The Voice of the Child in Family Law:
Whose Right? Who’s Right?

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Summary

This thesis explores children’s perceptions of their ability to participate in decisions that directly affect them following parental separation. Taking a postmodern approach, the thesis argues that the concepts of ‘the child’ and ‘childhood’ are social constructs produced by discourses that have arisen from historical accounts of the position of children in ‘adult’ society. The knowledge thus produced constructs children as incomplete beings, vulnerable and unable to understand significant issues such as those associated with parental separation. Consequently, children are marginalised, ‘othered’ and denied the opportunity to participate in decisions that directly affect them.

After reviewing the ways in which discourses operate to subjectify children in this way, the thesis explores an alternative construction of children as competent and resilient, able to participate with their adult counterparts in decision-making activities. The potential for the provisions of both the United Nations Convention on the Rights of the Child and the Australian Family Law Reform Act 1995 to reconstruct children in this way is explored.

Reviews of the literature indicated that Australian children had not been included in research and discussions about their involvement in decisions that directly affected them. Consequently, this research undertook in-depth interviews of sixteen children between the ages of 7 and 17 years. Their views about their abilities to participate in decisions that directly affect them are reviewed in relation to the different discourses identified in the literature. The extent to which children’s understandings reflect these discourses is considered.

The thesis argues that much is still to be achieved. A review of the findings includes an account of the difficulties experienced in recruiting children for this project and suggests that the social construction of children continues to position them as vulnerable and incompetent. It is argued that the constructs of ‘competence’, ‘age’ and ‘maturity’ are not useful indicators of children’s abilities to make decisions; thus, a ‘new’ construction of children, based on greater adult understanding of their unique experiences and understandings, is suggested. In relation to decisions that affect children following parental separation, the thesis makes a number of suggestions that support an exploration of creative initiatives that reflect the children’s views.
Declaration

I declare that this thesis presents work carried out by myself and does not incorporate, without acknowledgment, any material previously submitted for a degree or diploma in any university. I also declare that, to the best of my knowledge, it does not contain any materials previously published or written by another person except where due reference is made in the text.

Alan Campbell
Acknowledgment

Human research is only possible with the participation of individuals and groups of people. I am therefore grateful to the mothers who, when asked, expressed enthusiasm for this research and to the children who agreed to participate in it. I feel privileged to have met and worked with the children and enjoyed my contact with them. They taught me more about their worlds than I had known before and invited me into their lives respectfully and trustfully. I hope I was able to return that respect and trust in my interactions with them.

This research has consumed me for more than five years. For three of those five years, I lived away from my partner, seeing him only during holidays, my period of hospitalisation and special occasions. We both experienced difficulties in trying to maintain a long-distance relationship, including emotional and financial problems. That he has remained with me throughout this process attests to his loyalty and commitment to our relationship. I could not have completed the thesis without that. I owe Phillip Sweetman a debt of gratitude that I may never repay.

I have been fortunate in my research journey to have one of the finest supervisors in this country. Her knowledge and wisdom have been an inspiration to me. I have told friends and acquaintances that I felt the learning that I have undertaken in my heart and body. That feeling is in no small measure due to the guidance and support of Dale Bagshaw, to whom I shall be eternally grateful. I hope our close association continues for many years to come.

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Finally, my own family, in Melbourne and Cairns, has endured my research ramblings for many years. My mother has been very supportive of my efforts and has tried to understand my problems and achievements. My sisters, my brothers, and my nieces and nephews have been curious bystanders throughout the project, expressing interest in my progress. I have appreciated this interest and thank them all warmly for their encouragement and support.
Chapter 1: The Foundations of This Research Project

Since the mid-1990s, Australian interest in how to include children in decisions that directly affect them following parental separation has increased significantly. A number of initiatives have emerged across the country that attempt to centralise children’s views about separation, residence and contact. The terms ‘child inclusive practice’ and ‘child focused practice’ (Mackay, 2001; McIntosh, 2000) have become ‘buzzwords’ for counsellors, mediators and family workers. The Family Law Reform Act 1995 changed the terminology used in relation to children’s arrangements in an attempt to position children as individuals in their own right rather than as part of family property (Chisholm, 1996) and to ensure that children’s ‘best interests’ were appropriately addressed.

The design and implementation of all of these initiatives, however, did not include the views of children themselves about what they might consider appropriate in meeting their needs. Adults have established the ‘best interests’ of children without direct reference to children (Landerkin, 1997). One account of ‘child inclusive practices’ in Australia includes statements such as “…only those comfortable to engage with children should undertake [to work with them]” (Mackay, 2001: v), “The child is not usually ‘the customer’” (Mackay, 2001: 19) and “Children should be allowed to be children” (Mackay, 2001: 20). These statements reflect understandings about children and their place in society that both colour adult interactions with them and construct children as somehow different from adults.

This research project arose from a concern that our attempts to provide responsive services for children of parental separation have been informed by adult ‘scientific’ views about children’s needs, ‘best interests’, responses and behaviours. These views reflect our beliefs that children are more vulnerable and less able than adults to understand events that affect them, their own emotional responses to those events and what actions they may take to address the events. They also serve to marginalise children from adult society, positioning them as different from adults in the way in which they communicate, respond to situations, understand their worlds and interact with others.
This research represents an attempt to centralise children’s experiences and to present an alternative view of children as being similar to adults and as having an integral role in planning and implementing services for all people who experience family breakdown. The texts of children’s interviews indicate that they are social actors in their own right, able to interact effectively in society and to operate on their worlds in ways appropriate for them in any given situation.

1.1 Background: Political and Social Influences

1.1.1 The Population of Interest

In 2000, the crude divorce rate\(^1\) for every 1,000 people living in Australia was 2.6%, with a total of 49,900 divorces occurring in that year (Australian Bureau of Statistics, 2002: 3). Of those, 52.7% involved children under the age of 18, a total of 49,600 children. These figures do not include children of those families that experienced a separation but not a divorce, or de facto separations, in that period. In 2001, 21% of Australian families with children under the age of 15 were lone-parent families. The Australian Bureau of Statistics reports that, in 1998, a key factor contributing to relationship breakdown for parents was related to parent–child relationships and conflicts over parenting approaches.

In 1997, children in 88% of Australian separated or divorced families resided with the mother, while the father lived elsewhere. Contact was regular for the majority of these children; however, it varied from weekly to annual visits, with 29.8% of children experiencing contact with the other parent either less than annually or never.

When parents separate and divorce, children can experience a number of effects, including lower socioeconomic status, behavioural difficulties, decreased school performance, early home leaving and depressive symptoms (Rodgers & Pryor, 1998). Wallerstein and Kelly (1980) argued that children can suffer long-term effects from parental separation, including low self-esteem, later relationship problems, depression and sometimes suicide. In contrast, although Hetherington and Kelly (2002) described a number of ‘risk factors’ for children associated with parental separation, they argued that the long-term effects may not be as significant as Wallerstein and Kelly suggested. ‘Risk

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\(^1\) The Australian Bureau of Statistics defines the crude divorce rate as the number of decrees absolute (or final orders for divorce) granted during a calendar year per 1000 estimated population.
factors’ included not informing children about what is happening, being inconsistent and losing ‘vigilance’ in the ability to protect children from negative events such as violent outbursts from parents.

Parental separation is a time of significant emotional upheaval for every member of a family. Feelings of loss and guilt mingle with those of anger and revenge. The way in which parents and other adult decision-makers respond to the events embedded in separation can significantly affect children’s future adjustment. Children can begin to ‘parent the parents’ at this time, trying to improve the situation for them in some way (Hetherington & Kelly, 2002). These behaviours and reactions from children indicate that they have an integral role in family separation. They are not simply receptors of events that occur ‘out there’; they help to shape the events and, to an extent, the outcomes of actions taken during family breakdown.

While some protection of children is required to minimise the effects of parental separation, the extent of this protection is at issue. In the last thirteen years, a gradual recognition of the rights of children has brought their protection and levels of autonomy to the fore in Australia.

1.1.2 The Children’s Rights Debate


Almost immediately, a lively debate surfaced about what the ratification of CROC would mean for this country (Jones, 1999; Rayner, 1994). This debate revolved around the concept of ‘autonomy’ for children, centred on the Articles in CROC that emphasise the importance of children’s opinions in matters that affect them. It reflected community perceptions that children would become unmanageable and that, consequently, families would begin to fracture. As Rayner (1994: 60) argued, those who objected to the ratification of CROC “were opposed to the Convention’s bypassing the family’s sacerdotal or intermediating role”.

3
Three other criticisms of CROC have since emerged. The first argues that our nation’s sovereignty has been compromised through its willingness to yield to international pressures. The second criticism suggests that the Articles contained in CROC provide a ‘licence’ for the Commonwealth to interfere in State matters, while the third argues that Australian children do not need ‘rights’ because they already enjoy positive relations with adults (Jones, 1999). While Jones (1999) points out that these criticisms are based in myth, they still arise in discussions about the social position of children in Australia. For example, Barnes (1998) argued that CROC would harm Australian society by providing children with inappropriate levels of power. A year later, Francis called for the nation to “clearly spell out the preeminent role of the family and the rejection of the autonomous child concept” (Francis, 1999: 57). In 2000, the Sydney Morning Herald argued that CROC had the potential to damage political and social structures in Australia (Editorial, 2000). These responses ignore the interdependence of family members (Rayner, 1994) and the way in which CROC centralises the family as “the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children” (United Nations, 1989, preamble).

Signatories to CROC are obliged to report to the United Nations every five years on progress in implementing the matters contained in the document’s Articles. Australia last reported in 2002 (Australian Human Rights and Equal Opportunity Commission, 2002). That report focused on health, education and protective issues for Australian children, with no reference to provisions for children’s opinions to be heard on matters that affect them. At the same time, Australia’s government was expressing concern about its participation in international treaties such as CROC. Two years prior to its report on CROC, the Government had conducted a review of its participation in United Nations treaties “behind closed doors, without terms of reference and without seeking public input” (Evatt, 2001: 13). Evatt (2001: 13) reported that the result of this review was a veiled threat by some Government Ministers to “limit…co-operation with the treaty bodies unless unspecified changes were made”. She pointed out:

The Ministers also accused the treaty bodies of criticising minor abuses in countries like Australia, while ignoring serious violations in other countries. Such comments ignore the strong criticisms which the treaty bodies make of serious human rights violations, and trivialise the very significant human rights issues affecting indigenous people and asylum seekers, among others, which arise in Australia (Evatt, 2001: 14).
One of the major difficulties in implementing a rights agenda for all children in Australia is the system of government in this country. The Commonwealth has limited responsibility for family and children’s matters, having delegated its powers in these areas to the states (Australian Human Rights and Equal Opportunity Commission, 2002). States often respond to concerns about the social position of children with punitive laws that violate children’s rights (Blagg & Wilkie, 1997). Moreover, Australian courts, the majority of which are state-based, do not cater for children’s needs in an effective manner (Australian Law Reform Commission and Human Rights and Equal Opportunity Commission, 1997). Because the Commonwealth has little ability to intervene in state affairs, these practices can occur without reference to CROC, which was ratified by the Commonwealth and not individual Australian states.

1.1.3 Government Issues
The Commonwealth Government has maintained some responsibilities for family issues. Perhaps the most significant of these is responsibility for matters relating to marital breakdown and separation. These issues are the subject of the Commonwealth Family Law Act 1975 and its subsequent reforms. While breakdowns in de facto relationships are the responsibility of state jurisdictions, matters relating to the children of these relationships are also managed through the Family Courts. It is in this area that the Australian Government can directly address the rights of children.

For many years the Australian community has been extremely concerned about contact and residency issues following marriage and relationship breakdown and their experiences with the Family Court and the Child Support Agency. These have been critical issues brought to the daily agenda of members of parliament by their constituents. Several major parliamentary inquiries and a number of other inquiries have looked into these matters, but the problems persist. Different solutions are obviously needed (House of Representatives Standing Committee on Family and Community Affairs, 2003: 1).

The three most recent Commonwealth Government inquiries have considered different issues in Australian family law. In 1998, an inquiry explored the provision of professional services for families (House of Representatives Standing Committee on Legal and Constitutional Affairs, 1998). The 2001 Pathways group focused on the operations of the Family Court and family law system (Family Law Pathways Advisory Group, 2001). The most recent inquiry considered issues of child residence, contact and support (House of
Representatives Standing Committee on Family and Community Affairs, 2003). Although the focus of each was different, the three inquiries recommended an expansion of existing family services and the implementation of innovative new services to prevent and manage family breakdowns.

A major difference in the conduct of the inquiries centred on children’s participation in the process. With the exception of the last inquiry (House of Representatives Standing Committee on Family and Community Affairs, 2003) children did not participate in the discussions that led to the recommendations, even though the issues under consideration directly related to them. The 2003 inquiry heard from a small number of children and young people, but the extent to which their comments were taken into account in the subsequent report is not clear (House of Representatives Standing Committee on Family and Community Affairs, 2003). That inquiry’s conclusion (p. 1), that “Different solutions are obviously needed” is based on a large number of submissions from the adult community. Their many voices have the potential to mute and marginalise those of the 14 young people who were observed by the inquiry committee in discussion about their terms of reference and the other references to children’s opinions in a small number of the adult-prepared submissions.

One other influential Australian inquiry found that children are significantly marginalised by the nation’s legal systems (Australian Law Reform Commission and Human Rights and Equal Opportunity Commission, 1997). Amongst other matters, this inquiry heard that children’s participation in legal processes is almost non-existent. Significant barriers to their involvement included the ‘adult’ nature of the system, adult beliefs about children, adult discriminatory practices towards children, and the marginalisation of children in legal and social practices. The 1997 inquiry’s list of recommendations focused on ways in which Australia’s legal system could more clearly hear children’s voices. Since then, though, few initiatives have addressed these recommendations (Hubble, 2000). One of the few changes for children in legal systems occurred in 1995 with the promulgation of the *Family Law Reform Act*.

### 1.1.4 Children and Family Law

The 1995 reforms to the Australian *Family Law Act* were designed to address some of the Articles in CROC that refer to the position of children in families. Chisholm (1996)
argues that the *Family Law Reform Act* 1995 altered the term ‘welfare’ to reflect the principle of children’s ‘best interests’ outlined in Article 3 of CROC. It also changed the terminology relating to children’s living arrangements following parental separation. The previous terms ‘custody’, ‘guardianship’ and ‘access’ were replaced with the current terms ‘residence’ and ‘contact’. Chisholm (1996) suggests that these changes were made in an attempt to change Australian social perceptions of children as the ‘property’ of parents and to clarify a misconception that parents have rights over children. It was hoped that parents would not now subvert the principle of children’s ‘best interests’ by appealing to their rights rather than those of children.

The literature review conducted for this research indicated that there are some significant difficulties with the ‘best interests’ principle as applied to children. Authors have criticised the concept as vague and indeterminate, requiring a significant level of adult discretion in deciding on a child’s ‘best interests’ (Kelly, 1997; Rayner, 1992). To try to address these concerns, the Australian *Family Law Reform Act* 1995 includes at Section 68F a list of factors that adult decision-makers (judicial officers, lawyers, counsellors and other professionals and, presumably, parents) are expected to consider in determining a specific child’s ‘best interests’. The weight given to each of these factors is discretionary, though, and is based on evidence presented and the decision maker’s own value systems and experiences.

The first of the factors to be addressed under Section 68F, retained from the original *Family Law Act* 1975, refers to “any wishes expressed by the child” about future residence and contact with her or his parents. This factor is then tempered with the clause, “and any factors (such as the child’s maturity or level of understanding) that the court thinks are relevant to the weight it should give to the child’s wishes”. In its submission to the Commonwealth Government’s 2003 Inquiry into Child Custody Arrangements, the Family Court reported that children’s wishes are considered of moderate or high significance in only 29.7% of judgments made. In comparison, other issues such as the nature of the relationship between the child and parents, the likely effects of change on the child and parents’ attitudes towards children are considered to be of greater significance (House of Representatives Standing Committee on Family and Community Affairs, 2003: 8).
It must be acknowledged that the presence of a requirement to consider a child’s ‘wishes’ presents some difficulties. Parents can coerce a child to express a ‘wish’ to reside with a particular person, regardless of whether the child might express such a wish if not coerced. Children can undertake an ‘auction of affections’ for each parent by expressing specific wishes. It could also be argued, though, that whatever wish is expressed by a child needs to be accepted without challenge. If this were the practice, the significance of the child’s wishes would be rated far more highly in court judgments. While challenges exist, and while other factors can dilute the significance of children’s wishes, the child’s voice remains marginalised in family law systems.

1.1.5 How are Children Involved in Family Law Issues?
Chisholm (2000) points out that nowhere in the *Family Law Reform Act* (1995) is there a provision for children’s participation in decisions that directly affect them. He describes a number of possible ways in which children might be involved, however. These include their becoming parties to proceedings, although Chisholm points out that this rarely, if ever, happens. Children may be interviewed in chambers by a judge. Again, Chisholm suggests that this is now a rare occurrence in Australian family law. While children can give evidence in Family Court matters, this also rarely, if ever, happens and is reliant upon the court ordering that they do so.

Sometimes, but not in every case that comes before the Family Court, children can be represented by their own solicitor. Chisholm notes, however, that children’s representatives are not bound to present children’s wishes to the court in the same way as lawyers must present the wishes of adults. The most usual way for a child’s wishes to be presented to the court is through the preparation of a family report. Chisholm notes that these reports cover other issues alongside the children’s wishes, including their “perceptions and feelings” (Chisholm, 2000: 8), but because those who prepare family reports can be cross-examined in court and their ‘evidence’ questioned, the child’s voice can again be marginalised.

The *Family Law Reform Act* (1995) provides for parents to attend mediation to attempt to reach agreements about children’s residence and contact issues. Chisholm argues that the inclusion of children in this process has been “more the exception than the rule” (Chisholm, 2000: 9). Nevertheless, mediators have engaged in debate around children’s
involvement in mediation for some years. This debate has centred on children’s safety and their ability to engage in decision-making activities at an ‘adult’ level. Some mediators view children as vulnerable following parental separation. Including them in a process of decision making should therefore not occur (Meggs, 1993). Others argue that because it is the parents’ responsibility to make appropriate decisions for their children, children themselves should not be included in the process (Haynes & Charlesworth, 1996).

A contradictory argument suggests that, following separation, parents experience significant difficulty in making reasoned decisions for their children’s futures (Wallerstein & Kelly, 1980). It is, therefore, essential to involve children in some way, so that their interests are not completely ignored by parents who are unable to consider them appropriately (Beck & Biank, 1997). For some, this means providing extensive family therapy alongside mediation so that children’s views are incorporated into the work through helping parents to consider, accept and understand the children’s experiences (Beck & Biank, 1997).

When children are invited to become actively involved in the decision-making processes, there are varied forms of practice. A mediator or other professional may see children early so that an understanding can be gained of their feelings and thoughts about what is occurring for them. On other occasions, they may be seen at the same time that their parents are undertaking mediation. During this time, they may be asked to comment on what their parents are discussing. The information gained can be fed back to the parents, or children may simply discuss their situation separately with the mediator who then provides the parents with a synopsis of the discussion. Children may be brought into the mediation at specific times when an issue that might affect them is raised. Alternatively, they may only be brought in after their parents have reached agreement, to be advised of what that agreement is and asked for their reactions. Finally, they may be included in the mediation from the very beginning, with the agreement of all parties, participating as equals in the decisions to be made that relate to them (Campbell, 2002a).

One Australian initiative adopted the view that, although it may not be advantageous to elicit specific wishes from children, the information obtained from them concerning the impact of separation upon them personally might assist the parents to make appropriate decisions on their behalf (Strategic Partners, 1998). An approach that supports the philosophy that the fears, hopes and understandings of children “make at least three
important contributions to the mediation process” (Evans & Havercamp, 1994: 238) was used in Melbourne to involve children more directly in their parents’ mediation (McIntosh, 2000). The success of the approach has prompted its use in services across Australia (Campbell, 2002a). Children are invited to talk with a ‘child interviewer’ who then meets with the parents to provide them with feedback on the discussions. The child interviewer may then remain at the mediation session to act as an advocate for the children, reminding the parents of what they said. Results of this intervention strategy have been reported as positive and beneficial to the families involved (Campbell, 2002a).

Children’s participation in family law mediation still appears to be largely controlled by adults, however. The practice does not appear to be followed as a matter of course, with surveys indicating that the majority of mediators responding to survey questions see children only rarely (Lansky, Swift, Manley, Elmore, & Gerety, 1996; Strategic Partners, 1998). When children are directly involved in mediation, the surveys suggest that the timing and nature of their involvement is determined by adults and not by the children themselves. Children are advised as to how they will be involved and are asked for their consent to this involvement, but their rights to express an opinion are limited to specific, adult-defined areas of activity.

1.2 Where Does This Research Project ‘Fit’?

While children’s rights as autonomous citizens are still far from a reality, the gradual move towards including children in family law decisions that directly affect them is increasing in intensity (Mackay, 2001). Nevertheless, there appears to be a significant gap in adult approaches to ‘child inclusive’ and ‘child focused’ practices. To date, there has been very little consultation with children about the kinds of services that they would consider appropriate for them. While some initiatives have reported significant success in terms of children’s satisfaction and positive practical outcomes (McIntosh, 2000), they are predominantly devised and directed by adults. This research represents an attempt to redress this situation by asking children themselves for their perceptions of their involvement in decisions that directly affect them.

This research complements recent Government inquiries (House of Representatives Standing Committee on Family and Community Affairs, 2003) by including children in discussions about policies and approaches to decision making in which they might play a
significant part. It follows a similar design to that used by Smart et al. (2001), a study that was discussed at the 2001 Australian Family Court Conference (Smart, 2001). This research differs from Smart’s project, though, in that it asks children for their thoughts about their participation in decisions that directly affect them rather than exploring their daily experiences of post-divorce arrangements. The research seeks to inform adult decision makers about children’s views on policies and services rather than their responses to specific services that have already been developed for children by adults. It therefore has the potential to influence family law policy about the participation of children in decisions that directly affect them.

1.3 Postmodern and Social Constructionist Perspectives

A social-constructionist perspective has informed the research in a significant way. This perspective asserts that our sense of self is built through interactions with others, and that language actively contributes to our understanding of who we are in relation to the social contexts in which we live (Berger & Luckmann, 1966; Gergen, 1999; Wetherell & Maybin, 1996). Accompanying this perspective are Foucaultian understandings about discourse and its influence on Western thinking and power–knowledge relations. The postmodern perspective offers an explanation about the ways in which children are “othered” (Fine, 1994: 70) by a hegemonic adult society that positions children as both vulnerable and incomplete while they develop to the desired state of adulthood. Discourse analysis permits an exploration of the relationship between the visible and the sayable, which has resulted in a social construction of children as small, relatively weak, developing beings. It explores the underlying ‘rules’ of relationships between children and adults (Kendall & Wickham, 1999). Central to a discourse analysis of children’s texts is an exploration of the extent to which those texts reflect hegemonic adult attitudes towards children and their position in society.

This research explores how children define themselves in relation to adults, how those definitions change as a function of context and situation, and how children subsequently define their abilities to participate in decisions that directly affect them in the light of the

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2 There appear to be two conventions in relation to references to the work of Michel Foucault. A number of authors, among them Cheek (2000), McHoul and Grace (1993) and Sawicki (1991), prefer the term ‘Foucauldian’, while others such as Danaher, Schirato and Webb (2000) used the term ‘Foucaultian’. In this work I have chosen to adopt the convention of Danaher et al, using the term ‘Foucaultian’ to refer to Michel Foucault’s work.
dominant discourses about them. The research uses Foucaultian ‘techniques’ of archaeology and genealogy to build a ‘history of the present’ that shapes how children interact with the world and construct their position within it. The research questions reflect this perspective, exploring children’s views of their rights and their abilities to contribute and participate in decisions that directly affect them following parental separation.

1.4 Research Questions
The research investigates the extent to which children’s views about their abilities to participate in decisions that affect them following parental separation reflect “dominant and normative conceptions” of childhood (Mauthner & Doucet, 1998: 132).

Three research questions ask:

1. How are children’s views of themselves in relation to adults reflected in their comments about their ability to participate in decisions that directly affect them following their parents’ separation?

2. To what extent do children’s interview texts reflect the dominant discourses about rights and children?

3. How are the dominant discourses about children reflected in children’s views of their level of involvement in decisions about them after parental separation?

These three questions are interrelated. Each question considers an aspect of social construction of children, both from an adult perspective and from the perspective of the children themselves. Each question considers the intermediary effects of dominant discourses in shaping how children perceive the world and their place in it. Finally, each question is related to children’s perceptions of their involvement in decisions that directly affect them. While the focus of the three questions differs, together the questions build a picture of the perceived social position of children relative to decision-making activities and children’s own perceptions of their rights and abilities to participate.
1.5 The Researcher’s Influences

In recent years, researchers have emphasised the significance of reflexivity in the research process (Meyerhoff & Ruby, 1982; Prain 1997). The objective researcher who works on research ‘subjects’ rather than with ‘participants’ denies that her or his own background, training, experiences, values and research procedures have a bearing on the ways in which a research project evolves. Reflexive researchers write themselves into the research, in order to “confirm or supplement the authority of their texts” (Prain, 1997: 72). Reflexivity also defines the relationships between researcher and researched, thus resisting the process of ‘othering’ that occurs when researchers act and write as if they are detached from those with whom they work (Fine, 1994). As Fine argues:

As researchers, we need to position ourselves as no longer transparent, but as classed, gendered, raced, and sexual subjects who construct our own locations, narrate these locations, and negotiate our stances with relations of domination (Fine, 1994: 76).

My class, gender, race and specific ‘locations’ in the fields of psychology and family law directly led me to this research topic. A brief account of these influences will assist the reader in locating me in this research project.

In 1986, I joined the counselling section of the Family Court of Western Australia. Having earlier experiences as a teacher and educational psychologist, I saw the Family Court as having the potential to assist families and children through the separation and divorce process. My entry into the field of family law has influenced my career and my approach to families during the past 17 years.

In 1986, Western Australian Family Court counsellors performed a number of tasks throughout the process of separation and divorce. When couples first separated, they could attend the Court’s counselling service for assistance and information about the steps towards settling issues surrounding children and property. Following an application to the Court, parents were urged to attend counselling to discuss arrangements for the children, and if this had not occurred by the first hearing date, they would be directed immediately to counselling. Sometimes couples would voluntarily attend counselling to discuss children’s arrangements. When parents were in significant conflict about the children and intended to seek a judicial decision, the Court would order the preparation of a ‘welfare report’, now termed a ‘family report’. I worked in all of these activities. Even so, between 1986 and 1996 I rarely, if ever, included children in parents’ decision-making activities.
Indeed, the only time I saw children was to prepare family reports for the court in relation to the children’s wishes. During that task, my role was to assess the child’s situation and capacity to make an informed wish, based on my professional experience as a psychologist.

In postmodern terms, I entered the fields of psychology and family law within which were embedded many discourses about families, children, the roles of different family members, the roles of professionals within families and the ‘correct’ ways of helping separating couples. I adopted these discourses as holding ‘truths’ about families and separation. Assumptions that I brought to the work included that separating parents often were not emotionally equipped to make appropriate decisions about their children’s futures and that family law professionals could assist them in the decision-making task. My psychological training led to an assumption that children were significantly vulnerable at the time of family breakdown and that, consequently, they should not participate in the parents’ decision-making processes. Moreover, my training had informed me that children’s levels of development would significantly affect their abilities to engage in appropriate decision-making activities with parents. As a child psychologist I assumed that I was appropriately skilled to understand and ‘scientifically’ assess children’s needs, interests and developmental stages so that I could make appropriate decisions about their futures on their behalf.

During my work at the Family Court, though, I met children whose behaviours, speech patterns, abilities and comments did not reflect my professional understandings of developmental theory, the vulnerability of children, age-related levels of competence, needs and interests. These children were articulate and certain of their skills and limitations. Their understandings of their situations, reflected in the comments they made to me, did not match my ‘scientific’ understandings of the levels of knowledge and insights that children of certain ages and developmental stages ‘should’ possess. As a possible advocate for these children in family law matters I was obliged to change my perceptions of the children with whom I interacted.

Part of the court’s activities is the conduct of trials for couples who cannot agree on arrangements for children or for settling property. Many of these trials require the preparation of a family report (Chisholm, 2000). Counsellors who prepare these reports are often required to attend the court to ‘give evidence’ and be cross-examined. During
my employment as a family court counsellor, I began to find this part of the job irksome. Cross-examination became stressful, and I perceived the process as abusive of both my work and the children with whom I had talked. Lawyers acting on behalf of each parent would question whether the children’s expressed wishes were ‘accurate’ and whether my assessments were sufficiently thorough. The ‘best interests’ of children were often set aside in preference for discussions of parents’ needs, rights and ‘fitness’ to parent.

In 1996, I moved from Western Australia to take up a position as Chief Executive Officer of FMC Relationship Services (formerly Noble Park Family Mediation Centre), a major provider of family services in Melbourne. While in that position I challenged the organisation to become more flexible in its service delivery and to take initiative in establishing innovative, responsive services for the clients with whom we came in contact. One of these initiatives was the development of a ‘child inclusive’ service. This arose in connection with a funded research project in which the researchers developed and evaluated an approach to including children’s voices in parents’ mediation sessions (McIntosh, 2000; Strategic Partners, 1998).

The results indicated that children and parents expressed significant levels of satisfaction in their involvement together in the work. While children participated, however, that participation was limited to their providing information to a staff member who would feed back their comments to the parents. Children themselves were not engaged in the design of the program, nor were they invited to consider how else they might have been involved in the parents’ work. Parents heard from the children through another adult. The next step was to consider involving children in the design of interventions and decision-making activities in which they might participate. The research reported in this thesis arose as a way of taking this step.

The values underlying my approach in this research include an understanding that children have a right to information about events in their lives and to an opinion about their part in those events. My experience indicates that children can and do make decisions about a host of issues, both large and small. These decisions are sometimes made autonomously, while at other times they are made in consultation with adults. On yet other occasions, children will not wish to decide on matters in which they are involved, leaving that to adults to manage; however, the act of delegating to adults represents a decision in its own right.
I value children as social beings who engage with their worlds to achieve specific outcomes and as individuals who attract respect as people in the present rather than citizens of some future age. I acknowledge that their size and lack of physical strength relative to that of adults can render children vulnerable and open to opportunistic abuse from adults. I respect, however, that children also have the capacity to protect themselves in some situations, such as family breakdown, if they are sufficiently informed. Finally, I believe that each child possesses a unique set of experiences, beliefs, cultural values and understandings that cannot be essentialised or universalised. Complexities and contradictions will surface in the texts of each child’s discussions that reflect children’s multiple views of their selves and situate them within their unique experiences, beliefs and values and that contradict universal ‘scientific’ constructions of them.

1.6 Outline of Chapters

Human beings interact with each other through narratives, using language to describe experiences and actions in specific ways. The narratives and stories we use construct a web of meanings and practices that explain and define who we are and how we fit in society. Through narratives we build a social reality that provides meaning for us and places our selves within specific contexts. As these contexts change, so do our narratives (Fine, 1994; Weedon, 1997).

A research report reflects a narrative about a specific set of experiences and their associated meanings, constructed in interactions between researchers and those being researched. The way in which the narrative is structured can determine how we understand and relate to the issues being presented. A report written in a modernist ‘scientific’ manner constructs a unidirectional narrative, establishing hypotheses to be tested and leading to a conclusion that constructs meanings around those hypotheses while offering explanations from within a single frame of reference. In contrast, postmodernist research presents a multidirectional narrative, surfacing discourses and social realities that provide several frames of reference rather than a single frame (Mason, 2002). This report takes a postmodern approach, proposing that the narratives presented by the child participants reflect plural interpretations of lived experience. It therefore rejects the ‘traditional’, ‘scientific’ approach to reporting on the research undertaken.
Chapter 1: The Foundations of This Research Project

The structure of the report presents a narrative that considers the literature in relation to the issues under exploration alongside the statements made by the children who participated in this research. Children’s perceptions of their experiences will reflect several viewpoints and frames of reference. This report seeks to explore children’s experiences and viewpoints in a way that reflects the richness and diversity of children’s perceptions of their experiences and the understandings that they construct from them.

The thesis ‘sets the scene’ in Chapter 2 with a consideration of the position of children in society. Using Foucault’s concepts of archaeology and genealogy (McHoul & Grace, 1993) the chapter explores how the history of ‘childhood’ has influenced current understandings of children and their social position. Themes that emerge throughout the thesis are identified, explained and linked to adult constructions of children, both in history and in the present.

Foucault argued that dominant discourses that shape our perceptions of ourselves and the world emerge from scientific ‘truths’ established by institutional policies and practices (Danaher, Schirato, & Webb, 2000). In history, various institutions (for example, the family, governments, schools and the medical and psychological fields) have determined ‘truths’ about children from which dominant discourses have been built. These discourses do not emerge in a linear and ‘logical’ fashion and are neither absolute nor essential. Historical events occur accidentally and concepts of ‘truth’, arising from historical events, are embedded in situations, contexts and cultures (Foucault, 1984; Danaher, Schirato, & Webb, 2000). Foucault was interested in “the way in which ‘scientific rationality and reason’ was always changing, and the way that ‘bodies of knowledge and truth’, which were thought to be ‘eternal’, could come to an end and be replaced by a different ‘truth’ or rationality” (Danaher, Schirato, & Webb, 2000: 7). Chapter 2 explores the different ‘truths’ about children that have been constructed through history and the ways in which these ‘truths’ have changed over time to build a discourse that assigns to children a specific social position in the ‘adult’ world.

The thesis then discusses the research project itself. In Chapter 3, the theoretical base for the research is explained in some detail. The chapter considers the differences between modernist and postmodernist thought and situates this research within a postmodern paradigm. A central concept for the research is that of social constructionism, which
argues that the ways in which we perceive ourselves are based in language and our interactions with others. Chapter 3 explores this concept in depth.

The research uses a qualitative approach, with discourse analysis as its major tool. Chapter 3 discusses the differences between qualitative and quantitative approaches and the concept of ‘discourse’ and its relevance to research analysis. Finally, the chapter considers issues in working with children and positions the research within current concerns arising from dominant discourses about children’s abilities and levels of vulnerability.

A description of the research process, including obtaining ethical approvals, recruitment and interviewing and the approach to analysing the data gained from the interviews, is provided in Chapter 4. A number of issues arose in conducting this research, especially in the recruitment of children as participants. This resulted in a smaller number of participants than was originally proposed. Although the difficulties encountered in recruitment raise significant issues about the position of children in society, the small numbers in the final sample were not damaging to the project. Those children who participated were recruited through a snowball technique and reflected the many different ways in which families are constituted within Australia. Chapter 4 includes descriptions of the children and their current living arrangements and discusses the positives that arise from the inclusion of these children. Both the recruitment strategy and the small group of participants also present disadvantages, however. These are considered alongside the positives in Chapter 4.

Chapters 5 to 7 consider the literature alongside the comments from the child participants. They are arranged around the research questions, each chapter exploring one of the questions in detail. Chapter 5 explores questions around the social construction of children relative to adults. Children’s perceptions of themselves are considered in terms of perceived differences from adults, children’s membership of families and their position in society. The role of language in building discourses about children is discussed in relation to the ways in which the research participants constructed narratives that reflected their perceived social position. Issues of age, competence and vulnerability are all explored through both the literature and the children’s comments. The chapter includes discussions on children’s references to binary relations and the way in which Foucault’s concept of the Panopticon is reflected in children’s texts.
Chapter 6 then considers the issue of children’s rights. The chapter reviews the literature on the rights of children and reflects on the philosophical foundations of a ‘rights’ discourse. It explores children’s understandings of their rights and the relationship between these understandings and the broader discourses on rights and children. Two foundations of the United Nations Convention on the Rights of the Child are of particular relevance to the rights of children in family law. These foundations - the concept of the child’s ‘best interests’ and the right of children to participate in decisions that directly affect them - are discussed in detail. The literature on these issues is considered alongside the comments about them made by the children in this research. The children’s comments reflect a site of resistance to the dominant discourses that argue that children are unable to assert their ‘rights’ or participate in decisions that directly affect them.

Chapter 7 discusses ways that children perceive they can participate in decision-making activities, comparing the comments of the children in this research with those of children in other research and the broader literature on children’s decision-making processes. Comments from the children in this study indicated a number of perspectives on decision-making processes, embedded in contextual and situational factors. Children’s discussions on the ways in which parents reached decisions following separation reflected both gendered and cultural discourses about families and the care of children post-separation. When they discussed issues about children’s vulnerability and levels of competence, however, the children in this research demonstrated a resistance to the dominant discourses about these issues.

The final chapter attempts to draw from the previous chapters to centralise the voices of the children who participated in this research and consider ways in which the voices of children in general can be brought to the foreground. The processes undertaken in this research project and the texts of the children’s interviews raised a number of issues that reflect the social position of children today and lead to suggestions for changing that position. This research indicates that the current construction of children through discourses that maintain them as vulnerable and incomplete can be, and is being, challenged by children as well as by adults. The chapter concludes with a challenge of its own that could change the social position of children in Australia following parental separation.
1.7 Definitions of Terms

1.7.1 ‘Childhood’ and ‘The Child’

The terms ‘childhood’ and ‘the child’ appear easy to define. They relate to a specific stage of growth in the human life cycle. As discussed in Chapter 5, however, definitions of childhood are vague and circular. Moreover, the concepts of ‘the child’ and ‘childhood’ change depending on the reference point used. Different disciplines - such as psychology, law, medicine, education and culture - rely on different definitions of ‘the child’ and embed these definitions in the contexts in which children are discussed.

One approach to defining ‘the child’ is through a list of essentials that are considered to apply to all people regarded as ‘children’. They include a person’s physical size, comparative strength, command of language, and levels of experience and social understanding. These ‘essentials’ are not the same for every ‘child’ in every part of the world, however. The term ‘young people’ thus appears more inclusive of the group of people described as ‘children’.

The United Nations Convention on the Rights of the Child describes a child as “every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier” (United Nations, 1989, Article 1). In Australian family law, a child is a person under the age of eighteen. This thesis therefore defines a child as a person between the ages of zero and 18 years. The term ‘childhood’ is used to describe the period in which one is considered a ‘child’, in this case below the age of 18 years.

1.7.2 Children’s Rights

The subject of children’s rights is discussed in depth in Chapter 6. The discussion in that chapter indicates the complexities of the ‘rights’ discourse and its implications for societies that embrace it. A significant issue is the way in which the concept of ‘rights’ is defined. Freeman (1983: 35), for example, argued that children’s rights are an “abstract, general, legalistic concept” and an ideal that needs support from specific actions. He suggested that children’s rights represent a set of moralistic statements reflecting claims on behalf of children against individual adults for respectful treatment.

The Collins Gem Dictionary (1992a: 463) describes a ‘right’ as a claim or title, “what is just or due”, while the Collins Gem Thesaurus (1992b: 381) lists, as synonyms for the
term ‘right’, words such as “freedom”, “interest”, “liberty”, “licence” and “privilege”. Additionally, the literature discusses issues of autonomy and dependence, especially in relation to the rights of children (Francis, 1999; Freeman, 1983; Harding, 1997), and concepts of rights are linked to individuals’ abilities to claim entitlements (Dunston, 1997).

