

# **‘I THINK IT’S OKAY ... BUT IT’S RACIST, IT’S BAD RACISM’<sup>1</sup> — ABORIGINAL CHILDREN AND YOUNG PEOPLE’S VIEWS ABOUT THE INTERVENTION**

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*Field research conducted in the Northern Territory sought Aboriginal children and young people’s views about the ‘Intervention’ and revealed the impact of these measures on their lives, on Aboriginal peoples and in Aboriginal communities. Research participants articulated detailed knowledge about the Intervention and expressed their nuanced views about two key measures: income management through the BasicsCard, and alcohol regulation through the ‘blue and white warning signs’ that were placed at the entrance to all prescribed communities. Most participants said the BasicsCard positively impacted aspects of their lives, yet nearly all participants were unaware that the BasicsCard targeted Aboriginal peoples and upon learning this children and young people assessed the measure as ‘bad racism’. Participants unanimously agreed that the blue and white warning signs were an ineffective regulatory measure that negatively impacted their lives by ‘shaming’ communities and making them ‘look bad’.*

*This research is significant because it (a) presents the first academic accounts from Aboriginal children and young people detailing their views about the Intervention; (b) demonstrates Aboriginal children and young people’s agency and capacity to express informed views about complex matters such as legislation and policy; and (c) shows that the involvement of Aboriginal children and young people in the design of laws and policies likely to affect them is not only the Australian government’s responsibility under art 12 of the Convention on the Rights of the Child, and Australia’s obligation under art 19 of the Declaration on the Rights of Indigenous Peoples, but is an effective and necessary precondition for the development of relevant, culturally appropriate and durable laws and policies that advance Aboriginal children and young people’s human rights.*

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1 15-year-old female, Secondary Class Group Discussion (Field Research Session 2 of 4, Northern Territory, 16 May 2014). This statement was made in relation to a conversation during the field research about the BasicsCard.

## I INTRODUCTION

Aboriginal children and young people in Australia have a valuable, yet to date, unutilised role to play in the development of laws and policies that are likely to affect their lives. The legislative and policy frameworks surrounding the Northern Territory Emergency Response ('NTER'),<sup>2</sup> and its successor, the Stronger Futures legislation<sup>3</sup> (together referred to as the 'Intervention'), directly and indirectly affect Aboriginal children and young people living in the Northern Territory ('NT') of Australia.<sup>4</sup> Despite the foreseeable impact of these measures on Aboriginal children and young people and contrary to the right established by art 12 of the *Convention on the Rights of the Child* ('CRC'),<sup>5</sup> Aboriginal children and young people were not afforded the opportunity to express their views about, or be involved in, the development of this legislation prior to it coming into force. Since ratifying the *CRC* in 1990,<sup>6</sup> the Australian government is duty bound to seek children and young people's views and give 'due weight' to these views about 'all matters affecting' them<sup>7</sup> — this includes legislative frameworks such as the Intervention. Consequently, by not seeking and taking into consideration Aboriginal children and young people's views about the Intervention measures prior to their implementation, the Australian government breached its duty under art 12 of the *CRC*. Furthermore, the Australian government failed to comply with its obligations under art 19 of the *United Nations Declaration on the Rights of Indigenous Peoples* ('UNDRIP')<sup>8</sup> by passing the NTER, then later the Stronger Futures legislation without the requisite involvement of, and appropriate

2 The following Commonwealth statutes give effect to the federal government's NTER: *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); *Appropriation (Northern Territory National Emergency Response) Act (No 2) 2007–2008* (Cth).

3 The following Commonwealth statutes comprise the Stronger Futures legislation: *Stronger Futures in the Northern Territory Act 2012* (Cth); *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012* (Cth); *Social Security Legislation Amendment Act 2012* (Cth).

4 Most children and young people involved in this research used the words 'the Intervention' to describe both the NTER and Stronger Futures legislation. This term is also used in this paper and refers to both legislative regimes. Some children and young people, 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 children and young people did not refer specifically to, nor use the words 'Northern Territory Emergency Response'.

5 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 12 ('*CRC*').

6 See United Nations, *Convention on the Rights of the Child* (17 June 2017) United Nations Treaty Collection <<https://treaties.un.org/doc/Publication/MTDGS/Volume%20I/Chapter%20IV/IV-11.en.pdf>>.

7 *CRC* art 12. Notably, however, the Australian government has not passed domestic legislation to implement the provisions set out in art 12 of the *CRC*.

8 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61<sup>st</sup> sess, 107<sup>th</sup> plen mtg, Supp No 49, UN Doc A/RES/61/295 (13 September 2007) ('*UNDRIP*'). Whilst the *UNDRIP* is not legally binding it represents international legal norms and reflects the aspirations of states to uphold, respect and fulfil the human rights of Indigenous peoples.

consultation with, Aboriginal and Torres Strait Islander peoples, including Aboriginal children and young people.<sup>9</sup>

This paper goes beyond drawing attention to the Australian government's noncompliance with its international human rights law duties and obligations owed to Aboriginal children and young people; it demonstrates that if asked, and asked in a culturally appropriate and respectful way, children and young people can formulate and communicate robust views about the implications of legislative provisions they are, or may become, subject to. By presenting a group of Aboriginal children and young people's views about elements of the Intervention, this paper demonstrates why it is important that the Australian government involve Aboriginal children and young people in legislative and policy design prior to implementation. This is necessary not only to uphold international children's rights standards, but in order for children and young people's views to inform governmental decision-making processes, and importantly to safeguard against the passage of racially targeted and discriminatory laws that fail to promote, fulfil and uphold Aboriginal children and young people's human rights.

This paper presents the first academic accounts of Aboriginal children and young people's views about the Intervention.<sup>10</sup> These views were gathered during qualitative field research conducted in the NT that sought and examined a group of Aboriginal children and young people's knowledge of, and views about, two Intervention measures: (a) the BasicsCard, a key measure common to the two income management regimes operating in the NT under the Intervention — the NTER income management ('NTER IM') and New Income Management ('NIM'); and (b) the 'blue and white warning signs' that were erected at the entrance of prescribed communities during the NTER — another key measure linked to the alcohol regulation regime under the NTER, then adapted under the Stronger Futures legislation.<sup>11</sup>

Twenty-two Aboriginal children and young people from a school in the NT participated in this research and demonstrated a detailed understanding of these measures, and expressed their views about the impact of these measures on their lives, on Aboriginal peoples and within Aboriginal communities. In summary, most participants said the BasicsCard positively impacted aspects of their lives because it improves access to food and toys; it is helpful for paying bills; and it has contributed to reducing dishonest trading behaviours by retailers toward Aboriginal people. However, participants qualified their views about the positive

9 Alastair Nicholson et al, '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) 5; Peter Billings, 'Still Paying the Price for Benign Intentions? Contextualising Contemporary Interventions in the Lives of Aboriginal Peoples' (2009) 33 *Melbourne University Law Review* 1, 24.

10 As far as the author is aware this is the first time Aboriginal children and young people's views about these elements of the Intervention are represented in academic literature.

11 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 children and young people, nor were children and young people asked to discuss these issues in line with the ethical agreement and scope of the project.

aspects of the BasicsCard by expressing concern about the fact that the card is a racially targeted measure because it predominantly applies to Aboriginal peoples. Nearly all participants were unaware that the BasicsCard targeted Aboriginal peoples and upon learning this during the research children and young people classified it as a fundamentally racist and flawed measure despite reporting some benefits of the card. One participant summed this up by saying 'I think it's okay ... but it's racist, it's bad racism'.<sup>12</sup> Participants unanimously agreed that the blue and white warning signs are an ineffective regulatory measure that do not stop or control alcohol use and moreover, negatively impacted their lives by 'shaming' communities and making them 'look bad'.

Part I of this paper overviews the Intervention. Part II discusses the principle of 'children's participation' linked to art 12 of the *CRC* and how this relates to children and young people's role in decision-making processes. Part III overviews the research and the research methodology. Part IV — the crux of this paper — details Aboriginal children and young people's knowledge of and views about the Intervention gathered during field research. The paper concludes by asserting that the Intervention is a 'matter affecting' Aboriginal children and young people within the meaning of art 12 of the *CRC*, and the Australian government failed to meet its international law obligations by not affording Aboriginal children and young people the opportunity to participate in the development of this legislation. In order for the Australian government to design culturally relevant and appropriate laws and policies, as well as comply with art 12 of the *CRC* and art 19 of the *UNDRIP*, any future legislative measures likely to affect Aboriginal children and young people must be developed in collaboration with Aboriginal children and young people, their families and with Aboriginal Elders and communities.

## II THE INTERVENTION

The circumstances preceding, then following, the commencement of the NTER are important to note given the NTER was highly politicised, racialised, rushed through as law and policy, and then implemented 'without consultation' with Aboriginal and Torres Strait Islander peoples.<sup>13</sup> The laws and policies implemented under the NTER affected over 53 000 Indigenous Australians in 73 'prescribed areas' in the NT.<sup>14</sup> On 15 June 2007 the NT government publicly released the *Ampe Akelyernemane Meke Mekarle: 'Little Children Are Sacred'* report arising from the Board of Inquiry into the Protection of Aboriginal

12 15-year-old female, Secondary Class Group Discussion (Field Research Session 2 of 4, Northern Territory, 16 May 2014). This statement was made in relation to a conversation during the field research about the BasicsCard.

13 Nicholson et al, above n 9, 5. See also Billings, above n 9, 21.

14 *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'.

Children from Sexual Abuse.<sup>15</sup> The inquiry delivered 97 recommendations to address the alleged abuse of Aboriginal children in the NT the first of which stated: ‘It is critical that both governments commit to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities.’<sup>16</sup> Despite the report’s emphasis on the importance of consulting with Aboriginal communities before implementing measures that will affect them, the report was used as the purported catalyst for the commencement of the NTER introduced by the Australian government under Liberal Prime Minister John Howard in June 2007.<sup>17</sup> At the commencement of the NTER the Australian government declared a ‘national emergency’ facing Aboriginal children in the NT,<sup>18</sup> and asserted the NTER was necessary in order to address allegations of child sexual abuse and neglect in NT Aboriginal communities.<sup>19</sup> 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.<sup>20</sup>

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 (which largely mirrors the NTER laws)<sup>21</sup> under Labor Prime Minister Julia Gillard. The NTER legislation came into force in 2007, the same year the *UNDRIP* was adopted by the General Assembly of the United Nations. The Australian government initially voted against the *UNDRIP* in the General Assembly yet later revised this decision under a different government and

15 Rex Wild and Patricia 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* (Northern Territory Government, 2007).

16 Ibid 22.

17 Section 122 of the *Australian Constitution*, the ‘territories power’, provided the constitutional basis of the NTER legislation. This section empowers the federal Parliament to ‘make laws for the government of any territory’.

18 Mal Brough, ‘National Emergency Response to Protect Aboriginal Children in the NT’ (Media Release, 21 June 2007) <[http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/8ZFN6/upload\\_binary/8zfn61.pdf](http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/8ZFN6/upload_binary/8zfn61.pdf)>. See also 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, 2.

