, 'Justifying Children's Rights' (2013) 21 *International Journal of Children's Rights* 395, 432 citing David Archard, *Children: Rights and Childhood* (Routledge, Second Edition ed, 2004), 66.

provision sufficiently mature children are afforded not only the opportunity to participate in decision-making processes, but that their views must be given due weight in the final decision.[202] This interpretation of article 12 has the potential to enhance children's participatory rights in relation to child-led initiatives, and in relation to children as active decision makers, rather than being restricted to participants in decision-making.[203] Tobin and Invernezzi and Williams' views accord with Lundy's CRBA and her four interconnected elements required to implement meaningful children's participation under article 12: 'Space, Voice, Audience and Influence.'[204] Lundy's model likewise transcends the 'consultation' paradigm and positions CYP as agents in decision-making processes. An elaboration of how this approach is adopted and adapted is presented in chapter 7.

The three tiered analysis required by the VCTL of the meaning of the words 'due weight' concludes that States are required to assure CYP not only have the opportunity to express their views about matters relevant to them (as demonstrated above in 4.4.2.1) but that these views must influence decisions about matters affecting CYP. Further, that the presumption that children have the capacity to form views should be the starting point for States.

4.4.2.3 'In All Matters Affecting the Child'

i. Ordinary Meaning

Application of the general rule under article 31(1) of the VCLT requires that the meaning of the words 'all matters affecting the child' be interpreted in accordance with the 'context' as well as the 'object and purpose' of the treaty.[205] The standards developed by the CRC apply universally, to all children, and the rights articulated in the CRC apply to all children everywhere, and at all times.[206]

The phrase 'in all matters affecting the child' may at first appear uncomplicated, but this could potentially cover any matter in relation to children. Such an interpretation is likely to produce an

[202] Tobin, above n 201, 432.
[203] Invernizzi and Williams, above n 200.
[204] Lundy, above n 147, 927.
[205] *Vienna Convention on the Law of Treaties* art 31(1).
[206] *Convention on the Rights of the Child* preamble article 2.

'unreasonable' or 'absurd' result [207] because it is hard to imagine many matters that would not in some way relate to children. Thus, in order for the scope of article 12 to remain consistent with the object and purpose of the CRC, and not produce an unreasonable or absurd result, it is necessary to look to supplementary means of interpretation, as permitted by article 32 of the VCLT.

ii. The Intention of the Drafters

As mentioned above, the Polish proposal to the UN Commission on Human Rights in 1980 was the first time the UN had been asked to consider children's participation rights.[208] In that submission Poland framed children's right to express their 'opinion in matters concerning his own person, and in particular, marriage, choice of occupation, medical treatment, education and recreation.'[209] At this early drafting stage the Working Group focussed on providing children with the right to express their views about 'matters concerning his own person.'[210] In doing so the Working Group contemplated restricting children's participatory rights to the private sphere.

The Danish delegation favoured the inclusion of parents and guardians in children's participatory rights emphasising increased influence on decision-making and responsibility as children grow older. Again, the text, by virtue of the words 'person of the child' and 'personal matters' emphasised the private realm in which children's participatory rights were being considered by the Working Group. The Danish delegation submitted the following wording for article 12:

> Parents or other guardians have the right and duty to decide in matters concerning the person of the child. But the child shall as soon as possible, have an influence in such matters. As the child gets older, the parents or the guardian should give him more and more responsibility for personal matters with the aim of preparing the child for the life of a grown-up.[211]

The recommendations from the Australian and Danish representatives focussed on matters relevant to children's private domain. The suggestion from the Unites States of America ('US') delegate sought to

[207] *Vienna Convention on the Law of Treaties* art 32(b).
[208] Parkes, above n 12, 28.
[209] UN Doc E/CN.4/1349 art 7 at 3 (1980) cited in Detrick et al, above n 165, 224 (emphasis added).
[210] Ibid.
[211] UN Doc E/CN.4/L.1575, [74] (1981) 13-14.

broadened the ambit over which 'matters' the child was able to express their views under article 12.[212] The US representative proposed the following wording:

> 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 effectively and non-violently in matters concerning his own person and in particular, religion, political and social beliefs, matters of conscience, cultural and artistic matters, marriage, choice of occupation, medical treatment, education, travel, place of residence, and recreation. [213]

The comments from the US delegation suggest that matters beyond the child's private sphere were considered when drafting the text. However, the expanded list of matters proposed by the US was expressed in relation to children's private realm by virtue of the words 'in matters concerning his own person.' The text suggests that the proposed list was not intended to provide a right for children to express their views about 'religion, political and social beliefs, matters of conscience, cultural and artistic matters' in relation to public decision-making, only in relation to how these matters relate to the child's 'own person.'

After much debate, and several years of deliberation, the 'list of matters' to which article 12 would apply was abandoned in favour of wording stating that a child who is capable of forming their own views has the right to express those views in '*all* matters affecting the child.'[214] The Working Group stated that the 'various circumstances in which a child may express himself or herself should not be subject to the limits of a list.'[215] This suggests the drafters of the CRC intended the provision to evolve over time that these words 'were not static, but were by definition evolutionary.'[216]

The final wording of article 12 reflected the decision by the drafters of the CRC to settle on the broad wording 'all matters' with a qualifying statement 'affecting the child,' not 'children.'[217] The wording of article 12 intentionally left the scope of what 'matters' the article encompassed wide so as not to

[212] UN Doc E/CN.4/L.1575, [76-77] (1981) 13-14.
[213] Ibid.
[214] Parkes, above n 12, 51-54; *Convention on the Rights of the Child* art 12.
[215] Parkes, above n 12, 52.
[216] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* (Advisory Opinion) [1971] ICJ Rep 16 [53].
[217] Cantwell, above n 16, 55.

provide 'a normative list of the matters concerned.'[218] Yet the choice of the Working Group to refer to 'the child,' rather than 'children' in article 12, further suggests the provision was designed to apply to the individual circumstances of a child's life.

The later suggestion by the United States to include the word 'all' before the word 'matters' such that article 12 then read 'all matters affecting the child' was accepted.[219] The insertion of the word 'all' significantly altered the legal effect of the provision.

iii. Other Supplementary Sources

The UNCRC articulate that the words 'all matters affecting the child' are linked with the object and purpose of the CRC, and the 'principle, which highlights the role of the child as an active participant in the promotion, protection and monitoring of his or her rights.'[220] Statements from the UNCRC, explored below, suggest that article 12 now extends to provide children with a right to participate in public decision-making.

UNCRC on the Interpretation and Implementation of Article 12

In 1999, the UNCRC stated that children's involvement in local, national and international decision-making is within the meaning of the words 'all matters' in article 12 of the CRC.[221] Ten years later, the General Assembly adopted a resolution on children's rights urging all States to:

> [S]trengthen the participation of children and adolescents in planning and implementation relating to matters that affect them, such as health, environment, education, social and economic welfare and protection against violence, abuse and exploitation.[222]

[218] Ibid.
[219] UN Doc E/CN.4/L.1575 [78] (1981) 13-14.
[220] UN Committee on the Rights of the Child, General Comment No 5, 'General Measures of Implementation for the Convention on the Rights of the Child,' UN Doc CRC/GC/2003/5 (27 Nov 2003) [12].
[221] UN Committee on the Rights of the Child, 'Tenth Anniversary of the Convention on the Rights of the Child Commemorative Meeting: Achievements and Challenges', UN Doc excerpted from CRC/C/87, Annex IV 22nd Session (30 September–1 October 1999, 7 December 1999) para 91(w) and (x).
[222] *Rights of the Child*, resolution adopted by the General Assembly on 24 December 2008, sixty-third session, A/RES/63/241, 13 March 2009 [11].

Also in 2009, in the UNCRC's *General Comment on the Right to Be Heard* the Committee reiterated the views of the framers of article 12 stating that the drafters 'rejected a proposal to define these matters by a list limiting the consideration of a child's or children's views.'[223]

The UNCRC's *General Comment on Children's Right to Be Heard* provides State parties guidance as to how to implement article 12 of the CRC.[224] Included in this statement are several specific references to the role children can play in the development of law and policy affecting them. First, when discussing the role of State parties to protect children from rights violations the UNCRC said:

> The Committee notes that the voices of children have increasingly become a powerful force in the prevention of child rights violations … Children should be consulted in the formulation of legislation and policy related to these and other problem areas and involved in the drafting, development and implementation of related plans and programmes.[225]

The UNCRC has also made clear that 'State parties should carefully listen to children's views wherever their perspective can enhance the quality of solutions.'[226] Furthermore, the UNCRC elaborates and specifically references children's involvement in the creation of law in the following statement: 'The views expressed by children may add relevant perspectives and experience and should be considered in decision-making, policy making and preparation of laws and/or measures as well as their evaluation.'[227]

These statements by the UNCRC *General Comment on the Right to Be Heard* were made in the context of defining both the ambit of children's participatory rights, and States duties to protect these rights.[228] This, combined with the fact that the framers of article 12 left the wording of the provision somewhat open, and the fact that States understanding of the right has evolved, presents a body of evidence supporting article 12 as a foundation for children's right to participate in legislative and policy development, such as the NTER and Stronger Futures legislation.

[223] UN Committee on the Rights of the Child, General Comment No 12, 'The Right of the Child to be Heard,' UN Doc CRC/C/GC/12 (1 July 2009) [27(iv)].
[224] Ibid.
[225] Ibid [122].
[226] Ibid [27].
[227] Ibid [12].
[228] Ibid.

UNCRC on the Rights of Indigenous Children

On many occasions the UNCRC has emphasised the rights of Indigenous CYP in relation to 'matters affecting' them— including in the UNCRC's Concluding Observations on Australia's Fourth Periodic Report on the CRC about the NTER legislation.[229] The UNDRIP recognises Indigenous people's cultural rights, and right to self-determination and, despite the fact that it is a non-binding instrument, it is relevant to an assessment of whether Aboriginal CYP are entitled, under international law, to be involved in law and policy making. Libesman suggests the growing 'body of Indigenous-specific' international instruments, including the UNDRIP, are increasingly becoming an influential basis upon which Indigenous rights—including Indigenous children's rights—can be claimed.[230] Libesman has called for 'greater … reflective engagement with Indigenous peoples at both an international and national level' on the basis that this has the potential to 'transform and serve Indigenous children's wellbeing.'[231]

Article 19 of UNDRIP makes it clear that:

> States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.[232]

This provision underlines the critical importance of consulting and cooperating with Indigenous peoples in order to seek free, prior, and informed consent before adopting laws and policies that may affect Indigenous peoples, such as the NTER and Stronger Futures legislation. When considering Australia's fourth periodic report under the CRC, the UNCRC called upon Australia to review the legislation surrounding the NTER and 'remove discriminatory components' and to '[e]nsure the effective and meaningful participation of Aboriginal and Torres Strait Islander persons in the policy

[229] United Nations Committee on the Rights of the Child, 60th Session, *Concluding Observations on Australia's Fourth Periodic Report on the CRC*, CRC/C/AUS/CO/4, 19 June 2012 [30 (c) and (d)].
[230] Terri Libesman, 'International Human Rights Law and the Needs of Indigenous Children' in Rosemary Sheehan, Helen Rhoades and Nicky Stanley (eds), *Vulnerable Children and the Law: International Evidence for Improving Child Welfare, Child Protection and Children's Rights* (Jessica Kingsley Publishers, 2012) 181, 184.
[231] Ibid 181-182.
[232] *The United Nations Declaration on the Rights of Indigenous Peoples,* GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, Supp No 49, UN Doc A/RES/61/295 (13 September 2007) ('*United Nations Declaration on the Rights of Indigenous Peoples')*.

formulation, decision-making and implementation processes of programmes affecting them.'[233] In light of previous comments by the UNCRC in their General Comments No 11 and 12, explored above, this also requires the involvement of Indigenous children.[234]

After receiving a report from a State party under the CRC, the UNCRC may request further information from the State party.[235] The UNCRC requested such information on a range of issues following Australia's fourth periodic report to the CRC. One of the issues the UNCRC requested further information about was the 'Government's Emergency Response to child sexual abuse in remote Indigenous communities.'[236] Australia provided a response to this request detailing the measures taken to protect Indigenous children from sexual abuse under the NTER legislation.[237] On another occasion further information about the NTER was requested by the Human Rights Committee ('HRC') responsible for monitoring the ICCPR.[238] The HRC stated that many of the NTER measures were inconsistent with Australia's responsibilities under the ICCPR, and recommended the following:

> The State Party should redesign NTER measures in direct consultation with the Indigenous peoples concerned, in order to ensure that they are consistent with the 1975 *Racial Discrimination Act* and the Covenant.[239]

The Australian Government responded to the HRC's request stating the future direction of the NTER was determined through 'extensive consultation with Indigenous people in all affected

[233] United Nations Committee on the Rights of the Child, 60th Session, *Concluding Observations on Australia's Fourth Periodic Report on the CRC*, CRC/C/AUS/CO/4 (19 June 2012) [30 (c) and (d)].
[234] UN Committee on the Rights of the Child, General Comment No 11, 'Indigenous Children and their Rights under the Convention,' UN Doc CRC/C/GC/11 (2009); UN Committee on the Rights of the Child, General Comment No 12, 'The Right of the Child to be Heard,' UN Doc CRC/C/GC/12 (1 July 2009).
[235] *Convention on the Rights of the Child* art 44(4).
[236] Australian Government, 'Australia's Response to the List of Issues – *Convention on the Rights of the Child*' (2009) 5. This can be found at Australian Government, Attorney-General's Department, *United Nations Human Rights Reporting: Treaty Body Reporting* <https://www.ag.gov.au/RightsAndProtections/HumanRights/TreatyBodyReporting>.
[237] Ibid 5-6.
[238] Australian Government, 'Australia's Response to the Request for Further Information by the ICCPR Committee' (December 2010). This can be found at Australian Government, Attorney-General's Department, *United Nations Human Rights Reporting: Treaty Body Reporting* <https://www.ag.gov.au/RightsAndProtections/HumanRights/TreatyBodyReporting>.
[239] Australian Government, 'Australia's Response to the List of Issues – *Convention on the Rights of the Child*' (2009) 5. This can be found at Australian Government, Attorney-General's Department, *United Nations Human Rights Reporting: Treaty Body Reporting* <https://www.ag.gov.au/RightsAndProtections/HumanRights/TreatyBodyReporting>.

communities,'[240]—although the nature and quality of these consultations was criticised as inadequate, and did not involve Aboriginal CYP.[241] The Australian Government also stated that the *Racial Discrimination Act 1975* (Cth) ('RDA')[242] was suspended under a special measure in order to pass the NTER legislation. The RDA was later reinstated in 2010.[243]

In 2011, the HRC's Special Rapporteur requested that Australia provide further and more detailed information about the previous response in relation to the NTER. In January 2012 Australia provided a response, and again the HRC sent a request for further information about each of these issues in April 2012. In August 2012, Australia replied again providing statements about the reinstatement of the RDA and review of the NTER such that 'the provisions that are now in place are consistent with the *Racial Discrimination Act*.'[244]

These communications demonstrate the UNCRC's and the HRC's concerns about the manner in which the NTER legislation came about, and the implications of this for Aboriginal adults and Aboriginal CYP.

4.4.3 Concluding Remarks about Interpreting Article 12

Interpretations of article 12 have changed over time, and will continue to change as States apply this right in respective jurisdictions. Ascertaining the meaning of article 12 was carried out in this chapter against a three tiered analysis: looking first, as the VCLT requires, to the 'ordinary meaning' of the text; then drawing insights about the meaning from the history of drafting process of the CRC; and

[240] Australia's response to the request for further information by the ICCPR Committee (December 2010), 7-8. This can be found at Australian Government, Attorney-General's Department, *United Nations Human Rights Reporting: Treaty Body Reporting* <https://www.ag.gov.au/RightsAndProtections/HumanRights/TreatyBodyReporting>.
[241] Alastair Nicholson, Nicole Watson, Alison Vivian, Craig Longman, Terry Priest, Jason De Santolo, Paddy Gibson, Larissa Behrendt and Eva Cox, 'Listening But Not Hearing: A Response to the NTER Stronger Futures Consultations June to August 2011' (Jumbunna Indigenous House of Learning, University of Technology Sydney, 2012); Olga Havnen, 'Office of the Northern Territory Coordinator-General for Remote Services Report' (Northern Territory Government, June 2011 to August 2012).
[242] *Racial Discrimination Act 1975* (Cth).
[243] Australia's' response to the request for further information by the ICCPR Committee (December 2010) 7-8. This can be found at Australian Government, Attorney-General's Department, *United Nations Human Rights Reporting: Treaty Body Reporting* <https://www.ag.gov.au/RightsAndProtections/HumanRights/TreatyBodyReporting>. The Australian Government passed legislation on 21 June 2010 to remove the suspension of the RDA, effective from 31 December 2010.
[244] Response of the Australian Government to Request for Further Information on Concluding Observations of the United Nations Human Rights Committee, August 2012, 3. This can be found at Australian Government, Attorney-General's Department, *United Nations Human Rights Reporting: Treaty Body Reporting* <https://www.ag.gov.au/RightsAndProtections/HumanRights/TreatyBodyReporting>.

lastly through an analysis of the UNCRC's and other authoritative sources' interpretation of, and recommendations about, article 12. This discussion is explored further in chapter 7 where the idea of Aboriginal CYP's involvement in an 'interpretive community' is suggested as a means by which Aboriginal CYP can contribute to the interpretation and implementation of article 12.[245]

4.5 Conclusion

The CRC is the most comprehensive statement of children's rights available internationally, and its provisions provide a sound legal basis for implementing children's participation rights in Australia, and across the globe. The three tiered analysis (required by the VCTL) of the words 'shall assure,' and 'capable of forming his or her own views,' concludes that States are required to assure CYP have the opportunity to express their views about matters relevant to them. Further, this analysis supports the presumption that children have the capacity to form views and this premise is the appropriate starting point for States when implementing article 12 of the CRC.

The drafting history of the CRC produced an instrument that is reflective of a time in history where children's rights were an emerging area of thought and practice.[246] This chapter has demonstrated that the interpretation of article 12 has evolved over time. This evolution is reflected in guidance to States emanating from the UNCRC, and other treaty monitoring bodies.

The answer to the question posed at the beginning of this chapter is 'yes'—article 12 of the CRC requires State parties to involve children in the development of laws and policies relating to them. The NTER and Stronger Futures legislation is a 'matter affecting' CYP and falls within the scope of the meaning of article 12. Given this result, Aboriginal CYP should have been involved in the process of designing the NTER and Stronger Futures legislation. The non-involvement of Aboriginal CYP in the development of these legislative and policy provisions is a breach of Australia's international law

[245] Tobin, above n 125; Fish, above n 125; Johnstone, above n 125.
[246] Cantwell, above n 16.

responsibilities to 'assure' Aboriginal CYP the 'right to express their views,' and have these views considered, about a matter affecting them.[247]

Aboriginal CYP should be invited to participate in a review of the Stronger Futures legislation as a matter of priority in accordance with article 12 of the CRC. Suggestions about how Aboriginal CYP could be involved in such a review, and in the development of new legislation and policy, through membership of an 'interpretive community' are discussed in chapter 7.

This chapter has contributed to answering the overall thesis question 'why should Aboriginal CYP participate in the development of law and policy involving them?' by demonstrating the existence of a legal duty imposed on State parties to engage Indigenous children in legislative and policy formation under the CRC. However, answering this question is only the first step toward fulfilling children's right to participate in the creation of laws and policies likely to impact on them. This does not address the problem of Aboriginal CYP's non-participation in law and policy development in practice. It does however, position children as having a right to be engaged in this field, and details the claims children are legally permitted to make. Possibly more importantly, as is revealed in chapters 6 and 7, the field research undertaken for this project indicates the instrumental value of including children in the development of laws and policies about matters involving them. In order for children to experience human rights, 'far more than law itself is required … to be effective the legal enforcement of human rights … must mobilise the supportive elements and/or processes present within the social routines of everyday life.'[248]

The UNCRC has made it clear that: 'Listening to children should not be seen as an end in itself, but rather as a means by which States make their interactions with children and their actions on behalf of children ever more sensitive to the implementation of children's rights.'[249]

[247] *Convention on the Rights of the Child* art 12.
[248] Anthony Woodiwiss, 'The Law Cannot Be Enough: Human Rights and the Limits of Legalism' in S Meckled-Garcìa and B Çalı (eds), *The Legalization of Human Rights: Multidisciplinary Perspectives on Human Rights and Human Rights Law* (Routledge, 2006) 32, 36-37.
[249] UN Committee on the Rights of the Child, General Comment No 5, 'General Measures of Implementation for the Convention on the Rights of the Child,' UN Doc CRC/GC/2003/5 (27 Nov 2003) [12].

Chapter 5: Rethinking 'Childhood' and Children's Participation

5.1 Introduction

Chapter 4 established that State parties, including Australia, have a legal obligation to involve CYP in legislative and policy decisions affecting them under article 12 of the CRC. Thus, the Australian Government is duty bound to 'assure'[1] CYP have the opportunity to express their views, and have these views taken into consideration when developing laws and policies that may affect them. Aboriginal CYP were not afforded the opportunity to express their views, and have these views taken into account, in the design, evaluation and review of the NTER and Stronger Futures legislation. Chapter 4 established that the non-participation of Aboriginal CYP in the formation of this legislation was inconsistent with Australia's duty to comply with children's human rights standards under article 12 of the CRC, and was also inconsistent with article 19 of the UNDRIP.[2]

The *legal* requirement to involve CYP in legislative and policy decisions affecting them is only one reason for involving CYP in these processes. There is also *instrumental* value in engaging CYP in decision-making processes. Decisions made with input from CYP, who are likely to be affected by these decisions, have been shown to be more relevant, effective and durable—for CYP, their communities and for States.[3] Barnes et al argue CYP's participation legitimises, as well as enhances, the quality of governmental decisions.[4] It is not only CYP's, but all members of societies, participation in governance which is required as part of an overall process of 'extending participation to the

[1] *Convention on the Rights of the Child*, opened for signature 20 November 1989, 44 UNTS 25 (entered into force 2 September 1990) (*'Convention on the Rights of the Child'*) art 12.
[2] *The United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, Supp No 49, UN Doc A/RES/61/295 (13 September 2007) ('*United Nations Declaration on the Rights of Indigenous Peoples')*
[3] John Wall, 'Democratising Democracy: The Road from Women's to Children's Suffrage' (2014) 18(6) *The International Journal of Human Rights* 646; Tom Cockburn, *Rethinking Children's Citizenship* (Palgrave Macmillan, 2012); Ingi Iusmen, 'The EU and the Global Promotion of Children's Rights Norms' in Astrid Boening, Jan-Frederik Kremer and Aukje van Loon (eds), *Global Power Europe - Vol 2*, Global Power Shift (Springer Berlin Heidelberg, 2013) 321; Kate Bacon and Sam Frankel, 'Rethinking Children's Citizenship: Negotiating Structure, Shaping Meanings' (2014) 22(1) *International Journal of Children's Rights* 21.
[4] M Barnes, J Newman and H Sullivan, *Power, Participation and Political Renewal* (The Policy Press, 2007).

majority.'[5] Further, a body of thought supports the notion that CYP's participation in decisions affecting them leads to increased personal wellbeing for the CYP involved.[6]

Identifying a legal duty under international law is necessary to provide the basis for CYP's participation rights. However, in order for CYP's participation rights to be fulfilled barriers to the practical implementation of these rights need to be identified, addressed and overcome. This chapter contributes to answering the overall thesis question by focussing on sub-question three: 'What is the impact of Western concepts of childhood on Aboriginal CYP's participation in law and policy making in Australia?'[7]

A range of arguments presented in this chapter suggests the relationship between Australian legislators and Aboriginal CYP is fractured.[8] Reconceptualising the way legislators interact with Aboriginal CYP is required in order to fulfil CYP's human right to participate in decision-making and for the Australian Government to meet its human rights obligations. Reconceptualising the relationship between the Australian Government and Aboriginal CYP requires a critique of the socio-political and philosophical foundations of this relationship. This chapter presents the argument that in order for Aboriginal CYP's rights to be reflected in law and policy the Australian Government needs to rethink ideas about 'childhood' as the necessary precursor to 'rethinking children's participation' in law and policy making.

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[5] Tom Cockburn and Frances Cleaver, 'How Children and Young People Win Friends and Influence People: Children and Young People's Association, Their Opportunities, Strategies and Obstacles,' (2008), unpublished report to Carnegie, UK cited in E Kay M Tisdall, 'Governance and Participation' in Barry Percy-Smith and Nigel Thomas (eds), *A Handbook of Children and Young People's Participation: Perspectives from Theory and Practice* (Routledge, 2009) 319.

[6] Robyn Fitzgerald, Anne Graham, Anne Smith and Nicola Taylor (with contributions from young people who are part of the Centre for Children and Young People's Youth Advisory Committee, 'Young People, Big Voice'), 'Children's Participation as a Struggle Over Recognition: Exploring the Promise of Dialogue' in Barry Percy-Smith and Nigel Thomas (eds), *A Handbook of Children and Young People's Participation: Perspectives from Theory and Practice* (Routledge, 2009) 294.

[7] The key research question is: 'Why and how should Aboriginal children participate in the development of law and policy affecting them?' Research answered the key thesis question by responding to the following five aspects of the question:

i. What are the ethical and cross-cultural considerations surrounding Aboriginal CYP's participation in research, and in the development of laws and policies?
ii. Does article 12 of the CRC require State parties to involve CYP in the development of laws and policies relating to them?
iii. What is the impact of Western notions of childhood on Aboriginal CYP's participation in law and policy making in Australia?
iv. What did Aboriginal CYP say about the NTER and Stronger Futures legislation?
v. What did Aboriginal CYP say about their participation in the development of future laws and policies?

[8] The word 'relationship' in this context refers to the socio-legal interactions (both direct and indirect) between the Australian Government and Aboriginal CYP. In relation to the issues covered in this thesis this includes the relationship between law-makers (the Australian Federal Parliament and the Northern Territory Government) and policy makers (government agencies) and Australian citizens (Aboriginal CYP, their families and communities).

The aim of this chapter is to interrogate the historical underpinnings for the under-representation of children in public decision-making.[9] An analysis of Western conceptualisations of childhood seeks to uncover why CYP, including Aboriginal CYP, have been, and continue to be, excluded from participating in law and policy making in Australia.

The need to 'rethink childhood' is considered in section 5.2. In this discussion the impact of Western constructions of 'childhood' on Aboriginal CYP's, indeed all CYP's, participation in decision-making is considered. This is discussed in light of how 'rethinking childhood' is linked to 'rethinking children's participation.' Children's participation is considered in section 5.3 where the welfare model is discussed as well as new perspectives on children's participation, including the model of children's participation adopted in this project developed by Lundy.[10]

The social and political interpretations of 'childhood' in the West have historically emphasised children's limited capacity to contribute in decision-making processes. These interpretations are characterised by ideas that children are '*becomings*, *not-yets*, citizens-in-the-making, developing … immature, needy, vulnerable, dependant, incompetent, irrational' and lacking the capacity to participate in public decision-making.[11] It is argued that the ongoing dominance of these views, inherited from the Enlightenment period, and reflected in a persistent 'welfare-based approach' to children's policy, acts as a barrier to CYP's participation in law and policy development.

This chapter concludes that Western constructions of 'childhood' continue to hamper Aboriginal CYP's involvement in decision-making. Furthermore, that the relationship between Aboriginal CYP and the State needs to be reconceptualised and based on a CRBA to law and policy making, rather than a 'welfare-based' model which unduly highlights children's vulnerabilities at the expense of children's agency. In order for a CRBA to law and policy making to operate ideas about 'childhood' and 'children's participation' need to be reconceptualised.

[9] 'Public decision-making' refers to the process of developing, implementing and reviewing laws and policies likely to affect children.
[10] Laura Lundy, '"Voice" is Not Enough: Conceptualising Article 12 of the United Nations Convention on the Rights of the Child' (2007) 33(6) *British Educational Research Journal* 927.
[11] Matías Cordero Arce, 'Maturing Children's Rights Theory' (2015) 23(2) *International Journal of Children's Rights* 283, 287, see footnote 4.

5.2 Rethinking Childhood

The concept of 'childhood' is 'contentious, dynamic and historically contingent.'[12] Ideas about childhood are subject to political, cultural and social forces at any given point in time. The participation of children in public decision-making processes remains largely dependent on dominant attitudes held by adults about the appropriate position children should be *allocated* in society. In a Western context adult attitudes about childhood are influenced by ideas developed during and following the 17th century, with an emphasis on the social contract between adults and children, being controlled by adults.[13]

The premise from which laws and policies affecting Aboriginal CYP are made is predominantly informed by Western conceptualisations of childhood, and a Western 'gaze'[14] on Aboriginal CYP—evidence to support this assertion is provided below, and throughout the thesis. Aside from a few notable examples, there is a paucity of literature specifically addressing Australian Aboriginal childhood, particularly in the context of Aboriginal CYP's participation rights.[15] Existing literature considers the application of international law to specific issues relevant to Aboriginal CYP;[16] examines the welfare and needs of Aboriginal CYP;[17] or addresses Aboriginal child development.[18] The material presented in this chapter draws on existing literature about childhood more generally.

[12] John Tobin, 'Justifying Children's Rights' (2013) 21 *International Journal of Children's Rights* 395, 420.
[13] Brian Milne, *The History and Theory of Children's Citizenship in Contemporary Societies* (Springer, 2013).
[14] Martin Nakata, 'The Cultural Interface' (2007) 36 *The Australian Journal of Indigenous Education* 7; Martin Nakata, 'An Indigenous Standpoint Theory' in *Disciplining the Savages: Savaging the Disciplines* (Aboriginal Studies Press, 2007).
[15] Sana Nakata, 'Representing Indigenous Australian Childhoods' (2015) 8(17) *Indigenous Law Bulletin* 7; Terri Libesman, 'Can International Law Imagine the World of Indigenous Children?' (2007) 15(2) *International Journal of Children's Rights* 283; Mick Dodson, Boyd Hunter and Matthew McKay, 'Footprints in Time: The Longitudinal Study of Indigenous Children: A Guide for the Uninitiated' (2012) 91 *Family Matters* 69; Duane Champagne, 'UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples): Human, Civil, and Indigenous Rights' (2013) 28(1) *Wicazo Sa Review* 9.
[16] Libesman, above n 15; Hannah McGlade, *Our Greatest Challenge: Aboriginal Children and Human Rights* (Aboriginal Studies Press, 2012).
[17] Maureen Long and Rene Sephton, 'Rethinking the "Best Interests" of the Child: Voices from Aboriginal Child and Family Welfare Practitioners' (2011) 64(1) *Australian Social Work* 96; Rosemary Sheehan, Helen Rhoades and Nicky Stanley (eds), *Vulnerable Children and the Law: International Evidence for Improving Child Welfare, Child Protection and Children's Rights* (Jessica Kingsley Publishers, 2012); Terri Libesman, 'International Human Rights Law and the Needs of Indigenous Children' in Rosemary Sheehan, Helen Rhoades and Nicky Stanley (eds), *Vulnerable Children and the Law: International Evidence for Improving Child Welfare, Child Protection and Children's Rights* (Jessica Kingsley Publishers, 2012) 181; Terri Libesman, *Decolonizing Indigenous Child Welfare: Comparative Perspectives* (Routledge, 2013).
[18] Dodson, Hunter and McKay, above n 15; Laura Bennetts Kneebone et al, 'Footprints in Time: The Longitudinal Study of Indigenous Children: An Overview' (2012) 91 *Family Matters* 62.

The view explored in this chapter considers the influence of perceptions of childhood on Aboriginal CYP's participation in public decision-making.

This section of the chapter examines historical and contemporary conceptualisations of childhood and the impact of these conceptualisations on CYP participation rights. This examination discusses the connection between the social status of children and how historical perceptions about children's role in society have developed over time. This investigation also highlights the dominance of Western modes of thought which excluded consideration of Indigenous childhoods and Indigenous CYP's ways of knowing. An understanding of this background is necessary in order to present a model for reconceptualising the relationship between Aboriginal CYP, their families and communities with Australian legislators and policy makers.

Indigenous conceptualisations of childhood and Aboriginal CYP's participation in community decision-making, for example, may be different to Western perspectives. This study does not undertake an academic analysis of Aboriginal childhood, nor does it examine Aboriginal CYP's participation in Aboriginal community decision-making processes. Dodson notes the scarcity of scholarship about Australian Indigenous childhood development, which the 'Footprints in Time: The Longitudinal Study of Indigenous Children' sought to address.[19] There remain however, considerable gaps in scholarship about the nature of Indigenous childhood, which the growing body of literature on childhood does not address. Thus, the socio-political factors which have influenced the construction of Indigenous childhood, and the implications for Aboriginal CYP's participation in public decision-making, is not well represented in childhood scholarship.

Using a combination of childhood and children's citizenship literature the following section of this chapter explores how concepts of childhood, developed since the 16th century, remain influential in defining children's participation, as well as influence and perpetuate the non-participation of children in law and policy making. Lessons from these insights will be extrapolated in relation to Aboriginal CYP's participation in public decision-making in chapters 6, 7 and 8 of the thesis. However, it is

[19] Dodson, Hunter and McKay, above n 15, 81.

acknowledged that Aboriginal childhood is an emerging area of scholarship, and may offer insights for the future involvement of Aboriginal CYP in law and policy making.[20]

5.2.1 History of 'Childhood'

Adult control of CYP has been the norm for centuries, 'often justified as necessary for their welfare.'[21] Philosophers from the 14th to the 18th centuries such as Hobbes,[22] Locke, [23] and Rousseau[24] espoused Platonic/Aristotelian thinking about childhood, which viewed children as incomplete, as 'becoming', their potential for reason yet to be learned.[25]

The way children and childhood are perceived, defined and spoken about by adults in charge of making decisions about children's lives impose social, cultural, political and economic consequences upon children. This is particularly relevant to children who are defined not only as children but 'associated with a category' such as *being an Indigenous child*.[26]

Modern childhood literature uncovers the philosophical foundations of Western ideas about childhood and provides insight into the social and political reasons why Australian Aboriginal CYP do not play a significant role in the development of laws and policies likely to affect them. The new sociology of childhood, which began in the 1980s,[27] offers a paradigm to understand the emergence of children's right to participate in decision-making[28] by challenging 'social constructions of childhood as innocent, passive, or romantic.'[29] Leading theorists on the 'new' sociology of childhood— or as Tisdall and

[20] Nakata, above n 15.
[21] Murli Desai, *A Rights-Based Preventative Approach for Psychological Well-Being in Childhood* (Springer, 2010) 10.
[22] Thomas Hobbes (ed), *1651 Leviathan*, Classics of Moral and Political Theory (1968).
[23] John Locke, *An Essay Concerning Human Understanding* (Eliz Holt, 1700).
[24] Jean-Jacques Rousseau, *Emil (1762), trans. by Allen Bloom* (New York: Basic Books 1979) 3.
[25] Milne, above n 13, 245.
[26] Catherine McDonald, 'The Importance of Identity in Policy: The Case for and of Children' (2009) 23(4) *Children & Society* 241, 244.
[27] Katie Wilson and Judith Wilks, 'Research with Indigenous Children and Young People in Schools: Ethical and Methodological Considerations' (2013) 3(2) *Global Studies of Childhood* 142, 143.
[28] Michael Freeman, 'The Sociology of Childhood and Children's Rights' (1998) 6(4) *International Journal of Children's Rights* 433; Berry Mayall, 'The Sociology of Childhood in Relation to Children's Rights' (2000) 8(3) *International Journal of Children's Rights* 243; Robert Van Krieken, 'Childhood in Australian Sociology and Society' (2010) 58(2) *Current Sociology* 232.
[29] Wilson and Wilks, above n 27, 143 citing H Hendrick, 'Constructions and Reconstructions of British Childhood: An Interpretive Survey, 1800 to present' in A Prout and A James (eds), *Constructing and Reconstructing Childhood: Contemporary Isuses in the Sociological Study of Childhood* (Falmer Press, 2nd ed, 2005) 33.

Punch say, 'the not so "new"'[30] sociology of childhood—and other childhood scholars, stress the importance of perceiving children as agents capable of making valuable, informed contributions to decision-making.[31] These theorists claim Enlightenment based notions of childhood positions children as passive and in need of protection, which ignores children's agency and hinders children's participation rights.[32]

Attitudes about CYP have influenced the role, status and position of CYP in society for centuries.[33] Aries states '"childhood" is an historically and culturally variable social phenomenon.'[34] Van Bueren says '[c]hildhood is a relative concept which changes according to local culture, the geographical environment and the prevailing social and economic conditions.'[35] Conceptions of childhood vary across and within various cultures and regions.

Tobin warns that it is 'misleading to talk about a Western and a non-Western *conception* of childhood' rather 'that there are various *conceptions* of childhood *within* both Western and non-Western States which will always remain contentious, dynamic and historically contingent.'[36] Additionally, such conceptions of childhood may not be shared by children themselves or by their communities; these conceptions may be constructed by the State, and operate as a platform for State policy that is contrary to children's participation rights.

The philosophical concept *tabula rasa* refers to the child's mind at birth as a blank slate, the origins of which can be found in Locke's *Essay Concerning Human Understanding*.[37] A *tabula rasa* view is

[30] E Kay M Tisdall and Samantha Punch, 'Not So "New"? Looking Critically at Childhood Studies' (2012) 10(3) *Children's Geographies* 249, 249.
[31] A Prout, *The Future of Childhood: Towards the Interdisciplinary Study of Children* (Routledge, 2004); A Prout, 'Taking a Step Away From Modernity: Reconsidering the New Sociology of Childhood' (2011) 1(1) *Global Studies of Childhood* 4; A James and A Prout (eds), *Constructing and Reconstructing Childhood: Contemporary Issues in the Sociological Study of Childhood* (Falmer Press, 1990); Rachel Hinton, E Kay M Tisdall, Michael Gallagher and Susan Elsley, 'Children's and Young People's Participation in Public Decision-Making' (2008) 16 *International Journal of Childrens Rights* 281; Van Krieken, above n 28.
[32] Kay EM Tisdall, 'Is the Honeymoon Over? Children and Young People's Participation in Public Decision-Making' (2008) 16(3) *International Journal of Children's Rights* 343, 1.
[33] David Archard, *Children: Rights and Childhood* (Routledge, 3rd ed, 2015).
[34] Harriot Beazley et al, 'The Right to be Properly Researched: Research with Children in a Messy, Real World' (2009) 7(4) *Children's Geographies* 365, 366 citing P Aries, *Centuries of Childhood: A Social History of Family Life* (Vintage, 1962); J Qvortrup, 'Childhood as a Social Phnomnenon: An Introduction to a Series of National Reports' (European Centre, 1991) and A James and A Prout, above n 31.
[35] Geraldine Van Bueren, *The International Law on the Rights of the Child* (Martinus Nijhoff, 1995) 6.
[36] Tobin, above n 12, 420.
[37] Locke, above n 23.

based on notions that the period of childhood, at least during the early stages, is a time where children lack agency. This view positions children as passive and in need of adult direction, and has implications in relation to children's citizenship rights, particularly children's participatory rights. The legacy of this classification of childhood persists today, and does little to promote CYP's participation rights.

John Locke, one of the most influential philosophers of the Enlightenment period, developed concepts of childhood that continue to perpetuate perceptions of children as 'becoming' despite the work of modern theorists such as Kohlberg and Alderson et al.[38] Kohlberg and Alderson et al challenge conceptualisations of children as humans in the making, or *tabula rasa*, which imbed adult power over children and are tied to a 'welfare-based model' of provision for and protection of children (the welfare model is discussed below). Milne says this adult/child power dynamic is similar to Rousseau's 16th century theories about the appropriateness of inequality between adults and children.[39] Rousseau says:

> We know nothing of childhood, and with our mistaken notions the further we advance the further we go astray. The wisest writers devote themselves to what a man ought to know without asking what a child is capable of learning. They are always looking for the man in the child without considering what he is before he becomes a man.[40]

Whilst disagreeing with Rousseau's conceptualisation of childhood Milne agrees to the extent that we still 'know little of childhood.'[41] This is not due to an absence of knowledge (although this may be a contributing factor), but rather due to the diverse nature of childhood: 'there is no single childhood, as there is no single standard by which to measure or define what it is.'[42] Milne cautions against a linear construction of 'children's rights' for the term evokes a false impression of the existence of a singular

[38] Lawrence Kohlberg, *The Psychology of Moral Development: The Nature and Validity of Moral Stages* (Harpercollins College Div, 1984); Priscilla Alderson, Joanna Hawthorne and Margaret Killen, 'The Participation Rights of Premature Babies' (2005) 13 *International Journal of Children's Rights* 31(a)(b).
[39] Milne, above n 13, 240.
[40] Rousseau, above n 24, 3 cited in Milne, above n 13, 240.
[41] Milne, above n 13, 241.
[42] Ibid.

standard.[43] Arce's 'emancipatory discourse on children's rights' suggests ways to 'defy [the] hegemonic discourse of children's rights' which supposes a singular standard of childhood and children's rights.[44] Arce's model opens possibilities for children themselves to challenge singular constructions of childhood, and redefine children's rights discourse and practice. Arce states:

> [C]hildren can construct a strong conception of *children* and their *rights* against the conception of children as 'in transit'… a children's rights corpus that *includes* excluded childhoods, amplifying oppressed voices of the children of those childhoods; a children's rights discourse that transcends their infantilization, playing down the essentialist adult-child division.[45]

Milne and Arche's assessment redefines childhood and highlights a range of considerations relevant to this study. Firstly, children's rights exist in the context of children's communities with adults. Secondly, children's rights discourse emphasises marginalised childhoods and privileges marginalised voices. A CRBA to including Aboriginal CYP in law and policy development is based on the uniqueness of growing up as an Aboriginal child in Australia, and on the premise that Aboriginal CYP are experts in their own lives, and can offer valuable insights in law and policy development about matters involving them.

5.2.1.1 Childhood: The Enlightenment Period

The Enlightenment period did little to release constraints on children's agency. A key philosopher during this period, Emmanuel Kant's vision for emancipation of knowledge through reason featured children 'as potential harbingers of a new and bright future of reason.'[46] Kant's views about children's role in revolutionising knowledge were restricted, however, to children's inevitable development toward adulthood. Kant's vision was that when a child becomes an adult the education provided the child would then be harnessed, not during the period of childhood.[47]

[43] Ibid.
[44] Matías Cordero Arce, 'Towards an Emancipatory Discourse of Children's Rights' (2012) 20(3) *International Journal of Children's Rights* 365, 411.
[45] Ibid.
[46] Immanuel Kant, *The Foundations of the Metaphysics of Morals [1785]* (L Beck trans, Bobbs-Merrill, 1959) cited in Cockburn, above n 3, 56.
[47] Ibid.

Tobin describes the ongoing influence of Enlightenment thinking still apparent in modern human rights discourse, the effect of which diminishes children's rights. He says:

> The history of rights discourse reveals a vision of an adult (and more specifically a male adult) as the subject of rights. Irrespective of whether the origins of this discourse are traced to religious texts or the Enlightenment, capacity for reason and autonomy have historically been linked with an entitlement to rights. As children have been assumed to lack this capacity, they have been denied rights.[48]

The development of human rights discourse was firmly based on philosophical thinking from the Enlightenment period and is a 'unique product of modern Western civilisation'—which established the archetypal rights-holder as a rational adult capable of reason from which human rights emanate.[49] Enlightenment thinkers presumed that by virtue of being autonomous, rational, free and human certain rights emanate from this condition, so long as the human in question is an adult. Enlightenment philosophers did not attribute these qualities to children, and the rights derived from possessing these qualities did not therefore flow to children.[50] The content of 'adult' rights is still at times contested, but the conferral of human rights to adults is not contested.[51] Equivalent conferral of human rights is not presumed and automatic in relation to children.