Ife argues that in some cultures the term ‘right’ is not used. Instead, other words are used to convey notions of “human dignity and worth, ideas that all people should be treated according to certain basic standards, ideas that people should be protected from what is frequently termed ‘human rights abuse’, and ideas of respect for the rights of others” (Ife, 2001: 2). The children who participated in this research often did not refer to the term ‘rights’ when discussing their social position. Instead, they discussed ‘fairness’ and the importance of their having a voice and being respected. These concepts are at the core of this thesis. References to children’s ‘rights’ in this thesis thus relate to perceptions of fairness, the ability to speak and be heard, and demonstrations of respect for children as people rather than as human ‘becomings’ (Qvortrup, 1990) or appendices to the adult social world.

1.7.3 Family
The concept of the ‘nuclear family’ - consisting of a working father, a home-based mother and children born of the union between both - has existed for hundreds of years. In Australia, this concept has been idealised with an increasing emphasis on individualism, romantic love and privacy for individuals and small groups (McDonald, 1992). As McDonald points out, though, a broader view of the ways in which people interact with each other indicates that a wider concept of ‘family’ operates within Australian society. McDonald (1992: 5) argues that Australians “define their own families” according to the relationships they have, the contexts in which they discuss the concept of ‘family’, the circumstances in which they live and their perceptions of their obligations towards others in their lives.

Chapter 5 discusses some of the issues in defining the term ‘family’ and the ways in which the children who participated in this research defined their own families. The chapter discusses the complications in defining ‘family’ in an age of technology and changing relationships. Definitions include ‘single parent’ and ‘couple only’ families and
encompass groups of friends living together as well as same-sex partners. The children in this research discussed ‘family’ in a broad sense to include grandparents, aunts, uncles and cousins and, in the case of one child, same-sex partners. These definitions reflect changing societal attitudes to the ‘traditional’ definition of family as a close unit of mother, father and children living separately from the rest of the community.

McDonald (1992) points out that the Australian *Family Law Act* 1975 places responsibility for the support of children under the age of 18 with both parents, irrespective of where those parents and children might reside. While the Act provides for the inclusion of extended family members in a child’s life, the ways in which extended family members might be included have been the subject of the most recent Government Inquiry into Child Custody Arrangements (House of Representatives Standing Committee on Family and Community Affairs, 2003). That inquiry discussed the specific circumstances for indigenous children in this country who live in large family groups, all the adults of which assume responsibility for all the children. This creates difficulties for an Act that considers the concept of ‘family’ in terms of father, mother and children only.

For the purposes of this thesis, the term ‘family’ is applied in its broad sense to include extended kin and same-sex partners; however, at times, references to ‘family’ will assume a more narrow definition, relating only to the “modern, nuclear family” (McDonald, 1992: 4).

### 1.7.4 Family Law in Australia

In 1975, divorce laws were changed significantly with the passing of the Australian *Family Law Act*. This Act established a new court system (the Family Courts of Australia and Western Australia), the concept of no-fault divorce and the introduction of court-based counselling services to assist parents in making decisions about children. The Act referred only to married couples and their children in Australia, with state rather than Commonwealth laws carrying responsibility for separations of de facto couples. In the last ten years, though, most Australian states have passed responsibility for the children of de facto couples to the Commonwealth, while matters relating to de facto property are still managed by state Supreme Courts.

Successive Commonwealth governments have, however, remained concerned about breakdowns in Australian families, prompting a number of inquiries and submissions to
government over the years (House of Representatives Standing Committee on Family and Community Affairs, 2003). A perceived need for parents to share parenting responsibilities, both physically and financially, has led to significant legislative changes. For example, in 1989 the *Child Support (Assessment) Act* established the Child Support Agency to manage financial support for children. The later *Family Law Reform Act 1995* included a number of changes in terminology to reflect some of the Articles of the United Nations Convention on the Rights of the Child. Specifically, the principle of children’s ‘best interests’ (Article 3 in CROC) replaced an earlier ‘welfare’ principle in the 1975 Act. The reforms also changed the terminology in relation to arrangements for children, removing the terms ‘custody’ and ‘guardianship’ and replacing them with the concepts of ‘residence’ and ‘contact’. Section 60B of the *Reform Act* refers to the child’s right to know and be cared for by both parents, reflecting Articles 9 and 18 of the Convention. Separate parental responsibilities (incorporated in the previous terms of ‘custody’ and ‘guardianship’) have been removed in favour of a presumption of equal responsibilities (Chisholm, 1996).

Since 1996, the Australian government and the family law community have focused on issues of ‘shared parenting’. This concept that has gained significance due to the changed emphasis in the *Family Law Reform Act 1995* on joint parental responsibility (House of Representatives Standing Committee on Family and Community Affairs, 2003; House of Representatives Standing Committee on Legal and Constitutional Affairs, 1998). Concepts of shared parenting (defined as joint parental responsibility for children) have also raised questions about whether children should share their residence between both parents’ homes following separation (Chisholm, 1996). These issues have implications for decision making within families, especially if parents are to hold equal responsibility for decisions relating to the welfare of children.

The *Family Law Act 1975* and its subsequent reforms address the needs of those parents who experience significant difficulties in deciding on arrangements for children following separation. The Family Court of Australia has argued, though, that these parents represent only a small number of all those who make applications for the court’s assistance, with only 6% of those who apply going through to a judicial decision at trial. Whether decisions are made in children’s ‘best interests’ away from the court is unknown (House of Representatives Standing Committee on Family and Community Affairs, 2003). The *Family Law Reform Act 1995* provides assistance for parents through mediation and
conciliation, but the ways in which parents reach agreements through these processes are not well documented and more work is needed in this area of inquiry (Sourdin, 2002).

1.7.5 Mediation and Conciliation

Mediation and conciliation are considered part of the primary dispute resolution processes outlined in the Australian *Family Law Reform Act* 1995. In 2003, the National Alternative Dispute Resolution Advisory Council (NADRAC) published a glossary of terms used in Australia when referring to alternative (or primary) dispute resolution processes. In that publication, NADRAC described ‘mediation’ as purely facilitative, while ‘conciliation’ was considered as both facilitative and advisory. The Council pointed out, however, that both terms apply to a “wide range of processes” (National Alternative Dispute Resolution Advisory Council, 2003: 3).

NADRAC defined *mediation* as:

… a process in which the parties to a dispute, with the assistance of a dispute resolution practitioner (the mediator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted (National Alternative Dispute Resolution Advisory Council, 2003: 9).

On the other hand, *conciliation* was described by NADRAC as:

… a process in which the parties to a dispute, with the assistance of a dispute resolution practitioner (the conciliator), identify the issues in dispute, develop options, consider alternatives and endeavour to reach an agreement. The conciliator may have an advisory role on the content of the dispute or the outcome of its resolution, but not a determinative role. The conciliator may advise on or determine the process of conciliation whereby resolution is attempted, and may make suggestions for terms of settlement, give expert advice on likely settlement terms, and may actively encourage the participants to reach an agreement (National Alternative Dispute Resolution Advisory Council, 2003: 5).

These two definitions have been adopted in this thesis when referring to mediation and conciliation processes.
1.7.6 The Child’s ‘Best Interests’

The United Nations Convention on the Rights of the Child requires that a child’s best interests be a “primary consideration” in “all actions concerning children” (Article 3(1)). The 1995 Australian *Family Law Reform Act* describes a child’s ‘best interests’ as “paramount” (Section 65E). Defining the ‘best interests’ of children is not easy, however, as the discussion in Chapter 6 of this thesis will indicate. Australia’s *Family Law Reform Act* lists, at Section 68F, twelve factors that a court must consider when determining children’s ‘best interests’. Judicial decision-makers will apply a weight to each of these factors depending upon the evidence given before the court and upon the judicial officer’s own perception of the children’s position within the family (Landerkin, 1997). Landerkin (1997) and Rotman, Tompkins, Schwartz, & Samuels (2000) argue that the list of factors in instruments such as the *Family Law Reform Act* 1995 provides clarity for decision-makers, but this is a contentious argument. Behrens (1996), Kelly (1997), Rayner (1992, 1994) and Thomas and O’Kane (1998) all point out that the term ‘best interests’ is vague and involves value judgments and personal views about children.

Prior to 1995, the Australian *Family Law Act* referred to a child’s ‘welfare’, but this term was removed and replaced by ‘best interests’ in Section 65E of the *Reform Act*. Whether the new term represents a significant difference in the way that the judiciary perceives children is arguable. The Family Law handbook (CCH) has pointed out that judicial argument determines little difference between the two concepts. “The term ‘best interests’ was chosen in preference to ‘welfare’ as it was considered to represent a more child-centred and less paternalistic concept” (CCH, 1999, para 16-110). In terms of defining ‘best interests’, however, CCH takes a somewhat circular approach, referring to judgments that have ‘teased out’ the term in various ways. The concepts of the ‘welfare’ or ‘best interests’ of a child include moral and religious issues, a child’s physical well-being, the child’s “happiness” and the quality of relationships between the child and significant others, as well as measures of existing social standards (CCH, 1999, para 16-110).

For the purpose of this thesis, I have adopted a definition of children’s ‘best interests’ that encompasses those factors that will best assist children to grow in an environment in which they feel secure and supported by those around them. A child’s best interests might include all or only some of the concepts listed above, as well as other factors not included
in the list. Any child’s ‘best interests’ will be constructed by a number of people, including children themselves in consultation with adults.

1.8 The Final Foundation

This thesis presents a narrative about my journey over the past five years, telling the story of my research project and my contact with sixteen children and their thoughts about decision-making processes. As discussed in Chapter 3, we construct narratives to reflect an end-point in which meaning is embedded. Along the way, we relate events in specific ways to construct causal links and an ordered telling of the details to lead the audience towards our goal (Gergen, 1999).

The narrative contained in this thesis is similar to the ones the children told (in terms of structure and purpose), but it has a number of differences. First, it weaves the children’s stories with those from the literature that talk about children from different viewpoints, including psychological, legal, medical and developmental. Second, my narrative attempts to interpret, to a degree, what the children have said to me. This is done in order to surface the dominant discourses about children and the sites of resistance to these discourses, and to explore how the children’s comments create spaces for new statements and possibilities in relation to children and decision making (Potter & Wetherell, 1987). Third, it moves towards a goal that supports the discussion of new possibilities based on what the children have said to me. There is a danger, though, that my narrative misrepresents the children’s comments, thus restricting their voice rather than providing the children with a ‘conduit’ for their voices to be heard without the imposition of my adult (and ‘professional’) values.

Fine (1994: 80) argues that researchers are in a unique position of “status and privilege” relative to the position of those with whom the researcher works. Research participants are usually the ‘othered’ in society: indigenous peoples, women, homosexuals, people of ‘non-dominant’ cultures, children. During this research, I was the privileged adult, while the children represented a marginalised and ‘othered’ group, usually not included in ‘adult’ discussions. In this respect, I as researcher collude with adults who marginalise children, by exploring their worlds and writing about them rather than providing a venue for children to speak independently. Fine argues that researchers are obliged to “cut a deal: Listen to the story as long as the teller is not the Other” (Fine, 1994: 80; italics in
the original). My responsibility has been to privilege the children’s stories over my own, while exploring the meanings underlying the children’s texts. As described above, this work interweaves the children’s comments with the literature rather than presenting a separate literature review followed by a ‘results’ section. Children’s voices are thus heard throughout, as they comment on the literature, my own questions and responses, and their experiences. While my voice sits alongside those of the children, I have tried to balance the two to centralise the children’s voices over my own. In so doing, my own values, expectations, understandings and agenda are exposed. They are contextualised alongside those of the children and reflect our various experiences, beliefs and attitudes. By writing myself into the work, I have hoped to more respectfully report the children’s discussions with me in a way that brings their voices to the foreground. I trust that this has been achieved in some measure.
Chapter 2: Children in Society

2.1 Emerging Themes
Throughout this research a number of themes constantly emerge. These themes form the bedrock for the ways in which contemporary Western society constructs children. For much of recent history, the prevailing view of children has considered them as passive objects of adult attention and behaviours rather than as social actors in their own right. Today, children are marginalised in many areas of ‘adult’ society because of this prevailing view.

The major themes that emerge from the literature rely on a construction of children as biologically incomplete and therefore unable to participate in ‘adult life’. The view of children as passive recipients of adult guidance and nurturance is reinforced by scientific theories that construct them as incompetent, vulnerable, dependent and gradually developing through a biologically determined set of stages towards adulthood. This chapter will discuss these themes, placing them in the context of Foucault’s “ontology of the present” (Brown, 1998: 39) where history is analysed in terms of context and level of unpredictability (Danaher, Schirato, & Webb, 2000). Through this analysis, the history of ‘childhood’ will be reviewed, linking present perceptions of children to past constructions of them. Finally, the chapter will introduce the concept of children’s rights through a discussion of postmodern constructions of ‘the child’.

2.1.1 ‘Bio-science’
The work of Freud (1966) and Piaget (1928, 1929, 1969) has resulted in a widespread construction of children as vulnerable, incompetent and biologically unable to make ‘responsible’ decisions for many years. Developmental discourses, emerging from medical, psychological and social institutions, construct a ‘bio-scientific’ classification of children as different both from adults and from each other. The visibility of children as small in stature and physically weaker than their adult counterparts (Kendall & Wickham, 1999) makes it hard to think outside these powerful developmental discourses because biological explanations provide a strong basis for conceptualising the child (James & Prout, 1990). Physical, cultural and personality subsystems operate together to construct
childhood in specific ways, dehumanising children and creating a subjective position for them (Jenks, 1982). Articles 5, 12 and 14 of The United Nations Convention on the Rights of the Child and Section 68F of the Australian Family Law Reform Act 1995 reflect the argument that children’s capacities gradually increase with age. Thus the bio-scientific discourse about children as developing beings with limited ability to participate in decision-making activities until well into adolescence is institutionalised by these documents.

2.1.2 Competence

Many authors, among them Garbarino, Stott, et al (1992), Hendrick (1990), James and Prout (1990), Piaget (1929) and Piaget and Cartalis (1928), have discussed the level of competence in defining differences between children and adults. Biological descriptions of children emphasise the developmental nature of childhood, constructing children as cognitively incomplete and as having to pass through a number of stages towards adulthood (Piaget & Cartalis, 1928). This concept has been extended to a number of other areas of functioning in children, including to their views on politics (Connell, 1971) and on rights (Ruck, Abramovitch, & Keating, 1998).

Some studies have been unsuccessful in ‘fitting’ children's responses to a Piagetian developmental model, while other studies have questioned Piaget's original work (Cleverley & Phillips, 1987; James & Prout, 1990; Jenks, 1982; Lloyd-Smith & Tarr, 2000; O'Neill, 1982) and the determinacy of ‘scientific’ study of human subjects (Potter & Wetherell, 1987). In spite of the alternative descriptions of children’s abilities offered by these studies, the construction of children as incompetent is very strong, emerging as a further major theme in this research.

In the past, and even today, perceptions of children’s capacities have influenced institutional decisions made about the future of specific children, both in family law and in other areas of children’s lives (Jones & Marks, 1996; Ludbrook, 1996; Marks, 1998; Rayner, 1992). Questions remain about the capacity of children to understand policies, procedures and approaches to decision making, as recent court proceedings in both Britain and Australia have highlighted (Hubble, 2000; Jones & Marks, 1996; Marks, 1998). Whether this capacity is related to biological factors or to the ‘adult-ness’ of the processes used is open to debate. The presence of qualifications for children’s levels of
competence in policies and court practices, however, can silence children’s voices, especially when children are deemed ‘incompetent’ to express opinions. The literature that focuses on children’s rights to participate often reflects these issues (Blagg & Wilkie, 1997; Chisholm, 2000; Harding, 1997; Leach, 1994; Ludbrook, 1996; Marks, 1998; Nyland, 1999; Redman, 1997).

2.1.3 Vulnerability

In April 2003 Australia's Women's Services Network held a forum in Brisbane. The title of the forum, ‘Safety First for Children: The Need for Family Law Reform in Australia’, reflected the theme of children as vulnerable and in need of strong protective measures. This is another strong theme that has emerged in this research. Protective concerns have resulted in the emergence of specific programs within the Family Courts of Australia and Western Australia designed to provide integrated services for families in which issues of domestic violence and/or child sexual and/or physical abuse have emerged (Murphy & Pike, 2003).

The perceived vulnerability of children and the need to protect them feature significantly in a large body of the literature (Andrews & Freeman, 1997; Blagg & Wilkie, 1997; Fogarty, 1995; Hubble, 2000; Jones, 1999; Leach, 1994; Marks, 1998). In some cases, cogent arguments are provided for the establishment of protective mechanisms (Blagg & Wilkie, 1997), while in others the discourses reflect a fear of rebellion and a need for adults and parents to control children and young people (Andrews & Freeman, 1997). While the dominant discourses that construct children as vulnerable are very strong, over the past fifteen years a body of literature has emerged to suggest that children might be less vulnerable than adults construct them (Kitzinger, 1990; le Roux & Smith, 1998; Lopez-Calva, 2001; Peters & Richards, 1998).

2.1.4 Dependence and ‘Ownership’

The English language uses terms that imply ownership in describing relationships between human beings. When referring to one’s work colleagues, the word ‘my’ is used. The same word is used to describe the children of one’s partnership: ‘my’ or ‘our’ children, ‘my’ daughter, ‘my’ son. Children also use this language when referring to parents. Language is a central agent in discourse. Ownership words become powerful descriptors of relationships and possible determinants of reality. They define the nature of
the relationship between parents and children as one of belonging. They can also imply status and levels of attachment or dependence within a family (Chisholm, 1996; Lloyd-Smith & Tarr, 2000), with parents wielding power over each other and the children through their perceptions of ‘ownership’.

Children and young people are dependent on their parents and other adults in a number of ways, including emotionally, economically and socially (Bessant, 2002). Dependence is related to the perception of children as vulnerable and ‘innocent’, or lacking in competence to care for themselves (Lloyd-Smith & Tarr, 2000). This is another strong theme to emerge in this research. That children are dependent on adults for a significant part of their childhood is implied in the way in which legal and political approaches to issues that directly affect children are implemented. For example, in 1995, when the Australian government changed the terminology of the Family Law Act 1975, it expected that there would be a significant social shift towards a perception of children as independent beings, not owned by parents (Attorney-General of Australia, 2001; Chisholm, 1996). In 2001, however, the Australian Attorney General reported that the impact of the changes in terminology has been minimal, with family lawyers and parents showing slowness to accept the philosophies underpinning the new terms (Attorney-General of Australia, 2001). This slowness was highlighted when a 2003 Parliamentary inquiry used the pre-1995 term ‘custody’ in its title, indicating that overall acceptance of the ‘new’ term ‘residence’ is negligible at the legislative level (House of Representatives Standing Committee on Family and Community Affairs, 2003).

The language of the Family Court can sometimes imply that children are neither central to, nor independent of, parental conflict in matters concerning them. Court matters are listed in the names of the parents (e.g., ‘In the Matter of Joe Brown (Husband) and Melissa Brown (Wife)’), with no reference to any children who might be involved. Court orders are often framed to reflect a view of children as being similar to property (e.g., ‘The mother shall give to the father, and the father shall take from the mother, contact to the child (child’s name) as follows:’). Framing orders in this way, rather than centralising the needs of the child in relation to the parents, implies that children are considered as objects.
Chapter 2: Children in Society

2.2 The Themes in History

The four themes - ‘bio-science’, competence issues, levels of vulnerability and issues of dependence - reflect the ways in which children have been positioned in society over the past four hundred years and since Australia was colonised in the 1800s. The themes present a significant base from which children are perceived in society today. They are present in adult discussions about children and in the formulation of the provisions of the Family Law Reform Act 1995. Current practices also position children in ways that reflect dominant views of children’s abilities to participate in decisions that directly affect them following parental separation. For example, a 2000 report on Australian ‘child inclusive practice’ referred to ‘age-appropriate’ services on a number of occasions (Mackay, 2001). Although the themes have emerged from the social position of children at different stages in history, in postmodern terms they serve to maintain knowledge and power with adults. A Foucaultian analysis of the history of childhood explains how this has occurred.

2.2.1 The Importance of History for Foucault

Foucault’s construction of history views historical events as disconnected from each other. History is not considered as having a logical and linear flow to it, and Foucault is not concerned with finding overarching principles that define historical development. Instead, he focuses on “general history” which deals with “describing differences, transformations, continuities, mutations and so forth” (Kendall & Wickham, 1999: 24). Foucault uses the term ‘archaeology’ to describe the ways in which discourses are produced through the organisation of statements in archives and suggests that the concept of archives “deprives us of our continuities” (McHoul & Grace, 1993: 41). Archives cover what is said and what is seen, and archaeology both describes and analyses the ways in which these archives, and the institutions which maintain them, order and produce statements that comprise discourse (Kendall & Wickham, 1999).

The processes of archaeology are complemented by Foucault’s approach to ‘genealogy’. Genealogy involves an investigation of the origins of the “institutions and discourses which claimed to be universal and eternal” (Danaher, Schirato, & Webb, 2000: 24). Genealogy considers the ways in which power is embedded in the statements that make up a discourse, forming a close relationship between power and knowledge and legitimising the exercise of power. The focus is on the use of history to surface the marginalised and silenced voices of the disempowered (Sawicki, 1991).
The history of the concept of ‘childhood’ demonstrates how the processes of archaeology and genealogy can be applied. The organisation of statements around childhood and the power-knowledge relationship that emerges from that organisation indicates how childhood has been socially constructed to produce an ‘othered’ group whose own discourses are subjugated in preference to an adultist, scientifically-based explanation of children as different. An understanding of the ways in which childhood has been socially constructed can help to reconstitute the history of the position of children in society (Gergen, 1999).

2.3 The History of ‘Childhood’
Throughout history, the social position of children has been transformed several times, reflecting the changing perceptions and contexts around which childhood has been constructed (Danaher, Schirato, & Webb, 2000). In archaeological terms, these changes have articulated particular relations between the visible and the sayable while delineating a set of rules that have established clear boundaries between children and other groups in society (Kendall & Wickham, 1999). The different positions of children over history do not appear to be strongly connected to each other in a linear fashion, but seem to have emerged through institutional constructions of childhood in specific historical periods. The following review considers the history of childhood from the point of view of present constructions of children, focusing on how present practices have been informed by past views (Henriques, Hollway, Urwin, Venn, & Walkerdine, 1984).

2.3.1 The Child as a Small Adult
A major influence on modern interpretations of ‘childhood’ was Phillipe Aries. In his book, Centuries of Childhood, Aries suggested that the concept of ‘the child’ is historically quite new, emerging around the Middle Ages (Aries, 1962).

This does not mean that there were no children, or that they were not thought of as ‘different’, but the ways in which they were perceived and treated differed. Up to the thirteenth century AD a number of modes of adult attitudes towards children existed. From antiquity until the fourth century AD, parents resolved their anxieties about child rearing by engaging in infanticide. Between the fourth and the thirteenth centuries AD, children were considered to have an evil soul, requiring severe punishment and abandonment. From the fourteenth through to the seventeenth centuries, an ambivalence
towards children reflected the debate about their general usefulness in society (DeMause, 1982).

In reviewing how artists depicted children in painting, Aries (1962) charted the changes from about the twelfth through to the seventeenth century. Early depictions showed children as scaled-down adults, with adult musculature, clothing and features. In religious paintings from both the Renaissance period and the 1800s the infant Christ was depicted as a small adult. Depictions of children as they are seen in the twentieth century were not present. This is because early artists did not have a concept of ‘children’ as different from adults; they saw them as smaller versions of themselves, the only difference being in their size (Corbett, 1985). Indications are that, while they were considered as small adults, having the same weaknesses and pressures as their older counterparts, children were not considered ‘special’ or significantly different from adults except in respect of their physical attributes (DeMause, 1982). That children might have different needs from adults during these early periods, beyond a physical dependency when very young, was not recognised, and childhood was seen as a stage in life rather than as a preparation for adulthood (Jamrozik & Sweeney, 1996).

The term ‘child’ was used in a general fashion, to describe those in somewhat subservient positions, such as soldiers, employees and servants, with no specific distinction being made in its use. While there was a view of ‘infants’ as distinct from ‘adults’, there were no identified individuals between these two extremes (Stone, 1982), and those who were called ‘children’ were seen as ‘fun’ and ‘playful’, rather like the family pet, and not to be taken seriously (Aries, 1962). Play activities were not restricted to children, with all ages engaging in some forms of play. Social and gender roles were defined through adult constructions of childhood, with toys being scaled-down versions of the adult world (Barthes, 1982). Even so, children were viewed as valuable to the institution of the family because they could contribute to family incomes through work and could be expected to support their parents in their later years. For these reasons children were considered as part of the family property with few personal rights. This view ensured the maintenance of their value as positive contributors to the family’s well being.

The view of children as ‘property’ is still relevant today in Western cultures. While childhood is considered a transitory stage, “an oppression that you, literally, ‘out grow’” (Kitzinger, 1990: 178-9), many Australian laws “treat children and young people not as
people but as the property of their parents” (Robinson, 1997: 7). Children are perceived as “objects or possessions whose views don’t really matter” (Mason & Steadman, 1996: 2). This view leads to debates about the treatment of children in families and about appropriate attitudes towards outside involvement in family matters, including whether parents have a right to hit children as punishment for misdemeanours (Leach, 1994).

2.3.2 The Romantic Child

By the beginning of the seventeenth century representations of children in art had changed to a depiction of naked, happy, chubby little beings. In language, too, references to children’s speech and jargon began to emerge (Aries, 1962). Attention was given to the qualities in children that differentiate them from adults, especially their ‘cuteness’ and vulnerability. Adults began to view childhood as a ‘golden age’, a time of romanticism and dreams.

The social construction of childhood as a ‘romantic’ period arises from adult feelings of their having ‘lost’ their own childhoods. Adults are perceived as striving to retrieve the lost “language of enchantment” (Bachelard, 1982: 130) through remembering childhood and admiring the memory. A return to a simpler time, to “become as a child” (Hillman, 1982: 109), signifies the return to a memory of innocence, wonder and imagination.

During the seventeenth century, poetry and narrative began to be used to ‘reimagine’ childhood, the poet or author trying to reinvent him or herself through a process described as “a layer of births” (Bachelard, 1982: 125). Paintings began to depict children at play. In these, there is a suggestion that the activities of childhood are quite different from those of adults, and children are less obviously depicted as smaller adults (Gittins, 1998).

The reinvention of ‘lost’ childhood survives today in song lyrics which conjure up images of “pirates and adventurous dreams”, “fantastical stories to share/The dreams I would dare, watch me fly…” (Jackson, 1996), and in Hollywood movies such as ET. In psychoanalysis, Freud’s references to ‘abandoned’ children are thought not to relate to ‘real’ children but to a representation of the supposed innocence and youthful wonder that is lost to adults (Hillman, 1982). A differentiation between children and their adult counterparts begins to emerge.
In an alternative romantic construction the concept of ‘childhood’ provides an interpretive framework for understanding children in their early years. In adult-child relations, parents may attempt to work through the anxieties they experienced as children by regressing to the psychic age of their own children (DeMause, 1982). A concept of ‘childhood’ is developed as a result of this process. The history of childhood, in this view, represents a series of closer approximations to childhood from an adult perspective. Parents, in developing relationships with their children, try to close the psychic distance between them. DeMause (1982) argues that this is evidenced by history: the further back one goes, the less effective parents are in meeting the needs of children.

The romantic concept of childhood is also associated with suggestions that children represent the ‘future of the planet’, having the potential to address the mistakes of the past and “Heal the World” (Jackson, 1996). One contemporary popular recording includes the comment, “We’re playing for…Save the Children; and we’re all very serious about that because we’re expecting the children to save us all” (Ministry of Sound, 2002). The expectation is that children will be ‘saved’ and ‘trained’ to take their place as adults who will do a better job of living than have the current adult population. Again, this perception is specific to Western cultures and adult-centred.

In viewing childhood as a romantic period, a period of innocence, adults have tried to achieve an understanding of self and a meaning for life. Children are viewed as holding something lost to adults. As a result, they are considered as different and treated accordingly.

2.3.3 The Evangelical Child

Different constructions of children can exist side by side in society. At the same time as childhood was being constructed as a romantic ideal, the institution of the Church was turning to conservatism. By the middle of the seventeenth century, religious practices had become very puritan, and society had become more affluent and complex. Parents had new responsibilities for children, with a strong emphasis on the nuclear family as a unit of social control. Still regarded as property, children were nevertheless expected to learn the difference between ‘good’ and ‘evil’. They were perceived as having been born of original sin and as needing strict education, discipline and punishment for appropriate development into adulthood. In the eighteenth century, John Wesley further contributed to
the view of the ‘sinful child’ by focusing on children’s ‘wilfulness’. He emphasised the need to “break the will” of children (Hendrick, 1990: 38) through strict discipline and education.

“The wellbeing of children as children held little concern and the entire emphasis was on training and education of children for their future proper place in society as productive adults” (Jamrozik & Sweeney, 1996: 21, emphasis in the original). Evangelism was necessary to teach appropriate moral behaviours.

The concept of ‘the evangelical child’ paved the way for the emergence of the child saving movement. During the nineteenth century a number of growing concerns in relation to social and economic factors began to be addressed, if not for the whole of society, certainly for children in particular. These concerns included the growth of the Industrial Revolution, issues of delinquency, and the growing perception of the importance of education for the ‘improvement’ of society.

2.3.4 The Factory Child
With the advent of the Industrial Revolution, institutionalisation grew rapidly. Children of the poorer classes were put to work in factories and mills, and all children were “subjected to strict, rigid authority and discipline” (Jamrozik & Sweeney, 1996: 24). Play, not only for children but for all members of society, became less important, as the Christian work ethic gained prominence as one’s ‘ticket to Heaven’. The roles of men, women and children were clearly defined, and social classes were strongly established.

Child-saving movements turned their attention to developing legal systems and provisions for the care and control of dependent children. A view of children as vulnerable re-emerged, and residential institutions, the prevention of exploitation and abuse, and attempts to improve working conditions for children were established as a means of providing them with greater chances to attain adulthood and quality of life. While anti-child labour laws, a ‘trade-off’ for the continuation of men and women working in “unsafe and inhumane” conditions (Corbett, 1985: 2) were enacted, child-savers were not concerned with child labour per se. The concern was about certain forms of child labour for certain ages of children (Hendrick, 1990).
2.3.5 The Schooled Child

Running parallel with social changes for children around issues of work was a growing emphasis on education. Beginning with the concept of ‘original sin’ and running through the theme of children as innocent, education was viewed as essential for children to take their place in society as responsible adults, and heralded the formalisation of childhood. At first, education was used to instil discipline and moral character, rather than to provide children with skills and knowledge: “…let him learn to control himself and formulate his own principles; let him acquire the taste for discipline and order in his conduct” (Durkheim, 1982: 149). Later, education was considered to be the only way to address concerns about delinquency and issues surrounding working children. In the last quarter of the nineteenth century the school “played a pivotal role in the construction of a new kind of childhood” (Hendrick, 1990: 46). The classroom demanded a universality of childhood regardless of children’s origins, because it involved all children; and it was able to impose specific doctrines on all children including uniform behaviours and attitudes.

In Australia during the 1800s, two years’ full-time education was above the average, and while compulsory primary education was introduced during the 1870’s, secondary education was “neither compulsory nor ‘universal’ until well into the twentieth century” (Westhorp, Mayne, Sebastian, & McGeachie, 1977: 14). At this time in Australia, working class girls were entering domestic service and working class boys became labourers or apprentices. Marriage at the age of 14 or 15 was usual, especially for young women (Westhorp, Mayne, Sebastian, & McGeachie, 1977). Education was considered as a way of improving the circumstances of Australian children. A growing emphasis on the acquisition of knowledge, and a diminishing of emphasis on moral and religious education began to emerge, and concern grew for those children not able to access education because of the poverty of their circumstances.

2.3.6 The Welfare Child

The rise of the Welfare Child in Western society was accompanied by a perception of children as vulnerable in relation to more powerful adults. Vulnerability was perceived as biological in nature (Mason & Steadman, 1996), and placed children in an even more powerless position (Kitzinger, 1990). “Reforms which impose restrictions on children – ‘for their own good’ are routinely turned against the very people they are meant to protect” (Kitzinger, 1990: 167). Protectionist ideologies developed from two major
concerns about children: a perception of their ‘innocence’ and a need to provide ‘appropriate care’ for those perceived to be without it.

‘Innocence’
The opposite of a ‘child of sin’ is the innocent child. The proposal that children were innocent and developing beings was first suggested in the eighteenth century by Rousseau, who argued that children represented a ‘tabula rasa’ or blank slate that could be moulded until adulthood was achieved (Rousseau, 1955). In Rousseau's view, children were innately good, needing protection from the corrupting influences of adults. His concept of childhood as a life stage represents a significant change in the historical perception of children (Jamrozik & Sweeney, 1996).

At the same time, problems relating to ‘delinquent’ children arose. Delinquency came to be viewed as a social problem for the first time in the 1850s. In nineteenth century Australia (and in particular in Hobart Town) gangs of urchins roamed the streets. They were poorly treated, often sexually abused and murdered. Children as young as 8 and 9 were “hardened professionals” (Westhorp, Mayne, Sebastian, & McGeachie, 1977: 13) and many were dead (through execution) by age 15. These children were seen as different from others and separate from adults, not always responsible for their actions. They were considered ‘in need of care and protection’, along with discipline, in order for them to become positive citizens.

The notion of social class as a contributor to delinquency emerged at this time. Delinquent children, ‘children in need of care and protection’, were perceived to be those from working class and poor backgrounds, where it was believed that delinquency was encouraged and that children were not always responsible for their actions. Child-saving movements were established to re-educate these children, to have them acknowledge the power of adults and to redevelop their lost faith and trust in parents and other adults in their lives (Platt, 1982). Removal of children from the ‘destructive’ influences of their surroundings, and the application of strong discipline and education, were considered as positive measures for ‘saving’ them.

The perception of children as innocent has led to the emergence of protectionist policies that can contribute to their vulnerability because it excludes them from ‘adult’ issues and concerns, such as sexual knowledge. In reports of abuse towards children, headlines
evoke images of innocence, referring to concepts such as “babes in the wood” (Kitzinger, 1990: 159) and using pictures depicting unhappy children who appear vulnerable. The concept of ‘child abuse’ is based on the abused being seen as a ‘child’ and not as a smaller, younger or weaker person. This view of children, arising from their institutionalisation, increases their vulnerability rather than providing them with positive protection (Kitzinger, 1990). Further, the notion of ‘innocence’ can stigmatise the child who has some knowledge, suggesting a ‘leading on’ of adult abusers.

This issue was highlighted during 2002 in a television program when the then Governor General of Australia discussed the consequences for him of a matter involving child sexual abuse within the Anglican Church, of which he was an Archbishop. Asserting that the 14-year-old alleged victim was much more mature than 14 at the time of the abuse, he described her as a willing participant in the sexual activity that occurred (Australian Story, 2002). Moreover his understanding that the event did not constitute rape suggests a narrow view of sexual abuse that leads to blaming the victim, maintaining her perceived status as a willing participant rather than focusing on the responsibility of the perpetrator.

‘Appropriate Care’

With the advent of the Second World War there was significant social upheaval in Britain and other countries, including increases in ‘illegitimate’ children, evacuation of children and the provision of nurseries for working mothers. This shifted the focus to child protection issues. The question of ‘appropriate caring’ for children brought the family’s importance into sharp focus. Research by Bowlby (1952) concluded that the level of attachment between mother and child could shape the child’s future development. Beliefs such as the “extraordinary strength, tenacity and satisfaction found in the family group” and “encouragement by the state of the view that the family was the most valuable influence in the life of the child” (Hendrick, 1990: 53) supported these ideas. The importance of the home environment for children who had been taken into care by local authorities was emphasised. This emphasis was strengthened by the professional view that the family provided the best environment to teach children about behaviour and self discipline, and that the mother was the best person to do it. Feminists have argued that these discourses became dominant at a time when men were returning to the workforce and women were being encouraged to leave the workforce to take up family roles.
In 1945, the death of an 11-year-old boy from maltreatment by his foster parents raised questions in England about the maintenance of homeless children. The concept of the ‘natural family’ gained prominence as a mechanism for protecting and providing children with appropriate care (Hendrick, 1990). Children were perceived as malleable and dependent, and Bowlby’s work indicated the importance of early nurturing of children in their positive development towards adulthood (Bowlby, 1957). The role of the family in child development, in place of other individuals and institutions, was given prominence, and child rearing practices were highlighted. It was suggested that children’s welfare would be best addressed through close attention from the mother during the child’s ‘formative’ years.

Bowlby’s theories came into question in a number of ways. Firstly, his work focused on the role of mothers as significant nurturers for children. Consequently, his conclusions had the effect of ‘blaming’ mothers and parents for “the major or sole cause of deprived, unhappy or ‘wayward’ children” (Jamrozik & Sweeney, 1996: 29). This conclusion ignored other factors such as the involvement of non-related individuals in the nurturing of children.

Secondly, there is a lack of clarity about the level of nurturing required for a child to feel secure and appropriately cared for with regard to both the amount required at specific ages and developmental levels, and the kind of nurturing that is optimal for children’s growth. Parents and other adults are left to decide for themselves how much or how little of each they will exercise.

Bowlby’s conclusions had the added effect of strengthening the private domain of ‘family’ as sacrosanct and inviolable and of locking mothers in a home-based environment. It thus ignored the problems of family abuse and violence, centring these matters in the ‘secret’ business of family, free from outside influence. Children’s issues were fused with those of the family, effectively making children themselves ‘invisible’ and without a voice in society (Mason & Steadman, 1996). Nevertheless, the role of the family, particularly mothers, in the nurture and growth of the child has remained a strong influence in social thinking. The contemporary concept of ‘familism’ suggests that social policies are developed in relation to entire family groupings rather than specifically to children, who are perceived as “objects or possessions whose views don’t really matter” (Mason & Steadman, 1996: 2).
A review of the work of two Australian organisations (one government, the other non-government) indicates that children’s voices continue to remain insignificant in relation to policy and welfare issues surrounding them. The Australian Department of Family and Community Services describes the family as fundamental to society (Commonwealth Department of Family and Community Services, 2001). A non-government organisation, Focus on the Family, Australia, which describes itself as a non-denominational, profit-free ministry, dedicates itself to strengthening families (Focus on the Family Australia, 2001). Both of these organisations emphasise the role of the family as a unit but do not provide specific information relating to the needs of children beyond the provision of financial services and resources for parents. Specific issues relating to children and their individual voices remain absent from the policies and services surrounding families.

Child protectionist philosophies are culture specific and adult-centred. In many cultures throughout the world, safety of children is not considered and makes little sense. Kitzinger (1990) specifically mentions Latin and Asian children for whom the concept of protection does not exist. Protectionist programs fail to address issues for children of different cultures, relying on racist, ageist and heterosexist assumptions about what childhood is. Additionally, “[i]n the name of innocence adults repress children’s own expressions of sexuality, … deny children control over their own bodies … and seek to protect them from ‘corrupting influences’” (Kitzinger, 1990: 161). Adults decide on how to protect children, and indeed whether to protect them, without consultation with children themselves.