19 Brough, ‘National Emergency Response to Protect Aboriginal Children in the NT’, above n 18.

20 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://caep.anu.edu.au/sites/default/files/Publications/topical/Altman\\_AIATSIS.pdf](http://caep.anu.edu.au/sites/default/files/Publications/topical/Altman_AIATSIS.pdf)> 8, 10, 13; 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 Y Behrendt, ‘Underlying Legal Issues in the NT Intervention’ [2007/2008] (Summer) *Bar News* 12, 12; Barry Hindess, ‘Unintended Rhetoric: The “Little Children Are Sacred” Report’ in John Uhr and Ryan Walter (eds), *Studies in Australian Political Rhetoric* (ANU Press, 2014) 85.

21 Shelley Bielefeld, ‘History Wars and Stronger Futures Laws: A Stronger Future or Perpetuating Past Paternalism?’ (2014) 39 *Alternative Law Journal* 15; Nicholson et al, above n 9, 95 [229].

endorsed it in 2009.<sup>22</sup> Under art 19 of the *UNDRIP* the Australian government is obliged to 'consult and cooperate in good faith with the indigenous peoples concerned' to 'obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them'.<sup>23</sup> At the time of writing, the Stronger Futures legislation remains in force under Liberal Prime Minister Malcolm Turnbull and will continue till 2022.

The army, federal police and police from other states and territories were deployed to give effect to the NTER legislation.<sup>24</sup> For example, the 'North West Mobile Force' operated in the first six months of the NTER and their role 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'.<sup>25</sup>

Scrymgour notes '[t]he last time civilian authority was overturned by the military in the Northern Territory was in the aftermath of Cyclone Tracy' in 1975.<sup>26</sup> When the NTER commenced, major concerns arose around the impact this had on children given the heavy-handed law and order approach taken by the government in declaring the context in the NT as 'nothing less than a war zone'<sup>27</sup> and deploying the army to give effect to the Intervention.<sup>28</sup>

The NTER imposed a suite of changes applicable to Indigenous peoples living in the NT, all of which, argues Scrymgour, were 'shocking — and unexpected'.<sup>29</sup> These changes included regulating family expenditure through compulsory income management of welfare payments; imposing sanctions on income support recipients that were linked to Aboriginal children's school attendance; regulating alcohol consumption and possession; restricting access to pornography; and changes to health and education services, law enforcement, and land tenure.<sup>30</sup> The NTER measures were only applicable to people living in the NT of Australia who were in receipt of government welfare payments and who were also living

22 The *UNDRIP* was adopted by the General Assembly of the United Nations on 13 September 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*.

23 *UNDRIP* art 19.

24 Marion Scrymgour, 'Whose National Emergency? Caboolture and Kirribili? Or Milikapiti and Mutitjulu?' (Paper presented at the Charles Perkins Oration, University of Sydney, 23 October 2007) 9.

25 Billings, above n 9, 24 (citations omitted) (emphasis in original).

26 Scrymgour, above n 24, 14.

27 Mal Brough, 'The Federal Government's Intervention into Northern Territory Indigenous Communities' (Speech delivered at the Alfred Deakin Lecture, University of Melbourne, 2 October 2007).

28 Behrendt, above n 20; Pounder, above n 18, 2; Alison Vivian and Ben Schokman, 'The Northern Territory Intervention and the Fabrication of "Special Measures"' (2009) 13(1) *Australian Indigenous Law Review* 78; Nicholson et al, above n 9, 12.

29 Scrymgour, above n 24, 8.

30 *Ibid.* The federal government compulsorily acquired leases over the 73 'prescribed' towns and communities to which the NTER legislation applied.



in ‘prescribed communities’ — as such, these measures affected very few non-Indigenous Australians.<sup>31</sup> Thus, the NTER legislation racially targeted Indigenous peoples<sup>32</sup> and this 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 discriminate on the basis of race under the *International Convention on the Elimination of Racial Discrimination* (‘*CERD*’).<sup>33</sup>

In order to avoid potential conflict between Australia’s responsibilities under the *CERD* and the *Racial Discrimination Act 1975* (Cth) (‘*RDA*’) (which gives domestic effect to Australia’s responsibilities under the *CERD*) the Australian government ‘excluded the *RDA*’s application to the Intervention ... declaring that all measures constituting the Northern Territory Intervention were “special measures” for the purposes of the *RDA*’.<sup>34</sup> Section 8 of the *RDA*, which prohibits racial discrimination in pt II, does not apply to ‘special measures’ as defined in art 1(4) of the *CERD*.<sup>35</sup> Article 1(4) of the *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’.<sup>36</sup> Scholarly debate concurs that the NTER measures offended against 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 peoples affected.<sup>37</sup> On this basis, in 2009, a group of Aboriginal people from prescribed communities affected by the NTER legislation made a complaint to the UNCERD requesting ‘the Committee invoke its Urgent Action procedure’ in relation to

31 Shelley Bielefeld, ‘Compulsory Income Management and Indigenous Australians: Delivering Social Justice or Furthering Colonial Domination?’ (2012) 35 *University of New South Wales Law Journal* 522; See also Bielefeld, ‘History Wars and Stronger Futures Laws’, above n 21.

32 Bielefeld, ‘Compulsory Income Management and Indigenous Australians’, above n 31; Billings, above n 9; Nicholson et al, above n 9, 15; Pounder, above n 18.

33 *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 7 March 1966, 660 UNTS 195 (entered into force 4 January 1969) (‘*CERD*’); Alastair Nicholson, Michele Harris and Georgina Gartland, ‘Loss of Rights — The Despair of Aboriginal Communities in the Northern Territory’ (Concerned Australians, 2<sup>nd</sup> ed, 2010); Barbara Shaw et al, *Request for Urgent Action under the International Convention on the Elimination of All Forms of Racial Discrimination* (2009) <[https://www.uts.edu.au/sites/default/files/RequestforUrgentAction\\_28Jan09.pdf](https://www.uts.edu.au/sites/default/files/RequestforUrgentAction_28Jan09.pdf)> 27 [105].

34 Vivian and Schokman, above n 28, 78.

35 *CERD* 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.

36 *Ibid.*

37 Vivian and Schokman, above n 28; Gregory Marks, ‘Race Discrimination, Special Measures and the Northern Territory Emergency Response’ (Amnesty International Australia, 2009); Australian Human Rights Commission, ‘The Suspension and Reinstatement of the RDA and Special Measures in the NTER’ (2011); Nicholson et al, above n 9, 9.

the NT Intervention.<sup>38</sup> In response the UNCERD requested that the Australian government reinstate the *RDA*<sup>39</sup> and two years later the Australian government passed legislation — the *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2010* (Cth) — to remove the suspension of the *RDA*, effective from 31 December 2010.

The reinstatement of the *RDA*, however, had 'limited effect' as the legislative and policy measures continued to breach Australia's responsibilities under the *CERD*.<sup>40</sup> Thus, despite the restoration of the *RDA* following demands issued by the UNCERD, the NTER measures which racially targeted Aboriginal peoples through means such as income management (including NIM) and alcohol regulation were not substantially altered.<sup>41</sup> Given these factors, the NTER and the subsequent Stronger Futures legislation directly and indirectly target Aboriginal peoples.<sup>42</sup>

## **A Income Management and Alcohol Regulation**

In August 2010 the largest Australian income management program was introduced, called 'New Income Management in the Northern Territory' ('NIM'), which replaced the income management regime established under the NTER.<sup>43</sup> Under the NIM a range of categories were established under the *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2010* (Cth), the primary purpose of which facilitated the reinstatement of the parts of the *RDA* that had been suspended to allow the NTER IM regime to specifically target Indigenous communities in the NT.<sup>44</sup> The BasicsCard<sup>45</sup> is a key element of the income management regime operating under both the NTER and the Stronger Futures legislation and limits direct welfare payments to an individual by quarantining a percentage of these monies onto the card to be used as a debit card to purchase 'basics' such as food, clothing and to pay bills. Excluded items (tobacco, alcohol, gambling services and pornographic materials) cannot be purchased with the BasicsCard and cash cannot be withdrawn. Income management does not change the amount of welfare money paid; it changes the way the money is paid, a portion of which is paid in a cashless form onto the BasicsCard.

38 Shaw et al, above n 33, 27 [105].

39 Letter from Fatimata-Binta Victoire Dah, Chairperson of the Committee for the Elimination of Racial Discrimination to Caroline Millar, Permanent Representative of Australia to the United Nations at Geneva, 13 March 2009. A copy of the Urgent Action Letter can be accessed at <<http://web.archive.org/web/20090918125001/http://www.hrlrc.org.au/files/cerd-letter-to-australia130309.pdf>>.

40 Nicholson et al, above n 9, 8.

41 Ibid 80–97.

42 Ibid; Shelley Bielefeld and Jon Altman, 'Australia's First Peoples — Still Struggling for Protection against Racial Discrimination' (Paper presented at the 40 Years of the *Racial Discrimination Act 1975* (Cth) Conference, Sydney, 19–20 February 2015) 200 <<https://ssrn.com/abstract=2824282>>.

43 J Rob Bray et al, 'Evaluating New Income Management in the Northern Territory: Summary Report' (Social Policy Research Centre Report 25e/2014, September 2014).

44 Ibid 1.

45 See *ibid* for an explanation of how the BasicsCard works.



The Australian government maintains that the NIM scheme is not racially discriminatory, unlike the previous racially targeted NTER IM regime, because the NIM does not target individual Indigenous communities.<sup>46</sup> Whilst the NIM is not directly racially discriminatory, the scheme involves indirect racial discrimination due to the disproportionate impact it has on Indigenous peoples.<sup>47</sup> The most recent evaluation of the NIM regime concluded that at December 2013 (three years after the introduction of NIM), 90.2 per cent of people being income managed in the NT are Aboriginal or Torres Strait Islander peoples,<sup>48</sup> and approximately 80 per cent of these people are subject to compulsory income management.<sup>49</sup>

Alcohol consumption in some Aboriginal communities in the NT has been identified as a serious problem and is an issue that affects Aboriginal children and young persons.<sup>50</sup> Section 8 of the *Stronger Futures in the Northern Territory Act 2012* (Cth) modifies 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’,<sup>51</sup> and it is an offence to supply alcohol in a protected area.<sup>52</sup> The penalty for breaching these sections is a maximum of 100 penalty units or six months in prison, although for an offence involving larger quantities of alcohol the penalties are significantly greater.<sup>53</sup>

Part of the alcohol regulation measures under the NTER, and 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 73 prescribed communities stating in English ‘no liquor’ and ‘no pornography’.<sup>54</sup> 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

46 Australian Government, ‘Policy Statement: Landmark Reform to the Welfare System, Reinstatement of the *Racial Discrimination Act* and Strengthening of the Northern Territory Emergency Response’ (2009) 1.

47 J Rob Bray et al, ‘Compulsory Income Management in the Northern Territory — Evaluating Its Impact’ (2015) 50 *Australian Journal of Social Issues* 373, 390; Bielefeld and Altman, above n 42, 200.

48 J Rob Bray et al, ‘Evaluating New Income Management in the Northern Territory: Final Evaluation Report’ (Social Policy Research Centre Report 25/2014, September 2014) xx.

49 Ibid.

50 Kristen Smith et al, ‘Alcohol Management Plans and Related Alcohol Reforms’ (Research Brief No 16, Indigenous Justice Clearinghouse, October 2013) 3.

51 *Stronger Futures in the Northern Territory Act 2012* (Cth) s 8, inserting s 75B(1).