The CRC provisions emphasise the evolving capacities of children as they age and mature, and the appropriateness of expanding children's participation rights in accordance with this maturation. In the 18th and 19th centuries children 'had been more or less chattels' and discourse surrounding children's rights was non-existent.[52] In the 19th century Freud's psycho-sexual theory and stages of child development,[53] then Erickson's theory[54]—building on Freud's work—of social development,

[48] Tobin, above n 12, 413.
[49] Arce, above n 44, 370 citing A Chen, 'The Rise of Rights Some Comparative Civilizational Reflections' (1998) 25(1) *Journal of Chinese Philosophy* 5, 5.
[50] Arce, above n 44, 365.
[51] Ibid.
[52] Milne, above n 13, 232.
[53] Sigmund Freud, 'Project for a Scientific Psychology (1950 [1895])' in *The Standard Edition of the Complete Psychological Works of Sigmund Freud, Volume I (1886-1899): Pre-Psycho-Analytic Publications and Unpublished Drafts* (1966) 281.
[54] Erik H Erikson, *Childhood and Society* (WW Norton & Co 1950 [1963]).

reiterated the values established in philosophical thinking of childhood as a stage where children were not yet fully developed, but in the process of becoming.[55]

5.2.1.2 Childhood: The Turn of the 20th Century to the 21st Century

Throughout history children 'play a relatively minor role' although 'there is enough said about them that we know they were not full citizens.'[56] At the turn of the 20th century children still lacked social and political status, although signs that this was changing were beginning to emerge. Zelizer describes the context for American children at the turn of the 20th century against the backdrop of the introduction of child labour laws and compulsory education.[57] Zelizer says:

> Between the 1870s and the 1930s, the value of American children was transformed. The twentieth-century economically useless but emotionally priceless child displaced the nineteenth-century useful child.[58]

This conceptual shift suggests that, at least in the Western world, the child was being repositioned from a worker to 'a privileged guest who is thanked and praised' rather than an active, able 'collaborator' in the social structure.[59] This shift, despite benefits associated with liberating some Western children from child labour, did little to advance children's agency and involvement in decision-making. Milne and Arce concur with Zelizer's assessment that the 'sacralisation' of children during this period did little to advance children's participation rights. Instead, children were infantilised through paternalistic ideas about childhood.[60] Arce describes the sacralisation of children, and of childhood, in the West noting the focus on children's innocence as a basis for promoting children's protection. He says:

> [P]owerful models acting in the West that picture 'the child' … as a sacred being that having been saved from productive activities is now valued exclusively in emotional terms, and who is sacred

[55] Milne, above n 13, 232.
[56] Ibid 237.
[57] Viviana A Zelizer, *Pricing the Priceless Child: The Changing Social Value of Children* (Princeton University Press, 1985) 209.
[58] Ibid.
[59] Ibid.
[60] Milne, above n 13, 232; Arce, above n 11.

> because innocent; a child that has to be thus protected from all the dangers of the adult world that could threaten her innocence.[61]

This approach supports a concept of children as 'becomings', as 'not-yets', rather than individuals with the capacity to contribute socially and politically.[62] These conceptualisations of childhood were also associated with an emphasis on providing for, and protecting children—both worthy aims. However, in the absence of the facilitation of children's participation rights this approach perpetuates a welfare-based approach to children, which drives and subjugates children's social and political status.

Despite the ongoing focus on a welfare-based approach to childhood at the turn of the 20th century the social and legal status of children began to change during the period paving the way for new conceptions of childhood—including the emergence of children as holders of rights. Burgeoning knowledge within the 'child sciences' such as 'developmental psychology, paediatrics and child psychiatry' significantly contributed to elevating the social and political status of children departing from long held views of children as property of their parents.[63] It was also during this time, that knowledge about child protection was developing, and child welfare agencies were emerging.

From 1919 till 1966 the earliest and embryonic notions of children as citizens emerged in literature through the work of leading educationalists Montessori, Korczak and Dewey.[64] Knowledge emerging from these areas of inquiry was partly responsible for marking the mid-20th century to the turn of the 21st century as a time of 'unpreceded change for children.'[65]

Then, in the early 1970s the group of 'children's liberationists'—Firestone, Farson and Holt—began to promote the notion that children should have the right to be involved in decision-making about

[61] Arce, above n 44, 379, citing the work of several childhood studies theorists including Zelizer, above n 57.
[62] Arce, above n 11, 287 citing I Campoy, *La Fundamentación de los Derechos de los Niños* (Dykinson, 2006) and John Eekelaar, 'Naturalism or Pragmatism? Towards an Expansive View of Human Rights' (2011) 10(2) *Journal of Human Rights* 230.
[63] Milne, above n 13, 232.
[64] Maria Montessori, *Reconstruction in Education* (Theosophical Publishing House, 1942); J Korczak, *The Child's Right to Respect* (Prawo dziecka do szacunku, 1929) (Korczak was the pseudonym of Henryk Goldszmit, a Polish-Jewish paediatrician, educationist and children's writer); John Dewey, ' Democracy and Education: An Introduction to the Philosophy of Education' (New York, first published 1916, 1966 ed)
[65] Milne, above n 13, 232.

matters of direct relevance to them.[66] At this time though, the legal implications of children's participation in decision-making was not being considered, and this did not occur on the international stage till the mid-1980s—half way through the drafting of the CRC.[67]

5.2.2 Childhood and the Northern Territory Emergency Response

The language chosen by politicians to depict Aboriginal CYP at the commencement of the NTER[68] contributed to, and justified, the measures taken under this legislation, as well as indicated that a welfare-based approach to Aboriginal CYP was the basis for the measures taken.[69] The language used emphasised Aboriginal children's vulnerability, and need for special protection—an approach that is consistent with a welfare-based approach to addressing matters concerning children.[70] This is discussed further below. Aboriginal CYP, indeed all CYP, 'experience special vulnerabilities relative to adults' however, 'characterisation of children as vulnerable carries the risk that they will be defined by their vulnerabilities.'[71]

The language law makers used to describe and justify the NTER provides insight into the way law makers at the commencement of the NTER perceived childhood, in particular Aboriginal childhood. These perceptions operate as a barrier to Aboriginal CYP's participation in law and policy development because these perceptions define Aboriginal CYP as passive, in need of protection and incapable of contributing to decision-making processes. Furthermore, these perceptions are linked to a broader socio-political and historical context where Aboriginal people are defined by, and perceived by legislators and decision makers, on the basis of standards associated with 'patriarchal white

[66] Shulamith Firestone, *The Dialectic of Sex: The Case for Feminist Revolution* (Jonathon Cape, 1970); Richard Farson, *Birthrights* (Collier Macmillan, 1974); John Holt, *Escape from Childhood* (Penguin, 1975).
[67] Milne, above n 13, 238.
[68] See chapter 1 (section 1.1.3) for a discussion about the language used by politicians to talk about Aboriginal children at the commencement of the NTER.
[69] Marion Scrymgour, 'Whose National Emergency? Caboolture and Kirribili? or Milikapiti and Mutitjulu?' (paper presented at the Charles Perkins Oration, 2007); 'NT Deputy Scrymgour Makes History', *The Age*, 26 November 2007, <http://www.theage.com.au/articles/2007/11/26/1196036806597.html>. In this article it was reported that Marion Scrymgour was later forced to back away from statements made in this speech regarding her assessment that the NTER was 'Howard's "rabbit out of a hat"—the black kids' Tampa,' (page 9 of that speech). In the same article it was reported that Marion Scrymgour became the Northern Territory's Deputy Chief Minister, the highest-ranked Indigenous person in government in Australia's history.
[70] John Tobin, 'Understanding Children's Rights: A Vision Beyond Vulnerability' (2015) 84(2) *Nordic Journal of International Law* 155.
[71] Ibid 155.

sovereignty.'[72] These standards are based on a welfare-based approach of 'saving' and 'protecting the children,'[73] not based on arriving at a shared understanding through consultation with Indigenous peoples, nor through recognition or understanding of Indigenous Knowledge or Indigenous law and custom.[74]

An examination of some of the language used by law makers is provided below and demonstrates how a welfare-based approach, rather than a rights-based approach, influenced the development, introduction and continuance of the NTER and Stronger Futures legislation. As mentioned above, a welfare-based approach is based on philosophies developed during the Enlightenment period, and is an approach which assumes children lack capacity and rationality, and are vulnerable and in need of protection.[75] Welfare-based approaches emphasise children's 'best interests'—a core principle of the CRC articulated in article 3.[76] In order for CYP's participation rights to be realised the welfare-based approach needs to be replaced with a CRBA that emphases children as rights-holders capable of contributing to decision-making processes in accordance with their evolving capacities. A contemporary approach to conceptualising childhood values children's agency, autonomy, dignity and evolving capacities and seeks to fulfil children's interests, including their interest in participating in public decision-making.[77]

Political speeches at the commencement of the NTER were characterised by emotionally-charged pleas to address issues facing Aboriginal CYP such as poor living conditions and alleged widespread experience of sexual abuse and neglect. For example, the then Prime Minister John Howard, in a speech at the Sydney Institute four days after the commencement of the NTER, likened the 'crisis in

[72] Aileen Moreton-Robinson, 'The Possessive Logic of Patriarchal White Sovereignty: The High Court and the Yorta Yorta Decision' (2004) 3(2) *Borderlands e-journal <http://eprints.qut.edu.au>* [5].
[73] Louise Pounder, 'Never Mind Human Rights, Let's Save the Children: The Australian Government's Emergency Intervention in the Northern Territory' (2008) 12(2) *Australian Indigenous Law Review* 2.
[74] Moreton-Robinson, above n 72, [12].
[75] John Eekelaar, 'The Emergence of Children's Rights' (1986) 6(2) *Oxford Joumal of Legal Studies* 161.
[76] The *Convention on the Rights of the Child* art 3 states:

> '1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
> 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
> 3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.'

[77] Tobin, above n 70.

Aboriginal communities' in the NT to the 'human misery and lawlessness' that surrounded New Orleans in the aftermath of Hurricane Katrina in 2007.[78] He said: 'We have our Katrina, here and now,'[79] referring to an alleged crisis of widespread paedophilia in Indigenous communities where children were 'living out a Hobbesian nightmare of violence, abuse and neglect.'[80] Mal Brough's claim that there were 'paedophile rings'[81] in Aboriginal communities mirrored Howard's language about a 'national emergency.'[82] These claims were unfounded and no evidence was produced by the Federal Government to support these claims. Political speeches at the commencement of the NTER emphasised that the purported aim of the NTER was to *help* Aboriginal children—an emphasis consistent with a typical welfare-based approach.[83]

Marian Scrymgour, an Indigenous member of the NT Parliament, identified a disconnection between the language being used by politicians to explain and justify the NTER, and the substance of the legislation.[84] She identified that the legislation did not mention children, aside from requiring them to undergo compulsory health checks,[85] yet the political discourse about the legislation was rich with references to Aboriginal children.[86]

McDonald discusses how statements by politicians and policy makers shape the 'identities' of people who are the subject of these statements.[87] McDonald identifies the need for law and policy makers to choose the wording of their public statements carefully to avoid hyperbole and overly politicising issues relevant to the people, and the communities, they are talking about.[88] McDonald discusses the manner in which politically charged platforms for policy making influence perceptions about Aboriginal CYP's identity. She says:

[78] Prime Minister John Howard, "Little Children are Sacred" (Speech delivered at the Sydney Institute, 25 June 2007) <http://thesydneyinstitute.com.au/blog/speaker/john-howard/>.
[79] Ibid.
[80] Ibid.
[81] Tony Jones, 'Paedophile Rings Operating in Remote Communities: Brough (TV program transcript)', *Australian Broadcasting Corporation* 16 May 2006 <http://www.abc.net.au/lateline/content/2006/s1640148.htm>.
[82] Misha Schubert, Katharine Murphy and Lindsay Murdoch, 'A National Emergency: Howard Acts', *The Age*, 22 June 2007 <http://www.theage.com.au/news/national/howard-acts-on-nt emergency/2007/06/21/1182019284327.html>.
[83] Peter Billings, 'Still Paying the Price for Benign Intentions? Contextualizing Contemporary Interventions in the Lives of Aboriginal Peoples' (2009) 33 *Melbourne University Law Review* 1; Pounder, above n 73.
[84] Scrymgour, above n 69, 8.
[85] These 'health checks' were later abandoned as this measure was found likely to constitute assault and to breach a range of international human rights laws.
[86] Scrymgour, above n 69, 8.
[87] McDonald, above n 26, 247.
[88] Ibid 247.

> The identity of 'the Indigenous child' living in a remote Northern Territory community constitutes a politically pressing and increasingly fraught example in which the identity constituted within policy authorises specific types of highly intrusive intervention by government authorities into the lives of Indigenous families and the operations of Indigenous communities.[89]

The political language used in public forums to discuss the NTER suggests a range of assumptions about Indigenous children held by law makers in Australia. Statements made by law makers surrounding the commencement of the NTER focussed on the protection of Aboriginal CYP from abuse and neglect, and the provision of certain services in Aboriginal communities, not on seeking Aboriginal CYP's views about these matters, and engaging with Aboriginal CYP as active agents in their own lives. Protecting CYP from abuse and neglect is important; however, it is also important to involve CYP in decision-making processes about how their right to protection from abuse and neglect should be carried out. New conceptualisations of childhood need to move away from a welfarist approach to childhood based on a 'vulnerability paradigm,' and focus on perceiving children as active agents in the social and political system with the right to participate in decision-making about matters involving them.[90]

5.3 Rethinking Children's Participation

The nature and form of CYP's participation in public decision-making varies widely across cultures and jurisdictions, as do understandings about the meaning of such involvement. Whilst Freeman notes that 'children's rights have come a long way in a relatively short time' the opportunities children are afforded to participate in public decision-making, and influence political processes are minimal.[91] This is reflected in Australia, as Aboriginal CYP, indeed most CYP, are rarely involved in the development of law and policy about matters affecting them.[92]

[89] Ibid.
[90] Tobin, above n 70, 155.
[91] Michael Freeman, *The Future of Children's Rights* (Brill Nijhoff and Hotei Publishing, 2014) 3. See also Cockburn, above n 3.
[92] Nakata, above n 15. For a critique of children's participation in Australia see also Judith Bessant, 'Mixed Messages: Youth Participation and Democratic Practice' (2004) 39(2) *Australian Journal of Political Science* 387.

5.3.1 The Welfare Model

Prior to the CRC coming into force an internationally recognised right specifically for children to participate in decisions affecting them did not exist. Before the CRC, ideas of *children's wellbeing* were restricted to provision and protection (not participation) rights, and were criticised as paternalistic, positioning children as passive and dependant.[93] The *provision* and *protection* framework for the development of child related law and policy are hallmarks of a welfare-based approach to matters concerning CYP—this is the approach underpinning the NTER and Stronger Futures legislation.[94]

The welfare-based approach to children emerged in the late 19th and early 20th centuries and represented a shift away from perceptions of children as being 'property'—property of their fathers.[95] The shift from a 'proprietary' view of children, to a 'child-saving'[96] view based on children's 'welfare' was in response to 'middle class concerns over the "dangerous classes," which drove a system of welfare designed to "correct and control the poor".'[97] The welfare-based model underpins many laws and policies aimed at Indigenous Australians and 'Aboriginal culture, or the perceived "dysfunction" of Aboriginal families from which children must be saved.'[98]

A welfare-based model is founded on a commitment to the best interests of the child principle expressed in article 3 of the CRC which states 'the best interests of the child shall be a primary consideration.'[99] Under the welfare model children's 'best interests', distinct from their parents interests, were considered for the first time, and this model also permitted the State to intervene in children's private lives in order to protect children's interests, and protect them from harms occurring in the home.[100] Attending to children's best interests is not a perverse goal, quite the contrary.

[93] Tobin, above n 70; Tisdall, above n 5, 420.
[94] Gary Johns, 'The Northern Territory Intervention in Aboriginal Affairs: Wicked Problem or Wicked Policy?' (2008) 15(2) *Agenda* 65, 78-79; Meredith Wilkie, *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* (Human Rights and Equal Opportunity Commission, 1997).
[95] Eekelaar, above n 75; Tobin, above n 12.
[96] Pounder, above n 73, 3.
[97] Ibid 3-4 citing Wilkie, above n 94, 375.
[98] Pounder, above n 73, 4.
[99] *Convention on the Rights of the Child* art 3; Tobin, above n 12, 410, 416.
[100] Tobin, above n 12, 410; Eekelaar, above n 75.

However, in general, welfare-based approaches to matters involving children rarely involve children in determining their 'best interests'[101] due to the focus under this model on *provision* and *protection* of children.[102] Johns defines the welfare-based model as an approach:

> where people are recognised as being outside the mainstream economy and on that basis are supported until such time as they have the desire and the capacity to relocate and participate in the mainstream economic life of the community.[103]

The welfare model underpinned the NTER and Stronger Futures legislation,[104] as well as other legislative measures involving Aboriginal CYP.[105] The NTER and Stronger Futures legislation centres on 'constructions of Indigenous children, their caregivers and the state which are founded in a "child-saving" welfare model rather than a rights-based approach.'[106] The consequence of this approach is that Aboriginal CYP are perceived as 'subjects of concern' rather than as 'rights-holders.'[107] Despite children's participation rights enshrined in the CRC, and governments' duty to uphold these rights, legislative and policy formulations, such as the NTER and Stronger Futures legislation, continue to be driven by a welfare-based approach 'that position(s) children as passive objects of adult concern.'[108]

5.3.2 New Perspectives on Children's Participation

Chapters 1[109] and 4[110] of this thesis outline the international standards framework surrounding children's participation in decision-making. Article 12 of the CRC places a duty on States to assure CYP have the opportunity to express their views about matters concerning them, and the State must give 'due weight' to these views in decision-making processes.[111] The meaning of participation in the context of this study refers to Aboriginal CYP's right to be involved in the development of laws and

[101] Eekelaar, above n 75; Tobin, above n 12.
[102] Tobin, above n 12.
[103] Johns, above n 94, 79.
[104] Ibid 78-79.
[105] Pounder, above n 73.
[106] Ibid 16. See also Nakata, above n 15.
[107] Pounder, above n 73, 4.
[108] Ibid 3. See also John Tobin, 'Beyond the Supermarket Shelf: Using a Rights Based Approach to Address Children's Health Needs' (2006) 14(3) *International Journal of Children's Rights* 275, 289.
[109] See section 1.1.4.
[110] See sections 4.3 and 4.4.
[111] *Convention on the Rights of the Child* art 12.

policies likely to affect them.[112] The scope of participation in this context, concerns CYP's involvement in matters of a public nature, rather than matters concerning the individual lives of Aboriginal CYP—although it is acknowledged that CYP's private and public realms are intertwined.

The participation rights articulated in the CRC have been 'powerfully promoted' in literature offering a range of definitions.[113] Some of these definitions are considered below, and articulate the legal context, purpose and value of children's participation espoused in this thesis.

Sinclair and Franklin explain the various purposes of children's participation as follows:

> to uphold children's rights; to fulfil legal responsibilities; to improve services; to improve decision-making; to enhance democracy; to promote child protection; to enhance children's skills; to empower and enhance self-esteem.[114]

This description of the purpose of children's participation accords with the aims of this research and explains the range of children's rights that are linked to participation rights, as well as the legal, social and political benefits of children's participation rights. Children's participation centres on children's citizenship, children's position in society, and in particular the role children's participation plays in 'strengthening young people's status in relation to adults.'[115] This approach positions children's participation as 'an essential and moral ingredient of any democratic society–enhancing quality of life; enabling empowerment; encouraging psycho-social wellbeing; and providing a sense of inclusiveness.'[116]

Children's participation however, is not easy to understand, define and implement.[117] Herbots and Put suggest children's participation 'should be regarded as a complex notion, not easily encapsulated by a

[112] Nigel Thomas, 'Towards a Theory of Children's Participation' (2007) 15(2) *International Journal of Children's Rights* 199, 199.
[113] Tisdall, above n 5, 420.
[114] R Sinclair and A Franklin, 'A Quality Protects Research Briefing: Young People's Participation' (Department of Health, 2000) cited in R Sinclair, 'Participation in Practice: Making it Meaningful, Effective and Sustainable' (2004) 18(2) *Children and Society* 106.
[115] Thomas, above n 112 citing H Matthews, 'Children and Regeneration: Setting an Agenda for Community Participation and Integration' (2003) 17(4) *Children and Society* 264.
[116] Matthews, above n 115, 270 cited in Thomas, above n 200-201.
[117] Kartien Herbots and Johan Put, 'The Participation Disc: A Concept Analysis of (a) Child ('s Right to) Participation' (2015) 23 *International Journal of Children's Rights* 154, 158.

single definition' yet often directed toward achieving legal, political or social goals.[118] Legal goals may include promoting and protecting human rights and empowering children to claim their own rights or address violations of their rights.[119] Social goals may be based on a desire to improve social services, enhance the protection of children, increase young people's social status, wellbeing and self-esteem.[120] Political goals could include contributing to the betterment of democratic processes for CYP including as agents in decision-making.[121] This view of children's participation concludes that 'the outcome of participation never can be defined since it is an open process of continuing dialogue.'[122]

Various descriptors are used in relation to children's participation in public decision-making. Tisdall, for example discusses children's participation in public decision-making in the context of 'governance.'[123] Governance refers to a 'process of participation which depends on networks of engagement'[124] and 'demands that we consider all the actors and locations beyond the "core executive" involved in the policy making process.'[125] It is in these 'networks of engagement' where possibilities for Aboriginal CYP's involvement in governance are available. This approach, combined with Tobin's 'interpretive community'[126] framework in which Aboriginal CYP are members, is presented in chapter 7 as a possible mechanism for Aboriginal CYP's participation in treaty interpretation, implementation, law and policy making in Australia.

The UNCRC outline the 'right of all children to be heard and taken seriously' as 'the right of every child, without exception' that 'constitutes one of the fundamental values' of the CRC.[127] The principle of children's participation, provided by article 12 of the CRC 'highlights the role of the child as an

[118] Ibid 156-157.
[119] Ibid 157.
[120] Ibid.
[121] Ibid.
[122] Ibid 158.
[123] Tisdall, above n 5, 319.
[124] WR Lovan, M Murray and R Shaffer, 'Participatory Governance in a Changing World' in WR Lovan, M Murray and R Shaffer (eds), *Participatory Governance: Planning, Conflict Mediation and Public Decision-Making in Civil Society* (Aldershot: Ashgate, 2004) 1, 7-8 cited in Tisdall, above n 5, 319.
[125] D Richard and M Smith, *Governance and Public Policy in the UK* (Oxford University Press, 2002) cited in Tisdall, above n 5, 319.
[126] John Tobin, 'Seeking to Persuade: A Constructive Approach to Human Rights Treaty Implementation' (2010) 23 *Harvard Human Rights Journal* 1.
[127] UN Committee on the Rights of the Child, 'Working Methods for the Participation of Children in the Reporting Process of the Committee on the Rights of the Child,' UN Doc CRC/C/66/2 (16 October 2014) [1] ('*UNCRC's Working Methods*').

active participant in the promotion, protection and monitoring of his or her rights.'[128] The UNCRC emphasises the importance of governments opening decision-making processes to children given most children globally do not have the right to vote therefore 'there is all the more reason to ensure respect for the views of unenfranchised children in Government and parliament.'[129] The UNCRC clarify that the participation of children in governmental decision-making needs to be 'consistent and ongoing' not tokenistic and sporadic.[130] Furthermore, the UNCRC stipulates that article 12 of the CRC requires governments to 'develop a direct relationship with children' that is not mediated by NGOs or other institutions such as human rights institutions.[131]

The UNCRC stipulates nine 'basic requirements' for child participation processes in order for these activities to be 'effective and meaningful.'[132] These requirements are outlined in the UNCRC's 'Working Methods for the Participation of Children in the Reporting Process of the Committee on the Rights of the Child' ('*UNCRC's Working Methods*')[133] which state these requirements 'must be respected for all processes in which children are heard and participate.'[134] The nine requirements are that processes should be:

- 'Transparent and informative': Children must be provided with age appropriate information about the 'scope, purpose and potential impact' of the participation process. Children's views must be given 'due weight';
- 'Voluntary': Children must not be forced to express their views and must be informed they can withdraw their involvement at any time;
- 'Respectful': Children's views must 'be treated with respect' and children should be 'provided with opportunities to initiate ideas and activities';

[128] UN Committee on the Rights of the Child, General Comment No 5, 'General Measures of Implementation for the Convention on the Rights of the Child,' UN Doc CRC/GC/2003/5 (27 Nov 2003) [12].
[129] Ibid.
[130] Ibid.
[131] Ibid.
[132] Ibid [7].
[133] UN Committee on the Rights of the Child, 'Working Methods for the Participation of Children in the Reporting Process of the Committee on the Rights of the Child,' UN Doc CRC/C/66/2 (16 October 2014) ('*UNCRC's Working Methods'*).
[134] *UNCRC's Working Methods*. These requirements specifically refer to how CYP should be involved in the periodic reporting process required in the CRC. However, the UNCRC state the 'Working Methods' are applicable to any children's participation process.

- 'Relevant': Participation activities should utilise children's 'knowledge, skills and abilities to express their views on relevant issues' as well as provide opportunities for children to identify and express new ideas;
- Produce a 'child-friendly environment': The appropriate 'time and resources' should be available to provide the optimal environment for children to express their views;
- 'Inclusive': All children, particularly marginalised children, should be provided with opportunities to participate. Participation activities must not discriminate against children on the basis of age or ethnicity, and the activities must be culturally appropriate and sensitive;
- 'Supported by training': Adults should be properly trained to support and facilitate children's participation; children should also be supported through the provision of appropriate information and skill development to effectively express their views;
- 'Safe and sensitive to risk': Any child participation activity must include an appropriate child protection protocol and adults responsible must take steps to mitigate any potential risk to children involved; and
- 'Accountable': Children must be provided with a 'clear understanding of their role' in the process; and follow-up activities with children involved must take place to inform children about the impact of their participation, and how this information will be used.[135]

The field research conducted in the context of this project was designed in a way that is consistent with the *UNCRC's Working Methods.* The aim was to ensure that the research was 'respectful,' 'inclusive,' 'safe and sensitive to risk' and conducted in a 'child-friendly' manner.[136] A detailed overview of how these elements of the *UNCRC's Working Methods* were embedded into the research methodology is considered in chapter 2 (section 2.2).

The *UNCRC's Working Methods* align with Lundy's model for child participation adopted in this project.[137] Lundy's four pillars of children's participation outlined below encompass the nine

[135] *UNCRC's Working Methods* [7].
[136] Ibid.
[137] Lundy, above n 10.

requirements articulated in the *UNCRC's Working Methods*. The ways in which the *Working Methods* are consistent with Lundy's model are highlighted in section 5.3.3.

5.3.2.1 Typologies of Children's Participation

i. Hart's Ladder of Participation

A range of models of children's participation have been developed since the 1970s. Hart's 'ladder of participation' provides a model of children's participation, and is one of the early, and most well-known, theoretical representations of children's participation.[138] Whilst Hart's typology is not adopted in this thesis, many elements of this typology have been integrated into later models of child participation, as well as utilised in child participation practices. The model is presented here in some detail because it presents a thorough and nuanced overview of the theory, and particularly the practice, associated with children's participation in a way that other authors, including Lundy do not.[139]

Hart's typology includes consultation with children within the parameters of 'participation', but at a lower level the hierarchy of participation.[140] The difference between participation and consultation is an important distinction. Children's participation is when children 'have reason to believe that their involvement will make a difference' to the final decision.[141] Consultation with children is about seeking their views, although these views may have no bearing on the final decision-making process.[142] The definition of participation adopted in this thesis is distinguished from a consultation paradigm, and retains a focus on Lundy's four pillars of participation outlined below.[143]

[138] Roger A Hart, 'Children's Participation: From Tokenism to Citizenship' (UNICEF Innocenti Research Centre, 1992), 9.
[139] Lundy, above n 10.
[140] Roger A Hart, 'Children's Participation in Planning and Design: Theory, Research and Practice' in Carol Simon Weinstein and Thomas G David (eds), *Spaces for Children: The Built Environment and Child Development* (Plenum Press, 1987)
[141] Sinclair and Franklin, above n 114, 113-114.
[142] M Hill, J Davis, A Prout and K Tisdall, 'Moving the Participation Agenda Forward' (2004) 18 *Children and Society* 77, 83.
[143] Barry Percy-Smith, 'From Consultation to Social Learning in Community Participation with Young People' (2006) 16(2) *Children Youth and Environments* 153; Lundy, above n 10.

Hart's 'ladder of participation' in figure 5.1, represents a linear scale of children's participation in decision-making and was 'designed to serve as a beginning typology for thinking about children's participation.'[144]

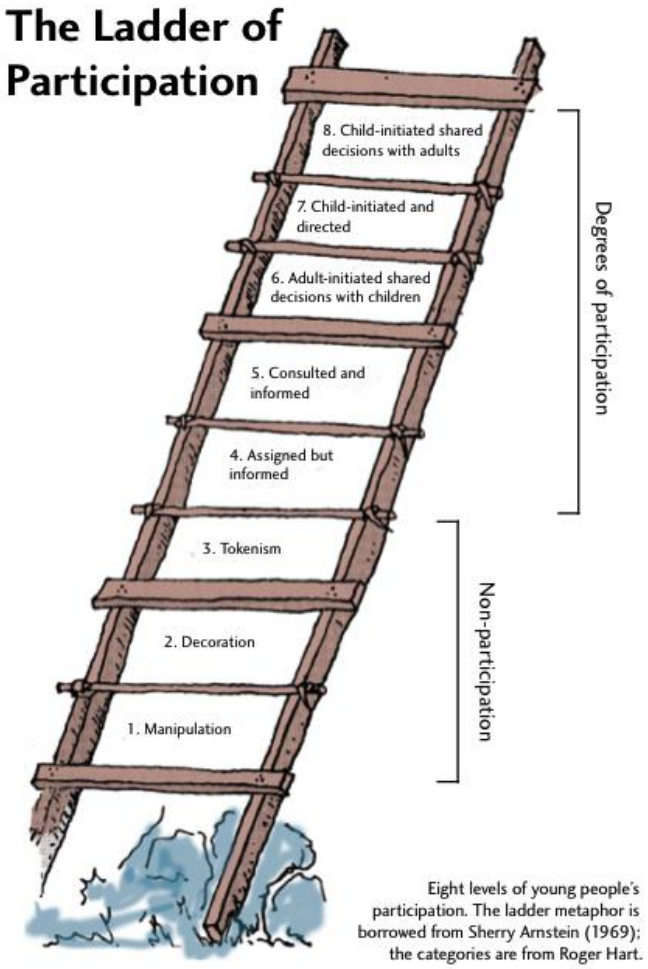

Figure 5.1: Hart's Eight Levels of Children's Participation[145]

In this typology 'genuine' participation occurs in the top rungs of the ladder where power and decision-making is shared between adults and children. The three lowest rungs represent non-participation because children in these contexts are 'manipulated', used as 'decoration' or only involved on a 'tokenistic' level.[146] Hart's example of manipulative involvement of children by adults are circumstances where children are not aware of the manner in which they are involved, and/or

[144] The ladder metaphor was applied to adult participation and is taken from Sherry R Arnstein, 'A Ladder of Citizen Participation' (1969) 35(4) *Journal of the American Institute of Planners* 216. The categories of children's participation are from Hart, above n 138, 9.
[145] Hart, above n 138, 8.
[146] Ibid.

where children are given no feedback about their involvement: for example where a pre-school child carries a 'political placard concerning the impact of social policies on children'[147] or is asked to provide their views about a children's policy but is not provided with an analysis of how these views are to be analysed or taken into account. Examples of 'decoration', the second rung on the ladder, refers to instances 'when children are given T-shirts [that] relate to some cause, and may sing or dance at an event … but have little idea of what it is all about.'[148] Hart's third rung, 'tokenism' refers to 'instances in which children are apparently given a voice, but in fact have little or no choice about the subject or the style of communicating it, and little or no opportunity to formulate their own opinions.'[149] Hart cites an example of tokenism as adult selection of 'articulate children' to participate as panellists at conferences with 'little or no substantive preparation on the subject and no consultation with their peers who, it is implied, they represent.'[150]

The degrees of children's participation are represented in ascending order on rungs four to eight of Hart's ladder. Rung four, 'assigned but informed' refers to where children are involved and informed, but where they do not design or control elements of the participatory process.[151] Rung five, 'consulted and informed' refers to situations where the 'project is designed and run by adults, but children understand the process and their opinions are treated seriously.'[152] The sixth rung of the ladder refers to adult-initiated projects where decision-making is shared between adults and children involved.[153] The seventh rung refers to 'child initiated and directed' initiatives where adults support children to undertake a project. The highest rung and, according to Hart, the highest level of children's participation, are endeavours which are initiated by children and decision-making processes shared with adults.[154]

[147] Ibid 9.
[148] Ibid.
[149] Ibid.
[150] Ibid 10.
[151] Ibid 11.
[152] Ibid 12.
[153] Ibid.
[154] Ibid 14.

The top three rungs of the ladder are, according to Hart, the optimal levels of children's participation.[155] The focus in this typology is on the power relationship between children and adults. Hart's 'ladder of participation' acted as a useful tool for practitioners and academics, and was later further developed by Hart himself [156] and adapted by other authors.[157] It was also subject to criticism and review, and other scholars (including Lundy) present alternate models for conceptualising and operationalising article 12 of the CRC.[158]

Subsequent typologies of children's participation were developed by Treseder and Lansdown that built on the ideas espoused by Hart.[159] These typologies retain the focus on power dynamics between adults and children, without including the hierarchy of participation set out by Hart.

ii. Treseder's Model of Participation

Treseder's 'degrees of involvement' circle presents five 'different, but equal, forms of good [participation] practice.'[160] This model takes the participation rungs (steps four to eight) of Hart's model, and omits the hierarchical element of the 'ladder.'[161] Treseder's approach emphasises that depending on the situation and desired outcomes different forms of children's participation are appropriate in different circumstances, and that the upper 'rungs' do not have more intrinsic value than the lower rungs. Aside from the realignment of the relationship between the various forms of children's participation Tresedor's typology is largely similar to Hart's. Figure 5.2 below depicts Treseder's typology for children's participation.

[155] Ibid.
[156] Roger A Hart, 'Stepping Back from "The Ladder": Reflections on a Model of Participatory Work with Children' in *Participation and Learning: Perspectives on Education and the Environment, Health and Sustainability* (2008) 19.
[157] Herbots and Put, above n 117; E Kay M Tisdall, 'A Culture of Participation' in Sheila Riddell and Nick Watson (ed), *Disability, Culture and Identity* (2014) 19.
[158] Hart, above n 156; Lundy, above n 10.
[159] P Treseder, *Empowering Children and Young People: Promoting Involvement in Decision-Making* (Save the Children, 1997); Gerison Lansdown, 'Promoting Children's Participation in Democratic Decision-Making' (UNICEF Innocenti Research Centre, 2001).
[160] Treseder, above n 159, 39.
[161] Herbots and Put, above n 117, 163.

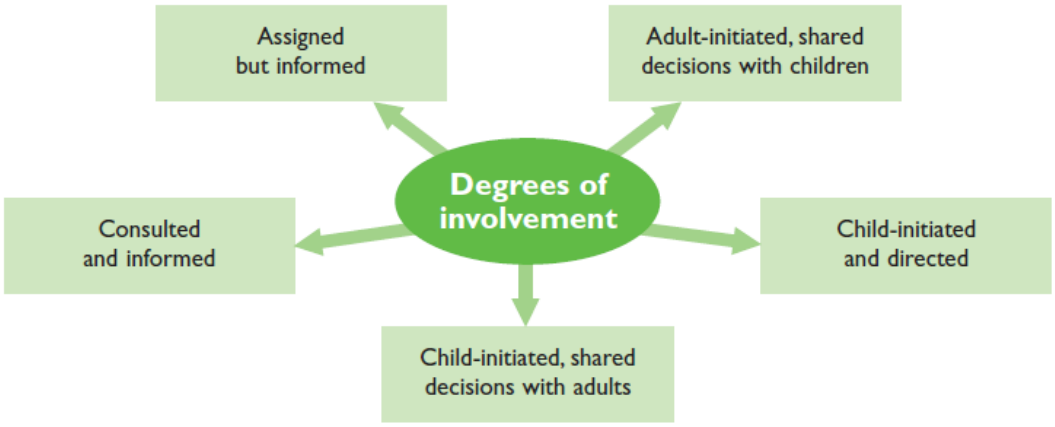

Figure 5.2: Treseder's Degrees of Involvement[162]

Children's participation encompasses involvement in decision-making at both the individual level (with respect to personal choices and personal life), as well as at the public level. Children's participation in public decision-making is the focus of this research. However, it is acknowledged that public and private decision-making processes are interconnected, each having a bearing and influence on the other. For example, during the field research for this project discussion included reflections on participant's personal experiences in the private sphere, as well as their views about public matters, and these reflections were often intertwined.[163]

Hart and Treseder's models 'have been immensely useful to challenge policy and practice, as they have been powerful tools to highlight the lack of children's participation and to advocate for change.'[164] However, given the growth of children's participation these typologies no longer provide a sufficient theoretical basis upon which to base children's participation practice.[165] Tisdall, Thomas, Liebel and Arce assert the need for a coherent theory of children's participation beyond these typologies.[166] Whilst a robust theory of children's rights, and children's participation, is yet to emerge in scholarship Lundy's model of children's participation provides a CRBA to the theory and practice

[162] Treseder, above n 159, 39.
[163] See appendix 12 and 13. During the field research CYP were asked about the availability of food in their homes followed by a discussion starter asking participants about the Basics Card.
[164] Tisdall, above n 5, 319.
[165] Ibid.
[166] Ibid; Thomas, above n 112; Arce, above n 11; Manfred Liebel, *Children's Rights from Below: Cross-Cultural Perspectives* (Palgrave Macmillan, 2012).

of children's participation. This is the model favoured and applied in this thesis, and throughout the field research component of this project.

5.3.3 Lundy's Model of Participation

Lundy provides a framework for conceptualising article 12 of the CRC using a CRBA for the involvement of CYP in decision-making.[167] This model provides guidance on how to implement children's participation in practice. This approach is different from the welfare-based approach outlined in 5.3.1 because it is based on a CRBA (outlined in section 2.1.1) which positions CYP as subjects and rights-holders, and as agents with the capacity to contribute to decision-making. A welfare-based approach positions CYP as objects and passive recipients of adult provision and protection.

Lundy's model is based on the four inherent elements of article 12 of the CRC. These elements articulate the nature and scope of article 12 and are essential for understanding and implementing the provision. These are: 'space, voice, audience and influence,' and are represented below in figure 5.3.[168]

[167] Lundy, above n 10; Elizabeth Welty and Laura Lundy, 'A Children's Rights-Based Approach to Involving Children in Decision Making' (2013) 12(03) *Journal of Science Communication* 1.
[168] Lundy, above n 10, 932.

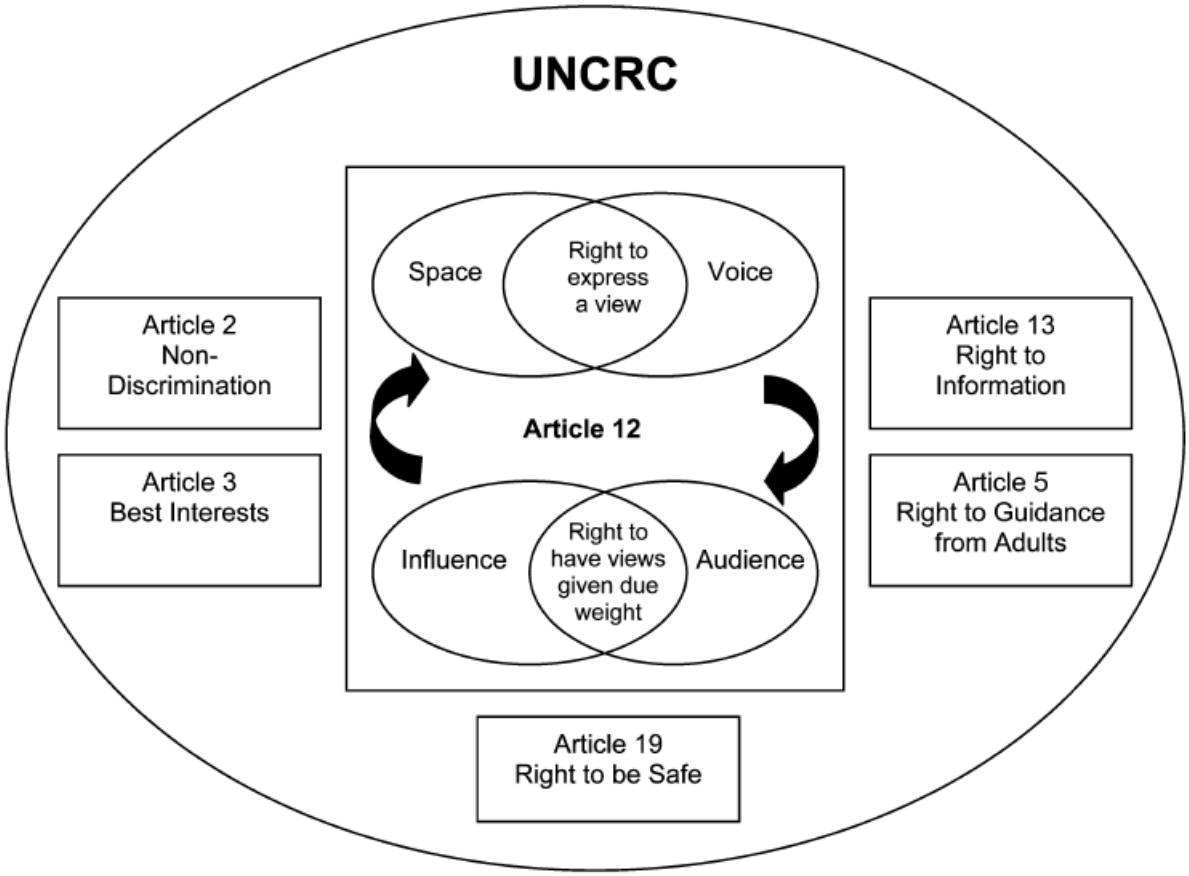

Figure 5.3: Lundy's Conceptualisation of Article 12[169]

These will be referred to as the four interconnected 'pillars' of children's participation, and are the four elements required for CYP's participation in law and policy making. The two key strands of article 12 are firstly children's 'right to express a view,' and secondly children's 'right to have the view given due weight.'[170] Lundy's model, pictured in figure 5.3, highlights how the two main strands of article 12 relate to the four pillars of children's participation.[171] The four pillars are interrelated particularly 'space and voice' and 'audience and influence.'[172] Importantly, in order for article 12 to be properly understood it must be considered in the context of other key rights contained in the CRC. These are the right to non-discrimination (article 2); the best interests principle (article 3); the right to guidance (article 5); the right to seek, receive and impart information (article 13); and the right to

[169] Ibid.
[170] Lundy, above n 10, 931.
[171] Ibid 932.
[172] Ibid 933.

protection from abuse (article 19).[173] The inextricable relationship within Lundy's model to a broad range of rights contained in the CRC distinguishes this approach from a welfare-based approach. Under Lundy's participation model the practice of actively involving CYP in decision-making is 'firmly located within the framework of children's rights' and is not 'an option which is the gift of adults but a legal imperative which is the right of the child.'[174] The meaning of each of Lundy's four pillars of children's participation is considered below.