2.3.7 The Institutionalised Child
Towards the end of the seventeenth century, children were increasingly perceived to be different from adults. A growing emphasis on the 'coddling' of children and on education emphasised children’s special needs and heralded the formalisation of childhood (Aries, 1962). The construction of childhood as a ‘special’ institution was strengthened through the gradual emergence of child protection ideologies, the growing importance of education and children’s increasing isolation from the world of adults. Current views of childhood reflect these ideologies (Hendrick, 1990). For example, the way in which play activities have changed over time reflects changing adult views of childhood. In England prior to the seventeenth century play activities were not restricted to children and people of all ages engaged in some forms of play. This situation had changed by the end of the
eighteenth century. With the rise of capitalism, play had become suppressed for most of society. A social movement against capitalism in the United States and England during the nineteenth century saw a move back to play for children and in 1930 the American Children’s Charter institutionalised play as a ‘childhood’ activity (Stone, 1982).

Events during the twentieth century, including the emergence of developmental theories of childhood, strengthened childhood as an institution. Freud (1966) and Piaget (1928, 1929) both argued that moral, cognitive and psychological understandings are biologically determined, slowly developing as children grow. Their work suggested that no child is fully able to understand the world, society, and her or his place in it until she or he has attained the ultimate point in developing these understandings, most often achieved during adulthood (Freud, 1966; Piaget, 1929; Piaget & Cartalis, 1928). According to Freud and Piaget, children develop along a number of dimensions, including cognitively, emotionally, spiritually and morally, as well as physically, and each stage along these dimensions must be addressed sequentially. Those who do not pass through any of them in their appropriate, biologically determined order would become ‘arrested’ in their development and require extensive therapy, including remedial education, if they were to become ‘successful’ adults. Both Piaget and Freud considered children as “lower on the evolutionary scale than adults” (Mason & Steadman, 1996: 3) and gradually becoming more ‘adult’ as they grow. Adults themselves were assumed to be more competent than children in all respects.

Piaget, seeking to describe the structuring of cognitive processes and the rational principle of nature through a theory of learning (Jenks, 1982), hypothesised that children develop according to a specific structure consisting of a series of pre-determined stages (James & Prout, 1990). In this view, human development follows a fixed, linear, biologically determined path towards adulthood. During their growth, children are passive recipients of adult care, ‘guidance’ and encouragement, and do not have a capacity to operate independently on the world around them. They must therefore remain under the control of adults (their parents and other caregivers) until such time as they are able to demonstrate their ability to move ‘responsibly’ in society. The attainment of ‘adulthood’ occurs over many years.

This perception of the way in which children grow has dominated our thinking about them over the last half of the twentieth century. It has influenced educational philosophy
and practice, reviews of child rearing approaches, and medical and psychological approaches to children. Piaget's theories have been highly influential, dominating research in cognition since the 1960s and totally eclipsing other possibly conflicting theories of childhood. It is hard to think outside Piaget's theoretical framework, because biological explanations provide a strong basis for conceptualising the child (James & Prout, 1990). Indeed, Time Magazine has named Jean Piaget among the 100 top scientists and thinkers in history (Papert, 2001). The magazine asserts that Piaget’s conclusion that “children don’t think like grownups” was significant because it “championed a way of thinking about children that provided the foundation for today’s education-reform movements” (Papert, 2001: 1).

Developmental theories of childhood perceive children not only as thinking differently from adults, but as being in some way less competent than their older counterparts. The idea of incompetence assumes, among other things, that children need adult guidance in all that they do in order to “promote their well-being during the various stages of childhood, and to help them mature into healthy adults” (Gale Encyclopedia of Psychology, 2001: 1). Australia’s current legal framework reflects this assumption, citing as a barrier to children’s participation in legal and decision-making processes their “developmental capacity”, which is described as “not entirely amenable to improvement” (Australian Law Reform Commission and Human Rights and Equal Opportunity Commission, 1997: 91). Many legal documents carry a qualification for competence. The United Nations Convention on the Rights of the Child (United Nations, 1989) refers to “the evolving capacities of the child” (Article 5) and states that children who are capable of expressing an opinion have a right to have that opinion heard (Article 12). The Convention does not suggest that a child’s opinions and wishes must be completely heeded, however. Both CROC and the Australian Family Law Reform Act 1995 (in Section 68(F)) suggest that the weight given to children’s wishes should be relevant to their age and developmental status.

Developmental theories have been criticised in relation to their claims. Freud’s theories were developed independently of his actually having studied any children. It is therefore not certain whether Freud was referring to actual childhood or some imaginative construction of it in his work (Hillman, 1982). Hillman (1982) suggests that for Freud, the world of the unconscious is equal to the world of the child, so the term ‘child’ refers to an adult need to return to a simpler time, to “become a child” (Hillman, 1982: 109).
Freud’s work suggested that children are in need of protection and reinforced the view that parents and other adults have an important role in protecting them, but exactly from whom or what children need protection remains unclear (Lloyd-Smith & Tarr, 2000).

Criticisms have also been levelled at Piaget’s work. First, he focused on cognitive development in isolation from other aspects of child ‘development’. This focus ignores the multifaceted nature of human beings (Cleverley & Phillips, 1987), resulting in the filtering out of other important information that might lead to different conclusions. Secondly, Piaget’s theory assumed a universality of childhood: that every child, everywhere, proceeds through predetermined stages on the way to adulthood. This is a complex notion, with no absolute continuity or discontinuity between childhood and adulthood. From a postmodern perspective we cannot state that all humans follow an essential developmental sequence regardless of culture, gender, class, ability and context. The transition to adulthood is unclear, and society has attached different meanings to the terms ‘child’ and ‘childhood’ at different times in history. Additionally, the terms can mean different things for different cultures (James & Prout, 1990) and the concept of ‘childhood’ is further complicated by its temporal nature.

The acquisition of human habits is not considered a specifically determined reflex but is more the acquisition of a capability for inventing solutions to situations which are not completely similar to each other and never identical to the original situation in which a solution was learned (O'Neill, 1982). Cognitive processes are not considered to be a purely intellectual task because affective factors interrelate with cognitive structures and humans define the world both cognitively and affectively (O'Neill, 1982).

A review of history indicates the presence of children in different historical ages who displayed talents not consistent with ideas of biological development. For example, the record of the life of Louis XIII (also referred to as ‘the Dauphin’) indicates that he had developed many ‘adult’ activities (such as music, art, reading, writing) by the age of four (Stone, 1982). There are other examples of children equally capable at young ages. This suggests that children cannot be essentialised and that developmental theories cannot be universally applied.

Nevertheless, the emergence of developmental theories became part of a clear definition of childhood in relation to medicine, psychology and welfare during and beyond the early
years of the twentieth century. A universal and institutionalised view of the child, closely aligned to education, child guidance, the treatment of delinquency, and institutional psychiatry and psychology, began to emerge (Hendrick, 1990).

### 2.4 Current Views

Many of the constructions of children and childhood that have emerged throughout history remain today. Adult perceptions of children reflect dominant Western discourses that have been shaped by the institutional subjectification of them in different ways. The application of a Foucaultian perspective to these perceptions demonstrates how these discourses operate to subjectify and marginalise children in Australia today.

#### 2.4.1 Language and Discourse

In considering language as an active force that shapes experience by providing meaning to the observed world, (Danaher, Schirato, & Webb, 2000), the way in which the English language refers to children is of interest. References to relationships in speech use the words of ownership (‘my’, ‘our’, ‘their’). When applied to children these references imply strong proprietary attitudes towards them. Similarly, the way in which language is used in relation to other aspects of children’s lives positions children as powerless in specific situations relative to their adult counterparts.

The literature on children’s rights (to be reviewed in the next chapter) discusses issues in relation to ‘bestowing’ or ‘giving’ rights to children (Freeman, 1983; McLean, 2001; Ruck, Abramovitch, & Keating, 1998; Wringe, 1981). The use of these words implies that ‘rights’ are tangible objects that can be handed to children. The power base that underlies the use of words such as ‘bestow’ lies with adults, who control the distribution of rights to others such as children. In feminist discussions, these powerful adults are specific: heterosexist, white, middle-class males (Haraway, 1991). They have represented the privileged ‘keepers of discourse’, the builders of knowledge about the social, medical and political body, the holders of ‘truth’ and the benefactors of women and children.

When words such as “recognition” (Marks, 1998: 1) are used in relation to children’s rights, the meaning is very different. To recognise children’s rights implies not an act of ‘giving’ but of acknowledging that children are people who possess rights.
The literature also uses the word ‘empowerment’ when discussing children’s ability to participate in society (Edwards & Alldred, 1999). This word is also used in social science literature to discuss work with disempowered adults. While it is used in a positive sense, implying that children can assert power through the specific actions of adult assistants, it can also be interpreted to mean that adults ‘give’ power to children in some way. The emphasis on the adult’s tasks rather than the child’s assertion of his or her own power through adult facilitation leads to some confusion in relation to the positioning of power in the adult-child relationship.

It has been suggested that the way in which adults use language to describe and discuss children can be abusive, implying indifference and disdain (Saunders & Goddard, 2001). For example, the use of words such as ‘it’ or ‘kid’ to describe a ‘generic’ child serves to marginalise, objectify and diminish children in adult-oriented texts (Saunders, 2000: 450). Indifference in relation to identifying children by gender, the positioning of children as vulnerable and innocent in newspaper reports (Kitzinger, 1990) and references to ‘childhood’ rather than ‘children’ (Hendrick, 2000) also objectify and marginalise children. Language serves to maintain adult power through ‘othering’, marginalising and oppressing children.

### 2.4.2 Scientific Discourse

Following the developmental theories of Piaget (Piaget, 1929; Piaget, 1969; Piaget & Cartalis, 1928) and Freud (Freud, 1966), many theories of ‘development’ emerged, including in cognitive, emotional, personality, social, religious and physical areas (Connell, 1971; Furstenberg, 2000; Smith & Taylor, 2003; Wolff, 1981; Woodhead & Faulkner, 2000). Developmental approaches to the study of childhood and children have resulted in a strong body of scientific discourse which positions children as incomplete and vulnerable. The knowledge that is built up through adult study on, rather than with, children, objectifies them and maintains the power base with adults. Children themselves are studied as dependent and passive recipients of the protection and guidance of adults rather than as social agents in their own right (Smith & Taylor, 2003).

In the early 1970s a seminal paper appeared that questioned whether the scientific world could develop an anthropology of children (Hardman, 2001). Based on the author’s reflections of studies of children and of childhood to that time, Hardman speculated on the
possibility of a separate culture of childhood, a culture that is perpetuated from age to age even though its members will change through becoming adult. Other authors (Furstenberg, 2000; James & Prout, 1990; Opie & Opie, 1982) have also constructed childhood as consisting of a separate culture, suggesting that this could be a fruitful area of study. The perception of childhood as a specific culture, however, emphasises major differences and ignores similarities between children and adults, further marginalising children and denying them the ability to more fully participate in social life.

Scientific studies that treat children as different from adults and provide ‘objective truth’ about biological and psychological aspects of childhood have informed legislation and social policies for some time. Both the United Nations Convention on the Rights of the Child (Article 12) and the Australian *Family Law Reform Act* 1995 (Part VII) qualify the child’s right to express an opinion with a reference to her or his capacity to do so. Capacity often arises in the literature on children’s involvement in legal and social processes (Andrews & Freeman, 1997; Australian Law Reform Commission and Human Rights and Equal Opportunity Commission, 1997; Chisholm, 2000; Redman, 1997; Ruck, Abramovitch, & Keating, 1998). Perceived differences between adolescents and adults have led to legislation aimed at reducing the problematic behaviour of adolescents (Bargen, 1996; Furstenberg, 2000). Throughout this literature and legislation it is assumed that some (if not all) children have less capacity than their adult counterparts; it is taken for granted as a scientific ‘given’.

### 2.4.3 Power-Knowledge Relations

Discourses that construct children as vulnerable place notions of their “own good” (Kitzinger, 1990: 167) in adult hands (Redman, 1997; Smart, 2001). They also serve to remind adults that they are powerful beings in the binary relationship of adult-child, able to determine children’s needs in some better way than children themselves.

The central provision in relation to children in the Australian *Family Law Reform Act* 1995 is the paramountcy of the principle of children’s ‘best interests’. Section 68F of the Act lists the matters that must be taken into account in reaching decisions about those best interests. It is interesting to note that similar lists are found in family law in some American jurisdictions and in Canada. Judges in those jurisdictions have argued that these lists, arising from psychological, social and medical discourses, represent a positive,
scientific approach to deciding a child’s ‘best interests’ and provide positive guidance for
decision-makers (Landerkin, 1997; Rotman, Tompkins, Schwartz, & Samuels, 2000). In
contrast, one Australian Family Court Judge has pointed out that provisions for hearing
from children themselves in relation to their ‘best interests’ were not addressed in the
1995 reforms, and that children’s voices are seldom heard in the Family Court (Chisholm,
2000). These comments imply two things: first, that adult decision-makers can determine
a child’s ‘best interests’ through the use of a list of matters prepared by other adult
decision-makers; and second, that it is not necessary, or even advisable, to discuss with
children their perceptions of their own ‘best interests’. Moreover, the way in which a
child’s ‘best interests’ are determined is problematic, leading to a suggestion that children
should be consulted about their own ‘best interests’ at very young ages (Leach, 1994). It
has been pointed out that in the past the ‘best interests’ principle has been used to justify
the removal of Aboriginal children from their families, suggesting that the concept of
‘best interests’ is an adult construction sometimes used to support adult, not child,
agendas (Nyland, 1999).

2.4.4 Normalisation
The history of childhood suggests the emergence of an understanding of the child as
different from adult and as requiring guidance and education while developing towards
adulthood: concepts embedded in constructions of children as being born of original sin
or as a *tabula rasa*. This understanding implies that the status of the rational, competent
‘adult’ is the normative condition to which all must aspire. Measurement of individuals
and groups against norms established by adult, white, middle-class, heterosexual males
(Schaffer, 1988) leads to the regulation and disciplining of “both individuals and entire
populations” in achieving the goals of ‘normality’ (Cheek, 2000: 27).

Notions of vulnerability, irrationality, ‘growth’, development and biological,
‘scientifically proven’ theories of childhood position children as ‘outside’ the norm of
adulthood. Descriptions of children that rely on these criteria measure children against
adult norms centred in systems of meaning that arise from language and social discourses
(Schaffer, 1988). Embedded within these discourses are a range of expectations. These
include the ways in which children must behave, how they will relate to adults and other
children, the environments in which they will live, what they will know and not know,
how they will spend their time, what they can and cannot do at certain ages and
developmental stages and how they will progress to the ‘normal’ status of adulthood (Fairclough, 1989).

### 2.4.5 Binary Relationships

Normative views of society that produce expectations about the roles and positions of people within social relations are dependent on concepts of binary differences. Binary relationships, such as adult-child, man-woman or healthy-sick, assume that people belong to either one or the other category. One cannot be man and woman or adult and child (Flax, 1990). In the adult-child binary relationship, the criterion of age has been significant in determining the ‘child-adult’ status of individuals (Archard, 1993; Australian Human Rights and Equal Opportunity Commission, 2001b; Furstenberg, 2000; Healey, 1994). Nevertheless, the age at which a child becomes adult has been problematic across centuries and cultures (Hendrick, 1990; Hubble, 2000; Jamrozik & Sweeney, 1996; Jenkins, 1993). Even within cultures there are different ages that signify when children are able to take on ‘adult’ responsibilities (Archard, 1993).

In the adult-child binary relationship there is no room for the ‘in-between’ person, the ‘not-child/not-adult’ of the teenage years. A solution to this has been the creation of a new category, that of teenager or adolescent. While the concept of ‘adolescence’ had emerged during the nineteenth century and first became a focus for research in 1904, it was not until the 1950s and 1960s that adolescence emerged as a “discrete life stage” (Furstenberg, 2000: 897). Research on adolescence has constructed this life stage as problematic, linking it with concerns about crime, disorderly conduct, drug and alcohol use and ‘early’ sexual activity (Bessant, 2002). This has resulted in measures such as the imposition of curfews and prohibitions on young people gathering outside shopping centres and in malls (Jones & Marks, 1996; Rayner, 1994). Moreover, further binaries have been created: those of adolescent-child and adult-adolescent.

The emphasis on the dominance of the first-named category in binary relationships (Cheek, 2000) reflects the position of children and adolescents as less than adult and not able to act ‘responsibly’ in adult life. Discourses around ‘childhood’ and adolescence are problematic, so ‘adult’ (and in the man-woman binary, ‘man’) becomes privileged (Flax, 1990). Political measures that restrict children’s movements and control their environments (Noonan, 2003) reinforce this social privilege. They position children as
different from adults and as making few positive contributions to social and political life. While it may be argued that the social status of children has improved over time, reports about curfews and environmental restrictions for young people demonstrate how children are treated with scorn and disrespect. This is consistent with the position of children throughout history. The major themes to emerge from the last three hundred years concern a need to discipline and to educate children in order for them to attain ‘responsible’ adulthood, while at the same time protecting them from ‘harmful’ influences such as sex, drugs and alcohol and ‘inappropriate’ influences.

2.4.6 Panopticism

Foucault’s use of the metaphor of Bentham’s Panopticon to explain his understanding of the way in which power works in society (Danaher, Schirato, & Webb, 2000; Dreyfus & Rabinow, 1982; McHoul & Grace, 1993) has relevance to the lives of children. Designed by Jeremy Bentham in 1791, the Panopticon provided a way for prisoners to be observed by their keepers for every hour of their existence. Consisting of an observation tower in the centre of a courtyard, the Panopticon has cells arranged in buildings around the periphery. Each cell has two windows. One of these lets in light. The other faces the tower, but is angled in such a way that although the supervisor in the tower can see the occupant of the cell, the occupant cannot see the supervisor and cannot communicate with any other inmate (Dreyfus & Rabinow, 1982). Because they do not know whether they are being observed, inmates begin to regulate their behaviours and discipline themselves (Danaher, Schirato, & Webb, 2000; McHoul & Grace, 1993). At the same time the supervisor, entangled in the system of ordered behaviour, is regulated and disciplined.

This concept can be applied to the way in which society regulates the behaviour of children within families. The construction of the child as the less powerful and less significant person in the ‘adult-child’ binary means that children have become highly regulated at school, at home and in public places (Blagg & Wilkie, 1997; Covaleskie, 1993; Furstenberg, 2000; Henderson, 2000; Rayner, 1994). Schools are controlled through social regulation to the point where the activities of both students and teachers are under scrutiny (Covaleskie, 1993). Students are regularly assessed against their peers in terms of academic achievement, behavioural measures, health and medical status, and psychological and personality variables. Peers and managers assess teachers in their abilities to teach, as well as to discipline students. Foucault’s Panopticon operates to
regulate all activities within schools, controlling teachers and students in “ways much more subtle and difficult to detect” (Covaleskie, 1993: 3). Additionally, the compulsory nature of education, until the age of sixteen in South Australia, results in significant regulation of children for a major portion of their lives (Ludbrook, 1996).

At home, parents supervise the activities and movements of children, controlling both space and time to a significant degree (Kelley, Mayall, & Hood, 1997). Household rules tend to focus on children’s behaviours and activities rather than on those of parents, and the fairness of some of these rules has been challenged. In particular, the level of free time available to children when at home indicates strong adult control and “educational demands, from parents and from teachers, both in and out of school” (Kelley, Mayall, & Hood, 1997: 321).

Control of children’s activities arises from legal, social and cultural expectations that adults will supervise children’s education, their choice of peers (Furstenberg, 2000) and the spaces they inhabit within the home (Kelley, Mayall, & Hood, 1997) and the community. Additionally, children’s thoughts and understandings are monitored. It is interesting to note that in a study of children’s understandings of their rights, the researchers presented children with a number of vignettes for discussion. One of the vignettes concerned whether a child could keep a diary that was not available to the child’s parents (Ruck, Abramovitch, & Keating, 1998). That this question was even raised in the study indicates that adults may consider it their responsibility, if not their ‘right’, to monitor children’s every thought and behaviour. The New South Wales Children (Parental Responsibility) Act 1994 implies that parents must maintain 24-hour surveillance on children, knowing where they are and what they are doing at all times (Jones & Marks, 1996). Children have reported that they do not tell their parents everything they do for fear that the parents will curtail some of their activities (Kelley, Mayall, & Hood, 1997).

In public spaces, Australian responses to children’s visibility have been highly criticised (Bessant, 2002; Blagg & Wilkie, 1997; Francis, 1999; Jones & Marks, 1996). In many Australian jurisdictions, curfews have been applied against young people (Francis, 1999). Children and young people may be stopped by police on suspicion of inappropriate activity (Jones & Marks, 1996; Rayner, 1994), and they are refused the right to meet in groups together at shopping centres and on the streets (Jones & Marks, 1996). In Perth,
video cameras have been installed in public places to assist police and security personnel to monitor activity and manage any unusual events. These measures result in the constant surveillance of children and young people with the accompanying understanding that this surveillance is not always overt. Children and young people must remain aware of the possibility that they are being observed while monitoring their own behaviours to remain free of scrutiny. The operation of public measures that support this situation is a positive example of panopticism.

2.4.7 Summary of the Current Situation
In contemporary Australian society, three major conceptualisations of children and childhood have arisen. First, there is a perception of children as the property of their parents or other adults (Robinson, 1997). Secondly, a romantic view of childhood as a ‘golden age’ has become a vehicle for protectionist ideologies and the view of the family as crucial to the growth of children (Platt, 1982). Thirdly, the emergence of the view of childhood as a universal phenomenon has grown with its institutionalisation (Hendrick, 1990; James & Prout, 1990).

The perception of children as ‘innocent’ (Platt, 1982) and as biologically developing beings (Lloyd-Smith & Tarr, 2000) has emerged as a strong influence on the way in which children are treated. Developmental theories argue that children do not have the ‘maturity’ or the competence to participate in ‘adult’ life until they have achieved specific skills and tasks. These skills and task are not achieved until well into adolescence (Piaget, 1969), so children are not considered ‘mature’ until at least 16 and beyond in spite of research that indicates otherwise. Until that age, it is argued, adult protection and ‘guidance’ are essential (James & Prout, 1990). The family is considered as the most appropriate structure to ensure that children receive the guidance and protection they require (Rayner, 1996). The continuing perception of children as ‘other’, ‘precious’ and trivial has resulted in their segregation from ‘adult’ affairs, including from matters of sex, death, economics and world events, and the factor of age in defining ‘the child’ has emerged as a significant characteristic (Corbett, 1985). Social constructions that determine the ‘needs’ of children for education, protection, and ‘innocent’ activities such as play, for their “own good” (Kitzinger, 1990: 167) maintain the perception that they are incompetent and unable to fully participate as effective contributors to society. Consequently children are marginalised and ignored.
Adult perceptions and social constructions of childhood overlook the possibility that children themselves are social actors who operate upon their worlds to make sense of objects and events around them (James & Prout, 1990). This alternative view challenges dominant contemporary perceptions of children as passive recipients of adult care, control and beneficence. Rather than relying on psychological explanations which consider children’s development as being determined by in-built cognitive constraints and organisational principles (Cleverley & Phillips, 1987; Hendrick, 1990; James & Prout, 1990; Jenks, 1982; Lloyd-Smith & Tarr, 2000), child ‘development’ could be conceptualised as “an internal set of cognitive restructurings” (Dockrell, Lewis, & Lindsay, 2000: 47). These restructurings define the development of children’s thought processes and understandings of the world. The concept of the ‘developing child’ is a social construct, where children’s knowledge and behaviour is influenced by social and cultural contexts. Cultural mores and practised values to which children are exposed while living in specific community groups influence the ways in which children will think, behave and react to stimuli in their environments.

Social constructionism argues that the view of children as possessions, or the property of their parents or other adults, with no independent rights is not related to perceptions of innateness. Instead, economic, social and political structures operating at particular times in history (Berger & Luckmann, 1966; Frankenberg, 1993; Gergen, 1999; James & Prout, 1990; Wetherell & Maybin, 1996) influence the ways in which we perceive children. Social constructionism would suggest that the discourses on children as possessions legitimise the power wielded by adults over children. Similarly, the use of intelligence tests and ability measures reinforces the concept of children as lesser beings while legitimising the power of adults to make decisions relating to their care. A social constructionist view of the way in which children interact with their world suggests that children actively operate upon their environment and have an ability to make decisions in relation to their needs.

In the late 1980s and into the 1990s a ‘new’ construction of children began to emerge through the United Nations Convention on the Rights of the Child (CROC). This instrument positioned children as “human beings and … the subject of their own rights” (UNICEF, 2003: 2). The Convention urges respect for the rights of all children to have and express opinions about issues that affect them while preserving their human dignity and well-being. Although issues relating to children’s rights will be discussed in detail in
Chapter 6, the following section will position the rights of children in a broader discussion of the social position of children in the 21st Century.

2.5 Emergence of Rights for Children

The concept of children’s rights was first formally acknowledged in 1924 when the League of Nations published a Declaration on the Rights of the Child (UNICEF, 2003). Subsequently, in 1948, and again in 1959, the United Nations released separate versions of their Declaration of the Rights of the Child. These early declarations were considered “statements of moral and ethical intent” (UNICEF, 2003: 6) and were not legally binding instruments.

As late as the 1970s confusion still remained as to what ‘the rights of the child’ might mean. In 1975, Hilary Rodham asserted that the concept of children’s rights had been used variously to describe world peace, constitutional issues, levels of affection and voting age changes (Ruck, Abramovitch, & Keating, 1998). The lack of clarity about what was meant by children's rights was of concern for reformers and those working in child protection.

It was not until 1979 that work began on drafting the current Convention on the Rights of the Child, an instrument that was to formally bind signatory states in meeting the obligations contained within it. The Convention was formally accepted and adopted by the United Nations General Assembly on 20 November 1989, and was subsequently ratified by 191 countries. At the time of writing, only two countries are yet to ratify it. Two optional protocols have since been released, referring to the involvement of children in armed conflict and the sale and use of children for pornography and prostitution. In 2003 these protocols had not been ratified by many countries, with Australia having signed, but not having ratified, the protocols on 18 December 2001 in relation to the sale and prostitution of children and 21 October 2002 in relation to the involvement of children in armed conflict (UNICEF, 2003).

UNICEF states that CROC contains four underlying principles central to the understanding of children as rights-holders (UNICEF, 2003). These principles are (1) non-discrimination, (2) survival and development, (3) the ‘best interests’ of children and (4) their rights to participation, with 54 Articles describing the responsibilities of states, parents and societies in relation to respecting children’s access to the principles. The
adoption and ratification of the document has, however, produced vigorous debate about its interpretation and meaning for children (Barnes, 1998) and the ways in which it can be implemented, especially in a country like Australia.

One of the mechanisms through which social relations are defined and legitimised is the institution of law (James & James, 1999). This institution contributes to the social construction of childhood (Berger & Luckmann, 1966) through establishing laws in relation to, among others, voting age (Ludbrook, 1996), school attendance, employment, sexual activity and marriage (Furstenberg, 2000). While offering protections for children when they need them, law can also assist in subordinating children’s needs and interests to those of parents and other adults (James & James, 1999). In a country such as Australia, a philosophy that places the management of children’s issues with state governments rather than a federal body creates divisions between States, Territories and the Commonwealth in dealing with matters relating to children. For example, there is a perception that there is little cooperation between Commonwealth and States/Territories in relation to child protection matters (Kaye, Stubbs, & Tolmie, 2003). While allegations of child abuse and neglect can be raised in the Federal Family Court, the allegations themselves are heard in State Courts. The Family Court is obliged to report any allegations of child abuse made in that court to State and Territory authorities, resulting in the involvement of two separate systems. Additionally, State child protection authorities are perceived to fail to take action in family law allegations of child abuse. This situation has led to an argument that until greater cooperation occurs CROC will have little impact in relation to children’s rights for protection (Fogarty, 1995; Kaye, Stubbs, & Tolmie, 2003). It has the potential to marginalise children and to work against the philosophy of protection that CROC endorses. This argument reflects those of Foucault in his discussions of the rights discourse.

2.6 Postmodernism and the Concept of Rights
Michel Foucault argued that a concept of egalitarian human rights emerged from “everyday, physical mechanisms…of micropower that are essentially nonegalitarian and asymmetrical which we call the disciplines” (Rabinow, 1984: 211). While on the surface a list of human ‘rights’ appears to provide individuals with autonomy and the ability to act independently, Foucault argued that “juridical systems” define subjects “according to universal norms”, and that “the disciplines characterize, classify, specialize” (Rabinow,
Chapter 2: Children in Society

1984: 212). The effect is to discipline society and provide “a guarantee of the submission of forces and bodies” (Rabinow, 1984: 211). International human rights discourses thus provide a site for regulating, normalising and universalising human societies by imposing “hegemonic European agendas” regardless of cultural, social and political differences between societies (Otto, 1999: 18).

In this view, the emergence of a discourse on children’s rights aims to normalise and universalise children and provides disciplinary mechanisms for the control of cultures, societies, schools and families. The United Nations Convention on the Rights of the Child contains articles that address children’s rights to an education (Articles 28 and 29), protection from sexual exploitation (Article 34) and work that compromises a child’s health or education (Article 32). The Convention also provides for children’s rights to freedom from direct participation in armed conflicts (Article 38). These articles regulate the behaviours and activities of children and legitimate regular monitoring by UNICEF of countries’ progress in addressing the issues contained in them (Human Rights Watch, 2002). In Foucaultian terms, this is an example of universal panopticism, a discipline applied regardless of cultural, political or social factors specific to a region or people (Otto, 1999).

Families also become subject to this panopticism. While CROC sanctifies the family as essential for “the full and harmonious development of [the child’s] personality” (Preamble), Article 19 charges signatory parties to protect children within families “from all forms of physical or mental violence, injury or abuse”, neglect, maltreatment and exploitation. State surveillance that ensures such protection can limit the sanctity of the family and coerce parents to act in specific ways towards their children (Danaher, Schirato, & Webb, 2000). A rights discourse can therefore be considered as a mechanism for institutional control of families and society.

Moreover, a rights discourse can continue to marginalise those whom it addresses because it establishes binary relations between the ‘rights holders’ and others (Otto, 1999). As Otto (1999) explains, an argument for equality for women establishes a standard against which ‘equality’ is measured, in this case equality with men. Otto describes this process as a ‘reinvention’ of gender stereotypes underpinning the modernist male-female binary. The same process occurs when children’s rights are discussed. The position of children as ‘rights holders’ is measured against both adultist and masculinist standards.
For Otto, a postmodernist approach to human rights involves challenging dominant discursive sites of power embedded in adultist and masculinist standards by “giving voice to those produced as other by the binary truths of modernity” (Otto, 1999: 8). The concept of human rights then becomes “transformative” (Otto, 1999: 11) through an emphasis on the counter-knowledges produced by the ‘othered’ and an identification of the sites of resistance to the dominant discourses about ‘othered’ groups. Attention to the counter-knowledges about children (for example, in relation to their level of competence, their abilities to decide for themselves on issues that directly affect them and their position in society as active contributors rather than passive receptors) has the potential to transform dominant perceptions of them.

Central to a postmodern understanding of children is the construction of them as social actors who operate in and on their worlds (James & Prout, 1990; McNamee, 2000; Punch, 2002; Roche, 1999; Thomas & O'Kane, 2000). While there appear to be different constructions of ‘the postmodern child’, a picture can be built of how childhood might look from a postmodern viewpoint, where children would receive acknowledgment of their active roles in society.

A ‘postmodern child’ would participate more fully in the growth of social policy, having a vote (Ludbrook, 1996) and participating in local government activities (Kjorholt, 2002) and in political parties (Ludbrook, 1996). ‘Postmodern’ children would not be subject to curfews and surveillance; instead they would be welcomed into the community and participate in building spaces within the community that children can use effectively (Bessant, 2002). Their opinions would be respected, listened to and acted upon (Giles, 2002), and they would actively make decisions on a wide variety of matters that directly affect them (Freeman, 1992).

Tensions exist between a postmodern construction of children and the dominant constructions that arise from theories of scientific determinacy. Whilst modernist theories emphasise a unidimensional, unchanging, essentialist ‘self’ that is biologically determined and static, postmodernist constructions of the self emphasise the possibility of multiple selves which are politically situated (Fine, 1994). Alongside the construct of multiple selves sits the possibility of there being many realities, reflected in the political and social contexts in which we are situated (Cheek, 2000). A postmodern perspective of children would therefore acknowledge that there are no essential elements in descriptions of
children and the ways in which they operate in the world. A child can sometimes be vulnerable and sometimes not, sometimes competent and sometimes not. Sometimes a child will make ‘mistakes’ while often making ‘appropriate’ decisions and choices. A child can be moral and immoral; independent and dependent; and she or he may be highly ‘successful’ in her or his activities, while sometimes being not as ‘successful’. While some authors have argued that these qualities of children are reflected in their adult counterparts (Freeman, 1992; Harding, 1997; Leach, 1994), they have also produced tensions in the binary structures that are part of structuralist approaches to the concept of childhood.

A postmodern construction of children represents a site of resistance to the dominant discourses that currently represent children as vulnerable, incompetent and unable to participate in society in any way (James & Prout, 1990). A number of events have occurred during the 1990s and in the new century where resistance to this dominant discourse has strengthened the postmodern view of children. They have included the emergence of children’s movements (Mason & Urquhart, 2001; McLean, 2001; Van Bueren, 2001) as well as individual actions by children (Giles, 2002). In some situations, adult actions have assisted children to assert their power as social actors in their own right (Kjorholt, 2002; Ludbrook, 1996).

On the global level, the United Nations Convention on the Rights of the Child (United Nations, 1989) focused on the importance of the voice of children (Article 12) and on the rights of children to be respected by adults. This focus signalled a move towards the construction of children as social actors. For these reasons the Convention can be considered as a site of resistance to the dominant discourse on children. The extent to which the Articles of CROC have assisted children to assert their rights and to construct an alternative view of themselves as active participants in society has, however, been somewhat unclear and patchy. This thesis explores in detail children’s views about their rights, their social position and their perceptions of their abilities to participate in decisions that directly affect them. Central to the thesis is an exploration of how children construct themselves in the light of adult constructions of children and childhood and how adult discourses about children are reflected in children’s own perceptions of themselves and their ability to participate in decision-making activities.
2.7 Chapter Summary

This chapter has explored the ways in which children have been perceived throughout history leading to a construction of them as vulnerable, incomplete and unable to fully participate in society. Different historical understandings about children and their abilities have resulted in the emergence of powerful discourses, supported by social institutions such as medicine, psychology, law and welfare, that marginalise children. These discourses reflect the four main themes that form the bedrock of social constructions of children. These themes present children as biologically and psychologically unable to make ‘responsible’ decisions for many years and as being significantly vulnerable and lacking in social, physical and cognitive competence. Moreover, the themes reflect an understanding of children as being significantly dependent on adults for their survival and as being ‘owned’ by their parents.

A significant change in the social construction of children began with Australia’s ratification of the United Nations Convention on the Rights of the Child in 1990. In postmodern terms the rights discourse provides a further way to regulate and institutionalise ‘othered’ groups such as children. As Otto (1999) points out, however, a rights discourse can also provide a site of resistance to dominant disciplinary discourses which serve to ‘other’ children. This thesis explores ways in which this can occur through asking children about their perceptions of their abilities and rights to participate in decisions that directly affect them following parental separation. The next chapter explains the research project in detail.
In this chapter I will discuss the theoretical and methodological bases on which this research is built. I will describe the Foucaultian perspective of the research and how the specific concepts embedded in social constructionism fit into this perspective. The research uses qualitative approaches to data collection and analysis. These approaches are described and contrasted with alternative approaches such as quantitative methods. Finally, because I chose to work with children in this research project, I considered a number of issues in engaging children. In this chapter I discuss these issues in some depth.

3.1 Foucaultian Orientation

Foucault’s orientation is useful for the exploration of concepts such as that of childhood. While he did not directly discuss the experience of childhood in any depth, he described ways in which society controls aspects of human life. Many of these descriptions can be applied to the position of children. For example, in his preface to *The History of Sexuality, Volume II*, Foucault described sexuality as “a historically singular form of experience”, “the correlation of a domain of knowledge, a type of normativity and a mode of relation to the self” (Rabinow, 1984: 333). In exploring issues of sexuality, Foucault tried to demonstrate how “a complex experience is constituted…(with its own concepts, theories, diverse disciplines), a collection of rules …, a mode of relation between the individual and himself (which enables him to recognize himself as a sexual subject amid others)” (Rabinow, 1984: 333-4). Childhood can be viewed as a similar experience, involving sets of rules for behaviour and relations between children and others that lead children to perceive themselves in specific ways (Henriques, Hollway, Urwin, Venn, & Walkerdine, 1984).

Discursive practices are situated in a variety of social apparatuses such as the family, school and law. They produce children as subjects through the establishment of concepts, theories, rules and disciplines that help to regulate the ways in which those subjects act and move within the social apparatus (Danaher, Schirato, & Webb, 2000; Kendall & Wickham, 1999; McHoul & Grace, 1993). This research explores the ways in which children’s actions and movements are both constrained and enabled through the
discursive practices situated in the social apparatuses of the family and family law. It uses a Foucaultian orientation to describe the ways in which children’s perceptions of their abilities to participate in decisions that directly affect them reflect the ways in which they recognise and construct themselves as specific subjects. The research uses the Foucaultian approaches of archaeology and genealogy to describe the ways in which children perceive themselves as different from, and similar to, the adults with whom they relate and to explore the ways in which different concepts, theories and diverse disciplines shape children’s views of themselves. In doing so, the research explores the rules and modes of relations through which children form a sense of self in relation to others in their lives.

Foucault considers historical study as an exploration of a history of the present, rather than of the past (Danaher, Schirato, & Webb, 2000; Henriches, Hollway, Urwin, Venn, & Walkerdine, 1984). He asserts that there are a number of overlapping and contesting histories (Danaher, Schirato, & Webb, 2000) where events have very little, if any, relation to each other and where change is the result of accident rather than a progressive and related set of occurrences (Kendall & Wickham, 1999). ‘Othered’ interpretations and historical accounts, such as those of indigenous peoples, women, gay men and lesbians are repressed and become subjugated, acting almost as ‘ghosts’ in the background of the dominant account of events (Danaher, Schirato, & Webb, 2000; McHoul & Grace, 1993). The history of childhood reflects these arguments. A study of ‘childhood’ ignores the history of children (Hendrick, 1990), which will be quite different from the adult constructions of ‘childhood’. Because children move out of the state of ‘childhood’ at some stage in their lives their history is one of the present, not of the past. An emphasis on the history of ‘childhood’ essentialises and marginalises the individual experiences and histories of children and strengthens perceptions of difference between children and adults as two universal, binary categories (Hendrick, 2000). Children themselves are rarely if ever the subject of public records as their independent voices have been repressed and subjugated. This research attempts to identify and describe accounts of childhood that have been subjugated by an historical account that relies on adult narratives and ignores the voices of children themselves.
3.2 Michel Foucault and the Construction of Society

3.2.1 Modernism and Postmodernism

... everyday induction grew into induction according to scientific method, but that changes nothing of the essential meaning of the pregiven world as the horizon of all meaningful induction. It is this world that we find to be the world of all known and unknown realities (Husserl, 1996: 234).