52 Ibid s 8, inserting s 75C(1).

53 Ibid s 5. However, s 75C(7)(a) of the *Stronger Futures in the Northern Territory Act 2012* (Cth) stipulates that if the quantity of alcohol involved in the offence exceeds 1350 ml the maximum penalty for an offence rises to a maximum of 680 penalty units or imprisonment for 18 months.

54 Signs were only produced in English. The signs were not translated into Aboriginal languages spoken in the prescribed areas. A prescribed area is defined in s 4 of the *Northern Territory National Emergency Response Act 2007* (Cth) as Aboriginal land as per the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and refers to town camps and areas prescribed by the Commonwealth Minister through legislative provision. See Altman, ‘The Howard Government’s Northern Territory Intervention’, above n 20.

the 'blue and white signs' implemented under the NTER legislation pictured in figure one below.



Figure 1: An image used in both Primary and Secondary Field Research Sessions 2

Income management through the BasicsCard, and alcohol regulation through the 'blue and white signs' are both forms of 'rationing'. A number of scholars characterise these measures as a return to pre-1970s policies of 'assimilation',<sup>55</sup> and the policy surrounding the BasicsCard is an example of this. Gibson refers to

55 Billings, above n 9; Paul Toohey, 'Last Drinks: The Impact of the Northern Territory Intervention' [2008] (30) *Quarterly Essay* 1; Pounder, above n 18; Bielefeld, 'History Wars and Stronger Futures Laws', above n 21; Bielefeld, 'Compulsory Income Management and Indigenous Australians', above n 31; Nicholson, Harris and Gartland, above n 33, 53.

the BasicsCard as the new ‘rations’ card.<sup>56</sup> Bielefeld says the alcohol management measures under the ‘Stronger Futures legislation are far more onerous and draconian than what was in place under the *Aboriginals Ordinance Act 1918* (Cth).<sup>57</sup> She notes that s 4 of the *Stronger Futures in the Northern Territory Act 2012* (Cth) 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’.<sup>58</sup>

### III THE CONVENTION ON THE RIGHTS OF THE CHILD AND CHILDREN’S PARTICIPATION

The *CRC* is the most widely ratified human rights treaty in the world with 196 countries as states parties.<sup>59</sup> 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.<sup>60</sup> The *CRC* sets out the rights that all people under the age of 18 are entitled to globally and it is the ‘contemporary context for thinking about the status of children’.<sup>61</sup> 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.<sup>62</sup> The Committee on the Rights of the Child (‘UNCRC’), the body responsible for monitoring state parties’ implementation of the *CRC*, has developed four

56 Paddy Gibson, ‘Working for the BasicsCard 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 Sydney, February 2010) 9.

57 Bielefeld, ‘History Wars and Stronger Futures Laws’, above n 21, 17.

58 Ibid.

59 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: United Nations High Commissioner for Human Rights, *Status of Ratification Interactive Dashboard*, United Nations Human Rights: Office of the High Commissioner <<http://indicators.ohchr.org/>>.

60 *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) art 26.

61 David Archard, *Children: Rights and Childhood* (Routledge, 2<sup>nd</sup> ed, 2004) 218.

62 Nigel Cantwell, ‘The Origins, Development and Significance of the United Nations *Convention on the Rights of the Child*’ in Sharon Detrick, Jaap 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) 19, 27.

foundation principles from which children's rights emerge.<sup>63</sup> These are the principles of survival and development, participation, non-discrimination and the best interests of the child.<sup>64</sup>

The principle of children's participation in decision-making processes is linked to art 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 1990 when the *CRC* came into force and received near universal ratification within a short period of time,<sup>65</sup> 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.<sup>66</sup> The participation provisions contained in art 12 of the *CRC* are responsible for the change in children's global 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*.<sup>67</sup>

In light of Australia's responsibilities under the *CRC*, Aboriginal children and young people should have been afforded the opportunity to participate in the development of the NTER and Stronger Futures legislation. There was no consultation with any Indigenous peoples prior to the NTER,<sup>68</sup> and the consultation process prior to the Stronger Futures law and policy framework was flawed and inadequate.<sup>69</sup> The

- 63 The Committee on the Rights of the Child ('UNCRC') is the body of 18 independent experts that monitors implementation of the *CRC* by its states parties. It also monitors implementation of two Optional Protocols to the *Convention* on the 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: *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: at art 5. The Protocol entered into force on 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](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en)>.
- 64 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*, 1<sup>st</sup> sess, 22<sup>nd</sup> mtg, UN Doc CRC/C/5 (30 October 1991, adopted 15 October 1991) 4 [13], cited in Helen Stalford and Eleanor Drywood, 'Using the *CRC* to Inform EU Law and Policy-Making' in Antonella Invernizzi and Jane Williams (eds), *The Human Rights of Children: From Visions to Implementation* (Ashgate Publishing, 2011) 199, 214.
- 65 Cynthia Price Cohen and Susan Kilbourne, 'Jurisprudence of the Committee on the Rights of the Child: A Guide for Research and Analysis' (1998) 19 *Michigan Journal of International Law* 633, 635.
- 66 E Kay M Tisdall, 'Children Should Be Seen and Heard? Children and Young People's Participation in the UK' 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 Macmillan, 2014) 168; John Tobin, 'Increasingly Seen and Heard: The Constitutional Recognition of Children's Rights' (2005) 21 *South African Journal on Human Rights* 86.
- 67 Michael Freeman, 'Whither Children: Protection, Participation, Autonomy?' (1994) 22 *Manitoba Law Journal* 307, 319.
- 68 Nicholson, Harris and Gartland, above n 33, 14.
- 69 Nicholson et al, above n 9, 5–15.

purpose of this paper is to highlight that if afforded the opportunity, Aboriginal children and young people are ready, willing and able to input into decision-making processes that affect them, and their ideas and insights, if sought and listened to by legislators and other decision-makers, could greatly enhance the quality, applicability and effectiveness of laws likely to affect their lives.

The active participation of children and young people in decision-making about matters affecting them is now regularly supported across a wide range of fields, and across different circumstances.<sup>70</sup> Child participation practices emphasise the importance not only of listening to children and young people, but of also incorporating their perspectives into decision-making processes, operationalising children's participation as a right within the democratic process.<sup>71</sup> Meaningful participation transcends the consultation paradigm where children may be asked to provide their views about a matter yet these views do not necessarily influence the decisions made. For this reason, some consultation practices (in contrast to participation practices) have been criticised for being tokenistic.<sup>72</sup> 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.<sup>73</sup> Tobin says, '[a]s 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.'<sup>74</sup>

- 70 John Tobin, 'Beyond the Supermarket Shelf: Using a Rights Based Approach to Address Children's Health Needs' (2006) 14 *International Journal of Children's Rights* 275, 289–91; Jennifer Skattebol et al, 'Making a Difference: Building on Young People's Experiences of Economic Adversity' (Final Report, Social Policy Research Centre, August 2012), 3; Barbara Bennett Woodhouse, 'Enhancing Children's Participation in Policy Formation' (2003) 45 *Arizona Law Review* 751, 753–4; Smiljka Tomanović, 'Negotiating Children's Participation and Autonomy within Families' (2003) 11 *International Journal of Children's Rights* 51, 51–2; Mary Ann Powell and Anne B Smith, 'Children's Participation Rights in Research' (2009) 16 *Childhood* 124, 125–6; Antonella Invernizzi and Brian Milne, 'Are Children Entitled to Contribute to International Policy Making? A Critical View of Children's Participation in the International Campaign for the Elimination of Child Labour' (2002) 10 *International Journal of Children's Rights* 403, 412–13; Meda Couzens, 'Exploring Public Participation as a Vehicle for Child Participation in Governance: A View from South Africa' (2012) 20 *International Journal of Children's Rights* 674, 676–8; Elisabeth Barratt Hacking, Robert Barratt and William Scott, 'Engaging Children: Research Issues around Participation and Environmental Learning' (2007) 13 *Environmental Education Research* 529, 531.
- 71 Kirsten Jane Davies, *Intergenerational Democracy: Rethinking Sustainable Development* (Common Ground Publishing, 2012) 196.
- 72 Roger A Hart, 'Stepping Back from "The Ladder": Reflections on a Model of Participatory Work with Children' in Alan Reid et al (eds), *Participation and Learning: Perspectives on Education and the Environment, Health and Sustainability* (Springer, 2008) 19.
- 73 Roger A Hart, *Children's Participation: From Tokenism to Citizenship* (UNICEF International Child Development Centre, 1992); Davies, above n 71, xviii; Cath Larkins, 'Rethinking Children's Citizenship' (2013) 43 *British Journal of Social Work* 821.
- 74 Ballarat City 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 and Kurunjang Primary School, 2013) 2, citing John Tobin, 'Asia Pacific Child Friendly Cities' (Speech delivered at the Victorian Chapter — Asia Pacific Child Friendly Cities, Moreland City Council, 10 August 2012).



Using a child rights-based approach ('CRBA'),<sup>75</sup> informed by Indigenous research methodologies,<sup>76</sup> this research was conducted in a way that sought to engage Aboriginal children and young people as collaborators — as research *agents* not as research *subjects*. Embedded in this approach is the view that children have 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*.<sup>77</sup> The following section overviews the methodology used to carry out the field research.

#### IV RESEARCH OVERVIEW AND RESEARCH METHODOLOGY

The field research undertaken was a key component of a larger PhD project that examined the question '[w]hy and how should Aboriginal [children and young people] participate in the development of law and policy affecting them?'<sup>78</sup> Twenty-two Aboriginal<sup>79</sup> children and young people aged between 10–17 years old, from a school in the NT, participated in this field research. This group of people does not speak for all Aboriginal children and young people. Rather, this research presents a snapshot of the views presented by a small group of participants from one school and one local area in the NT.<sup>80</sup> All participants were bilingual, or multilingual, and spoke English as well as one or more of four Aboriginal languages. Two groups of children and young people participated in the research: a primary class group of participants (aged 10–12 years) who are

75 Laura Lundy, "'Voice" Is Not Enough: Conceptualising Article 12 of the United Nations *Convention on the Rights of the Child*' (2007) 33 *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 Michael Freeman (ed), *Law and Childhood Studies: Current Legal Issues 2011* (Oxford University Press, 2012) 75.

76 Martin Nakata, *Disciplining the Savages: Savaging the Disciplines* (Aboriginal Studies Press, 2007) ch 11; Lana Ray (Waaskone Giizhigook), 'Deciphering the "Indigenous" in Indigenous Methodologies' (2012) 8 *AlterNative: An International Journal of Indigenous Peoples* 85, 88. See also Lester-Irabinna Rigney, 'Indigenist Research and Aboriginal Australia' in Julian E Kunnie and Nomalungelo I Goduka (eds), *Indigenous Peoples' Wisdom and Power: Affirming Our Knowledge through Narratives* (Ashgate Publishing, 2006) 32.

77 Geraldine Van Bueren, 'Acknowledging Children as International Citizens: A Child-Sensitive Communication Mechanism for the *Convention on the Rights of the Child*' in Antonella Invernizzi and Jane Williams (eds), *The Human Rights of Children: From Visions to Implementation* (Ashgate Publishing, 2011) 117, 118.

78 Holly Doel-Mackaway, *'Just Ask Us. Come and See Us': The Participation of Aboriginal Children and Young People in Law and Policy Development* (PhD Thesis, Macquarie University, 2016) 3–4.