5.3.3.1 Pillar 1: Space

Lundy identifies the characteristics of 'space' as a place where 'children are encouraged to express their views … (and) the space must be inclusive. It is important that the views of a diverse range of children are sought and that participation is not just afforded to the articulate and literate.'[175] This requires an understanding of the duty not to discriminate under article 2 of the CRC. Pillar 1 aligns with the *UNCRC's Working Methods,*[176] for children's participation to be 'respectful', 'inclusive', 'safe and sensitive to risk' and be conducted in a 'child-friendly environment.'[177]

In order for children's views to influence law and policy making processes, legislators and policy makers must provide a safe place and an opportunity for children to express their views about law and policy likely to affect them. Article 19 of the CRC places a duty on States to protect children from abuse. Thus, children must be provided with a space to express their views 'without fear or rebuke or reprisal.'[178]

This approach was implemented in conducting the field research for this project by ensuring that the research environment was safe and inclusive. This was carried out by seeking to make the research environment child-centred through the use of play-based activities to engage the CYP in an informal, culturally appropriate and age appropriate way.[179] The research was undertaken outdoors, rather than

[173] *UNCRC's Working Methods* [1]. See also ibid.
[174] Lundy, above n 10, 931.
[175] Welty and Lundy, above n 167, 2.
[176] Discussed above in 5.3.2.
[177] *UNCRC's Working Methods* [7].
[178] Lundy, above n 10, 934.
[179] See chapter 2 (section 2.2).

in the classrooms, and 'yarning' was a key research method used along with iPad peer-to-peer interviewing.[180] The combination of the research space being outdoors and the use of child-friendly and culturally appropriate research methods sought to create a research environment that was consistent with Lundy's model of participation in relation to the first pillar: 'space'.

5.3.3.2 Pillar 2: Voice

Article 12 of the CRC specifically provides CYP with the right to 'freely' express their views.[181] However, children's right to 'voice' their views is only one key element of children's right to participate in decision-making. Lundy says, 'voice is not enough'[182] children require the appropriate space, audience and influence to fully experience their right to participate in decision-making.[183] In order to *have a voice* and express their views 'freely'[184] CYP may require adult support to 'form a view.'[185] Article 5 of the CRC provides children with the right to receive direction from adults when exercising their rights in the CRC.[186] This is relevant to children's participation rights under article 12 because in some instances the input of adults is required in order for children to be able to form a view. Children's right to express their views is also linked with article 13 of the CRC which provides children with the right to freedom of expression in ways that are appropriate to them.[187]

Pillar 2 accords with the *UNCRC's Working Methods*,[188] which require children's participation activities to be 'transparent and informative,' 'voluntary' and 'respectful.'[189]

This approach was implemented in conducting the field research for this project by ensuring that CYP were adequately and appropriately prepared to participate in research; and that they had the

[180] See chapter 2 (section 2.2.3).
[181] *Convention on the Rights of the Child* art 12. All people have the right to freedom of expression under international law, for example *Universal Declaration of Human Rights*, G.A. Res. 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc. A/RES/217A (III) (10 December 1948) art 19.
[182] Lundy, above n 10, 927.
[183] Ibid.
[184] *Convention on the Rights of the Child* art 12.
[185] Lundy, above n 10, 935.
[186] *Convention on the Rights of the Child* art 5. Article 5 of the CRC provides: 'State Parties shall respect the responsibilities, rights and duties' of adults related to or connected with the child to provide 'appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.'
[187] *Convention on the Rights of the Child* art 13. See chapters 1 and 2 (section 2.2).
[188] Discussed above in 5.3.2.
[189] *UNCRC's Working Methods* [7].

opportunity to participate in a range of appropriate and appealing ways. The relevant pre-research activities and research methods are discussed in chapter 2.[190]

5.3.3.3 Pillar 3: Audience

The CRC provides CYP with the right for their views to not only to be heard, but to be listened to, and for 'due weight' to be given to these views when decisions are made.[191] In order for such views to be expressed, and taken into account, CYP need to have an appropriate 'audience' to listen to these views. Lundy identifies that article 12 imposes a ''right of audience'—a guaranteed opportunity to communicate views to an identifiable individual or body with the responsibility to listen.'[192] The audience for these views must have decision-making power, listen, and give 'due weight' to these views. Simply providing CYP with an 'audience' does not fulfil the right articulated in article 12. The audience must listen to the views expressed by CYP and these views must 'influence' decision-making. The 'audience' includes legislators and policy makers, or their representatives.

Pillar 3 accords with the *UNCRC Working Methods* that emphasise the importance of adults being appropriately trained to facilitate and support children's participation as well as ensuring children understand their role in the process, and are informed about how their participation will inform the decisions made.[193] This approach was undertaken during the field research for this project in numerous ways. The researcher's prior experience working professionally with CYP, including facilitating other children's participation activities, provided a basis for carrying out the research, and provided an appropriate level of training in order to carry out the field research.[194]

5.3.3.4 Pillar 4: Influence

'Due weight' must be given to children's views in decision-making processes in 'accordance with the age and maturity of the child.'[195] Pillar 4 refers to the requirement 'that children's views are taken

[190] See section 2.2.
[191] *Convention on the Rights of the Child* art 12. Lundy, above n 10, 936-937.
[192] Lundy, above n 10, 937.
[193] *UNCRC's Working Methods* [7].
[194] See chapter 2 (section 2.2.1).
[195] *Convention on the Rights of the Child* art 12.

seriously and acted upon.'[196] This pillar is possibly the most challenging pillar to implement, particularly for governments in the process of law and policy making about CYP. Lundy notes that providing a 'space' to listen to children's 'voices', even ensuring these views are represented to the appropriate 'audience' is 'relatively unchallenging.'[197] The challenge however, lies in assuring these views are given 'due weight,' and deciphering what 'constitutes the "due" in due weight' given the right is qualified by reference to 'the age and maturity of the child.'[198]

Pillar 4 reflects the requirement in the *UNCRC's Working Methods*,[199] that children's participation processes be supported by adults with the appropriate level of preparation, and the appropriate skills and resources to facilitate effective and meaningful participation. Further, Pillar 4 links with the *UNCRC's Working Methods* in relation to the requirement that children's participation processes must be 'accountable' to children, ensure they have a clear understanding of their role in the process and are provided with the appropriate feedback about the impact of their involvement.

Preparing CYP to effectively participate in the research and ensuring reciprocity arrangements are made with CYP, their parents and carers, as well as the staff at the school who participated in this research was an intrinsic part of the methodology adopted in the field research component of this project. Ensuring the CYP were informed about the likely impact of their involvement was also a key feature of the research design.[200] Children and young people influenced this research and in doing so pillar 4 was implemented. The methods chosen to engage CYP in this research sought to provide opportunities for CYP to adapt the research design in ways that were best for them. The yarning and peer-to-peer interviewing methods sought to provide a means by which CYP could influence the research process.

[196] Welty and Lundy, above n 167, 4.
[197] Lundy, above n 10, 937 citing UN Committee on the Rights of the Child, General Comment No 5, 'General Measures of Implementation for the Convention on the Rights of the Child,' UN Doc CRC/GC/2003/5 (27 Nov 2003) [12].
[198] Lundy, above n 10, 937; *Convention on the Rights of the Child* art 12. The qualification on 'due weight' in article 12 is discussed in chapter 4.
[199] Discussed in 5.3.2.
[200] The research methods are discussed in chapter 2 (section 2.2).

5.3.3.5 Lundy's Model in Practice

Lundy's model of children's participation presents a nuanced framework for the implementation of article 12 of the CRC. This model stipulates that in order to realise children's right to express their views, and have these views given due weight in decision-making processes, the four pillars of article 12 must be met: 'space, voice, audience and influence.'[201] Lundy's model articulates a theoretical and practical guide for how to conceptualise, as well as undertake, children's participation.

This model strongly influenced the methodological approach underpinning this project and examples of how the four pillars were implemented in practice are outlined above.[202] Lundy's pillars of participation were particularly instructive throughout this research as this model elaborates that in order for children to express their views, or have a 'voice', the appropriate 'space' for these interactions must be provided.[203] Further, in order for children's views to be given due weight the appropriate 'audience' must hear these views and these views 'influence' decision-making processes.[204]

Lundy's model anticipates the involvement of children in decision-making processes, including children's involvement in treaty interpretation.[205] However, Lundy's model is silent about Indigenous children's participation in decision-making processes—a consideration critical to this undertaking. Furthermore, Lundy's model does not provide guidance about undertaking children's participation activities in a cross-cultural setting, particularly the context for this research where the researcher is non-Indigenous carrying out field research with Aboriginal CYP. However, it is understood that Lundy's model was designed in order to be generally applicable to all settings where children's views about matters relevant to them are being sought. In the context of this research these two limitations of Lundy's model were mitigated by drawing on Indigenous research methodologies and methods,[206] as

[201] Lundy, above n 10, 932.
[202] See section 5.3.
[203] Lundy, above n 10, 933-936.
[204] Ibid 935-938.
[205] Ibid 927-929.
[206] See sections 2.1 and 2.2.

well as by seeking advice from a range of professionals during the Scoping Trip—both of which informed the fusion of Lundy's CRBA with Indigenous research methodologies.

5.4 Conclusion

The analysis of the history of childhood presented in this chapter reveals the legacy of Enlightenment philosophy on concepts of childhood that continue to obstruct children's participation in decision-making. Ideas about children lacking capacity to contribute to decision-making continue to be reflected in welfare-based approaches to developing child related law and policy such as the NTER and Stronger Futures legislation.

Ideas about childhood and ideas about children's participation are inextricably linked, and the need to 'rethink childhood' is a necessary precursor to 'rethinking' children's participation in decision-making. Concepts of childhood remain focussed on a 'welfare model' which emphasise children's vulnerabilities, rather than contextualising these vulnerabilities in light of a CRBA which acknowledges children's agency, capacity to contribute in decision-making processes, and children's right to do so under the CRC.

In order to overcome barriers to children's participation in public decision-making the relationship between the Australian State and Aboriginal CYP, their families and their communities needs to be reconceptualised. In order to reconceptualise this relationship welfare-based concepts of childhood need to be challenged and investigated for their ongoing influence in the development of law and policy affecting Aboriginal CYP. Welfare-based approaches need to be replaced with modern ideas about childhood that are firmly based on a child rights-based framework that acknowledges Aboriginal CYP's right to participate as agents, and whose participation in public decision-making is critical to democratic processes.

During the last 20 years scholarly discourse about children's participation has surged.[207] So too have practices that aim to meaningfully engage children in decision-making processes at the international level—such as the UN Special Session on Children's Rights in 2004,[208] the Children's World Summit for the Environment in 2005[209]—and at the national level, for example, in discussions about national resource allocation.[210]

Lundy's assessment of a CRBA to implementing article 12 of the CRC identifies that children's 'voice' in decision-making processes 'is not enough.'[211] Implementation of each of Lundy's four pillars of article 12—'Space, Voice, Audience and Influence'—is necessary in order for CYP to meaningfully and effectively participate in decision-making.[212] Children must have the 'space', that is, the opportunity to express their views; adults must facilitate the expression of children's voices; these 'views must be listened to', and appropriately influence the decision made.[213] This typology presents a template for Aboriginal CYP's involvement in public decision-making. Chapter 7 extends the application of Lundy's model through the suggestion that this model could be applied to the involvement of Aboriginal CYP in an 'interpretive community.'[214] In an 'interpretive community' the meaning of article 12 could be ascertained as well as decisions made about how to implement article 12. Aboriginal CYP's membership to an 'interpretive community' is a suggested means by which to provide a 'space' for Aboriginal CYP to 'voice' their views about laws and policies affecting them to an *influential* 'audience.' The 'influential audience,' are law and policy makers who have a duty to listen to these views and take account of these views in decision-making processes.[215]

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[207] Hart, above n 138; Michael Freeman, 'Whither Children: Protection, Participation, Autonomy?' (1994) 22(3) *Manitoba Law Journal* 307; Tisdall, above n 5; Thomas, above n 201; Joachim Theis, 'Children as Active Citizens: An Agenda for Children's Civil Rights and Civic Engagement' in Barry Percy-Smith and Nigel Thomas (eds), *A Handbook of Children and Young People's Participation: Perspectives from Theory and Practice* (Routledge, 2009).
[208] United Nations, *Special Session on Children* (2002) <http://www.unicef.org/specialsession/under-18/index.html>.
[209] In July 2005 the United Nations Environment Programme held the first Children's World Summit for the Environment in Japan. Six hundred children between the ages of 10 and 14, from 65 countries, were involved. United Nations Environment Programme, *Children's World Summit for the Environment* <http://www.unep.org/tunza/children/world_summit_for_env.aspx>.
[210] Alana Kapell, '... With Children: Examples of Children's Participation Throughout the World' (Save the Children, Plan International and War Child Holland, 2009).
[211] Lundy, above n 10, 927.
[212] Ibid.
[213] Ibid 933.
[214] Tobin, above n 126.
[215] Lundy, above n 10.

Article12 of the CRC reflects the premise that 'children are competent social agents and creators of meaning in their own right.'[216] A CRBA to children's involvement in law and policy making involves more than children's *presence* and *having a voice* at the negotiating table. A CRBA requires meaningful involvement not only in formative decision-making processes about legislation and policy affecting CYP, but also in the evaluation, review and redesign of such measures. These hallmarks of children's participation were not present in relation to the NTER and Stronger Futures legislation; however, these hallmarks should be implemented when developing future legislative and policy measures likely to affect Aboriginal CYP. The following two chapters present a range of suggestions from Aboriginal CYP about how this could be achieved.

[216] Beazley et al, above n 34, 366 citing Aries, above n 34; Qvortrup, above n 34; and A James and A Prout, above n 31.

Part II: Field Research with Aboriginal CYP

Chapter 6: 'I Think it's Okay … But it's Racist, it's Bad Racism'[1]: Aboriginal CYP Talk about the NTER and Stronger Futures Legislation

6.1 Introduction

> *Research in which young people participate, and the outcomes of which ultimately can inform policy is an important medium through which the aims of Article 12 might be realised.*[2]

Seeking and recording Aboriginal CYP's views about aspects of the NTER and Stronger Futures legislation was the central aim of the field research component of this project. This aim was achieved because of the generous contributions of 22 Aboriginal CYP who expressed their views about the legislation, and also spoke about how Aboriginal CYP could participation in future law and policy making. The purpose of this chapter is to discuss the data arising from the field research in relation to what CYP said about two key measures arising from the NTER and Stronger Futures legislation—income quarantining through the Basics Card, and alcohol regulation through the 'blue and white warning signs' ('blue and white signs'). Chapter 7 discusses the data arising from the field research in relation to what CYP said about how they could be involved in future law and policy developments about matters affecting them.

During the field research CYP's words were digitally recorded, transcribed, and documented in this chapter precisely as they were spoken.[3] Pseudonyms are substituted for CYP's real names to protect

[1] Tasha (15 year old female), Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014).
[2] Katie Wilson and Judith Wilks, 'Research with Indigenous Children and Young People in Schools: Ethical and Methodological Considerations' (2013) 3(2) *Global Studies of Childhood* 142, 143 citing Priscilla Alderson, 'Children as Researchers: Participation Rights and Research Methods' in P Christensen and A James (eds), *Research With Children: Perspectives and Practices* (Routledge, 2008) 276.
[3] See chapter 2 for details about this process. The words used by CYP have not been altered. They are an accurate account of the precise words used during the field research. As noted in chapter 1 the field research conversations were recorded on a

their privacy.[4] As far as the author is aware, this is the first time Aboriginal CYP have been asked for their views about the NTER and Stronger Futures legislation in a research context.

In keeping with the methodological approach adopted in this study—a CRBA informed by Indigenous research methodologies—this chapter, and the following chapter, present and privilege CYP's views shared during the field research.[5] This approach recognises Aboriginal CYP's distinctive worldviews and knowledge in the context of the 'social, historical and political contexts which shape' their experiences.[6] This approach is consistent with article 12 of the CRC which provides CYP with the right to express their views about matters affecting them and have these views considered in decision-making processes. This approach aims to be consistent with both a CRBA to conducting research[7] and the possibilities for Indigenous research envisaged by Asmar, Mercier and Page regarding 'opening up new spaces within the academy for more creative ways of doing research *with*, rather than research *on*, Indigenous peoples.'[8] The involvement of Aboriginal CYP and the representation of their views in this study are carried out in a way which seeks to 'represent Indigenous persons honestly; is accountable to Indigenous persons; and benefits the self-determination of [the] participants.'[9]

6.1.1 Overview of the Field Work

Field research was carried out in April and May 2014, and a follow-up field trip was undertaken in December 2014 where the results of the research were reported to the CYP, their families and the community. Field research involved talking with Aboriginal CYP from the NT across two age ranges,

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Dictaphone (for the group discussion sessions), or on an iPad (for the peer-to-peer interviews). These recordings were transcribed and analysed using NVivo software.

[4] A child or young person's age and gender are noted once in each section of text where a direct quote is cited.

[5] See chapters 1, 2 and 6. See also Christine Asmar and Susan Page, 'Sources of Satisfaction and Stress Among Indigenous Academic Teachers: Findings From a National Australian Study' (2009) 29(3) *Asia Pacific Journal of Education* 387; Wilson and Wilks, above n 2, 142-143.

[6] Karen Lillian Martin, 'Ways of Knowing, Ways of Being, and Ways of Doing: A Theoretical Framework and Methods for Indigenous Re-Search and Indigenist Research' (2003) 76 *Journal of Australian Studies* 203, 207.

[7] Laura Lundy, '"Voice" is Not Enough: Conceptualising Article 12 of the United Nations Convention on the Rights of the Child' (2007) 33(6) *British Educational Research Journal* 927; Elizabeth Welty and Laura Lundy, 'A Children's Rights-Based Approach to Involving Children in Decision Making' (2013) 12(03) *Journal of Science Communication* 1.

[8] Christine Asmar, Ocean Ripeka Mercier and Susan Page, '"You Do It From Your Core": Priorities, Perceptions and Practices of Research Among Indigenous Academics in Australian and New Zealand Universities' in *Academic Research and Researchers* (Open University Press And Mcgraw-Hill, 2009) 146, 148.

[9] Ibid 149.

attending the same school.[10] The first cohort, referred to collectively as the 'primary class group,' were 10 and 11 years old from a composite grade 5/6 class. The second cohort, referred to collectively as the 'secondary class group,' were between 12 and 17 years old from a combined grades 7-10 class. Generally, each group of participants engaged in the field research separately. However, the two groups were combined at times, such as in the final stages of the research when findings were reported and discussed with the group as a whole. In order to best represent the findings individual statements from CYP are used in this chapter and throughout the thesis. Children and young people's statements are noted in the following way: a person from the primary class group is referred to as a 'child,' and a person from the secondary class group is referred to as a 'young person.'[11]

Fifty percent of the field work time during April and May 2014 was spent building rapport with potential research participants, and preparing CYP to engage in the research in an informed way.[12] This time was also used to seek free, prior and informed consent from CYP and their caregivers.[13] A summary of the pre-research information sessions is provided below, as an indication of the material shared with CYP about the scope and nature of the research before the researcher sought consent from the CYP to participate in the research.[14]

The first information session overviewed children's rights, the CRC and the UNDRIP.[15] The second information session outlined children's participation rights, and briefly overviewed the key elements

[10] The name of the school cannot be disclosed due to privacy reasons in accordance with the ethical requirements under the National Health and Medical Research Council, the Australian Research Council and the Australian Vice-Chancellors' Committee, 'National Statement on Ethical Conduct in Human Research' (2007, updated December 2013) (*'The National Statement'*). Revealing the name of the school would make it possible to identify the CYP involved in the research. One of the ethics committees overseeing the project, the Central Australian Human Ethics Committee (CAHREC) specifically requested the name of the school remain confidential.
[11] Further reasons associated with this are outlined in chapters 1 and 2.
[12] See chapter 2 for how this process was undertaken. See also Harriot Beazley et al, 'The Right to be Properly Researched: Research with Children in a Messy, Real World' (2009) 7(4) *Children's Geographies* 365; Kay Tisdall, John M Davis and Michael Gallagher, *Researching with Children and Young People: Research Design, Methods and Analysis* (Sage, 2008).
[13] See chapter 2 (section 2.2.2.3).
[14] Appendix 10(i) and 10(ii) detail the information shared with CYP about the proposed research and the case study (the NTER and Stronger futures legislation).
[15] Ibid.

of the NTER and Stronger Futures legislation relevant to the research.[16] For example, in the first information session the following visual prompt (figure 6.1) was used to discuss children's rights.

Figure 6.1: What are Children's Rights[17]

Children's rights were discussed further in the context of participant's lives, and images such as the ones below, were used to assist CYP to relate the provisions of the CRC to their lives.

[16] Ibid. *Convention on the Rights of the Child* opened for signature 20 November 1989, 44 UNTS 25 (entered into force 2 September 1990) ('*Convention on the Rights of the Child*') art 12; *The United Nations Declaration on the Rights of Indigenous Peoples,* GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, Supp No 49, UN Doc A/RES/61/295 (13 September 2007) ('*United Nations Declaration on the Rights of Indigenous Peoples')*.
[17] Ibid.

Figure 6.2: What Rights do CYP Have?[18]

Using the visual prompt in figure 6.2 above the researcher asked the CYP: 'What do children and young people have the right to?' The CYP responded with statements such as 'food,' 'the internet', 'culture' and 'family.'[19]

In the second information session issues to do with law, children's participation in decision-making including in relation to laws, and the NTER and Stronger Futures legislation was discussed. Figure 6.3 below shows a visual prop that was used to prompt a group discussion about CYP's input in decision-making.

[18] Ibid.
[19] Ibid.

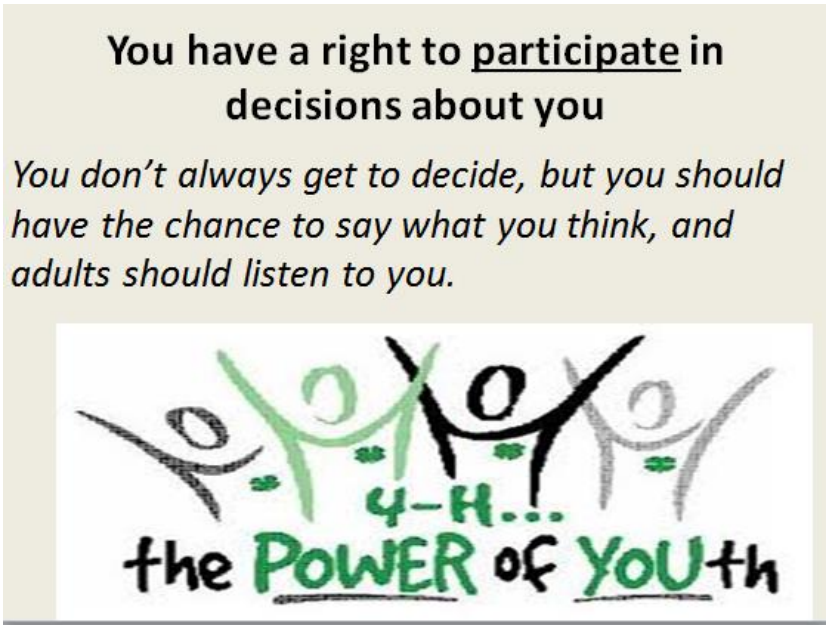

Figure 6.3: Children's Participation[20]

Children and young people's role in decision-making, as a right contained in the CRC which adults must respect, is contextualised in figure 6.3 above. Qualifications of this right were also expressed, that is, 'children and youth do not always get to decide, but that their views should make a difference to the decisions made.'[21] The concept of 'law' and the idea of CYP voicing their views about laws were discussed. The researcher also shared details about the NTER and Stronger Futures legislation. For example, the researcher said statements such as: 'You are allowed to say what you think about laws and rules' the 'Intervention made some changes. This included changes about kids' education, about buying things like food, and about things like alcohol in communities.'[22]

It was necessary to provide sufficient background information about the NTER and Stronger Futures legislation to provide a foundation for CYP to enter into a discussion about the issues. Participant data reflected the themes discussed during the information sessions, which focussed on the Basics Card (an income management measure introduced at the commencement of the NTER and continued under the Stronger Futures legislation); and the 'blue and white signs' (warning signs placed at the entrance to

[20] See appendix 10(i) and 10(ii).
[21] Ibid.
[22] Ibid.

'prescribed communities' during the Intervention regarding the prohibition on alcohol and pornography in these communities).[23] The following images were shown to CYP during the information sessions:

Figure 6.4: A 'Blue and White' Warning Sign[24]

Figure 6.5: The Basics Card[25]

[23] See chapter 1 (section 1.1.3) and for an overview of the income and alcohol regulation measures.
[24] 'Ears to the Ground: Learning about the NT Intervention, Government Income Management and the Struggle for Indigenous Self-Determination,' <https://ears2theground.wordpress.com/facts/>.
[25] Image from Pas Forgione, 'Gov't Turns Blind Eye to Income Management Pain', *Green Left Weekly* (Sydney), 30 June 2012. This image is reproduced with permission from Green Left Weekly.

Figure 6.6: A Basics Card Kiosk[26]

The research sought CYP's views about these elements of the NTER and Stronger Futures legislation, and CYP were shown these images in order to provide a visual prompt to aid potential participant's understanding of the scope of the study. Whilst the NTER and Stronger Futures legislation covers a wide range of matters affecting Aboriginal peoples lives in the NT, this study focussed on income and alcohol regulation as two key measures likely to have an impact on Aboriginal CYP's lives. Thus, the data arising from this study is most relevant to these specific elements of the NTER and Stronger Futures laws, although may be applicable to other elements of these packages of legislation.

6.1.2 Scope of Data Sought

An overview of the NTER and Stronger Futures legislation is provided in chapter 1.[27] The information provided about the NTER and Stronger Futures legislation to potential participants in the pre-research information sessions was selected to contextualise the scope of the study, and give CYP a clear idea of

[26] These kiosks are located in various places where the research took place, such as in grocery stores. People can check the balance of money remaining on their Basics Card at the kiosks, as well as carry out other Centrelink inquiries.
[27] See section 1.1.3.

what information was being sought.[28] This framework may have also provided an indication of what information was not being sought, although reference to unwanted information was not specifically articulated to CYP. As stated the research was designed to focus on two NTER and Stronger Futures measures—income management and alcohol regulation. The human resource limitations and ethical requirements of this project compelled this narrow focus. The range of other issues the NTER and Stronger Futures legislation address were intentionally excluded from the scope of this research. This was because the NTER was largely predicated on governmental claims of high rates of sexual abuse of Aboriginal children in Aboriginal communities,[29] and I wanted to make it clear to CYP, teachers, parents and carers, that this study was not seeking to illicit information about child sexual abuse or neglect. Discussion of child sexual abuse and neglect was likely to present a high-level of ethical risk to participants and the research; in any case the research did not seek to investigate these issues. Rather, the research sought CYP's views about other elements of the NTER and Stronger Futures legislation concerning changes to the provision of welfare, and changes in communities through alcohol regulation.

6.1.3 Terminology

Children and young people in both research groups frequently used the terminology 'white-fella' and 'black-fella.'[30] These terms were also regularly used by Aboriginal and non-Aboriginal people within and outside the research setting, by the school staff, and within the community. On a few occasions the researcher also used these terms, although this was limited to times when the researcher was reflecting the words used by CYP. The researcher spoke with the CYP about this in order to clarify the

[28] See appendix 10(i) and 10(ii).
[29] See discussion about this in chapter 1 (section 1.1.3). See also chapter 5 (section 5.2.2) for discussion about the impact of the language used in political speeches surrounding the introduction of the NTER, and statements by politicians with respect to alleged widespread sexual abuse of Aboriginal children.
[30] The words 'white-fella' and 'black-fella' were used by CYP in both primary and secondary research sessions 1, 2 and 3: Primary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014); Primary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 15 May 2014); Primary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 22 May 2014); Secondary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014); Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014); Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).

appropriate use of this terminology. The following is a record of a conversation that took place in the context of talking about the Basics Card:

> Jacob (10 year old male): White-fella make that for save some money for you!
>
> Holly: Is it okay or not okay for me to say black-fellas and white-fellas?
>
> Leah (10 year old female): Yep.
>
> Holly: So if you see me in the street would you think in your mind, 'oh that's a white-fella, a white woman'?
>
> Leah: Yep.
>
> Holly: And when you see other people who are Aboriginal or Indigenous people, is it ok for you to say black-fella or is it not ok?
>
> Jacob, Leah and Ryan (10 year old male): It's ok.
>
> Jacob: We say that a lot of the time.
>
> Jacob: Some kids, like white kids, always say to all the Indian kids, black people. They say black to kids. White teenagers say 'you black.' That means he's racist.
>
> Holly: I see, so they are not meaning it in a nice way. There's some ways that you can say black that is not nice, is that right?
>
> Jacob and Leah: Yep.
>
> Holly: So when I say black-fella do you think I'm being racist or not racist?
>
> Jacob and Leah: Not racist.[31]

Upon reflection, and drawing on learning from Smith, Farmer and Fasoli, and Bat about doing outsider, cross-cultural research, I have since decided that it is not appropriate to use the terms 'white-

[31] Primary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014).

fella and black-fella' in this research context.[32] This is because of my non-Indigenous status, and the limited time I spent in the community where the research was conducted. I acknowledged however, that using the terminology CYP use during the research process may differ over time in the context of developing relationships with community.

6.2 Aboriginal CYP's Views about the NTER and Stronger Futures Legislation

Field research was designed to illicit CYP's views on key aspects of the NTER and Stronger Futures legislation: income management through the Basics Card; and alcohol regulation in relation to the blue and white signs. These measures were discussed in class groups as well as in peer-to-peer contexts whilst making iPad videos.[33] As mentioned above the regulation of pornography and the sexual abuse of Aboriginal children are also issues covered by the legislation, however these issues were not raised by any CYP, nor were CYP asked to discuss these issues in line with the ethical considerations and scope of the project.

The remainder of this chapter discusses the level of knowledge CYP had about the NTER and Stronger Futures legislation, as well as the views CYP expressed about the legislation. The chapter also discusses the major themes that emerged from this element of the field work. Section 6.2.1 presents CYP's knowledge about the Basics Card and the blue and white signs. Section 6.2.2 examines CYP's views about the Basics Card, and section 6.2.3 presents CYP's views about the blue and white signs. The final section, 6.2.4, demonstrates that the legislation is a 'matter affecting' the CYP, consistent with the meaning of article 12 of the CRC, by demonstrating the complex and multi-faceted impact of these measures in the CYP's lives, and the range of effects these measures have in their family, and in their community life.

[32] Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (Zed books, 2nd ed, 2012); Rebekah Farmer and Lyn Fasoli, 'You're in New Country: Learning Both Ways: Advice for non-Indigenous Early Childhood Mentors, Trainers and Teachers' (Tafe NSW Western, Batchelor Institute of Indigenous Tertiary Education, Tafe Riverina Institute, Charles Sturt University, 2011); Melodie Bat et al, 'Ethical Moves: Innovation in Qualitative Research: An Example of an Ethical and Effective Cross-Cultural Research Methodology Using Video' (paper presented at the AARE National Conference: Inspiring Innovative Research in Education, Canberra, 2009).
[33] See appendix 10(i) and 10(ii).

The chapter concludes that CYP identified some positive ramifications of the Basics Card in their lives, and in the community. However, these views were qualified by CYP's statements that the Basics Card is a racist initiative because it discriminates against Aboriginal people, and it should be available for anyone who requires financial management assistance, not only Aboriginal people.

The chapter also concludes that the CYP identified the blue and white signs as 'shaming' the community, and doing little to regulate alcohol use in communities. While, in the context of discussions about the blue and white signs, CYP spoke about the negative influence of adult alcohol consumption in many of their communities, they said the signs failed to address problems associated with alcohol in communities. The issue of alcohol in community was a common theme throughout the research and is discussed further in chapter 7.

6.2.1 Knowledge about the Legislation

In the first discussion groups the researcher told CYP that the purpose of the research was to seek their views about 'the Intervention' and their ideas about participating in the development of laws and policies on matters that might affect them. Most CYP used the words 'the Intervention' to describe the NTER and Stronger Futures legislation. Others however, used the terms 'Stronger Futures' to refer to both the NTER and the Stronger Futures legislation. Participants did not differentiate between the NTER and the Stronger Futures legislation, and CYP did not refer to the 'Northern Territory National Emergency Response.'

Statements from many CYP in both research cohorts indicate an understanding among the groups, some more detailed and complex than others, of the legislation being examined. The following statements for example, highlight CYP's knowledge about the nature of the laws, the measures arising from the laws, and what the laws sought to do. A child described the legislation as a product of non-Indigenous law. She said, '[i]t's white-fella law, its big law.'[34] Another child described the

[34] Leah (10 year old female), Primary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014).

Intervention in this way: 'It's the Basics Card and the signs.'[35] A young person articulated his view of the purpose of the Intervention, he said it was about: 'Helping. Helping people with their family.'[36]

A limited amount of data was collected about how CYP knew about the NTER and Stronger Futures legislation. As mentioned already, some of this knowledge may have been formed during the information sessions held as part of the pre-research preparation activities. It is not possible to disentangle how CYP knew about the NTER and Stronger Futures measures as this was not investigated in depth. Some data was collected on this issue that suggests CYP sourced some information about the NTER and Stronger Futures from the media. A group of five young people said the Intervention was not spoken about at home, one said: 'It's on telly.'[37] However, CYP's contributions in group discussions indicated the majority of learning about the measures associated with the NTER and Stronger Futures legislation came through experience, primarily witnessing family members and others using the Basics Card, and seeing and talking about the blue and white signs. Aboriginal CYP (as young as 10 years old) expressed a working understanding of the 'Intervention,' and voiced their understanding of some of the legal and social underpinnings of the legislation.

6.2.1.1 Knowledge about the Basics Card

From the outset of the field research CYP across both research groups, including the youngest research participants indicated sophisticated understanding of the use and scope of the Basics Card. The majority of CYP were able to provide detailed descriptions of how to use a Basics Card, such as what goods were able to purchased and not purchased using this card. Children and young people expressed their comprehensive knowledge about the Basics Card including who made it, how to use it and what products could be purchased using it. Fake sample cardboard Basics Cards[38] were distributed to CYP

[35] Sofie (10 year old female), Primary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014).
[36] Sean (13 year old male), Secondary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014).
[37] James (17 year old male), Secondary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014).
[38] I visited an exhibition called 'Ghost Citizens: Witnessing the Intervention,' 16 May – 17 June 2013, Counihan Gallery, Victoria. An installation at that exhibition by Brendan Penzer included realistic looking, yet fake, cardboard Basics Cards for visitors to take. I used these during the field research.

in the first primary and secondary group sessions. This is an image of the sample Basics Card that was distributed:

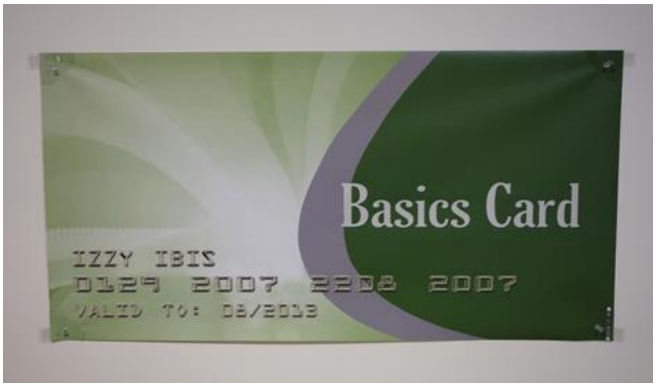

Figure 6.7: Brendan Penzer, 'Ghost Citizens: Witnessing the Intervention Exhibition'[39]

The purpose of giving CYP the card was to promote discussion about the Basics Card, and to do this using a physical and visual prop to aid CYP's understanding about what was being asked of them. This method is also an age appropriate strategy to engage CYP in CRBA to research.[40] All CYP recognised the Basics Card, and all had seen an adult member of their family, or a friend, using a Basics Card.[41] Some young people had personally used a Basics Card to purchase goods.[42]

In the first primary class discussion group, when the researcher handed out the sample Basics Cards, the group was discussing what law is, what Aboriginal law is, and who makes the law. A 10 year old child, pointing to another child holding the sample Basics Card, called out '[w]hite-fella make that for save some money for you!'[43]

Two young people further highlighted their understanding of the Basics Card in a peer-to-peer video they made when they said:

[39] 'Ghost Citizens: Witnessing the Intervention,' 16 May – 17 June 2013, Counihan Gallery, Victoria. Photograph taken by Holly Doel-Mackaway with permission.
[40] Lundy, above n 7.
[41] The adult relative may have been an uncle, aunty, grandparent, cousin, sibling or another relative. Not all participant's parents or carers held a Basics Card.
[42] Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).
[43] Jacob (10 year old male), Primary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014).

> James (17 year old male): What's for Basics Card?
>
> Brody (16 year old male): Basic Card, it's for young child who is hungry, they have no clothes, some kids have no drink because parents go spent their money on grog. That's what I really hate. I see people, kids mainly, crying in the streets saying their mothers don't care … they're asking their boyfriend to buy grog. Their mother always trying to stop me but I fight, and said 'buy food for us, me and my sisters.'[44]

James described the Basics Card in this way:

> It's not cash it's a card. It's there to help you buy food and supplies and stuff you need at home … It saves you money. You can pay your power bill on the Basics Card.[45]

A 14 year old participant made an individual iPad video and in it he described his view about the purpose of the Basics Card. He said: 'We are talking about Basics Card to help people, to help community, to help everything. Help the family, help the school.'[46]

All primary class group children said they had experienced of a close family member using the Basics Card. The following exchange in the first primary class research group demonstrates this:

> Holly: Does anyone's parents use this at the shops? (holding up the sample Basics Card)
>
> All children: Yes. / Yes, mine.
>
> Leah (10 year old female): When there's money in it!
>
> Ryan (10 year old male): My Nanna she uses it.
>
> Sofie (10 year old female): She gets toys, clothes and a feed.[47]

[44] Secondary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014).
[45] James (17 year old male), Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014).
[46] Jonathan (14 year old male), Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014).
[47] Primary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014).

A child from the primary class group shared his knowledge about who is able to hold a Basics Card, he said: 'You need to be an adult to have a Basic Card.'[48] A young person expressed his understanding that the Basics Card was only for people who were not working. He said: 'If a person is working and he has money in his bank and he has a key card then he don't have to worry to have a Basics Card.'[49] Children and young people demonstrated an understanding that only people who were not employed could have a Basics Card. Leah said:

> Leah (10 year old female): You can only get Basics Card if they don't work.
>
> Holly: And then if they start working do they get the Basics Card anymore?
>
> Leah: Nope.[50]

Children and young people showed detailed understanding of the types of goods that can, and cannot be purchased using a Basics Card. All CYP knew that alcohol and cigarettes could not be purchased using the Basics Card. The following excerpt from the first primary class group research session demonstrates this awareness:

> Holly: What are you not allowed to buy on the Basics Card?
>
> Leah (10 year old female): Grog.
>
> Mel (non-Indigenous teacher's assistant): Is that the only thing you're not allowed to buy?
>
> Leah: Yep, you can only buy food, clothes and toys.
>
> Ryan (10 year old male): You can't buy smokes.
>
> Leah: You can pay bills on it too.[51]

[48] Blake (10 year old male), Primary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 22 May 2014).
[49] James (17 year old male), Secondary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014).
[50] Primary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014).
[51] Ibid.

Children from the primary class group demonstrated an awareness of the legal context in which the Basics Card was designed:

> Holly: Who decided on making the Basics Card?
>
> Ethan (11 year old male): Tony Abbott.
>
> Ellie (11 year old female): No Adam Giles.
>
> Holly: Blake did you make the Basics Card (out of the play dough)?[52] Why did you decided to make the Basics Card?
>
> Lily (11 year old female): Because we need to buy clothes.
>
> Ellie: We need to save money.
>
> Blake (10 year old male): Because people were poor and they was just scavengers.
>
> Lily: And they was homeless.
>
> Holly: What do you think about that idea, did it work out or did it not work out?
>
> Several children: It worked out.
>
> Ellie: Cause I got a Basics Card.[53]

Children's references in the statements above to 'scavengers,' and people being homeless, indicate these children recognised Aboriginal disadvantage and linked the Basics Card to addressing this disadvantage. Young people in the secondary class group also expressed reasons why they believe the Basic Card was put in place. The following conversation highlights these reasons:

> Holly: What do you think about the Basics Card? What's life like with the Basics Card?
>
> Tasha (15 year old female): Um, I think it's better for the other people. Like people that have no jobs.[54]

[52] During this discussion children were moulding play dough as the discussion took place. This was part of the research design arising from advice received during the Scoping Trip and detailed in chapter 3. This advice centred on conducting 'yarning groups' with CYP so as to avoid CYP feeling 'shamed', or pressured during the research interactions.
[53] Primary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 15 May 2014).

Holly: Why is it better for them?

Tasha: They was put on Basic Cards because they are not buying food with their money and just wanna go buy alcohol.

Holly: So is that what the Basics Card is about? Is it about not buying alcohol?

Tasha: Yep.

Holly: What do you think about the Basics Card only being for Aboriginal people?

Tasha: Cause some of the Aboriginal people don't work.

Holly: Same with white-fellas, there are some white-fellas who don't work. Is it fair or not fair?

Tasha: It's fair.

Emily (16 year old female): Fair.[55]

The following exchange demonstrates that some of the youngest participants understood the way the Basics Card is administered.

Leah (10 year old female): The Basics Card saves you when you are hungry. Ring up the Centrelink and check how much is in your kitty, in your Basics Card.

Holly: I see so that means you have a kitty. When you were really little there was no Basics Card was there?

Jacob (10 year old male): That was long, long time ago.

Ryan (10 year old male): It's gone up to 2016, I seen it on the Basics Card.[56]

[54] This participant's parents did not have Basics Cards. Not all CYP's parents had Basics Cards.
[55] Secondary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014).
[56] Primary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014).

6.2.1.2 Knowledge about the 'Blue and White Warning Signs'

Discussion about alcohol regulation measures, and alcohol use, in community was also a common theme across both research groups, particularly in the secondary class group. Across all of the research sessions CYP said the word 'grog' 25 times, and the word was used in all of the primary and secondary research sessions. The word 'alcohol' was said 24 times by CYP over the course of the research sessions, and mentioned by CYP in each of the secondary research sessions and in one of the primary research sessions.

Namey et al suggest however, that the frequency of keywords fails to contextualise the varied meanings of these words, and the nuances associated with those who use these words, and when.[57] Namey et al suggest 'determining frequencies on the basis of the number of individual participants who mention a particular theme, rather than the total number of times a theme appears in the text.'[58] Thus, the fact that the words 'grog' or 'alcohol' were mentioned in all of the research sessions, by more than half of the CYP is significant and indicates a strong theme arising from the data collected.

Participant's shared their views about the alcohol regulation measures arising from the NTER and Stronger Futures legislation.[59] Children and young people were asked about their knowledge of the blue and white signs, the warning signs situated at the front of 'prescribed areas' under the NTER legislation[60] and continued under the Stronger Futures legislation in 'alcohol protected areas.'[61] A young person expressed his understanding about the alcohol restrictions in prescribed communities. He said:

[57] Emily Namey et al, 'Data Reduction Techniques for Large Qualitative Data Sets' in Greg Guest and Kathleen MacQueen (eds) *Handbook for Team-Based Qualitative Research* (Altamira Press, 2008) 137, 143.
[58] Ibid 143.
[59] See Chapter 1 (section 1.1.3) for an overview of these measures.
[60] The *Northern Territory National Emergency Response Act (2007)* (Cth) s4 outlines the areas of the NT subject to this legislation.
[61] *Stronger Futures in the Northern Territory Act (2012)* (Cth) Part II.