In the modernist view of existence, ‘the world’ is a concrete, unchanging and predictable force. Everything in it can be explained in terms of ‘scientific’ and mathematical formulae which explain the ‘natural order’ of things. This ‘natural order’ contains the ‘truth’ of scientific ‘laws’, “which are unconditionally, universally valid” (Husserl, 1996: 237). In modernist thought, knowledge is situated in ‘truth’, which is considered concrete and observable. ‘Reality’ is “independent…of what you or I or any finite number of men may think about it” (Pierce, 1996: 152), because it can be tested objectively and ‘scientifically’. The role of language in this modernist view serves to assign names to the objective reality in which we live. “[I]f a word is used in such a way that it does not correspond to a determinate idea, it can at different times arouse different ideas in the same person’s mind, and this is the most fecund source of error in reasoning” (Marquis de Condorcet, 1996: 79). Language is therefore viewed as passive; it simply acts as a reference for the world as observed.

A contrasting view to modernism, described as ‘postmodernism’, is that language is an active force that shapes experience by providing meaning to the observed world (Danaher, Schirato, & Webb, 2000). We ascribe meaning to our experiences through language and our selves, other people and the environment in which we operate are defined by it. As a result, we each negotiate “our position in culture with reference to...networks of dominant or preferred meanings” (Schaffer, 1988: 13). These meanings are encompassed in different discourses which act to “both constrain and enable what we can know” (McHoul & Grace, 1993: 37). It is through discourse, the regular and systematic organisation of statements and events (Kendall & Wickham, 1999), that we form and define the extent of our knowledge of ourselves and the world around us (Mills, 1997).

The Role of Discourse

In a postmodern perspective, specific discourses are strengthened by their ability to speak some kind of ‘truth’. Occurring in dialogue and language, ‘truth’ gains meaning and
power within social contexts and reflects the discourses which provide structure for people's sense of 'reality' and personal identity (Mills, 1997). Knowledge is embedded in these discourses and is reflected at a local rather than a global level within institutions, which are described as social structures arising from 'fields' of inquiry (Hartsock, 1996; Mills, 1997). Institutions have both physical environments (for example, a classroom is the physical environment for the field of education) and a set of relationships (for example, between the school principal and teachers, teachers and students, teachers and parents, etc.). They can be either public (for example, the legal system) or private, such as the family. They “draw their authority from their capacity to speak the truth about some situation”, ‘public truths’ having “far wider effects across society” (Danaher, Schirato, & Webb, 2000: 37-38). By situating ‘public truths’ in these social structures, the discourses surrounding them become reflected in the way in which individuals think, behave and construct their world (Mills, 1997).

**Power and Knowledge**

For Foucault, regimes of ‘truth’ emerge from the accepted discourses and induce “regular effects of power” (Rabinow, 1984: 73). Centred in scientific discourse and the institutions that produce it, and having diverse forms, ‘truth’ is disseminated through “a few great political and economic apparatuses” and “is the issue of a whole political debate and social confrontation” (Rabinow, 1984: 73). The power that it induces is diffuse and subtle, used “to gain access to the bodies of individuals, to their acts, attitudes, and modes of everyday behavior” (Rabinow, 1984: 66-67).

Foucault argues that ‘truth’ emerges from scientific and institutional discourses. The professions represented by various institutions hold a monopoly on knowledge about individuals and their behaviours, and can use this knowledge to control “the social body” (Rabinow, 1984). For Foucault, the relation between knowledge and power cannot be separated.

**Panopticism, ‘bio-power’ and subjectification**

Foucault used the principle of the Panopticon, discussed in Chapter 2, to describe the forms of discipline that regulate the behaviours of workers, students, children, those considered mad and other groups in society (Dreyfus & Rabinow, 1982). People within society regulate their own actions and thoughts and are in turn regulated through the knowledge bases arising from the language of institutions wherein power resides. The
professions that represent those institutions and others who are influenced by them (including politicians, police, social scientists, teachers, parents) assist in regulating the actions and thoughts of the rest of society. At the same time the practice of ‘bio-power’ serves to maintain this regulation.

Arising from the human sciences, bio-power consists of the technologies that are used “for analysing, controlling, regulating and defining the human body and its behaviour” (Danaher, Schirato, & Webb, 2000: 64). Part of the role of bio-power is to render individuals as sites or subjects of scientific study and analysis (Dreyfus & Rabinow, 1982). The move to know more about human beings results in the subjectification of individuals and their subsequent self-examination. Bio-power is aided by the concept of repression, where behaviours considered ‘inappropriate’ are repressed through censorship, prohibition and surveillance (Dreyfus & Rabinow, 1982), and ‘subjects’ define themselves in relation to specific moral positions (McHoul & Grace, 1993; Moss, 1998). In doing so, they refer to rules which govern behaviours and relationships between adults and young people, parents and children, property ownership and transmission, the use of different environments, and the classification of people within society (Rabinow, 1984).

Rules and knowledge are embedded in discourses. Some discourses are emphasised to a greater degree than are others. The dominant discourses that have emerged from institutional fields of inquiry emphasise ‘normal’ ways of behaving and a universal ‘natural order’ to the world, based on biological and scientific ‘evidence’ (Flax, 1990; Leonard, 1996; Sawicki, 1998). Individuals define their identities and the identities of others around them through an emphasis on how they differ from the normative views reflected in the discourses with which they are familiar (Schaffer, 1988). Dominant discourses are associated with binary relationships between groups of people (such as ‘man-woman’, ‘adult-child’, ‘well-sick’, ‘right/wrong’) and divide the population accordingly (Alldred, 1998; Fine, 1994). These ‘dividing practices’ (Danaher, Schirato, & Webb, 2000; Flax, 1990; Mills, 1997) result in “othering” (Alldred, 1998: 159; Fine, 1994: 74), a process which marginalises those who do not fit with the dominant discourses. ‘Othering’ also assigns power to those who are identified as part of the normalised group (men, adults, the physically and mentally well). Alternative discourses, residing in the ‘others’, are silenced, marginalised or de-emphasised in favour of the dominant discourses. The process of ‘othering’ reflects the relationship between what is said and what is seen: words and things (Kendall & Wickham, 1999). Bio-power involves the construction of
individuals and groups as different from the ‘norm’ through observation of characteristics of behaviour, physical strength and ability, size and stature, sexuality, skin colour and nationality, to name a few. These differences are then named and scientifically categorised in terms of the degree to which they depart from an established ‘norm’. Once categorised, individuals may then become marginalised and divided from general society: they are ‘othered’.

Power is most effective when it is not obvious (Danaher, Schirato, & Webb, 2000; Dreyfus & Rabinow, 1982). “In other words, although knowledge and technologies are being used to control and regulate individuals and populations, the official version of things is that they are ‘working in our interests’, ‘taking care of us’, looking after us and watching over us ‘for our own good’” (Danaher, Schirato, & Webb, 2000: 68). The power that resides in knowledge and produces ‘othering’ is never static or fixed. While Foucault describes the knowledges embedded in alternative discourses as “subjugated” because they are “low down on the hierarchy, beneath the required level of cognition or scientificity” (McHoul & Grace, 1993: 16), they yet open the possibility for new knowledge to emerge (Danaher, Schirato, & Webb, 2000; Kendall & Wickham, 1999). Moreover, categorisation of groups within society can change through history so that our understandings of the properties of a given category can become transformed from time to time (Danaher, Schirato, & Webb, 2000).

The Concept of Social Contructionism

The ways in which we position ourselves, and are positioned, within society in part rely on how we are socially constructed. Social constructionists assert that humans build a sense of ‘self’ from interactions with others. Our subjective experience of the world around us (that which comes from within us) is shaped by our relations with the objective social world in which we are situated (that which appears to be ‘outside’ us) (Gergen, 1999; Wetherell & Maybin, 1996). Social context and the self are therefore intertwined, and the perceived boundaries between them are significantly blurred (Wetherell & Maybin, 1996).

We learn our roles and position in society through social interactions and the way in which language is used within these interactions. Language is a performative act, containing both meaning and action (Berger & Luckmann, 1966; Gergen, 1999), and the
self emerges through the interactive use of language both to define our position in society and to provide meaning for our experiences (Berger & Luckmann, 1966). As we grow, we interact with others around us. Through social relations we learn where we fit in society, and the rules and behaviours that are expected of us (Wetherell & Maybin, 1996). As we act within the environment, we receive information, through various forms of language (speech, non-verbal communications, body actions) about how others perceive us (Gergen, 1999). Our concept of ‘self’ becomes constructed in relation to those around us, and is situational and contextual (Frankenberg, 1993). In defining the ‘self’ we focus on qualities and characteristics that identify us as specific individuals in relation to others in our world. This essentialising places us within particular social groups and defines our roles and positions within society. We become legitimated through this process, reflecting the roles and rules for behaviour established through social interactions (Berger & Luckmann, 1966). In this way, our identity emerges through context and socialisation, and continues to be shaped by us according to context, the roles expected of us and the ‘rules’ of social interaction (Frankenberg, 1993; Wetherell & Maybin, 1996).

Socialisation and the emergence of identity rely on a network of relations. We cannot build an identity in isolation, because we require referents (‘others’) against which to measure ourselves (for example, ‘whiteness’ is measured against ‘not-white;’ ‘woman’ is measured against ‘man;’ ‘childhood’ is measured against ‘adulthood’). Additionally, we learn how we are to act, what we are to say and how we are to think by reference to the actions, speech and expressed thoughts of others (Wetherell & Maybin, 1996). Others’ senses of self and social positions are also reliant upon our roles, behaviours and attitudes in relation to them. When roles, behaviours and expressed thoughts do not fit with others’ expectations, the processes of normalising and essentialising are threatened, and forms of maintenance (such as discipline, therapy and nihilism) are employed (Berger & Luckmann, 1966). These maintenance activities re-establish the roles and rules for people within the societies in which they live.

Identity is never fixed, however. It changes with context and experience (Fine, 1994; Wetherell & Maybin, 1996) and is multifaceted. Young children’s exposure to competing discourses is limited to the narrow social worlds they inhabit. As they grow, they acquire new information that they must include in the construction of the self. A first identity, the ‘me’, is necessary to establish consistency upon which a recognition of the person can be
built (Berger & Luckmann, 1966; Wetherell & Maybin, 1996). Later information leads to the acquisition of other ‘selves’ which may at times contradict each other (Wetherell & Maybin, 1996). Our descriptions of the self therefore need to account for contradictions and different responses and behaviours in different contexts.

As we interact with others we use language to describe our experiences and actions in specific ways. The narratives and stories we use construct a web of meanings and practices that explain and define who we are and how we fit in society. Through narratives we build a social reality that provides meaning for us and places our self within specific contexts. As these contexts change, so do our narratives.

Narratives are themselves constructed in specific ways, having a goal (an end-point in which meaning is embedded) and an ordered and causal relating of events towards that goal (Gergen, 1999). In the case of narratives about children, the end goal is the emergence of the rational, ‘successful’ adult (Furstenberg, 2000). Events that lead to the achievement of this goal are often presented in terms of incremental stages of development. In history, the narratives have changed from time to time in relation to the ‘required’ stages and tasks for achieving the goal, but the goal itself has remained clear. As a result, the condition of ‘adultness’ is privileged and becomes a structural advantage (Frankenberg, 1993). Children learn how to relate to adults in different social contexts through the narratives that occur about them and the narratives that they construct about themselves (Wetherell & Maybin, 1996).

### 3.2.2 Postmodernist and Poststructuralist Approaches

Foucault has been described as “the most influential of postmodernist thinkers” (Cahoone, 1996: 360), postmodernism having its beginnings in France in the 1960s and being closely aligned with poststructuralism. As theoretical approaches rather than research methods (Cheek, 2000), postmodernism and poststructuralism provide a framework from which to challenge the dominant discourses surrounding children. Overarching scientific theories about specific phenomena and the notion of history as continuous and comprehensive are rejected (Cheek, 2000). Instead, a social constructionist perspective which challenges concepts of a pre-discursive and self-knowing subject and categories such as ‘woman’, ‘child’, ‘subject’, and ‘experience’ is adopted (Cheek, 2000; Mason, 2002; Moss, 1998).
Poststructuralism differs from social constructionism in its emphasis on the role of discourse in the construction of a self-view. Discourse describes characteristics of groups of people and normalises and essentialises them. Social constructionism argues that we build an understanding of ourselves not through adopting specific discourses but through social comparisons of ourselves with others around us. In its emphasis on the concept of plural realities and multiple views of experience (Cheek, 2000; Weedon, 1997) poststructuralism is similar to social constructionism. Both theoretical perspectives argue that the self is a constructed phenomenon, but while social constructionism views language as part of social interactions, poststructuralism centralises the role of language in defining social organisation (Weedon, 1997). In a poststructural view, the meaning of the concept of ‘childhood’ can vary according to the social, cultural, historical and political setting in which one is situated (Mason, 2002). Meanings reflect competing discourses and are contextualised, open to challenge and redefinition (Weedon, 1997) and the subjectivity of individual accounts of experience is valued.

This study focuses on the social construction of childhood and the ways in which the sciences of biology, psychology, law and social theory have constructed the child throughout history. It seeks to challenge the modernist concept of the child and to explore the plural realities for children in their relations with others, particularly adults. The ways in which these realities have contributed to children’s social construction of themselves, and the role that language plays in this process, are explored through the texts of interviews with children. The research therefore uses a poststructural framework to explore the socially-constructed child and her or his relation to the adult-centred perceptions of children that have marginalised, essentialised and othered children throughout recent history.

3.2.3 Qualitative and Quantitative Research

This study used a qualitative approach to collecting and analysing data. There are a number of reasons for this. First, the research focuses on the meanings given by children to the construction of their identities and to the decision-making processes in which they and their families have been engaged following their parents’ separations. Qualitative research focuses on the meanings given by participants to specific phenomena (Rice & Ezzy, 1999). While quantitative research can demonstrate the relationships between phenomena such as children’s self-view and their perceptions of their ability to participate
in decision-making, it cannot describe the meanings given by children to the issues under consideration in the same way as qualitative research (Rice & Ezzy, 1999).

Second, this research considers children’s perceptions of their abilities to participate in decisions affecting them from a postmodern perspective. Qualitative research more easily combines with postmodern views than does quantitative research (Denzin & Lincoln, 1994). This is because postmodernism rejects the normalising and essentialising assumptions that arise from quantitative research which seeks to provide information about global trends, attitudes and reactions to specific issues (Rice & Ezzy, 1999).

Third, this study is concerned with presenting the voices and perceptions of the child participants rather than providing an interpretation of their comments. While qualitative research provides an opportunity for participants’ voices to be heard through an emphasis on direct presentation of their comments, quantitative research often cannot undertake this task because its emphasis is on the researcher’s perspective rather than that of the participants (Rice & Ezzy, 1999). Statistical representation and interpretation of those statistics in terms of generalised human behaviour have a stronger emphasis in quantitative research.

Fourth, quantitative research has most often been associated with the testing of pre-determined hypotheses (Rice & Ezzy, 1999; Silverman, 1986). In contrast, qualitative research has been described as sociological in nature (Silverman, 1986), studying phenomena in “natural settings” (Denzin & Lincoln, 1994: 2) and interested in obtaining and reporting rich descriptions of experience and perceptions (Bloor, 1997; Denzin & Lincoln, 1994). The study explored the contexts in which children construct a sense of self in relation to adults and their abilities to participate in decision-making activities. Rather than testing pre-determined hypotheses, the research raised questions about children’s perceptions and experiences. Building understandings of these issues was achieved through obtaining rich descriptions from children of their thoughts and perceptions. Qualitative research is said to achieve these aims more effectively than quantitative research (Denzin & Lincoln, 1994; Rice & Ezzy, 1999).

Qualitative research has been criticised as being value-laden and lacking in reliability and validity (Denzin & Lincoln, 1994; Rice & Ezzy, 1999). It does, however, require “rigour, consistency and integrity” (Rice & Ezzy, 1999: 4) as well as flexibility and creativity.
Because qualitative research strives for rich and detailed descriptions of individual perspectives it is not concerned with normative views based on large randomly selected groups of people (Denzin & Lincoln, 1994). Rigour and consistency arise from the transparency provided by the explanations of the researcher. In particular, the importance of reflexive research practice, where the researcher describes how her or his personal understandings, experiences and theoretical background have impacted on the research process, is emphasised (Rice and Ezzy, 1999).

Bloor (1997) questions the ability of researchers to remain fully value neutral. Researchers bring to the task their own experiences and aspects of self (including gender, age, ethnicity, experience and world views) that influence the ways in which data are analysed and interpreted. Value-free research is not possible because of the researcher’s own assumptions about objective reality that are informed by these various factors. While qualitative research does not purport to be value-free, rigour demands that the researcher’s own values and biases be carefully considered and discussed in reporting the research results.

If research is to contribute to changing society rather than simply producing knowledge (Bloor, 1997) the use of qualitative methods can produce rich descriptions of social life which have the potential to inform future policies and practice, thus resulting in possible societal change. Because this study explored the position of children in society and sought their perceptions about their abilities to participate in decisions that directly relate to their future it took a qualitative perspective.

### 3.2.4 Discourse Analysis

The term ‘discourse’ has been used in a variety of ways and situations (Potter & Wetherell, 1987) and relates to all forms of communication. For this research, ‘discourse’ is taken to mean a group of regular and systematic statements that contains a set of rules for the production of statements and that delimits what can be said about a specific topic or phenomenon (Kendall & Wickham, 1999: 42). Statements can be spoken or written and can include what is not said as well as what is. Statements build discourses that contain a network of meaning around specific conditions that help to define the world in which we live. Discourse is based in language, which is considered to be productive and
to define, rather than simply describe, the world in which we live (Danaher, Schirato, & Webb, 2000).

The concept of language as both active and functional is central to the analysis of discourse (Potter & Wetherell, 1994), but because language functions in context, discourse analysis also focuses on the contexts in which the language is situated (Cheek, 2000; Potter & Wetherell, 1994). An analysis of discourse will therefore account for both the local level, involving the ways in which language is used in any discourse and the more global level of the social and political contexts in which the discourse occurs (Cheek, 2000).

While there is no one way to approach discourse analysis (Cheek, 2000), there are some ‘clues’ as to what an analysis might contain. First, discourse analysis would consider both the said and the unsaid in the text of an interview or other communication (Cheek, 2000; Kendall & Wickham, 1999). Second, it would consider the binary relations in texts, focusing on the subject positions of each member of the binary (Cheek, 2000; Fine, 1994; Flax, 1990). Hidden alliances and affiliations and the accompanying power relations embedded in the binaries themselves would be considered (Henriques, Hollway, Urwin, Venn, & Walkerdine, 1984; Kendall & Wickham, 1999). Finally, discourse analysis would consider the ways in which language is used to construct specific versions of the world, and how those versions may change between speakers and audiences (Potter & Wetherell, 1994).

Discourses contain both formal and informal rules about what can and cannot be said, and about the behaviours, thoughts and attitudes of people within society (Kendall & Wickham, 1999). The focus of analysis is on the ways in which these rules produce some statements and delimit others (Flax, 1990; Kendall & Wickham, 1999). In an approach described by Kendall and Wickham (1999), the underlying rules in discourses would be considered alongside the statements made in texts, the binary relationships embedded in them, and the ways in which language is used to describe relationships. This study used this approach in analysing the texts of the interviews conducted with children.

### 3.3 Issues in Working with Children

The way in which researchers perceive children, and the subsequent ways in which children and adult researchers work together, have the potential to either continue to
marginalise and ‘other’ children or establish collaborative results. There are a number of issues in relation to effective research with children that must be addressed if children’s views are to be respected and heard appropriately. They include adult researchers’ views and perceptions of childhood and children, the power differentials between adults and children, researchers and participants, issues surrounding the concept of ‘informed consent’ and the setting in which the research occurs. These issues will be addressed separately in the next section.

3.3.1 Adult Views and Perceptions of Children
The way in which the researcher perceives children, both historically and socially, affects decisions about the research method that will be used (Punch, 2002; Thomas & O’Kane, 2000). When children are considered as essentially the same as adults the researcher will choose methods that are used with adult participants (Christensen & James, 2000) It is possible, however, that this approach will ignore the power differentials between adults and children (Punch, 2002). Researchers who perceive children as very different from adults (in terms of competence to provide reliable and valid information, as belonging to a significantly different culture from that of their adult counterparts, or as gradually developing towards adulthood) may choose an ethnographic method (Corsaro & Molinari, 2000). Ethnographic researchers typically spend extended time with the group being studied, joining their daily lives and activities in an effort to understand them (Corsaro & Molinari, 2000; Peshkin, 1997; Rosaldo, 1993). Punch (2002), however, observes that these methods ignore that adults are not children and can never be full participants in children’s social worlds. The observations made by adult ethnographic researchers will reflect adult interpretations of the children’s actions and daily lives.

Children can also be perceived as both similar to adults and having different competencies. Researchers who take this view will use methods that relate to children’s skill levels, such as drawings, writing narratives and play activities (Punch, 2002; Thomas & O’Kane, 2000). While arguing that these methods will engage children in effective ways, Punch (2002) points out that researchers should avoid assumptions that they are the most appropriate way of conducting research with children, and that other ways are just as valid.
Underlying these various ways of constructing children are assumptions about their competence. Competence can be constructed according to developmental attributes (de Leeuw, Borgers, & Strijbos-Smits, 2002; Woodhead & Faulkner, 2000), age (David, Edwards, & Alldred, 2000; Edwards & Alldred, 1999), experience (Mason & Urquhart, 2001) and level of exposure to social interactions (Edwards & Alldred, 1999). Some researchers have pointed out that age and competence levels are not the same thing, and that alternative ways of constructing competence are more useful (David, Edwards, & Alldred, 2000; Edwards & Alldred, 1999). Researchers who ignore age as a factor in competence have the potential to perceive children in new ways, as social actors in their own right (Jenks, 2000; Matthews, Limb, & Taylor, 1999). Christensen and James (2000), Edwards and Alldred (1999) and Jenks (2000) all argue that the construction of children as effective social agents represents a new paradigm and can open the potential to explore other aspects of children’s competence not considered by developmental theorists, thus empowering them and hearing their voices. Children actively shape their own environments as family members, collaborative learners and peer supporters, and actively interpret and shape the research process (Christensen & James, 2000; Woodhead & Faulkner, 2000). Constructing children as experts in their own lives and inviting them to discuss events that have meaning for them can promote children’s opportunities to demonstrate their competence in relation to issues that directly relate to their lives (Roberts, 2000; Scott, 2000).

There is a danger in taking a perspective that essentialises children, perceives children as a homogenous group (McNamee, 2000) or ignores differences between children of similar ages, genders and cultures. Each child will approach the research process in his or her own way (Davis, Watson, & Cunningham-Berley, 2000). A further danger in research with children is the potential for them to continue being marginalised through the approach taken and the language used throughout the research. In reporting results of research children’s experiences can be minimised or re-interpreted. Researchers can ‘compact’ gender by using one pronoun (exclusively ‘he’, ‘she’, or even ‘it’). These approaches can maintain the construction of children as different and dismiss their contributions as less than useful (Fine, 1994; Saunders & Goddard, 2001). The description of research approaches as ‘child friendly’ or ‘child inclusive’ can also communicate a construction of children as different from adults and needing ‘special’ research techniques that differ significantly from those used with adults. Additionally, the
dominant paradigm of research as working on children rather than with them (Kelley, Mayall, & Hood, 1997) constructs children as problematic (Roche, 1999) and essentially different from adults. Researchers must be aware of the ways in which the research they undertake constructs children and sets the tone for the conduct of the research itself.

3.3.2 Power Relations

The construction of self is defined in relation to others and the self and the other are closely interrelated (Fine, 1994). Children construct a sense of their selves through interaction with and observation of adults. They expect that adults will have power over them and that they will not be considered as equals (Punch, 2002). Knowledge and power reside in adults, leaving children subjugated, marginalised and with little or no power. In most Western cultures, members of the social group defined as ‘children’ are not able to discuss with adults their concerns and needs in a way in which they will be heard (Matthews, Limb, & Taylor, 1999). This issue has the potential to influence the way in which research projects are conducted and reported.

The research process can contribute to the ‘othering’ of children. In most traditional research, adults have been asked to report on children’s lives rather than children being directly asked (Scott, 2000), and adult researchers maintain control over every aspect of the process. They set the research agenda, define the problem to be addressed, design the research, edit and analyse the interview texts and other data and establish the relationship between themselves and the research participants (Fine, 1994; Frankenberg, 1993). This process can mirror the dominant adult relationship to children, which has oppressed and marginalized them (Fine, 1994). Children may feel suspicious of adult researchers’ questions because of their experiences with specific adult groups, such as teachers, who already know the answers to the questions they ask of children (Edwards & Alldred, 1999; Thomas & O’Kane, 2000). Children will also construct a perception of the researcher in ways that will influence the quality of the information they provide (Edwards & Alldred, 1999; Frankenberg, 1993). They may wish to please the researcher by saying what they think the researcher wants to hear, or wish to appear in a positive light (Edwards & Alldred, 1999; Maundeni, 2002; Punch, 2002). They may also wish to avoid addressing painful issues and be unsure about how to do this because of the perceived power differences between themselves and the adult researcher (Punch, 2002).
Some authors (Jenks, 1982; Punch, 2002) argue that children are different from adults due to the prevailing social constructions of them. They do not have the same language skills as adults, and possess far less social and relational experience. They may often defer to adult knowledge (Jenks, 2000) due to lower levels of understanding of the issues being researched (Punch, 2002). Attention spans may be less than those of adults, and children’s abilities to decide on responses to specific questions may be inferior because of their fewer experiences in making decisions (Jenks, 2000). While Punch (2002) argues that researchers must account for these differences, Jenks (2000) suggests that researchers try to put them aside so they can better understand the worlds of children themselves.

Social constructions of children as vulnerable in turn create vulnerability for children when adults hold power over them. In interview situations, children may not be able to perceive and maintain boundaries for themselves, responding to questions and probes that they might otherwise refuse to respond to (Cree, Kay, & Tisdall, 2002). While researchers can invite children to refuse to answer questions or turn off the tape recorder or even discontinue the interview (Frankenberg, 1993), the perceived power imbalances may make it difficult for children to do any of these things.

The process of analysing the texts of children’s interviews can also marginalise children (Fine, 1994; Frankenberg, 1993; Punch, 2002). “Imperial translation” (Fine, 1994: 80), defined as the researcher’s analysis of texts using adult perceptions of what children say, acts to colonise the world of children and disempower them through analysis and reporting of research results in adult terms. Universalising of children’s experiences can also occur, resulting in essentialising them and treating them as a homogeneous group (Hartman, 1994). Researchers are advised to reflect on who ‘owns’ the analysis and resist adult interpretations of children’s texts (Punch, 2002). Because children do not have their own authoritative voice they cannot challenge adult accounts of their contributions to research. The entering into public record of children’s own stories is important for their voices to be effectively heard (Hendrick, 2000).

On the other hand, researchers who privilege narratives over analysis risk losing the opportunity to describe the ways in which texts ‘other’ and marginalise children (Fine, 1994). If a view of the self is socially and historically constructed, then qualitative researchers have an ethical obligation to argue against the process of ‘othering’ by describing the ways in which texts reflect adult power/knowledge bases.
In working with children in research, the role of the adult researcher is critical. The adoption of a traditionally objective and distant approach has been criticised because it ignores that researchers bring their own assumptions and world-views to the task which can colour the way in which the research proceeds (Cheek, 2000). The objective, disengaged researcher operates from a narrow view that research participants are passive sources of data rather than as active agents who interact within, and thus shape, the research process (Frankenberg, 1993). The adoption of an objective and disinterested research persona also objectifies participants and maintains a significant power differential between researcher and participants (Frankenberg, 1993).

An alternative approach is to engage research participants collaboratively in the research project (Hartman, 1994; Roche, 1999). This involves an acceptance of children as research partners, working closely with the researcher in the conduct of the research, perhaps from the initial design of the project through to the final report (Cree, Kay, & Tisdall, 2002; Roche, 1999). When full collaboration is not possible, some researchers approach child research participants by adopting an attitude of “interested friend” (Thomas & O’Kane, 1998: 827), “least adult role” (Mayall, 2000: 121) or ‘naïve enquirer’ (Butler & Williamson, 1994; Campbell, 1996). In taking these positions the researcher invites children to help him or her to understand their lives through focusing on their knowledge about their position and status in society (Cree, Kay, & Tisdall, 2002; Mayall, 2000). The researcher follows the agenda set by the children rather than that set by the adult researcher (Cree, Kay, & Tisdall, 2002; Punch, 2002; Thomas & O'Kane, 2000). Such an approach has the potential to maintain a construction of children as other, however, because it assumes that researchers are obliged to approach children in specific ways which highlight the perceived differences between children and adults. A focus on differences ignores other research issues. These issues include the development of rapport, the research context, the clarity of questions put to children, the quality of the data obtained and how to analyse and report on outcomes without imposing the values and interpretations of the researcher on the data (Punch, 2002).

Fine (1994), Frankenberg (1993) and Mason & Urquhart (2001) also stress the importance of reflexivity in challenging the adult-child binary. Reflexive approaches include questioning the language and processes used in the research as well as challenging the assumptions about childhood and adulthood that the researcher brings to the work. Maintaining an awareness of these variables can help to describe the partialities and
pluralities that are part of social constructions of self, the other and the worlds in which they are situated.

I was not able to involve children in the design and management of this research because of the need to obtain formal ethical approval from the University of South Australia and possible referring organisations. This required me to have completed the research design and to have developed an understanding of the research questions and interview schedule before applying for ethical approval to work with children. In some respects, then, this project mirrors traditional social research, in that the children were to a degree its ‘subjects’ rather than active participants. The danger of constructing a research project in this way from the outset is that the researcher can continue to maintain control over the process through to the final product, so that the children’s voices become muted and their message shaped by the researcher’s own position. These issues were addressed in a number of ways.

First, I adopted a ‘naïve enquirer’ position in relation to the issues being explored (Butler & Williamson, 1994; Campbell, 1996). Children were advised that whatever they said was positive and appropriate, and that there were no ‘right’ or ‘wrong’ answers to the questions asked. They were advised that their opinions and ideas were important, rather than those of the researcher. In working through the issues to be explored, I took the children’s lead, following their line of thought rather than adhering to the interview schedule. When children asked questions about any of the issues under discussion (such as those relating to court processes or the rights of children) I provided answers rather than remaining distant and ‘objective’ (Frankenberg, 1993). While considering that children are ‘different’ from me in terms of levels of experience and worldviews, I focused on other issues such as those listed by Punch (2002) in preference to treating children as a significantly different group from adults. A reflexive approach was adopted throughout the research, and I maintained a ‘watch’ on the potential for ‘othering’ of children to occur.

In analysing the data, my ability to act reflexively became significant, given my modernist psychological research background. I was careful not to universalise the children’s experiences and tried to resist interpreting the children’s texts from my adult perspective. At the same time, in seeking answers to the research questions, the analysis required me to look beyond the children’s statements to build an understanding of how this group of
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research participants constructs the world. This task provided a challenge to me to ensure that I maintained an awareness of the importance of appropriately representing the children’s voices while identifying the partialities and pluralities in their discussions.

3.3.3 Hearing the Voices of Children

The task of researching children’s voices is not simply a matter of providing the appropriate situation for those voices to be heard. In family law issues, children’s abilities to voice their opinions are often limited by other circumstances. Adults can manipulate children in relation to their ‘wishes’ through threats or coercion, to say what their parents would have them say (Faulks, 1996). Sometimes, children will express opinions that will reflect their relationships with their parents and other adults rather than their own thoughts, needs or interests. Bigger, more powerful adults can abuse children emotionally, sexually, and physically because of the power differences inherent in the adult-child binary relationship (Cheek, 2000; Kitzinger, 1990). A seven-year-old child may not be able to articulate her or his needs in the same way as a fourteen-year-old, not having the language skills to do this (Garbarino, Stott, & Erikson Institute, 1992). The dominant discourses surrounding children argue that these factors reflect the developmental and biological aspects of childhood: that because of their ‘incompleteness’ they are easily abused. A social constructionist viewpoint would argue that the way in which children are positioned in relation to developmental and biological factors creates their vulnerability to abuse and an expectation that they are inarticulate. Nevertheless, because children have been positioned in society as vulnerable and open to abuse, this research has tried to respect their integrity in relation to issues of protection. In centring their voices, issues surrounding how children could become more vulnerable as a result have been considered.

One issue to emerge from the positioning of children as incompetent is the question of the ‘reliability’ of their reports of events and their subsequent perceptions surrounding those events. While there is an argument that children’s evidence in court can be credible under certain circumstances (Rayner, 1994), legal processes expect such evidence to be linear and rational (Australian Law Reform Commission and Human Rights and Equal Opportunity Commission, 1997). Often, however, people’s stories are not linear and may not appear rational, especially when they weave between contradictions within one’s self (Fine, 1994). As children try to negotiate their constructions of self as both an individual
and as a member of a family, a group of friends and a school environment, children’s accounts of themselves in relation to the wider community may demonstrate inconsistencies in their positions. Their voices will reflect the fluidity of the pluralist meanings in which the self is embedded (Weedon, 1997). This research attempted to describe children’s plural interpretations of their lives in their discussions about their participation in decisions that directly affect them.

Part of the plurality of interpretations lies in the way in which children become subjugated in society. The panopticisation of children means that they internalise perceptions of their differences from the “dominants” (Fine, 1994: 78). Children gain substantial knowledge about their selves in relation to adults through observing adults and noting the differences between themselves and the adults around them. Children can therefore provide insights into how relationships between them and the adult world operate. The self in relation to others is not fixed, however, because of the way in which social interactions vary between members of groups. Partialities and pluralities will always be present (Fine, 1994).

### 3.3.4 Re/presenting and Re/presenting Children’s Experiences

This research began with a title: *The Voice of the Child in Family Law*. That title has changed during discussions and submissions. Sometimes it was written as ‘the voice of the child’, while at other times ‘the voice of children’ was written. The way in which the title positions what follows can be significant, as it will determine the methodology used (Alldred, 1998).

This research concerns the ‘voice of children about their voice’. In bringing children’s voices to the fore, the research seeks to achieve a balance between “re-presenting” the story for particular children and “re/presenting” (interpreting) what they say in order to describe the underlying meanings that children assign to their experiences (Alldred, 1998: 162). In so doing, a number of tensions are encountered. First, whether discussing with children issues relating to their ‘voice’ is in their ‘best interests’ may be questioned in light of the strong discourses that surround them. Alldred (p151) suggests that there is an assumption that “what children say can be represented (portrayed) through research” in a simple manner. She argues that this is not so. Others have questioned the appropriateness of involving children in public affairs, arguing that they haven’t the capacity to
understand the issues involved and suggesting an uncertainty about the outcomes for children of their involvement (Matthews, Limb, & Taylor, 1999).

Secondly, a focus on children has the potential to further objectify and “other” them (Fine, 1994: 74). This can occur through taking children’s voices out of context and muting them in the interests of identifying themes and building structures around what children say. Interviews constitute a specific form of social interaction where the discourse is jointly structured by researcher and participant (Alldred, 1998). The analysis and interpretation of interview texts is thus based on particular social contexts and discourses where specific meanings have emerged. Representing children’s ‘voices’ in relation to these contexts, discourses and meanings can result in the loss of other meanings and discourses that may otherwise emerge. Additionally, a tension exists between “romanticizing” (Fine, 1994: 80) children’s narratives and undertaking a deeper analysis of the text.

Third, in trying to ‘interpret’ the content of children’s ‘voices’, there is a potential to move from their frame of reference to that of the researcher whose understandings, values and beliefs could take precedence over those of the children. An inequality between the researcher’s interpretations and children’s meanings may then emerge (Hartman, 1994).

Fourth, the power differentials between researcher-researched, adult-child, man-boy/girl could have an effect on the children’s responses to the research issues. Residing in these binary relations are issues relating to knowledge/power, potential for coercive responses, understandings about self and others, and varying discourses relating to children, adults and the relationship between them.

Fifth, the research process is often disconnected from the life of both researcher and researched. Both step outside their cultural frames and social contexts during the time in which they are engaged in the research interactions. Activities and research settings may be adult-centred, and the language used during the research process may be different from that used outside (Alldred, 1998).

Sixth, there is a potential for tokenism in the representation of the children’s ‘voices’ emerging from the research. Children can appear to be given a voice although they “have little choice about the subject, the style of communication or any say in the final outcomes” (Matthews, Limb, & Taylor, 1999: 140).
Each of these issues was taken into account in the design of this research project. Clayton Giles, the fourteen-year-old who rode his bicycle across Canada to talk with his Prime Minister about children’s involvement in family law issues, urged in an e-mail on 4 October 2002 that I “hear [children] out without making your own interpretations”. This was a central goal of the research. In analysing the data of the interviews, however, it was important to identify the effects of the dominant discourses on children’s statements about their ability to participate in decisions and the ways in which the dominant discourses have contributed to children’s constructions of themselves in relation to adults. The analysis therefore tries to both re-present and re/present children’s views as described by Alldred (1998).

3.3.5 ‘Informed Consent’

The adult-child power imbalance raises issues about whether and how children can become fully informed about research projects in which they are invited to participate. Because the issue of age is raised in relation to children’s consent, the question of competence to consent is also at issue (Edwards & Alldred, 1999). While some authors argue that chronological age is not synonymous with competence (David, Edwards, & Alldred, 2000; Edwards & Alldred, 1999), the ability of children to fully understand their involvement in research projects has been raised in several articles (David, Edwards, & Alldred, 2000; Edwards & Alldred, 1999; Mason & Urquhart, 2001). Additionally, the power differential between children and adults can mean that children feel they have no choice but to participate in research activities (Punch, 2002). In any research, there is a power difference between researcher and participants, creating difficulties for any potential participant in relation to ‘fully-informed’ involvement. Research is an intrusion in people’s lives and it is important to consider that consent is a continuous issue throughout a person’s involvement (Cree, Kay, & Tisdall, 2002; David, Edwards, & Alldred, 2000).

A site of strong debate about the ability of children to provide informed consent has been in the area of medical research (Edwards & Alldred, 1999; King & Churchill, 2000; Smyth, 2001; Woodhead & Faulkner, 2000). Considered an ethical issue, consent to participate in medical research revolves around an assessment of risk minimisation (King & Churchill, 2000) and an ‘acceptable’ level of risk. It has been argued, however, that research that involves the concept of ‘minimal risk’ breaches ethical principles for
research, including issues in relation to children’s informed consent (Woodhead & Faulkner, 2000). While this is probably not as significant in the field of social research, there is sometimes a risk that children (and adult participants) will become emotionally disturbed depending upon the nature of the issues being researched. Whether this constitutes a reason for not conducting the research, even with informed consent, is at issue. Children have stated that they talk about events and issues that occur in their lives with their peers at school, often long before they talk with adults (Bagshaw, Campbell, & Jelinek, 2002; Mayall, 2000). While they may use this approach to acquire knowledge (Mayall, 2000), they put themselves at risk with their peers by talking about emotional issues. The research process may not be any more of a risk for them if they are fully informed about what to expect in participating.