79 The choice to use the word 'Aboriginal' as a descriptor indicating research participants' cultural background was influenced by the children and young people involved in the research. During the field research most children and young people used the word 'Aboriginal' to describe their cultural background. Some children and young people used the words 'Aboriginal' and 'Indigenous' interchangeably in reference to themselves, their family, and their community. None of the children and young people identified as Torres Strait Islander, and none of the children and young people identified as non-Indigenous.

80 See Katie Wilson and Judith Wilks, 'Research with Indigenous Children and Young People in Schools: Ethical and Methodological Considerations' (2013) 3 *Global Studies of Childhood* 142, 147.



referred to as ‘children’, and a secondary class group of participants (aged 12–17 years) who are referred to as ‘young people’.

The research methodology — a CRBA to research informed by Indigenous research methodologies — is the result of an amalgamation of Lundy’s CRBA to matters involving children,<sup>81</sup> with elements of Indigenous research methodologies, particularly Nakata’s ‘Indigenous standpoint theory’<sup>82</sup> and Ray’s ‘Indigenous convergence methodology’.<sup>83</sup> The methods used to carry out the field research were ‘yarning’ and peer-to-peer video interviewing using iPads drawing on the work of Bessarab and Ng’andu,<sup>84</sup> as well as the work of Bat et al and Kral.<sup>85</sup>

In keeping with the methodological approach adopted in this study, this paper presents and privileges children and young people’s views shared during the field research<sup>86</sup> and recognises Aboriginal children and young people’s distinctive worldviews and knowledge in the context of the ‘social, historical and political contexts which shape’ their experiences.<sup>87</sup> This approach is consistent with art 12 of the *CRC*, which provides children and young people with the right to express their views about ‘matters affecting’ them and have these views considered in decision-making processes. Furthermore, privileging Aboriginal children and young people’s views is consistent with both a CRBA to conducting research<sup>88</sup> 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’.<sup>89</sup> The involvement of Aboriginal children and young people and the representation of their views in this study were carried out in a way which sought to ‘[represent] Indigenous persons honestly; is accountable to Indigenous persons; and benefits the self-determination of [the] participants’.<sup>90</sup> Thus, this research was primarily concerned with seeking, highlighting and recording Aboriginal children and young people’s perspectives and knowledge. For this reason, the words children

81 Lundy, above n 75. See also Lundy and McEvoy, above n 75.

82 Nakata, above n 76, ch 11.

83 Ray, above n 76, 88. See also Rigney, ‘Indigenist Research and Aboriginal Australia’, above n 76.

84 Dawn Bessarab and Bridget Ng’andu, ‘Yarning about Yarning as a Legitimate Method in Indigenous Research’ (2010) 3(1) *International Journal of Critical Indigenous Studies* 37.

85 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 Annual Conference, Canberra, 2009); I Kral, ‘Plugged In: Remote Australian Indigenous Youth and Digital Culture’ (Working Paper No 69/2010, Centre for Aboriginal Economic Policy Research, May 2010).

86 Christine Asmar and Susan Page, ‘Sources of Satisfaction and Stress among Indigenous Academic Teachers: Findings from a National Australian Study’ (2009) 29 *Asia Pacific Journal of Education* 387, 390; Wilson and Wilks, above n 80, 142–3.

87 Karen Martin and Booran Mirraoopa, ‘Ways of Knowing, Being and Doing: A Theoretical Framework and Methods for Indigenous and Indigenist Re-search’ (2003) 27(76) *Journal of Australian Studies* 203, 205.

88 Lundy, above n 75; Elizabeth Welty and Laura Lundy, ‘A Children’s Rights-Based Approach to Involving Children in Decision Making’ (2013) 12(3) *Journal of Science Communication* 1.

89 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 Angela Brew and Lisa Lucas (eds), *Academic Research and Researchers* (Open University Press, 2009) 146, 148 (emphasis in original).

90 Ibid 149.

and young people spoke during the field research were digitally recorded, transcribed and documented in this paper precisely as they were spoken, without editing, in an attempt to best reflect children and young people's views.<sup>91</sup> Children and young people's names are not used to protect participants' privacy; rather, participants' gender and age are noted where a direct quote is cited.

## A A Child Rights-Based Approach to Research

The use of a CRBA sought to embed children and young people's participation not only in this research process, but also to assist with the formulation of a model for children and young people's participation in the development of legal and policy frameworks more broadly.<sup>92</sup> A CRBA acknowledges that children and young people have agency, and have the capacity to participate 'in the process of [the] construction of meaning' about their own lives.<sup>93</sup> A fundamental defining element of a CRBA is the recognition and promotion of children as 'rights-holders'<sup>94</sup> and the placement of concomitant responsibilities on the state as the duty-bearer<sup>95</sup> for the fulfilment and realisation of these rights.<sup>96</sup> 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),<sup>97</sup> with the core human rights principles (universality, indivisibility, inalienability and interconnectedness).<sup>98</sup> A CRBA 'emphasises the importance not only of listening to children, but of using their perspectives in making decisions on matters affecting them'.<sup>99</sup> Finally, 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' and ensuring that the

- 91 Vicki Saunders, Roianne West and Kim Usher, 'Applying Indigenist Research Methodologies in Health Research: Experiences in the Borderlands' (2010) 39 (Supplement) *Australian Journal of Indigenous Education* 1, 5. The words used by children and young people have not been altered. They are an accurate account of the precise words used during the field research. The field research conversations were recorded on a 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.
- 92 Terri Libesman, 'A Human Rights Framework for Contemporary Aboriginal and Torres Strait Islander Children's Wellbeing' (2008) 12 (Special Edition) *Australian Indigenous Law Review* 68; Lundy, above n 75.
- 93 Sandy Fraser and Chris Robinson, 'Paradigms and Philosophy' in Sandy Fraser et al (eds), *Doing Research with Children and Young People* (Sage Publications, 2004) 59, 76.
- 94 John Tobin, 'Justifying Children's Rights' (2013) 21 *International Journal of Children's Rights* 395, 397.
- 95 Lundy and McEvoy, above n 75, 77, citing Charles R Beitz, *The Idea of Human Rights* (Oxford University Press, 2009).
- 96 Lundy and McEvoy, above n 75, 79–80.
- 97 Tobin, 'Beyond the Supermarket Shelf', above n 69, 286–91.
- 98 *Ibid* 281–5.
- 99 Skattebol et al, above n 70, 3.

research is ‘conducted by researchers who use quality, scientific methods and analysis’.<sup>100</sup>

## B Indigenous Research Methodologies

My non-Indigenous status was a key limitation of this research, the challenges and ethical complexities of which I sought to mitigate by adopting a CRBA to research informed by Indigenous research methodologies. I strove to understand and implement elements of Indigenous research methodologies, acknowledging the diversity of approaches in this body of thought and practice. This methodological approach meant that I focussed on developing collaborative relationships with, and seeking advice from, Indigenous scholars, Indigenous Elders and community members, and by engaging Aboriginal children and young people in the research process as active research agents not ‘research subjects’.<sup>101</sup>

Indigenous research methodologies draw attention to the manner in which research is undertaken, who is doing the research, why the research is being carried out and what benefits Indigenous peoples and Indigenous communities gain from being involved.<sup>102</sup> Of primary concern in conducting this research 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.

Nakata’s Indigenous standpoint theory<sup>103</sup> — which builds on feminist standpoint theory<sup>104</sup> — offered an appropriate and helpful lens to understand Aboriginal children and young people as ‘knowers’ and for ‘investigating the social relations within which [they] as “knowers” know’ as well as a means to include these otherwise absent accounts in public discourse.<sup>105</sup> The word ‘standpoint’ though, warns Nakata, cannot be substituted for a person’s ‘perspective or viewpoint’.<sup>106</sup>

100 Harriot Beazley et al, ‘The Right to Be Properly Researched: Research with Children in a Messy, Real World’ (2009) 7 *Children’s Geographies* 365, 370.

101 Ibid 366, citing Allison James and Alan Prout (eds), *Constructing and Reconstructing Childhood: Contemporary Issues in the Sociological Study of Childhood* (Falmer Press, 1990); Nakata, above n 76, 214, citing Gaile Pohlhaus, ‘Knowing Communities: An Investigation of Harding’s Standpoint Epistemology’ (2002) 16 *Social Epistemology* 283, 287. I would like to particularly thank Professor Susan Page, adjunct supervisor for this project, as well as the many staff members at the school where the research took place for their expertise, time and advice throughout this project. The names of the people who assisted at the school cannot be revealed for privacy reasons and due to the ethical arrangements entered into in order to carry out this research.

102 Aileen Moreton-Robinson and Maggie Walter, ‘Indigenous Methodologies in Social Research’ in Maggie Walter (ed), *Social Research Methods: An Australian Perspective* (Oxford University Press, 2<sup>nd</sup> ed, 2010); Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (Zed Books, 2<sup>nd</sup> ed, 2012). See also Australian Institute of Aboriginal and Torres Strait Islander Studies, *Guidelines for Ethical Research in Australian Indigenous Studies* (2<sup>nd</sup> revised ed, 2012) (*‘ALATSIS Guidelines’*) 2.

103 Nakata, above n 76.

104 Dorothy E Smith, *The Everyday World as Problematic: A Feminist Sociology* (Northeastern University Press, 1987).

105 Nakata, above n 76, 214, quoting Pohlhaus, above n 101, 287.

106 Nakata, above n 76, 213.

Rather, standpoint theory is a method of inquiry 'utilised by a diversity of marginalised groups whose accounts of experience were [otherwise] excluded or subjugated'.<sup>107</sup> Nakata's Indigenous standpoint theory was applied in this research to assist with debunking myths about children and young people's capacity to be involved in decision-making and as active agents in research processes.

Field research was carried out with the awareness that Indigenous Australians have historically been the 'subjects' of research rather than participants in control of research processes, methods and the interpretation of data.<sup>108</sup> Ray states that Indigenous methodologies are 'motivated by anti-colonial and anti-oppressive agendas, and work toward establishing an equitable relationship with the state'.<sup>109</sup> This agenda accords with a CRBA and the priority in this approach regarding children and young people's relationship with the state, ensuring the duty-bearer/rights-holder relationship is based on the provisions contained in the *CRC*.

A blend of Indigenous and Western research methodologies was used to carry out the field research. Ray's theory of the convergence of Western and Indigenous research methodologies provided a template for how to fuse these traditions, and draw on the respective strengths of each approach.<sup>110</sup> 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 ways that value Indigenous knowledge.<sup>111</sup> A convergence approach rejects the elements of Western research methodologies and methods that devalue Indigenous knowledge and subjugate Indigenous research participants.<sup>112</sup> 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.

The research was informed and guided by the principles articulated in the *National Statement on Ethical Conduct in Human Research* ('*National Statement*'),<sup>113</sup> the *Guidelines for Ethical Research in Australian Indigenous Studies* ('*AIATSIS Guidelines*')<sup>114</sup> and the National Health and Medical Research Council's *Values*

107 Ibid.

108 Lester-Irabinna Rigney, 'Internationalization of an Indigenous Anticolonial Cultural Critique of Research Methodologies: A Guide to Indigenist Research Methodology and Its Principles' (1999) 14 *Wicazo Sa Review* 109, 117.