> Only people living in town can get alcohol. If you are in a [prescribed area] you can't get alcohol. You are not allowed to take the alcohol back to the [prescribed area].[62]

These signs detail in English[63] the regulations regarding the possession, sale and consumption of alcohol in these communities. The blue and white signs pictured in figure 6.8 below, were placed at the entrance to 73 prescribed communities in 2007 at the commencement of the NTER.[64]

Figure 6.8: An Image Used in the Discussion Starters for Secondary Research Session 2[65]

Some CYP who participated in the research lived in communities where these signs were erected. The signs say 'no liquor' and 'no pornography' and detail the penalty for breaching these rules in accordance with the NTER, then later in accordance with the Stronger Futures legislation using modified, but largely similar signs. All CYP were aware that the blue and white signs meant that

[62] Chris (17 year old male), Secondary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014). In order to protect the privacy of CYP, and in accordance with the ethical agreement entered into to undertake this research, the words 'prescribed area' have been inserted and the name of the place the child or young person mentioned has been deleted.
[63] Signs were only produced in English. The signs were not translated into Aboriginal languages spoken in the prescribed areas.
[64] *Northern Territory National Emergency Response Act (2007)* (Cth) s 4. A prescribed area is defined in s4 of this Act as Aboriginal land as per the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and refer to town camps and areas prescribed by the Commonwealth Minister through legislative provision.
[65] See appendix 12 and 13.

alcohol could not be consumed in communities where the signs were erected. The following response to a question about the signs illustrates this:

> Holly: So what are the blue and white signs about?
>
> Chris (17 year old male): Alcohol, to keep it out of the community.[66]

Participants did not mention issues to do with pornography when they were talking about the warning signs, or in relation to any other issues discussed. The absence of discussion about the pornography in communities could be due to many factors. Some of these reasons may be that during the information sessions the research was not framed in relation to this issue, or that pornography was not an issue that affects CYP involved in this research; or it could indicate this group of CYP deemed pornography as subject that was inappropriate to discuss with an 'outsider researcher.' Participant statements about the blue and white signs exclusively related to alcohol regulations.

The research did not seek to collect information about whether CYP had knowledge of pornography use in their communities; however, the research did not preclude CYP from raising this as a matter relevant to the blue and white signs, or otherwise. Further research into this issue needs to be conducted to assess whether pornography is a matter affecting this group of CYP. This research did not reveal any findings of this nature, other than the fact that pornography was not mentioned by any CYP during the field research. However, during the preparatory exercises, and in the information sessions, the issue of pornography was not discussed as being within the ambit of this research.

In summary, the findings outlined in this section detail CYP's knowledge about two key measures implemented under the NTER and Stronger Futures legislation: the Basics Card and alcohol regulation. The following section explores CYP's views about these measures.

[66] Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014).

6.2.2 Views about the Basics Card

Overall, when discussing the Basics Card CYP from both the primary and secondary class groups said the Basics Card helps them in some ways and described some of the positive effect the Basics Card on their lives, and in the community. Children and young people said the Basics Card (a) improved access to food and toys, and helped with paying bills and (b) addressed some dishonest trading behaviours. However, nearly all CYP said the Basics Card is a racist measure given it is predominantly for, and targeted at, Aboriginal people in the NT. These views are explored below.

6.2.2.1 Improves Access to Food and Toys, and Helps with Paying Bills

What can be extrapolated from the data provided by the CYP is that they believe the Basics Card improves their access to food, clothes and toys, and that this has had a positive impact on their lives. Several CYP reflected this view. Two young people, and one child, said the following:

> James (17 year old male): The Basic Card is alright, it doesn't harm anybody, it's just a card.
>
> Eddy (15 year old male): It's just a card to buy a feed for your kids.
>
> James: That little card is helping you to get a life. It's like you got a spare life, it's trying to help you and your kids a bit more.[67]
>
> Ethan (11 year old male): Yes. You can save for what you need milk, butter, chips.[68]

When the researcher asked in the third primary class research session (whilst holding up a sample Basics Card): 'Do you think this is a good thing, not a good thing, or are you not sure?' members of the primary aged group said:

> Sofie (10 year old female): Good thing.
>
> Holly: Tell me about why it's good.
>
> Leah (10 year old female): It's got money.

[67] Secondary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014).
[68] Primary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 15 May 2014).

> Sofie: Cause to buy money.
>
> Holly: Yeah. What can you buy with the money?
>
> Jacob (10 year old male): Buy lollies.
>
> Leah: Clothes and vegies.[69]

Most CYP indicated they supported the continuance of the Basics Card. A 10 year old child reflected the sentiment expressed by the majority of CYP about the Basics Card, he said: 'I'd say no to Tony Abbott and Adams Giles not to stop money, not to stop Basics Card … so that we can keep on having it.'[70]

Not all CYP agreed that life is better with the Basics Card:

> Holly: Do you guys think that life is better with this or without?
>
> Lily (11 year old female): Yep, it's better with that (the Basics Card).
>
> Ellie (10 year old female): I don't know.[71]

Ambivalence, not only about whether the Basics Card has improved life for CYP and their communities, but about whether the Basics Card should continue was expressed by one young person in the following conversation:

> Holly: So if you could change the law to keep it or get rid of it what would you say? Keep it or get rid of it?
>
> Brodie (16 year old male): Keep it in some ways, and get rid of it in some ways.[72]

The participant did not elaborate on this statement; however, this suggests he identified elements of the Basics Card that he thought were positive, and other elements that could be improved. These statements detailed above emphasise the value some CYP placed on the Basics Card as a means by

[69] Primary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 22 May 2014).
[70] Ibid.
[71] Primary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 22 May 2014).
[72] Secondary Class Discussion, Field Research Session 2 (of 4), 16 May 2014.

which to access food. A young person said the Basics Card has contributed to enhancing his life through improving his access to food. He said:

> Nathaniel (14 year old male): I reckon the Basics Card is alright. You can buy food for yourself.
>
> Holly: Do you think life is better or not better because of the Basics Card?
>
> Nathaniel (14 year old male): It's better. So you can buy stuff for yourself or for your family. You can buy food.
>
> Holly: What can't you buy on it?
>
> Nathaniel (14 year old male): You can't buy bad stuff with it; you can only buy good stuff. Not allowed to buy smokes, alcohol, any bad stuff. [73]

Children and young people expressed their view that the Basics Card has some positive effects because it assists families to manage household income, pay bills and save money. Many CYP reported that life is better with the Basics Card as it increases their access to food, clothing and toys. Most CYP expressed their view that the Basics Card was a positive initiative in their own lives, as well as having a range of positive effects in the community.

6.2.2.2 Addresses Some Dishonest Trading Behaviours

Some CYP said using the Basics Card assists in addressing problems when Aboriginal people transact whilst shopping. A young person said:

> Sean (13 year old male): They rip you off at Coles.
>
> Holly: How do they do that?
>
> Sean: They don't count the change and give you less.
>
> Holly: Has that happened to you?
>
> Tessa (16 year old female): Yep. It happens a lot.

[73] Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).

Holly: So does the Basics Card help you with that or doesn't it?

Sean: Yeah it helps. Because they don't have to give you change.[74]

These CYP identified the reduction in dishonest trading behaviours as a positive benefit associated with the Basics Card.

6.2.2.3 The Basics Card is Racist

With the exception of two participants, CYP in both research groups did not know that the Basics Card is predominantly for Aboriginal people.[75] Nearly all of the CYP expressed that they thought the Basics Card was for everyone, and that it was not predominantly for Aboriginal people. Many CYP said they thought it was for anybody in Australia experiencing difficulty managing their money. Upon learning this during the research process numerous CYP expressed their view that the race based criteria for the Basics Card was discriminatory. One young person said, 'it should be for all people who are struggling to manage their money better. It's not just black people that are like that, it's every other race is like that.'[76] Another young person went further, after learning the Basics Card targeted Aboriginal people, criticising the operation of the Basics Card as racist, she said: 'I think it's okay … but it's racist, it's bad racism.'[77] Numerous other CYP concurred with this statement stating that it was racist that the Basics Card was not for everyone who received welfare payments. A record of this conversation is as follows:

Holly: Who has a Basics Card?

Sean (13 year old male): My mother and my father have one.

Holly: Why do some people have one and some people don't?

[74] Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014).
[75] A range of changes to the income management regime under the Stronger Futures legislation was taking place at the time of writing this thesis. This includes proposals to make the Basics Card available to people in receipt of welfare payments across the whole of Australia. At the time of conducting the research, whilst changes to income management were made under the Stronger Futures legislation, the Basics Card remained a racially targeted measure predominantly affecting Aboriginal people. Very few non-Aboriginal people were affected by the Basics Card measure under the NTER and Stronger Futures legislation. See chapter 1 (section 1.1.3) for further details.
[76] Brody (16 year old male), Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014).
[77] Tasha (15 year old female), Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014).

Sean: So then they can't buy grog on it.

James (17 year old male): So they can't buy alcohol on it, or smoke. You can only buy food and medicine and bills on it.

Holly: Is that something that anyone in Australian can get, or only some people? Is Basics Card something for everybody or only something for Aboriginal people?

James: For everybody.

Eddy (15 year old male): For Aboriginal people hey.

Holly: So you know what, it's pretty much only for Aboriginal people. What do you guys think about that?

Brody (16 year old male): I think some white people having Basics Card too. White like you.

Sean: Yeah like you.

Holly: But only if they are an Aboriginal person, so I'm not an Aboriginal person.

Brody: No, white, one white woman, like you, she had a Basics Card, honest.

Holly: Okay. What do you think about that James?

James: They're probably married.

Sean: It's freaky.

James: It's good for kids

Holly: Why is it good for kids?

Sean: Because of food.[78]

One young person, Eddy, said: 'Lots of people need help with money, it's not only Aboriginal people. Everyone who needs a Basics Card should be able to have one.'[79] Eddy, like the other CYP mentioned above, expressed the view that the provision of the Basics Card predominantly to Aboriginal people was unjust and racist. In a discussion about governmental law making and consultation prior to

[78] Secondary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014).
[79] Eddy (15 year old male), Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).

making laws impacting on Aboriginal CYP the researcher asked the following question, and a child responded and said the Basics Card should be voluntary.

> Holly: So everybody said that the government should ask you before they make laws about you. What do you think the government should ask you about before they make the rules?
>
> Ellie (11 year old female): Do you want to have Basics Card or not.[80]

This statement, by one of the youngest member of the research cohort, reflects the sentiment that quarantining welfare monies onto a Basics Card should be a matter of choice rather than a compulsory measure. It also suggests that young children recognise discrimination, and are capable of making judgements. The element of choice, whether or not to have welfare money quarantined on a Basics Card, has been discussed widely in the literature.[81]

A few CYP said they had witnessed a family member experiencing racism in the community when using the Basics Card. The issue of racism was a strong theme throughout the research interactions with CYP, and was raised regularly, often in the absence of specific inquiry from the researcher about such matters. Chapter 7 deals with these findings further.

6.2.3 Views about the 'Blue and White Warning Signs'

The research revealed important findings about CYP's views and experiences of alcohol use in community. Participants discussed issues associated with alcohol in communities frequently throughout the research. All CYP expressed the sentiment that alcohol abuse was a negative factor in their lives, or in the lives of other Aboriginal people known to them. Most CYP said the blue and white signs implemented under the NTER and Stronger Futures legislation[82] did not contribute to

[80] Primary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 15 May 2014).
[81] Shelley Bielefeld, 'Compulsory Income Management and Indigenous Australians: Delivering Social Justice or Furthering Colonial Domination?' (2012) 35(2) *UNSW Law Journal* 522; Paddy Gibson, 'Return to the Ration Days: The NT Intervention-Grass-Roots Experience and Resistance: A Discussion Paper' (Jumbunna Indigenous House of Learning, University of Technology Sydney, 2009); Eva Cox and Terry Priest, 'Evidence-Free Policy Making? The Case of Income Management' (2012) 12 *Journal of Indigenous Policy, Jumbunna Indigenous House of Learning, University of Technology.*
[82] *Stronger Futures in the Northern Territory Act* (2012) (Cth), Part II.

positively addressing this problem. In fact, several CYP said these signs have intensified problems in communities.

6.2.3.1 The Signs Shame the Community and Don't Stop People Drinking

Children and young people did not report any data suggesting the blue and white signs had made a positive contribution to managing problems associated with alcohol use in communities. On the contrary, CYP said the blue and white signs had a detrimental impact on people in the community, 'shamed' the communities, and the signs were an ineffective and flawed mechanism to manage alcohol use in their communities.

Fifteen of the 22 CYP indicated their support for addressing problems linked to alcohol abuse which exist in many Aboriginal communities. Several of these CYP said however, that the blue and white signs were ineffectual in addressing alcohol abuse in many communities, and led to unanticipated negative implications for Aboriginal CYP, and for many communities. Participants said the signs shame the community; they do not necessarily stop people drinking; some communities were already 'dry communities' before the signs were erected and many adults do not drink, so the signs are irrelevant in some communities.[83]

Some young people reflected their view that the blue and white signs have brought shame on the community, and therefore had a negative impact on communities where alcohol regulations are in place. The following exchange indicates some young people held the view that the signs labelled communities in a negative way:

> Holly: What do you think about the blue and white signs? Have you seen them before?
>
> James (17 year old male): Yeah. No I don't like them.
>
> Tessa (16 year old female): It makes communities look bad. They don't respect the community.

[83] Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014).

Sean (13 year old male): They're racist. [84]

This sense of shame associated with the blue and white signs being placed at the entrance to prescribed areas is documented in scholarship in relation to Aboriginal adults.[85] Children and young people in this study said the blue and white signs did not stop people drinking in communities where alcohol regulations applied. Furthermore, CYP said the signs were an ineffective way of managing alcohol abuse in communities.

6.2.3.2 The Signs Do Not Help Children and Young People

Many CYP said the signs were ineffective in regulating alcohol consumption because people who wanted to drink often left the community to drink elsewhere, such as the town centre, where alcohol restrictions were not in place. A young person said 'some drink out of community.'[86] She also said the alcohol restrictions in some communities does not stop people drinking, it means people leave the community to drink and this does not assist in reducing alcohol consumption, rather it is 'probably getting more worse.'[87] Another young person added, 'the kids will cry for their parents. It happens to a lot of them. But some parents don't drink.'[88] During the second secondary class group discussion most young people agreed with the statement by one young person that the blue and white signs did 'not really' stop members of communities from drinking.[89] Numerous young people identified that a negative consequence of the signs was that adults who wanted to drink alcohol from prescribed communities can go to a town to access alcohol, and sometimes stay for long periods of time in that town, which means that some CYP in these communities are left unattended.[90]

[84] Ibid.
[85] Gibson, above n 81, 22.
[86] Tessa (16 year old female), Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014).
[87] Ibid.
[88] Samantha (16 year old female), Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014).
[89] Jessie (13 year old male), Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014).
[90] Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014); Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014).

6.2.3.3 Views about the Impact of Alcohol in Communities

During the research CYP were asked to consider what laws they would make if they had law making power.[91] In the context of discussions about the blue and white signs, the majority of CYP discussed issues relating to alcohol use in their communities as a matter affecting them. The context of these discussions was generally in relation to the community as a whole, not in relation to CYP's household, parents, or guardians, although at times CYP made comments about the impact of alcohol use on their life and the life of their community. Several CYP spoke about the absence of alcohol in their family, and some in their community, because they lived in 'dry' communities. As mentioned above, CYP spoke about alcohol, or 'grog,' in Aboriginal communities in all of the field discussion sessions.[92] These views were expressed by CYP in a range of ways—verbally in the yarning circles, in participant's peer-to-peer iPad videos, and in participant's posters. In the second research sessions with the primary and secondary classes, CYP designed posters in response to the discussion starter: 'If I was Prime Minister for a day …'[93] Children and young people made a range of posters and captured these on iPad videos. Three of these posters are pictured below in figure 6.9. In these posters, the theme about alcohol or grog in communities is apparent, as well as the view expressed by CYP that money should not be wasted on grog. These posters also convey participant's sentiment that alcohol should not be allowed in Aboriginal communities.

[91] Primary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 15 May 2014) and Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014).
[92] Results of keyword query and data analysis in NVivo 10.
[93] See appendix 12 and 13.

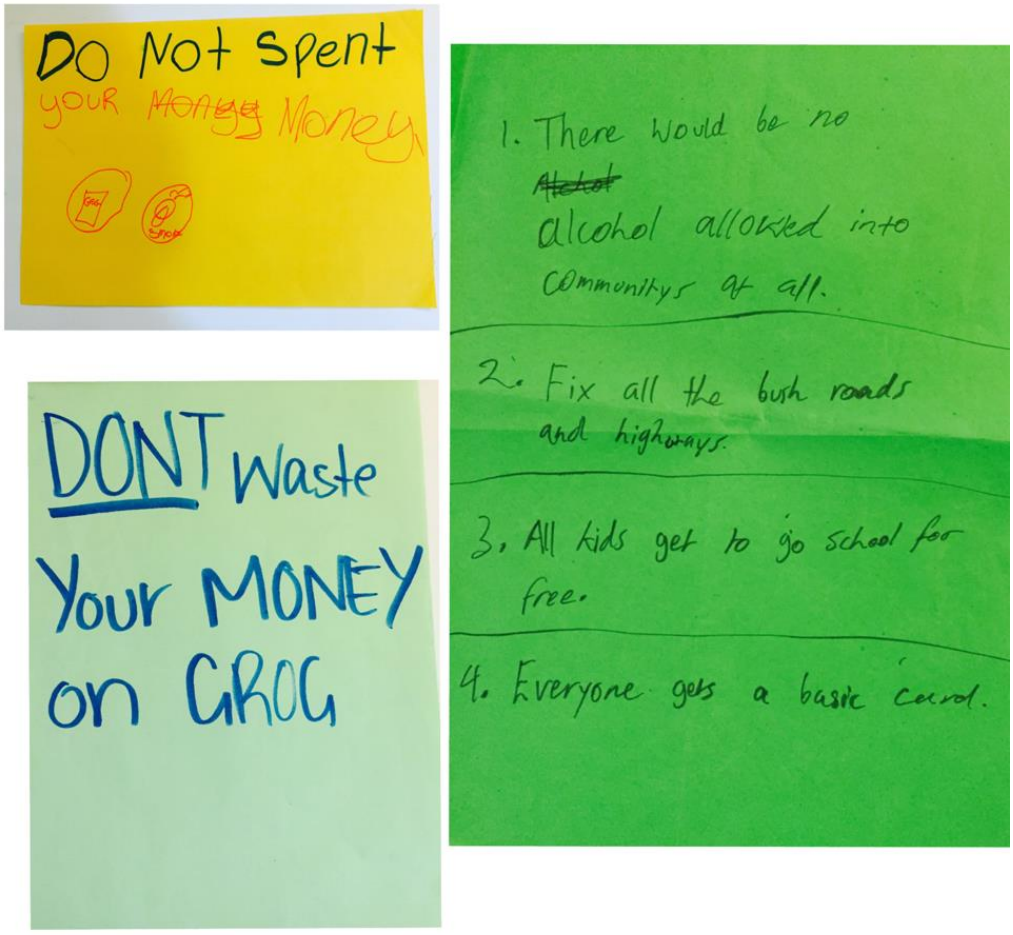

Figure 6.9: Participant Posters that Mention Alcohol[94]

The posters say: 'Do not spent your money (on grog or cigarettes)'[95]; 'Don't waste your money on grog'[96]; and: 'There would be no alcohol allowed into communitys at all.'[97] Participants discussed regulating alcohol in communities in relation to not 'allowing' alcohol in communities. Two children, in a peer-to-peer iPad video said the following in response to the discussion starter, 'If I was Prime Minister for a day':

[94] Primary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 15 May 2014); and Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014).
[95] Poster by two 11 year old female children and included in their peer-to-peer iPad video, Primary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 15 May 2014).
[96] Ibid.
[97] Poster by a 17 year old participant and a 16 year old participant and included in their peer-to-peer iPad video, Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014).

> Sarah (11 year old female): I would close down all the alcohol shops.
>
> Sofie (10 year old female): And if I was a shop keeper I'll be closing most of the shops and no grog. Cause they smash them bottles. When people go with their bike, and they see the bottle glass, and they step on that thing.
>
> Holly: I see so it's dangerous.
>
> Sarah: And people when they drink and they go back to their house and their car they'll have a crash.
>
> Holly: I see so it's dangerous when you're driving hey. What about kids?
>
> Sarah: Kids they'll get sick from it, from smoke, when you're parents are smoking and the smoke will go to the kids, and the kids will cough and get sick.[98]

Several CYP expressed the view that alcohol should not be allowed in the communities, yet these participants and others, did not agree that the blue and white signs prohibiting alcohol in communities were appropriate or effective. This suggests that the CYP want alcohol to be regulated in communities, however, in addition to the signs being ineffective in regulating alcohol, the signs actively harmed community by shaming and singling out prescribed communities.

Children and young people spoke about the impact of alcohol use in their communities on several occasions. In an iPad peer-to-peer interview two primary children expressed their view about the impact of alcohol use on them. They said:

> Sarah (11 year old female): In the grog there's too much sugar and it makes them fight
>
> Sofie (10 year old female): And salts.
>
> Holly: I see, in the grog. And when they fight what happens?
>
> Sarah: They get family fight, big family fight.
>
> Holly: Right, and how does that make you feel?

[98] 10 year old female, Primary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 15 May 2014).

Sofie and Sarah: Sad.

In general, CYP said they did not want alcohol to be permitted in Aboriginal communities. A young person expressed this view clearly when he said: 'We don't want alcohol in our community. It's too much for Aboriginal people because they are wasting their life with drinking, and drinking and drinking.'[99]

These findings reveal the legislation is a matter which affects the CYP involved in this research, particularly as this relates to alcohol regulation and food security. The prevalence of discussion about alcohol use in communities indicates that this is an issue that affects the CYP who participated in this research.

6.2.4 The Legislation Deals with 'Matters Affecting' Aboriginal CYP

At first appearance the wording of the NTER and Stronger Futures legislation seems to only affect Aboriginal adults, not Aboriginal CYP. However, the findings represented above demonstrate that the Basics Card and the blue and white signs are matters affecting the CYP.

These findings confirm information obtained during the 2012 Scoping Trip where people interviewed suggested the measures arising from the NTER and Stronger Futures legislation are matters affecting Aboriginal CYP, as well as Aboriginal adults in the NT. This finding is important because under article 12 of the CRC children have a right to participate in decision-making processes about 'matters affecting them.'

Several Scoping Trip interviewees suggested potential research participants would have direct experience of the NTER and Stronger Futures legislation measures in their everyday lives. For example, an Indigenous Chief Executive Officer of a peak social justice agency interviewed during the Scoping Trip said:

[99] 17 year old young person and a 16 year old young person, Secondary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014).

> Participant: A lot of our mob in the communities, they are a lot more mature than most kids because they've had a harder sort of life. They haven't been mollycoddled. They've had the hard life … They've got a lot of responsibilities and they are a lot more mature than most other kids. So I think if you were to ask a child something you are going to get the response that they will give you.
>
> Holly: So what if I asked them something, like: 'What do you think about the Basics Card'?
>
> Participant: Yeah they'd know about that.
>
> Holly: What do you think if I asked them something really broad like: 'What do you think about the Intervention' and 'what's life like under the Intervention'?
>
> Participant: They will be able to respond … These kids have lived it. They have lived the Intervention. They know the changes. They know first-hand in their communities.[100]

Data from several Scoping Trip interviews suggests the NTER and Stronger Futures legislation dealt with matters affecting Aboriginal CYP, despite the legislation being directed at adults. Many Scoping Trip interviewees confirmed the measures implemented through the NTER and Stronger Futures legislation are matters which affect the lives of Aboriginal CYP, in addition to affecting Aboriginal adults. One Scoping Trip participant, a non-Indigenous Director of a peak NT welfare organisation, suggested the NTER and Stronger Futures legislation impacts Aboriginal CYP differently and is 'dependent on what community they are in.'[101] For this reason this person said children will have varied experiences of the NTER and Stronger Futures measures.

Findings of the field research detailed above confirms that CYP identified the measures examined under the legislation as 'matters affecting' them. Participant's demonstrated their understandings of the legislation and the measures arising from the legislation. Statements from CYP in both research

[100] Scoping Trip Interview (No 1) with Indigenous Chief Executive Officer of a Leading Social Justice Agency (Northern Territory, 23 October 2012). Sixteen interviews with 19 professionals working with Aboriginal CYP were conducted during the Scoping Trip in September and October 2012. See Appendix 19 for a list of CYP (pseudonyms used) who participated in the research. See chapter 3 for details about the Scoping Trip.

[101] Scoping Trip Interview (No 4) with a non-Indigenous Executive Director of a Peak Welfare Agency (Northern Territory, 23 October 2012).

groups indicated that some CYP had more developed understandings of the legislation, of Australian political processes, and about law and policy making generally than other participants.

Varied understandings about the legislation among a group this large was to be expected however, especially given the wide age range within the group. It is significant however, that almost all CYP understood that the NTER and Stronger Futures measures were governmental initiatives, and laws made by the 'white government.'[102] In a peer-to-peer iPad video a child articulated her knowledge that the NTER and Stronger Futures measures were laws made by the government. She described the NTER and Stronger Futures legislations as follows: 'That's about when not allowed black-fella or white-fella to drink in [town where the research took place], cause that's the law for [town where the research took place].'[103]

The NTER and Stronger Futures legislation deals with matters which directly and indirectly impact on participant's lives, and on their communities. Children and young people's views about this legislation, discussed above, establishes that the NTER and Stronger Futures legislation is a matter affecting them. The majority of CYP made links between the 'Intervention' legislation and the Basics Card and the blue and white signs, identifying these two measures as matters affecting them. All CYP said they had witnessed a close family member using the Basics Card, and all CYP had seen the warning signs situated at the entrance to their community, or another Aboriginal community. All CYP spoke about either or both of these elements of the NTER and Stronger Futures legislation, and about the impact directly or indirectly on themselves, their family or their community.

6.3 Conclusion

These findings contribute to answering the primary thesis question regarding *why* Aboriginal CYP should be involved in law and policy making—because CYP not only have the right to do so under article 12 of the CRC, but also demonstrate through this research their understanding of such

[102] Jacob (10 year old male), Primary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014). Participants did not know details about which government implemented the measures.
[103] Sofie (10 year old female), Primary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 15 May 2014).

measures, and their capacity to enter into decision-making processes.[104] Under a welfare-based approach, discussed in chapter 5,[105] CYP are not afforded the opportunity to contribute to decision-making, least of all legislative decision-making processes given the focus in the welfare-based model on provision and protection of CYP. A CRBA emphasises CYP's right to contribute to decision-making and these findings provide evidence as to how and why this should take place.

Aboriginal CYP shared their views about measures arising from the NTER and Stronger Futures legislation, and the affect these measures have on them, their family and their communities. Analysis of CYP's personal experiences of the measures arising from the NTER and Stronger Futures laws demonstrates the legislation is a 'matter affecting them', within the meaning of article 12 of the CRC. Thus, as outlined in chapter 4, under article 12 of the CRC, Aboriginal CYP should have had the opportunity to participate in the formulation of these laws. Furthermore, article 19 of the UNDRIP underlines the importance of 'consult(ing) with Indigenous peoples in order to obtain their consent before adopting laws and policies that may affect them.'[106] There was no such consultation with Aboriginal CYP before the NTER and Stronger Futures measures were implemented by the Australian Government.

Field research conducted with Aboriginal CYP revealed three key findings. Firstly, Aboriginal CYP understood and held views about the Basics Card, and the impact of its operation in their lives and in community life. Most of the CYP expressed the view that the Basics Card positively contributed to improving theirs and their family member's food security, as well as positively impacted on household budgeting. However, nearly all CYP did not know that the Basics Card was only for Aboriginal people who received government welfare payments in the NT. The vast majority of CYP thought that the Basics Card was for everyone who needed assistance with managing their income. When CYP learned this information during the research interactions many in both the primary and secondary class groups expressed their view that the provision of the Basics Card only to Aboriginal people was racist. Many

[104] John Tobin, 'Understanding Children's Rights: A Vision Beyond Vulnerability' (2015) 84(2) *Nordic Journal of International Law* 155.
[105] See 5.3.1.
[106] *United Nations Declaration on the Rights of Indigenous Peoples* art 19.

CYP also expressed the view that the card should be available to anyone who needs assistance managing their finances.

Secondly, Aboriginal CYP understood and held views about the blue and white signs, a component of the alcohol regulation measures under the NTER and Stronger Futures legislation. Although CYP generally agreed that alcohol should be banned from communities, they did not report any positive implications of the blue and white signs that publicise the prohibition of alcohol in certain communities. Participants did however, speak about the negative impact of alcohol consumption in some Aboriginal communities in the context of discussions about the signs. Some CYP expressed their view about the negative implications of the blue and white signs saying that the signs stigmatised communities making the people in these communities 'look bad.'[107] Children and young people also spoke about alcohol regulation measures under the NTER and Stronger Futures legislation, and how these measures do not effectively address alcohol abuse and alcohol consumption in communities. Furthermore, several CYP voiced their view that alcohol prohibition in prescribed communities has failed to achieve the purported aim of reducing community member's alcohol consumption. Rather, alcohol prohibitions have led to some adults leaving communities to consume alcohol in town centres, which some participants said negatively impacts on CYP in these communities, as they are left unattended.

The third finding, draws from the previous two findings, concluding that the NTER and Stronger Futures legislation is a 'matter affecting' Aboriginal CYP, and is therefore within the scope of the right provided by article 12 of the CRC. Consequently, Aboriginal CYP have a right to participate in the formation of laws and policies likely to affect them such as the NTER and Stronger Futures legislation.

[107] Tessa (16 year old female), Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014).

Chapter 7: 'Ask Us … This Is Our Country'[1]—Aboriginal CYP Talk about Participating in Law and Policy Making

7.1 Introduction

Iris Marion Young says 'the normative legitimacy of a democratic decision depends on the degree to which those affected by it have been included in the decision-making processes *and* have had the opportunity to influence the outcomes.'[2] The NTER and Stronger Futures legislation lack normative legitimacy because contrary to the requirements set out in article 12 of the CRC, Aboriginal CYP were not involved in their development, and therefore did not have the opportunity to affect the legislation.

Chapter 6 presented CYP's views about two measures under the NTER and Stronger Futures legislation—the quarantining of welfare payments and alcohol regulation—and highlighted the impact of these measures on CYP's lives, their family life, and community life. This chapter mirrors the approach adopted in chapter 6 and preferences the views expressed by Aboriginal CYP in the field research.[3] Privileging Aboriginal CYP's views is consistent with the research approach underpinning this project — a CRBA informed by Indigenous research methodologies.[4]

This chapter presents data arising from the field research detailing CYP's views about *how* they could participate, and *why* they should participate in the development of future laws and policies likely to affect them. Data obtained during the field research is presented and conclusions are drawn from that data in response to sub-question five, 'what did Aboriginal CYP say about their participation in the development of laws and policies?'[5] The conclusions reached go directly toward answering the overall

[1] Nathaniel (16 year old male), Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).
[2] Iris Marion Young, *Inclusion and Democracy* (Oxford University Press, 2010) 5-6.
[3] See chapters 1, 2 and 6 for further details about this approach. See also Christine Asmar and Susan Page, 'Sources of Satisfaction and Stress Among Indigenous Academic Teachers: Findings From a National Australian Study' (2009) 29(3) *Asia Pacific Journal of Education* 387; Katie Wilson and Judith Wilks, 'Research with Indigenous Children and Young People in Schools: Ethical and Methodological Considerations' (2013) 3(2) *Global Studies of Childhood* 142, 143.
[4] See chapter 2 (section 2.1).
[5] See chapter 1 (section 1.1.1) for the thesis question and a list of the five sub-questions.

thesis question, 'why and how should Aboriginal CYP participate in the development of law and policy affecting them?'

Section 7.2 details Aboriginal CYP's suggestions about *why* governments should engage them, their parents and their communities in legislative and policy design. Children and young people said they should be involved in developing laws and policies for three reasons. Firstly, because Aboriginal people are the rightful owners of the land and their views about laws and policies that apply on their land which affect them, should be sought and privileged in these decision-making processes. Secondly, CYP said Aboriginal and non-Aboriginal law are both important and Aboriginal law should be factored into law and policy decisions. Thirdly, CYP said if they are involved in the development of laws and policies that relate to them their opinions about these measures could produce better, more relevant laws and policies.

Section 7.3 presents CYP's views about *how* they could be involved in law and policy making. Children and young people gave two key suggestions for how governments should involve them in law and policy making processes. Firstly, in order for governments to effectively and appropriately involve Aboriginal CYP governments need to understand the importance of Aboriginal culture and traditions. Secondly, governments must seek the appropriate permission to consult with Aboriginal CYP, their parents, communities and their schools; and conduct these consultations respectfully.

This chapter also includes Aboriginal CYPs reflections about several important issues associated with structural inequality and systematic disadvantage affecting Aboriginal people CYP raised in the course of the field research—racism, poverty and homelessness. Children and young people said these are key issues affecting their lives, as well as matters that affect Aboriginal people's lives generally. The research did not seek to illicit information about these matters; however, CYP's statements about the impact of these issues in their lives suggests a nexus between law and policy and these factors. These factors were discussed by CYP in the context of discussing their views about law and policy making and suggest a correlation between these factors and legislative and policy measures to address these issues. It is acknowledged that this is a small qualitative study from which it is not possible to

generalise. However, this study reveals a range of conclusions that may be useful to legislators and policy makers, to other people seeking to gather the views of Aboriginal CYP, and to other researchers.

The chapter concludes by suggesting a model for the involvement of Aboriginal CYP in both the interpretation of article 12 of the CRC, as well as Aboriginal CYP's involvement in the development of laws and policies affecting them. The suggested approach, referred to throughout the thesis, is via Aboriginal CYP's membership to 'an interpretive community.'[6] This mechanism is suggested as an appropriate forum where Aboriginal CYP's views about law and policy can be heard and given 'due weight,'[7] in accordance with article 12 of the CRC.

7.2 Why Should Aboriginal CYP be Involved in Law and Policy Making?

Children and young people said it was important that they are involved in the process of law and policy making, and that their views should be privileged given their status as the rightful owners of the land. Children and young people also suggested their involvement in law and policy making could improve the quality of Indigenous related laws and policies given their knowledge about Aboriginal and non-Aboriginal law, and about Aboriginal culture.

7.2.1 Privilege Aboriginal CYP's Views as the Rightful Owners of the Land

During the field research CYP were asked to consider whether they would like to be involved in law and policy making, and if so what laws and policies they would make if they were 'Prime Minister for a day.'[8] One of the themes arising from these conversations concerned the correlation many CYP

[6] John Tobin, 'Seeking to Persuade: A Constructive Approach to Human Rights Treaty Implementation' (2010) 23 *Harvard Human Rights Journal* 1; Stanley Eugene Fish, *Is There a Text In this Class? The Authority of Interpretive Communities* (Harvard University Press, 1980); Ian Johnstone, 'Treaty Interpretation: The Authority of Interpretive Communities' (1990) 12 *Michigan Journal of International Law* 371; Ian Johnstone, 'The Power of Interpretive Communities' in Michael Barnett and Raymond Duvall (eds), *Power in Global Governance* (2004) vol 98, 185.

[7] *Convention on the Rights of the Child* opened for signature 20 November 1989, 44 UNTS 25 (entered into force 2 September 1990) ('*Convention on the Rights of the Child*') art 12.

[8] Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014); Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014); Primary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 15 May 2014); Primary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 22 May 2014).

made between their Aboriginal status and participating in law and policy making. Many CYP said they should be involved in law and policy development because they are the rightful owners of the land. In response to the question, 'do you think the government should ask you before making important decisions about you?' three young people replied in the following ways:

> 'Yes. Cause this is not their country, this is Aboriginal Country.'[9]

> 'Yeah. It's very important. It's really important for you and your family and for culture.'[10]

> 'Ask us … This is our country'[11]

Young people in the secondary group noted that governments have not asked their views about laws and policies that are likely to affect them, prior to enacting those laws.[12] During the second research session with the secondary group all CYP said they had never had the opportunity to express their views to government about the development any laws or policies.[13] In an iPad peer-to-peer interview a 16 year old young person spoke about governmental law making, she said:

> Government they don't ask us … They do it secret. It makes us feel bad about that. They just make up rules on our land. We need to follow their rules.'[14]

This statement is significant because it indicates Tessa's view that she is not involved in the development of laws that she, and other Aboriginal people, must then follow, despite being the rightful owners of the land. Another 16 year old participant, in the same interview said: 'They should ask us, we own this land.'[15] These young people raise an issue that is significant in relation to the connection between the land and the law, and their non-participation in the laws that apply on that land. These

[9] Samantha (16 year old female), Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).
[10] James (17 year old male), Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).
[11] Nathaniel (16 year old male), Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).
[12] Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).
[13] Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014). This data was obtained in the context of a large group discussion with all members of the secondary class group.
[14] Tessa (16 year old female), Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).
[15] Samantha (16 year old female), Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).

young people identified themselves as the rightful owners of the land, and identified that despite being the owners of the land they have no input into the laws associated with living on the land. In addition to this these young people, as well as all other participants in the research, indicated they would like to contribute to making laws and policies that may affect them.

7.2.2 The Importance of Aboriginal Law

Children and young people spoke about the ongoing creation of Aboriginal law by Aboriginal people throughout Australia. Children and young people associated Aboriginal law making with land ownership on several occasions throughout the research interactions.[16] Several CYP spoke about the importance of Aboriginal law in their lives, and the links between Aboriginal law and other laws. The research did not specifically seek to gather information about Aboriginal law, however, CYP spoke about this during the field research on numerous occasions.[17] A 10 year old child expressed her view about the importance of Aboriginal law in the following extract from an iPad interview:

> Lily (11 year old female): Aboriginal law is important, and it's different (to non-Aboriginal law).
>
> Mel (non-Indigenous teacher's assistant): Which one's more important to you?
>
> Lily: It's different.
>
> Mel: So you think they are both important? Black-fella and white-fella law?
>
> Lily: Uh, huh. (agreeing)
>
> Mel: Why do you think they should ask you first before making laws?
>
> Lily: They might not know the right questions and answers.[18]

[16] Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014); Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014); Primary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014).

[17] Aboriginal law was discussed by CYP 14 times across the following research sessions: Primary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 15 May 2014); Primary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 22 May 2014); Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014); Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).

[18] Primary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 22 May 2014).

Many CYP articulated views about law and policy making in relation to Aboriginal people, beyond the case study inquiry, providing insight into CYP's broader experiences of living under two systems of law: Aboriginal and non-Aboriginal law. Two young people expressed their view about the interplay between the two systems of law in the following response to the following question:

> Holly: How does Aboriginal law and non-Aboriginal law fit together?
>
> Nathaniel (14 year old male): Ah, a little bit not nicely.
>
> Holly: What is Aboriginal law about?
>
> James (17 year old male): It's about culture, keep the culture strong.[19]

Several CYP spoke broadly about the relationship between Aboriginal law and non-Aboriginal law and the impact on Aboriginal people, and on themselves, and about living under two systems of law. A young person spoke about the creation of Aboriginal law across Australia. In the context of a group discussion about whether the government should ask CYP about laws and policies likely to affect them before they make these laws and policies two young people said:

> Samantha (16 year old female): Yes, cause this is not their country, cause this is Aboriginal Country.
>
> Holly: And are there Aboriginal people who make laws?
>
> James (17 year old male): Yes all over the place. North, South, East and West. All over the country.[20]

This data indicates that Aboriginal CYP experience and understand the operation of two systems of law operating in their lives. The data reflected in this section, as well as in the previous section, indicate that CYP are aware of the interplay between Aboriginal and non-Aboriginal law. Some of the data indicates CYP perceive a tension between the two systems of law, and perceive the respective legal systems as operating separately from one another.

[19] Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).
[20] Ibid.

The research did not seek to gather data about the relationship between Aboriginal and non-Aboriginal law, nor attempt to demonstrate how the two systems could operate together. However, CYP raised these issues during the research and many CYP said Aboriginal law is important to them. It is significant that CYP spoke about Aboriginal law in the context of discussing how they could be involved in the development of non-Aboriginal law. This suggests that the experience of living under a dual system of law, which is what the CYP said is their experience, is a matter that needs to be considered in the development of non-Aboriginal laws and policies concerning Aboriginal CYP. This is an important conclusion for law and policy makers to be aware of—the fact that Aboriginal CYP who participated in this study report that they live under two systems of law, and perceive both systems of law as being important in their lives. Furthermore, the fact that CYP discussed their participation in the development of non-Aboriginal law alongside a discussion of Aboriginal law suggests two things. Firstly, that non-Aboriginal laws and policies that are likely to affect Aboriginal CYP should acknowledge the importance of Aboriginal law to CYP. Secondly, legislators and policy makers should ask Aboriginal CYP about how Aboriginal law supports their connection to Aboriginal culture and tradition, and design non-Aboriginal laws and policies in a way that supports and enhances Aboriginal CYP's connection to Aboriginal traditions and cultural practices.

7.2.3 Produce Better Laws and Policies

Many CYP, including the youngest participants, demonstrated awareness of law, of law making, and of political processes. This finding concurs with the analysis conducted in chapter 5 about children's capacity to participate in public decision-making. Two of the youngest child participants indicated their awareness of research, law and political processes in the following exchange.

> Holly: So I'm a researcher. What have I been researching here at this school?
>
> Ellie (10 year old female): About us.
>
> Holly: Yeah what about you?
>
> Ellie: What we know about law.

Holly: Yes, exactly. And what is law?

Ellie: The rules.

Ethan (11 year old male): The budget.

Holly: The budget. Did you watch the news today Ethan? Ethan told me he watches the news before the bus comes every day … Part of my job is listening to what you think about law and rules, and the rules the government makes. Remember I showed you the picture of Parliament House in Canberra? Where all the people sit inside and they yarn?

Ellie: Yeah, where they have meetings.

Holly: And they write down what the law should be.

Ellie: They make the rules.

Ethan: In Parliament they make the rules for the whole world.

Holly: For the whole country, yeah.

Ethan: They make the budget in there.[21]

Data from the field research indicates Aboriginal CYP have formed views, that these views are informed, and that Aboriginal CYP can express these views, including their views about the development of laws and policies affecting them. This data also indicates Aboriginal CYP's desire to be consulted about laws and policies affecting them. Children's involvement in governance, as discussed in chapters 4 and 5, provides a forum for the expression of these views and in doing so contributes to legitimising and improving governmental decision-making.[22]

Children and young people demonstrated their awareness of the nature of Aboriginal and non-Aboriginal law and discussed what laws they would design if they had the ability to do so. Children and young people's responses indicate that seeking the views of CYP prior to making laws about them

[21] Primary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 22 May 2014).
[22] M Barnes, J Newman and H Sullivan, *Power, Participation and Political Renewal* (The Policy Press, 2007).

could contribute to making laws more targeted and relevant—particularly culturally relevant. In response to the question 'if you became a law maker for kids, what kind of laws would you make?' A 10 year old child said:

> I make them to dance, culture dance, and make them to hunt, hunting, and make them go to school and learn about the Dreamtime. That's all.[23]

Another child said, 'I would make good laws and help people.'[24]

During the field research CYP were asked to consider whether they like talking about things that are important to them, what things are important to them, and whether they thought it is important to talk about things that mattered to them.[25] All CYP said they liked talking about things that mattered to them. One participant said he liked saying what he thought about things 'because it makes me happy.'[26] He explained further, saying that when he says what he thinks about things 'then life isn't hard … Because when I don't bring it up it makes me sad inside.'[27] These sentiments suggest that there are instrumental benefits associated with engaging Aboriginal CYP in law making, benefits related to providing avenues for children to be heard and express their thoughts, which assist with CYP's individual wellbeing. This finding is supported in literature.[28] Importantly however, this data indicates that Aboriginal CYP want to be listened to, and have their views taken into account in decision-making processes.