Medical research discusses the importance of obtaining parental consent as well as that of children, depending upon their “capacity” (Dimond, 2002: 573). While ‘capacity’ has been linked to a number of variables (Edwards & Alldred, 1999), the construction of children as vulnerable and lacking in ‘adult’ levels of understanding has resulted in an ethical requirement to obtain parental (or guardian) consent before approaching children themselves, in both medical and social research (Punch, 2002). Adult ‘gatekeepers’ who are sceptical about the usefulness of a study or who are concerned about the potential for the research to upset children, can deny access to children from the outset (Cree, Kay, & Tisdall, 2002; Gilbertson & Barber, 2002). This situation denies children information about research that might interest them and any agency to decide for themselves whether to participate in their own right. While there is no legal requirement for researchers to obtain adult consent to include children in research (Masson, 2000), when adult ‘gatekeepers’ block children’s ability to participate they marginalise children and reinforce a construction of them as vulnerable and lacking in competence. Moreover, excluding children from issues that affect them could be constructed as abusive behaviour in itself (Oakley, 2000). Although children may not want to involve themselves in research projects or to be heard in relation to the issues under consideration (Cree, Kay, & Tisdall, 2002; Edwards & Alldred, 1999) it is important that they be given the option to decide their participation free from adult influence (King & Churchill, 2000).

Masson (2000) argues that consent to participate in research should be sought on the basis of a full explanation of the purpose, process and intended outcomes of the research. Clear, detailed information about the project is essential for both adults and children in
facilitating their decisions to participate (Edwards & Alldred, 1999). Information must be understandable for children and their parents/guardians and sufficiently detailed for children to be assured about what their involvement may mean. Information should also include details about how the results will be used (Lindsay, 2000) and that children can withdraw at any time. Cree (2002), David (2000) and Maundeni (2002) also suggest that researchers constantly check with children to renegotiate their consent through the life of the research project and to monitor their emotional states during the contact with them.

How to ensure that children are fully informed is another issue of concern. David (2000) argues that educating children about research can be a vital step in their subsequent participation. ‘Education’ takes precedence over simple ‘information’. In some instances, the ethical requirements of funding bodies and universities detail the ways in which information is provided about research projects. For example, the University of South Australia's Human Research Ethics Committee requires information for potential participants to include a “plain English title” and a summary of the researcher’s expectations of the participants. Statements about the confidentiality and storage of information obtained and descriptions of interventions to be implemented in the event of participants suffering “adverse events” from their participation are also required (University of South Australia's Human Research Ethics Information Sheet Guidelines). The University makes a distinction between information and recruitment material, and states:

Every proposal considered...will include an information sheet (which might be in the form of a letter, an introduction to a questionnaire or a document headed “information sheet”), not every proposal will include recruitment material (University of South Australia Guidelines for Preparing Ethics Protocols, paragraph 3.4)

For the current research project, information about the research was linked to recruitment processes, because the research began through contact with adult ‘gatekeepers’ (those working with families, teachers and parents). Possible child participants were not informed about the research until the adults involved with them had received information. Adult ‘gatekeepers’ were provided with both written and verbal information about the research. Discussions were held with parents in order to situate the research in relation to current political concerns about children’s participation in family law decisions and to describe the interview process. Following parental agreement the children themselves were invited to hear about the research, during which time the process was described to
them. The importance of continuing to renegotiate children’s consent was considered vital in this research in order to check that they were still comfortable to proceed throughout the interview.

### 3.3.6 Research Setting

The research environment can affect the way in which children perceive the researcher and the process and contribute to the maintenance of power differences (Begley, 2000; David, Edwards, & Alldred, 2000). School-based research, for example, can be seen by children as having the structure of education, with researchers taking the role of teachers and children perceiving that they must find ‘correct’ responses to researchers’ questions (Eder & Fingerson, 2002; Edwards & Alldred, 1999).

Some authors have suggested that the research setting must adapt to children and not the other way around (Thomas & O’Kane, 2000) and that ‘child spaces’ can feel more comfortable for children than adult-oriented offices (Punch, 2002). Being able to connect with children in places where they feel safe can enhance the quality of the interaction between children and researcher (Thomas & O’Kane, 2000).

Some researchers have worked with children in their own homes (Maundeni, 2002; Mayall, 2000). For Mayall (2002), conducting research within children’s homes reflected the aims of her research, while Maundeni (2000) observed that the setting may have improved the quality of the data she obtained. Maundeni pointed out that the informality of the home can encourage more trust and self-disclosure than might be possible in formal settings such as schools. She warned, however, that home-based research can blur the boundaries between researcher and participants who may see the researcher as a guest rather than a visitor with a specific purpose. The boundaries between what to tell the researcher and what to edit may also be confusing for children, who may reveal more about their lives than they would otherwise be willing to share (Cree, Kay, & Tisdall, 2002). The researcher’s responsibility is thus to consider what to ask and what not to ask, when to follow a line of inquiry and when to change the subject, and how to ask questions in a way that respects children’s own boundaries (Christensen & James, 2000; Cree, Kay, & Tisdall, 2002).

Most of the interviews for the current research were conducted in children’s homes. Three interviews were, however, conducted in the offices of Murray House at the University of
South Australia. Children were interviewed outside school hours, either after school or during the weekend. Pets were often present and the children talked about them with me. They also discussed their spaces within the home, often inviting me to see their rooms. Computer games were also discussed, with two children showing me the latest games acquired. In most cases the atmosphere was relaxed and comfortable, with the children interacting with me as they might with adult family friends. The three interviews that occurred at the University of South Australia were also conducted in a relaxed atmosphere, but the constraints and distractions of the office environment may have affected the quality of the interview more than those conducted in the home environments. Cautions about the guest status of researchers in private homes (Maundeni, 2002) were considered in relation to the boundaries between researcher and children. I was careful to respect boundaries and continued to monitor the questions and responses in order to maintain this respect. The danger in doing this is that I may have been over cautious in deciding to change the subject or not to ask specific questions. The quality of information gained may have been affected by these decisions.

3.3.7 Issues in Interviewing Children

The appropriateness of using formal interviews with children has been an issue in some of the literature. It has been argued that structured interviews can place undue pressure on young children who need options in how the discussion will occur (David, Edwards, & Alldred, 2000). Others argue that interviews need to be pitched at children’s ways of interacting, such as drawings, games and other activities (Thomas & O'Kane, 2000). Respondents’ accounts in interview situations are influenced by the questions asked, the language used and the topics discussed (Maundeni, 2002) and adult power bases can be strengthened by children’s perceptions of the researcher, the interview setting and the questions asked (Maundeni, 2002; Thomas & O’Kane, 2000). On the other hand, Christensen and James (2000) and Eder & Fingerson (2002) argue that when ‘appropriate’ methods are used, interviews with very young children can be effective.

There are a number of different interviewing approaches, ranging from highly-structured, formal approaches through to very informal and unstructured procedures (Minichiello, Aroni, Timewell, & Alexander, 1995). While each approach has its positives and negatives, the choice of one over others is related to both the researcher’s theoretical and
philosophical perspectives and the purpose of the particular research project (Eder & Fingerson, 2002; Minichiello, Aroni, Timewell, & Alexander, 1995).

‘Traditional’ formally structured interviews are concerned with building scientific explanations for specific behaviours, events or experiences (Burgess, 1984; Minichiello, Aroni, Timewell, & Alexander, 1995). The goal is reliability (in terms of the replicability of the research) and validity (or the level of ‘truth’) of the data. The interviewer uses a structured set of questions from which the interview does not deviate, either in the wording or sequence of the questions (Burgess, 1984), and maintains power over the informant and the process (Frankenberg, 1993). It is assumed that researcher objectivity is both achievable and desirable (Minichiello, Aroni, Timewell, & Alexander, 1995), so the researcher will not volunteer any personal views or respond to respondents’ questions. The interaction is one-way (interviewer to respondent) rather than a reciprocal exchange of views.

In contrast, ‘in-depth’ interviews are less formal and more interactive (Eder & Fingerson, 2002). They involve mutual self-disclosure and trust building (Johnson, 2002) and resemble a conversation rather than a formal interview. The researcher responds to the research participants’ questions and where appropriate gives opinions during the interview. While it has been suggested that this approach can build rapport and trust in the interviewer (Burgess, 1984), it is important to take care in the extent to which interviewers will express their own opinions, especially in interviews with children because of the power differentials which exist between them. The way in which questions and comments are framed can affect the responses given by the research participants (Burgess, 1984; Eder & Fingerson, 2002).

Interviews might be used with children for a number of reasons. They can tap into issues that children have discussed with their peers but not necessarily with adults (Eder & Fingerson, 2002). They can gain rich and detailed information about the issues of interest, identify different discourses and highlight power/knowledge relations as well as sites of resistance to the dominant discourses that operate (Eder & Fingerson, 2002; Johnson, 2002). In-depth interviews can elicit multiple subjective meanings and interpretations in relation to children’s experiences (Rice & Ezzy, 1999) and describe the contextual boundaries within which these meanings and interpretations occur (rules that govern what is said and not said) (Eder & Fingerson, 2002).
Eder and Fingerson (2002) and Thomas and O’Kane (2000) argue for group, rather than individual, interviews when working with children. Thomas and O’Kane (2000) argue that children learn through social interaction and that this can enhance the quality of the information gained. Eder (2002) adds that the power differentials between adult researcher and child participant are reduced when children are together in groups. Participants in group interviews are not independent, however, and the thoughts of the group as a whole can take precedence over the thoughts of the individual members of the group (Minichiello, Aroni, Timewell, & Alexander, 1995). Additionally, some group members can feel inhibited while other dominant members can control the discussion, so that not every meaning is explored.

While the power differential between adult and child has the potential to increase in individual interviews, there are some ways in which to minimise this. First, interviewers can adopt a collaborative approach to the interview (Cree, Kay, & Tisdall, 2002; Eder & Fingerson, 2002; Hartman, 1994; Roche, 1999). Second, children, rather than the adult researcher, can set the direction of the interview. The interviewer can follow the child’s direction while maintaining the ability to return to the topics of the interview at convenient stages (Burgess, 1984; Cree, Kay, & Tisdall, 2002; Johnson, 2002; O’Kane, 2000; Punch, 2002). Third, interviewers can share information, answer children’s questions, and offer appropriate comments so that the interview becomes a two-way interaction rather than a structured information-gathering process (Burgess, 1984; Frankenberg, 1993; Johnson, 2002). Finally, researchers can adopt the position of ‘friend’, ‘confidant’ or ‘partner’ in the interview situation, rather than objective information-gatherer (Maundeni, 2002; Roche, 1999; Thomas & O’Kane, 2000).

For this research I conducted all but one of the interviews with individual children. On one occasion I interviewed three members of one family together. In-depth interviews afforded time with each individual child to explore themes and issues in detail without the possible influence of peers, siblings, parents or other adults. The choice of individual in-depth interviews contributed to a more collaborative approach between myself and the participants, as the children were invited to raise issues of specific concern to them and were asked about what forms any follow-up should take.

Parental separation is often a sensitive issue for children. In-depth interviews assisted the research participants to manage the sensitivity of the issues under discussion by providing
a one-on-one situation where they could feel less inhibited to talk and more willing to
discuss issues in depth. Additionally, the interview approach used in this research related
good to my personal style and experience, which has included interaction with children on
a daily basis in both my personal and professional life. I value children as people and
interact with them on this level. Individual in-depth interviewing extended the ways in
which I interact with children in my daily contact with them. This approach agrees with
that children can relate appropriately to research methods that are used with adults as long
as those methods are relevant to the cultural and social contexts of the participants. As
Thomas and O’Kane (2000) point out, while specific techniques might enhance the
research process, the interaction that occurs through being with children and providing a
space for them to talk is more positive than doing things with them.

A further important way of addressing power differences between adult researcher and
child participants is through a reflexive approach. By continually analysing my own
construction of my self and the children with whom I interacted I introduced a potential to
expose the partialities and pluralities in my own ways of viewing the world and children’s
relationship to me (Fine, 1994). In acknowledging the power differential between myself
and the children with whom I interacted, I hoped to question and reflect on it during the
interviews (Mason & Urquhart, 2001) and adjust my approach to the children as a result.
Reflexivity is required throughout the research process, both during data gathering and
during analysis and reporting of the results. These issues needed to be constantly revisited
during this research project in order for children’s voices to be clearly heard.

3.4 Chapter Summary

In this chapter I have discussed the theoretical bases for the research project. A
postmodern perspective was used together with a social constructionist approach to
build an argument that states that our sense of self is built through our interactions with
those around us and our exposure to the dominant discourses about the groups to which
we belong. Children’s self-views are thus built on discourses that position them as
different from adults, vulnerable and incompetent. Their self-view is supported by their
interactive experiences with adults and other children through which they form an
understanding of the social position they occupy.
Work with children is accompanied by a unique set of issues, among them questions about the way in which adults view children, power differences between children, adults and adult researchers, issues relating to children’s ‘informed’ consent to participate and how to report children’s comments in respectful and appropriate ways. This chapter discussed each of these issues, exploring the debates around effective engagement of children. To address these issues, researchers may take the position of ‘naïve enquirer’ and use an in-depth interview approach where they follow the direction given by the children with whom they work rather than adhering to a strict interview schedule.

Analysis and reporting of research data must be consistent with the theoretical approaches used in the research. Postmodern approaches to research benefit from the use of qualitative research methods for several reasons. These include the ability of qualitative methods to focus on the meanings given by the participants to events in their lives and their emphasis on centralising participants’ voices. This has been considered significant when working with children whose voices have often been silenced by research which objectifies and decontextualises their comments.

Finally, the importance of a reflexive approach to research was discussed. The ability of the researcher to reflect on the effects of his or her values and experiences on the research process is integral to an analysis of power structures within the research process.

All of these issues were considered in the design and implementation of the research project discussed in this thesis. The next chapter provides a detailed description of the research process itself.
Chapter 4: The Research Process

4.1 Research Proposal

The proposal for this research was informed by current Australian moves towards the concept of ‘child inclusive practice’ and framed in the light of the United Nations Convention on the Rights of the Child. Additionally, my experience during my tenure as Chief Executive Officer of a leading provider of family relationships services between 1996 and 2000 framed my approach. I proposed to ask children what they thought of their ability to be involved in decisions that would directly affect them following their parents’ separation. Originally I proposed to conduct a series of focus groups at schools in Melbourne, where I was then living and working. I would first approach schools to seek their support for the research. Following ethical approval from the Victorian Education Department, the schools would again be approached, parents contacted, and following their consent, potential child participants would be engaged. The research design proposed the involvement of a total of 120 children. The proposal was submitted in late 1999, and was approved by the reviewers in March 2000. One reviewer commented on the irony of a requirement to gain adult consent for children’s participation in a research project that was to focus on their ability to participate in their own right.

Following approval of the project as described in the original proposal I began further reading on the topic of children’s involvement in decisions that directly affect them. Full-time employment as CEO of a large and growing family services organisation in Melbourne often meant that the time spent on the research was significantly limited, however. In the second half of 2000, I decided to leave my position and apply for an Australian Postgraduate Award to complete the research. Were I successful in obtaining an award, I would move to Adelaide to work from the Magill campus of the University of South Australia. An Australian Postgraduate Award was granted to begin in 2001, but at the beginning of that year I was diagnosed with a possible cancer and was hospitalised in Melbourne. The research project was postponed along with the move to Adelaide until I had recovered, a process that took six months.

Following my eventual move to Adelaide, the research proposal was revised and reconsidered. Ethical approval was sought from the University’s Human Research Ethics
Committee in November 2001 for a plan that involved recruitment of possible child participants through three family services organisations in Adelaide: Centacare Family Services, Relationships Australia (South Australia) and the Family Court of Australia’s Adelaide Registry. Counsellors and mediators employed by these organisations, the majority of whom knew me through my previous work, would be asked to identify possible families from which children might be recruited. It was proposed that following contact with, and consent from, their parents, thirty children (fifteen males and fifteen females), ranging in age from 7 to 12 years, would be invited to participate. The age range was chosen following a review of previous Australian research that explored issues for children of separation and divorce. The majority of studies until now have involved young people between about 15 and 25 years who have reported retrospectively on their experiences as much younger children. I was interested in exploring children’s current lived experience and chose an age range that would reflect this experience.

I proposed to invite children to participate in in-depth interviews which aimed to explore the meanings and interpretations that children give to their experiences of the decisions made in relation to them (Rice & Ezzy, 1999). The proposal outlined a set of selection criteria for participating children, aimed at reducing the potential for significant emotional issues to arise and consisting of the following qualifications:

Research participants will:

- Have parents who have separated and have an agreement and/or a court order
- Their parents will have in the past expressed concern about the arrangements for the future of their children (usually regarding future residence and contact with their parents), and will have made decisions regarding these issues or have received a court order settling the issues
- There will have been no allegations of child abuse (either sexual or physical), and no suggestions made that the children are at risk of harm
- The parents of participating children will have worked with the services provided by the Family Court or community organisations at some stage in the past twelve months. They may or may not be current clients of a service, and the children may or may not have been seen by the service providers involved.
- The child participants’ parents may have received orders or reached agreement but because of the changing nature of post separation parenting
arrangements they may still be active clients of one of the participating organisations.

4.2 Ethical Approvals

4.2.1 University Ethics Approval

The Human Research Ethics Committee considered the proposal at their November 2001 meeting. Following this meeting the Chair of the Ethics Committee advised that the Committee had significant concerns about some aspects of the proposal. These included the ‘sensitive’ nature of the subject matter of the research, with the possibility that children may experience trauma in discussing their parents’ separation. The Committee expressed concern about whether I could interview children without the presence of a counsellor and whether both parents should be required to consent to the interview. It questioned whether other adults (such as children’s legal representatives) should be informed of children’s involvement in the research and raised issues about the confidentiality of information obtained. Accordingly, the Committee consulted with a family law solicitor who has written on the issue of children’s involvement in family law proceedings (Redman, 1997). Ms Redman replied to the Committee by letter on 11 April 2002.

In her response, Ms Redman noted that I was “a highly experienced counsellor and mediator with years of experience in interviewing children and families”. There would be no difficulty in my interviewing children without the presence of another counsellor. On the question of parental consent, Ms Redman advised that it would be appropriate for the ‘resident’ parent to consent rather than both parents. She recommended, however, that I check any Family Court orders for provisions that would prevent the children from being interviewed. I subsequently agreed to this recommendation. Additionally, I reminded the Ethics Committee that under this proposal the likelihood would be that when counsellors and mediators discussed the research with parents, both mother and father would be present.

Ms Redman also pointed out that any solicitor who was currently representing a child would need to be contacted to ensure that she or he either consented to the interview of the child client or was at least advised of the intention to interview the child. I agreed to contact any Child Representatives whose clients were referred to the project.
Finally, Ms Redman raised a concern in relation to the storage and retrieval of data. If a family was currently involved in litigation, records of any interviews conducted with the children of that family could be used in evidence at a subsequent hearing. The University’s requirement that records of interviews be held for seven years following the research could jeopardise children’s confidentiality in the event of court proceedings. My response to this concern advised the University’s Ethics Committee that identifying information (including names of children, living arrangements, school, street and suburb names) would be either altered or erased from the transcripts to ensure confidentiality of the children who participated.

My e-mailed response to the Human Research Ethics Committee on 12 April 2002 addressed all of the concerns raised above and outlined the procedures for obtaining the consent of parents, children and Child Representatives where appropriate. Copies of information sheets and consent forms were included in the response and are attached at Appendix A. The University’s Human Research Ethics Committee considered the information provided by both myself and the solicitor and approved the research on 17 April 2002.

4.2.2 Ethical Approval from Participating Organisations

Having received ethical approval from the University’s Human Research Ethics Committee to recruit participants through the Family Court of Australia, Centacare South Australia and Relationships Australia South Australia, ethical approval was then sought from each of those organisations.

Both Centacare and Relationships Australia are based in Adelaide and are independent of their national umbrella organisations. Their approval processes were internal, consisting of approval being given from the management groups following receipt of a detailed proposal. Managements of both these organisations knew me personally through my previous work with family services organisations at a national level. Their approval of the research proposal was partly based on this knowledge and partly contingent on the University’s approval.

Ethics approval from the Family Court of Australia required the lodging of an application with that organisation’s head office in Canberra. Again, members of the Family Court’s Ethics Committee knew me because of my previous work both within the Family Court
and subsequently as President of the national body known as Family Services Australia. I had also been appointed as a Court-approved reporter and had prepared a number of family reports for the Court in relation to matters that had gone to litigation. Additionally, the current significant national interest in ‘child inclusive practice’ within the family services sector positioned this research project as highly important in setting the direction for family law for the future (Mackay, 2001). Approval was received from the Family Court’s Ethics Committee within two weeks of application.

4.3 Recruitment

4.3.1 Family Court, Centacare and Relationships Australia

Once approval was obtained from each of these institutions, I conducted a series of meetings with the counsellors and mediators employed by them. The research was explained in detail and service providers’ roles were described. Counsellors and mediators were asked to first identify possible families using the selection criteria outlined above, to discuss the research with the identified parents and to invite them to contact the researcher. Counsellors and mediators were provided with printed information that outlined these activities, and were asked to provide potential participating parents with a letter and information sheet when explaining the research to them (see Appendix A for examples of the information sheets used).

The result of this approach was the receipt of no referrals from any of the participating organisations. When a suitable time frame had elapsed with no response, a further proposal was presented to the Human Research Ethics Committee of the University of South Australia. This second proposal requested that service providers be asked to seek consent from prospective parents for service providers to pass their contact details to me. I would then approach parents directly. The Ethics Committee approved this approach, and the Ethics Committees for the Family Court of Australia, Relationships Australia (SA) and Centacare South Australia subsequently gave their approval.

I returned to meet with service providers and invited them to collect contact details from potential participant families and pass them to me. At these meetings I reminded service providers of the selection criteria for families and answered any further queries about the research in general. I then maintained contact with the participating organisations, talking
with counsellors, mediators and managers on regular occasions. After six months, however, I had received no referrals from the organisations.

4.3.2 Alternative Recruitment Strategies
In November 2002, with no participants having been referred to the project in eight months, a further proposal was forwarded to the University of South Australia’s Human Research Ethics Committee. This proposal requested that the Ethics Committee consider a number of different initiatives for recruiting children. These initiatives consisted of:

1. The conduct of in-depth interviews, as outlined in the original ethics proposal, with families referred through two additional organisations: the Northern Metropolitan Community Health Centre and Anglicare in Murray Bridge;
2. The conduct of focus groups in primary and secondary schools within the Adelaide metropolitan area. It was proposed that children in Years 6 and 7 in selected schools would be invited to participate in these focus groups;
3. A general phone-in. This would involve an advertising campaign inviting children to telephone a specific number to talk with the researcher. Parental consent would not be sought for this initiative because children who called would be anonymous and would control the process by terminating the telephone call whenever they wished;
4. The use of a snowball technique, involving an initial contact of parents known to the researcher whose children would fit the criteria for the research and then relying on referrals from those parents to recruit further participants. This proposal included the suggestion that University staff and students be contacted through the internal e-mail system to invite them to consider involvement in the research.

On 19 November 2002 the Human Research Ethics Committee approved these approaches with the exception of both the contact of University personnel and the phone-in. The Committee advised that no approval had been sought to access the University’s contact data bases and that confidentiality of this information was protected. The phone-in issue was referred to the family law consultant and the researcher was instructed not to proceed with that initiative until the lawyer had advised on its appropriateness. Given the constraints on the time left to complete the research, however, the phone-in was not pursued. Nor was the approach to schools pursued beyond an initial exploration of its feasibility. In preparation for lodging an ethics application to the South Australian
Education Department, I contacted a colleague within that department who agreed to discuss the research with a number of principals and seek their support. After consulting with a group of principals, the colleague telephoned on 15 November 2002 to advise that they were not supportive of this research. The main reason given for this lack of support was that the research would “upset” children because they would be obliged to “talk about breakups”. The research would “reignite sensitive issues” that teachers and other personnel would not have the skill to manage. Following this advice the proposal to conduct focus groups in schools was abandoned.

The proposal to recruit families through two additional community-based organisations arose through the interest of counsellors working in the organisations. I met with staff at Adelaide’s Northern Metropolitan Community Health Centre, and subsequently with the clinical manager at Anglicare Murray Bridge, to discuss the research and provide them with printed information prepared previously. Staff members expressed support for the research and agreed to consider referring families to the project, but no referrals were received from either of these organisations. Telephone contact with personnel in both organisations indicated that counsellors could not identify any appropriate families for referral.

Children who finally participated in the research were recruited through a snowball technique, but not through University staff as first proposed. I initially approached an acquaintance whose child was known to be in the ‘target’ group of participants. She agreed to the involvement of her child and contacted two mothers from her network who also subsequently agreed that their children become involved. This led to further referrals from the networks of these mothers and resulted in a final group of sixteen children, aged between 7 and 17 years, who participated in in-depth interviews that lasted between 25 and 80 minutes duration.

### 4.3.3 Final Sample

Table 1 lists details of the children who participated in the research. Names of the children have been changed to ensure confidentiality and where quotes are used in this thesis the children’s ages are placed in parentheses immediately following the names. Of the sixteen children, seven were female and nine were male. They represented 11 different families, as siblings were interviewed on four occasions. The sibling groups
were Brenda and Callum, Fran, Gemma and Harry, Laurence and Matthew, and Nicholas (Nick) and Olivia. While the majority of children were interviewed separately and alone, Fran, Gemma and Harry were interviewed as a group. In retrospect, interviewing them separately might have given Harry more opportunity to develop his own responses to the interview, as he was overshadowed by his older sisters. Nevertheless, the group approach with them provided information about the ways in which this family structures the roles of individuals within it and how these young people construct the concepts of adulthood and childhood.

Table 1: Details of Child Participants

<table>
<thead>
<tr>
<th>Name*</th>
<th>Gender and Age</th>
<th>Resident parent</th>
<th>Contact with other parent</th>
<th>Time since Separation</th>
<th>Age at Separation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amy</td>
<td>F 9</td>
<td>Mother</td>
<td>Alternate weekends</td>
<td>8 years</td>
<td>1</td>
</tr>
<tr>
<td>Brenda</td>
<td>F 7</td>
<td>Mother</td>
<td>Weekly</td>
<td>4 years</td>
<td>3</td>
</tr>
<tr>
<td>Callum</td>
<td>M 10</td>
<td>Joint residence</td>
<td>Joint residence</td>
<td>1 year</td>
<td>9</td>
</tr>
<tr>
<td>Daniel</td>
<td>M 10</td>
<td>Joint residence</td>
<td>Alternate weekends</td>
<td>2 years</td>
<td>7</td>
</tr>
<tr>
<td>Ellen</td>
<td>F 9</td>
<td>Mother</td>
<td>Alternate weekends</td>
<td>8 years</td>
<td>9</td>
</tr>
<tr>
<td>Fran</td>
<td>F 17</td>
<td>Mother</td>
<td>Alternate weekends</td>
<td>8 years</td>
<td>7</td>
</tr>
<tr>
<td>Gemma</td>
<td>F 15</td>
<td>Mother</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Harry</td>
<td>M 13</td>
<td>Mother</td>
<td>Nil</td>
<td>2 years</td>
<td>5</td>
</tr>
<tr>
<td>Iain</td>
<td>M 7</td>
<td>Mother</td>
<td>Nil</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Jonathon</td>
<td>M 7</td>
<td>Mother</td>
<td>Nil</td>
<td>10 years</td>
<td>3</td>
</tr>
<tr>
<td>Kane</td>
<td>M 13</td>
<td>Mother</td>
<td>Holidays</td>
<td>6 years</td>
<td>10</td>
</tr>
<tr>
<td>Laurence</td>
<td>M 16</td>
<td>Mother</td>
<td>Holidays</td>
<td>6 years</td>
<td>6</td>
</tr>
<tr>
<td>Matthew</td>
<td>M 11</td>
<td>Mother</td>
<td>Holidays</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>Nick</td>
<td>M 13</td>
<td>Mother</td>
<td>Holidays</td>
<td>6 years</td>
<td>6</td>
</tr>
<tr>
<td>Olivia</td>
<td>F 9</td>
<td>Mother</td>
<td>Holidays</td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Petra</td>
<td>F 13</td>
<td>Aunt/Uncle</td>
<td>Holidays</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>
The original proposal for this research set age limits on the group of prospective participants at between 7 and 14 years, but the difficulties experienced in recruiting children resulted in a broadening of these limits. The ages of the final group of participants varied from 7 through to 17 at the time of interview, with the mean age being just under 12 years (See Table 2).

<table>
<thead>
<tr>
<th>Age</th>
<th>Girls</th>
<th>Boys</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>7-10</td>
<td>4</td>
<td>4</td>
<td>8</td>
</tr>
<tr>
<td>11-14</td>
<td>1</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>15-17</td>
<td>2</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Totals</td>
<td>7</td>
<td>9</td>
<td>16</td>
</tr>
</tbody>
</table>

Three young people above the age of 14 participated. They were members of families whose mothers supported the involvement of the younger siblings. The older siblings were invited to consider talking with the researcher as well, and three of them accepted the invitation. Two of these people (Fran and Gemma) were members of the family who were interviewed as a group, while the other one (Laurence) expressed interest in the research when his brother (Matthew) agreed to participate.

With the exception of one child (Ellen, who lived in Perth), all the children resided in Adelaide and its suburbs. The majority of the children resided with the mothers at the time of the interviews. One boy (Daniel) was moving between the homes of his mother and his father on a weekly rotation. Because of his father’s job, however, this rotation sometimes became interrupted when the father was obliged to work on weekends or away from Adelaide.

Recruitment difficulties also resulted in a relaxation of the selection criterion of separated parents. One of the girls (Petra) was residing with her aunt and uncle in Adelaide while her parents were residing interstate. She had chosen to move to her aunt and uncle’s home because of her perception that her parents liked to travel around, while Petra expressed a desire for some continuity in her life. In effect, Petra had separated from her parents rather
than the parents themselves having separated from each other. Two other children fell outside the category of parental separation, both having not known their fathers at all. Iain had spent the first 5 years of his life with his mother and her female partner before they separated. He advised that he had not known his birth father who had “just used his, you know, sperm to help Mum”. Jonathon also had not known his birth father, saying, “I didn’t have a dad, but I did have a father. Soon I’ll have a stepdad”. His “stepdad” is his mother’s new partner, whom she recently married. His reference to a “father” was to his birth father whom he could not remember having ever seen.

The time since the parents separated varied from between 1 and 10 years, with the mean time being just over five years. Some of the children (Amy, Brenda, Kane and Olivia) were very young when the separation occurred, while others (Daniel, Ellen and Laurence) were much older. This meant that while some children could remember how decisions were made about them following the separation, others had no recollection at all of these events. Nevertheless, all the children drew on their experiences to discuss the issues raised during the interviews.

Contact with fathers varied significantly depending on where the fathers resided. Brenda, Callum and Ellen resided in the next suburb from their fathers, making contact relatively easy to arrange. While Brenda and Callum saw their father every weekend, Ellen described a flexible arrangement where she could visit her father both on weekends and during the week if she so wished. A number of other children had fathers who resided in country South Australia, but within an easy drive from Adelaide. All of these children stated that they visited their fathers on alternate weekends and stayed overnight when they visited.

Daniel’s parents lived on opposite sides of Adelaide city, the mother living in a suburb towards the hills (east of the city) and the father living with his new partner in a western beachside suburb. Although the distance between the homes was greater than for Brenda, Callum or Ellen, Daniel resided for one week with his mother and the following week with his father, and alternated between them. He had maintained this arrangement since the separation, one year previously.

The remaining group of child participants had fathers who had moved away from South Australia and were living interstate. For all but one of these children, visits with the
Chapter 4: The Research Process

fathers were confined to holiday periods, when either the children would travel interstate to see their fathers or the fathers would return to Adelaide for a short time. Kane was the exception to this. While he maintained regular telephone contact with his father, he had not seen him since the separation ten years ago.

Iain and Jonathon, both of whom did not know their fathers, had had no contact with them in their memory. Iain had had regular contact with his mother’s former lesbian partner for some time following the separation, but he reported that this contact had ceased because she had found it too emotionally difficult. He said, “…she sent my mum an e-mail saying that she can’t have me in my life, you know, in her life”. The mothers of both Iain and Jonathon had entered into new relationships (both with men) and were re-defining the families to accommodate them and their children.

Finally, Petra, who had moved to live with her aunt and uncle, travelled interstate to visit her parents during school holiday periods. Petra reported that her mother and brother were returning to live in Adelaide soon after the date of the interview. She believed that her parents would separate at that stage because her father “has good work and stuff like that” in the state where they currently live. Petra said that when her mother and brother return to Adelaide she will stay living with her aunt and uncle because she does not think her mother will settle in one place. “… [I]t’s the same decision, like my mum will come here, she’ll probably move round here and there and everywhere. So it’s just the same”, she said.

4.3.4 Advantages and Disadvantages of the Recruitment Strategy and the Final Sample

The major reasons for choosing to use a snowball technique to recruit children were, first, that other methods of recruitment had yielded no child participants for the project, and second, that the time available to complete the research was quickly reducing. Having waited for referrals from service providers for almost a year, and having investigated other avenues for recruitment with little success, this technique was considered the most appropriate way of accessing children who might be interested in participating. The result was a much smaller group of participants than was originally planned (16 children instead of the planned group of 30), all of whom had significant experience in making decisions throughout their lives. Both the recruitment technique and the resulting group of participants therefore present a number of advantages and disadvantages.
Rice and Ezzy (1999) argue that snowball techniques are particularly useful when strong networks exist or when researchers wish to access hidden populations. Because of the difficulties encountered in recruiting children for this research through other sources, such as service provider organisations and schools, children became ‘hidden’ from the researcher, making the snowball technique more effective in this project. Additionally, strong support networks of separated parents exist in the Australian community, both formally (e.g., Parents Without Partners) and informally. Tapping into these networks permitted the researcher to access ‘hidden’ children in a more direct manner.

The use of snowballing was also advantageous from the point of view of accessing children whose experiences had included some form of family disruption. While it was originally expected that all participants would have experienced the separation of their parents, this was not the case for all participants in the final group. In the cases where the participants had not experienced this they nevertheless were able to discuss issues surrounding decision-making during times when they felt under stress. For Iain, this occurred when his mother’s former partner (his ‘other’ parent) left the family, while for Jonathon it surrounded his mother’s re-partnering with a man who brought other children into the relationship. Petra decided at age 12 to leave the care of her parents to reside with her aunt and uncle due to her feelings of a lack of stability in her life. Each of these experiences brought with it a set of decisions that impacted on the children, and that they could discuss during the interviews.

The snowball technique also ensured that the children who participated in the research would not be singled out from their peers or friendship groups in places like schools, where their recruitment would have meant making the selection criteria explicit. Announcing to school populations that this research involves children whose parents have separated may have stigmatised them, separating and marginalising them from their peers while constructing parental separation as a problem. The technique also ensured that other selection criteria (such as the absence of violence or abuse in the participating families) were minimised and not addressed publicly. Before speaking with the children, the researcher met with the mothers/caregivers to discuss the research in more detail with them and to check that there would be no consequences from the other parent due to their involvement. The children’s participation, and their family situation, were confidential and not made public to their peers, teachers or other adults such as Family Court personnel.
Rice and Ezzy (1999) argue that a research project that uses a snowballing technique can be strengthened when the social networks from which the participants are drawn are themselves made explicit in the study’s methodology and analysis. They warn, however, that the resulting sample may be highly homogeneous because of the technique of snowballing. In this study, these factors were both a strength and a weakness. Those children who joined the study through the technique had some common characteristics that led to their agreement to participate. All the mothers or caregivers supported the rights of children to have an opinion and to be heard on issues that directly affect them. They expressed strong interest in their children being given an opportunity to voice their opinions. The children had all been involved in making significant decisions that affected their lives, often from an early age, and discussed the research issues from their own experiences. This contributed to the richness of the data collected. In most cases, the parents and other family members were not in high conflict with each other, and the children were experiencing cooperation and positive interactions from the majority of the significant people in their lives. Most of the children who participated in the research therefore felt supported by the adults around them. Their opinions were valued.

These factors resulted in a group of research participants that represents a small section of the children whose parents separate in Australia. No children from Indigenous or recent migrant families participated. The low conflict levels between parents meant that the children had had little experience in negotiating parental conflicts and anger. No children whose parents made every decision participated, resulting in very little information about how children feel when they are not involved in any decisions. This issue was highlighted when one mother, who had arranged to meet the researcher to discuss the project, telephoned to cancel the appointment because of her decision to move with the children interstate, “away from their father”. She explained that the children were not being consulted about this decision, which was entirely hers, and that she thought that their involvement in the research “might upset them”. The children subsequently were never directly invited to participate.

This research was therefore restricted to those children whose rights to be heard were already supported by the parents involved. Additionally, the non-inclusion of children from Indigenous and other cultural backgrounds restricted the research to a very narrow section of the Australian population. This was not deliberate; no families from targeted groups volunteered to be included in the study and I could not recruit any despite talking
with people from within these groups. This situation was disappointing because the voices of those children who were marginalised through not being heard by parents, counsellors, mediators and teachers were not represented in this research. This was a major deficit in this study and will be explored in more detail in Chapter 8.

The theoretical base for this research is postmodern. Postmodern thought rejects a normalising philosophy of human existence. Representativeness and homogeneity are not concerns in postmodern research because there is no one way of being in the world. A focus on what each child says in the analysis eliminates any need for representativeness and avoids suggestions of homogeneity. This research reflects the understanding that experience and observation are not “visible evidence of that which took place” (Mason, 2002: 15), but that the ways in which we construct our experiences and observations make them ‘real’ for us. A focus on the ways in which the children in this research “employ accounts” of their “personal experience” (Mason, 2002: 14) assists in accessing “a form of reality that is discursively constituted” (Mason, 2002: 24) and in confirming the reality of the children’s lived experience. It is this experience that “produces the very sense of being an individual” (Mason, 2002: 25). The range of experiences reflected in the interviews of the children who participated in this research tap into the concept of the plural voices of the child participants as “constructors and agents of knowledge” (Fine, 1994: 75).

A possible deficit of this research is the small sample size, which may limit the breadth of understanding of the ways in which children perceive their ability to participate in decisions that directly affect them. Some authors argue that when a ‘saturation’ level of ideas, issues and information is reached in a research project (identified when no new issues arise) then the resulting report can show rigour and validity (Strauss & Corbin, 1990; Strauss, 1987). It is possible that in this research a ‘saturation’ of information was not reached. There may be other views that have not surfaced in this small sample, but that might have broadened our understandings of children’s experiences had a larger sample been recruited.