109 Ray, above n 76, 86.

110 Ray, above n 76.

111 Ibid 94.

112 Ibid 95.

113 National Health and Medical Research Council, Australian Research Council and Australian Vice-Chancellors' Committee, *National Statement on Ethical Conduct in Human Research* (Australian Government, revised ed, 2013) 12 <[http://web.archive.org/web/20140201153219/http://nhmrc.gov.au/filesnhmrc/publications/attachments/e72nationalstatement\\_131211.pdf](http://web.archive.org/web/20140201153219/http://nhmrc.gov.au/filesnhmrc/publications/attachments/e72nationalstatement_131211.pdf)> ('*National Statement*').

114 *AIATSIS Guidelines*, above n 102, 2.

*and Ethics: Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research ('NHMRC Values and Ethics Guidelines')*.<sup>115</sup>

### **C Research Methods: 'Yarning' and 'Peer-to-Peer Interviewing Using iPads'**

In order to carry out the research in a way that was sensitive to, and respectful of participants' status as Aboriginal peoples, and as young people, two primary research methods were implemented that aligned with the methodological framework adopted. These methods were 'yarning' and 'peer-to-peer interviewing using iPads'. Bessarab and Ng'andu describe yarning, as a research method, 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.<sup>116</sup>

The use of the yarning method is consistent with Indigenous research methodologies given yarning is 'an Indigenous cultural form of conversation',<sup>117</sup> and a widespread preferred mode of communication in many Aboriginal communities between adults and children.<sup>118</sup> A growing body of literature supports the assertion that a large proportion of Indigenous peoples, adults and children prefer to communicate informally through 'yarning' rather than talking formally and face-to-face in a typical Western research 'interview' setting.<sup>119</sup>

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'.<sup>120</sup> However, Bessarab and Ng'andu,<sup>121</sup> as well as other Indigenous authors and academics,<sup>122</sup> have established this method as a credible way to value Indigenous knowledge, and a means to effectively

115 National Health and Medical Research Council, *Values and Ethics: Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research* (Commonwealth of Australia, 2003) ('NHMRC Values and Ethics Guidelines').

116 Bessarab and Ng'andu, above n 84, 38.

117 Ibid 37.

118 Ibid 38.

119 Ibid. See also Melissa Walker et al, "'Yarning" as a Method for Community-Based Health Research with Indigenous Women: The Indigenous Women's Wellness Research Program' (2014) 35 *Health Care for Women International* 1216; Margaret Kovach, 'Conversational Method in Indigenous Research' (2010) 5(1) *First Peoples Child & Family Review* 40; Beverley Flückiger, Pat Diamond and Will Jones, 'Yarning Space: Leading Literacy Learning through Family-School Partnerships' (2012) 37(3) *Australasian Journal of Early Childhood* 53.

120 Bessarab and Ng'andu, above n 84, 39, citing Allan Feldman, 'The Role of Conversation in Collaborative Action Research' (1999) 7 *Educational Action Research* 125. In the year 2000 some academics challenged Bessarab's use of the yarning method, which was a part of her doctoral research, as a non-bona fide research method.

121 Bessarab and Ng'andu, above n 84.

122 Walker et al, above n 119; Kovach, above n 119.

interrogate a research topic and achieve sound research results.<sup>123</sup> Thus, yarning is increasingly being accepted in international academic fora as a robust method of undertaking research and valuing Indigenous knowledge, as well as an appropriate process to ethically engage Indigenous peoples in qualitative field research.<sup>124</sup> The use of yarning in this research is linked to a CRBA as the yarning method created a system for Aboriginal children and young people to express their views in a culturally appropriate way that was also consistent with implementing art 12 of the *CRC*.

In addition to seeking children and young people's views through yarning, participant led peer-to-peer video interviewing using iPads was also undertaken. This research method was used to present a platform which was engaging and relevant to Aboriginal children and young people, and as a means to record participants' views. Peer-to-peer interviewing is used by other researchers working with young Indigenous participants and is considered an effective medium to creatively engage children and young people in research.<sup>125</sup> Children and young people were invited to make videos addressing the research topics 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 and as part of the reciprocity arrangements. During the research, 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.<sup>126</sup>

Literature supports the assertion that technological influences, such as the use of iPads in this research context to record research contributions, are having a profound, often enriching, impact on Indigenous young people's lives, engendering a sense of 'their "belongingness" to globalised youth culture'.<sup>127</sup> Indigenous youth in remote areas, such as where this research was conducted, are at a unique point in history where they are introducing their communities to technology and negotiating new forms of oral and written communication.<sup>128</sup> Participants in this study, like most young people in the modern world, expressed a keen interest in using and engaging with digital technology.<sup>129</sup> Furthermore, participants said

123 Bessarab and Ng'andu, above n 84; Walker et al, above n 119; Flückiger, Diamond and Jones, above n 119.

124 Devi Dee Mucina, 'Story as Research Methodology' (2011) 7 *AlterNative: An International Journal of Indigenous Peoples* 1; Bessarab and Ng'andu, above n 84, 39; Flückiger, Diamond and Jones, above n 119; Walker et al, above n 119.

125 Bat et al, above n 85, citing Willie Ermine et al, 'The Ethics of Research Involving Indigenous Peoples: Report of the Indigenous Peoples' Health Research Centre to the Interagency Advisory Panel on Research Ethics' (Report, Indigenous Peoples' Health Research Centre, July 2004); John Henry et al, 'Indigenous Research Reform Agenda: Rethinking Research Methodologies' (Links Monograph Series 2, Cooperative Research Centre for Aboriginal and Tropical Health, 2002).

126 Marla Weston, Dianne Biin and Brenda Pohl, 'Digital Storytelling: A Case Study of Aboriginal Youth Engaging in Technology' (Paper presented at the EdMedia: World Conference on Educational Multimedia and Technology, 24 June 2013).

127 Kral, above n 85, 14.

128 Ibid.

129 Ibid.



that knowledge of, proficiency with and access to digital technologies was a high priority for them.<sup>130</sup> In order to facilitate creative research engagement with the participants it was important to tap into their interest in digital technology as a ‘meaningful and relevant’ research tool.<sup>131</sup>

## **V ABORIGINAL CHILDREN AND YOUNG PEOPLE’S KNOWLEDGE AND VIEWS ABOUT THE INTERVENTION**

The remainder of this paper presents findings from the field research representing Aboriginal children and young people’s knowledge and views about the NTER and Stronger Futures legislation. The findings centre around participants’ (a) knowledge about the legislation, (b) views about the BasicsCard, and (c) views about the ‘blue and white warning signs’; as well as (d) whether participants viewed the legislation as a ‘[matter] affecting’ them, consistent with the meaning of art 12 of the *CRC*. In summary, children and young people said the BasicsCard has led to some improvements in their lives such as improving access to food and toys; that the BasicsCard is helpful for paying bills; and the BasicsCard has helped to reduce dishonest trading behaviours by retailers toward Aboriginal peoples. However, children and young people qualified their views about the positive aspects of the BasicsCard by expressing concern and surprise about the fact that the BasicsCard is a racially targeted measure because it predominantly applies only to Aboriginal peoples.<sup>132</sup> Therefore, children and young people classified the measure as fundamentally racist and flawed. In relation to the alcohol regulation measures, participants said the warning signs shame Aboriginal communities and are an ineffective regulatory mechanism because this measure does not stop nor control alcohol use.

### **A Knowledge about the Legislation**

Participants demonstrated detailed understanding of the NTER and Stronger Futures measures discussed during the field research. This argument supports the argument espoused in this paper, and supported by art 12 of the *CRC*, that Aboriginal children and young people not only must participate in decision-making processes affecting them, but that they have the capacity to do so, even in relation to complex matters such as law and policy. The following statements, for example, highlight participants’ knowledge about the nature of the laws being examined, the measures arising from these laws, and children and young people’s perceptions about the purpose of these laws. A child described the Intervention legislation as a product of non-Indigenous law, she said, ‘[i]t’s white-fella law, its

130 Ibid 9.

131 Ibid. See also Fatima Pirbhai-Illich, ‘Aboriginal Students Engaging and Struggling with Critical Multiliteracies’ (2010) 54 *Journal of Adolescent & Adult Literacy* 257, 257.

132 Bielefeld and Altman, above n 42, 200.

big law.<sup>133</sup> Another child described the Intervention in the following way: 'It's the BasicsCard and the signs.'<sup>134</sup> A young person articulated his view of the purpose of the Intervention when he said it was about: 'Helping. Helping people with their family.'<sup>135</sup>

A limited amount of data was collected about how children and young people knew about the Intervention legislation. Some of this knowledge may have been formed during a series of information sessions that were conducted with potential participants as part of the pre-research preparation activities. It is not possible to disentangle how children and young people knew about the measures arising from the Intervention as this was not investigated in depth. Some data was collected on this issue that suggests children and young people sourced some information about the Intervention from the media; one young person said: 'It's on telly.'<sup>136</sup> Several children and young people said the NTER and Stronger Futures legislation were not directly spoken about in their homes and they knew about these measures through experience, primarily by witnessing family members and others using the BasicsCard, and seeing and talking about the blue and white signs in the community. Governmental advertising promoting the BasicsCard was widely observable throughout the town area where the research was conducted; this marketing was particularly pronounced at retail outlets. It is likely that participants' views about the BasicsCard were influenced by these positively framed marketing messages and may have contributed to both the participants' positive views about the purpose of the measures, as well as the finding that nearly all participants were unaware of the racially targeted nature of the BasicsCard. Aboriginal children and young people (as young as 10 years old) demonstrated a working knowledge of the legal and social underpinnings of the BasicsCard and the blue and white warning signs.

## **1 Knowledge about the BasicsCard**

From the outset of the field research participants of all ages, including the youngest participants, showed they had a sophisticated understanding of the use and scope of the BasicsCard. Participants expressed their comprehensive knowledge about who made the BasicsCard, how to use it and what products could be purchased (and not purchased) with it. When shown a sample BasicsCard<sup>137</sup> (pictured below

133 10-year-old female, Primary Class Group Discussion (Field Research Session 1 of 4, Northern Territory, 13 May 2014).

134 10-year-old female, Primary Class Group Discussion (Field Research Session 1 of 4, Northern Territory, 13 May 2014).

135 13-year-old male, Secondary Class Group Discussion (Field Research Session 1 of 4, Northern Territory, 13 May 2014).

136 17-year-old male, Secondary Class Group Discussion (Field Research Session 1 of 4, Northern Territory, 13 May 2014).

137 Brendan Penzer, 'BasicsCard' (Installation presented at the exhibition Ghost Citizens: Witnessing the Intervention, Counihan Gallery, Melbourne, 17 May 2013 – 16 June 2013) <<http://crossart.com.au/98-2013-exhibitions-projects/190-witnessing-the-intervention-counihan-gallery-melbourne-17-may-to-16-june-2013>>. I visited this exhibition and Brendan Penzer's installation included realistic looking, yet fake, cardboard BasicsCards for visitors to take and with permission I used several of these during the field research.

in figure two) all children and young people recognised what it was, and all had seen an adult member of their family, or a friend, using one.<sup>138</sup> Some young people had personally used a BasicsCard to purchase goods.<sup>139</sup> This is a photograph of the sample BasicsCard children and young people were shown during the research.