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[23] Jacob (10 year old male), Primary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 15 May 2014).
[24] Ryan (10 year old male), Primary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 15 May 2014).
[25] These issues were discussed in three of the four research sessions with both groups: Primary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014); Primary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 15 May 2014); Primary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 22 May 2014); Secondary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014); Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014); Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).
[26] Ethan (11 year old male), Primary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 15 May 2014).
[27] Ibid.
[28] Kay EM Tisdall, 'Is the Honeymoon Over? Children and Young People's Participation in Public Decision-Making' (2008) 16(3) *International Journal of Children's Rights* 343; Rachel Hinton, E Kay M Tisdall, Michael Gallagher and Susan Elsley, 'Children's and Young People's Participation in Public Decision-Making' (2008) 16 *International Journal of Childrens Rights* 281.

Children and young people in this research reported they have the opportunity to contribute to a wide range of private decision-making processes in their families, and some public decisions in their school and community. These matters include: having input into how the school runs through a student council; contributing to family decisions, such as what to buy at the grocery store; and involvement in how the community runs, such as being involved in planning recreation activities. Children and young people said they felt listened to in most areas of their private and community lives. All CYP stated that they had not had the opportunity to contribute to legislative or policy making processes, and some expressed a desire to do so. The following excerpt from a secondary research session indicates this:

> Holly: Who listens to you?
>
> Tessa (16 year old female): My mother listen to me, my father listen to me, my aunty listen to me … My little brother and sister.
>
> Jonathan (14 year old male): My uncle listens to me.
>
> Holly: What about your teachers, do they listen to you?
>
> Tessa: Yeah always.
>
> Holly: They always listen to you?
>
> Several participants: Yep / Yes.
>
> Holly: So when you come to school do you feel listened to and heard?
>
> All participants: Yes (all children said this at the same time).
>
> Holly: All the time?
>
> Most participants: Yes.
>
> Tessa: Not all the time, sometimes teachers are busy.
>
> Holly: Who would you like to listen to you? Who do you think should be listening to you but isn't?

> Tessa: The Prime Minister.[29]

Young people in the secondary group identified the family and school settings as forums where they have the opportunity to express their views about matters that are important to them, and where these views are taken into considerations when decisions are made. The quote above details a participant's experience of being excluded from public decision-making processes, yet indicates her desire to be included.

7.3 How Should Governments Involve Aboriginal CYP in Law and Policy - Making?

Under article 12 of the CRC the Australian Government is legally bound to involve children in the development of law and policy about matters affecting them. This includes building and implementing sustainable mechanisms for Aboriginal CYP to contribute to the formation of laws and policies that may affect them. Children and young people involved in this research invited the Australian Government to 'Ask us. Come and see us.'[30] These words reflect Cockburn's sentiment when he says, 'rather than expecting young people to come to democracy … democracy (must) go to children and young people.'[31] Acceptance of this invitation would contribute to the involvement of Aboriginal CYP in law and policy making about matters affecting them. This would also provide an opportunity for law and policy makers to understand Aboriginal CYP—their lives, culture, traditional practices and law, as well as the range of challenges they face that need to be considered in policy and law making processes. Children and young people's suggestions about how *democracy could come to them* is the subject of the remainder of this chapter.

Field work findings below detail Aboriginal CYP's recommendations about how the Australian Government could involve them in law and policy making. These recommendations align with

[29] Referring to the Hon Prime Minister Tony Abbott, who was the Prime Minister of Australia when the research was conducted. Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014).
[30] Tessa (16 year old female), Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).
[31] Tom Cockburn, 'Children and Deliberative Democracy in England' in Barry Percy-Smith and Nigel Thomas (eds), *A Handbook of Children and Young People's Participation: Perspectives from Theory and Practice* (Routledge, 2009) 315.

Lundy's model for children's participation.[32] In summary, CYP suggested that the government undertake consultations in a child, youth and community friendly manner; and ensure such consultations are carried out in a culturally informed and appropriate, ethically sound manner. Children and young people suggested government representatives should visit Aboriginal communities, and spend time 'getting to know' the community, the culture and traditions and conduct appropriate consultations before making law and policy affecting them. This recommendation was supplemented by a range of suggested practical ways to consult with Aboriginal CYP. This includes guidance for how to appropriately seek permission to consult with CYP from Elders, parents, guardians and schools, as well as some essential rules for cross-cultural engagement. These suggestions are discussed below.

7.3.1 Understand the Importance of Aboriginal Culture and Traditions

A strong theme arising from the research interactions with CYP was the connection to, knowledge about, and experiences of Aboriginal culture and traditions in their everyday lives. Hunting for traditional food, eating this food, talking about the Dreamtime and the connection between the Dreamtime and Aboriginal law featured in these discussions. Children and young people spoke about their experiences of hunting with family members for 'bush tucker,'[33] and eating foods such as tree berries, bush onions, echidna, kangaroo and goanna.[34] Young people in the secondary group spoke about hunting for food in the bush, they said:

> Jonathan (14 year old male): I go shooting to get food.
>
> Eddy (15 year old male): Yeah we go hunting.
>
> Several participants: Yeah / If we run out of money.

[32] Laura Lundy, '"Voice" is Not Enough: Conceptualising Article 12 of the United Nations Convention on the Rights of the Child' (2007) 33(6) *British Educational Research Journal* 927.
[33] Bush tucker was referred to by CYP in the following research sessions: Primary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014); Primary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 15 May 2014); Secondary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014).
[34] Primary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014); Secondary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014).

Holly: You get food from the bush?

Brody (16 year old male): You gotta hunt em.

Holly: What do you hunt?

Chris (17 year old male): Kangaroos. Yeah, it's really nice.[35]

Primary children also spoke about their experiences hunting and eating traditional Aboriginal food. They said:

Sofie (10 year old female): Sometime out bush, when we don't have food sometime we go hunting for kangaroos.

Leah (10 year old female): And my nana bought porcupine.

Sofie: Echidna that's tasty

Leah: We ate it last night.

Ryan (10 year old male): You know what is really sweet? Kangaroo tail.

Leah: It's so tasty, and when you touch it it's really sticky.

Holly: Really what's sticky about the tail?

Leah: Some fat and some oils in it.

Jacob (10 year old male): Emu, do you eat emu? [36]

Associated with this theme, CYP expressed the importance of understanding, valuing and recognising Aboriginal culture both personally, and in the wider Australian population. Children and young people in both the primary and secondary groups spoke about the need to 'keep our culture strong.'[37] Children and young people used the word *strong* in reference to both staying at school, and finding ways to

[35] Secondary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014).
[36] Primary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 15 May 2014).
[37] James (17 year old male), Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014).

express their Aboriginal culture at school. A primary aged participant referred to this dynamic, she said, 'stay strong at school.'[38] Both groups of CYP spoke about the connection between keeping Aboriginal culture strong and education—education in schools and education in the community. In the school context one participant spoke about the importance of learning, and speaking his language. He said:

> James (17 year old male): You have to go to school and learn. Not just learn white-fella law, just learn your culture and their culture. This school here, this is the first school I have been to, that has four language groups. Other schools [name of town deleted for ethical and privacy reasons] don't have the language.
>
> Holly: Which language do you go to?
>
> James: I go to Arrernte. That language then you can understand it, you can speak it, and also you can explain it.[39]

In addition to the participant's reference to Aboriginal culture, this participant, James, the oldest research participant, spoke numerous times about living in both an Aboriginal world and a non-Aboriginal world. In the context of discussing the importance of culture James elaborated on the dualist system in which Aboriginal people live, and the adversity faced by many Aboriginal people. He said:

> They're poor. Because they want to get work, but they just don't know how to get work. They never went to school before. The first thing that they learn was their language and their culture. Now they learn how to become one of them, to be one of them.
>
> We have to learn our way first and then from there we can learn their way. We have to learn Aboriginal way first, then from there, when we understand all of that meaning, what does that mean, then we can learn white folk ways … We have two ways of learning and two ways of living life.[40]

[38] Leah (10 year old female), Primary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 15 May 2014).
[39] James (17 year old male), Secondary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014).

Aspects of James' sentiment were reflected by a primary aged participant when she said, 'learn about your culture so when you be big and you'll be working and you'll be having a job at any places. Stay at school and learn your culture.'[41] Children and young people discussed the importance of Aboriginal culture and practicing Aboriginal traditions in their everyday lives. For example, CYP spoke about their engagement in traditional practices such as hunting for and eating bush tucker,[42] and shared Dreamtime stories about how the lands surrounding the research site were formed, and the spiritual powers that are connected to the land.[43] The centrality of Aboriginal Knowledge, Aboriginal law, customs and traditions were articulated by many CYP throughout the field research, in particular when CYP were invited to talk about 'things that are important' to them, and about what laws they would change if they were law makers.[44]

When discussing the things that are important to them many children spoke about practicing Aboriginal customs and traditions. A child spoke about her favourite things, and the things that are important to her in an iPad interview. She said:

> Leah (10 year old female): The land. Because I love it and it's great to stay.
>
> Mel (non-Aboriginal teacher's assistant): What do you do?
>
> Leah : Go for hunting, and on the weekends we go to the discos out bush. It's nice and I like to dance.
>
> Mel: What else do you like about the land?
>
> Leah: Hunting.
>
> Mel: What do you hunt?
>
> Leah: Echidna, kangaroo, turkey, goanna and kangaroo.
>
> Mel: What else is it about the land that you like?

[40] Ibid.
[41] Sofie (10 year old female), Primary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 15 May 2014).
[42] Ibid.
[43] Secondary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014).
[44] Primary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 15 May 2014); Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014).

> Leah: We go for swimming, and camping out, at a place called [name of place deleted for privacy reasons]. That's my grandmother's and my grandfather's land.[45]

The views expressed by CYP represented above identify the importance of learning about their culture in tandem with learning at school.[46] These reflections provide a range of suggestions about talking with Aboriginal CYP in any given context, including seeking their views on law and policy making about matters affecting them. Additionally, law and policy makers need to understand the role and significance of Aboriginal culture in the everyday lives of Aboriginal CYP in order to design relevant laws and policies which may affect them.

Children and young people made a range of practical suggestions for how Aboriginal CYP can be involved in law and policy making. These are detailed below.

7.3.2 Seek Appropriate Permission and Conduct Respectful Consultations

The thesis title, 'Just ask us. Come and see us,'[47] was chosen because it communicates Aboriginal CYP's desire to participate in decision-making, but this statement also portrays a strong message about overcoming long term difficulties associated with remote law and policy making.[48] Participants in both the field research and the Scoping Trip echoed sentiments documented in literature surrounding the gulf between law making in Canberra, and the reality of Indigenous people's experiences of these laws, and the lack of Indigenous people's involvement in drafting of these laws.[49] Two young people from the secondary group and an Aboriginal teacher's assistant shared their ideas, in an iPad video interview, about how government could seek their views about law and policy. The following is an extract from the transcript of this conversation.

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[45] 10 year old female, Primary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014).
[46] Primary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 15 May 2014).
[47] Tessa (16 year old female), Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).
[48] Fred Chaney, 'The Indigenous Policy Experience 1960 to 2012' (paper presented at the Better Indigenous Policies: The Role of Evaluation: Roundtable Proceedings, Canberra, 2013).
[49] Les Malezer, 'Challenges in Evaluating Indigenous Policy' (paper presented at the Better Indigenous Policies: The Role of Evaluation: Roundtable Proceedings, Canberra, 2013); Diane Austin-Broos, 'Keeping Faith with Self-Determination: Economy and Cultural Difference' (2012) 7(29) *Indigenous Law Bulletin* 19; Richard Howitt and Jessica McLean, 'Towards Closure? Coexistence, Remoteness and Righteousness in Indigenous Policy in Australia' (2015) 46(2) *Australian Geographer* 137.

> Rob (Aboriginal teacher's assistant): How should they go about it? Cause that mob down in Canberra they're not mind readers. So how should they come and get your point of view?
>
> Tessa (16 year old female): Just ask us. Come and see us.
>
> Rob: Do you reckon they should do it themselves or just get people from the government to go all over Australia and get everyone's opinion?
>
> Samantha (16 year old female): They do it themselves.
>
> Rob: So you reckon all the politicians should come and see you personally?
>
> Samantha: Yes. Yes. (Definitively)
>
> Tessa: Um I don't know probably.
>
> Rob: It's your own opinion, you're entitled to it.
>
> Tessa: Yeah I think so.
>
> Rob: So you think so as well.
>
> Tessa: Yes.
>
> Rob: Fair enough then. Should they go out to your home communities and do it. You know for them mob out bush that live in community, should they just go visit the community or go door to door?
>
> Samantha: Visit the community.[50]

These views suggest CYP's desire for a direct relationship with government in order to participate in law and policy making processes. This accords with the statement in the *UNCRC's Working Methods* that establishing a 'direct relationship with children' that is not mediated by a third party is required in order to implement article 12 of the CRC.[51]

[50] Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014) Extract from the transcript of an iPad peer-to-peer interview that was videoed with the help of Rob (a teacher's assistant), at the request of Tessa and Samantha.

[51] UN Committee on the Rights of the Child, 'Working Methods for the Participation of Children in the Reporting Process of the Committee on the Rights of the Child,' UN Doc CRC/C/66/2 (16 October 2014) ('*UNCRC's Working Methods*') [12].

7.3.2.1 Seek Aboriginal CYP's Views Respectfully

The manner in which government should hold consultations with Aboriginal young people was spoken about on numerous occasions during the field research. The word 'nicely' was often used by CYP in both the primary and secondary research groups to describe how the government should talk with Aboriginal CYP. The following excerpt of conversation from the third secondary group research session demonstrates the importance young people placed on the importance of governments seeking their views in a respectful way.

> Holly: So if the government came to speak to you, how should they do it?
>
> Chris (17 year old male): Nicely.
>
> Holly: Nicely! That's really important. What would it mean to do it nicely?
>
> Nathaniel (14 year old male): Not to go and just say 'Ah can we change your law' they just have to go through our big people like the Elders.
>
> Holly: I see, and talk with them?
>
> Nathaniel: Yeah and talk with them if we can change the law.
>
> James (17 year old male): And ask young people what they want for their future. What's better for them in the community?
>
> Nathaniel: What's better for the younger ones?[52]

The importance of how the government talks with CYP, and from whom permission should be sought, was also discussed by children in the third primary group research session. In response to the questions: 'If the government wanted to ask you your opinion about things how should they ask you?

[52] Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).

Should they go to particular people to ask you?' an 11 year old child said, 'Nicely … they should go to my Mum and Dad, and my Poppa.'[53]

Children and young people in both groups spoke about protocols to follow if the government wants to talk with Aboriginal CYP. These included writing a letter to parents, to an Elder in the community or to the school, indicating they want to talk with Aboriginal CYP. Participants from the secondary group said:

> James (17 year old male): They could send a letter to where we are living, and could always contact someone working at the school office.
>
> Nathaniel (14 year old male): They could contact your family.
>
> James: They could send a letter, like mail, says that if we come out the community and have a meeting about law, and ask Elders what they want for the younger ones.[54]

This was confirmed in discussions with the primary group. For example, a child said:

> Toby (Aboriginal teacher's assistant): How can they ask you?
>
> Ryan (10 year old male): They can email us or something or put it in the mailbox.[55]

This response indicates an essential step for governments to undertake in order to liaise with Aboriginal CYP, and the importance of ensuring appropriate permission is granted. Obtaining appropriate permissions is a core element of Lundy's model for children's participation, and is also a core element of implementing ethical standards when consulting with Indigenous people.[56] This finding also suggests that seeking appropriate permission need not be arduous; something as simple as a letter to parents contributes to the overall process of seeking free and informed consent.

[53] Primary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 22 May 2014).
[54] Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).
[55] Primary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 22 May 2014)
[56] Lundy, above n 32; Laura Lundy and Lesley McEvoy, 'Childhood, the United Nations Convention on the Rights of the Child and Research: What Constitutes a "Rights-Based"Approach?' in *Law and Childhood Studies: Current Legal Issues* (Chapter 6, Oxford University Press, 2012); *Guidelines for Ethical Research in Australian Indigenous Studies* (Australian Institute of Aboriginal and Torres Strait Islander Studies, Revised 2nd Edition ed, 2012) ('*AIATSIS Guidelines'*) 6.

Children and young people stressed the importance of government seeking CYP's views in an open, non-biased manner. Openness to hearing children's views and facilitating children's autonomous expression of these views, without having preconceived ideas about what children will or should say is consistent with Lundy's CRBA model of children's participation, as well as the *UNCRC's Working Methods*.[57] During the third secondary group research session young people spoke about the importance of government involving CYP in law and policy development in a way which does not pre-suppose the content of their views. That is, that the government must not 'assume' they already know what CYP's views are.[58]

7.3.2.2 Consult with Elders, Parents, and the School Respectfully

Children and young people advised that governments need to consult with Aboriginal Elders and seek their permission to come into an Aboriginal community to consult with Aboriginal CYP. This suggestion focusses on the importance of government knowing and respecting the 'rules' of the community, and is consistent with literature and ethical guidelines about seeking the views of Aboriginal people.[59] This advice from CYP was about understanding and following community protocols in order to facilitate CYP freely expressing their views under article 12, as well as facilitate CYP's right to freedom of expression under article 13,[60] and to foster community and parental support for the expression of these views consistent with article 5 of the CRC.[61] Details about how to seek the appropriate permission to talk with Aboriginal CYP were provided by participants, and the following discussions provide examples of these suggestions. The following discussion illustrates how two young people suggest governments should talk with Aboriginal Elders:

[57] Lundy, above n 32, 934; *UNCRC's Working Methods* [7(a)].
[58] Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).
[59] Lyn Fasoli and Ranu James, 'Researching Remote Aboriginal Children's Services: It's All About Rules' (2008) 33(4) *Ngoonjook: A Journal of Australian Indigenous Issues* 26; *AIATSIS Guidelines* above n 55; Stella Coram, 'Rethinking Indigenous Research Approval: The Perspective of a "Stranger"' (2011) 11(2) *Qualitative Research Journal* 38.
[60] *Convention on the Rights of the Child* art 13 states: 'The child shall have the right to freedom of expression.'
[61] *Convention on the Rights of the Child* art 5 states: 'States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.'

> Holly: If the government did come and ask you about what you think before they made big laws about you, how could they do that? How would the government come and ask you?
>
> Nathaniel (14 year old male): They have to talk to our people first if they want to make another law about something.
>
> Holly: I see. Who are your people?
>
> Nathaniel: Aboriginal people. Elders.
>
> James (17 year old male): Elders.
>
> Holly: In your community do you have Aboriginal Elders in all communities?
>
> James: Yep.[62]

A 14 year old participant in the secondary group expressed his view that he was too young to be responsible for reforming law, and that was the role of adults in his community, yet he could assist. He said:

> Holly: So if the government came and asked you the kinds of things you would like to change for young people, what would you say?
>
> Nathaniel (14 year old male): Well let's see. What would I say? I would rather say 'go and ask my family instead.' I'm too young I can't change the law, my family will. I'm too young to change the law, my family can, but I can help![63]

This finding revealed a range of views about how governments should engage Aboriginal CYP in law and policy making. The data gathered stressed the importance of governments visiting communities and talking with all members of the community, and including specifically talking with CYP, after obtaining the appropriate permission to do so. Elders, parents, guardians, and schools are some suggested avenues to seek permission to talk with CYP.

[62] Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).
[63] Ibid.

7.3.2.3 Ensure the Participation 'Space' is Appropriate

Lundy's CRBA to children's participation, and the *UNCRC's Working Methods* emphasises that children's participation activities must ensure the 'place' where children's views are gathered is 'respectful', 'inclusive', 'safe and sensitive to risk' and be conducted in a 'child-friendly environment.'[64] Wilson and Wilks note that consulting with children in their school environment is not ideal, as this imposes 'school-like' conditions on the participation activity, and may impinge on CYP's right to 'freely' express their views.[65] Data gathered from this research indicates CYP favoured consultations with government taking place in their communities, rather than at their school. Several young people discussed the location where their views should be sought:

> Holly: I saw Julia Gillard[66]came here a few years ago when she was Prime Minister. So if the government did ask you about your ideas should they go to your school, or should they go to your community?
>
> Sean (13 year old male): School or community, whatever, both.
>
> Holly: Both. So I'm talking to you in your school because that's the only place I'm allowed to, I'm not allowed to go to your house or know your address. What would it be like if I did go to your house? Would it be better, would I learn more about your life?
>
> Nathaniel (14 year old male): Oh yes!
>
> Tessa (16 year old female): Yes.
>
> Holly: What would I learn Tessa?
>
> Tessa: It's more personal. Yeah you can tell stories there.
>
> Chris (17 year old male): You can tell the story of your life. [67]

[64] *UNCRC's Working Methods* [7].
[65] Wilson and Wilks, above n 3, 148.
[66] The former Prime Minister Julia Gillard visited the school a few years prior to this research taking place.
[67] Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).

Other CYP suggested government representatives meet in a community facility as the appropriate venue to talk with Aboriginal CYP about proposed law and policies. All community members would be invited to attend, Elders, adults and CYP. A participant said: 'I reckon it would be good if they just had a community meeting, at a meeting hall out there. Where they spoke to all the Elders and got their opinion, and spoke with all the youngsters and got their opinion.' [68]

7.4 Key Factors Affecting Aboriginal CYP

Involving Aboriginal CYP in decision-making requires law and policy makers to develop and demonstrate a deep understanding about the multi-faceted range of circumstances Aboriginal CYP experience in Australia. In order to most effectively involve Aboriginal CYP in the development of law and policy, law and policy makers must recognise and respond to the factors of social disadvantage that impact on their lives. In the context of talking about the NTER and Stronger Futures legislation CYP spoke about the experience of living in a context where the effects of systemic inequality, namely structural poverty and racism, are felt on a daily basis. Children and young people in both the primary and secondary class groups spoke about the poor treatment, and injustices, experienced by Aboriginal people in their community, including themselves.

Sections 7.2 and 7.3 above, detailed Aboriginal CYP's views about why and how they should be involved in law and policy making. The third key theme to emerge from the field research was CYP's detailed accounts of racism, poverty and homelessness: key issues CYP said they, their communities, or other Aboriginal community's experience. CYP gave accounts of the impact of racism and poverty on their lives, and on the lives of other Aboriginal people. These experiences need to be understood by law and policy makers as a starting point and foundation for Indigenous related law and policy making.

When discussing what changes they would make as law makers, two 16 year old young people said in an iPad interview, and noted on the poster in figure 7.1 below, that they would make changes to

[68] Chris (17 year old male), Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).

community housing, in the police force, and with respect to money and health services. A summary of their concerns are depicted below:

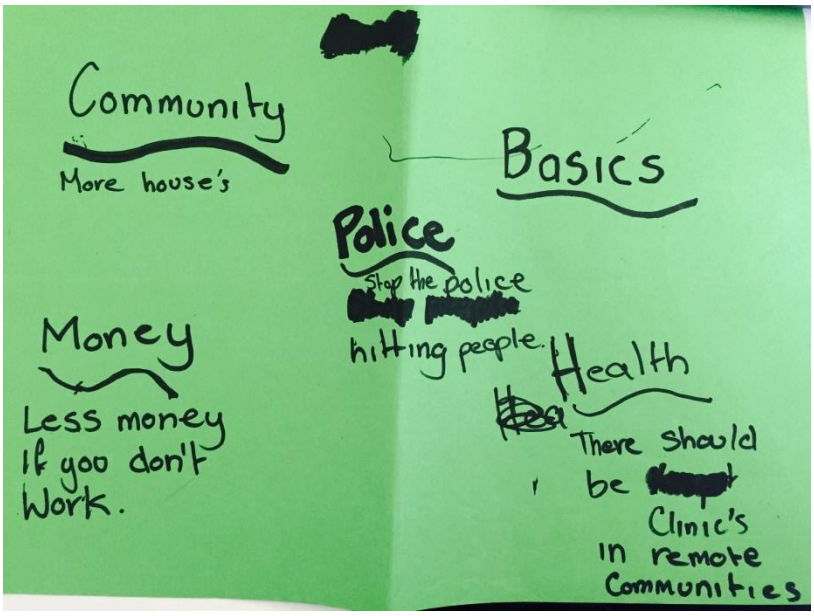

Figure 7.1: Poster Made by Several Secondary Participants[69]

These sentiments were reflected by other members of the secondary group in the same research session during an iPad interview. Seven suggestions were made in this video, and depicted on the poster they developed below in figure 7.2. In this iPad video discussion several young people suggested the following legal changes:

1. There would be no alcohol allowed into communities at all;
2. Fix all the bush roads and highways;
3. All kids get to go to school for free;
4. Everyone gets a Basics Card;
5. Try to fix the homeless problem;
6. Destroy racism in the police force first, then the Nation; and
7. Build more houses and better schools in the bush and cities.

[69] Poster written by Emily (16 year old female), Tasha (15 year old female) and Tessa (16 year old female), Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).

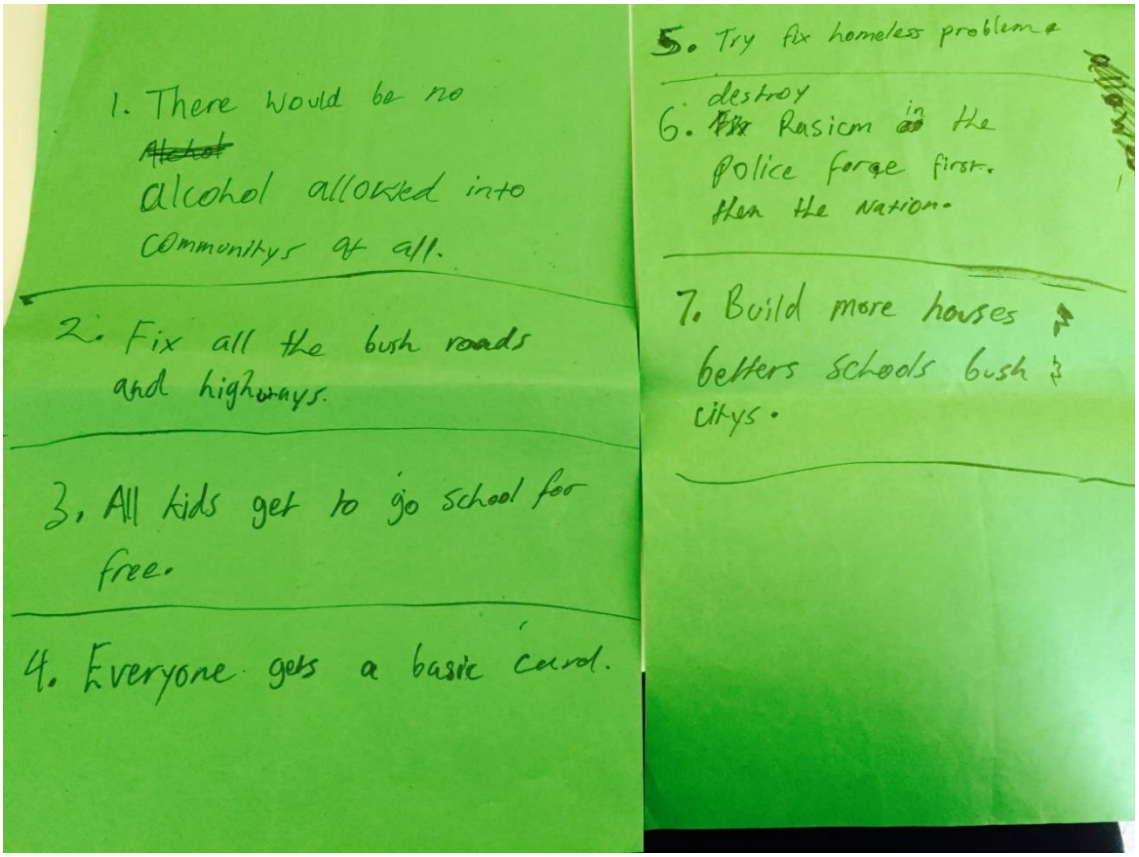

Figure 7.2: Poster Made by Two Secondary Participants[70]

These examples demonstrate the broad range of concerns affecting Aboriginal CYP explored in this research. Of these concerns racism and housing stood out as the two main areas CYP would change if given the opportunity to do so. Participant's views about these matters are discussed below.

7.4.1 Racism

The issue of racism was raised by participants in all elements of the field research—in the group discussions and in the peer-to-peer iPad interviews. The word 'racism' featured among the top 50 words used by CYP.[71] Many CYP spoke about being subject to racism—or of family and friends being subject to racism—and generalised racism in the community. Structural racism in the community perpetrated by the police force, and generalised racism in the community by non-Aboriginal youth,

[70] James (17 year old male) and Chris (17 year old male), Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014).
[71] Analysis of word frequency by participants in NVivo. A word frequency query was carried out in the software program NVivo and revealed the top 50 words used from all of the words said by CYP during the field research—one of which was the word 'racism.'

were issues of concern expressed by numerous CYP. When expressing their views on law and policy reform one group of participants said if they had the power to make changes they would firstly address racism in the police force then nationally.[72] The following is an exchange from a video made by three participants and I, featuring the poster these participants made where further exploration of the issue of police violence toward Aboriginal people was discussed.[73] I asked the young people what they would change about the police[74] if they were 'Prime Minister.' Tasha and Tessa said the following:

> Tasha (15 year old female): Stop them hitting our people in the cell.
>
> Holly: Are you talking about Aboriginal people who are in prison?
>
> Tasha: Yep.
>
> Tessa (16 year old female): It happens all the time.
>
> Holly: Does it?
>
> Tessa: Yeah.
>
> Tasha: Some died.
>
> Tessa: My cousin was in before and there was these police that wasn't nice to him.[75]

These comments detail CYP's negative experiences with police, suggesting the relationship between Aboriginal CYP and the police is fractured in this context. These comments also suggest the fractured relationship with police extends to CYP's families and communities. Analysis of data from the field research transcriptions showed an association between racism and structural inequities, and disadvantage between Aboriginal and non-Aboriginal people, in the region where the research took place. Some CYP said racism had increased in the area in the past few years. In response to an example given by the teacher about police harassing Aboriginal people at the shops, a young person said:

[72] See figure 7.2.
[73] Ibid.
[74] The researcher was referring to the words written on the CYP's poster in figure 7.1 that says: 'Stop the police hitting people.'
[75] Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014).

> Jessie (13 year old male): Oh yeah, I've seen that once happen to my Dad and he didn't like the way that the police spoke to him. My Dad got really wild.
>
> Samantha: The government should tell those police to stop doing that you know. Those police they act like they're king.
>
> Tessa: Yeah they do, they think they can take over [name of town deleted].
>
> Rob: Yeah. What else? So do you think that it's the government that's racist or the police force?
>
> Tessa: Police force.
>
> Samantha: But the government is telling them what to do.[76]

Another young person also spoke about racism by the police, he said: 'They shouldn't be racist … They twist your hands, your wrists.'[77]

Data collected from CYP in this research concurs with the work of Priest et al concerning racism as a determinant of Aboriginal Australian young people's social and emotional wellbeing.[78] The degree of harm CYP experienced as a result of racism, experienced 'interpersonally' or 'systematically', was not measured in this study, as it was not the purpose of this study to do so. However, CYP's accounts demonstrate their experiences of racism are persistent and part of their everyday lives. Chapter 6 highlights evidence obtained from literature, from the Scoping Trip and from CYP that the income and alcohol regulation measures arising from the NTER and Stronger Futures legislation, have exacerbated racism toward Aboriginal people in the Northern Territory.[79]

7.4.2 Poverty, Housing and Homelessness

Children and young people said poverty, housing and homelessness were key factors affecting their lives, and the lives of people close to them. Several CYP spoke about homelessness, and inadequate

[76] Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).
[77] Eddy (15 year old male), Secondary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014)
[78] Naomi Priest et al, 'Racism as a Determinant of Social and Emotional Wellbeing for Aboriginal Australian Youth' (2011) 194(10) *Medical Journal of Australia* 546.
[79] See chapter 6 (section 6.2).

housing, in theirs or other communities as an issue that affects them. When asked about what changes they would make if they were Prime Minister a group of young people from the secondary group expressed concern about the quality of housing in Aboriginal communities. They said they would change the 'community, build more houses, they are too cramped, and too old … with lots of people.'[80] Several young people spoke about inadequate housing, the lack of housing, homelessness and overcrowding in both remote and city areas.[81] Children and young people's descriptions of the many forms of homelessness, resonates with some of the five types of homelessness,[82] particularly overcrowding, outlined by Keys Young.[83]

Numerous young people said the unavailability of housing in rural communities, combined with high levels of rural unemployment, forces Aboriginal families to leave remote areas and move to urban areas. A secondary participant said, 'you see a lot of black people coming here from the country because there's not enough houses over there. They should build more houses so our family can go back and live.'[84] Another participant in the same conversation then said: 'There is not enough work also. They need more different work for Aboriginal people, not just for Aboriginal people who are strong.'[85]

Housing is an issue affecting many CYP involved in this study. This was reflected by young people in the secondary group. In a self-made iPad recording, a 14 year old young person responded to the discussion starter: 'If you were Prime Minister for a day you would …' He said, 'I would change the law, I would change the class and the rules and the community … Like putting new houses. Like

[80] Sean (13 year old male), Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014).
[81] Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014); Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014).
[82] Australian Department of Health and Aged Care Keys Young (firm), Australian Department of Family and Community Services, 'Homelessness in the Aboriginal and Torres Strait Islander context and its possible implications for the Supported Accommodation Assistance Program (SAAP)' (Commonwealth Department of Health and Aged Care, 1998).
[83] Ibid.
[84] Eddy (15 year old male), Secondary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014).
[85] James (17 year old male), Secondary Class Group Discussion, Field Research Session 1 (of 4) (Northern Territory, 13 May 2014).

making different law, respect your culture.'[86] The connection between housing and culture was made by this participant and others.

7.5 A Mechanism for Aboriginal CYP to Participate in Law and Policy Making

So far this chapter presents CYP's suggestions about *how* they can be involved in law and policy making; and their views about protocols which need to be followed by people and agencies when seeking their views. Previous chapters address reasons *why* Aboriginal CYP should be involved in law and policy making. The purpose of this section is to suggest a framework for how to implement these suggestions on an ongoing basis in Australia.

Lundy's model of participation, discussed in chapter 5 and throughout the thesis, provides insight into *how* Aboriginal CYP can be involved in public decision-making in light of the rights and duties arising from article 12 of the CRC. Lundy's framework for the conceptualisation and implementation of article 12 of the CRC articulates four interconnected elements—'space, voice, audience and influence'—all four of which are required in order to implement children's participatory rights under article 12 of the CRC.[87] In addition to the views expressed by CYP in this study, some suggestions are presented below about a possible *space* where Aboriginal CYP's *voices* can have an *audience* and *influence* law and policy making in Australia.

This suggestion centres on the involvement of Aboriginal CYP in an 'interpretive and implementation community' as a means to participate in both the interpretation of children's rights in the CRC as well as participate in the implementation of their rights through law and policy development.[88] The meaning of an interpretive community, as well as how this approach supports Aboriginal CYP's involvement in law and policy development in Australia, is discussed below. The focus of this

[86]Jonathan (14 year old male), Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014).
[87] Lundy, above n 32; Elizabeth Welty and Laura Lundy, 'A Children's Rights-Based Approach to Involving Children in Decision Making' (2013) 12(03) *Journal of Science Communication* 1.
[88] Tobin, above n 6; Fish, above n 6; Johnstone, above n 6.

suggestion arose from the field research presented above where CYP outlined a range of ways they could be involved in law and policy formation. A logical extension to these ideas is the involvement of Aboriginal CYP in an interpretive community as an appropriate place for their views to be heard by people in decision-making roles, and for these views to carry due weight in the process of treaty interpretation and implementation.

This section does not attempt to reiterate a model of how an interpretive community can offer a persuasive interpretation of article 12 of the CRC. Tobin already presents such a model, setting out a method for an interpretive community to assess the meaning of treaty provisions via reasoning which must be 'principled, practical, coherent and context-sensitive.'[89] Tobin's approach is adapted and expanded here to encompass how the rights should be implemented in practice.

Children and young people are not offered an opportunity to contribute to treaty interpretation processes, including the interpretation of the CRC.[90] This is despite the fact that CYP's interests, and participation rights, lie at the centre of the CRC. The CYP who participated in this research offered their 'voice' about the NTER and Stronger Futures legislation, as well as voiced the ways they could be involved in legislative and policy formation in the future. The research environment sought to provide an ethically sound, child rights-based 'space' for these voices to be heard using a variety of methods including yarning, interviewing, and non-verbal methods such as drawing, modelling with playdough, photography and video. Through future publication of the field research there is potential for these views to reach an 'audience' who have 'the responsibility to listen.'[91] However, a formal, ongoing and politically entrenched governmental mechanism for Aboriginal CYP (indeed for all CYP) to express their views about laws and policies likely to affect their lives, and for these views to influence decision-making processes, needs to be established in Australia.

[89] Tobin, above n 6, 15. Also in this article see 'Part III: Seeking to Persuade by Constructive Engagement', 13-48.
[90] However, CYP in Australia were involved in the preparation of the alternate report to the UNCRC on Australia's compliance with the CRC; 'Listen to Children: Child Rights NGO Report Australia' (Child Rights Taskforce, 2011). The decision to involve children in the preparation of the alternate report to the UNCRC was a decision made by the Child Rights Taskforce.
[91] Welty and Lundy, above n 87, 3.

Some recommendations about how this could operate in Australia are presented below as a possible way to both interpret and implement the four elements of article 12 of the CRC articulated by Lundy. This approach to treaty interpretation centres on understanding and implementing article 12 of the CRC, however, the approach is relevant to the interpretation of provisions contained in any human rights treaty.[92]

Chapter 4 established that there is no single *correct* way to interpret and apply international law—thus, no one way of interpreting article 12 of the CRC. Treaty interpretation is no longer associated with ascertaining a predetermined meaning 'instead, the interpretive exercise is very much an active process of constructing *a* meaning rather than finding *the* meaning which lies latent with the text.'[93] States are primarily responsible for protecting, respecting and fulfilling human rights, and are usually the main interpreters of international human rights law.[94] Expanding the role of interpreting international human rights law instruments from States, to include key stakeholders with interests in particular human rights (including Aboriginal CYP) as members of an 'interpretive community,' is a suggested mechanism to implement CYP's right to participate in law and policy making.[95]

7.5.1 An 'Interpretive and Implementation Community'

The theorist Stanley Fish first wrote about 'interpretive communities' explaining the role of these communities is to seek the meaning of texts (such as international treaties) not by the words of the text, but rather through collective understanding and agreement about the cultural and contextual setting in which the text resides.[96] Johnstone elaborates on Fish's idea explaining that in an interpretive community '[m]eaning is produced neither by the text nor by the reader but by the interpretive community in which both are situated.'[97] The field research for this project demonstrates that Aboriginal CYP want the opportunity to express their views about legislation and policy that affects them, and contrary to the right provided by article 12 of the CRC, CYP said they have not had,

[92] Tobin, above n 6, 4-5.
[93] Ibid 5.
[94] Ibid.
[95] Ibid.
[96] Fish, above n 6.
[97] Johnstone, above n 6, 190.

and do not have, this opportunity. The 'interpretive community' model is an appropriate way to involve Aboriginal CYP in law and policy making, because this model presents a framework for Aboriginal CYP to be involved not only in domestic law and policy creation, but also in the interpretation of children's rights in Australia.

Simma criticises the bilateral interpretation of international law by States and calls for a 'more socially conscious legal order,' an order which is more reflective of 'community interests.'[98] He acknowledges the continuing and central role of the State as a key actor in the interpretive community.[99] Yet, Simma anticipates the dynamic in the interpretive community, where non-State actors support a certain interpretation of a treaty provision, to influence the manner in which the State implements that provision.[100] Tobin's 'communitarian model' is reflective of Simma's approach, yet further develops this idea by contemplating the involvement of children in interpreting and implementing treaty provisions, particularly the CRC.[101] The State is the central stakeholder in this system, as the key duty-bearer responsible for implementing children's rights, and the key party bound by the terms of the treaty.

This interpretive community model presents a way Aboriginal CYP can be involved in law and policy making about matters affecting them,[102] and is consistent with Lundy's approach to implementing the four elements of article 12 of the CRC.[103] In this model, Aboriginal CYP would operate as equal members, their views carrying 'due weight.' This does not mean children would have the 'final say' on how article 12 is interpreted, however, it does mean 'that these views must always be accommodated or reconciled before offering an interpretation.'[104]

Interpretive communities overcome the undesirable situation where 'the only interpreters of the law are domestic officials who are institutionally and politically predisposed to positions that favour their

[98] Bruno Simma, 'From Bilateralism to Community Interest in International Law' (1994) 250 *Recueil des Cours de l'Académie de Droit International* 217, 234.
[99] Ibid 247.
[100] Ibid.
[101] Tobin, above n 6; John Tobin, 'Justifying Children's Rights' (2013) 21 *International Journal of Children's Rights* 395.
[102] Tobin, above n 6.
[103] Lundy, above n 32.
[104] Tobin, above n 6, 11.

government or state.'[105] Arriving at conclusions about the meaning of international treaties, and their applicability and implementation in domestic settings in an 'interpretive community' context, provides an opportunity to balance and mediate the interests of State actors with the interests of non-State actors, including Aboriginal CYP.

Johnstone says 'the process of producing and living under a treaty … generates a community … of people and institutions associated with the treaty.'[106] Bell describes the involvement of stakeholders in an interpretive community as providing the opportunity for 'a meaningful role in the creation of human rights obligations, provincial actors gain a stake in giving substance to ideals through implementation and supervision.'[107] The inclusion of Aboriginal CYP in an interpretive community could, as Bell states, 'promote the diffusion of human rights consciousness at the grassroots level and a sense of local interconnectedness to the greater world community.'[108]

The method used to interpret international law, and article 12 of the CRC, is one of the key elements associated with the effective implementation of Aboriginal CYP's participatory rights. Fish's theory of an 'interpretive community,'[109] later developed by Tobin,[110] refers to 'persons or entities and their agents that have an *interest*, either direct or implied, in the meaning of the rights under international instruments.'[111] It is argued here that Aboriginal CYP have an interest in assessing the meaning of international children's rights law in the context in which they operate, as well as an interest in participating in the generation of domestic laws and policies likely to affect them.[112] This research also suggests that Aboriginal CYP are highly capable of participating in these endeavours, if given the opportunity to do so.

[105] Johnstone, above n 6, 189.
[106] Johnstone, above n 6, 385-386.
[107] Koren L Bell, 'From Laggard to Leader: Canadian Lessons on a Role for US States in Making and Implementing Human Rights Treaties' (2002) 5(1) *Yale Human Rights and Development Journal* 255, 286.
[108] Ibid 290.
[109] Fish, above n 6 cited in Tobin, above n 6.
[110] Tobin, above n 6.
[111] Ibid 8 (emphasis added).
[112] See chapter 4.

Disagreements in an interpretive community about the meaning of children's rights are likely to occur given 'the diverse and potentially conflicting interests within the relevant interpretive community when attributing a meaning to human rights standards.'[113] This is part of the evolutionary dynamic inherent in an interpretive community and compels the interpretive community to engage with and consider such views when offering a meaning for a particular right.[114] Dworkin says competing interpretations in an interpretive community can be resolved through 'conventions of description, argument, judgment and persuasion as they operate in this or that profession or discipline or community.'[115] Over time, and through the process of ongoing inquiry about members of the interpretive community's understanding and views about the meaning of certain treaty provisions, shared understandings will emerge.[116] These need not be achieved through consensus however, as variances in members perspectives about treaty interpretation are likely to be characteristics in this setting. Thus, obtaining consensus within the 'interpretative community' is not always necessary, depending on the issue. Rather, the important issue is that a variety of voices are heard and dissonant opinions are not ignored. This accords with Nakata's standpoint theory the focus of which is on the inclusion of otherwise subjugated accounts.[117] However, a level of consensus is required in order to progress the implementation of human rights.[118]

As mentioned, Tobin's 'interpretive community' model[119] develops Fish's[120] original framework by providing theoretical and practical justifications for children's involvement in treaty interpretation. Yet, similar to Lundy's model, Tobin's model does not specifically consider Indigenous children's involvement in the interpretive community, and the breadth of cross-cultural considerations associated with engaging Indigenous children in treaty interpretation using a CRBA in law and policy development processes. The framework provided by this thesis attempts to begin to address this by providing a range of suggestions about how Indigenous children can be involved as active agents in an

[113] Tobin, above n 6, 10.
[114] Ibid 11.
[115] Ronald Dworkin, 'Law as Interpretation' (1982) 60 *Texas Law Review* 527, 562.
[116] Tobin, above n 6, 11.
[117] Martin Nakata, *Disciplining the Savages Savaging the Disciplines* (Aboriginal Studies Press, 2007) 213.
[118] Tobin, above n 6.
[119] Ibid.
[120] Fish, above n 6.

interpretive community, and how governments and agencies can facilitate this level of participation in a culturally appropriate, child focussed way.