From a postmodern viewpoint, however, the small number of participants can be considered advantageous. An emphasis on saturation of data implies that there is a finite level of experience, and that representativeness, which seeks to normalise the experiences of the children being researched, can be reached. Attempts to exhaust accounts of
experiences and place them into a ‘normal’ range of being can serve to “Other” children (Fine, 1994: 77) and discount their statements in favour of an adult discursive construction of their experiences. It is arguable whether it would ever be possible to achieve an understanding of ‘the normal Australian child’ and ‘normal childhood experiences’ given the diversity of children within this country. An attempt to normalise children and childhood in such a way feeds back into the scientific discourses that have marginalised and essentialised children and childhood. This is not the aim of this research. Instead, the small sample size allows the unique experiences of each child to become more visible, highlighting children’s subjective constructions of their ability to be involved in decisions that directly affect them (Mason, 1994). Counter discourses to the adult constructions of children as vulnerable and incompetent, “evidence of struggle, resistance and counterhegemony” (Fine, 1994: 76), can be identified more easily due to the focus on individual accounts rather than global interpretations. The ways in which children’s knowledge is situated in the researcher’s questions and the research settings themselves can be reflected upon in depth. Finally, the ways in which children’s statements are produced in the context of the relations between each child and her or his family and peers can be considered more deeply due to the small number of research participants.

Rice and Ezzy (1999) assert that snowballing is the least desirable approach to recruiting research participants. For some research this is probably the case, but largely because of adult concerns about the socially constructed vulnerability of children, organisations such as the Family Court, Relationships Australia, Centacare and the Education Department did not refer to this project. Several arguments can be made to challenge the perceived level of vulnerability in children. Research on street children has indicated that children are more resilient than adults believe (D’Abreu, Mullis, & Cook, 1999; le Roux & Smith, 1998). In many cultures children as young as five years of age are working full-time (Lopez-Calva, 2001), and research indicates that children who have been exposed to significant abuse have developed mechanisms to protect themselves (Kitzinger, 1990). There is even a suggestion that some child soldiers make fully-informed choices to fight in wars, an arena where they could be considered to be at the ultimate level of vulnerability (Peters & Richards, 1998). I eventually bypassed ‘professional gatekeepers’ (such as counsellors and mediators) and directly approached parents and caregivers. Discussing the research face-to-face with them before talking to children facilitated
appropriate recruitment because it provided me with an opportunity to respond to parents’ concerns directly and work cooperatively with them to minimise potential harm to the children who participated. Rice and Ezzy (1999) state that snowballing is used to facilitate direct access to the population of interest in some research designs. The technique was used for precisely that reason in this project.

4.3.5 Informed Consent

As has been described, obtaining children’s ‘informed consent’ to participate in the research involved two stages. I first made appointments with parents and caregivers who expressed interest in the research to explain the project in detail. During this appointment, I provided parents and caregivers with printed information about the project (see Appendix A) and informed them about my previous experience in working with children. The research itself was discussed in the context of current initiatives within the Australian Government and funded family services organisations to develop ‘child-inclusive practices’ (Mackay, 2001). I explained my perception that these initiatives had not to date involved children in their design or implementation. Parents and caregivers were advised that this research project planned to ask children what they thought of their involvement in decisions that affected them at the time of family separation. I explained my expectation that the results would assist Australian decision-makers to consider how they might involve children more directly in future decisions about them.

During the meeting with the parent or caregiver, issues such as the potential for children to become stressed during interview, whether other adults (such as the non-resident parent or a legal representative for the child) needed to be informed and any other significant concerns were also discussed. I advised parents and caregivers that while they would receive general information about the children’s responses, specific comments made by the children in their care would not be communicated to them without the consent of the children. Parents and caregivers were invited to ask any questions or raise any issues of concern during this meeting and I provided detailed responses to anything raised at this time. When parents or caregivers expressed satisfaction with the information provided to them they were invited to sign a consent form for children’s participation (see Appendix A).
Following this discussion, and with the consent of the adults, an appointment was made with the children to inform them about the project. They received the same printed information as the parents and caregivers and were invited to ask any questions or raise any concerns about the project at that time. Children were advised that adults who work with separating families were beginning to think about how to involve children directly in decisions that were being made about them, but that to date children themselves had not been interviewed. I wanted to find out from children what they thought about how they might be involved in decisions that would affect them, who else should be involved, and the best ways of doing this. At this time the children were shown the interview schedule (see Appendix B) and invited to comment on its content. They were also asked if they had any issues that they wanted to discuss with me prior to becoming involved. After this discussion, and when I had checked that the children understood the procedures and aims of the research, the children were invited to sign the consent form following an explanation of its content (see Appendix A).

The approach taken to introducing the research was both educative and informative for adults and children (David, Edwards, & Alldred, 2000) because of the difficulties encountered in implementing the original recruitment strategy. I assumed that education of potential research participants would ensure their full involvement. Additionally, giving potential participants an opportunity to shape the research through consulting them on the questions to be asked can assist in building trust and a sense of ‘ownership’ in the process for all concerned and yield rich and detailed information about the topic under study (Delgado-Gaitan, 1993).

4.4 The Interviews

4.4.1 Interview Schedule
Rice and Ezzy (1999) argue that in-depth interviews evolve during the actual discussion with the participants. The meanings and interpretations that participants assign to events do not represent a standardised set of experiences, although themes might emerge around the ways in which individuals respond. An in-depth interview approach can assist in highlighting the pluralistic nature of participants’ experiences, attending to both the individual voice of each participant and the emergence of themes in the combined texts (Mason, 2002).
According to Rice and Ezzy (1999), in-depth interviews do not use standardised “fixed format” questionnaires (Rice & Ezzy, 1999: 58). Rather, they “aim to explore the complexity and in-process nature of meanings and interpretations” (Rice & Ezzy, 1999: 53). The use of a standardised interview format would result in the reduction of a richness of information and the stifling of an exploration of the plurality of experience that forms part of the socially constructed self. Rice and Ezzy (1999) therefore suggest the use of a theme list of topics that the researcher is interested in. “This ensures that all relevant issues are discussed and that the interviewer is free to concentrate on the ongoing interaction” (Rice & Ezzy, 1999: 59). The Human Research Ethics Committees of the University of South Australia, the Family Court and the community organisations with whom I intended to work required the addition of an interview schedule in order to grant ethical approval for the research. Consequently, a structured interview schedule (Appendix B) was prepared in preference to a theme list as suggested by Rice and Ezzy (1999).

I constructed the interview schedule by referring to the research questions and the literature review conducted prior to the submission of the proposal. The schedule was arranged under three headings - current situation, decisions, and children’s rights and best interests - and included a total of 26 questions. Part of the schedule contained questions of a more general nature relating to how different kinds of decisions are made, from decisions about what the child wears each day to decisions about when children do their homework, when they eat, when they can go out and to where. Other questions related to children’s perceptions of how decisions have been made in the past and what changes they would like to see in relation to their involvement in the future. Consistent with the postmodern focus of this research I included some questions from postmodernist approaches such as narrative therapy (Parry & Doan, 1994). One of these questions is called the ‘miracle question’ developed by Berg (De Jong & Berg, 2002) and de Shazer (1988). Berg described how she first used the question with a woman who “seemed burdened with the weight of the world” (De Jong and Berg, 2002: 84). When she asked the woman to describe what would be different in her life if a miracle occurred, Berg reported that the woman “began describing a different life” (De Jong and Berg, 2002: 85). Berg and her team thought about the woman’s descriptions of this different life and realised that the use of the miracle question had moved the woman’s focus away from negative descriptions of her life and towards more satisfying outcomes. De Jong and Berg
(2002: 85) argue that the miracle question is useful in helping people to think about “an unlimited range of possibilities” for building a future in which current problems do not exist. In considering this future people are able to identify what changes they would like to see and set goals for achieving these changes. The emphasis is on change for the person her or himself rather than on ways in which others might change.

There are several versions of the miracle question (Parry and Doan, 1994) and I used two of these, altering the question to suit the particular child to whom I was speaking. With four of the sixteen children I chose to use the concept of a magic wand to achieve what they would most want for the future. In describing this version of the question, De Jong and Berg (2002: 96) argue, “For most young children, the word miracle is too abstract and may not stir their imagination” (italics in the original). In contrast, young children are “able to work with ideas like magic wand, gold dust, and magic” (De Jong and Berg, 2002: 96). While it could be argued that the focus on magic wands has the potential to infantilise children, when this version of the question was used the children responded with enthusiasm.

The second version of the miracle question asked: “If you could change anything about your life and how you see your parents, what would you change?” This more direct version of the question suited the older children in the sample. Use of these two versions of the miracle question provided me with information about what the children in this study might have changed had they the power to do so. In response all of the children said they would change very little of their current situation. Two of them (Amy and Ellen, both aged 9) did, however, say that if they had the power their parents would be living together and the separation would never have occurred.

While the interview schedule assisted in maintaining some consistency around the issues addressed in interview, I did not use it in a rigid and orderly fashion. Nor did I ask all the questions of every child. Rather, I followed the children’s agenda, responding to their topics and raising relevant questions as I thought appropriate. As the interviews progressed, I also added questions. For example, beginning with the fifth interview, I began to ask children when they thought they would become adults, and what ‘conditions’ would need to be present before they could be considered ‘adult’. These additional questions enhanced the information obtained and provided the child participants with an
opportunity to explore other topics about which they may not have thought deeply, but about which they had opinions.

### 4.4.2 Interview Settings

All except three interviews with the child participants were conducted in the children’s homes. Most of these occurred in the dining or lounge/family rooms of the homes while parents and other caregivers were not present. One child (Daniel) was interviewed in his bedroom at his mother’s home while his mother was working in the living area. The choice of children’s homes for this research was deliberate for a number of reasons. First, bringing the children to a formal interview setting such as an office may have reinforced the perceptions of power that can operate for children in unfamiliar adult environments (Punch, 2002). Second, seeing all the children at the University of South Australia, for example, would have placed a burden on parents and caregivers to transport them, deliver them on time and wait for them until after the interviews had been completed. These parents had already made time in their lives to hear about the research and had offered significant support for the project. Third, I was able to engage with the children on a deeper level than might have occurred in a formal setting. I met the children’s pets and became somewhat familiar with the spaces in which the children lived. They were eager to show me their belongings such as clothing, games, skateboards and bicycles. Having the opportunity to see these things and discuss them with the children enhanced my relationship with them and contributed to the quality of the information obtained during the interviews (Maundeni, 2002). Seeing the children in their homes also enhanced their comfort and feelings of safety during the interview process (Punch, 2002; Thomas & O’Kane, 2000). Children were more relaxed and the interviews proceeded in a more informal manner than might have been possible in a formal office-type setting.

Three children were interviewed in the offices of the Conflict Management Research Group, Murray House, at the University of South Australia. Murray House is the original farm homestead of the Murray family who owned the land upon which the University of South Australia’s Magill campus now stands. An historic building, the house now provides office space and a seminar room for a number of research concentrations within the university. The original room spaces have not been altered, and desks are placed to maintain the sense of space that the original residents would have experienced. The rooms have high ceilings, large areas, adequate natural light, and some of the original fittings.
Two of the three children who were interviewed in this setting appeared comfortable and relaxed, and talked freely for well over an hour each. The third child (a 7-year-old boy) appeared unsettled and unwilling to engage in ‘conventional’ discussion within this setting, however. When he responded to some of the questions, he wrote his answers rather than speaking. At other times, he did not respond directly to my comments, instead pointing at me and saying, “Blah, blah, blah”. While he was the only child out of sixteen interviewees who displayed this behaviour, his responses indicate the importance of remaining flexible in the research approach used. Not everyone will respond to a formal interview in ‘conventional’ ways, and other techniques (drawing, craft work, games) should be available to engage some children.

4.4.3 Interview approach
In interviewing the children I constructed them as similar to adults but with possibly fewer social experiences than those of their adult counterparts. I considered the children as active participants and contributors to knowledge about them rather than as passive recipients of research activities (Hartman, 1994; Kelley, Mayall, & Hood, 1997; Matthews, Limb, & Taylor, 1999; Punch, 2002; Thomas & O'Kane, 2000). Attempting to deconstruct essentialist notions about working with children, I agreed with Christensen and James (2000), Punch (2002) and Scott (2000) that research with children does not necessarily mean using different or specialised methods, but that methods should be relevant to the social and cultural contexts of the participants. An approach that assumes competence in children must be aware that their competence may be expressed in different forms depending upon context, exposure to social interactions and experience. Accordingly, I used language styles and idioms that children relate to and varied the question-answer format to fit with the response patterns of the child participants. My approach tried to access the “adult child” in participants (Thomas & O’Kane, 2000: 824).

It was originally proposed that the children would be asked to draw and engage in other activities during the interviews, but this did not occur with the majority of the participants. First, the final group of participants deviated from the original proposed group in terms of the constructions of their families and the spread of ages of the children involved. While drawing was appropriate for the younger children the older participants did not wish to draw at all. Secondly, all the children were verbally articulate. They expressed comfort in simply talking with me without engaging in other
activities. I invited children to draw and engage in other activities if they wanted to, and all except one seven-year-old declined. Thirdly, the settings in which most of the interviews took place (in the homes of the children) did not easily accommodate drawing and craft activities. Dining tables were often covered with cloths, lounge rooms had little space for paper and drawing implements to be spread, and bedrooms were sometimes cramped with the child’s belongings. Fourth, there was limited time to interview the children. When interviews occurred after school, parents and caregivers expected the children to fit established routines for dinner and homework around the interviews. At the University campus parents and caregivers waited for the children to complete the interview. On weekends children had other activities to attend to following the interviews. I felt the time constraints and considered that engaging the children in drawing and craft activities during the interviews may have prolonged the time spent with them, perhaps unnecessarily.

My experience agrees with the assertion of Thomas and O’Kane (2000) that the interaction with children, and the provision of a space for them to talk, is often more positive than arranging activities for them. Interviews proceeded at the children’s pace and I responded to their agenda rather than setting my own (Garbarino, Stott, & Erikson Institute, 1992). These initiatives attempted to maintain the children’s voices at the centre of the research process, ensuring their emergence in the foreground of the created texts (Alldred, 1998; Fine, 1994,).

Comments from some of the children in this research project indicated their levels of comfort with the approach used. Thirteen-year-old Petra advised her aunt that the interview had challenged her by requiring her to think of issues she had not considered before. At the completion of seven-year-old Brenda’s time with me her mother commented that the interview had taken “a while”. When I agreed, Brenda reported, “I liked it”. Iain was thanked for talking with me. He replied:

_Iain (7): OK, if you ever need to do something else on kids, I’ll be, I’ll be the first to know._
_Q: All right. That’s good. I, I really appreciate you spending the time to talk to me. So thank you very much. And um, I hope to catch up with you soon._
_Iain (7): Mm-hmm. And I’m pretty glad I did it as well ..._
4.4.4 Interview Structure

The time for interviews ranged from 25 to 80 minutes, with the average time for all interviews being around 54 minutes. The differences in times spent with children were related to the amount of discussion that occurred around the topics of interest. Some children did not respond to some avenues of inquiry because they said they had no experience with the issues (such as deciding when to see a parent they had never known) or because they expressed no knowledge of them (such as issues relating to children’s rights). Questions were asked in a number of ways and information was given to children in relation to the issues being discussed, but in some cases the limited knowledge meant that the discussion stalled early. Other children had some knowledge of the areas of discussion and built on that knowledge through further discussion during the interview. When children had limited knowledge the interviews were completed in a shorter time frame.

The longest interview time was spent with the family that was interviewed as a group. They shared information between them throughout the interview and the discussion built upon what each sibling said. This interview demonstrated some of the qualities of focus group discussions, in that it produced detailed data about the children’s perceptions and feelings (Stewart & Shamdasani, 1990) and facilitated the exploration of sensitive issues (Rice & Ezzy, 1999). Nevertheless, the two older girls appeared to overshadow their younger brother, who as a consequence was not able to express his thoughts very strongly or clearly. Consequently, although the interview may have assisted the girls to explore and clarify their own views (Daly, Kelleahear, & Gliksman, 1997) this may not have been the case for the boy.

All interviews were tape-recorded with the consent of both adults and children. Some children were interested in hearing themselves on the tape, and time was given for this to occur. One child (Jonathon, aged 7) became extremely interested in working with the tape to produce short ‘radio plays’ that he acted and then listened to. Much of his interview was taken up with these activities. For the group interview with Fran (aged 17) Gemma (aged 15) and Harry (aged 13) the tape was mistakenly not turned on to record, and it ran on ‘play’ for the entire interview. When the family and I realised this, a further appointment was made to re-do the interview. The family arranged for some time to be available for the second interview on the weekend, and the young people were happy to return to the discussion. Between the two interview occasions, the three young people
stated that they had thought about the issues and their responses on the second occasion reflected this.

At the beginning of each interview I checked that the children were comfortable and ready to talk. I then outlined the issues that I wished to discuss and showed the children the interview schedule. The children’s consent to be interviewed was obtained and, if not already completed, the consent forms (see Appendix A) were signed. The children were asked whether they were happy to have the interview taped, and they were informed that the tapes would be transcribed after the interview and subsequently destroyed.

I shared my hopes that the information gained from the research would help adults to decide how they were going to include children in decision-making processes in the future. Children were then asked how they wanted the interview to proceed: did they want to just talk, draw or do other activities? They were asked whether they wanted to be given questions that they could answer or whether they wanted to have a general discussion around the topics. Children were also given the opportunity to ask me any questions at this point.

When they were settled and responded positively to questions about their level of understanding about what was to happen, the tape recorder was turned on and the interview begun. At the beginning of the interview, I advised the children of what I knew about them. This was general information about their ages, where they lived and the time since their parents separated. I then asked them for information about their school and activities. Following the collection of this general information, the interview proceeded to issues around decisions and then on to issues of children’s rights.

Interviews did not follow a set pattern, but followed the directions set by the children. Accordingly, discussions flowed from topic to topic and included other issues such as care of pets, the children’s activities, holidays and relationships with grandparents, friends and other relatives. This meant that discussions were often dynamic and changeable, ranging over many topics in a relatively short time and involving an exchange of information between children and researcher. The resulting information obtained was thus extensive and rich and reflected the concept of plurality of selves and the blurred boundaries between researcher and researched (Fine, 1994).
During the course of successive interviews, opportunities presented for exploring other issues related to the topic. One of these issues, explored with about half of the children interviewed, was their perception of the transition between childhood and adulthood. Questions such as, “What do you think about when young people become adult?” led to an exploration of the qualities of adulthood as understood by the children in this project, and yielded useful information. Exploration of the issue was led by the children rather than by me.

4.5 Reflexivity

A number of issues, relating to my own responses to the children’s comments, presented themselves during the interview process. My experience as a Family Court counsellor and mediator, and my subsequent experience with FMC Relationship Services in Melbourne, led to my construction of children as capable and skilled at discussing their own needs and interests with adults. When the children in this research made comments that agreed with my construction of them, I was aware of sometimes smiling in response. This reaction could have led some of the children to make further similar comments in an attempt to seek my approval. My reactions could have influenced the children’s responses in specific ways.

My research background as a psychologist has tended to focus on quantitative methods to this point. I often think in terms of ‘normal populations’ and ‘representativeness’. During the interviews I was aware of sometimes trying to standardise the interviews to some degree by returning to the interview schedule and asking questions from it that destroyed the flow of the discussion. This occurred on three occasions when the children continued to respond to the new question from the train of thought that we had followed until then. This led to a return to the discussion that occurred before the new question was introduced, but it interrupted the flow and could have detracted from the quality of the information obtained from the children.

I was highly aware of my responsibility to ‘protect’ the children from any emotional trauma that might occur due to the nature of the topic under discussion. This awareness was influenced by the difficulties I had encountered in both obtaining ethics approval for the research and recruiting children through service provider networks, as well as by the
setting of these interviews. Because of my awareness of this responsibility I was hesitant to explore more deeply issues that arose during the discussions with the children.

Sometimes the children asked me questions relating to the topics under discussion. They were often interested in Court processes and how decisions were reached in the Family Court. When this happened I answered their questions and discussed the processes and issues with them in detail. I also shared some of my own experiences with the children at times during the interviews. Taking this action led to the children exploring the issues in more depth than they might have otherwise done. It also encouraged a climate of information-sharing that led to a positive rapport between me and the children.

I remained aware of these issues and made many strategic decisions to address them throughout the interviews with the children. Consequently, my self and the selves of the children were “knottily entangled” (Fine, 1994: 72), and my directions, reactions and responses influenced the texts of the children’s discussions with me. At the same time, by following the children’s agenda and being willing to learn from them I worked with the children rather than on them and assisted in “[e]roding the fixedness of categories” of adult-child and researcher-researched (Fine, 1994: 72).

4.6 Analysis

4.6.1 Transcription

All the interviews were transcribed verbatim. Each transcript was checked against the tape recorded interview twice for accuracy of transcription. After I had checked that each transcript accurately reflected the interview in its entirety, the tape was erased. In hindsight, it might have been useful to have kept the tapes until the entire analysis had been completed. In erasing them I lost some of the nuances and inflections in the children’s speech and was not able to recall the way in which some comments were made.

Names of the children were changed on the transcripts to preserve confidentiality and any identifying information (such as school names, names of suburbs and streets) was removed. Transcripts were then filed in a hard copy file for reference as the analysis proceeded.
4.6.2 Reading the Texts

Voice Relational Method

Before beginning any analysis, I read the texts of the interviews over four occasions. During these readings, I employed a ‘voice-centred relational method’ (Mauthner & Doucet, 1998) to engage with the data. This method focuses on different aspects of the text with each reading. During the first reading, I attended to the overall plot and the respondent’s responses to the issues under discussion. Over successive readings, I considered my own reactions to the text in a reflexive focus, and then attended to the respondent’s self-statements: “how she speaks of herself before we speak of her” (Mauthner & Doucet, 1998: 128). On the next reading, I focused on the respondents’ accounts of the relationships with others, including parents, other adults, and the broader social networks surrounding them. Finally, I listened for the underlying social, political and cultural bases of the children’s texts.

Mauthner and Doucet (1998) argue that these readings “emphasize the multi-layered nature of narratives and trace voices across and within a particular transcript” (Mauthner & Doucet, 1998: 134). Their approach was useful for this research project because the successive readings emphasised the social constructionist aspects of the children’s discussions while directly addressing the research questions. It provided a strong base upon which to build the analysis.

Arising from the several readings of the transcripts were a number of “overlapping themes and sub-themes” (Mauthner & Doucet, 1998: 135). These formed the next stage of the analytical process.

Computer Assisted Analysis

Themes and sub-themes were further developed using the computer package known as N6, a product developed by QSR International (Richards & Richards, 1994). This program codes text in a way that both conserves and retrieves data for use in deeper analysis. The program has the ability to assign text to a number of thematic categories and to cross-reference these categories in order to compare them with each other. N6 builds data ‘trees’ containing related categories and ‘nodes’ which branch from the ‘trees’ and store other related information. Richards and Richards (1994) argue that nodes can convey ‘facts’ about the text, represent relationships within the data, and present categories which can enable thinking about the data.
For this research, ‘trees’ were devised from the research questions and the literature on the discourses embedded in discussions of the history of childhood, children’s rights and decision-making approaches. A list of the trees and their nodes is represented in Table 3, slightly rearranged from the way they were listed in the N6 program. Five major trees represented the main themes to emerge from the literature review and the research questions. ‘Nodes’ were then built from these ‘trees’, both from the literature and from the text as it was being coded. This procedure provided the opportunity to consider new themes as they emerged from the data.

Memos attached to some of the nodes explained their meanings for later review. While these memos did not attach to every node, some explanations were required as data was added to the nodes. For example, ‘node 1.5. Father’ includes ‘information about step fathers’ while ‘1.6. Environments’ describes ‘children’s discussions about the environmental contexts in which they live and visit’. Other explanations included ‘1.10. Current Events’, which describes children’s comments about world events that concerned them during the time in which the interviews were conducted, including the Allied invasion of Iraq and the bombing of a nightclub in Bali. Under the ‘Decisions’ tree, node ‘5.2. Consultation’ described ‘children and parents jointly decide in consultation together; or where adults discuss issues with friends, extended family or counsellors’, while ‘5.6. Contextual’ related to ‘when the context in which the decision is made is situational, such as the child having some activity that precludes another usual activity such as contact; or when a child makes a decision that is supported by an adult, such as not going on contact visits’. ‘5.6.1. Situational’ referred to ‘activities such as parties on weekends and limited decision-making ability such as what to wear to school’. Finally, the node, ‘5.6.2. Conditional’ described ‘when a child makes a decision but it’s conditional on doing activities with an adult or on adult-sanctioned consequences’.

In addition to the five major trees and their accompanying nodes, N6 supported a number of ‘base codes’ where biographical data was stored for each child. This data included the child’s age, gender, age at parental separation, time since separation, where the child lived and details of contact with the ‘non-resident’ parent. Biographical data was not used in the process of analysis.
Table 3: N6 Trees and Nodes

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<th>Trees</th>
<th>First Level Nodes</th>
<th>Second Level Nodes</th>
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<td>1.2. Adulthood</td>
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<td>1.3. Self</td>
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<td>1.4. Mother</td>
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<td>1.5. Father</td>
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<td>1.6. Environments</td>
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<td>1.7. Relationships</td>
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<td>1.8. Pets</td>
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<td>1.10. Current Events</td>
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<td>4.4. Rules</td>
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<td>5. Decisions</td>
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<td>5.3.1 Judicial</td>
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<td>5.3.2 Investigative</td>
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<td>5.4 Child only</td>
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<td>5.6 Contextual</td>
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<td>5.6.3 Adult support unconditional</td>
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Analysis of Coded Data

Once all the data had been coded, the major analysis was undertaken using discourse analysis. This approach identified specific discourses about children, defining them as groups of regular and systematic statements appearing in the interview transcripts. Rules governing what can be both said and not said, and the relationships between these rules and the visible world, were then identified. Rules included those focusing on shifts in thinking about children and the relations between the binaries of adult/child, parent/child, child/adolescent and female/male. The analysis then focused on the knowledge-power relations embedded in the emerging discourses that support and maintain the position of children as different from adults (Kendall & Wickham, 1999).

Alongside these general foci, the analysis considered passages in the interviews that specifically defined dichotomies between adults and children, as well as those that departed from these dichotomies. Contradictions in the children’s constructions of their selves in relation to specific discourses of competence, vulnerability and transition to ‘adulthood’ were highlighted, and the discourses surrounding children’s ‘rights’ and ability to participate in decision-making processes were identified (Mason, 2002). Ways in which children socially construct their selves in relation to adults, peers and age groups were also explored. Throughout the analysis, an emphasis on differences, particularities, contradictions and paradoxes was maintained (Hartman, 1994).

This stage of the analysis was undertaken without using N6 for a number of reasons. First, although the use of N6 resulted in a familiarisation with the data, I still felt that there were gaps in my understandings of the children’s comments. Secondly, I wanted to become closer to the data in terms of my knowledge of the already-identified themes. Third, I expected that taking time to revise the data through close analysis would re-acquaint myself with the children’s comments and the contexts in which they were made. This approach resulted in an ‘intimate’ knowledge of each child’s text and a deeper analysis of the discourses underlying it.

4.6.3 Reflexive Approach in Analysis

During the process of analysis I was aware of the importance of taking a reflexive stance. Both interviews and analysis are grounded in particular ways of seeing the world. The researcher’s discursive background influences the way that analysis is undertaken, and
ultimately how the ‘results’ of the research are reported (Alldred, 1998). Moreover, the discourse that emerges from a research process is jointly structured by the researcher and the researched, with meanings reflecting the contexts in which the research is conducted (Alldred, 1998). In this research, while children were ‘given a voice’ in interview, they had little choice about the topic of discussion, the way in which the interviews progressed and the final outcome, raising questions about the accuracy of the representation of what they said (Alldred, 1998; Matthews, Limb, & Taylor, 1999). I was aware that while analysing the data for this research I often began to interpret the interviews from my psychological perspectives. On occasion I looked for reasons why a child might make a particular statement, or for underlying themes that might ‘explain’ a particular experience or event. When I did this I departed from the texts of the interviews and began to interpret children’s statements from my adult, ‘professional’, white male perspectives rather than listening to the children’s statements free from interpretation. I constantly questioned my responses to the data and reminded myself about the importance of “re-presenting the accounts of the particular children who participated” in the research (Alldred, 1998: 162).

The dilemma that this presents lies in the researcher’s responsibility to make explicit the discourses and binaries that marginalise children and construct them as unable to fully participate in ‘adult’ society (Alldred, 1998; Fine, 1994; Mason, 2002). During the analysis I therefore avoided moving to a deep, hegemonic interpretation of the underlying ‘motives’ behind children’s statements. Instead, I tried to both report children’s statements as they were made in the interviews and describe how those statements reflect the discourses about children and their abilities to be involved in decision-making processes.

4.7 Chapter Summary

The process undertaken towards recruiting children for this research presented me with difficulties. Adult gatekeepers’ perceptions of children as vulnerable and the research topic as ‘sensitive’ meant that I did not recruit children for a significant period of time following ethical approvals. Children were finally recruited through direct contact with parents and caregivers and the use of a snowball technique. Snowballing was effective in this research project because it bypassed many of the gatekeepers and tapped into networks of families who fit the criteria for inclusion in the research and may have otherwise been hidden from my access.
The sixteen children who participated in the research had already experienced parental support for their rights to be heard. All the children were from similar cultural backgrounds, which excluded indigenous children and those from non-Anglo Celtic cultures. Thus the research was restricted to a very narrow section of the Australian population. It was pointed out, however, that in postmodern research representativeness is not an issue because there is no one way of being in the world and an individual’s experiences are multifaceted. This research focused on each child’s experiences and tapped into the plural voices of the child participants.

An interview schedule assisted me to address all the issues covered by the research questions. However, interviews did not follow a rigid sequence of questions nor were they fully directed by me. I followed the children’s agenda and responded to their topics as they arose. I also added questions that arose from the children’s comments. This approach enhanced the information obtained and provided the child participants with opportunities to explore other topics about which they were interested.

Analysis of the interviews was aided by N6 with additional manual analysis that enabled me to closely analyse the data and identify the discourses underlying the children’s interview texts. Analysis focused on the rules for governing what is said and not said and the relations between binaries such as ‘adult-child’. Knowledge-power relations that maintain the position of children as different from adults were also analysed. Ways in which children socially construct themselves in relation to others were explored and the analysis emphasised differences, particularities, contradictions and paradoxes in children’s comments. Finally, the analysis explored statements that reflected sites of resistance to the dominant discourses about children and their ability to participate in decisions that directly affect them.

In the next three chapters I will discuss the research findings alongside the literature that focuses on the three research questions. Chapter 5 will begin this discussion with an exploration the ways in which children, childhood and adults are socially constructed.
Chapter 5: The Social Construction of Children and Adults

This chapter explores the findings of the research in relation to children’s perceptions of themselves and adults. It reviews the literature relating to the definitions of ‘child’ and ‘adult’ and compares that literature with the comments of the children who participated in this research. The chapter takes a social constructionist approach, arguing that children build a sense of ‘self’ from interactions with others. I will explore the ways in which children’s comments about themselves reflect their learned positions and the associated rules and behaviours that are expected of them. I will also discuss the relationship between current issues and historical notions of childhood using Foucault’s archaeological and genealogical approaches discussed in Chapter 2.

5.1 How is Childhood Defined?
Many definitions of childhood are vague, open to interpretation, and culturally specific. For example, the Collins Gem English Dictionary (1992a: 87) defines a ‘child’ as a “young human being; son or daughter”. This is a limited view as no other qualifications for the state of ‘childhood’ are provided and a ‘son’ or ‘daughter’ remains so until her or his parents die, and even beyond that event. In other definitions, taken from fields of psychology, law and social work, ‘the child’ is described with reference to specific criteria. Children are described as a social group on the basis of age, physical, medical and psychological differences or the level of responsibility held by an individual.

5.1.1 Age
The recognition of childhood as a distinct age-related status group has emerged only in recent history, broadly identified with the birth of modernity (Jamrozik & Sweeney, 1996: 13).

Qualifications relating to age are now frequently used to define a ‘child’, but definitions can change depending upon the reasons for their use, the “particular time and place” in which they are used (Jamrozik & Sweeney, 1996: 13) and the institutions from which specific definitions arise. For example, psychological definitions of childhood, focusing on issues of human development, sometimes break down childhood stages into small age-related divisions (Lefrancois, 1993). These divisions describe stages of ‘infancy’ (0 to 2
years), ‘early’ (2 to 6/7 years) and ‘middle’ childhood (6/7 to 11/12 years), adolescence (11/12 to 19/20 years) and early adulthood (20 to 40/45 years). They are arranged according to assumed differences in physical growth and cognitive and social abilities between people of the designated ages (Lefrancois, 1993) and are presumed to describe ‘scientific’ qualities of each age-related division.

In contrast, legal definitions of ‘childhood’ are less sensitive than those from the psychological field. The United Nations Convention on the Rights of the Child defines a ‘child’ as anyone under the age of 18 years (Australian Human Rights and Equal Opportunity Commission, 2001b). No further explanations are given for this definition; the specificity of age suggests that immediately one attains the age of eighteen years a transformation occurs, something like the emergence of a butterfly from a chrysalis.

Nevertheless, the influence of legal institutions in defining the concept of ‘childhood’ has been powerful. Some of the children who participated in this study relied on legal definitions to explain their perceptions of ‘the child’. In discussing issues about when they thought children might drink alcohol, drive a car or enter a ‘love’ relationship, they referred to the law. For example, Callum discussed age in relation to drinking and driving:

Q: Um, sometimes people say, yeah, but you know, kids can be able to do things at all sorts of different ages, like driving a car at 16 (Mm). Um, they should be able to drink at 16.
Callum (10): No.
Q: No?

Fran, Gemma and Harry expressed a perception that in some states of America the driving age was still set at 21. They expressed concern about the appropriateness of this law, while Harry, who is 13, related it to other issues:

Gemma (15): Yeah. It's like you need it at ages like this cos you've gotta work and you can't rely on your parents to get you everywhere. So I think it's better, I mean, till you're 21...
Fran (17): That's just a bit ridiculous.
Harry (13): Well, we, we've got drinking and smoking should be about 18, but driving ...

Fran also expressed opinions about the age at which young people might begin to develop relationships with the opposite sex:
Fran (17): If it's just having, um, just having boyfriend/girlfriend I sort of think 15 and over but under that I think it's a bit stupid. Having sex is a completely different thing altogether. Because legally they've got seventeen as the age when they say that you know, basically there are different ages in Australia as well, and as far as that goes I think that's fair, because other than that it's just, it's a very, it's basically like, supposed to be a big thing, sort of thing, and up here (tapping her head) as well. And you're having like 12-year-olds going out and having sex, I mean that's just ri... (interrupted by comment from Gemma)

In contrast to Fran’s views, Nick argued that having a girlfriend or boyfriend might occur outside legal age requirements. Even so, Nick’s reference to an “18 law” indicates his understanding about the ‘legal’ differences between ‘childhood’ and ‘adulthood:’

Nick (13): I don't, I don't think that's got much to do with the 18 law. I know people who are twelve who do that kind of stuff.

Six of the sixteen child participants in this research referred to the age of 18 in discussing the end of childhood; but they, like the law, offered few suggestions as to why this age, and not others, was selected as signifying the end of childhood. During one discussion, Gemma and Harry offered the following explanation for setting 18 as the age of ‘adolescence’:

Q: Why 18 for smoking and drinking, why not sixteen for smoking and drinking?
Gemma (15): Cos you’re still in high school, you’re still, um
Harry (13): You're still regarded as a kid.

These quotes suggest that children construct their perceptions of the period of ‘childhood’ on powerful legal discourses which define its properties. Their comments reflect the dominant legal discourses about the ages at which childhood ends and adulthood is said to begin. Legal definitions are not always clear about the age at which childhood ends, though. For example, the Schools’ Education Legal Group at the University of New South Wales defines a ‘child’ as “a person up to 16 years of age”, while those between the ages of 16 and 18 are defined as ‘young persons’ (Healey, 1994: 28). These definitions do not accompany a description of their origins, but are offered with the following explanatory notes:

Until a child turns 16 she or he has very little control over his or her life. She or he is either under the care and control of his or her parents or, if that fails in some way, the Government steps in and takes control by making him or her a ward of the State (Healey, 1994: 28).
Fine (1994), Jamrozik (1996) and Weedon (1997) all point out that the concept of ‘childhood’ can change depending upon the context in which it is used. Healey’s definition, based not on legal considerations but on some measure of children’s dependence on adults, is an example of how the concept can change with a shift in context. While the definition creates a distinction between ‘children’ and ‘young persons’ in relation to ‘control’ over one’s life, it provides no explanation for the distinction between children and young persons at age sixteen rather than, say fourteen. It ignores the presence of young people below the age of sixteen who are not under the ‘care and control’ of a parent, those who live on the streets, or even, in some cases, those who live independently. Additionally, the title of ‘young persons’ is culturally specific (Furstenberg, 2000; Lefrancois, 1993) and infers that some people are somehow half way between childhood and adolescence but with no explanation about what distinguishes this half way mark in an individual’s growth. The definition raises the difficulty of trying to fit one explanation to the concept of an unchanging stage of life called ‘childhood’ and poses further questions about the division of childhood and adulthood.

These issues were highlighted in discussion between Fran, Gemma and Harry:

*Q:* OK. Um, age. When does a child stop being a child?

*Harry (13):* Um, when they're about, ah, sixteen, seventeen.

*Gemma (15):* But that's a teenager, isn't it?

*Fran (17):* It's not a child child. I say that.

*Gemma (15):* Really, you really think

*Fran (17):* Well, not really adult, you're still only seventeen.

*Harry (13):* About 20 is when they're actually adult.

A teenager (or adolescent) is neither a child nor an adult, being stuck somewhere between those two concepts. The stage of ‘adolescence’ seems no easier to define that those of ‘childhood’ or ‘adulthood’. The Collins Gem Dictionary (1992a: 8) describes adolescence as the “period between puberty and adulthood”. Lefrancois, while suggesting that the period of adolescence “spans the period of the teen years”, nevertheless specifies that in adolescence “the child has achieved sexual maturity but has not yet taken on the rules and responsibilities, or the rights, that accompany full adult status” (Lefrancois, 1993: 378). The problem with these definitions is that ‘puberty’ and ‘sexual maturity’ do not occur at the same age for every child and many young people in Western societies are now not
assuming ‘rules’, ‘responsibilities’ and ‘rights’ until well into the period of young adulthood (Furstenberg, 2000).

Furstenberg (2000) argues that the concept of adolescence is relatively recent, having emerged in 1904. This is not to suggest that adolescence and youth did not exist prior to that time. Furstenberg points out that before the concept was named, the period of adolescence was characterised by semi-autonomy and “typically began after early childhood and stretched through the transition to adulthood”. Now “culturally defined as a life stage when full-time education replaces full-time employment as the primary activity of young people”, adolescents are “sheltered from the adult world” (Furstenberg, 2000: 897). Furstenberg argues that this has encouraged the growth of a separate “youth culture” which is “maintained by social institutions that isolate youth from adults” (Furstenberg, 2000: 897) and construct adolescence as problematic.