**Figure 2: Brendan Penzer, ‘Basics Card’ presented at the exhibition ‘Ghost Citizens: Witnessing the Intervention Exhibition’<sup>140</sup>**

During a research discussion with the 10–12-year-old children, 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 BasicsCard, demonstrated his knowledge about who developed it and his view about the purpose of the card when he said ‘white-fella make that for save some money for you!’<sup>141</sup> Two young people further highlighted their knowledge about the uses, purpose and benefits of the BasicsCard in a peer-to-peer video they made when they said: ‘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 BasicsCard’;<sup>142</sup> ‘Basic Card, it’s for young child who is hungry, they have no clothes, some kids have no drink.’<sup>143</sup>

Another young person showed his knowledge of the broader purpose of the BasicsCard in the context of the family and the community when he said the ‘BasicsCard is to help people, to help community, to help everything. Help the family, help the school.’<sup>144</sup> A child said her Nana uses the BasicsCard to ‘gets toys, clothes and a feed’.<sup>145</sup>

138 The adult relative may have been an uncle, aunt, grandparent, cousin, sibling or another relative. Not all participants’ parents or carers held a BasicsCard.

139 Secondary Class Group Discussion (Field Research Session 3 of 4, Northern Territory, 20 May 2014).

140 Penzer, above n 137.

141 10-year-old male, Primary Class Group Discussion (Field Research Session 1 of 4, Northern Territory, 13 May 2014).

142 17-year-old male, Secondary Class Group Discussion (Field Research Session 2 of 4, Northern Territory, 16 May 2014).

143 16-year-old male, Secondary Class Group Discussion (Field Research Session 1 of 4, Northern Territory, 13 May 2014).

144 14-year-old female, Secondary Class Group Discussion (Field Research Session 2 of 4, Northern Territory, 16 May 2014).

145 10-year-old female, Primary Class Group Discussion (Field Research Session 1 of 4, Northern Territory, 13 May 2014).

All of the participants, including the youngest participants, expressed their understanding about the way the BasicsCard is administered. One child indicated her knowledge of the limited funds available on the card, and how to ascertain the balance remaining on the card when she said her parents use the card: 'When there's money in it! ... The BasicsCard saves you when you are hungry. Ring up the Centrelink and check how much is in your kitty, in your BasicsCard.'<sup>146</sup>

Participants across all age ranges demonstrated knowledge about the criteria required to hold a BasicsCard, for example, a child said: 'You need to be an adult to have a BasicsCard.'<sup>147</sup> Further, children and young people demonstrated their knowledge that only people who were not employed could have a BasicsCard. Several participants commented on this — one young person 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 BasicsCard.'<sup>148</sup> A child reiterated this statement when she said that people could only receive a BasicsCard if they were unemployed, and if a person later became employed they were no longer able to use a BasicsCard; people could 'only get a BasicsCard if they don't work'.<sup>149</sup> The correlation children and young people made between adults who are not engaged in the paid workforce and eligibility to use a BasicsCard suggests the income management regime seeks to instil the normative value of undertaking paid work.

Children and young people showed detailed knowledge of the types of goods that can and cannot be purchased using the card. All children and young people who participated in the research knew that alcohol and cigarettes could not be purchased using the BasicsCard — that 'you can only buy food, clothes and toys', or 'pay bills on it'.<sup>150</sup>

In addition to knowing how, when and for what purposes a BasicsCard could be used, even the youngest children demonstrated an awareness of the legal and political context in which the BasicsCard was designed. During a discussion about 'who decided on making the BasicsCard?' one child said, 'Tony Abbott' to which another child said, 'No Adam Giles'.<sup>151</sup> This illustrates that participants had a solid knowledge (particularly for young children aged 11 years old) of the political process, and political players, underpinning the NTER and Stronger Futures legislation.

146 10-year-old female, Primary Class Group Discussion (Field Research Session 1 of 4, Northern Territory, 13 May 2014).

147 10-year-old male, Primary Class Group Discussion (Field Research Session 3 of 4, Northern Territory, 22 May 2014).

148 17-year-old male, Secondary Class Group Discussion (Field Research Session 1 of 4, Northern Territory, 13 May 2014).

149 10-year-old female, Primary Class Group Discussion (Field Research Session 1 of 4, Northern Territory, 13 May 2014).

150 Ibid.

151 11-year-old male, Primary Class Group Discussion (Field Research Session 2 of 4, Northern Territory, 15 May 2014); 11-year-old female, Primary Class Group Discussion (Field Research Session 2 of 4, Northern Territory, 15 May 2014). The Hon Tony Abbott MP was the Prime Minister of Australia from 18 September 2013 to 15 September 2015. He was Prime Minister at the time when the field research was conducted. The Hon Adam Giles MP was Chief Minister of the NT Territory from 2013–16. He was Chief Minister of the NT at the time when the field research was conducted.

As well as demonstrating knowledge about how to use the BasicsCard and the political and legal underpinnings of the measure, children and young people linked the card to systemic discrimination against Aboriginal peoples and spoke about the card in the context of disadvantages experienced by Aboriginal peoples. When participants aged 10 and 11 years old discussed the BasicsCard, strong themes surrounding poverty and homelessness emerged. These children spoke about not having enough access to basic requirements such as enough clothes, money, food and shelter. Children said, ‘we need to buy clothes’, ‘we need to save money’, people (are) ‘poor and they [are] just scavengers’, and Aboriginal people are ‘homeless’.<sup>152</sup> Children’s references in these statements to ‘scavengers’ and people being homeless indicate that participants recognised, and possibly experienced, Aboriginal disadvantage and linked the BasicsCard to addressing this disadvantage.

When speaking about the BasicsCard, all of the participants in this study had experience with, and knowledge of, the main category of income management — compulsory income management — under the NIM regime. There is no data suggesting that any participants had knowledge about another category of income management, voluntary income management under the NIM.

## **2 Knowledge about the ‘Blue and White Warning Signs’**

Participants also expressed their knowledge about the alcohol regulation measures arising from the NTER and Stronger Futures legislation. Children and young people discussed their understanding of the blue and white signs — the warning signs situated at the front of ‘prescribed areas’ under the NTER legislation<sup>153</sup> and continued under the Stronger Futures legislation in ‘alcohol protected areas’.<sup>154</sup> The signs detail the penalties associated with the consumption, supply or sale of alcohol in prescribed areas. A young person described his knowledge of the alcohol restrictions in prescribed communities as follows: ‘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].’<sup>155</sup>

Some children and young people who participated in the research lived in communities where these signs were erected and all children and young people had either seen the signs at the entrance to their own community or at the entrance to another community they had visited. All children and young people were aware that the blue and white signs meant alcohol could not be consumed in

152 11-year-old female, Primary Class Group Discussion (Field Research Session 2 of 4, Northern Territory, 15 May 2014); 11-year-old female, Primary Class Group Discussion (Field Research Session 2 of 4, Northern Territory, 15 May 2014); 10-year-old male, Primary Class Group Discussion (Field Research Session 2 of 4, Northern Territory, 15 May 2014).

153 *Northern Territory National Emergency Response Act 2007* (Cth) s 4 outlines the areas of the NT subject to this legislation.

154 *Stronger Futures in the Northern Territory Act 2012* (Cth) pt 2.

155 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 children and young people, 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 young person mentioned has been deleted.

communities where the signs were erected. A young person said the signs were about 'alcohol, to keep it out of the community.'<sup>156</sup>

The blue and white signs also prohibit the possession, supply or sale of certain pornographic material in prescribed areas. Participants did not report anything to do with pornography at any time during the field research. The absence of discussion about the pornography prohibitions in communities could be due to many factors. Some of these reasons may be that the research was not framed in relation to this matter; or that pornography was not an issue that affects children and young people involved in this research; or it could indicate this group of children and young people deemed pornography as a subject that was inappropriate to discuss in this research context. Participants' statements about the blue and white signs exclusively related to discussions about alcohol regulations.

The findings outlined in this section detailed children and young people's knowledge about two key measures implemented under the NTER and Stronger Futures legislation: income quarantining via the BasicsCard and alcohol regulation via the blue and white warning signs. During the research children and young people revealed sophisticated knowledge of both measures. It is particularly significant that, when talking about the BasicsCard, children and young people identified and discussed a range of factors associated with systemic discrimination and disadvantage experienced by Aboriginal peoples such as poverty and homelessness. This section establishes that the children and young people who participated in this research had a detailed and nuanced *knowledge* of the NTER and Stronger Futures measures being examined. The following section explores children and young people's *views* about these measures.

## **B Views about the BasicsCard**

Overall, when discussing the BasicsCard, participants from both the primary and secondary class groups said it helps them in some ways and described some of the positive effects of the BasicsCard on their lives and in their communities. Children and young people identified several key benefits of the BasicsCard stating it has improved their access to food and toys, helped their families with paying bills and assisted with addressing some dishonest trading behaviour by retailers toward Aboriginal peoples. However, nearly all children and young people expressed their view that the BasicsCard is a racist measure given it is predominantly only for, and targeted at, Aboriginal peoples in the NT.

### **1 Improves Access to Food and Toys and Helps with Paying Bills**

The data from this research suggests the BasicsCard has improved participants' access to food, clothes and toys, as well as helping families pay bills. Participants said these benefits of the BasicsCard have had a positive impact on their lives.



Numerous children and young people reflected this view and the following conversation depicts this:

17-year-old male: The Basic Card is alright, it doesn't harm anybody, it's just a card.

15-year-old male: It's just a card to buy a feed for your kids.

17-year-old male: 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.<sup>157</sup>

11-year-old male: Yes. You can save for what you need milk, butter, chips.<sup>158</sup>

A young person said the BasicsCard has contributed to enhancing his life by improving his access to food. He said:

14-year-old male: I reckon the BasicsCard is alright. You can buy food for yourself.

Holly: Do you think life is better or not better because of the BasicsCard?

14-year-old male: It's better. So you can buy stuff for yourself or for your family. You can buy food.<sup>159</sup>

Many children and young people reported that the fact that family bills could be paid using the card was a positive initiative.<sup>160</sup> Most children and young people indicated that they supported the continuance of the BasicsCard. A 10-year-old child reflected the sentiment expressed by the majority of children and young people about the BasicsCard — he said: 'I'd say no to Tony Abbott and Adams Giles not to stop money, not to stop BasicsCard ... so that we can keep on having it.'<sup>161</sup> Many children and young people stated that the BasicsCard has led to improvements in their lives, for example, during a discussion about whether life is better with or without the BasicsCard a child said 'yep, it's better' and many other children and young people expressed similar views.<sup>162</sup>

However, not all children and young people agreed that life is better with the BasicsCard. Numerous children and young people were unsure about whether the BasicsCard has improved their lives, and these children and young people, when discussing if they 'could change the law to keep it or get rid of it?',<sup>163</sup> expressed a lack of certainty about whether the BasicsCard should continue. For example, a young person said: 'Keep it in some ways, and get rid of it in some ways',<sup>164</sup> and during a discussion about whether life is better with or without the BasicsCard a

157 Secondary Class Group Discussion (Field Research Session 1 of 4, Northern Territory, 13 May 2014).

158 Primary Class Group Discussion (Field Research Session 2 of 4, Northern Territory, 15 May 2014).

159 Secondary Class Group Discussion (Field Research Session 3 of 4, Northern Territory, 20 May 2014).

160 *Ibid*; Secondary Class Group Discussion (Field Research Session 1 of 4, Northern Territory, 13 May 2014).

161 Primary Class Group Discussion (Field Research Session 3 of 4, Northern Territory, 22 May 2014).

162 11-year-old female, Primary Class Group Discussion (Field Research Session 3 of 4, Northern Territory, 22 May 2014).