The interpretation of treaty provisions by an interpretive community, in which Aboriginal CYP are members, is a possible mechanism through which article 12 could be applied in Australia, and is consistent with a CRBA to treaty interpretation and implementation. The establishment of an interpretive community, in which Aboriginal CYP are members, is also consistent with the Australian Government's duty to implement the provisions contained in article 12 of the CRC, as was established in chapter 4.

Participant's pragmatic suggestions for how Aboriginal CYP can be involved in law and policy making about matters affecting them are detailed above. The establishment of an 'interpretive community' to which Aboriginal CYP delegates are members would offer a formal 'space' for Aboriginal CYP's 'voices' to be heard and for these views to 'influence' decision-making processes, in a forum where those who are responsible (the 'audience') for implementing children's rights are present. Thus, an interpretive community offers a means to implement the elements of article 12 highlighted by Lundy.[121]

Chapter 5 discussed continuing barriers to children's participation due to the dominance of the welfare-based conceptualisations of childhood. The interpretive community model presents an opportunity to overcome these barriers through the involvement of Aboriginal CYP in a discussion and decision-making forum. This suggestion offers the opportunity to debate the role of CYP in public decision-making processes, including the interpretation of relevant treaties. This forum also offers the opportunity for CYP to influence the redefinition of childhood in ways that are consistent with children's agency and children's capacity to contribute to decision-making processes. As discussed in chapter 5, a reconceptualisation of childhood, particularly Aboriginal childhood, is necessary in order to advance CYP's participation rights—this requires a reconceptualisation of the relationship between the State and Aboriginal CYP.

[121] Lundy, above n 32.

7.6 Conclusion

In this study Aboriginal CYP said they want to participate in developing laws and polices about matters involving them, and expressed a range of reasons as to why they should participate in these processes. Aboriginal CYP said their involvement in law and policy making is appropriate given their status as the rightful owners of the land, and because their involvement could improve the quality of laws and policies that affect Aboriginal people given their knowledge about Aboriginal and non-Aboriginal law, and about Aboriginal culture.

Children and young people proposed a range of ways as to how Aboriginal CYP can, and should, be involved in law and policy making. These include the recommendation that government participation activities about law and policy development should take place in an appropriate location close to CYP's place of residence, and be carried out in a respectful and courteous manner. Importantly, government consultations with Aboriginal CYP must be underpinned by an awareness of the cultural norms and practices of the community in which the consultation is taking place. Further, CYP's contributions should be sought after appropriate permissions are obtained from people such as parents, relatives, Elders and schools.

The findings documented in this chapter also reveal racism, poverty and homelessness are matters affecting the Aboriginal CYP who participated in this research. In order for Aboriginal CYP's perspectives to be fully understood, and have a bearing on Australian law and policy affecting them, these matters must be carefully considered by government when drafting legislation and corresponding policy affecting Aboriginal CYP.

Article 12 of the CRC gives States clear instruction on how to manage their relationship with children.[122] The CRC 'promotes a more inclusive and consultative model of decision-making with respect to matters affecting children than other treaties.'[123] Further, the UNCRC has made it clear that in order for children's rights to be realised States 'need to engage all sectors of society and, of course,

[122] Tobin, above n 101, 427-428.
[123] Ibid 428.

children themselves' in the 'task of implementation.'[124] Thus, the realisation of children's rights requires collaboration from all sectors of society, including first and foremost collaboration with CYP and with adults responsible for children's rights including 'parents, State officials, and professionals working with children, cultural or religious representatives.'[125]

Sharing the responsibility for interpreting treaties, particularly the CRC, between the State and an 'interpretive community,' is a suggested mechanism to advance CYP's participatory rights in Australia. This model affords Aboriginal CYP the opportunity to express their views, and have these views taken into consideration in decision-making about the implementation of the CRC.

[124] UN Committee on the Rights of the Child, General Comment No 5, 'General Measures of Implementation for the Convention on the Rights of the Child,' UN Doc CRC/GC/2003/5 (27 Nov 2003) [1].
[125] Tobin, above n 101, 415.

Chapter 8: Conclusion

8.1 Introduction

This research sought to address three key gaps in academic literature by (a) documenting a group of Aboriginal CYP's views about elements of the NTER and Stronger Futures legislation; (b) presenting the ideas put forward by a group of Aboriginal CYP about how the Australian Government could involve them in law and policy making about matters relevant to them; and (c) formulating a CRBA to research and the development of legislation and policy pertaining to Aboriginal CYP that is consistent with the CRC, as well as culturally sensitive and appropriate.

This research is important because it is original, significant and innovative and it is the first time Aboriginal CYP have had the opportunity to express their views about various measures arising from the NTER and Stronger Futures legislation. Prior to this research Aboriginal CYP's views about these legislative and policy measures were not represented in academic literature, or in public policy. Therefore, the perspectives of Aboriginal CYP have been excluded from political and social debate surrounding the NTER and Stronger Futures legislation.

Under article 12 of the CRC, CYP are entitled to participate in decision-making about matters affecting them—this includes the right to be involved in the development of laws and policies likely to affect them. The Australian Government did not provide Aboriginal CYP with the opportunity to participate in the development of the NTER or Stronger Futures legislation. This contravened Australia's obligations under article 12 of the CRC, and was inconsistent with article 19 of the UNDRIP, which provides that States shall consult and obtain consent from Indigenous peoples before laws affecting them are made.[1]

[1] *Convention on the Rights of the Child* opened for signature 20 November 1989, 44 UNTS 25 (entered into force 2 September 1990) ('*Convention on the Rights of the Child*') art 12; *The United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, Supp No 49, UN Doc A/RES/61/295 (13 September 2007) ('*United Nations Declaration on the Rights of Indigenous Peoples')* art 19.

The primary question this thesis investigated was: 'Why and how should Aboriginal CYP participate in the development of law and policy about matters affecting them?' This investigation involved answering the following five sub-questions:

i. What are the ethical and cross-cultural considerations surrounding Aboriginal CYP's participation in research?

ii. Does article 12 of the CRC require State parties to involve CYP in the development of laws and policies relating to them?

iii. What is the impact of Western notions of childhood on Aboriginal CYP's participation in law and policy making in Australia?

iv. What did Aboriginal CYP say about the NTER and Stronger Futures legislation?

v. What did Aboriginal CYP say about their participation in the development of future laws and policies?

These questions were answered through doctrinal and empirical investigation. The findings relevant to each of these sub-questions are discussed below alongside a discussion of how these findings collectively answer the primary thesis question.

This chapter concludes the thesis by setting out (a) how this research seeks to make an original contribution to knowledge, and (b) how the research findings answer the thesis sub-questions and together contribute to answering the primary thesis question.

8.2 Contribution to Knowledge

The thesis sought to make an original contribution to knowledge in three key ways. First, by presenting a legal justification for CYP's right to participate in the formation of law and policy affecting them. Second, by presenting a group of Aboriginal CYP's views about aspects of the NTER and Stronger Futures legislation, as well as their views about how they could participate in the

formation of future laws and policies. Third, by presenting a model for the participation of Aboriginal CYP that is based on a CRBA informed by Indigenous research methodologies. This model is an adaptation of Lundy's model[2] and incorporates elements of Indigenous research methodologies.

8.2.1 Legal Justifications

This thesis sought to contribute to the ongoing emergence of a theory of children's participation by articulating the legal basis upon which children's participation rests. Scholarship concerning CYP's right to participate in decision-making does not focus on CYP's right to participate in the development of law and policy, and there is a lack of scholarship in this area addressing Aboriginal CYP's participation. Furthermore, scholarship about children's participation lacks focus on children's role in evaluating, designing, and contributing to laws and policies likely to affect them. This body of thought is concerned about children's role in certain contexts, either in education settings, in the family, in community life, but not in relation to CYP's active participation in the development of legislation and policy.

This thesis contributes to filling a gap in scholarship about CYP's right to participate in law and policy development by suggesting that not only is this required under international law, but that there is instrumental value in doing so. State parties to the CRC are duty bound under article 12 to provide opportunities for CYP to express their views, and have these views considered, in law and policy making processes about matters affecting them.[3] Upon this legal foundation, the thesis went on to establish the instrumental value of Aboriginal CYP's participation in law and policy making.[4]

8.2.2 Aboriginal CYP's Views

This thesis addressed the lack of investigation to date into Aboriginal CYP's views about the NTER and Stronger Futures legislation, and lack of scholarship detailing Aboriginal CYP's views about how they could, and should, be involved in law and policy making processes including their suggestions

[2] Laura Lundy, '"Voice" is Not Enough: Conceptualising Article 12 of the United Nations Convention on the Rights of the Child' (2007) 33(6) *British Educational Research Journal* 927.
[3] See chapter 4.
[4] See chapters 5 and 7.

about how governments could facilitate their involvement. Findings from the field research, summarised below, begin to fill these research gaps by presenting the views of a group of Aboriginal CYP about the NTER and Stronger Futures laws; as well as how Aboriginal CYP can be involved in the development of future laws and policies affecting them.

8.2.3 A Model for Aboriginal CYP's Participation

This thesis presents a model for a non-Indigenous researcher to undertake a CRBA to research with Aboriginal CYP that is informed by Indigenous research methodologies, as well as being consistent with the *AIATSIS Guidelines* and the *National Statement*.[5] Whilst there is literature dealing with non-Indigenous researchers conducting research with Indigenous people, there is a lack of literature that addresses such research being conducted with Aboriginal CYP using a CRBA informed by Indigenous research methodologies. This research draws on Lundy's model of children's participation combined with Nakata's Indigenous standpoint theory and Ray's convergence theory. The methods used to implement this methodological framework were yarning and peer-to-peer interviewing. In conducting the field research the researcher sought to implement ethical standards for engaging Aboriginal CYP in cross-cultural research and in doing so created an ethical model that may prove useful to other non-Indigenous researchers conducting cross-cultural research.[6]

8.3 Thesis Questions and Thesis Findings

The following primary question guided the research: 'Why and how should Aboriginal CYP participate in the development of law and policy affecting them?' In order to answer this question five sub-questions have been explored throughout the thesis.[7] However, in broad terms part I of the thesis focussed on answering sub-questions one, two and three; and part II of the thesis focussed on answering sub-questions four and five. This section sets out the research findings relating to these sub-

[5] *Guidelines for Ethical Research in Australian Indigenous Studies* (Australian Institute of Aboriginal and Torres Strait Islander Studies, Revised 2nd Edition ed, 2012) ('*AIATSIS Guidelines*'); The National Health and Medical Research Council The Australian Research Council, and the Australian Vice-Chancellors' Committee, 'National Statement on Ethical Conduct in Human Research' (Commonwealth of Australia, 2007 (updated December 2013)) ('*National Statement'*).
[6] Ibid. Field research was informed by, and consistent with, the *AIATSIS Guidelines* and the *National Statement.*
[7] See above (section 8.1).

questions and concludes with an assessment of how the overall findings from these sub-questions answers the primary thesis question.

8.3.1 Part I: Methodology and Legal Foundations

Seeking to understand and document the perspectives of Aboriginal CYP in this research was a sensitive academic pursuit, particularly for a non-Indigenous researcher. The involvement of CYP in this research required considerable attention to the ethical considerations associated with this endeavour. The first thesis sub-question asked: 'What are the ethical and cross-cultural considerations surrounding Aboriginal CYP's participation in research, and in the development of laws and policies?' Addressing the issues raised by this sub-question formed the fundamental basis of the overall research project, and the answers to this question were directly linked to answering the primary thesis question, as well as answering the other four sub-questions.

Answering sub-question one demanded the development of a methodology for Aboriginal CYP's participation that was consistent with participants' rights as CYP, as well as being sensitive to participants' rights as Aboriginal CYP.[8] In the context of this project the model for children's participation needed to be appropriate for research purposes, as well as for CYP's participation in law and policy making for use by legislators and policy makers.

The methodological approach adopted—a CRBA informed by Indigenous research methodologies—focussed on implementing a 'rights-based approach' rather than a 'welfare-based approach' to matters concerning Aboriginal CYP.[9] The methods used to implement the methodology—yarning and peer-to-peer interviewing using iPads—sought to engage CYP in the research in a child-friendly, culturally appropriate and age appropriate manner.[10] These methods emphasised CYP's agency and to some degree enabled CYP to influence and lead the research environment.

[8] The details of the methodological approach are outlined in chapter 2.
[9] See chapter 5.
[10] See chapter 2 (section 2.2).

Information obtained from the Scoping Trip influenced and enhanced the research methodology and informed the research methods.[11] During the Scoping Trip conversations, adult professionals working in fields associated with Aboriginal CYP offered their ideas about important factors to consider when conducting research with CYP in Aboriginal communities. These included the informal rules operating in the communities, and the importance of understanding these rules before commencing the research. During the Scoping Trip participants shared important information about conducting ethically sound research with Aboriginal CYP, such as making sure not to 'shame' or embarrass Aboriginal CYP by singling individual children out, or by asking direct questions. This advice strongly influenced the adoption of the 'yarning' method which offered a way to conduct the research in an informal, culturally sensitive manner. The research demonstrated that the research methods used—'yarning' and peer-to-peer interviewing—are consistent with a CRBA to research and are appropriate methods for a non-Indigenous researcher to use. Part II of the thesis discusses how these methods were used to allow CYP to effectively and meaningfully engage in research.[12] The use of these methods provides a model that is adaptable for other non-Indigenous people wishing to ask Aboriginal CYP their views about matters affecting them. The methodological approach and methods used also provide a model for the involvement of Aboriginal CYP in law and policy development processes, and could be used by governments to fulfil their duty under article 12 of the CRC.

Information obtained during the Scoping Trip also influenced the measures taken before and during the field research in order to mitigate the cross-cultural research barriers inherent in conducting this research. This included suggestions about 'getting to know' potential participants and their community before conducting the research as a way of mitigating the risks associated with being a non-Indigenous researcher doing outsider research.[13]

The Scoping Trip also confirmed the importance of seeking free, prior and informed consent from CYP and from the appropriate people in the community, and presented a range of ways to go about

[11] See chapter 3.
[12] See chapter 6.
[13] See chapter 3.

seeking consent.[14] The model for seeking consent was also influenced by a range of other factors including consultation with the two ethics committees overseeing this research and advice received from several academics with relevant experience conducting qualitative research.[15]

The Scoping Trip also reiterated the importance of building reciprocity arrangements into the research design in collaboration with research participants.[16] These suggestions were incorporated into the research design and implemented during the final research session, as well as a final visit to the school where a children's rights seminar was conducted by the researcher with CYP and a 'movie' of all of the participants combined iPad videos was shown as a way of thanking participants.[17] The key conclusion from the Scoping Trip was that the proposed research was viable as was the proposed research methodology.

The investigation of sub-question two: 'Does article 12 of the CRC require State parties to involve CYP in the development of laws and policies relating to them?' sought to resolve the question of whether article 12 requires CYP's participation in law and policy making on 'matters affecting' them. The research demonstrates that governments are duty bound to provide CYP with the opportunity to express their views, and have these views considered, when making legislative and policy decisions likely to affect them. Thus, the development of law and policy concerning CYP is within the scope and meaning of article 12 of the CRC. This was determined by investigating the meaning of article 12 using the three tiered analysis required under the VCLT, including using supplementary sources such as statements from the UNCRC and other bodies.[18] The impact of this finding is that the Australian Government is duty bound to ensure CYP have an opportunity to participate in the formation of laws and policies that are likely to affect them.

The methodological approach, and the research methods used, were linked to findings arising in response to sub-question three: 'What is the impact of Western notions of childhood on Aboriginal

[14] See chapter 2 (section 2.2) and chapter 3 (section 3.2).
[15] See chapter 2 (section 2.2).
[16] See chapter 3.
[17] See chapter 2 (section 2.2).
[18] See chapter 4.

CYP's participation in law and policy making in Australia?'[19] The premise of the research was based on a rights-based perspective on 'childhood' that perceives Aboriginal CYP as agents with the capacity to express formed and informed views in decision-making processes, including in research processes.[20] This view of childhood contrasts the view inherent in a welfare-based perspective on childhood that emphasises children's vulnerabilities and focusses on children's protection and provision needs. The CRBA approach adopted acknowledges children's vulnerabilities, accepts children need to be protected from harm and accepts children need to be provided for—yet a CRBA emphasises children's right to participate in decision-making processes in all matters affecting children.

In order to answer sub-question three: 'What is the impact of Western notions of childhood on Aboriginal CYP's participation in law and policy making in Australia?' it was necessary to examine the political discourse surrounding the introduction of the NTER and its successor, the Stronger Futures legislation. This revealed the paternalistic ideas of childhood underpinning this suite of measures.[21] These paternalistic ideas of childhood were shown to support the welfare-based approach that underpinned the NTER and Stronger Futures legislation.[22] A key finding from this research concerns the need to reconceptualise childhood and depart from paternalistic approaches which underpin legislation such as the NTER and Stronger Futures legislation. Legislators need to better understand childhood, including Aboriginal childhood, in light of modern theories of childhood. The inclusion of Aboriginal CYP in law and policy making processes will contribute much to replacing unhelpful paradigms with new conceptualisations of childhood based on children's agency, and capacity to meaningfully contribute to public decision-making as valuable citizens. This approach is founded on the body of children's rights contained in the CRC, particularly article 12 of that instrument.

[19] See chapter 5.
[20] See chapter 5.
[21] See chapter 5 (section 5.2.2).
[22] See chapter 5 (section 5.2.2 and 5.3.1).

The key finding from the exploration of sub-question three, which examined how ideas of childhood impact on children's participation rights, was that the relationship between the State and Aboriginal CYP requires 'rethinking' in order for article 12 to be implemented, and for Aboriginal CYP to be able to participate in public decision-making processes. In order for this relationship to be reconceptualised the Australian Government needs to base its ideas about 'childhood' on a CRBA that perceives Aboriginal CYP as having agency and capacity to contribute to decision-making processes. This will require the Australian Government to understand and accept the diversity of childhoods, and demonstrate culturally adaptive understandings of childhood, and a robust understanding of what it means to engage children in public decision-making, as well as the benefits of doing so. An assessment of the possibilities for advancing Aboriginal CYP's participation in law and policy making by reconceptualising the relationship between Aboriginal CYP and the State is discussed further below using Lundy's model of children's participation.[23]

8.3.2 Part II: Field Research with Aboriginal CYP

The findings in response to sub-questions four and five arise from the field research,[24] and together with the other thesis findings, present a comprehensive response as to why, and how, Aboriginal CYP should be involved in the design of law and policy.

Sub-question four asked: 'What did Aboriginal CYP say about the NTER and Stronger Futures legislation?' The field research demonstrated three main conclusions in relation to this question: (a) all Aboriginal CYP involved in the research knew about the two key measures arising from the NTER and Stronger Futures legislation—the Basics Card and the blue and white signs; (b) Aboriginal CYP presented nuanced views about the impact of these measures in their lives, and in the lives of people in their community;[25] and (c) the NTER and Stronger Futures legislation is a 'matter affecting' the Aboriginal CYP who participated in this research.

[23] Lundy, above n 2.
[24] See chapters 6 and 7.
[25] See chapter 6.

All of the CYP involved in this research, including the youngest participants, expressed detailed understandings of these NTER and Stronger Futures measures. When images of the Basics Card and the blue and white signs were shown to CYP all participants, without exception, could describe both measures and nearly all of the CYP expressed how these measures impacted on their lives. Children and young people's statements about how these measures impacted on their lives suggests these measures are 'matters affecting' them.

Children and young people detailed their personal experience of witnessing an adult known to them using the Basics Card and the impact that the card had on their lives, and in some cases participants had personally used a Basics Card. All of the CYP had seen the blue and white signs, either at the front of their community, or at the front of another community, and all participants could describe the meaning of the signs—that there was no alcohol allowed in that community—and the impact of the signs in their lives.

These findings are important because they correlate with the findings explored in sub-question three concerning ideas about 'childhood' and children's capacity to contribute to decision-making processes. The fact that CYP expressed knowledge and views about legislative and policy matters contradicts the idea that CYP are not capable of forming and expressing views and on this basis participate in complex decision-making processes such as law and policy making.

The research methodology supported the development of a research 'space' in which CYP would feel comfortable to express their views in a culturally appropriate and child-friendly way. The creation of the research space was linked to answering sub-question one regarding the ethical and cross-cultural considerations regarding Aboriginal CYP's participation in research and law and policy making. In order to ascertain CYP's knowledge and views about the NTER and Stronger Futures legislation, the methodological approach, the research methods employed, and the preparatory information sessions were all designed in order to provide an appropriate 'space' where CYP were supported to effectively express their views.[26] Furthermore, the research environment sought to communicate with CYP that

[26] Lundy, above n 2.

the information they shared during the research was being listened to by the researcher and the other participants, and that one of the aims of this research was to share their views with other people as a way of expanding knowledge about the impact of the NTER and Stronger Futures legislation.

Children and young people said the Basics Card contributes to improving their access to food and helps families save money and pay bills. Nearly all CYP said they wanted access to the Basics Card to continue for their families. However, these views were qualified by participants' concern that the provision of the Basics Card only to Aboriginal people is a racist measure. Upon learning during the research that the Basics Card was only for Aboriginal people one participant said 'I think it's okay … but it's racist, it's bad racism.'[27] Some CYP said the Basics Card should be a voluntary measure available for anyone who needs one.

Children and young people said the blue and white signs shame and single out Aboriginal communities and did little, if anything, to effectively regulate alcohol use. Participants said the blue and white signs in fact have led to some negative implications for CYP. Many CYP said the signs do not help Aboriginal CYP because the prohibition on alcohol in prescribed communities means that adults from these communities who wish to buy alcohol can only do so if they go to a town centre where the purchase of alcohol is permitted. Often the town centres are a long distance from the prescribed communities, and this means some CYP can be left without adult care at times, and sometimes for a long time. Moreover, participants said these signs contributed to perpetuating an already endemic problem—racism—which Aboriginal CYP said is an everyday reality in their lives.

The field work component of this research sought to assess whether CYP identified the NTER and Stronger Futures legislation and policies as 'matters affecting' them.[28] Article 12 of the CRC is clear that CYP have a right to express their views, and have these views considered about 'matters

[27] Tasha (15 year old female), Secondary Class Group Discussion, Field Research Session 2 (of 4) (Northern Territory, 16 May 2014).
[28] See chapter 6 (section 6.2.4).

affecting' them. The findings from sub-question two[29] demonstrate that law and policy relevant to CYP is a 'matter affecting' CYP and is therefore within the meaning and scope of article 12.

The findings detailed in chapter 6 outline that the NTER and Stronger Futures legislation deals with matters which directly and indirectly impact on Aboriginal CYP's lives, and their communities.[30] Therefore, the NTER and Stronger Futures legislation is a 'matter affecting' the CYP who participated in this research.

The Australian Government did not provide an opportunity for Aboriginal CYP to be involved in the design of the NTER and Stronger Futures legislation. However, in order to comply with Australia's duty under article 12 of the CRC Aboriginal CYP must be afforded the opportunity to participate in the development of future laws likely to affect them. Sub-question five asked: 'What did Aboriginal CYP say about their participation in the development of future laws and policies?' The findings arising from the investigation of this question revealed a range of reasons why Aboriginal CYP said they should be involved in law and policy development, as well as a range of suggestions for how governments can involve Aboriginal CYP in these processes. Children and young people said it is appropriate for them to be involved in law and policy making because of their status as the rightful owners of the land, and because their knowledge about Aboriginal law and culture could assist in producing better quality non-Indigenous laws.

The recommendations Aboriginal CYP made about how governments should engage them in law and policy development centred on the importance of governments learning about and understanding the cultural norms relevant to their community, as well as understanding the key issues concerning racism, poverty and homelessness. Children and young people said governments should come to them to seek their views in a location close to where the CYP live. On many occasions CYP stressed the importance

[29] See chapter 4.
[30] See chapter 6 (section 6.2.4).

of governments talking with CYP in a polite and courteous manner, that governments must ask CYP for their views 'nicely.'[31]

The findings in response to sub-question five provide a set of conclusions that debunk myths associated with CYP's participation in public decision-making.[32] These myths are based on persistent ideas dating back to Enlightenment philosophy that conceptualised children as 'becomings' and 'not-yets,' incapable of reason and agency.[33] The findings associated with sub-question five, and documented in chapter 7, refute these ideas by presenting an evidence based template for involving Aboriginal CYP in the development of law and policy, a template that could be adopted and applied by governments to ensure CYP's participation in public decision-making processes.

The CYP involved in this research expressed an interest in being involved in law and policy making. The title of the thesis depicts this: 'Just ask us. Come and see us.'[34] Importantly though, the findings from the field research present a body of evidence that suggest Aboriginal CYP not only want to be involved in the development of law and policies likely to affect them, but that Aboriginal CYP are capable of forming and expressing views about 'matters affecting' them. Under article 12 of the CRC the Australian Government is duty bound to provide opportunities for Aboriginal CYP to express these views, and have these views considered in the process of developing laws and policies that impact on them.

A practical suggestion for how Aboriginal CYP can be involved in legislative and policy decision-making process is via Aboriginal CYP's involvement in an 'interpretive community'[35] (see chapter 7). This is a possible way Aboriginal CYP could influence the interpretation and implementation of article 12 of the CRC, and in doing so give weight to article 19 of the UNDRIP.

[31] Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014); see chapter 7 (section 7.3).
[32] See chapter 7.
[33] See chapter 5.
[34] Tessa (16 year old female), Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).
[35] John Tobin, 'Seeking to Persuade: A Constructive Approach to Human Rights Treaty Implementation' (2010) 23 *Harvard Human Rights Journal* 1.

The body of findings emanating from the investigation of each of the five thesis sub-questions collectively contribute to answering the overall thesis question: 'Why and how should Aboriginal CYP participate in the development of law and policy affecting them?' This was carried out by an analysis of the findings, and the correlations between these findings emerging from part I (methodological and legal foundations) and part II (field research with Aboriginal CYP) of this thesis.

8.4 Final Comments—'Just Ask Us. Come and See Us'[36]

This thesis sought to explore avenues for Aboriginal CYP to play an active and influential role in the development of legislation and policy that affects them. In order for these avenues to be available legislator's and policy maker's conceptualisations of childhood, particularly perceptions about Aboriginal childhood, need to be reformulated and based on modern discourse about children's agency and capacity to make meaningful contributions in public life. From that premise Australia's legal responsibility to involve Aboriginal CYP in law and policy development under article 12 of the CRC can more readily be realised, in a way that is consistent with article 19 of the UNDRIP.

The words of a young person during the field research sums up the main message arising from this research 'Just ask us. Come and see us.'[37] This statement encapsulates the desire expressed by the CYP involved in this research to be involved in the creation of legislative and policy measures that will affect them, and conveys what was found in this research—that if asked, CYP are capable of forming and expressing views about complex matters, including about law and policy. These words also invite the Australian Government to form a direct relationship with Aboriginal CYP, and to do so in an appropriate 'space'—CYP's own environment. This accords with Lundy's CRBA to children's participation, and is confirmed by the *UNCRC's Working Methods* on the involvement of CYP in participatory processes.[38] Finally, these words emphasise that law and policy making conducted in Canberra, about matters affecting Aboriginal CYP is ineffective, and does little to overcome welfare-

[36] Tessa (16 year old female), Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).
[37] Ibid.
[38] Lundy, above n 2; UN Committee on the Rights of the Child, 'Working Methods for the Participation of Children in the Reporting Process of the Committee on the Rights of the Child,' UN Doc CRC/C/66/2 (16 October 2014) ('*UNCRC's Working Methods*').

based approaches to law and policy making, which continues to operate as a key barrier to children's participation. Reconceptualising the relationship between Aboriginal CYP and Australian law and policy makers is required in order for a CRBA to law and policy making to take place.

Participation by way of membership to 'an interpretive community'[39] is a suggested means to implement a CRBA for the involvement of Aboriginal CYP in policy and legislative development. This approach has the potential to be 'emancipatory'[40] and provide a cross-cultural 'place'[41] for Aboriginal CYP to express their views, and have these views considered. Chapter 7 suggests that an 'interpretive community'—within which the meaning of children's rights contained in the CRC can be ascertained, as well as suggestions made about how to implement these rights—should be the basis on which Aboriginal CYP are involved in law and policy making in Australia. In this context the ethical considerations associated with involving Aboriginal CYP can be carefully considered and acted on.

Indigenous adults did not play a substantial role in the development of the NTER and Stronger Futures legislation, and Aboriginal CYP played no role in the development of either package of legislation. In keeping with the CRBA informed by Indigenous research methodologies adopted the research sought to provide a 'space' for CYP to express their views in ways that were relevant, culturally appropriate and interesting.[42] The inclination toward wanting to have fun, and being able to engage in creative activities is a part of 'childhood' that must be respected when adults are seeking CYP's views about matters affecting them. This is not restricted to the research process, but to all processes where CYP's views are being sought—including when legislators and policy makers talk with Aboriginal CYP about law and policy affecting them.

The methods used in this research sought to embed a sense of fun, informality, and a relaxed, free space to yarn. The photograph in figure 8.1 represents the essence of fun this research sought to foster whilst simultaneously discussing serious matters affecting Aboriginal CYP. This photograph was taken by Chris using an iPad and is indicative of the types of photographs CYP took of themselves,

[39] Tobin, above n 35.
[40] Matías Cordero Arce, 'Towards an Emancipatory Discourse of Children's Rights' (2012) 20(3) *International Journal of Children's Rights* 365.
[41] Lundy, above n 2.
[42] Ibid.

and of me, during the field research.[43] This photograph depicts the nature of the research setting, one where attempts were made to reduce the inherent power differential that exists between a researcher and CYP—Chris felt comfortable taking a photograph of me, and experimented with the functionality of the iPad to distort the image producing a result the CYP found amusing, as did I.[44]

In closing, under article 12 of the CRC the Australian Government is duty bound to seek Aboriginal CYP's views when developing laws and policies likely to affect them. The idea of engaging CYP in the development of laws and policies is challenging for adults and for governments. It is challenging because it requires transforming the way laws and policies affecting CYP are developed. It requires adults to shift from perceiving CYP as objects in need of protection who lack capacity to participate in decision-making—to thinking about CYP as subjects with agency, rights and entitlements with expertise and capacity to contribute to developing effective laws and policies about matters affecting them. This thesis has demonstrated that engaging with children to seek their views is not something to be fearful of—on the contrary, it can be done in a way that is creative, engaging, fun, age appropriate, culturally sensitive and ethically sound. Under these conditions Aboriginal CYP are willing and able to express their views and to actively participate in decisions about matters affecting them, including the development of law and policy that is likely to impact on their lives, their families and their communities.

[43] Chris (17 year old male), Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).
[44] Given this thesis will become publically available photographs that identify CYP have not been used.

Figure 8.1: iPad Photograph Taken of the Researcher by a Young Person[45]

[45] Secondary Class Group Discussion, Field Research Session 3 (of 4) (Northern Territory, 20 May 2014).

Appendices

Appendix 1: Ethics Approvals

i. MQHREC (Scoping Trip, Ref 5201200619)

Holly Doel-Mackaway

From: Ethics Secretariat <ethics.secretariat@mq.edu.au>
Sent: Friday, 14 September 2012 3:31 PM
To: Dr Natalie Klein
Cc: A/Prof Susan Page; Ms Carolyn Mary Adams; Ms Holly Astrid Doel-Mackaway; Dr John Tobin
Subject: Approved- Ethics application Klein (5201200619)

Dear Dr Klein

Re: "Adopting a 'child rights-based approach' (CRBA) to policy and legislative development regarding indigenous children in Australia is an effective way to fulfil indigenous children's rights and necessary to meet Australia's international human rights treaty obligations" (Ethics Ref: 5201200619)

Thank you for your recent correspondence. Your response has addressed the issues raised by the Human Research Ethics Committee and you may now commence your research.

This research meets the requirements of the National Statement on Ethical Conduct in Human Research (2007). The National Statement is available at the following web site:

http://www.nhmrc.gov.au/_files_nhmrc/publications/attachments/e72.pdf.

The following personnel are authorised to conduct this research:

A/Prof Susan Page
Dr John Tobin
Dr Natalie Klein
Ms Carolyn Mary Adams
Ms Holly Astrid Doel-Mackaway

NB. STUDENTS: IT IS YOUR RESPONSIBILITY TO KEEP A COPY OF THIS APPROVAL EMAIL TO SUBMIT WITH YOUR THESIS.

Please note the following standard requirements of approval:

1. The approval of this project is conditional upon your continuing compliance with the National Statement on Ethical Conduct in Human Research (2007).

2. Approval will be for a period of five (5) years subject to the provision of annual reports.

Progress Report 1 Due: 14 September 2013 Progress Report 2 Due: 14 September 2014 Progress Report 3 Due: 14 September 2015 Progress Report 4 Due: 14 September 2016 Final Report Due: 14 September 2017

NB. If you complete the work earlier than you had planned you must submit a Final Report as soon as the work is completed. If the project has been discontinued or not commenced for any reason, you are also required to submit a Final Report for the project.

Progress reports and Final Reports are available at the following website:

http://www.research.mq.edu.au/for/researchers/how_to_obtain_ethics_approval/human_research_ethics/forms

1

3. If the project has run for more than five (5) years you cannot renew approval for the project. You will need to complete and submit a Final Report and submit a new application for the project. (The five year limit on renewal of approvals allows the Committee to fully re-review research in an environment where legislation, guidelines and requirements are continually changing, for example, new child protection and privacy laws).

4. All amendments to the project must be reviewed and approved by the Committee before implementation. Please complete and submit a Request for Amendment Form available at the following website:

http://www.research.mq.edu.au/for/researchers/how_to_obtain_ethics_approval/human_research_ethics/forms

5. Please notify the Committee immediately in the event of any adverse effects on participants or of any unforeseen events that affect the continued ethical acceptability of the project.

6. At all times you are responsible for the ethical conduct of your research in accordance with the guidelines established by the University. This information is available at the following websites:

http://www.mq.edu.au/policy/

http://www.research.mq.edu.au/for/researchers/how_to_obtain_ethics_approval/human_research_ethics/policy

If you will be applying for or have applied for internal or external funding for the above project it is your responsibility to provide the Macquarie University's Research Grants Management Assistant with a copy of this email as soon as possible. Internal and External funding agencies will not be informed that you have final approval for your project and funds will not be released until the Research Grants Management Assistant has received a copy of this email.

Please retain a copy of this email as this is your official notification of final ethics approval.

Yours sincerely
Dr Karolyn White
Director of Research Ethics
Chair, Human Research Ethics Committee

ii. MQHREC (Field Research, Ref 5201300649)

Holly Doel-Mackaway

From: Ethics Secretariat <ethics.secretariat@mq.edu.au>
Sent: Monday, 14 October 2013 10:34 AM
To: Carolyn Adams
Cc: Associate Professor Susan Page; Ms Holly Astrid Doel-Mackaway; Dr John Tobin
Subject: Approved- Ethics application- Adams (Ref No: 5201300649)

Dear Ms Adams

Re: "Indigenous children and young people's right to participate in law and policy making: A child rights examination of the Stronger Futures legislation" (Ethics Ref: 5201300649)

Thank you for your recent correspondence. Your response has addressed the issues raised by the Human Research Ethics Committee (Human Sciences and Humanities), effective 10-Oct-13. This email constitutes ethical approval only.
This research meets the requirements of the National Statement on Ethical Conduct in Human Research (2007). The National Statement is available at the following web site:

http://www.nhmrc.gov.au/_files_nhmrc/publications/attachments/e72.pdf.

The following personnel are authorised to conduct this research:

Associate Professor Susan Page
Carolyn Adams
Dr John Tobin
Ms Holly Astrid Doel-Mackaway

NB. STUDENTS: IT IS YOUR RESPONSIBILITY TO KEEP A COPY OF THIS APPROVAL EMAIL TO SUBMIT WITH YOUR THESIS.

Please note the following standard requirements of approval:

1. The approval of this project is conditional upon your continuing compliance with the National Statement on Ethical Conduct in Human Research (2007).

2. Approval will be for a period of five (5) years subject to the provision of annual reports.

Progress Report 1 Due: 10 October 2014
Progress Report 2 Due: 10 October 2015
Progress Report 3 Due: 10 October 2016
Progress Report 4 Due: 10 October 2017
Final Report Due: 10 October 2018

NB. If you complete the work earlier than you had planned you must submit a Final Report as soon as the work is completed. If the project has been discontinued or not commenced for any reason, you are also required to submit a Final Report for the project.

Progress reports and Final Reports are available at the following website:

http://www.research.mq.edu.au/for/researchers/how_to_obtain_ethics_approval/human_research_ethics/forms

1

3. If the project has run for more than five (5) years you cannot renew approval for the project. You will need to complete and submit a Final Report and submit a new application for the project. (The five year limit on renewal of approvals allows the Committee to fully re-review research in an environment where legislation, guidelines and requirements are continually changing, for example, new child protection and privacy laws).

4. All amendments to the project must be reviewed and approved by the Committee before implementation. Please complete and submit a Request for Amendment Form available at the following website:

http://www.research.mq.edu.au/for/researchers/how_to_obtain_ethics_approval/human_research_ethics/forms

5. Please notify the Committee immediately in the event of any adverse effects on participants or of any unforeseen events that affect the continued ethical acceptability of the project.

6. At all times you are responsible for the ethical conduct of your research in accordance with the guidelines established by the University. This information is available at the following websites:

http://www.mq.edu.au/policy/

http://www.research.mq.edu.au/for/researchers/how_to_obtain_ethics_approval/human_research_ethics/policy

If you will be applying for or have applied for internal or external funding for the above project it is your responsibility to provide the Macquarie University's Research Grants Management Assistant with a copy of this email as soon as possible. Internal and External funding agencies will not be informed that you have approval for your project and funds will not be released until the Research Grants Management Assistant has received a copy of this email.

Please retain a copy of this email as this is your official notification of ethics approval.

Yours sincerely

Dr Karolyn White
Director of Research Ethics
Chair, Human Research Ethics Committees

Office of the Deputy Vice Chancellor (Research)

Ethics Secretariat
Research Office
Level 3, Research Hub, Building C5C East Macquarie University NSW 2109 Australia
T: +61 2 9850 6848
F: +61 2 9850 4465
http://www.mq.edu.au/research

CRICOS Provider Number 00002J

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iii. MQHREC Note of Commendation (Field Research, Ref 5201300649)

Holly Doel-Mackaway

From: Ethics Secretariat <ethics.secretariat@mq.edu.au>
Sent: Monday, 30 September 2013 10:46 AM
To: Carolyn Adams
Cc: Ms Holly Astrid Doel-Mackaway
Subject: Ethics application ref: 5201300649 - Outcome of HREC review (September meeting)

Dear Ms Adams

Re: Indigenous children and young people's right to participate in law and policy making: A child rights examination of the Stronger Futures
legislation

Thank you for submitting the above application to the Human Research Ethics Committee (Human Sciences and Humanities) for review. Your application was reviewed at the HREC (Human Sciences and Humanities) meeting held on 27 September 2013.

The HREC would like to commend the research team on the high quality of the application and for successfully managing to handle all sensitivities in relation to this research with such delicateness and professionalism. The HREC would also like to commend the research team for the way that the research incorporated alternative ways for information to be supplied to parents and for consent to be obtained, i.e. the development of a video explaining the project.

With the research team's permission, the HREC would like to add this application to its Ethics Library. A separate email will be sent to you in relation to this request.

In order to ensure that above application meets the requirements of the National Statement on Ethical Conduct in Human Research (2007) the Committee has requested the following modifications to your application:

1. Item 1.3. Please indicate the role of Dr John Tobin, e.g. associate investigator, etc.

2. Item 2.2. Please provide a list of references.

3. For noting: Item 5.9(a) In relation to the question 'Has this illegal behaviour already been dealt with by the criminal justice system?', all three boxes have been selected (yes, no & unsure). Perhaps 'unsure' would be a more suitable response.

4. The research script states that Ms Doel-Mackaway wants to 'write a book'
but the PhD is not mentioned. Perhaps this should be changed to "I'm doing my PhD and will write a book which is otherwise called a thesis" or something similar to that effect.

Please provide a copy of the amended research script for review.

Please send your response to each issue via email to ethics.secretariat@mq.edu.au in the form of a covering email or a document attachment. You do not need to resubmit your application. Please cite the reference number above and attach any requested documents with your response.

Please submit your response within six (6) weeks of the date of this email.
If you are unable to respond within this time frame, please contact the Ethics Secretariat.

Please do not hesitate to contact the Ethics Secretariat if you have any questions or concerns.

Regards

1

Fran Thorp
Human Research Ethics Officer
--
Ethics Secretariat
Research Office
Level 3, Research Hub, Building C5C East Macquarie University NSW 2109 Australia
T: +61 2 9850 6848
F: +61 2 9850 4465
http://www.mq.edu.au/research

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iv. CAHREC (HREC-13-197)

CENTRAL AUSTRALIAN HUMAN RESEARCH ETHICS COMMITTEE
Centre for Remote Health
PO Box 4066 Alice Springs NT 0871
Ph: (08) 8951 4700 Fax: (08) 8951 4777
Email: cahrec@flinders.edu.au

Ms Holly Doel-Mackaway
Macquarie University
21 Gwendale Cr
Eastwood NSW 2122

25th February 2014

Our Ref: HREC-13-197

Dear Ms Doel-Mackaway

RE: Ethics Application – Approval

The Central Australian Human Research Ethics Committee (CAHREC) has considered your response to the Committee's request for further information about your research project **'Indigenous children and young people's right to participate in law and policy making: A children's rights examination of the Northern Territory emergency Response and the Stronger Futures legislation.**

The Committee agreed that this project now meets the requirements of the National Statement on Ethical Conduct in Human Research.

The Committee decided to **grant approval** for your project to proceed.

However, this approval is contingent upon CAHREC receiving evidence of the following changes:

- At Pt 5 it should state 'a school in the NT' rather than 'a school in Central Australia' as this makes the school less identifiable.
- The Information sheet needs to explain the procedure for withdrawal and whether or not withdrawal will remove all the participant's data from the project.

The period for which approval has been given is **from the date of receipt of the above amendments** until the **31st October 2014**. If you do not complete the research within the projected time please request an extension from CAHREC.

Ethics approval is contingent upon the submission of an annual Progress Report and a Final Report upon completion of the project. Please make a note of the following dates as failure to submit reports in a timely manner will result in your ethics approval lapsing.

Your Final report is due on:

31st October 2014

Copies of the report form can be downloaded from the CAHREC website.

Yours sincerely

Chris Schwarz
Secretariat Support
Central Australian Human Research Ethics Committee

Appendix 2: Invitation to Participate in the Scoping Trip

MACQUARIE UNIVERSITY

Macquarie Law School
MACQUARIE UNIVERSITY NSW 2109 AUSTRALIA
Phone +61 (0)2 9850 9931
Fax +61 (0)2 9850 7686
Email natalie.klein@mq.edu.au

10 October 2012

Dear Sir / Madam

Re: Invitation to participate in a scoping activity regarding research on Indigenous children's rights and the Northern Territory Emergency Response (NTER)

Overview of the research
I am currently supervising Holly Doel-Mackaway who is undertaking PhD research on Indigenous children's rights and the NTER. Holly is a lawyer and a social worker with over fifteen years of experience working nationally and internationally on human rights issues.