An example of how youth becomes isolated from adults occurred at a public meeting convened by a local council within the metropolitan area of Adelaide in February 2003. The meeting was convened to discuss a proposal to build a skate park on one corner of an oval in the municipality (Noonan, 2003). The meeting, described as an “‘information sharing’ session”, “quickly dissolved into name calling and shouting. ‘Screw the kids, we haven’t even got chairs to sit on’, yelled one woman” (Noonan, 2003: 1). Residents expressed fears that the skate park would spoil their views of the oval and that the presence of the facility would “encourage drinking and drug use” (Noonan, 2003: 1). Adult concerns about having chairs to sit on, a view from their front windows and the visible absence of young people in their park were considered of greater importance than young people’s needs for space to pursue their own activities. Moreover, they positioned children and young people – the potential users of the new facility – as bringing social problems to the area.

The children who participated in my research were asked for their opinions about the skate park issue. They rejected the suggestion that the park would attract drug and alcohol users and gave reasons for their rejection:
Nick (13): ... I don't...the skate, I don't think skate parks are where drugs and alcohol and all that kind of stuff, I know a lot of people who are quite friendly and they skate, but um. I just think that's how people stereotype skaters as druggies, people on the streets, but um, and as for the noisy thing, that's pretty true. But, yeah, I think the main reason why that kind of thing wouldn't happen is because of public liability insurance, but I don't think drugs and people, like, if you've got skate park in the middle of like, a public area, um, people don't generally walk around in broad daylight trading drugs at a skate park which is like an unenclosed concrete block, um. So I don't think that that's, that shouldn't be a concern that there's going to be all kind of drugs and alcohol happening around this place because of a skate park.

Kane (13): ... Um I think skate parks are a good idea because kids do drinking and drugs because they're bored and things, or because, um, it's like a cool thing to do. But skating's a good thing to do, and it gets you involved and you have something to do instead of sitting around drinking and stuff. And um, it gets people fit as well.

When asked about the differences between adolescence and childhood, a number of the children in this study described adolescence as the stage during which children begin to become responsible:

Fran (17): I'd say it's well, as you get older you take on a little bit more responsibility, and you're sort of heavy of the fact that you go round sensibly or not. You have to learn how to behave, to learn to do things the way the adult world works. Much as it sucks. (...) But, it's different, like, there's a big different mentality. Because over the years you've got to pick up different things, and a little bit more. And yet you have to do a lot more. Because of your age as well. And I just, and I personally think it's cheek for someone of 13 to be considered a teenager and be considered they would, er, adult and they think, oh, I'm older and all that sort of thing when really they've still got this thing where they only really are thirteen and they don't really know lots, they're very ignorant of everything and they end up becoming very stupid and big-headed.

Olivia (9): Um, well, in, when you get to a teenager, you're following down to something you really like and you're trying new things, and when you get older you're, when you're around 19, 18, you probably um find your feet and you know what you want so I think around 19, 18 to 19, you start to think like an adult, more than just a teenager. And when you reach your twenties you're still a little bit, you've still got that little bit of teenager in you, but you've also got a little bit of adult in you. So you start to change what you used to think, and you start to change how you used to dress, but ...

While the children in this research agreed that adolescence was a time of growing responsibility and independence, they nevertheless argued that adolescents should not
assume complete responsibilities for their lives. While some of the children were not able to provide reasons for the arguments they presented, others argued for a lack of understanding and competence in young adolescents. For example, Fran indicated in her comment above that younger ‘teenagers’ may still be “very ignorant”. When reasons were not given, children referred to the behaviours being discussed as ‘stupid’, as Gemma did when discussing adolescents’ use of alcohol:

Gemma (15): See, I'm 15 and I haven't even got drunk yet.
Q: So do you think it'd be a, um,
Harry (13): Some people of 40 don't get drunk.
Q: What do you think about fifteen-year-olds drinking, then?
Gemma (15): I think it's stupid. I mean, it's OK to have a drink, like I go to parties where my friends drink, but I don't think you should be drinking, like you know, getting drunk.

Levels of adolescent responsibility include prohibitions on ‘adult’ activities such as sexual relations and marriage. In some of the interviews, the issue of the age at which people could marry arose. I suggested that in some cultures, and historically in Australia and elsewhere, young people could marry at the age of 16. Gemma, who is 15, replied:

Q: Disgusting.
Fran (17): Yeah.
Gemma (15): (Simultaneously) Yes, cos they, I mean they're still kids, they haven't, oh you know, like, what do you call it? I don't know what you call it.

Callum responded to my suggestion that marriage might occur at 16 with surprise:

Q: What makes it early?
Callum (10): I don't know. It's...I don't know. Just sounds weird, people getting married at 16. It's kinda like driving a car at 1.

The comments of the children in this study support the assertions of Furstenberg (2000) that the period of adolescence is characterised by differences in skill mastery, some of which are considered more desirable than others. In some states of Australia (as elsewhere in the world) a young person can receive a driver’s licence at 16 and this is considered as a positive event. In contrast, the use of alcohol is not legal until age 18 and is considered negative. As Furstenberg argues,
Both drinking and driving have the potential to be deadly, but both can also signify learning to manage potentially harmful actions, can serve as a measure of increased autonomy, and can be ways of socially promoting trust and signaling maturity (Furstenberg, 2000: 900).

According to Furstenberg (2000) similar differences occur in discussions around adolescent sexual activity, transition from school to work and changes to residence for adolescents. The act of problematising some adolescent activities while promoting others indicates the ways in which social institutions such as law, medicine, social work and psychology socially construct contrasting notions of adolescence (Furstenberg, 2000). The responses of the children in this research indicate that they have adopted these social constructions as they have grown. While describing adolescents as learning about ‘adult’ life, their comments also reflect the understanding of adolescence as a problematic stage.

### 5.1.2 Childhood ‘Properties’

Historically, the age at which children moved to the status of ‘adult’ has been flexible, at various stages ranging from very young through to the age of 21 and beyond (Aries, 1962). The setting of an age to signify transition from childhood to adulthood reflects the discourses surrounding children in specific historical periods and cultural settings as described above. This has prompted the application of specific structures to the concept of ‘childhood’ (Archard, 1993). One attempt to do this assumes that ‘childhood’ has three properties: boundaries, dimensions and divisions (Archard, 1993). Boundaries are the points at which childhood ends and adulthood begins. They are fluid and culturally determined, with different cultures having different boundaries, often related to initiation rites and the transition from school to work. Some cultures view the end of childhood at ages 8 to 12, while others use much older criteria, as discussed earlier.

In the current study, Harry, Daniel, Olivia and Fran positioned the age boundary between childhood and adulthood at around 20 years, the age at which they perceived children as taking more ‘adult’ responsibilities. Seventeen-year-old Fran argued that while there are differences between boys and girls, these differences are largely resolved by this age:
Fran (17): And, yeah, like guys mature slower than girls, sort of thing, and little things like that, and some boys may be really childish for the rest of their life or not sort of fit into that thing, but I reckon there's sort of a fair age limit of um, over time, sort of thing in getting everyone to reckon what they've got is about 18 to 20 is about right, cos it's, well, it's sort of accepted and that's when you have to do things and it sort of makes more sense. (Sighs).

Callum’s comments indicate his confusion with the anomalies of legal status, having a driver’s licence, being able to drink alcohol and having money. His return to the visible aspects of adulthood (“they’re a lot bigger”) demonstrates how the visible and the sayable connect to define the differences between children and adults (Kendall & Wickham, 1999). The underlying rule is that boundaries between children and adults can be identified partly by age, partly by responsibility and partly by differences in physical size:

Callum (10): Mm. About 18. When they’re allowed to like get a car, get their licence, which is 16, um yeah, like when they can start drinking. When they’re a lot bigger; like when they’re adults. When they have enough money.

Archard’s dimensions of childhood, used to perceive the child, include moral/judicial, epistomological/metaphysical, political, biological and level of independence. Each dimension applies different criteria for the end of childhood, and these criteria change from time to time. For example, in the Middle Ages, the age of majority might have been the point at which a male child could bear arms. As armour became heavier in later centuries, so the level of strength to carry it increased. Accordingly, the age at which a child could enter military service was raised (Archard, 1993).

For the children in this research, dimensions of childhood were associated with the context and activity being discussed. For example, Callum and Gemma rejected the age of 16 as a time for marriage. Daniel discussed his understandings of the kinds of activities that might be appropriate at different ages:

Daniel (10): Well, kind of, yeah, like, you know, like, in so, um, in some TV shows even, um, and in some of the families I know, some of the older pe., older children, they, they, the parents always say, ‘Be home before whatever time, nine o’clock’, if they were going to a party or something. Like, us, year fours and stuff, fives, sixes, well, like we don't really go to huge parties and things like discos and stuff, but we've got school discos and that, but it's not huge like, well (All night), yeah so, yeah. Children should just have like, different ages should have different rights.
Olivia referred to levels of independence in discussing the differences between children, adolescents and adults:

Olivia (9): Well, children, children my age, well they're younger, and um, they don't do what, they don't run the household, they don't have to pay the bills and things like that, um, when you get to a teenager you're a little bit different because you're older, um, you're going through puberty and things like that, um, and when you reach adult you're very independent.

For the children in this research, childhood was associated with a number of dimensions, including legal aspects of ‘childhood’, types of activities that might be appropriate at different ages, developmental stages and, as described above, levels of independence.

The third property of childhood proposed by Archard (1993) relates to its divisions. This term refers to the different stages within the general period of childhood including infancy, middle-age and later childhood. Different stages of history and different cultures use different divisions to describe the period of childhood. Lefrancois (1993) suggests that in Western society these divisions are identified by developmental stages along the dimensions of physical, cognitive and social developmental tasks. They are structural and based on visible qualities of children (small stature, comparatively less mastery than adults over language and fewer social experiences) that are supported by ‘scientific’ understandings gleaned from psychology and medicine. These understandings in turn determine what can be said about children and delimit other explanations for child related phenomena.

Archard’s dimensions try to account for cultural and social variations in definitions of childhood. In so doing, they highlight the complex ways in which adults perceive children and the state of childhood. These are powerful perceptions, built over many years and through the influence of many institutions, including the family, law and education. Comments from the children who were interviewed for this research indicate that their perceptions of childhood reflect many of the adult constructions of childhood in terms of the boundaries, dimensions and divisions of childhood.

5.1.3 Childhood as ‘non-existent’
Durkheim defined childhood as “the period of growth…the period in which the individual, in both the physical and moral sense, does not yet exist, the period in which he is made, develops, and is formed” (Durkheim, 1982: 147; italics in the original).
According to this view, during the period of growth the child is weak, has poor mobility, is constantly changing, and is incomplete and lacking something. Children’s intellects and moral characters are fragile and require care and protection, and their many and varied states must be controlled. Even some of the children in this study agreed with Durkheim that children are ‘non-persons’:

*Fran (17): But I still don't really see them as people.*

Mason and Steadman (1996) and Rautiainen (1997) argue that children have been constructed as unable to meet their own needs and, consequently, as dependent upon adults. Definitions that rely on moral, physical, cognitive and social ‘incompleteness’ support a view of children as dependent on adults regardless of individual differences between members of the category of ‘child’. Definitions become statements of universality, assuming that all children are the same, no matter who or where they are. When children hear these definitions of themselves their perceptions of who they are can reflect adult understandings of their abilities and competencies:

*Q: What about friends? Do you call friends on the telephone?*
*Jonathon (7): Definitely not. I'm only 7.*
*Q: Does that mean 7-year-olds can't do that?*
*Jonathon (7): No.*

*Gemma (15): Yeah, anything about politics, you can't teach them politics at like a young age*

Fran argued that young adolescents fit the category of ‘child’ in that their behaviours and attitudes reflected adult notions of ‘child’. Young adolescents did not act in ‘adult’ ways:

*Fran (17): Thirteen, fourteen, they're still people still got this big mentality of a child anyway, you see them.*

5.1.4 Differences between ‘Childhood’ and ‘Adulthood’

Attempts to define childhood have used the basis of difference to describe children as distinct from adults. This assumes that the definition of ‘adult’ is clear. Many of the psychological and legal texts reviewed for this research did not precisely define ‘adulthood’ except to assume that the term refers to a ‘fully functioning’, independent human being. The Collins Gem Dictionary (1992a: 8) defines ‘adult’ as “fully grown, mature”, while legislative definitions use age as an indicator of ‘adulthood’ (Costella, 2003). In psychology texts, the stage of ‘adulthood’ is sometimes divided into a number
of sub-stages signifying early, middle and late adulthood, with early adulthood beginning at around age 20 (Lefrancois, 1993). Elsewhere, adulthood has been defined as beginning at age 15. In adult education, debates centre around who is eligible for ‘adult’ status in courses offered by universities and other educational institutions. Some educators define adulthood by a level of maturity (Lindeman, 1926, cited in Grill, 2002), while others suggest that the receiver of adult education is one who defines her or himself as ‘adult’ (Merriam & Brockett, 1997). It is apparent that definitions depend upon the context in which the term ‘adult’ is defined and the purposes for the definition.

Some of the children in this study referred to the concept of ‘maturity’ to describe the differences between adulthood and childhood:

**Q: When do you think that young people could be called adults?**

Fran (17): Well, the whole maturity thing's sort of different, like ...

Kane (13): Ah, I don't mind really, I reckon it should vary between ages, like intelligence and um, stuff like that. Because some people mature like adults when they're like 16. Some mature when they're like, 18. So it varies.

Laurence (16): I think becoming adult is more of a thing of maturity rather than age. Like some people may act very adult when they're like I don't know about 16, and some people may when they're like 19, 20, may still be very immature. Not that, even though they may be considered an adult they don't know how to act like an adult.

The children’s discussions highlighted the difficulties of arguing for a specific stage or growth period when children or young people become adult. The concept of maturity provides them with a reference point that resolves these difficulties by offering an alternative flexible transition between childhood and adulthood. Some adult professionals consider this to provide other difficulties, however. For example, Lefrancois (1993) takes the concept of ‘maturity’ from the developmental perspective, arguing that human beings continue to develop and ‘mature’ through the whole life cycle. They never stop maturing, so the concept of maturity as “a finally reached state of readiness or competence” (Lefrancois, 1993: 7) is not very useful as an indicator of the stage of adulthood.

Another way of describing the differences between childhood and adulthood is to refer to social roles and levels of responsibility. In Foucaultian terms, adults have greater knowledge than do children, which provides them with the power to hold responsibility
for them and all that they do (Danaher, Schirato, & Webb, 2000). Adults work, have money and property and can control children’s access to these things. Their responsibilities include attending to the “solemn things” in life (Lefrançois, 1993: 452) such as entering the workforce and establishing a family. Indeed, Hetherington & Kelly (2002: 7) argue that the chief tasks for young adults are those of “establishing careers, creating intimate relationships, building meaningful lives for themselves”.

Seven children in this study perceived that adults differed from them in the level of responsibility that they held. This was sometimes related to levels of independence as well.

Q: Mm-hmm. And what does being a child mean?
Fran (17): You don’t have to have really big responsibility, you can have a bit of fun, you don’t have to worry about that sort of crap.
Gemma (15): You get to muck around and do what you want.

Q: You’re saying that, ah, that um, children should have some kind of life free of, of adult responsibilities and adult worlds.
Gemma (15): Yeah, because otherwise for the rest of their life they’re gonna be adults forever. You only get to be a child for only a small amount of time.

Q: What, who do you think should make the decision about where kids go to school?
Callum (10): The parents. Definitely.
Q: Definitely.
Callum (10): Mm, it’s not like, mm, ‘I want to go to that school. No, I changed my mind, I want to go to that school’. I mean, they’d have to pay a lot of money to do that. So it should be them; it’s their money.

Laurence (16): ... Like it's kind of hard if all of a sudden like one day kind of you're being looked after by your parents for months and the next day suddenly you have to do everything for yourself, that makes up a pretty big step to cope with it. That's what's happened, everybody has that kind of more gradually been given responsibilities.

The romantic concept of childhood (Bachelard, 1982; DeMause, 1982; Hillman, 1982) was evident in comments made by five of the children in this study. Childhood was a time for enjoying life with few cares:

Fran (17): Why should you be forced to do things the adults and stuff are doing, and having to work out and all that sort of thing when you're a kid? I think that's just unfair, basically.
Fran (17): A child, you have your childhood for reasons, to have your childhood and have your fun before you have to grow up and deal with everything else.

Eleven-year-old Matthew was interviewed in 2003 at a time when the Australian Government was considering providing support to the United States in a strike against Saddam Hussein, the then President of Iraq. In expressing concern about this issue Matthew raised another dimension of the ‘romantic child:’

Matthew (11): Yeah. Well, the government's done not a thing about the children. They're just like, just think about themselves. They don't think about anyone else, and they could kill lots of innocent people and stuff.

In terms of romanticising children in relation to transitional issues, Lefrancois (1993) referred to the Peter Pan Syndrome. Those who suffer from this syndrome do not “grow up”:

They are unwilling or unable to accept the ordinary responsibilities that come with increasing maturity. Accordingly, they are reluctant to make career decisions, to become economically independent, or, even more, to become emotionally independent and to accept responsibility for others. They are also anxious and lonely because they do not relate well to others who have matured more normally (Lefrancois, 1993: 452).

Olivia discussed a friend of her family who ‘suffered’ from the Peter Pan Syndrome. The friend was aged 43 and was still residing with his mother:

Olivia (9): Cos he was too scared to take the big wide world on his own. Q: OK. What do you think about that? Olivia (9): Um, I think that's a bit sad, actually, because he's 43 and he's missed all that time of being an adult and he's still living with his mum which is ninety-three.

The children’s comments generally reflect discourses that position adults as independent, responsible, confident and powerful. In contrast, children were generally positioned as young, not responsible, playful and not understanding of wider social issues such as work and politics. The ways in which the children who participated in this research constructed adulthood and childhood reflect the legal, social, psychological and historical definitions of childhood discussed earlier. The perceptions of these children of their relationship to adults indicate how they have become objects of knowledge which classifies, describes and pathologises the condition of ‘childhood’ (Dreyfus & Rabinow, 1982). If our identity
is formed through discourses about us, then the children in this research have constructed identities that are consistent with the historical discourses that rely on the visible aspects of children to determine what can be said about them (Kendall & Wickham, 1999).

The research questions and process could also have contributed to the children’s constructions of ‘childhood’ in this way. In their discussions on age and the status of ‘child’, the children in this research accepted the description of themselves as ‘children’. This may have reflected my own approach to the concept of ‘child’. I did not ask specific questions about children’s understandings of ‘the child’, assuming that this was self-evident. My assumption reflected the relation between the visible and the sayable (Kendall & Wickham, 1999) and delimited alternative descriptions of children and childhood. Omitting to explore the visible aspects of ‘the child’ with the research participants could have supported discourses about them based on what can be seen of them while ignoring the possible presence of alternative discourses. It is interesting to note, however, that some children who participated in this study were aware of the ways in which adults use the visibility of children to construct an understanding of their characteristics. Kane, for example, discussed the right of children to be respected:

_Q: What kind of rights do you think children ought to have?_
_Kane (13): That we also have, um, that we should get some more respect from most people, because most people when they see people our age, they just think children, they don’t know anything and stuff like that. Um, ah, that's all, really. Cos most who have children don't have any idea about anything._

Discourses about children rely on language to communicate the content of the discourse. What we see and think is constructed through language, which in turn produces discourse. In the next section of this chapter the relationships between language and discourse and what is said and what is not said will be explored. Ways in which discourses operate to subjectify and marginalise children in Australia today will be considered and compared with children’s discourses as they occurred in the interviews for this research.

### 5.2 Children and Families

There are a number of discourses surrounding children in families. A number of authors, including Andrews & Freeman (1997) Harrison (1992) Jones & Marks (1996) and Rayner (1994), have discussed the role of the family in ‘developing’, ‘nurturing’ and supporting children. This role has been reified by the United Nations who state that they are:
Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community (United Nations, 1989, Preamble).

The Australian Government has maintained a focus on families for some time. In June 1999 a Government Inquiry reported that a “national family strategy” would be developed with a view to “strengthening family relationships” (Government Response to the House of Representatives Standing Committee on Legal and Constitutional Affairs, 1999: 2). The program known as *Strengthening Families and Communities*, which in part provides funds for projects that will assist in meeting the objectives described by the Inquiry, arose from this initiative. More recently, the Family Law Pathways Group recommended that “the family law system, in whole and in all its parts, be designed to maximise the potential for families to function cooperatively in the interests of children” (Family Law Pathways Advisory Group, 2001, Recommendation 1).

The Collins Gem Dictionary provides the following definitions of family:

> Group of parents and their children; one’s spouse and children; one’s children; group descending from a common ancestor; group of related objects or beings (Collins Gem Dictionary, 1992a: 195)

With advances in reproductive technology and changes in human society (Campbell, 2002b), definitions of ‘family’ have become more complicated. In 2001, 21% of all Australian ‘families’ with children under 15 years of age consisted of one parent (lone father or mother), an increase since 1989 of 8 % (Australian Bureau of Statistics, 2002: 1). Additionally, the percentage of ‘couple-only’ families without children (including same-sex couples) rose from 48.2% in 1989 to 53.5% in 2001. This represented a steady increase over the whole period. Jacqueline Campbell has argued that Australian couples are beginning to ‘design’ children through ‘genetic engineering’, stating, “In 2000, about 30% of babies were born outside of a heterosexual legally married relationship” (Campbell, 2002b: 2). The notion of ‘family’ is rapidly changing, creating uncertainty about the meaning of the concept.

Similarly, the concept of ‘parent’ is undergoing some change. With increasing technology, biological connections between a child and the adults with whom he or she lives and refers to as ‘parents’ may not exist (Campbell, 2002b). One biological parent
may have re-partnered, with the children accepting the new partner as their ‘parent’ in preference to the biological ‘parent’. Increasingly, children are living with two adults of the same sex, both of whom the children refer to as their ‘parents’. These new groupings of ‘families’ challenge the traditional view of the “mythical ‘ideal’ family type” (Rayner, 1994: 66).

The children who participated in my study lived in, and described, a number of different kinds of families. First, all but one of the children resided with their biological mothers. Although my research involved only 16 children, their living arrangements reflect the situation reported in a 1997 study of 237 separated parents which found that “children were most likely to be in the care of their mother” (Smyth, Sheehan and Fehlberg, 2001: 118). Indeed, Callum expressed concern about a friend who was living with his father:

*Callum (10):* (...) My friend lives with his dad and I find that a bit weird somehow. (Uh-huh). With his two brothers. (Mm). It's just all boys.

Q: Yeah. Weird?

*Callum (10):* Yeah. You see...I don't know why, but you should live with your mum, or and your dad, but you should live with your mum, mostly. (Mm). I don't know why, but...

These findings and Callum’s comments indicate the strength of cultural expectations that women “are usually the primary caregivers of children. Thus the vast majority of the caring for children before and after separation is done, and is likely to continue to be done, by women” (Behrens, 1996: 214).

Four of the children in this study described a different understanding of the concept of ‘family’, however. Petra said that she had ‘re-designed’ her family, moving to live with an aunt and uncle because her parents liked to travel throughout Australia and Petra’s interests would not be served by her travelling with them. She described her close family as including her parents and her uncle and aunt:

*Petra (13):* I think I, I love living with my uncle and auntie, I think it's like great. They give me, like I'm really spoilt, you know, I have lots of fun with them and when my mum moves down I'll see her every weekend, so it's kind of just like both, like a lot of people I know are like, oh, how can you live without your mum and dad, they, like, people make me feel as in oh, as if you can live without your mum and dad, but for me it's just like, I just can because I'm so close to my auntie and uncle and just like, it's not that big a deal. I do miss them and stuff, but it's not that big a deal for me.
Daniel, who was living with each parent on the basis of alternate weeks, described the complex arrangements around a planned holiday:

*Daniel (10): ... both families, we're both, we're all going to go to, not my mum, but Chris, Erica, Belinda, my dad and I, we're all going to Lombok for a holiday for about a week.*

Daniel’s father’s new partner, Belinda, and her two children comprise one ‘family’ while Daniel and his father comprise the other. In this construction, Daniel described his mother, father and himself as a discrete family unit even though his parents had separated and his father had entered into a new relationship. His view of two families that interconnect indicates how children can construct the concept of ‘family’ in a variety of ways that both relate to, and differ from, ‘traditional’ definitions.

Some households included the mother’s new partner. Biological fathers were sometimes absent, living interstate, and while most of the children visited their fathers at some time during each year, Kane, Iain and Jonathon did not see their biological fathers at all. Moreover, Iain and Jonathon, both aged 7, had no recollection of their biological fathers, Iain advising that the man who helped to conceive him “just used his, you know, sperm to help Mum”. Iain’s ‘other’ parent during his early years was his mother’s lesbian partner.

Children who lived with a parent and the parent’s ‘new’ partner sometimes described difficulties in relating to the partner:

*Q: And how is it with Shane?*
*Iain (7): Mm, it's a little bit tougher on me cos he does give badder punishments.*

*Brenda (7): ... I would want to stay with my real dad, not my step-dad. Cos my step dad's quite mean.*

All of the children in this study described mothers as caring and supportive, as loving and as decision-makers. In contrast, they described fathers as positive and “heaps of fun”, as trusting and as decision-makers, but as mainly absent, either because they did not live in South Australia or because they worked long hours. Even Daniel, who moved between his parents’ homes on a weekly basis, said that he is often not able to spend time with his father because of work commitments. These descriptions of their parents again reflect the cultural expectations of mothers as more available than fathers because of the roles described for genders in the discourses around parenting.
5.3 The Role of Language in Children’s Discourses

A newborn is a primitive, self-driven little sensing machine designed to mature and grow physically in a predetermined way, programmed as an extraordinarily capable information-processing system, endowed with powerful emotions and gregarious tendencies, and pretuned to speech and to the development of language (Lefrancois, 1993: 151).

The language used by Lefrancois in this quote to describe an infant is embedded in a cultural context that perceives newborn children as significantly different from other human beings. The words “machine”, “programmed”, “information-processing system” and “pretuned” are the words of mechanics and technology rather than those relating to people. The use of language like this objectifies and ‘others’ children, creating a discourse that constructs them as less than human.

Some of the children in this research used language that reflected adult objectifications of children. At times their comments indicated proprietary attitudes towards children. For example, Iain discussed his relationship with Shane, his mother’s new partner. His comments reflected a construction of parents as ‘owners’ of children. This ‘ownership’ could determine how other adults should act towards specific children. Iain stated:

*Iain (7): Yeah, well, Shane’s the one I get most annoyed of. He's got his own kids, he can't go raving around going on me. He may be an adult, but why can't he just do it every time he's got his girls and do it on them? I mean, I'm not his child. He takes care of his and Mum takes care of me.*

The way in which language is used in relation to other aspects of children’s lives can position children as powerless in specific situations relative to their adult counterparts. It was stated earlier in this thesis that discourses in relation to ‘bestowing’ rights and ‘empowering’ children arise from the visibility of children as small, vulnerable and physically ‘unformed’, subject to adult control and power. Comments from the children in this research reflected these discourses in some ways by referring to the comparative size and strength of the adults in their lives and the rules under which they have to live:

*Q: What do you reckon, what kinds of things um might make kids scared to speak up?  
Amy (9): Because um there might be big people and they might be a bit too mean and they might have scared the children.*
Iain (7): Yeah, but at school I have to hurry, I have to hurry cos I've got a real mean teacher and when he talks into what the rest of the class would be a normal voice, to him it's a whisper. When he talks in what to us is a yell, to him it's a normal voice.

Laurence (16): Ah, I didn't like school much. I didn't like that it was hell. Like, school was like really sick, like to the point of being ridiculous, kind of like you kind of, I didn't like how you kind of, you had to do this and be, that's kind of you have to do that in like the real world, you kind of have to, you're always going to have to do certain things, but, I don't know, I just didn't enjoy school at all, ... 

Petra (13): Um, if I want to see friends, um, me and Aunt D, we talk about it. I'd just be like, oh am I allowed to go see wh, um, whoever. Um and she'd, she'd either, if she said no, we're doing something, or no just because no, I wouldn't argue with that. No is the final answer, like I've learned in life, you just don't argue because no is the final answer. And if I'm allowed, well, I'm allowed.

Saunders and Goddard (2001) pointed out that texts about children often engage in ‘slippage’ of gender and other forms of textual abuse. Gender ‘slippage’ occurs most notably, for example, when authors use the word ‘it’ to describe a ‘generic’ child (Saunders, 2000: 450). In her interview, Fran used this ‘slippage’ when discussing issues relating to the residence of children following parental separation:

Fran (17): Cos you can't just stick it with a parent that's gonna abuse it. Cos that's just plain wrong, and you've got a parent that's wanting to care for it but just can't, even with the Government's help can't really financially support the child.

Saunders and Goddard also referred to the textual abuse of children through the use of terms such as ‘kid’ rather than ‘child’. In this study, both the children and I used the word ‘kid’ to refer to children. This was partly due to the language I used in the interviews and partly because of the colloquial use of the term ‘kid’ in Australian culture to refer to children. I had begun the interviews for this research before I read the 2001 article by Saunders and Goddard on textual abuse of children. Once I had read the article I tried in subsequent interviews to delete terms such as ‘kid’ when discussing ‘children’ as a group with the participants. Even so, the degree to which these terms are embedded in Australian discourses about children was reflected in a number of the interview texts:

Fran (17): Why should you be forced to do things the adults and stuff are doing, and having to work out and all that sort of thing when you're a kid? I think that's just unfair, basically.
Nick (13): (...) I think that's kind of strange to me, cos they're saying that we don't want kids on the roads, but they're saying that you're, you are legally allowed to drive when you're a kid until you're 18.

Gemma (15): (In recording her “disgust” at the thought of sixteen-year-olds marrying) Yes, cos they, I mean they're still kids, they haven't, oh you know, like, what do you call it? I don't know what you call it.

References to children as ‘kids’ and objectifying them with the use of pronouns such as ‘it’ indicate the power of the ‘othering’ discourses to influence children’s thoughts about themselves. The comments of the children in this study reflected the discourses that set children as different from adults and as not having the ability or the competence to act independently of adults.

In other instances, children’s responses reflected the ‘scientific’ and historical understandings of children and their abilities. For example, Kane referred to the assumed potential of children to become ‘bad’ if they are not provided with some boundaries. This reflects the concept of ‘original sin’ (Hendrick, 1990):

Q: Yeah, OK. One of the things that is a bit difficult in Australia is how much responsibility to give children.
Kane (13): Yeah, I think, um, you should give them some, but not, not enough to do bad things with. Like, just to help and stuff. And have things that would affect them, help with stuff like that.

The children in this research also discussed their thoughts on levels of competence and introduced an adult notion of the romanticised child when considering issues relating to children’s possible participation in political activities:

Q: There's a guy in Australia who says that the um Democrats Party has got a, a Young Democrats, and they've got 11-year-olds in that Young Democrats group.
Fran (17): I'd say they've got problems.
Q: You say they've got problems?
Fran (17): Yeah. Cos I'd say they're wasting that poor child's life.

Nick (13): Um, I think it's not really an age of, it's not really age when they should vote, it's whether they understand why they're voting and who they're voting for, and whether they really believe that what the person they're voting for is saying is right.

Gemma (15): Yeah, anything about politics, you can't teach them politics at like a young age
Fran (17): Yeah, well then you get adults going, ‘Come on kid vote for this person’.
Gemma (15): Yeah, but, no, if you, they know nothing about it, and if you try and teach them it's a bit unfair because that's their child,

In considering children’s participation in discussions at the time of parental separation, Petra raised the question of children’s capacity to understand:

Petra (13): Um, sometimes, like I don't really think that there's any age that they shouldn't be involved. There's ages that they probably can't get involved because they're too young to understand the whole concept of the divorce and who they want to live with.

Eleven-year-old Matthew plays rugby. He was invited to try out for the state team and was keen to do this, but he reported that his mother thought him too young to try out. Matthew was asked at what age he could attempt to join the team. He replied:

Matthew (11): Eleven. Mum said I could, Mum said I can try out this year. I can go there.

Matthew’s comments indicate his mother’s understandings about ‘age-appropriate’ activities for children. The age of 11 is in some way more appropriate than 10 for Matthew to attempt to join the state rugby team. While it could be that younger children are not accepted by the team, the age distinction for this activity reflects the power-knowledge relations embedded in discourses about children’s capacities to become involved in social activities.

These comments reflect the discourses on children that position them as not able to fully participate in society. In these discourses, children are constructed as vulnerable and incomplete rather than as people who can engage in society in an effective manner. The power-knowledge relations embedded in the discourses result in children being perceived as ‘other’ and as marginalised from ‘adult’ society.

The comments that reflected these discourses in my research were, however, balanced by other constructions of children as competent and able to understand many ‘adult’ concepts. At times, children presented alternative discourses that indicated their significant understanding about the relationships between adult knowledge and power. Nick was asked whether he thought children could understand social issues:
Nick (13): I think, I think they do. I think that children can understand the issues that go over the world, and people only see them as not being able to because they're younger than them, or they think they're less experienced or, cos maybe when they were a child things weren't like this, that they weren't heard, and children were just waiting there to become adults and then they could do things. But um, I think now things have changed and children can comprehend the world a lot better, and that a lot of adults might be stopping them from being heard cos they, when they were a child they weren't heard, so they don't think other children should be allowed to as well. Something like that.

Kane argued that children might be more able to contribute to social issues if they had more knowledge:

Kane (13): Um, er, kids could probably get a better knowledge of what's going on in the adult world and stuff, some, cos sometimes, or most of the time they don't say what's happening. All they broadcast is like America's going to war and stuff. But the actual facts about it?

Knowledge produces ‘truth’ about the world and both knowledge and ‘truth’ are “tied up with the way in which power is exercised” (Danaher, Schirato, & Webb, 2000: 29). A ‘truth’ that constructs children as unable to understand social issues will lead to attempts to ‘protect’ them from those issues. One protective approach is to not inform children about events that occur in the social world. In keeping children uninformed, adults maintain control and power over their activities and understandings and marginalise them.

5.4 Binary Relationships

Dualistic thinking was reflected in the comments of the children who participated in this research. All the children discussed the differences between themselves and their parents and other adults. These differences included issues of comparative size, differing responsibilities, activities and levels of focus (for example, a focus on fun against a focus on work). Their constructions of adults and children along these dimensions emphasised the perceived differences between children and adults.

As was noted in Chapter 2, one cannot be adult and child (Flax, 1990). The children’s comments highlighted the difficulties in maintaining these distinct binaries, especially around their understandings of transitional issues. A number of authors, including Archard (1993), the Australian Human Rights and Equal Opportunity Commission (2001b), Furstenberg (2000) and Healey (1994) have referred to age in determining the ‘child-adult’ status of individuals, but the children’s comments indicate that age does not
clearly delineate difference. For example, nine-year-old Olivia’s discussion about changes in thinking that occur with age, reported on Page 125, reflects her perception that the transition between child and adult is neither smooth nor clearly identifiable. Her understanding, and that of other children in this research, indicates the difficulties posed by dualistic thinking.

The emergence of the category of ‘adolescent’ in the early 1900s (Furstenberg, 2000) brought with it a further binary - adult-young person - that positioned young people as largely problematic. The discourse surrounding adolescents as ‘problems’ has led to the imposition of curfews and prohibitions on youth gathering in groups. The children in this study were invited to comment on these issues. Often, their comments were critical of adults who legislate to prohibit gatherings of young people and impose curfews. At other times they gave alternative reasons against legislating on these issues:

Gemma (15): But that happens everywhere, everyone hangs in groups because you, you want to talk to your friends, so of course you're gonna hang with them all. So, but people can mug people ....

Fran (17): Trouble is so many adults that are just really you know, I wouldn't want to record the word, but, heh. Basically, they cause a lot of problems themselves, so they just can't keep blaming it on young people.

Kane (13): Um, I don't think that's really good, because normally when kids do that they're bored and they've got nothing better to do. And with the curfew, I don't think that's a good idea because that gives more motive for kids to do bad things like break the curfew and do illegal things.

Q: Are all the rules fair, do you think?
Petra (13): Not all of the rules, because some people that make, some people that make the rules think that, like you said before, that they might be some people that think that children can't make their own decisions.

In each of these comments, children maintained a distinction between themselves as children and those they considered as ‘adult’. Their comments reflected the adult-child binary relationship that supports a discourse that positions children and adolescents as less than adult and not able to act ‘responsibly’ in adult life.

5.5 Panopticism

Comments made by all of the children in this study indicated that their lives were significantly regulated. Just prior to being interviewed, Gemma reported that she had been
asked to stop using the computer and complete her homework. Seven-year-old Brenda discussed her sporting and music activities after school. Many of the children talked about school requirements for them to wear uniform. Laurence discussed his dislike for school and its regulations. Petra also talked about the rules that applied to her movements. For others, such as Daniel and Olivia, there were restrictions on where they could go and with whom. Children’s lives seemed to be regulated in many different ways and by a number of different adults. Even when children described a supportive decision-making environment at school, any decisions were considered by a higher authority before being implemented. This had the effect of maintaining a regulated environment for children:

Nick (13): (...) Um, in my primary school um, people, there was, there were class meetings, um, where everyone could contribute any ideas they had and they would be voted on by a student representative council, um, there were an equal, there were more students than there were teachers there and often a lot of the students shared some of the views of the teachers, and, like they had some idea of a skate park at the school, but that got rejected cos of things like costs, like, and inconveniences like the students as well as the teachers. I think people are heard in that respect there, but, like I said there are, there are things like ridiculous options that, um, people have. Say for example, someone wanted a water slide from the top floor to the bottom floor. Um, those kind, those kind of opinions were voted on, but in the end they, they were carried to the Education Department but they were rejected there cos of inconveniences and things like that. So in that respect every, those people's opinions were heard and they did have something done about it.

Though a ‘water slide’ between school floors was “ridiculous”, the Education Department, the final decision-maker, might not have considered its feasibility in another part of the school grounds for other “inconveniences”. In other words, even though Nick and his friends felt that they had input into the school life, higher authorities regulated that input.

Danaher, Schirato and Webb (2000), Dreyfus and Rabinow (1982) and McHoul and Grace (1993) all discussed Foucault’s description of Bentham’s Panopticon and its application to human life. The children who participated in this research discussed the degree to which they were regulated and their activities watched and controlled. For example, Brenda talked about having an activity every day after school. She said that she was thinking of changing the times at which she did some of the activities, which would include dropping recorder lessons. Her comments indicated that she had discussed these changes with her mother:
Brenda (7): Yeah, Mum said it's fine, she actually wanted me to because um I got lots of stuff every day except Tuesday, something. So I want to have two days free, free.

Daniel discussed his school uniform. While he said that wearing school uniform was not a problem for him, he talked about how he and his friends were able to wear what they liked to school on certain days of the year, such as fete days. He commented that on these days:

Daniel (10): Like, they’re, like the only times we have sweet freedom.

For both Brenda and Daniel, a change to their routine was perceived as “freedom” from the regulation around which their lives revolve. This was more so for sixteen-year-old Laurence who had left school and commented that the majority of his school experiences were not positive, as reported on page 139. The children’s comments reflect those of Bessant (2002: 34) that “childhood and youth are the most governed periods of our lives”.

5.6 Children’s Views of Self, ‘Child’ and ‘Adult’

Q: Where are you in that, Harry?
Harry (13): Well, oh, I win. No, they don’t. Well, um, um, I'm still at the start, well, I'm a teenager.