163 Secondary Class Group Discussion (Field Research Session 2 of 4, Northern Territory, 16 May 2014).

164 16-year-old male, Secondary Class Group Discussion (Field Research Session 2 of 4, Northern Territory, 16 May 2014).

child said, 'I don't know.'<sup>165</sup> The participants who expressed uncertainty about the continuance and benefits of the BasicsCard did not elaborate on these statements; however, this data suggests that these children and young people identified elements of the BasicsCard that were positive, and other elements that were not positive, or could be improved.

In summary, children and young people expressed their view that the BasicsCard has some positive effects because it assists families to pay for food, clothes, toys as well as manage household income, pay bills and save money. In addition, many children and young people reported that because of this life is better with the BasicsCard. Most children and young people said the BasicsCard was a positive initiative in their lives, as well as having a range of positive effects in the community. However, these views were qualified by several participants who expressed uncertainty about both whether the BasicsCard has in fact led to improvements in their lives, and whether or not the BasicsCard should continue.

## **2 Addresses Some Dishonest Trading Behaviours**

Another key finding that emerged from the field research data was that children and young people reported that the use of the BasicsCard led to a reduction in dishonest trading behaviours by retailers toward Aboriginal people whilst they were transacting in retail outlets. Numerous children and young people spoke about their experiences of buying goods in shops with either cash or the BasicsCard and reported that when they used cash it is was common for retailers to provide less change during a transaction than was due. These participants said the use of the BasicsCard in shops stopped this practice because the exact amount is deducted from the BasicsCard account and no change is required. Two young people expressed their experience of dishonest trading behaviour by staff at retail outlets and how using the BasicsCard has stopped these practices:

13-year-old male: They rip you off.

Holly: How do they do that?

13-year-old male: They don't count the change and give you less.

Holly: Has that happened to you?

16-year-old female: Yep. It happens a lot.

Holly: So does the BasicsCard help you with that or doesn't it?

13-year-old male: Yeah it helps. Because they don't have to give you change.<sup>166</sup>

These children and young people identified the reduction in dishonest trading behaviours as a positive benefit associated with the BasicsCard. However, it should be noted that the same effect is achieved by using a standard key card associated with an ordinary bank account. Therefore, use of a BasicsCard is not required to

165 10-year-old female, Primary Class Group Discussion (Field Research Session 3 of 4, Northern Territory, 22 May 2014).

166 Secondary Class Group Discussion (Field Research Session 2 of 4, Northern Territory, 16 May 2014).

address dishonest trading behaviours — other mechanisms, particularly voluntary use of a key card could, and do, achieve the same result. Furthermore, the onus of responsibility for addressing dishonest trading behaviours involving stealing money from Aboriginal peoples requires an institutional response aimed at the perpetrators of these offences, not a compulsory measure imposed on Aboriginal peoples.

### 3 *The BasicsCard is Racist*

With the exception of two participants, children and young people in both research groups did not know that the BasicsCard is predominantly only for Aboriginal peoples.<sup>167</sup> Nearly all of the children and young people said that they thought the BasicsCard was for everyone, and that it was not targeted at Aboriginal peoples. Many children and young people said they thought it was for anyone in Australia who was having trouble managing their money. Upon learning (during the research process) that the BasicsCard was predominantly only for Aboriginal people who were in receipt of government welfare payments, numerous children and young people expressed their view that the BasicsCard 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.’<sup>168</sup> Another young person, after learning that the BasicsCard targeted Aboriginal peoples, went further and criticised the operation of the BasicsCard as racist — she said: ‘I think it’s okay ... but it’s racist, it’s bad racism.’<sup>169</sup> Numerous other children and young people concurred with this statement saying it is racist that the BasicsCard is not for everyone in Australia who receives welfare payments.<sup>170</sup> One young person said: ‘Lots of people need help with money; it’s not only Aboriginal people. Everyone who needs a BasicsCard should be able to have one.’<sup>171</sup> This young person, like the other young person mentioned above, expressed the view that the issuance of the BasicsCard predominantly to Aboriginal peoples in the NT was unjust and racist. In a discussion about governmental law making and consultation prior to making laws impacting on Aboriginal children and young people, a child emphasised her view that the BasicsCard should be voluntary:

167 A range of changes to the income management regime under the Stronger Futures legislation was taking place at the time of writing. This includes trialling a new ‘Healthy Welfare Card’ in line with the recommendations arising from the Forrest Review: see below n 174. The trial currently applies to specific regions in Australia, however, it is envisaged that depending on the results of the trial, the ‘Healthy Welfare Card’ may be a measure that applies to all Australians in receipt of income support other than the aged and veteran pension. At the time of conducting the research, whilst changes to income management were made under the NIM, the BasicsCard remained a racially targeted measure predominantly affecting Aboriginal people. Very few non-Aboriginal people were affected by the BasicsCard measure under the NTER and Stronger Futures legislation.

168 16-year-old male, Secondary Class Group Discussion (Field Research Session 2 of 4, Northern Territory, 16 May 2014).

169 15-year-old female, Secondary Class Group Discussion (Field Research Session 2 of 4, Northern Territory, 16 May 2014).

170 Secondary Class Group Discussion (Field Research Session 1 of 4, Northern Territory, 13 May 2014).

171 15-year-old male, Secondary Class Group Discussion (Field Research Session 3 of 4, Northern Territory, 20 May 2014).

Holly: 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?

11-year-old female: Do you want to have BasicsCard or not.<sup>172</sup>

This statement, by one of the youngest member of the research cohort, reflects the sentiment that quarantining welfare monies onto a BasicsCard 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 about complex matters such as the legislative and policy framework surrounding the BasicsCard. The element of choice, whether or not to have welfare money quarantined on a BasicsCard, has been discussed widely in the literature.<sup>173</sup> Notably, the 2014 Forrest Review<sup>174</sup> commissioned by the federal government and chaired by Andrew Forrest ('a businessman with extensive involvement in the mining industry')<sup>175</sup> proposed the introduction of the 'Healthy Welfare Card' for all income support recipients other than those receiving the aged or veteran pension — this is now being trialled across various towns in Australia.<sup>176</sup> To a degree, the views espoused by participants support the Forrest Review proposal that a mechanism to assist income support recipients with managing their money should be widely available. However, participants in this study did not suggest that the vast majority of welfare monies be quarantined onto the BasicsCard (or a similar card like the Healthy Welfare Card) nor did they suggest the use of the card should be compulsory. On the contrary, participants in this study stressed the importance of the BasicsCard being an opt-in measure that is available to assist families if they so choose.

It is important to note that several participants said they had witnessed a family member experiencing racism in the community when using the BasicsCard. This finding adds weight to Gibson's finding that the introduction of the BasicsCard led to increased racism in the community toward Aboriginal peoples.<sup>177</sup> This finding also demonstrates the detrimental impact of racially targeted legislation on Aboriginal children and young people who spoke about experiencing and/or witnessing community-based racism as a result of the introduction and continuance of the BasicsCard under the NTER and then under the Stronger

172 Primary Class Group Discussion (Field Research Session 2 of 4, Northern Territory, 15 May 2014).

173 Bielefeld, 'Compulsory Income Management and Indigenous Australians', above n 31; Paddy Gibson, 'Return to the Ration Days — The NT Intervention: Grass-Roots Experience and Resistance' (Discussion Paper, Jumbunna Indigenous House of Learning, University of Technology Sydney, June 2009) 532.

174 Andrew Forrest, *The Forrest Review: Creating Parity* (Commonwealth of Australia, 2014).

175 Bray et al, 'Compulsory Income Management in the Northern Territory', above n 47, 391.

176 Under the 'Healthy Welfare Card' 80 per cent of welfare payments are quarantined onto the card and 20 per cent can be withdrawn as cash. See Department of Social Services, *Families and Children, Cashless Debit Card Trial — Overview* (14 March 2017) <<https://www.dss.gov.au/families-and-children/programmes-services/welfare-conditional/cashless-debit-card-trial-overview>>. For an analysis of the 'Healthy Welfare Card', see Shelley Bielefeld and J Rob Bray, 'Income Management' in E Klein (compiler), 'Academic Perspectives on the Forrest Review: Creating Parity' [2014] (2) *Centre for Aboriginal Economic Policy Research Topical Issue* 1, 14–18.

177 Gibson, 'Return to the Ration Days', above n 173, 28–31.

Futures legislation.<sup>178</sup> The issue of racism was a strong theme throughout the research interactions with children and young people, and was raised regularly, often in the absence of specific inquiry from me about such matters. The word ‘racism’ featured among the top 50 words used by children and young people during the field research.<sup>179</sup> Many children and young people spoke about being subject to racism — or of family and friends being subject to racism — and generalised racism in the community.

The evaluations of the NIM regime in the NT highlighted significant differences in Aboriginal and Torres Strait Islander adults<sup>180</sup> views about the income management program operating in the NT.<sup>181</sup> Nearly all the children and young people in this study expressed the view that they wanted the BasicsCard to continue, which suggests they want people in their families and/or communities to continue to be able to use the card. This contrasts somewhat with the findings of the final evaluation of income management (‘IM’) in the NT that found 41.2 per cent of Aboriginal and Torres Strait Islander peoples on compulsory IM<sup>182</sup> wish to get off the program and 45.4 per cent wish to remain on it.<sup>183</sup> As mentioned previously, participants in this study did not realise IM in the NT directly and indirectly targeted Indigenous peoples — participants reported that they believed the BasicsCard was for any Australian person who received welfare payments. This gap in knowledge about the income management regime may have altered participants’ views about the merits of the IM program and their views about whether their families and communities should remain subject to the program.

The 2014 evaluation of the NIM program did not find any evidence that the program has achieved significant change in relation to its key objectives,<sup>184</sup> which sought to reduce income support recipients’ ‘spending on alcohol, gambling, pornography and tobacco in favour of meeting “basic” family needs, especially for children, to limit the scope for financial harassment, encourage pro-social behaviours, and build financial capabilities’.<sup>185</sup> Importantly, these evaluations found that the NIM has not led to improvements across the general measures of

178 Ibid 26.

179 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 children and young people during the field research — one of which was the word ‘racism’.

180 There is no mention in these evaluations that children and young people’s views were sought whilst conducting these evaluations. Thus, the author has assumed that the views represented in these evaluations are only representative of adults’ views.

181 Bray et al, ‘Final Evaluation Report’, above n 48, 191, 249; J Rob Bray et al, ‘Evaluating New Income Management in the Northern Territory: First Evaluation Report’ (First Evaluation Report, Social Policy Research Centre, July 2012), 202; Bray et al, ‘Summary Report’, above n 43, i.

182 Data from the field findings supports the conclusion that when speaking about the BasicsCard, all of the participants in this study had experience with, and only knowledge of, the main category of income management (compulsory income management) under the NIM regime. There is no data suggesting that any participants had knowledge about another category of income management (voluntary income management) under the NIM.