In 2013 Holly will be conducting field research to obtain the views of Indigenous children about the impact of the NTER on their human rights. To date, there has been no research conducted documenting the views of Indigenous children about the impact of the NTER on their lives. This research focusses on the right of children to express their views freely in all matters affecting them and for those views to be given due weight in accordance with Article 12 of the *Convention on the Rights of the Child.*

Scoping trip to the Northern Territory to interview key people in the field
In order to carry out this research in the most effective and culturally appropriate way Holly will soon travel to the Northern Territory to carry out a short five day scoping trip. During this trip Holly will consult with Indigenous and non-Indigenous people in the field to seek advice and input into the research design, and who she should ask to participate in the upcoming field research in 2013. Holly will also be speaking with a small number of relevant professionals from Sydney based organisations. Children will not be interviewed during the scoping trip.

What is the purpose of the scoping activity?
The purpose of the scoping activity is:
1. To undertake individual meetings with Indigenous and non-Indigenous people from key organisations in [redacted] to discuss the proposed research and seek input about how best to proceed with the research design and proposed methodology and
2. To establish key contacts and build relationships with people in the Northern Territory.

Invitation to participate in a scoping interview
I would like to invite you to participate in a scoping interview. It is envisaged that the scoping trip will provide significant information as to how, and with whom, the research is conducted. All participants will be provided with any published work arising from the research, as well as be informed about how your participation in the scoping activity influenced the research design.

How will the scoping interview be undertaken and what will be asked of participants?
Informal face to face meetings with representatives from a range of schools and government and non-government organisations will take place in either [redacted] in September 2012. Participants in [redacted] will be invited to participate by phone or Skype. Participants will be asked to take part in an hour long interview to answer questions such as:

- Can you suggest effective ways for me to identify and make contact with Indigenous children and their parents to ask them to participate in my research?
- Do you have any suggestions for how I might most effectively engage and communicate with Indigenous children and their parents on an ongoing basis through the course of my research?

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- What potential risks do you think are involved in undertaking this research and can you suggest ways I could minimise those risks?
- What barriers or hurdles, for example, in relation to language or culture am I likely to encounter in conducting this research? Can you suggest ways of overcoming these barriers?
- Can you suggest ways I can thank child and adult participants, and their communities, for their contribution to this research?
- Would your agency / school be interested in participating further in this research?

If you agree, the interviews will be audio- recorded and the recordings will only be accessible by the researcher and her direct supervisors. Any personal information or details gathered in the course of the research are confidential. Any publications arising from the research will not include any information identifying individual participant without prior written permission from the participant.

Participation in this study is entirely voluntary. You are not obliged to participate, and if you decide to participate you are free to withdraw at any time without having to give a reason and without any consequence. The scoping interviews are not expected to pose any risk or discomfort to participants. However, for some participants discussing the issues Indigenous children experience as a result of the NTER may be difficult. The researcher will provide participants with a referral to an appropriate support service should a participant require counselling or other support as a result of being involved in a scoping interview.

How do you accept this invitation?
If you would like to participate in a scoping interview please email Holly at holly.doel-mackaway@students.mq.edu.au. Holly will then phone you to make a suitable time to meet with you. A follow up email will also be sent asking you to reply by email as to whether you consent to have the interview recorded and the information obtained used for research purposes, including reference to the information you provide in the thesis and any published work arising from the research.

If you have any questions please feel free to contact me on (02) 9850 9931 or by email at natalie.klein@mq.edu.au.

I would be most pleased if you would accept this invitation to participate in a scoping activity interview.

Sincerely

Natalie Klein
Professor & Dean of Macquarie Law School

The ethical aspects of this study have been approved by the Macquarie University Human Research Ethics Committee. If you have any complaints or reservations about any ethical aspect of your participation in this research, you may contact the Committee through the Director, Research Ethics (telephone (02) 9850 7854; email ethics@mq.edu.au). Any complaint you make will be treated in confidence and investigated, and you will be informed of the outcome.

Appendix 3: Letter to the School Council Seeking Approval to Conduct Field Research

MACQUARIE UNIVERSITY

Macquarie Law School
MACQUARIE UNIVERSITY NSW 2109 AUSTRALIA
Phone +61 (0)2 9850 7670 / 0411 980 922
Fax +61 (0)2 9850 7686
Email holly.doel@mq.edu.au

[redacted]

19 July 2013

Dear School Council

Re: Request to undertake research with students at [redacted] School.

I am writing to the School Council to request permission to undertake research with children and young people at [redacted] School. I am currently completing a PhD at Macquarie University under the supervision of Carolyn Adams from Macquarie Law School and Associate Professor Susan Page from Warawara, Department of Indigenous Studies. My background is in law and social work and I have been working in the field of human rights for fifteen years both nationally and internationally. Last year I had the privilege of coming to [redacted] and meeting with the Principal [redacted] to discuss the proposed research. [redacted] provided many valuable ideas on how best to undertake the research and the most appropriate and effective ways to engage Indigenous children and young people in the research.

This research focuses on children's right to express their views freely in all matters affecting them and for those views to be given due weight under Article 12 of the *Convention on the Rights of the Child*. This research aims to provide recommendations on how Australia can effectively engage Indigenous children and young people in the development and review of policies and laws which affect them using the Northern Territory Emergency Response (the Intervention) as a case study. Indigenous children and young people were not consulted regarding the Intervention and have not been consulted about the implementation of the Stronger Futures legislation.

This research aims to provide Indigenous children and young people's perspective on the Intervention. If you deem it appropriate I would like to speak to children and young people aged between 11 and 17 at [redacted] School and ask them about their knowledge of, and views about, the Intervention and their ideas on how they can be involved in the design and evaluation of policies and laws affecting them and their communities.

Overview of the planned research

If possible the research will be conducted later this year at a time convenient for the School and students. The proposed format of how the research will be conducted is outlined below (subject to negotiation).

> **Visits 1 and 2: Getting to know you meetings:** Attend the school to meet with students (primary and secondary students separately) and interested parents and relatives and over a couple of days on two separate occasions.
>
> At these meetings I will talk with students about the research topic and engage the students in interactive activities regarding Indigenous children's rights. A separate parent information session could also be held. Parental permission would be sought for students to participate in the research, be photographed and videoed.
>
> **Visit 3: First Research meeting:** A few weeks after visits 1 and 2 I plan to meet with primary and secondary students in separate groups to discuss their thoughts on the Intervention and ideas on how they could be involved in making laws and policies relating to their lives. I would use various tools to talk with the children and young people such as student to student video interviewing (drawing on the children's existing knowledge of movie making).

Visit 4: Second Research meeting: A few weeks after the visit 3 I plan to meet again with primary and secondary students in separate groups to further develop the ideas that arose at the previous research meetings.

Visit 5: Present the results of the research to all involved and offer thanks for their involvement in research. This could involve running an event involving food and music and presenting a visual overview (video and PowerPoint presentation) of the findings of the research for the children, youth, families and staff of [redacted] An appropriate way of thanking the School and students for their involvement would be negotiated with the School and students.

Follow-up documentation (2013-2015): This PhD research is due to conclude in June 2015. Until this time articles on the research will be written and submitted for publication. [redacted] School would be provided with child friendly versions of the research results to share with students. Copies of any published material will be shared with [redacted] School.

If you agree for me to conduct this research at [redacted] I will provide the School with a full overview of the research plan, methodology and the methods to be used.

The identity of participating children and young people is confidential and no names or identifying information will be published. Interviews and discussions may be audio and video recorded and will only be accessible by my direct supervisors and I.

Participation in this research is voluntary. [redacted] is not obliged to participate, and if you decide to participate you can withdraw at any time without having to give a reason and without any consequence. The interviews are not expected to pose any risk or discomfort to participants. However, some participants may experience difficulty and distress discussing issues to do with the Intervention. I will be sensitive to child and youth participants and should it be necessary I will arrange an appropriate referral to a support service and / or support within the School.

I look forward to your decision as to whether I am able to undertake this research with [redacted] School. Should you decide to permit this research I will then apply to the Human Research Ethics Committee at Macquarie University for approval to undertake the research. I will also provide the School with a Working with Children Clearance Notice from Safe NT.

If you have any questions please feel free to contact me on 0411 980 922 or at holly.doel@mq.edu.au or my Supervisors, Carolyn Adams on (02) 9850 7086 or carolyn.adams@mq.edu.au, or Associate Professor Susan Page (02) (0)2 9850 8634 or susan.page@mq.edu.au.

Sincerely

Holly Doel-Mackaway
PhD Candidate, Macquarie Law School
BSW (Hons); LLB (Hons); PLT (Cert).

(attachment sent with the letter to the Council)
Overview of PhD Research at [redacted] School

(Updated 8 November 2013)

Summary of the research

Title: Indigenous young people's right to participate in law and policy making: Listening to young people about the Northern Territory Emergency Response and the Stronger Futures legislation.

This research seeks to listen to Indigenous youth talk about the NTER and the Stronger Futures legislation. There is no research documenting the views of Indigenous youth about these packages of legislation and corresponding polices. There is also a lack of research on the involvement of Indigenous youth in the development of policy and legislation relevant to them. This research aims to inquire into both of these issues based on the requirement in Article 12 of the *Convention on the Rights of the* Child (CRC) that young people have the right to have their views taken into account on matters affecting them. This research is also based on the provisions of the *Declaration on the Rights of Indigenous Peoples* regarding self-determination and the obligation of governments to effectively consult with Indigenous people when designing legislation and policy that will affect them.

Obtaining consent

This project has been carefully designed to ensure young people and their parents/carers are fully aware of what they are agreeing to if they consent to being involved in this research. So as not to place face-to-face pressure on the parents/carers and students to be involved Holly plans to produce a two minute introductory video introducing herself and the research which the school can show students. Also, to avoid placing pressure on the parents/carers an Information Sheet will be sent home with the students. This will enable the parents/carers to consider their consent prior to Holly visiting parents/carers during the school bus pick-up and drop-off to discuss and answer any questions. When Holly visits the school she will talk with parents and students about whether they agree to participate and obtain their verbal or written consent.

Proposed timeframe

The researcher proposes to conduct field research in term 1, 2014, depending on what is convenient for the school. It is expected that approximately seven hours of student time will be required to participate in this research over 5-7 weeks. The following is a suggested overview of the timeframe of the research subject to the convenience of the school.

Visit 1: Getting to know the students / Information Session 1 (Children's Rights) / Parent and Carer Information Evening / Lunch Time Fun

Days 1 and 2 – The researcher will spend time getting to know the children and young people during their normal school routine. The researcher will spend separate time in the Grade 5/6 classroom and in the Grade 7-10 classroom. The researcher will go on the school bus (am and pm) during this whole visit in the morning and afternoon to provide information to parents and carers about the research and to answer any questions.

Days 3 and 4- Spend further time getting to know the children and young people during their normal school routine. Conduct a one hour child rights information session for primary and another one hour session for secondary students.

Parent/Carer Information Evening: During this week the researcher, with the assistance of an appropriate staff member, will hold a Parent/Carer Information Evening.

In consultation with the school conduct lunch time activities for any children who would like to be involved: This will support building the relationship between the researcher and the participants in a non-research, non-classroom context. It is also a way of further getting to know the children and young people, and for them to feel more comfortable with the researcher. This may include doing either outdoor or indoor activities depending on the weather. Indoor activities could include constructing Lego, doing craft and using the research iPad resources to practice making videos and read interactive books. Outdoor activities could include casual sporting activities or treasure hunting in the playground (for the younger children).

Visit 2: Getting to know the students / Information Session 2 (Children's Rights and the Right to Participate) / Information Session 3 (NTER and Stronger Futures)

Days 1 and 2 - As appropriate, the researcher will spend further time getting to know the children and young people during their normal school routine remaining sensitive to the requirements of the School. The researcher will spend separate time in the Grade 5/6 classroom and in the Grade 7-10 classroom. The next day the researcher will conduct a one hour session on the *United Nations Convention on the Rights of the Child* and the right to participate in decision-making with primary and another one hour session with secondary students.

The researcher will go on the school bus (am and pm) during this whole visit in the morning and afternoon to seek consent from parents and carers (verbally or written) about the research and to answer any questions. The researcher will also seek consent (written or verbal) from young people during this visit.

Days 3-4 – As appropriate, the researcher will spend further time getting to know the children and young people during their normal school routine remaining sensitive to the requirements of the School. The next day the researcher will conduct a one hour Information session dealing with the NTER and the Stronger Futures legislation and setting out the elements of these initiatives that are the focus of the project, that is, food security, education and access to health care.

In consultation with the school conduct lunch time activities for any children who would like to be involved: see above

Visit 3: Primary Field Research (Yarning Discussion Groups 1 and 2)

The method used to carry out the field research focuses on conducting group discussions using the 'yarning' technique as recommended by the Principal and the School Council as being the most culturally appropriate way to communicate with the students. This methodology has been chosen as it ensures the students feel comfortable, not pressured, to take part in the research. Yarning techniques will be used to answer the research questions (Bessarab, 2010) and interactive activities (including video making, see question 16 below) and breaks will be woven into the discussion time. A suitable school staff member will be present during the discussion groups.

Days 1 and 2 – The researcher will conduct two separate discussion groups (primary and secondary separately) for 1 hour.

Days 3 and 4 – The researcher will conduct two separate discussion groups (primary and secondary separately) for 1 hour.

In consultation with the school conduct lunch time activities for any children who would like to be involved: see above

Visit 4: Primary Field Research (Yarning Discussion Groups 3 and 4)

As outlined above, yarning techniques will again be used to conduct the group discussions.

Days 1 and 2 – The researcher will conduct two separate discussion groups (primary and secondary separately) for 1 hour.

Days 3 and 4 – The researcher will conduct two separate discussion groups (primary and secondary separately) for 1 hour.

In consultation with the school conduct lunch time activities for any children who would like to be involved: see above

Total time investment

- **Primary and secondary students: 7 hours** over 5-7 weeks (three hours for the awareness raising information sessions and four hours of group discussion time).

Visit 5: Mid-2014 – Presentation of research findings and student movie

The researcher will present the results of the research to all involved and offer thanks for their involvement in research. This could involve running an event involving food and music and presenting a visual overview (video and PowerPoint presentation) of the findings of the research for the children, youth, families and staff of [redacted] An appropriate way of thanking the school and students for their involvement will be negotiated with the school and students.

Completion: 2014-June 2015

The results of the research will be provided, in child-friendly formats, to participants and their families. In addition, Holly will arrange a special event to screen a movie of the compilation of student videos. Research findings will be published in academic journals, copies of which will be provided to the school and any interested participants and their families. No individual students will be identified by name in published materials.

Are the risks of the students being involved?

It is possible that some participants may experience psychological distress as a result of being involved in the research given the research concerns the NTER and Stronger Futures legislation and related to this are matters concerning child abuse, family interactions, the status of Indigenous people in the community and the impact of large scale social policy on the community. However, obtaining information about child abuse is not part of this project. This research is concerned with three elements of the NTER and Stronger Futures legislation that directly concern youth: education, health and food security. Holly has significant experience working with, and communicating with, children and young people. Throughout her contact with the students she will remain sensitive to their needs and respond appropriately such checking with a student about their wellbeing or moving onto different

discussion topics if a participant appears distressed. Holly is also aware of her legal responsibilities to report any child maltreatment concerns to the Northern Territory Department of Children and Families. Holly has received the Northern Territory Child Protection Clearance and Ochre Card

How will the students benefit from being involved?

Students will benefit from being involved in the research in several ways. Firstly, in the three Information Sessions they will learn more about their human rights and responsibilities, technology, laws and policies. This includes understanding the process and impact of legislation and government policy and that there are ways these processes can be influenced by people outside government, including themselves. This material encourages students to identify social issues within the local and global community and take steps to promote positive change. Students will also have the opportunity to create a peer-to-peer video as a part of the research and use skills the older students have already acquired at school. These videos will be made into a [redacted] Movie of the research and shown at a special event organised by Holly in the middle of 2014.

Appendix 4: Letter of Approval from the School Council

[redacted]

[redacted]CHOOL COUNCIL INC.

Phone: [redacted]
Fax: [redacted]
email: [redacted]

Holly Doel-Mackaway
Macquarie Law School
MACQUARIE UNIVERSITY
NSW 2109 AUSTRALIA

Dear Ms Doel-Mackaway

We have considered your request to undertake research with some of the [redacted] students.

We understand that you would like to talk with students from grade 5 to grade 10 about what they think about the Intervention and Stronger Futures legislation, and that you would like to talk with students in groups. We are pleased to hear that you intend to 'yarn' with the children and avoid asking them direct questions which may make them feel uncomfortable and that you will be sensitive to students, as many are shy.

The Principal, [redacted] has informed us that you would like to run three information sessions and hold four discussion groups at [redacted] School, and that this will take about 7 hours spread over 4 weeks of a school term. We understand that parents and students will be asked whether they want to be involved in this research and that involvement is voluntary.

We understand that the research aims to show what Aboriginal young people think about the Intervention and Stronger Futures legislation and that their 'voice' is important to listen to. We look forward to receiving information about the research results and know that you may write about the research in academic journals or talk about it at conferences. We understand that student's personal information such as their names and addresses will remain confidential.

We agree to the research taking place at the School in collaboration with the School Principal and/or other staff members.

Sincerely

[redacted]
Signed by or on behalf of a **Member of the School Council**

[redacted] President 05/02/14
Name /Date

Appendix 5: Overview of Proposed Field Research

(Excerpt from approved documentation from the Central Australian Human Research Ethics Committee (CAHREC))

TAB 14: Researcher Schedule of Visits to [redacted] School

Commencement: The researcher proposes to conduct field research in early 2014, preferably in term 1 or 2. Visits 1-4 will be conducted over a 4 week period depending on what is convenient for the school.

Prior to field research:

Prior to the researcher attending the school for the first time the Principal will organise for the Introductory Video **(Tab 7)** produced by the researcher to be shown to the children and young people. The Information Sheet for Parents and Carers **(Tab 4)** as well as the parents and child-friendly summary pages will also be sent home with students in advance of the researcher's first visit and another provided, if necessary, when the researcher meets the parents/carers during the first visit.

- **Visits 1-4 will be conducted over four consecutive weeks.**

Visit 1: (3-4 day visit)

Days 1 and 2 – The researcher will spend time getting to know the children and young people during their normal school routine. The researcher will spend separate time in the Grade 5/6 classroom and in the Grade 7-10 classroom.

Days 3 and 4- Spend further time getting to know the children and young people during their normal school routine. Conduct a one hour child rights information session for primary and another one hour session for secondary students.

Parent/Carer Information Evening: During this week the researcher, with the assistance of the Principal will hold a Parent/Carer Information Evening and provide information to parents and carers about the research and to answer any questions. Members of the School Council will also be invited to attend.

Visit 2: (3-4 day visit)

Days 1 and 2 - As appropriate, the researcher will spend further time getting to know the children and young people during their normal school routine remaining sensitive to the requirements of the school. The researcher will spend separate time in the Grade 5/6 classroom and in the Grade 7-10 classroom.

The next day the researcher will conduct a one hour CRC and participation session with primary and another one hour session with secondary students.

Days 3-4 – As appropriate, the researcher will spend further time getting to know the children and young people during their normal school routine remaining sensitive to the requirements of the school. The next day the researcher will conduct a one hour Information Session dealing with the NTER and the Stronger Futures legislation and setting out the elements of these initiatives that are the focus of the project, that is, food security, education and access to health care.

Visit 3: (3-4 day visit)

Days 1 and 2 – The researcher will conduct two separate discussion groups (primary and secondary separately) for 1 hour.

Days 3 and 4 – The researcher will conduct two separate discussion groups (primary and secondary separately) for 1 hour.

Visit 4: (4 day visit)

Days 1 and 2 – The researcher will conduct two separate discussion groups (primary and secondary separately) for 1 hour.

Days 3 and 4 – The researcher will conduct two separate discussion groups (primary and secondary separately) for 1 hour.

Total time investment

- **Primary and secondary students: 7 hours** over 4 weeks (three hours for the awareness raising information sessions and four hours of group discussion time).

Visit 5: Mid- late 2014.

The researcher will present the results of the research to all involved and offer thanks for their involvement in research. This could involve running an event involving food and music and presenting a visual overview (video and PowerPoint presentation) of the findings of the research for the children, youth, families and staff of [redacted] An appropriate way of thanking the school and students for their involvement will be negotiated with the school and students.

Completion: 2014-June 2015

Research findings will be published in academic journals. [redacted] school as well as any research participants and their families will be provided with copies of any publications arising from the research.

Appendix 6: Information Afternoon Tea for Parents, Carers and Children

Information Afternoon Tea for Parents, Carers and Children

After School at [redacted]
Wednesday 30 April 2014 at 3.15pm

Research at [redacted] School about what young people think about the Intervention and Stronger Futures legislation

Come along to find out about this research and whether you would like your child to be involved in it. Feel free to bring your children to share afternoon tea together.

Appendix 7: Child and Young Person Information and Consent Form (including Child-Friendly Cover Sheet)

MACQUARIE UNIVERSITY

Research at [redacted] School in 2014

28 April to 30 May 2014

Would you like to talk about the Intervention and the Stronger Futures laws? No-one has asked Aboriginal kids what they think about it yet.

Why do this research?

- To show that Aboriginal young people's ideas are important and these ideas could help make laws about Aboriginal people. Holly, from Macquarie University is doing the research.

How long will it take and what will happen?

- About 7 hours over 4 weeks from **29 April till 30 May 2014**: three Information Sessions (3 hours) and four group discussions (4 hours).

What will you get out of it?

- You will have the chance to tell someone your views about the Intervention and Stronger Futures.
- You will learn more about technology, your rights and the law.
- You will get to make a movie with iPad's and have a special event at the School where the movie is shown.

Could anything go wrong?

- Some people might get upset talking about the Intervention and Stronger Futures legislation. If you do get upset Holly will help you.

Do you want to be involved?

- You do not have to be involved. This is not part of your school work. You can say no. If you want to be involved please sign and return the consent form to the School.

➢ ***More information about this research is attached.***

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NSW 2109 AUSTRALIA

Carolyn Adams, Senior Lecturer

Phone: 02 9850 7086
Email: carolyn.adams@mq.edu.au

Warawara Department of Indigenous Studies
MACQUARIE UNIVERSITY
NSW 2109 AUSTRALIA

Associate Professor Susan Page
Department Director of Learning and Teaching
Phone: 02 9850 8634
Email: susan.page@mq.edu.au

Research at [redacted] School

What do Aboriginal young people think about the Intervention and Stronger Futures legislation?

- You can keep this information sheet.
- You do not have to participate in this research.
- This is not part of your school work—***this means you can say no.***

What is this research about?

Hello, our names are Carolyn Adams and Susan Page. We are supervising Holly Doel-Mackaway's PhD research about the Intervention and Stronger Futures legislation. So far, nobody has asked Aboriginal young people what they think about the Intervention and Stronger Futures. We think it is important to know what young Aboriginal people think about it. This research aims to show that young people's ideas may be able to help make laws and policies.

Holly is coming to [redacted] School and would like to talk with your class about this. A staff member will be there and your parents are welcome to come too.

Holly has worked for a long time with children and young people in Australia and overseas. Her work is about listening to children to understand what adults can do to make their lives better.

How long will it take?

Holly hopes to talk with your class for about 7 hours spread out over 4 weeks (**from 29 April till 30 May 2014**). In the first two weeks Holly would like to get to know you in your classroom and run three 'Information Sessions'—two about the *United Nations Convention on the Rights of the Child* and one about the Intervention and Stronger Futures. In the last two weeks Holly would like to hold four 'Discussion Groups', of about an hour each, to ask your class what you think about the Intervention and Stronger Futures.

What are you being asked to agree to?

You are being asked if you agree to being involved in this research. This includes three ***'Information Sessions'*** and four ***'Discussion Groups'*** being run by Holly at [redacted] School. You are also being asked if you agree for Holly to **audio record** (not video record) what you say during the Discussion Groups so she can remember and write down what you say. You are also being asked if you agree to Holly taking **photographs** of you to record your participation in the research. You will also have the choice about whether you want to make a video with another student as a part of this research. The student's videos will be made into a movie to show at a special event at the School for everyone to attend. This movie is only for the School and will not be given to anyone else.

These recordings and photos will be kept on Holly's password protected computer and may be used in presentations she gives, articles she writes and at a movie night about this research at the School. The digital copies will not be given to anyone and will be deleted after five years.

MACQUARIE UNIVERSITY

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Associate Professor Susan Page
Department Director of Learning and Teaching
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Email: susan.page@mq.edu.au

Holly plans to write journal articles and speak at conferences about the results of this research using the photographs, audio recordings and video of the research taking place. Your name, where you live and [redacted] School will not be mentioned in any article or presentation. Holly is committed to making sure that your child's personal information remains private.

If you choose to share Aboriginal knowledge and cultural heritage during the discussions the ownership of this information remains with you and Holly will make sure you are acknowledged for this information if the research is spoken about or written in books and journals. If during the research Holly learns that a young person has been harmed, or may be harmed, she must report this to the Department of Children and Families or to the Police.

You are free to say yes or no to being involved in this research. ***This means you can say no.*** If you agree to participate in this research you can stop participating at any time without having to give a reason, and without anything bad happening. If you want to stop participating in the research you can tell your teacher or leave the room where the research is happening and return to your teacher at your classroom. The information you provided up until you left will still be included in the writing up of the research unless you say you don't want it included.

Could anything go wrong?

Some young people might feel uncomfortable talking about the Intervention and Stronger Futures. If you become upset Holly will help you straight away, and arrange more help as soon as possible.

What will you get out of it?

You will learn more about technology, human rights, laws and policies. You will talk about why your opinions are important. It is possible that by participating in this research you may influence the way laws and policies about Indigenous young people are made. Hopefully the research will be fun for you as you will have the chance to make a movie with iPad's. This movie is only for the School and will not be given to anyone else.

Do you agree?

If you agree to be involved in this research the School will give you a copy of the consent form, which you can sign or your verbal consent can be recorded if you prefer. If you agree please return the consent form to the School.

Do you have any questions?

If you have any questions please contact Carolyn on (02) 9850 7086 carolyn.adams@mq.edu.au; Susan on (02) 9850 8634 susan.page@mq.edu.au; Holly on 0411 980 922 holly.doel-mackaway@mq.edu.au. The ethical aspects of this study have been approved by the Macquarie University Human Research Ethics Committee (MQHREC) and the Central Australian Human Research Ethics Committee (CAHREC). If you have any complaints or reservations about any ethical aspect of your child's involvement in this research, you may contact either committee: for the MQHREC through the Director, Research Ethics on 02 9850 7854 or ethics@mq.edu.au. For CAHREC through the Secretariat on 08 8951 4700 or cahrec@flinders.edu.au. Any complaint you make will be treated in confidence and investigated, and you will be informed of the outcome.

ABN 90 952 801 237 | CRICOS Provider No 00002J

Macquarie Law School
MACQUARIE UNIVERSITY NSW 2109
AUSTRALIA
Carolyn Adams
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Phone 02 9850 7086
Fax 02 9850 7686
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Research about Indigenous young people's views about the Intervention and Stronger Futures legislation

Young Person Consent Form

I *(insert young person's name)* _____ have read, or have had read to me, and understand the information above. Any questions I have asked have been answered. I agree to participate in this research, knowing that I can withdraw from further participation in the research at any time without any consequence.

I **agree / do not agree** (please circle one) to the researcher **audio-recording the discussions** involving me.

I **agree / do not agree** (please circle one) to the researcher **taking photograph's** during the research involving me.

I **agree / do not agree** (please circle one) to making and featuring in a video during the research.

The researcher will provide you with a copy of this form for you to keep.

Young Person's Name:_____

Young Person's Signature: _____ Date:_____

Researcher's Name: HOLLY DOEL-MACKAWAY

Researcher's Signature: _____ Date:_____

The ethical aspects of this study have been approved by the Macquarie University Human Research Ethics Committee (MQHREC) and the Central Australian Human Research Ethics Committee (CAHREC). If you have any complaints or reservations about any ethical aspect of your child's participation in this research, you may contact either committee: for the MQHREC through the Director, Research Ethics on 02 9850 7854 or email ethics@mq.edu.au or CAHREC through the Secretariat on 08 8951 4700 or email cahrec@flinders.edu.au. Any complaint you make will be treated in confidence and investigated, and you will be informed of the outcome.

Appendix 8: Parent and Carer Information and Consent Form (including Parent and Carer Friendly Cover Sheet)

Research at [redacted] School in 2014

Would you like to know what Aboriginal kids think about the Intervention and the Stronger Futures laws? No-one has asked them what they think yet.

Why do this research?

- To show that Aboriginal young people's ideas are important and these ideas could help make laws about Aboriginal people. Holly, from Macquarie University is doing the research.

How long will it take and what will happen?

- About 7 hours over 4 weeks: three Information Sessions (3 hours) and four group discussions (4 hours). You will be invited to come to a Parent Information session to find out more about the research.

What will your child get out of it?

- They will learn more about technology, their rights and the law.
- They will have the chance to tell someone their views about the Intervention and Stronger Futures.
- They will get to make a movie with iPad's and have a special event at the School for parents, teachers and kids where the movie is shown.

Could anything go wrong?

- Some people might get upset talking about the Intervention and Stronger Futures legislation. If your child gets upset Holly will help them.

Do you want to be involved?

- Your child does not have to be involved. This is not part of their school work. **You can say no.** If you want your child to be involved please sign and return the consent form to the School.

➢ ***More information about this research is attached.***

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Associate Professor Susan Page
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Research at [redacted] School

What do Aboriginal young people think about the Intervention and Stronger Futures legislation?

- This information is for you to keep. Your child does not have to participate in this research.
- This is not part of your child's school work—*this means you can say no.*

What is this research about?

Hello, our names are Carolyn Adams and Susan Page. We are supervising Holly Doel-Mackaway's PhD research about the Intervention and Stronger Futures legislation. So far, nobody has asked Aboriginal young people what they think about the Intervention and Stronger Futures. We think it is important to know what young Aboriginal people think about it. This research aims to show that young people's ideas may be able to help make laws and policies.

Holly is coming to [redacted] School and would like to ask students from grade 5 to year 10 about this. Holly will talk with groups of students and a staff member will be there. You can come too, if you wish. You will also be invited to attend a parent's Information Session at the School before the research begins. Holly has worked for a long time with children and young people in Australia and overseas. Her work is about listening to children to understand what adults can do to make their lives better.

How long will it take?

Holly hopes to talk with students at [redacted] School for about 7 hours spread out over 4 weeks (**from 29 April till 30 May 2014**). In the first two weeks Holly would like to get to know the students in their classrooms and run three 'Information Sessions'—two about the *Convention on the Rights of the Child* and one about the Intervention and Stronger Futures laws. In the last two weeks Holly would like to hold four 'Discussion Groups', of about an hour each, to ask student's what they think about the Intervention and Stronger Futures laws.

What are you being asked to agree to?

You are being asked if you agree to your child being involved in this research. This includes three ***'Information Sessions'*** and four ***'Discussion Groups'*** being run by Holly at [redacted] School. You are also being asked if you agree for Holly to **audio record** (not video record) what your child says during the Discussion Groups so she can remember and write down what your child says. You are also being asked if you agree to Holly taking **photographs** of the children to record their participation in the research. Your child will also have the choice about whether they want to make a video with another student as a part of this research. The student's videos will be made into a movie to show at a special event at the School for everyone to attend.

These recordings and photos will be kept on Holly's password protected computer and may be used in presentations she gives, articles she writes and at a movie night about this research at the School. The digital copies will not be given to anyone and will be deleted after five years.

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Holly plans to write journal articles and speak at conferences about the results of this research using the photographs, audio recordings and video of the research taking place. However, your child's name, where they live and [redacted] School will not be mentioned in any article or presentation. Holly is committed to making sure that your child's personal information remains private.

The ownership of Aboriginal knowledge and cultural heritage is kept by the young people and will be acknowledged when the results of the research are released. If during the research Holly learns that a child has been harmed, or may be harmed, she must report this to the Department of Children and Families or to the Police.

If you agree for your child to participate in this research you can withdraw her/him at any time without giving a reason, and without anything bad happening. ***This means you can say no.*** You or your child can tell your child's teacher that you no longer want your child to participate in the research. The information your child has provided in the research up until that point will be included in the writing up of the research unless you say you don't want it included.

Could anything go wrong?

Some young people might feel uncomfortable talking about the Intervention and Stronger Futures. If your child appears distressed Holly will help your child straight away, and arrange more help as soon as possible.

What are the benefits for your child?

Your child will learn more about technology, human rights, laws and policies. They will also talk about why their opinions are important. It is possible that by participating in this research your child may influence the way laws and policies about Indigenous young people are made. Hopefully the research will be fun for your child as they will have the chance to make a video with an iPad.

Do you agree?

If you agree for your child to be involved in this research the School will give you a consent form to sign and return to the School. Your verbal consent can be recorded if you prefer.

Do you have any questions?

If you have any questions please contact Carolyn on (02) 9850 7086 carolyn.adams@mq.edu.au; Susan on (02) 9850 8634 susan.page@mq.edu.au; Holly on 0411 980 922 holly.doel-mackaway@mq.edu.au. The ethical aspects of this study have been approved by the Macquarie University Human Research Ethics Committee (MQHREC) and the Central Australian Human Research Ethics Committee (CAHREC). If you have any complaints or reservations about any ethical aspect of your child's involvement in this research, you may contact either committee: for the MQHREC through the Director, Research Ethics on 02 9850 7854 or ethics@mq.edu.au. For CAHREC through the Secretariat on 08 8951 4700 or cahrec@flinders.edu.au. Any complaint you make will be treated in confidence and investigated, and you will be informed of the outcome.

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Research about Indigenous young people's views about the Intervention and Stronger Futures legislation

Parent/Carer Consent Form

I *(insert parent's name)* _____ have read, or have had read to me, and understand the information above. Any questions I have asked have been answered. I agree for my child to participate in this research, knowing that I can withdraw, or my child can withdraw, from further participation in the research at any time without any consequence.

I agree / do not agree (please circle one) to the researcher **audio-recording the discussions** involving my child.

I agree / do not agree (please circle one) to the researcher **taking photograph**'s during the research involving my child.

I agree / do not agree (please circle one) to my child making and featuring in a video during the research.

The researcher will provide you with a copy of this form for you to keep.

Parent/Carers Name:_____

Parent/Carers Signature: _____ Date:_____

Young Person's Name:_____

Young Person's Signature: _____ Date:_____

Researcher's Name: HOLLY DOEL-MACKAWAY

Researcher's Signature: _____ Date:_____

The ethical aspects of this study have been approved by the Macquarie University Human Research Ethics Committee (MQHREC) and the Central Australian Human Research Ethics Committee (CAHREC). If you have any complaints or reservations about any ethical aspect of your child's participation in this research, you may contact either committee: for the MQHREC through the Director, Research Ethics on 02 9850 7854 or email ethics@mq.edu.au or CAHREC through the Secretariat on 08 8951 4700 or email cahrec@flinders.edu.au. Any complaint you make will be treated in confidence and investigated, and you will be informed of the outcome.

Appendix 9: Child and Young Person's Pictorial Information and Consent Form

Question	Answer	
Who is Holly? *A researcher from Sydney*	MACQUARIE UNIVERSITY	
What is she doing? *Asking you for your ideas*		
Asking your thoughts about the Intervention / Stronger Futures law		

	STRONGER FUTURES	
If you want to be involved what will we do?		
What happens at the end?		
You do not have to be involved. It is your choice.		

Appendix 10 (i): Pre-Research Information Sessions 1 (CRC) and 2 (Child Participation, the NTER and Stronger Futures Legislation): Primary Class

1

INFORMATION SESSION 1:
Grade 5-6 Class, [redacted] School.
Children and young people rights

2

Who is a child / young person?

3

What are children's rights?

- The things people under 18 are entitled to.
- What children are allowed to do.
- What adults have to do to make sure children are happy, healthy and safe.

4

What do children have the right to?

5

What else do children have the right to?

6

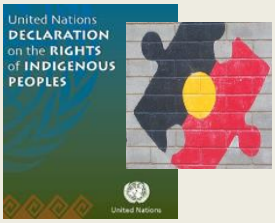
Video

https://www.youtube.com/watch?v=V1BFLitBkco

https://www.youtube.com/watch?v=V1BFLitBkco

7

Aboriginal People's Rights



- Equality
- To decide
- Culture and traditions
- Family
- Traditional knowledge

8

The Convention on the Rights of the Child

- Children's rights for the whole world!
- how children should be treated

9

4 main children's rights

- ✓ To say what you think about important things
- ✓ To be included
- ✓ That adults do what is BEST for you
- ✓ That you get good food, education, protection, health care.

10

Other movies

- Discrimination

- Expression

11

Game: Let's make a movie!!!!

Be a star!!!!!

STEP 1: Think of something children need to be happy, healthy or safe.

STEP 2: Talk about it - or draw it.

STEP 3: Holly will film and you can be the stars then we can watch it back.

12

Information Session 2

Grade 5-6 [redacted] School

Your right to participate in important decisions

13

Recap Information Session 1 on children's rights and the CRC.

Talk about how I won't say anyone's names and we don't have to make a movie, we can just talk or make a movie.

14

15

Overview Article 12: Children's rights to participate in decisions affecting them.
What does this mean? It doesn't mean that children get to decide, it means they should have the opportunity to express their view about things that affect them and have this considered by adults.
The researcher will provide some examples of children expressing their views.

The researcher will talk about why article 12 is important and how it relates to all children across the world.

Show cartoons / video depicting children's right to express themselves such as this one for Secondary
http://www.youtube.com/watch?v=SFentchvj6w

Group Discussion about the right to participate in decision-making.

In delivering the content the researcher will target the different developmental stages of each cohort of students. For example, when talking about the Intervention the researcher will not detail the specific legislation or sections of the respective Acts to any students rather talk about the main elements of the Intervention that this research is about, being elements to do with education, health and food security.

What is the Intervention?
The beginning of the Northern Territory Emergency Response was in 2007 —when primary students were 4-7 years old and secondary students were 6-11 years old.
What changes occurred under the NTER?
(i.e. new rules about children going to school, the Basics Card and new ideas about children's health).

What is the Stronger Futures legislation?
The Stronger Futures legislation started in 2012 and replaced the NTER
Some things changed under the Stronger Futures legislation but the policies about education, health and the Basics Card remained similar.
What does the Intervention (NTER and Stronger Futures legislation) say

about children's education?

Teachers in remote NT schools

Children attending school every day

What does the Intervention (NTER and Stronger Futures legislation) say about children's health?

Services for children's health are important. Services such dentists, doctors, nurses and counsellors.

What does the Intervention (NTER and Stronger Futures legislation) say about basic things such as children's food, clothing and housing?

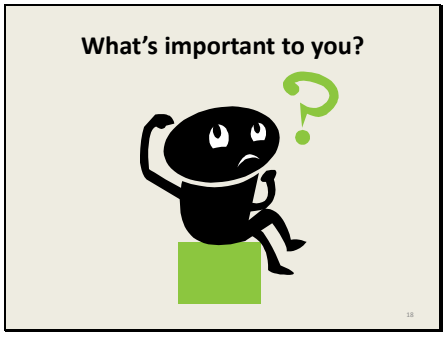
Improvements to community stores, and that it is important that children have enough nutritious food.

Group Discussion about the Intervention (referring to both the NTER and the Stronger Futures legislation).

16

17

18



19

22

20

Activity

- Mould or draw something that is important to you.

- Use the ipad to make a video? Take photos?

20

21

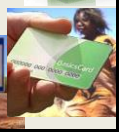
QUIZ: Why is it important to say what you think?

21

23

Next week

- Talking in groups in the playground.
- Play fun games and laugh.
- Talk about the Intervention.
- Use the ipads.



Appendix 10 (ii): Pre-Research Information Sessions 1 (CRC) and 2 (Child Participation, the NTER and Stronger Futures Legislation): Secondary Class

1

INFORMATION SESSION 1:
[redacted] **Secondary Class**
Children and young people rights

2

Who is a child / young person?

3

What are children's rights?

- The things people under 18 are entitled to.
- What children are allowed to do.
- What adults have to do to make sure children are happy, healthy and safe.

4

What do children / young people have the right to?

5

What else do children and young people have the right to?

6

Video

https://www.youtube.com/watch?v=V1BFLitBkco

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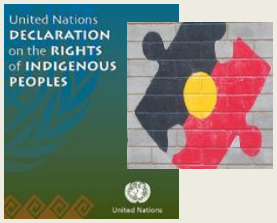
Aboriginal People's Rights



- Equality
- To decide
- Culture and traditions
- Family
- Traditional knowledge

8

The Convention on the Rights of the Child

- Children's rights for the whole world!
- how children should be treated

9

4 main children's rights

- ✓ To say what you think about important things

- ✓ To be included
- ✓ That adults do what is BEST for you

- ✓ That you get good food, education, protection, health care.

10

Other movies

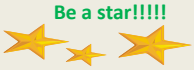
- Discrimination

- Expression

11

Game: Let's make a movie!!!!

Be a star!!!!!



STEP 1: Think of something children need to be happy, healthy or safe.

STEP 2: Talk about it - or draw it.

STEP 3: Holly will film and you can be the stars then we can watch it back.

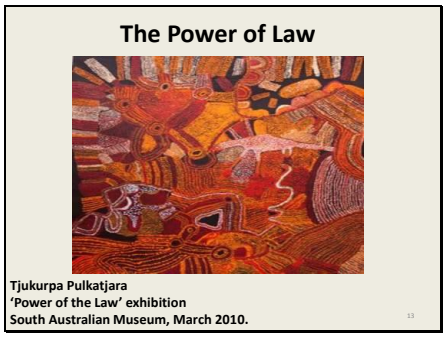
12

INFORMATION SESSION 2:

[redacted]Secondary Class

Your right to participate in decisions about you.

13



- Talk about the power of law.
- Talk about the power of law when it is made with the views of young people.
- The reason I am at your school and in your classroom is to talk with you about a white-fella law that was made called the Intervention and now it is called the Stronger Futures legislation. Just to hear your thoughts about it. You can talk with your parents about it before you talk with me if you want to.
- Next week and the week after I will be here and those of you who have brought in your forms can talk with me in the playground (under a tree) or in a room in groups. No-ones names will be used – what you say is private.
- Another reason I am here is to show ways how white-fellas who don't' live [redacted] but who make laws about people in [redacted] can make better laws.

14

Recap Information Session 1 on children's rights and the CRC.

Talk about how I won't say anyone's names and we don't have to make a movie, we can just talk or make a movie.

15

16

You have a right to <u>participate</u> in decisions about you

You don't always get to decide, but you should have the chance to say what you think, and adults should listen to you.

Overview Article 12: Children's rights to participate in decisions affecting them.

What does this mean? It doesn't mean that children get to decide, it means they should have the opportunity to express their view about things that affect them and have this considered by adults.

The researcher will provide some examples of children expressing their views.

The researcher will talk about why article 12 is important and how it relates to all children across the world.

Show cartoons / video depicting children's right to express themselves such as this one for Secondary

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Group Discussion about the right to participate in decision-making.

In delivering the content the researcher will target the different developmental stages of each cohort of students. For example, when talking about the Intervention the researcher will not detail the specific legislation or sections of the respective Acts to any students rather talk about the main elements of the Intervention that this research is about, being elements to do with education, health and food security.

What is the Intervention?