183 Bray et al, ‘Summary Report’, above n 43, i.

184 Bray et al, ‘Final Evaluation Report’, above n 48.

185 Bray et al, ‘Compulsory Income Management in the Northern Territory’, above n 47, 373; *ibid*, xxi.

wellbeing at the community level including in relation to children's wellbeing.<sup>186</sup> This study reveals different findings to these evaluations with respect to some of the measures associated with children and young people's wellbeing. Many of the participants to this study reported that the use of the BasicsCard by their family members improved their access to food, clothing and toys. It is important to note though that when this research was carried out in 2014 the eldest participant was 17 years old, and the youngest 10 years old. Thus, when the NTER commenced in 2007 the eldest participant in this study was 10 years old, and the youngest three years old. Therefore, the most recent and largest part of young participants' lives had been lived under the Intervention and under IM. Because of this, the younger participants would have no cash-based social security experience to compare the Intervention IM regime to. The impact of children and young people growing up under the Intervention and being subject to compulsory IM for the last seven years of their lives is likely to impact their perceptions of the benefits of the program. As such, some of the data arising from this small study should be situated alongside other empirical data about the variety of IM schemes now operating in Australia.<sup>187</sup>

Additionally, the evaluations of IM in the NT found no evidence the NIM has led to changes in spending patterns for those on compulsory income management; no changes in overall financial wellbeing for people subject to IM; and no improvement in people's financial management skills (despite the fact that many people said IM made it easier to manage their money). The key finding arising from the evaluations was that 'rather than building capacity and independence, for many the program has acted to make people more dependent on the welfare system.'<sup>188</sup>

### **C Views about the 'Blue and White Warning Signs'**

All participants in this study, across all age ranges, unanimously agreed that the blue and white warning signs were a negative Intervention measure and have detrimentally impacted Aboriginal peoples, causing direct harm to Aboriginal peoples and to Aboriginal communities. Children and young people reported that the signs have 'shamed' Aboriginal communities and the signs do not contribute to positively addressing alcohol related problems. In fact, several children and young people said these signs have intensified problems in communities because they are an ineffective alcohol regulation mechanism and the signs do not help children and young people. Children and young people said the policies and laws detailed on the signs have led to unanticipated negative implications for Aboriginal children and young people.

186 Bray et al, 'Summary Report', above n 43, i, 16.

187 Including the current trial of the 'Healthy Welfare Card' that was proposed in the Forrest Review. See Forrest, above n 174.

188 Bray et al, 'Summary Report', above n 43, i.

## 1 *The Signs Shame the Community*

Several children and young people reported that some communities where the signs were erected have been ‘dry communities’ for many years (meaning there is no alcohol allowed in these communities). Additionally, other participants reported that their parents do not drink alcohol and there is no alcohol consumed in their homes, thus these children concluded that the signs are irrelevant and do not reflect the norms and practices adopted in some Aboriginal communities and by some Aboriginal families.<sup>189</sup>

Some young people expressed 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 branded Aboriginal communities in a disrespectful and negative way:

Holly: What do you think about the blue and white signs? Have you seen them before?

17-year-old male: Yeah. No I don’t like them.

16-year-old female: It makes communities look bad. They don’t respect the community.

13-year-old male: They’re racist.<sup>190</sup>

Gibson notes the sense of shame Aboriginal adults experienced and expressed as a result of the blue and white signs being placed at the entrance to prescribed areas.<sup>191</sup> This research confirms that Aboriginal children and young people also experienced this sense of shame in relation to the blue and white signs. As outlined in the following section, participants said the blue and white signs were an ineffective way of managing alcohol abuse in communities and this measure has led to some negative implications for children and young people.

## 2 *The Signs are an Ineffective Regulatory Mechanism*

Many children and young people said the signs were ineffective in regulating alcohol consumption because in order to access and consume alcohol adults had to leave ‘prescribed’ communities and go to a town centre where alcohol restrictions were not in place, or be subject to legal consequences if they consume or possess alcohol in a prescribed community. A young person said ‘some drink out of community.’<sup>192</sup> This participant further explained that alcohol restrictions do not prevent people from drinking because people can leave the prescribed community to consume alcohol elsewhere, and this does not assist in reducing

189 Secondary Class Group Discussion (Field Research Session 2 of 4, Northern Territory, 16 May 2014).

190 Ibid.

191 Gibson, ‘Return to the Ration Days’, above n 173, 22.

192 16-year-old female, Secondary Class Group Discussion (Field Research Session 2 of 4, Northern Territory, 16 May 2014).



alcohol consumption; rather, it is 'probably getting more worse'.<sup>193</sup> Another young person said when parents or carers leave communities to access alcohol in town centres, 'the kids will cry for their parents. It happens to a lot of them. But some parents don't drink.'<sup>194</sup>

Nearly all participants in one research session agreed with the statement by one young person that the blue and white signs did 'not really' stop members of communities from drinking.<sup>195</sup> Numerous young people identified and agreed that a negative consequence of the signs was that adults who lived in prescribed communities who wanted to drink alcohol can go to a town centre to access alcohol, and sometimes stay for long periods of time in that town.<sup>196</sup>

### **D The Legislation Deals with 'Matters Affecting' Aboriginal Children and Young People**

The findings discussed above relating to children and young people's knowledge and views about the BasicsCard and the blue and white signs reveal that the NTER and Stronger Futures legislation are matters which affect the children and young people involved in this research. At first appearance, the wording of the NTER and Stronger Futures legislation seems to only affect Aboriginal adults, not Aboriginal children and young people. However, the findings represented above demonstrate that the BasicsCard and the blue and white warning signs are matters that closely affect Aboriginal children and young people individually as well as in the context of their families and their communities. This finding is important because under art 12 of the *CRC* children have a right to participate in decision-making processes about 'matters affecting [them]'.<sup>197</sup>

Findings from the field research detailed above confirm that children and young people identified the measures examined under the NTER and Stronger Futures legislation as 'matters affecting' them within the meaning and scope of art 12 of the *CRC*. Participants demonstrated their understanding of the measures arising from the legislation. Statements from children and young people indicated that some children and young people had more developed understandings of the legislation, of Australian political processes, and about law and policy-making than other participants. Varied understandings about the legislation among a group this size was to be expected, especially given the wide age range within the research cohort. It is significant, however, that almost all children and young people understood that the NTER and Stronger Futures measures comprising the Intervention were governmental initiatives and laws made by the 'white government'.<sup>197</sup> In a peer-

193 Ibid.

194 Ibid.

195 13-year-old male, Secondary Class Group Discussion (Field Research Session 2 of 4, Northern Territory, 16 May 2014).

196 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).

197 10-year-old male, Primary Class Group Discussion (Field Research Session 1 of 4, Northern Territory, 13 May 2014).

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].’<sup>198</sup>

The NTER and Stronger Futures legislation deals with matters which directly and indirectly impact on Aboriginal children and young people’s lives. Through this research, children and young people freely expressed their views about the NTER and Stronger Futures legislation and in doing so defined the Intervention legislation as a matter affecting them. The majority of children and young people made links between the Intervention legislation, the BasicsCard and the blue and white warning signs, identifying these two measures as matters affecting them. All children and young people said they had witnessed a close family member using the BasicsCard, and all children and young people had seen the warning signs situated at the entrance to their community or another Aboriginal community. All children and young people 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 and their community.

## VI CONCLUSION

This research endeavour sought to achieve two primary goals: firstly, to seek and record Aboriginal children and young people’s views about aspects of the NTER and Stronger Futures legislation, and secondly, to do this in a way that upheld participants’ rights as Aboriginal people and as children and young people by using a CRBA informed by Indigenous research methodologies. These aims were achieved because of the generous contributions of a group of Aboriginal children and young people who expressed their views about the legislation and the effect these measures had on them, their family and their communities. These findings support the assertion that Aboriginal children and young people must be involved in law and policy making about matters affecting them because they have the right to do so under art 12 of the *CRC* and under art 19 of the *UNDRIP*, and because (as this research demonstrates) children and young people have the capacity to enter into and inform complex decision-making processes when appropriately supported to do so.<sup>199</sup> A CRBA to law and policy development emphasises children and young people’s right to contribute to decision-making and these findings provide evidence as to why the Australian government is required to facilitate this engagement with Aboriginal children and young people.

198 10-year-old female, Primary Class Group Discussion (Field Research Session 2 of 4, Northern Territory, 15 May 2014). The name of the town this child was referring to cannot be stated due to the ethical agreement entered into as a part of undertaking this project.

199 John Tobin, ‘Understanding Children’s Rights: A Vision beyond Vulnerability’ (2015) 84 *Nordic Journal of International Law* 155, 177.

Analysis of children and young people's personal experiences of the measures arising from the NTER and Stronger Futures laws demonstrates that the legislation is a 'matter affecting [them]' within the meaning of art 12 of the *CRC*. Thus, under art 12 of the *CRC*, Aboriginal children and young people should have had the opportunity to participate in the formulation of these laws. Furthermore, art 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'. There was no such consultation with Aboriginal children and young people before the NTER and Stronger Futures measures were implemented by the Australian government.

This field research revealed that this group of Aboriginal children and young people understands and has informed views about the BasicsCard and the impact of its operation in their lives and in community life. Most of the children and young people expressed the view that the BasicsCard has positively contributed to improving their and their family members' access to food and toys, as well as positively impacted on household budgeting.<sup>200</sup> However, nearly all children and young people did not know that under the NTER IM the BasicsCard was a measure that directly targeted Indigenous people in the NT, and under the NIM regime the BasicsCard indirectly targets Indigenous people. The vast majority of children and young people thought that the BasicsCard was a national measure for everyone who needed assistance with managing welfare income. When children and young people learned that the BasicsCard was predominantly for Aboriginal people in the NT who received welfare payments, most participants expressed their view that the Intervention IM regime is racially discriminatory, and this measure amounted to 'bad racism'.<sup>201</sup> Many children and young people expressed the view that use of the BasicsCard should be voluntarily entered into and available to anyone in Australia who needs assistance managing welfare payments.

Furthermore, research participants understand and hold informed views about the blue and white signs, a component of the alcohol regulation measures under the NTER and Stronger Futures legislation. Children and young people did not report any positive implications of the blue and white signs that publicise the prohibition of alcohol in prescribed communities. Many children and young people 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',<sup>202</sup> and 'shamed' communities, doing little to regulate alcohol use in communities. Participants unanimously agreed that the laws and policies associated with the signs are ineffective regulatory mechanisms and the signs have failed to address problems associated with alcohol in communities.

200 Cf other research which indicates opposite outcomes: Bray et al, 'Final Evaluation Report', above n 48.

201 15-year-old female, Secondary Class Group Discussion (Field Research Session 2 of 4, Northern Territory, 16 May 2014).

202 16-year-old female, Secondary Class Group Discussion (Field Research Session 2 of 4, Northern Territory, 16 May 2014).

The fact that the Australian government failed to involve Aboriginal children and young people in the development of the NTER and Stronger Futures legislation contravenes art 12 of the *CRC* and art 19 of the *UNDRIP* and represents a lost opportunity for the Australian government to develop laws and policies that promote, protect and fulfil Aboriginal children and young people's participation rights. This research supports the proposal that future laws and policies, particularly laws and policies that significantly impact on Aboriginal children and young people's lives such as the NTER and Stronger Futures legislation, must be developed in collaboration with Indigenous communities and include Indigenous children and young people. This paper presents a model for how governments can engage Aboriginal children and young people in law and policy making by using a CRBA informed by Indigenous research methodologies. This model is particularly useful for legislators and policy makers, who are seeking to engage Aboriginal children and young people in decision-making processes.

Given the imperative established by the *CRC* and the *UNDRIP*, the Australian government must seek and take notice of Aboriginal children and young people's views about laws and policies likely to affect their lives before instituting such measures. Most of all, the involvement of Aboriginal children and young people in law and policy development must be done in a way that is culturally respectful, culturally informed and in concert with Aboriginal children and young people's parents, carers, Elders and communities.