The beginning of the Northern Territory Emergency Response was in 2007 –when primary students were 4-7 years old and secondary students were 6-11 years old.

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Improvements to community stores, and that it is important that children have enough nutritious food.

Group Discussion about the Intervention (referring to both the NTER and the Stronger Futures legislation).

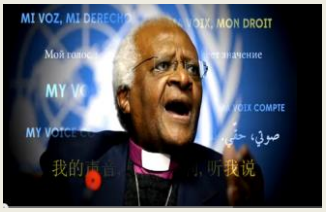
17

"Don't be shame, you be game" (Melissa)

- Young people have ideas and you have the **right** to share your ideas.
- When you share your ideas people **understand** you more and your ideas can make your community and country better.
- If Government learn about your ideas maybe **better laws** can be made for you.
- Talking about your ideas also helps you learn and be confident.

18

Everyone has the right to be heard



My voice counts YouTube video.

http://www.youtube.com/watch?v=SFentchvj6w

19

The Long Walk Alice Springs champions young voices

"Join with us to stop the violence, stop the racism and put an end to poverty."

Young Person, Alice Springs, 2013.

20

Aboriginal organisations to put communities back in control, 2013.

"Aboriginal community-control of service delivery. It's about putting Aboriginal people back in the driver's seat"

Priscilla Collins, Aboriginal Peak Organisations Head.

21

QUIZ: Why is it important to say what you think?

22

What things do you care about?

YOUTH VOICES

YOUTH VOICE NATION

23

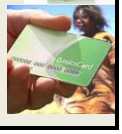
Laws

- **You are allowed to say what you think about laws and rules.**
- **Intervention is White fella law – about young people's health, food and education.**
- **Basics Card, Blue and white signs. Rules about going to school and getting health care.**

24

Next week

- **Talking in groups in the playground.**
- **Play fun games and laugh.**
- **Talk about the Intervention.**
- **Use the ipads (if you want)**
- **What you say is PRIVATE!!!!!**
- **Consent forms.**



Appendix 11: Proposed Discussion Starters (excerpt from approved documentation from the Central Australian Human Research Ethics Committee (CAHREC)

TAB 3: Group Discussion: Possible Discussion Starters

This research aims to examine Indigenous children and young people's views about the Northern Territory Emergency Response (NTER) and the Stronger Futures legislation and how they could be involved in the development and review of legislation and policies that directly impact on their lives. The research seeks to answer the following questions:

- To what extent are Indigenous children and young people aware of the NTER and the Stronger Futures legislation?
- Do Indigenous children and young people see these initiatives as 'matters affecting' them? If not, why not, and are there other policies and laws that they believe affect them? If so, do they believe they should be involved in the development of such legislation and policies, and why?

The answers to these questions will be used to develop a framework for how Indigenous children and young people can provide input into the development and review of laws and policies affecting their lives and communities.

Group interviews using 'yarning' techniques[1] were conducted with Indigenous children aged 11-17 years olds in their school environment. The school setting was not ideal because children may perceive their involvement in the study as part of school work. However, the groups were run in as 'un-school-like' way as possible by keeping discussions informal.[2] Yarning is defined as:

> . …an informal and relaxed discussion through which both the researcher and participant journey together visiting places and topics of interest relevant to the research study. Yarning is a process that requires the researcher to develop and build a relationship that is accountable to Indigenous people participating in the research.[3]

Utilising the yarning technique is consistent with the AIATSIS Guidelines and includes facilitating the involvement of research participants in designing research questions. The Scoping Trip in October 2012 revealed that direct questions are not appropriate to use with Indigenous people:

[1] Lana Ray, 'Deciphering the "Indigenous" in Indigenous Methodologies' (2012) 8(1) *AlterNative: An International Journal of Indigenous Peoples* 85; Lester-Irabinna Rigney, 'Internationalisation of an Indigenous Anti-Colonial Cultural Critique of Research Methodologies: A Guide to Indigenist Research Methodology and its Principles' (1997) 14(2) *Journal for Native American Studies* 109; Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (Zed books, 2nd ed, 2012).
[2] Laura Lundy and Lesley McEvoy, 'Developing Outcomes for Educational Services: A Children's Rights-Based Approach' (2009) 1(1) *Effective Education* 43, 48.
[3] Dawn Bessarab and Bridget Ng'andu, 'Yarning About Yarning as a Legitimate Method in Indigenous Research' (2010) 3(1) *Journal of Critical Indigenous Studies* 37, 38.

> The direct question technique is wrong. It's not the way to go with Indigenous people. Direct questions can be considered rude. The best way with Indigenous people is yarning, as they call it. It's just sitting talking. Sitting side-by-side, rather than confronting, opposite and better sit in a circle or side-by-side. [4]

The researcher will undertake ***two pre-research visits*** to the research location to meet with research participants. At these visits the researcher will get to know the participants and discuss the research topic. Thus, the following questions will be discussed with the participants and transformed into indirect questions consistent with the yarning technique. The researcher will provide the School Council and the Principal with the questions for their review.

The researcher is aware of the importance of not leading research participants toward particular conclusions either through words or non-verbal behaviours. The researcher is also aware of different developmental stages and is aware of the importance of catering to different emotional, cognitive and physical stages of development (McDevitt and Ormond, 2010). These Discussion Starters have been designed with these principles in mind and seek to obtain, in an unbiased way, the views of children and young people about the NTER and the Stronger Futures legislation. The researcher will ensure that she does not lead, or give the impression of leading, participants toward ideas that may not be their own but those they may perceive the researcher wants to hear (Christensen and James, 2008).

Some of the discussion starters include information about the researcher. These have been included on advice from the School Principal and others during the Scoping Trip who advised that the best way to conduct research with Indigenous children is to be open and share some appropriate personal information as the children are likely to feel more relaxed if they know a little bit about the researcher. This approach is consistent with the Indigenous research methodology being employed. The researcher has been careful however, not to divulge too much information or use personal information to suggest a particular opinion or leaning. Thus, the discussion starters are aimed at eliciting information in a non-biased way.

Possible discussion starters

'Matters' affecting them (research issues: what matters most; what things are important; why are these things important; do other people think these things matter).

- 'Everyone is different and different things matter to different people.'
- 'A lot of things matter to me like my family, my work and my music.'

[4] Scoping Trip Interview (No 13) with three Aboriginal Women Employees from an Independent School (Northern Territory, 25 October 2012).

- ‘My work is with children and young people and I care about what they think about all sorts of things. I especially care about the things that they care about’.
- ‘Sometimes it’s hard to know what matters to people. I find out by talking with people what matters to them. Like my son might be looking all sad and I ask him if he is ok or if anything bad happened in his day. Then sometimes he wants to talk about stuff, but sometimes he doesn’t and we just sit together instead’.
- ‘Sometimes I wonder why some things matter to some people and they don’t matter to other people.’

‘Participation’ in matters affecting them (research issues: understandings of decision-making, what kinds of decisions they make, involvement in important decisions, desire to participate in important decisions, whether they should be more involved in decision-making).

- ‘You know how some people talk lots and some don’t? We are all different. But we all have ideas right? People sometimes do and sometimes don’t get to make decisions about important things in their life.’
- ‘Really little children can’t make big decisions but they can make some decisions. I remember my niece was really little, only 18 months old, and she used to put on heaps of different clothes every day and she really liked pink. Her mum didn’t like pink, and didn’t like her putting on all different clothes, but my niece is different to her mum and made a different decision. I also heard on X-factor the other week that there was an Aboriginal fella from the Territory who loved to sing and all his brothers were football players and his parents really wanted him to be a football player. But he was no good at football but he was a great singer and his Dad realised that. Everyone has different ideas and we can all make decisions.’
- ‘Sometimes people make big decisions by themselves or with their families and friends.’
- ‘A lot of people think everyone has the right to say what they think about things.’
- ‘I have spoken to a lot of kids and most of them like being asked what they think about things.’

‘Participation’ in law and policy making (research issues: what is law, children’s involvement in law making – customary and common law).

- ‘The word ‘law’ means different things to different people. I am a white person and when I think law I think rules that are written down. But I know that lots of laws are not written down. Some people have two different sets of laws that affect their lives – white law and Aboriginal law.’
- ‘I wonder sometimes what law means to different people.’
- ‘A while ago I met this girl from overseas and she was involved in changing laws in her country to try and make sure children get a chance to say what they think.’

- ‘Sometimes children and young people get asked what they think about things and sometimes they don’t.’
- ‘A lot of people think children and young people’s ideas on how things should run are important. But some people don’t agree.’
- ‘People who don’t agree sometimes change their mind after they hear children and young people’s ideas.’
- ‘Sometimes when children and young people say things it changes the way adults do things, sometimes even the way communities do things, and sometimes even the way governments do things.’
- ‘Some children and young people have ideas, sometimes big ideas, on how things could change in their community and in Australia.’

The ‘Intervention’(research issues: knowledge and thoughts about the Intervention, how important is the Intervention, changes since the Intervention, parents views on the Intervention, life under the Intervention, changes they would make to the Intervention)

- ‘A lot of people talk about that thing called ‘The Intervention.’
- ‘The Intervention means different things to different people.’
- ‘Adults and young people might have different or the same ideas about it.’
- ‘We don’t know yet what kids think about the Intervention.’
- ‘Some people think the Intervention made some changes to life.’
- ‘A lot of people talk about things to do with the Intervention like the Basics Card, about the rules about going to school and being able to see a Doctor if you are sick’.

Appendix 12: Discussion Starters used in Field Research Session Number 2

1. **If I was Prime Minister for a day I would change ....**
   (e.g. health, police, school, family, culture, money, community)

2. **"I think the Basics Card is ....."**

3. **"I think those blue and white signs out the front of communities are....."**

YOUTH VOICES

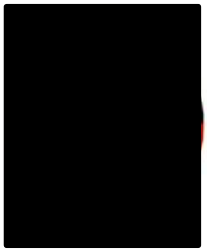
4. Who listens to you?
(family, teachers, police, elders, nurses, Government)

5. Who doesn't listen to you?
(family, teachers, police, elders, nurses, Government)

Appendix 13: Discussion Starters used in Field Research Session Number 3

1. **Do you like saying what you think?**

2. **Do your teachers or parents ask you before deciding on important things about you?**



3. **Do you think the Government should ask your opinion before deciding on important things about you? (like rules and laws about you)**

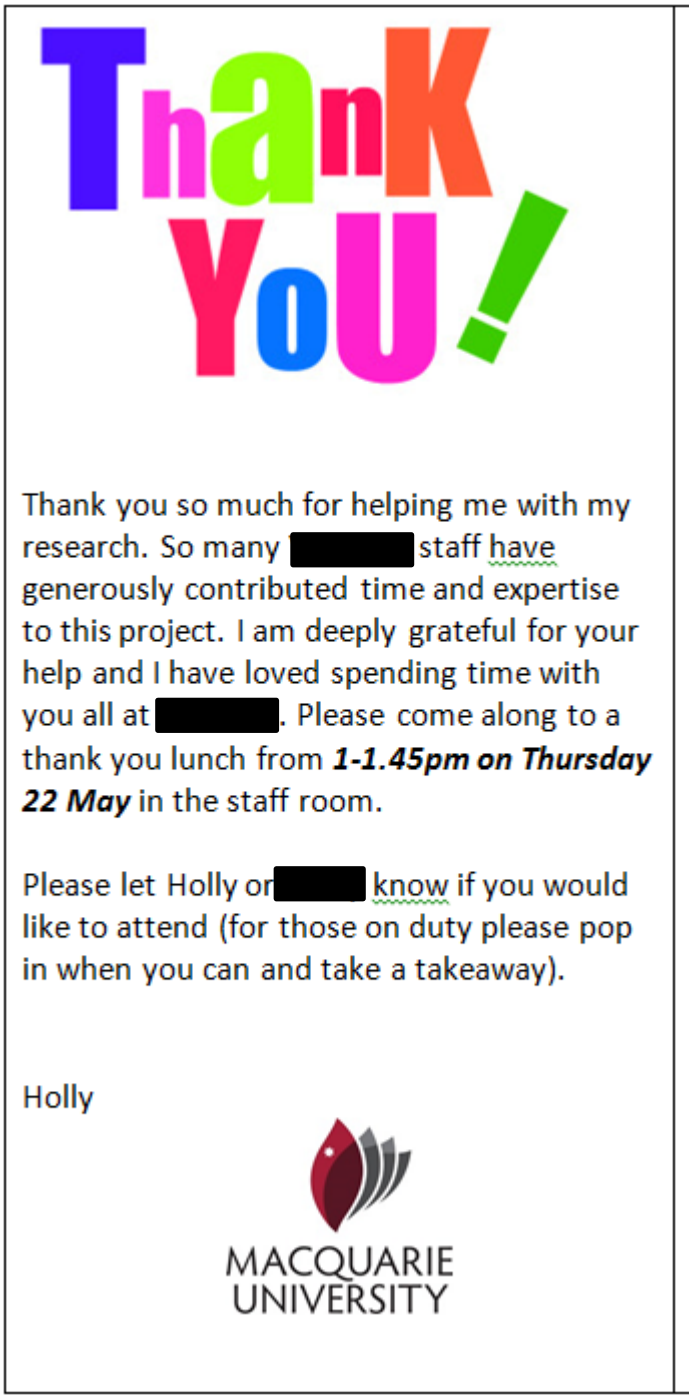
Adam Giles: NT Chief Minister

Tony Abbott Australia's Prime Minister

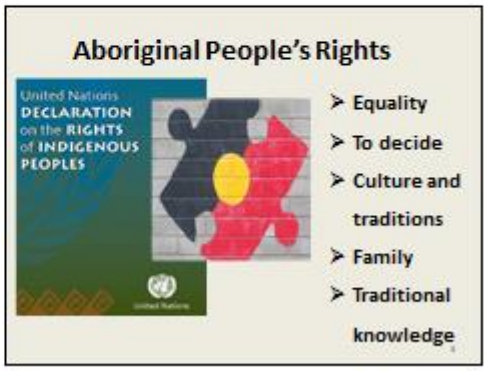
Federal Parliament in Canberra

4. **How could they ask you?**

Appendix 14: Thank you Lunch for Staff



Appendix 15: Reciprocity Arrangements: Children's Rights Session for all Primary and Secondary Students



ACTIVITY:
RIGHTS/NEEDS versus WANTS?

1. You have your 2 piles of cards: RIGHTS/NEEDS and WANTS.
2. Organise them in order of importance.
   - Most important
   - Important
   - Least important
3. Which are the 6 most important cards?

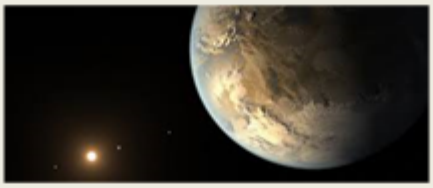
Activity:

1. Choose 5 'rights/needs' cards.
   (All rights come with matching responsibilities).
2. Write down a responsibility that matches each of the 5 'rights/needs'.

EXAMPLE: Your right to come to school matches your responsibility not to cause harm to another person at school.

EXAMPLE: People's right to health care matches the Governments responsibility to provide it.

ACTIVITY:
Journey to a new planet



You have a right to <u>participate</u> in decisions about you

You don't always get to decide, but you should have the chance to say what you think, and adults should listen to you.

"Don't be shame, you be game" (Melissa)

- Young people have ideas and you have the **right** to share your ideas.
- When you share your ideas people **understand** you more and your ideas can make your community and country better.
- If Government learn about your ideas maybe **better laws** can be made for you.
- Talking about your ideas also helps you learn and be confident.

The Convention on the Rights of the Child

- Children's rights for the whole world!
- how children should be treated

4 main children's rights

- ✓ To say what you think about important things

- ✓ To be included
- ✓ That adults do what is BEST for you

- ✓ That you get good food, education, protection, health care.

What do young people have the right to?

- ✓ SAY WHAT YOU THINK
- ✓ FOOD
- ✓ HEALTHY BODY AND MIND
- ✓ EDUCATION
- ✓ PLAY

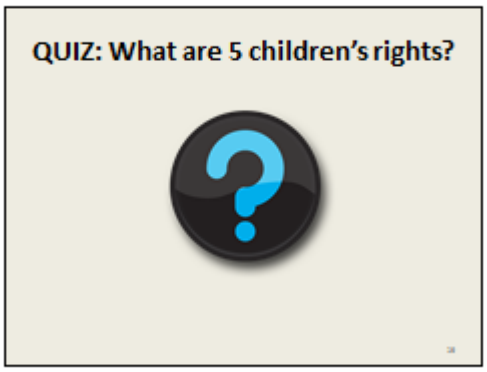
Some children's stories. Are these rights/needs or wants?

- Michelle
- Henry
- Katherine
- Bob
- Kathy

ACTIVITY: RIGHTS/NEEDS versus WANTS?

1. Break into small groups.
2. Read the cards.
3. Decide which cards are about WANTS and which ones are about NEEDS.
4. Make 2 piles: RIGHTS/NEEDS and WANTS.

NEEDS/RIGHTS	WANTS
Decent shelter (article 27)	Clothes in the latest style
Nutritious food (article 24)	A bicycle
Protection from abuse and neglect (article 19)	Holiday trips
Education (articles 28, 29)	Your own bedroom
Health care (article 24)	A personal computer
Fair treatment and non-discrimination (article 2)	A television set
Clean air (article 24)	A personal stereo
Opportunities to share opinions (article 12)	Money to spend as you like
Playgrounds and recreation (article 30)	Fast food
Clean water (article 24)	
Opportunities to practise your own culture, language and religion (article 31)	


QUIZ: What are 5 children's rights?

Appendix 16: Thank you Lunch for Parents, Carers and Children

Thank You!

[redacted] Research

Thank you for allowing your children to be involved in the research about the Intervention and Stronger Futures legislation this year.

Parents and carers are invited to come to find out the results of the research.

Tuesday 25 November 2014 at 2 pm at the [redacted] School office building.

Light refreshments will be served.

Please tell [redacted] at the office if you would like to come along.

MACQUARIE UNIVERSITY

Appendix 17: 'Cross-Cultural Creative Engagements with Children and Youth,' paper presented at the 9th Global Conference on Creative engagements with Children, Prague, March 2014.

<http://www.inter-disciplinary.net/at-the-interface/wp-content/uploads/2014/01/Holly-ce9webpaper.pdf>

Cross-cultural research with Indigenous children: engagement and creativity.

Holly Doel-Mackaway

Abstract

In 2007, the Australian Government implemented the Northern Territory Emergency Response, referred to locally as the 'Intervention' and recently redesigned through the 'Stronger Futures' legislation. These measures affect over 53,000 Indigenous Australians in the Northern Territory, and indirectly as well as directly, impact on the lives of Indigenous children through measures such as compulsory quarantining of welfare payments, the regulation of alcohol consumption and possession and changes to health and education services. The Intervention and Stronger Futures legislation were developed and introduced with minimal involvement by Indigenous adults, and without the involvement of Indigenous children.

This research aims to provide the first documented accounts from Indigenous children and young people about how the Intervention and Stronger Futures legislation have impacted on their lives. It also seeks Indigenous young people's perspectives on their involvement in the development of policies and legislation affecting them in accordance with Article 12 of the *United Nations Convention on the Rights of the Child*.

The ethical, theoretical and practical considerations of designing and undertaking field research of this nature are complex, particularly in relation to ensuring a safe, creative and culturally appropriate research environment for young Indigenous participants. Critical legal theory and Indigenous research methodologies inform the theoretical approach. 'Yarning' (informal discussions without the use of questions) and 'child led peer-to-peer video interviewing' are the research methods. This paper asserts that the chosen methodological approach combined with the research methods creates a culturally appropriate, ethically robust and creative basis upon which to engage Indigenous youth in this research.

Key Words: Children, Indigenous, Australia, views, creativity, yarning, video, participation.

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1. Introduction

Children and young people[1] are rarely involved, or at best have limited opportunities to be involved, in the development of laws and policies affecting their lives.[2] Indigenous young people have even less opportunity to engage in

legislative and policy design for a range of reasons including language and cultural barriers, geographical remoteness and limited contact with law and policy making systems. Article 12(1) of the *United Nations Convention on the Rights of the Child* (CRC)[3] provides the right for children to freely express their views in 'all matters affecting' them and to have these views taken seriously 'in accordance with the age and maturity of the child.' This right, known as children's participation right, is widely considered to be the 'lynchpin,' of the CRC.[4] Article 12 of the CRC positions children as stakeholders in, rather than objects of, decision making,[5] a development which in the 1980's fundamentally challenged previously held notions of childhood as 'innocent, passive, or romantic.'[6] The participation rights proclaimed in the CRC do not confer children's right to 'make the decision or determine the outcome, but it does mean being listened to and having one's views taken seriously and treated with respect.'[7]

Despite the almost universal ratification of the CRC, and the centrality of children's participation rights within Article 12, the voice of young people remains largely silent in law and policy development processes. Governmental facilitation of the involvement of young people in the design, development and review of legislation and policy pertaining to them is infrequently attempted, and in jurisdictions where it is attempted the efficacy of these efforts varies widely. This paper examines the preconditions for the creative engagement of Indigenous children in qualitative research and also serves as a template for their creative engagements in law and policy making processes.

The overall research project examines how young people can play a meaningful role in the development, evaluation and improvement of laws and policies relating to them in accordance with the participation rights set out in Article 12 of the CRC.[8] This paper overviews both the research design and methods, the combination of which, it is argued, forms the basis to creatively engage Indigenous youth in expressing their views in this research.

The ideas reflected in this paper are the result of two years of research conducted as a part of a four year PhD involving students from a school in Northern Australia who are effected by the Northern Territory Emergency Response and the Stronger Futures legislation. Work to date has focussed on the development of a research methodology compliant with the Australian National Statement on Ethical Conduct in Human Research[9] and the principles for ethical research set out in the Guidelines for Ethical Research in Australian Indigenous Studies (the AIATSIS Guidelines).[10]

This research is challenging for a range of reasons including it being considered high risk research as it involves Indigenous people under the age of eighteen. In Australia, most human research ethics committees (including the committee's overseeing this project)[11] classify research with this cohort as posing a high level of risk requiring sophisticated mitigation by the researcher. Being a non-Indigenous researcher, and an outsider to the community, adds further complexity to the ethical issues surrounding this field research.

Twenty to thirty Indigenous youth aged 11-17 years old will be invited to participate in the research and contribute their views about the impact of the Intervention and the Stronger Futures legislation on their lives. The aim of this research is to document and publish these views, as well as make recommendations about how to involve Indigenous children and youth in law and policy making in Australia.

The research cohort attend a school in Northern Australia. The School was chosen for a range of reasons including that it educates Indigenous children, is independent, is operated by an Indigenous School Council and draws Indigenous children from local town camps.[12] These town camps are classified as 'prescribed communities' under the Stronger Futures legislation and are subject to the measures imposed by this legislation. The majority of families whose children attend the School live in these town camps and are therefore subject to the measures imposed by this legislation. These measures are broad and include the regulation of alcohol possession and use, community safety and justice measures, changes to welfare provision and school enrolment and attendance measures. Many of these measures relate explicitly to the care and welfare of Indigenous children and youth. However, to date there are no accounts, academic or non-academic, of young people's views about these changes to Indigenous life in the Northern Territory.

2. Understanding Indigenous childhoods

Understanding the nature and complexities of Indigenous childhoods, that is, children and young people's experience of growing up in Australia, and the implications of this for engaging Indigenous children in research, is fundamental to carrying out ethically robust, culturally appropriate, creative and child friendly research.[13] This requires researchers, particularly non-Indigenous researchers, to ensure research methods align with Indigenous children's lived experience and varying cultural contexts. For most Indigenous children, particularly children living in town camps, growing up in Australia is a vastly different experience than

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that of non-Indigenous children.[14] Traditional Indigenous kinship relations position children as members of often large extended family networks with roles and responsibilities within this system, where collective interests are dominant.[15] In contrast, non-Indigenous children growing up in Anglo-Saxon Australian traditions are positioned within comparatively independent nuclear families, where extended families exert little authority and children's individual skill acquisition is prioritised.[16]

Through understanding Indigenous children's varied perspectives and backgrounds a range of potential research pitfalls can be avoided. This includes understanding that many Indigenous children are shy and if singled out in situations often experience 'shame.' The experience of shame is profound and 'describes situations in which a person has been singled out for any purpose, scolding or praise or simply attention, in which the person loses the security and anonymity provided by the group.'[17] Preliminary consultations about this research stressed the importance of respecting the particular characteristics of the children attending the School, particularly their 'shyness.'

Other potential pitfalls can curtail the potential success of research endeavours and discourage Indigenous young people from participating in research, especially with a non-Indigenous researcher. Throughout the project's pre-research consultations Indigenous adults stressed the significance of respecting certain norms and using particular language when communicating with Indigenous children during the field work. For example, Indigenous male students who have passed through certain traditional ceremonies are likely to experience embarrassment and personal feelings of shame if they are referred to as a 'boy,' rather than a 'man' or a 'fella.' Additionally, the researcher should not ask children direct questions as this is likely to make young people feel uncomfortable and embarrassed. The preferred way of communicating, as advised during pre-research conversations with the School, is to 'talk alongside students, side by side, not face to face.'

Understanding how Indigenous children feel shame in certain contexts is vital to effectively communicating with Indigenous children during this research. If the research participants feel shameed or embarrassed during the research they are unlikely to want to participate and may withdraw. This can occur in response to a range of factors including feeling pressured to talk, being asked direct questions or not trusting or being comfortable with the researcher.

The research methods are constructed to take into account the group of children who will be invited to participate in the research. To date this involved deep level pre-research preparation and long term consultation with the School community. This level of preparation and attention to the methodological approach provides the context for undertaking creative research with Indigenous children.

3. Methodological approach

The research process is underpinned by social justice principles valuing the generation rather than 'extraction' of knowledge in a context of reciprocal learning between participants and the researcher.[18] Western research models positioning Indigenous children as passive, ascribing deficit definitions such as 'neglected child' or 'abused child,' do little to improve the status of Indigenous children, and perpetuate negative stereotypes and discrimination.[19]

A combination of Indigenous research methodologies and critical legal theory inform this research. Indigenous research methodologies are 'motivated by anti-colonial and anti-oppressive agendas'[20] and grounded in the principles of critical and feminist theory challenging positivist methodologies which 'validate colonising knowledge about Indigenous people.'[21] Critical legal theory extends this approach to examine how conventional legal thinking and practices contribute to perpetuating colonialist legislation and policy pertaining to Indigenous people–and in relation to this research, Indigenous children. This approach provides a framework requiring research to be carried out in a way which respects children as active, not passive, participants in their lives. In practice this approach rejects a Western research methodology which historically positioned researchers as powerful 'plunderer(s) of information,'[22] instead situates the researcher as a facilitator committed to ethically engaging children in discussing their own experiences and as experts in their own lives. This research endeavours to challenge Western ways of conducting research whilst concurrently utilising some elements of Western research such as the interview. Thus, an amalgamation of Western and Indigenous research methodologies forms the basis of the methodological approach.

The Western background of the researcher makes this research vulnerable to succumbing to dominant colonialist research norms, yet some Western research methods, such as the interview, are useful tools and will be implemented in this research. It is appropriate to recognise these limitations and utilise a combination of evolving understandings about how best to undertake cross-cultural research using 'convergence Indigenous methodologies.'[23] Convergence Indigenous

methodology accepts that some Western research methodologies, such as data collection and research methods such as the interview, are useful and can be carried out in a way that values Indigenous knowledge. The convergence of Western and Indigenous research methodologies presents a practical challenge to non-Indigenous researchers particularly in relation to research epistemologies regarding who has 'control' of the knowledge. This research approach recognises that colonialist research methodologies dominate academic research relating to Indigenous issues[24] and attempts to ensure inappropriate colonialist methodologies do not dominate the research methodology are being made.

Integral to this is the importance of carrying out this research in a way which values and acknowledges Indigenous perspectives.[25] Indigenous Australians are a highly researched population[26] and research involving them has often failed to provide 'demonstrable benefits' and in many cases has caused significant harm.[27] This includes 'the theft of beliefs and knowledge, and the portrayal of their societies and cultures in a way that merely reflects the values, prejudice and preoccupation of the vague entity that has come to be known as 'the West.'[28]

Over the last ten years Indigenous research methodology has emerged as a discrete body of knowledge[29] encompassing 'theory, approach, ethos and methods.'[30] Despite the recent emergence of Indigenous research methodologies, and adoption within academic circles,[31] overcoming the negative impact of colonialist research on Indigenous people is a major limitation of this research. [32] Norman Denzin and Yvonna Lincoln represent the impact of colonialist research on Indigenous people as follows:

> Sadly, qualitative research, in many if not all of its forms (observation, participation, interviewing, ethnography), serves as a metaphor for the colonial knowledge, for power, and for truth. The metaphor works this way. Research, quantitative and qualitative, is scientific. Research provides the foundation for reports about and representations of 'the Other.' In the colonial context, research becomes an objective way of representing the dark-skinned Other to the white world.[33]

A major challenge for this research is to avoiding perpetuating the negative impact colonialist research has had on Indigenous people.[34] Linda Smith, in her ground-breaking book *Decolonizing Methodologies* articulated the non-objective, politicised and Western dominated nature of social research which disregards

Traditional knowledge held by Indigenous people privileging Western knowledge.[35] This research is being carried out with the awareness that Indigenous Australian's have historically been the 'subjects' of research rather than participants in control of research processes.[36] This research aims to implement elements of Indigenous research methodologies, acknowledging the diversity of approaches within this body of thought and practice.

4. Research Methods

Creatively engaging children in this research is fundamental to the success of this endeavour. Other than the creative opportunities the research offers, particularly the use of iPads for video making, there are few reasons why children would volunteer to be involved in the research. The research environment has been designed to be engaging and respond to the varying interests and aptitudes of children involved. Group discussions using 'yarning' techniques[37] as well as student led peer-to-peer video interviewing will be the methods used to creatively engage Indigenous children aged 11-17 years olds in the research and correspond with the methodological basis for this study.

Field research will utilise a yarning style of research inquiry and students will be invited to participate in yarning groups described as, 'an informal and relaxed discussion through which both the researcher and participant journey together visiting places and topics of interest relevant to the research study.'[38] These will be conducted at the School in an 'un-school-like' way[39] with few direct questions unlike traditional classroom teaching methods. The researcher will engage with the students to design a group of statements about the research topic to be used as discussion starters such as: 'Young people have ideas about a lot of things, maybe even about the way things happen in Australia, like rules and laws. Sometimes they talk about these ideas and sometimes they don't.' The researcher will then pause to allow the participants to speak if they choose to.

Utilising the yarning technique is consistent with the AITSIS Guidelines and includes facilitating the involvement of research participants in designing research questions. Consultations with the School confirmed yarning as the appropriate research method, a staff member said:

> The direct question technique is wrong. It's not the way to go with Indigenous people. Direct questions can be considered rude. The best way with Indigenous people is yarning, as they call it. It's just sitting talking. Sitting side by side, rather than confronting. [40]

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The use of yarning as a research method has recently been internationally accepted as a legitimate and robust research tool and is part of the ongoing emergence of Indigenous research methodologies within academia.[41] Further, the yarning method is an effective and culturally appropriate process to ethically engage Indigenous people, including children, in qualitative field research. A growing body of literature supports the assertion that a large proportion of Indigenous people, adults and children, prefer to communicate informally through 'yarning' rather than talking formally and face-to-face in a typical Western research 'interview' style setting.[42] Yarning is a well-documented method of communicating in Indigenous communities and is being used increasingly as a research method by both Indigenous and non-Indigenous researchers.[43]

In addition to seeking young people's views through yarning methods, participant led peer-to-peer video interviewing will also be undertaken. The participants at the research site have recently completed a course in movie making and the Principal supports scaffolding this learning during the field research by engaging the students in peer-to-peer video interviewing using iPads. Participants will be invited to make a video addressing the research topic with a peer using an iPad. If participants consent individual videos will be made into a movie and a screening will be held at the School as part of reporting the research results.

This research method is an attempt to present a platform which is engaging and relevant to Indigenous participants, and also a means to record their views about a significant matter involving them. Peer-to-peer interviewing has been used by other researchers working with young Indigenous participants and is widely considered as an effective medium to creatively engage young people in research.[44] Further, technological influences are having a profound, often enriching, impact on Indigenous young people's lives engendering a sense of 'their "belongingness" to globalised youth culture.'[45] Indigenous youth in remote areas are at a unique point in history where they are introducing their communities to technology and negotiating new forms of oral and written communication.[46] Indigenous youth, like most young people in the modern world, are particularly interested in using and engaging with digital technology.[47] Knowledge of, proficiency with, and access to digital technologies is a high priority for this cohort.[48] In order to facilitate creative engagement with Indigenous children and youth it is important to tap into this interest in digital technology as a 'meaningful and relevant' research tool.[49]

There are risks associated with video interviewing and there are some inconsistencies between using a yarning research method and video interviewing. Namely, that the definition of an 'interview' is the use of direct questions, which is inconsistent with the open discussion style upon which yarning is based. Participants however, may carry out the task in any way they wish and this could yield a variety of video responses. This is the aim of the method, to create a research environment where student participants are free to explore their thoughts about the research topic and express these in a way that is meaningful to them.

5. Conclusion

This paper examined the methods and methodological deliberations arising at the midpoint in the course of conducting a PhD research project. These deliberations were undertaken in the pursuit of designing a workable methodological framework for upcoming field research involving Indigenous children and young people. This paper asserts that the methodological approach and chosen research methods create a safe cross cultural and creative environment for Indigenous children to participate in this research. Further, that the research design will effectively and ethically illicit young Indigenous people's views about the research case study—the Northern Territory Emergency Response and the Stronger Futures legislation—as well as garner participants ideas on their future involvement in the development and review of legislation and policies directly impacting on their lives. Student responses will be used to develop a framework for involving Indigenous young people in the development and review of laws and policies affecting their lives and communities in accordance with international law obligations.

Notes

[1] Article 1 of the *United Nations Convention on the Rights of the Child* defines a person under the age of eighteen as a child. This research refers to and involves Indigenous people aged between eleven and seventeen, and refers to this sample as 'youth' or 'young people.'

[2] Mariya Riekkinen, 'Limited engagement of the child in political issues: The right which evolved at the universal level but is still unacknowledged by most regional instruments', *Baltic Journal of Law and Politics* 4(1) (2011): 169-201, 169.

[3] *United Nations Convention on the Rights of the Child* opened for signature 20 November 1989, 44 UNTS 25 (entered into force 2 September 1990).

[4] John Tobin, 'Understanding a Human Rights Based Approach to Matters Involving Children: Conceptual Foundations and Strategic Considerations'. In *Human Rights of Children: From Visions to Implementation*, edited by Antonella Invernizzi and Jane Williams (England, Ashgate Publishing,

2011), 61–99. See also Laura Lundy, "'Voice' is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child', *British Educational Research Journal* 33(6) (2007): 927-942.
[5] Judy Cashmore, 'Promoting the Participation of Children and Young People in Care', *Child Abuse & Neglect* 26(8) (2002): 837-847, 838.
[6] Katie Wilson and Judith Wilks, 'Research with Indigenous Children and Young People in Schools: Ethical and Methodological Considerations', *Global Studies of Childhood Symposium Journals* 3(2) (2013):142-152, 143.
[7] Cashmore, 'Participation of Children', 838.
[8] A view supported by the United Nations Committee on the Rights of the Child. When considering Australia's periodic report to the 60th session of the Committee on the Rights of the Child called upon Australia to review the legislation surrounding the Northern Territory Emergency Response and remove discriminatory components (Para 30 (c)) and to '[e]nsure the effective and meaningful participation of Aboriginal and Torres Strait Islander persons in the policy formulation, decision-making and implementation processes of programmes affecting them' (Para 30 (d)).
[9] National Statement on Ethical Conduct in Human Research 2007 (Updated December 2013). The National Health and Medical Research Council, the Australian Research Council and the Australian Vice-Chancellors' Committee. Commonwealth of Australia, Canberra.
[10] Guidelines for Ethical Research in Australian Indigenous Studies, Institute of Aboriginal and Torres Strait Islander Studies, Canberra, (2011).
[11] The Macquarie University Human Research Ethics Committee (MQHREC) as well as the Central Australia Human Research Ethics Committee (CAHREC) oversee the ethical elements of this project.
[12]Also referred to as 'Aboriginal Housing Estates.'
[13] Melodie Bat et. al, 'Ethical moves: Innovation in qualitative research: An example of an ethical and effective cross-cultural research methodology using video', (Australian Association for Research in Education National Conference: Inspiring Innovative Research in Education, Canberra 2009).
[14] Suzanne Belton et.al, 'Growing Up Our Way: The First Year of Life in Remote Aboriginal Australia', *Qualitative Health Research* 22(6) (2012): 777-787, 777.
[15] Robert Van Krieken, 'Childhood in Australian Sociology and Society', *Current Sociology* 58 (2) (2010): 232-249, 234.
[16] Ibid., 235.
[17] Jean Harking, 'Shame and Shyness in the Aboriginal Classroom: A Case for 'practical semantics', *Australian Journal of Linguistics* 10 (1990): 293-306, 293.
[18] Angela Veale, 'Creative Methodologies in Participatory Research with Children' in *Researching Children's Experience: Approaches and Methods*, (eds) Sheila Greene and Diane Hogan, (London: Sage, 2005), 253-272, 253.
[19] Ibid.
[20] Lana Ray, 'Deciphering the 'Indigenous' in Indigenous methodologies' *AlterNative: An International Journal of Indigenous Peoples* 8(1) (2012): 85-98, 86.
[21] Vicki Saunders, Roianne West and Kim Usher, 'Applying Indigenist research methodologies in health research: Experiences in the borderlands' *Australian Journal of Indigenous Education* 39 (2010): 1-7, 2.
[22] Jan Mason and Suzanne Hood, 'Exploring Issues of Children as Actors in Social Research', *Children and Youth Services Review* 33(4) (2011): 490-495, 492.
[23] Ray, 'Indigenous Methodologies', 94.
[24] Ibid.
[25] Saunders et. al, 'Experiences in the Borderlands', 2.

[26] Lester-Irabinna Rigney, 'Internationalisation of an Indigenous anti-colonial cultural critique of research methodologies: A guide to Indigenist research methodology and its principles', *Journal for Native American Studies* 14(2) (1997): 109-121.
[27]J Henry, T Dunbar, A Arnott, M Scrimgeour, S Matthews, L Murakami-Gold and A Chamberlain, 'Indigenous research reform agenda: rethinking research methodologies' (Cooperative Research Centre for Aboriginal and Tropical Health Links 2002), 5 cited in Lyn Fasoli and Ranu James, 'Researching remote Aboriginal children's services: it's all about rules' *Contemporary Issues in Early Childhood* 8(4) (2008): 26-42, 30.
[28] Jonathan Kingsley, Rebecca Phillips and Mardie Townsend, 'Using a qualitative approach to research to build trust between a non-Aboriginal researcher and Aboriginal participants (Australia)', *Qualitative Research Journal* 10(1) (2010): 2-12, 4.
[29] Ibid.
[30] Ray, 'Indigenous Methodologies', 89.
[31] Saunders et. al, 'Experiences in the Borderlands'.
[32] Odette Mazel, 'Development in the 'First World': Alleviating Indigenous Disadvantage in Australia - the Dilemma of Difference', *Griffith Law Review* 18(2) (2009): 475-502.
[33] Norman Denzin, Yvonna Lincoln and Linda Tuhawi Smith (eds), *Handbook of Qualitative Research* (Sage, 2000), 4.
[34] Mazel, 'The Dilemma of Difference'.
[35] Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples*, (London, Zed Books,1999).
[36] Rigney, 'Indigenist research methodology and its principles', 109.
[37] Ray, 'Indigenous Methodologies', 85; Rigney, 'Indigenist research methodology and its principles', 109; Smith, *Decolonising Methodologies*.
[38] Dawn Bessarab and B Ng'andu, 'Yarning about yarning as a legitimate method in Indigenous research', *Journal of Critical Indigenous Studies* 3(1) (2010): 37-50, 38.
[39] Laura Lundy and Lesley McEvoy, 'Developing outcomes for educational services: a children's rights-based approach' *Effective Education* 1(1) (2009): 43-60, 48.
[40] Conversation with a staff member at the School, October 2012.
[41] Melissa Walker, Bronwyn Freidricks, Kyly Mills and Debra Anderson, '"Yarning" as a Method for Community-Based Health Research with Indigenous Women: The Indigenous Women's Wellness Research Program', *Health Care for Women International* (2013): 1-11, 1; Bessarab and Ng'andu, 'Yarning', 39. In 2000 Western academics challenged Bessarab's use of the yarning technique, as a part of her Doctoral research, as a non-bona fide research method.
[42] Bessarab and Ng'andu, 'Yarning', 37.
[43] Bessarab and Ng'andu, 'Yarning', 39; see also Walker (et.al), 'Women's Wellness Research Program'.
[44] Bat et. al., 'Ethical Moves'.
[45] Inge Birgita Kral, 'Plugged in: Remote Australian Indigenous youth and digital culture', (Centre for Aboriginal Economic Policy Research), Working Paper No. 69, 2010, 14.
[46] Ibid., i.
[47] Ibid., 14.
[48] Ibid.
[49] Ibid., 14; See also Fatima Pirbhai-Illich, 'Aboriginal students engaging and struggling with critical multiliteracies: engaging diverse students requires tapping into their interest in using digital media, accepting their lived experiences, and inviting them to use their funds of knowledge in multiliteracies', *Journal of Adolescent and Adult Literacy*, 54(4) 2010: 257.

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Appendix 18: List of Scoping Trip Participants

(all names have been replaced with pseudonyms)

Aboriginal— 5
Maori—2
Torres Strait Islander—0
Total: 19 people

1. CEO—Peak NGO Justice Agency
2. Principal— NT Catholic school
3. Executive Director—Peak NGO Social Services Agency
4. President—Peak Children's Agency
5. Operations Manager—Peak NT NGO
6. Commissioner - NT Government Agency
7. Policy Officer—Community NGO
8. Project Administrator—NT Youth Agency NGO
9. NT Barrister
10. Commissioner—NT Government Children's Agency
11. Principal of a remote NT Government school
12. Principal NT Independent school
13. Indigenous female staff member—Independent NT school
14. Indigenous female staff member—Independent NT school
15. Indigenous female staff member—Independent NT school
16. Policy Officer—NT Social Services NGO
17. Youth Worker—NT Government Youth Service
18. Principal—NT Government school
19. Director—Women's Advocacy NGO

Sixteen interviews were conducted and 19 people participated in these interviews. All interviews were conducted individually between the researcher and the participant apart from two interviews. One of these interviews was between the research and the Commissioner—NT Government Agency and a Policy Officer—Community NGO; and another interview was between the researcher and three Indigenous female staff members at an independent NT school.

Appendix 19: List of Child and Youth Participants

(all names have been replaced with pseudonyms)

Primary	**Age / Sex**	**Secondary**	**Age / Sex**
Jacob	10 (male)	Brody	16 (male)
Ethan	11 (male)	Emily	16 (female)
Leah	10 (male)	Emma	15 (female)
Sofie	10 (female)	Nathaniel	14 (male)
Ryan	10 (male)	James	17 (male)
Cathy	10 (female)	Sean	13 (male)
Sarah	11 (female)	Jessie	13 (male)
Blake	10 (male)	Jonathan	14 (male)
Lily	11 (female)	Chris	17 (male)
Ellie	10 (female)	Tessa	16 (female)
		Samantha	16 (female)
		Eddy	15 (male)
Teacher		**Teacher**	
Liz (non-Indigenous)		Jeremy (non-Indigenous)	
Teachers Assistants		**Teachers Assistants**	
Toby (Indigenous)		Rob (Indigenous)	
Mel (non-Indigenous)		Mandy (Indigenous)	
Total no. children and young people involved	22 (9 female, 13 male)		

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