Harry’s description of himself as being “at the start” while also being a “teenager” reflects the discourses that position children and young people as ‘developing’ and as being somehow ‘incomplete’. Although he was not asked, Harry’s view of himself as being “at the start” indicates that he has a goal or finish post. That finish post may be the stage of ‘adult’.

Harry’s construction contains two possible approaches to building a self-view. First, he places himself in a specific social position as a “teenager”. This construction has a set of social relations that provide Harry with a sense of where he ‘belongs’. The second approach reflects the construction of a narrative in which meaning is invested in the end-point of adulthood (Gergen, 1999). An article by Furstenberg (2000: 900) refers to “successful adolescence”, suggesting a narrative that moves towards a definition of ‘success’. Narratives were also reflected in the comments of Petra and Laurence in their discussions of becoming a lawyer. While Petra viewed ‘success’ in her life as reaching this goal, Laurence was not as certain, expressing a belief that young people must follow their own goals rather than someone else’s.
According to Danaher, Schirato and Webb (2000), discourses consist of statements that are related to each other: “they share a space and establish contexts” (Danaher, Schirato, & Webb, 2000: 35). The statements made by the children in this research reflect a specific discourse about children and their position in society and the end-point of ‘success’ as an adult. Fran and Gemma’s comments provide an example of this discourse about young adolescents:

*Fran (17):* ... They've got this big thing where they think they're adults and everything. And so they try and act all big and grown-up, and try and dress grown-upwards and things, that really, everything else they do up there is just, it's still like a child.
*Gemma (15):* Yeah, they still play chasey and that

As Harry asserted in an earlier comment, no matter how a child acts, “You're still regarded as a kid”.

The child participants in this study presented a discourse that constructed children as not as competent or as socially aware as their adult counterparts, needing boundaries and direction. An example of this construction is Jonathon’s perception of his ability to use the phone to call friends at age 7. Other comments, such as Olivia’s discussion of growing responsibilities, reflect the discourses on children as lacking the ability to take much responsibility for themselves. The romantic view of childhood as a time of play and no responsibility was also reflected in the children’s discussions. Additionally, childhood was constructed as a stage of ‘carelessness’ in relation to social activities. This was reflected in the thoughts of 15-year-old Gemma and her brother, Harry, in discussing appropriate behaviour at school. They had been discussing how Harry rushes from the classrooms at break times, a behaviour that Gemma thought irresponsible:

*Harry (13):* Yeah, but you try to beat everyone there.
*Gemma (15):* Yeah. That's primary school.
*Q:* An unwritten rule is, is not to tear out of the classroom like, like you're?
*Fran (17):* Like a child.
*Gemma (15):* Yeah, like you're six.

Berger and Luckmann (1966) and Wetherell and Maybin (1996) argued that in constructing the self, we rely on our observations of others to define our own position in society. The children in this research referred to a continuum of age. They positioned themselves on the continuum in relation to those around them in terms of their perceived
levels of ability and understandings. For example, 7-year-old Iain discussed his family’s move to a new house. His mother’s current companion has two daughters (Marie and Jessica) who visit them on alternate weekends, staying overnight. When the family moved in to the new accommodation they considered the allocation of bedrooms. Iain’s description constructs a picture of himself as having more understanding than five-year-old Jessica, despite being just two years older:

Iain (7): (When asked how old Jessica was): Ah, five. [Five]. Um, I'm really glad that her sister's a little bit older, cos she understands, but I only have to put up with her sometimes. But Marie, her sister who's not the annoying one, has to put up with her sister all the time. So I feel happy. Anyway, I'm glad of this, me and, I got, I got one of the big rooms, Marie got a separate room, like she's been begging, and she also got a two, like a double bed, so it was a queen, oh, Jessica's gonna be, Jessica's gonna be upset, ... anyway she's gonna have to sleep on a mattress, and she got the smallest room. So I'm gonna be happy. Well, the thing that I'm gonna be happy with for the rest of the time that we live in that house, she's got the smallest room. So we, but we have to convince her, so she could have it, that it was the biggest. I'd throw, I threw a hissy-fit of it, not knowing, not remembering that she was only nearly five then, and that she didn't understand that we had to convince her, so I threw a hissy-fit about it. And then, mmm, yeah. I got into trouble for nothing.

In another example, Ellen stated that she is required to accompany her mother to the shops rather than stay at home on her own. She discussed her views about this in relation to her age and compared herself to children of an older age than herself:

Ellen (9): Yeah, cos um, sometimes I might not want to go to the shop and I have to go. And um, I, ah, about thirteen I could not have to go. I could stay home and watch TV, and make, if we haven't had dinner, make myself some noodles or something.

In comparing themselves with others of different ages, the children in this research were at the same time inserting themselves into society and separating themselves from it in terms of the levels of understanding and skills they considered themselves to have achieved. Their comments reflected the thoughts of Fine (1994) and Weedon (1997) who pointed out that narratives can change depending upon the contexts in which issues are discussed.

A common feature of attempts to define childhood is the reliance on observed physiological phenomena to explain fundamental biological differences from adults, in terms of cognitive, moral and social ‘incompleteness’. It does not follow, however, that
children do not exist during periods of growth as Durkheim (1982) suggests. Associations between small stature and deficiencies in other qualities such as intellect and emotional and moral attributes ignore that the latter variables are quite different from physical aspects of the child. They are not as readily observable, are more complex, and are susceptible to ‘outside’ influences such as socialisation, education and life experiences.

To fully accept that children are ‘incomplete’ and unable to learn certain things requires one to ignore the abilities they do possess. Definitions of ‘childhood’ that reflect specific adult views and understandings about children, their abilities and their place in society highlight the vagueness and adult centredness of definitions and their cultural and historical specificity. The comments of the children who participated in this study indicated that they have learned to socially construct themselves in a way that reflects the dominant discourses around them. In postmodern thought, “there is no one authoritative discourse, …, but a number of competing discourses and groups which produce different versions of events” (Danaher, Schirato, & Webb, 2000: 77). Indeed, as McHoul and Grace (1993) and Henriques et al (1984) argue, different discourses exist alongside each other and are often interdependent. Moreover, McHoul and Grace (1993) discuss Foucault’s assertion that the knowledge produced in some discourses engenders power. Alternative discourses provide sites of resistance to this power, offering alternative knowledges to the knowledge that is privileged.

5.7 Chapter Summary

This chapter explored the views of the children in this study about themselves in relation to adults. Their comments reflect many of the issues discussed in the literature that position children as not able to fully participate in social life because of psychological, medical, legal and developmental reasons.

All of the children experienced difficulties in defining ‘the child’. Their comments reflected legal and social discourses that position ‘childhood’ as bounded by age, levels of maturity and responsibility and differences in physical size. Their comments indicated, however, that definitions of ‘childhood’ can change depending upon the context in which the definition is embedded. Definitions arising from legal, psychological or social contexts, for example, use different criteria to set boundaries,
dimensions and divisions of childhood. These institutional discourses were often reflected in the children’s comments.

The children in this study perceived adults as independent, powerful, responsible and confident. In contrast, they perceived children as young, not responsible, playful and not understanding of wider social issues. These perceptions reflect the discourses about differences between adults and children found in psychological, legal and social texts.

Sometimes the children’s comments indicated sites of resistance to these dominant discourses, however. For example, the children positioned themselves in relation to other children of different ages. In doing so, they inserted themselves into society while at the same time separating themselves from it in terms of the relative levels of understandings and skills they considered themselves to have achieved. Their perceptions of themselves as sometimes more skilled and knowledgable than other children while yet not as skilled as adults reflect the argument that our narratives can change depending on the contexts in which we discuss issues. Their perceptions of themselves as sometimes more knowledgable than other people suggest that children’s self-perceptions sometimes do not reflect the dominant discourses about children’s lack of knowledge. Nick and Kane, for example, argued that if children were provided with more information about global issues they would be more able to participate in society than they are currently able to do.

One debate that has the potential to influence dominant discourses about children centres on children’s rights. Chapter 6 will explore issues relating to the rights of children and children’s responses to the rights debate.
Chapter 6: Children and the Concept of Rights

Foucault has asserted that the survival of a dominant discourse depends on the existence of competing discourses (McHoul & Grace, 1993). In relation to the direct participation of children in matters that affect them, the dominant view of children as incomplete, incompetent and vulnerable is challenged by the presence of children’s rights movements (Mason & Urquhart, 2001; Van Bueren, 2001). Other emerging approaches that advocate including children in research and decision making processes (Campbell, 2002a; Christensen & James, 2000; Gilbertson & Barber, 2002; Thomas & O’Kane, 1998) add to this challenge.

Otto (1999) suggests that the topic of human rights provides an example of how competing discourses operate. She suggests that the “Cold War hierarchy” (Otto, 1999: 18) perceived human rights to be universal, while in the Marxist view they were considered to apply to “individualistic self-interest” (Otto, 1999: 18). Later theorists, such as post-colonialists and indigenous theorists, constructed human rights as supporting “the imposition of hegemonic European agendas” (Otto, 1999: 19). Each of these discursive explanations of human rights privileges specific constructions of rights and marginalises others. Otto supports a perception of human rights as having a potential to transform the binary relations between groups such as adults and children by promoting marginal knowledges. This discourse is particularly relevant in a discussion of the social position of children. If a rights discourse can challenge the binary opposites of ‘adult-child’ by “working the hyphen” (Fine, 1994: 72) between them, then there is potential to change the social position of children so they take a more active role in decisions that directly affect them at all levels.

This chapter will review the extent to which children’s discussions about rights reflect dominant discourses about children and rights. It presents an extensive theoretical and philosophical discussion on aspects of the rights discourse. Comments made by the children who participated in this research are compared with philosophical discussions in the literature. Consequently, reference will be made to the interview texts at appropriate points during this discussion.
The chapter will begin with a description of the United Nations Convention on the Rights of the Child (CROC). It will then discuss the philosophical foundations of a human rights discourse before reviewing children’s comments about their rights. The chapter will conclude with a discussion of the cornerstone principles in CROC and the Australian *Family Law Reform Act* 1995: the principles of the ‘best interests’ of the child and the child’s right to a ‘voice’.


The United Nations Convention on the Rights of the Child (CROC) is probably the most significant international document relating to children to have emerged since the late 1950s. Its four guiding principles argue for the inclusion of every child without discrimination, that children’s ‘best interests’ must be considered in any issue relating to them, that all children have a right to survival and that children should have opportunities to participate in society (UNICEF, 2003). CROC’s ratification by most of the world’s nations by the end of 1995 indicates a level of support not known before (UNICEF, 2003) and an expectation that the document will apply to all the world’s children.

The concept of rights for children is part of a broader view of rights for human beings that cover a large number of variables. Some rights have become a part of legal frameworks while others remain outside legislation and policy formation and it is difficult to determine how they interact with policies and legislation. This has resulted in attempts to better understand rights by categorising them. While categorisations of rights have some differences, there are common themes in the ways in which rights have been conceptualised. Freeman (1983) describes four types of rights, ranging from very general ‘welfare’ rights through to more formalised and ‘moral’ rights. In a ‘welfare’ category he lists children’s rights to shelter, food and medical care, with rights to feel safe and secure listed separately under a category called ‘protection’ rights. Two further categories cover claims for adult rights to be extended to children and children’s rights to autonomy over their own lives (Freeman, 1992: 40).

Others have categorised the rights outlined in CROC under two broad headings: those relating to protection or welfare (the ‘caretaker thesis’) (Archard, 1993) and those relating to self-determination or freedom (Coady, 1996). A review of CROC suggests that
‘welfare’ rights are considered far more important for children than those that might provide them with some measure of autonomy.

**6.1.1 Welfare Rights and Freedom Rights**

**Welfare Rights**

Discussions in relation to welfare rights and their application to children rely on the social construction of children as vulnerable, incompetent and unable to make rational decisions for their own protection. In this argument, parents have a responsibility to implement these rights because children cannot care for themselves and need adult ‘guidance’. From a wider perspective, it is argued that welfare rights fulfil individuals' needs for things they cannot otherwise obtain through their own efforts, the denial of which would have serious consequences for the individual (Wringe, 1981). Many of the so-called ‘welfare’ rights do not fit into a legalistic framework, however, and cannot be legislated for (Freeman, 1983). While it is suggested that without them other rights would be ineffective, Freeman argues that beyond being statements of moral or social ideals welfare rights are not very valuable.

Welfare rights are described as those that have as an aim the protection of the welfare of children. CROC (United Nations, 1989) contains a large number of statements which could be defined as ‘welfare’ (protection) rights. These include rights to survival and development (Article 6), rights to have a name, nationality and identity (Articles 7 and 8) and rights of a child to know and enjoy positive relationships with his or her parents (Articles 9, 10 and 11). Other rights under this category include rights to protection from abuse and neglect (Article 19), to appropriate care (Articles 20 through 23), to good health (Article 24), a positive standard of living (Article 27) and education (Article 28). Protection from sexual exploitation (Article 34), forced labour (Article 32), sale, trafficking and abduction (Article 35) are also mentioned, as are other more problematic ‘rights’ such as those relating to involvement in armed conflicts (Article 38).

Welfare rights appear to be, at the very least, significantly ‘adultist’. Powerful individuals (adults) confer welfare rights on children on their behalf, thus refusing children the autonomy to decide if and when they need protection. Parents can ‘protect’ children by denying them other rights such as the right to associate with friends or to decide what they will wear (Freeman, 1983).
Protectionist ‘rights’ can lead to policies such as those that have been directed towards indigenous groups and women, especially within the family system. These protectionist policies reify the reasons for adults assuming some care and control over children. Arguments that position children as needing care and control deny the ability of children to care for themselves and to develop an “ethic of responsibility” (Smart, 1998: 84).

**Freedom Rights**

Freedom rights in CROC are limited to those rights described in Articles 12 through 16. These relate to freedom of opinion, expression, thought, conscience and religion, and the right to privacy. Moloney (1995) suggests that the presence of these rights in CROC implies that children should hold the same rights as their adult counterparts while Coady (1996) argues that their presence requires adults to consult with children on matters that affect them. The concept of children’s rights to freedom has the potential to remove them from possible oppression and harmful parental control (Freeman, 1992).

Freedom rights may be either active or passive. Passive rights are those referring to the right to be left alone, not interfered with or harmed. Active freedom rights are the rights to take an action without interference from others, including the right to move freely in public places, to choose occupations and interests, and to seek and disseminate information that should not be legitimately concealed (Freeman, 1983).

Difficulties arise when freedom rights are related to the concept of autonomy (Freeman, 1992). Autonomy has been described as the ability and capacity to enable an individual to make independent decisions about significant aspects of their lives. It is this concept that leads to arguments about the advisability of children having any level of autonomy. First, developmental theories of childhood indicate that children do not have a capacity to make independent decisions. While they may seem ‘competent’ when discussing issues relating to their daily lives they may also seem ‘incompetent’ when discussing matters relating to politics, for example (Coady, 1996). Second, it is argued that children make mistakes and are not competent to decide appropriately between competing options (Freeman, 1992). This argument denies that adults make mistakes too, and that having autonomy means having the right to take risks, make choices and learn through trial and error (Freeman, 1992). Additionally, the rigidity of the argument ignores the possibility of multiple selves that interact in different ways in specific contexts (Fine, 1994).
One difficulty with CROC is that it mixes the rights of adults with those of children. While the document discusses the rights of children to certain freedoms it implies that children are not able to freely make decisions in relation to issues surrounding core values. For example, Article 14 in CROC states that children may have a right to freedom of thought, conscience and religion. The same article points out, however, that signatories to the Convention shall “respect the rights and duties of parents…to provide direction to the child in the exercise of his or her right” (Article 14, United Nations Convention on the Rights of the Child). The accompanying discourse maintains the view of children as incompetent, developing beings who need constant direction and of adults as having full responsibility for their development. Consequently, adults continue to decide on major issues for children. For example, when children become ‘clients’ in therapy their rights, both to protection and autonomy, are often removed. In most cases, children do not seek therapy, but are forced by adult caregivers to attend. Children believe that they cannot refuse, and are not invited to participate (Andrews & Freeman, 1997). Legalistic constructions of rights do not assist children in these circumstances. Andrews and Freeman (1997: 10) argue that society needs to transform its view of children to include the right to approve their own involvement in therapy.

6.2 Philosophical Foundations of Rights

In endorsing the Convention on the Rights of the Child, the United Nations placed the rights of children on the legal and political agendas of signatory states. The glossary that accompanies the Convention states that by ratifying the document a State Party is legally bound to “uphold the treaty’s standards” (United Nations, 1989, Glossary, ‘Ratification’). The positioning of children’s rights as a legal issue raises concerns about the institutionalisation of ‘rights’ and suggests a number of philosophical and practical dilemmas in relation to their implementation. These include issues surrounding the difference between claims and entitlements, rights, rules and power, universalism and essentialism, autonomy and dependence and the question of adultism in the children’s rights discourse.

6.2.1 Claims and Entitlements

When rights are discussed from a legal point of view they are associated with the concept of ‘claims’. Rayner (1994) suggested that human rights claims represent ethical
statements relating to a universal standard for living. For a claim to be recognised, it is usual for an entitlement to be established. ‘Entitlements’ relate to individuals and are not negotiable (Dunston, 1997), although in some circumstances (such as Australian Native Title) entitlements can be claimed by groups of people.

The relationship between rights and claims is not very clear, however. It is argued that when claims are made they constitute action. In making a claim, one is stating that one has a right to it. In contrasting arguments, a right is not associated with any actions at all. Another difficulty is that, while claims are related to legal rules, rights are not necessarily related in the same way (Wringe, 1981). One can have a claim (for example, to an inheritance) yet not exercise it or even be aware of it (Freeman, 1983), but it remains claimable. On the other hand, the existence of a right does not necessarily mean that one can claim it.

6.2.2 Rights, ‘Rules’ and Power

There is also a conflict between ‘rights’ and ‘rules’ of behaviour (Wringe, 1981). Societies can have sets of rules that conflict with each other, so that what is seen as morally correct behaviour in one society (for example, female circumcision) can be rejected in another. The ‘rights’ of the respective members of societies differ as a result of the established ‘rules’.

Some of these ‘rules’ may be unwritten and culturally embedded. For example, the dominant discourses that have been established in any given culture determine the qualities of a ‘fit’ person within the society (Danaher, Schirato, & Webb, 2000), and an implied social contract emerges (Mason, 2002) that specifies the set of ‘rights’ that relate to individuals.

Additionally, the relationship of rights to power is problematic. It has been suggested that one cannot have a right unless one has some level of power to exercise the right in question. This argument is difficult to uphold, however. Firstly, the idea of power suggests an ability to compel others to comply with the wishes of the more powerful. When this occurs, the rights of the less powerful are overridden, ignored or destroyed. Secondly, the simple possession of power cannot be seen to justify the claims made on others. Having the power to act in a given situation does not necessarily equate with a right to take action (Wringe, 1981). Power itself can be seen as linked to knowledge and
discourse, running through the whole fabric of society (Rabinow, 1984). It is the discourses that are produced by and in turn produce power that determine the level and quality of the rights that any given individual may claim.

Rights can be removed from people in some circumstances. A right to life, for example, may be removed by the state when a convicted murderer receives a death sentence. On the other hand, a right to end one’s own life has been vigorously denied by society. In current circumstances, a right to justice is denied for those who were arrested and incarcerated by the Americans during the Afghanistan invasion that followed the destruction of the World Trade Centre in September 2001. In Australia, asylum seekers have been detained without rights because they are not Australian citizens (Ife, 2002).

Some dominant discourses determine who has the power to overrule the rights of certain groups of people. In Western society, human rights pertain more to men in the public sphere and are often violated in the private sphere of the family, in particular where there is physical, emotional, economic or social abuse of women and children at home, among other forms of rights violations (Ife, 2002).

6.2.3 Universalism/Essentialism

Human rights are inscribed in the hearts of people; they were there long before lawmakers drafted their first proclamation (Mary Robinson, UN Commissioner for Human Rights, quoted in UNICEF, 2003: 1)

UNICEF argues that human beings are born with rights and that rights cannot be given but are universal, applying equally to all, no matter who or where they are. This view of rights has emerged through the institution of the United Nations and its predecessor, the League of Nations (UNICEF, 2003). A review of history indicates that human rights have not always been available to the whole of society. The changing social positions of Jews, African Americans, Indigenous peoples, women and children throughout history indicate that the concept of human rights is relatively new. An argument that describes rights as being innate (Ivison, 1998; UNICEF, 2003) reflects a legal and political discourse that provides legitimation for a concept of ‘rights’ as ‘natural’ and available to all at birth (Berger & Luckmann, 1966). The concept of a universal set of ‘rights’ that applies to everyone across all cultures and social positions invests human ‘rights’ with scientific qualities: “True being is everywhere an ideal goal, a task of episteme or ‘reason’”. (Husserl, 1996: 231, italics in original). While Rayner (1994) has argued that rights
represent a universal standard of living, a postmodernist philosophy would suggest that the ‘rights’ listed in documents such as CROC represent a set of rules in relation to appropriate behaviours and reflect a specific institutional (James & James, 1999) and cultural discourse.

The concept of human rights for all children suggests that childhood can be essentialised. In its preamble, CROC refers to an immaturity in children, both physical and cognitive, and argues for “special safeguards and care” for children as they grow (United Nations, 1989, Preamble, Paragraph 9), while UNICEF refers to the “evolving capacities” of children (UNICEF, 2003: 3). These descriptions suggest an essentialising of children which ignores the differences in values, gender, culture, religious beliefs and life styles in which children are situated (Gergen, 1999). Such essentialising of children makes it difficult to evaluate the practical outcomes of CROC because it assumes that the specific set of rights contained within it will fit for all cultures and life stages (James & James, 1999).

While practices of universalism and essentialism can lead to ‘othering’, the objectification of children (Gergen, 1999) and the assigning of a social status to them that subordinates them to adults (James & James, 1999), these practices can also lead to an enhancement of children’s rights (Otto, 1999). On one hand, universalism overlooks the diversity of social meanings of ‘childhood’ and ‘family’ in different social contexts and the rights of a child to maintain his or her individual identity (Olsen, 1992). On the other hand, recognising that CROC has the potential to universalise and essentialise children can produce a site of resistance and transformation for the rights of children (Otto, 1999). This is because the notion of universality can destabilise hierarchies of difference that are inherent in processes of ‘othering’, thus acknowledging and enhancing the rights of the ‘others’ in society.

6.2.4 Adultism

UNICEF states that the Convention on the Rights of the Child was drafted over a ten-year period. The working party included members of the UN Human Rights Commission, independent experts and observers, non-government organisations that represented a range of interests including legal and family concerns and United Nations agencies (UNICEF, 2003). Children themselves were not included in the drafting process, leaving
open to debate the question of whether children would have agreed with the content of the Articles in the final document (Freeman, 1992; Taylor, 1998). Taylor (1998) argues that adults generally place children in subordinate roles in society while writing about and debating the rights of children on their behalf. Freeman (1992) agrees, arguing that CROC represents a set of conditions that adults think children need in order to develop into adulthood. Children might have very different views of the issue of rights.

The connection of ‘rights’ to ‘interests’ has led to some debate about whether children might choose sets of rights that pertain to their perceived interests in ‘child-like’ activities. For example, the assumption that children do not have an interest in marrying, working or voting leads to an argument that ‘rights’ in relation to these, and other ‘adult’ activities, should be attained at different ages and stages in the human life cycle (Campbell, 1992). While children might pursue specific interests at different ages, “paternalistic interventions” (Campbell, 1992: 15) may be seen to be appropriate to protect children’s rights either by restraining them from taking certain action or to ‘require’ some other action that will result in the achievement of the child’s stated interests. This notion seems narrow, presenting one version of children and their interests, essentialising and universalising children and ignoring the cultural and social differences in which children are situated. Freeman (1992) argues that an emphasis on people’s interests can lead to an erosion of their rights because many individual interests have no justifiable claim in terms of ‘rights’. In contrast, Eekelaar argues that people are usually thought of as having ‘rights’ “when they choose an action irrespective of whether that choice eventually promotes their interests or not” (Eekelaar, 1992: 226).

The concept of ‘interests’ suggests the presence of a level of knowledge about the issues that underlie interests. The Collins Gem Dictionary (1992a: 285) defines ‘interest’ as a “desire to know or hear more about something”. If one does not know of a specific phenomenon one cannot express an interest in it. This creates difficulties for children to assert rights-based ‘interests’ when they may not have been exposed to the issues underlying them. In terms of Foucault’s power-knowledge relationship (Sawicki, 1998), children who have no knowledge of a specific ‘right’ because their interest in it has not been raised through information or education will not hold the power to assert that right. In my research, a comment by Petra highlighted this issue. She asserted that she had not “really” been taught about rights although she had “picked up” some information “along the line”. Petra’s practical assertion of her right to be heard on matters that affect her has
led to her moving to live with her aunt and uncle in preference to her parents. When asked to discuss other children’s rights, however, she did not offer extensive information because of her lack of exposure to them. Although adults discuss the rights of children, when children are asked about the issue of their rights their comments reflect a lack of information and knowledge rather than a lack of understanding about rights issues.

While not having participated in the drafting of CROC, children and young people have expressed opinions about their rights, most recently at the United Nations Special Session on Children in May 2002. Four hundred and four young people under the age of 18 participated in a Children’s Forum during this session. Two delegates from that forum (one aged 13, the other 17) presented a statement to the General Assembly on 8 May 2002 that represented the combined views of the child participants. The children who attended the Forum supported the Articles of CROC and pledged “an equal partnership” in ensuring that the rights of children were protected (UNICEF, 2002: 3). Their statement partly reflects adult perceptions of the social position of children, however. For example, the attendees at the Children’s Forum described children as “resources” and “investments” (UNICEF, 2002: 3). This description reflects a particular adult view of “a good childhood” which includes a perception of children as “resources in environmental protection” and “resources for local communities” (Kjorholt 2002: 71).

The statement prepared by the children who attended the Children’s Forum considered a number of issues in relation to children’s rights. These included rights to be free from exploitation and abuse, the eradication of child soldiers, provision of opportunities for children with AIDS, education for all children and children’s rights to participate in decision-making processes. While it is difficult to separate the statement of the children who attended the United Nations Children’s Forum from the institutional discourses surrounding children’s rights, the language they used demonstrates the ways in which narratives reflect the social construction of the self (Gergen, 1999: 48). The issues discussed in the statement reflect those that were the focus of the 2002 World Report (Human Rights Watch, 2002), suggesting that the Children’s Forum may have been influenced by the United Nations’ current concerns. Nevertheless, the children involved in the Forum constructed themselves as competent and able to fully participate in society, thus challenging dominant adult discourses about them. The statement ended with a declaration that reads, “Until others accept their responsibility to us, we will fight for our rights” (UNICEF, 2002: 3). This statement challenges a construction of children as future
citizens rather than citizens of the present. As society changes and new discourses gain strength, children’s abilities to effectively assert their rights as separate from, and complementary to, those of adults may become more pronounced.

6.2.5 Autonomy or Dependence?
When Australia ratified the United Nations Convention on the Rights of the Child in 1990, a number of concerns were raised by adults (Jones, 1999). A concern that seems to have persisted revolves around a perception that to provide children with a degree of autonomy would undermine the authority of parents and other adults (Barnes, 1998). In 2000, an editorial in the *Sydney Morning Herald* reported that courts in the United States had rejected concepts of autonomy and “adult-style civil rights” (Editorial, 2000: 3) for children such as freedoms of speech, religion, association, assembly and privacy. Arguments against the concept of children holding such rights focused on levels of children’s dependence on adults, suggesting that this dependence would be destroyed if children were given more autonomy. Other arguments that reflect a perceived need for children to be highly dependent on parents and other adults include statements about high numbers of street children in Victoria who place themselves in situations of danger and corruption on a daily basis (Fogarty, 1995).

The children in my study commented on their need to depend on parents for support and to provide them with boundaries and guidance. For example, in issues such as bed time and diet, children’s comments reflected a respect for parental authority:

*Q: Are there some decisions that adults should make that children shouldn’t make?*

*Olivia (9): Um, hmm. (4 sec). Well, sometimes children get to choose when they go to bed and choose when they eat and things like that, but I think that the parents should choose things like that, even though sometimes I know my, I know that I get a bit cheesed off when Mum says I have to go to bed now, but, um, it's what I need. And that's why she says it. If I didn't need it then she'd let me stay up later.*

*Harry (13): Well, I think I should go to, I should have to go to um, bed, like 10, and parents, like my, my age, parents should like have the say in bed time. Unless it's like holidays and you're watching a movie, like you sit up to like 11 or something. Sometimes. But parents should get the say in it mostly. Unless you're up to 17, like Fran, or 15 and that.*
Restrictions on children’s movements were perceived as positive because they demonstrated a level of care for children:

Q: You make decisions about where you’re going to meet and who’s, who’s gonna be there?
Daniel (10): Yeah, we get to choose who, who we want to be there; but it’s our parents who give us the A-OK for us to be able to go. Otherwise, like ...
Q: How does that feel, Daniel?
Daniel (10): Well, it's OK. Cos we can, I can tell that obviously our parents care for us. Cos, like, if we just ran off then we might get in trouble and they won't know.

Q: What happens about parties and things like that?
Petra (13): Parties. Um, if I get an invitation to a party, I'm allowed to go, cos it's usually a birthday, unless I've been you know, like, really bad, which, that's never happened, but I'm sure that would happen if I did something bad, I wouldn't be allowed to go. And that's fair because that would be a punishment, cos I love going to parties.

While children’s comments supported the principle of freedom of association, they recognised that this had limitations.

*Q: … sometimes parents even say oh, I don't think you should see him [Whoever]. Yeah, because um his family's a bad influence or something. [Yeah] What do you reckon about that sort of stuff?
Callum (10): Um, but sometimes if you know they're a bit funny and their family's like not good you should listen to your parents, but if you know that's not true you should tell them that.

*Q: Sometimes, um, the other thing that happens is that um, parents and other adults will say to children, um, that someone that is seeing a friend or, or, um, a child that you’ve made friends with isn’t the kind of person that the parents would want them to, to be spending time with. You know? And sometimes parents will stop children from um, seeing the people that the children want to see. Like, like friends. [Yeah]. What do you think about that?
Olivia (9): Well, I'm not quite sure. If, I don't think it would be really fair because just say you went to a new school and you found this friend and your parents didn't really like her, but it was the only person who would talk to you, and then the parents didn't like her and they stopped you seeing them, well, the kids, well, ah, it wouldn't be really fair on them, because it's their first friend. And um, if it was like that, then the, well the kid might still be talking to them at school, but just not um, telling their parents about it, and then they might lose that little bit of communication.
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Q: ... And then, um, are there any restrictions on, um, who you should see and who you shouldn't see?
Kane (13): Ah, not really. (OK). Cos I don't really know that many bad people and stuff. Mum wouldn't let me I think.

Some children suggested that there was a moral obligation to consider parents’ feelings and wishes in a number of issues. For example, Gemma responded to a question about whether she might refuse food:

Gemma (15): I don't think it matters what age we are, we'd still get told off: cos they cooked it. And it's like, appreciate what you have, people are dying. You know.

Fran discussed children’s obligations in relation to contact visits with the non-residential parent. Her comment reflected adult perceptions about the way in which children learn and the consequences for not learning:

Fran (17): Yeah, if the parents do, really do nothing wrong towards them, then I see no reason why the child shouldn't see the parents, the parents have the right to see the child as well. And children enjoy to be told what to do sometimes, because it's the only way they learn. Otherwise they grow up to be selfish little shits.

Fran went on the discuss children’s obligations towards parents:

Fran (17): Well, yeah, it, it's like you know, sometimes we don't, like the parents have big problems and stuff if we don't see them a lot, but still even if we have problems with our dads and mums, if we still a, obligated to really go see him every once in a while, so, if it works sometimes we can't go on the weekends, we just don't do it or not sort of thing, but we still have to see him.

Feelings of obligation went deeper than a sense of duty, however. The emotional attachment between children and parents, even when parents had separated, was reflected in the children’s comments on a number of occasions. For example, although Fran, Gemma and Harry’s father had refused them the opportunity to accompany their mother when she separated from him, these children continued to see regular contact with him as positive. Ellen also commented on the positive aspects of being able to see her father at times other than the scheduled contact visits. Daniel summed up his perceptions of his good fortune relative to others in having two parents:
Daniel (10): Mm. And I’m also lucky to have a mum and dad. Some people, their dad might have been a police officer, in the army. Mm. They would have died. Might not even have any parents at all. Might be an orphan.

In general, children accepted the rules that governed their lives with few complaints. They were, however, able to discriminate between fair and unfair rules, a finding also reflected in the comments of Emler:

All who have studied the question agree that even in early childhood there is some sense of what is fair and what is unfair. That is, children react to the treatment they get not simply in terms of how intrinsically unpleasant or aversive it is but according to whether it is deserved. Many would go further and argue that young children are guided by such notions of fairness in the treatment they mete out to others (Emler, 1991: 123).

The observations and the comments of the children who participated in this research indicate a site of resistance to the argument that a children’s rights discourse promotes the destruction of parental authority, as Barnes (1998) and the Sydney Morning Herald’s editorial of 4 March 2000 have argued. The children’s comments reflect a respect for parental authority as long as they perceive that the treatment they receive is fair, as Gemma’s comment suggests:

Q: Who should make those kinds of decisions about when you do your homework?
Gemma (15): I think I should, cos I’m the one doing it.
Harry (13): You’d be doing Internet all day, M.
Fran (17): I think the parents should have a fairly big say in that, because ...
Gemma (15): Yeah, but they shouldn’t, like, push, cos then they, I, I’m, I hate it when people do that, it’s annoying.

In other discussions, the perceived significance of the family as a nurturing and positive influence on children is highlighted (Francis, 1999). While Francis perceives CROC as highly damaging to the institution of the family - and even as undermining Christian values - one of the central provisions of CROC is the concept of the family as “the fundamental group of society” (United Nations, 1989, Preamble). The Australian Human Rights and Equal Opportunity Commission has endorsed this view by describing the family as “the basic unit in society” (Human Rights Watch, 2002: 1). Rayner (994) points out that the sanctity of the family has long been respected in Australia.
Articles 5 and 18 of CROC assert that the primary responsibility for decision-making in relation to children rests with parents. This emphasis on the centrality of the family brings some concern. Families are often implicated in the abuse of children, sometimes leading to their death (Bessant, 2002; Saunders & Goddard, 2001). If complete privacy is assured for the family, children who may be at risk of abuse or neglect may well be compromised. Additionally, because of their relatively powerless position in relation to adults, children can be exploited (Bessant, 2002; Harding, 1997). Protective mechanisms are required to ensure that exploitation is identified and addressed in appropriate ways. It could be argued that were children to have complete autonomy the possibility of greater exploitation could arise, due to children’s relative inexperience, their physical differences and emotional dependence on adults. “Even parental ‘love’ has its suspect side” (Harding, 1997: 125).

Olsen (1992) argues that in issues of sexual abuse, the voice of children remains marginalised because children are either ignored, not listened to, or not believed. When children protest about visiting a non-residential parent, for example, the protestations are usually considered to be related to negative influences of the other parent on the child. Unless abuse is ‘proven’, children continue to be forced to visit the allegedly abusive parent. Concerns such as these were reflected in some of the comments made by the children in this research. Both Fran and Laurence questioned the advisability of contact between a child and a parent if the child was refusing to visit the parent:

*Q: And how much do you think the child should be involved in deciding to see the parent they don’t live with?*

Fran (17): I think their opinion should be taken fairly highly. But also take consideration that there may be factors that um, if they’re saying no for a very strong reason there could be a very good reason why they're saying no. ... Like, there's so many things you'd have to sort of consider. As far as the child's relationship with the parents go.

*Q: When parents separate, what kind of rights do you think children should have then?*

*Laurence (16): Um, rights to choose which parent they live with, and rights to choose um, like when they want to see the parent that they’re not living with and if they want to see him at all. Like, I don’t know, it, it would be kind of a rare case, but there might be some cases where they wouldn’t want to see their other parent at all. And, yeah, that kind of thing.

*Q: You think it would be important if children were really strong on not seeing the other parent that ...
Laurence (16): Yeah. Cos if a child was fairly strong on not seeing the parent, there'd have to be something really wrong, like they're getting abused by that parent or something, there'd have to be something quite severely going wrong really, like for them not to ever want to see them again, like yeah.

The tension between autonomy and dependence that underlies these different perceptions of children’s rights reflects adult discourses on the protection of children so they may grow positively while respecting that they may have a degree of autonomy to act independently. The tension lies in the question of how much autonomy a child needs or can manage in safety.

Freeman argues that autonomy is a central concept for a rights perspective. One cannot have rights unless one has the freedom to use them (Freeman, 1992), but increased autonomy may mean a corresponding need for an increase in levels of responsibility in children. Notions of responsibility could extend to criminal actions and other behaviours that fall within legal frameworks. This issue was highlighted when two ten-year-old boys were charged with the murder of the infant James Bulger in England in 1993 (Harding, 1997; Hubble, 2000). In a 1994 appeal against their sentence, the Court did not agree that the convicted boys should not have been considered responsible for their actions due to their age. Harding (1997) pointed out, however, that in most European jurisdictions children as young as ten would not be prosecuted in the way that Robert Thompson and John Venables were. Most European jurisdictions construct children of this age as less than responsible and thus unable to be held accountable for actions such as murder. Harding suggested that this could change for all children if they are accorded greater levels of autonomy.

On the other hand, a certain level of dependence may be positive for children because it can provide some protection from abuse and the possibility of children making inappropriate choices. The dependence of children on adults is therefore a concept created for their own good (Harding, 1997). Indeed, it has been suggested that adults actually strive to reduce children’s dependence as they grow because of adult responsibility that accompanies child dependence (O’Neill, 1992). When, however, dependence is translated into statements of control and the imposition of curfews, strict and limiting rules and constant surveillance, it becomes oppressive and counter-productive for children’s emerging autonomy (Leach, 1994).
6.3 Can Children Claim Rights?

In a legalistic framework, human rights are those that can be claimed, most often in a court of law. If they are not claimable they are not rights (Dunston, 1997). This argument ties ‘rights’ with ‘entitlements’, concepts which are tangible and quantifiable. According to Dunston (1997), human rights do not exist without an entitlement. Such a utilitarian view of human rights concludes that children are not legally entitled to rights (through statutes) and cannot claim any. Consequently, they have no rights at all.

The concept of ‘rights’, though, encompasses a host of other concepts that are not tangible and not claimable at law. For example, the right to a name, to freedom of speech, or to associate with those of one’s own choosing, are not rights that are fully regulated and cannot therefore be easily claimed in a court of law. These are rights that one asserts independently of the law, through acting or speaking in certain ways. They are also the rights that some authors have asserted are embedded in a concept of obligations, placed on others (adults) to ensure that children ‘receive’ appropriate care and ‘guidance’ (O’Neill, 1992). Consequently, O’Neill (1992) suggests that children do not have rights of their own because of the need to oblige adults to care for them. Because they lack the competence to assert their own rights, children cannot actually ‘claim’ them. These arguments rely on the social construction of children as dependent on adults and unable to act through their own agency and feed back into the dominant Western discourses of children and childhood. Power is allocated to parents and other adults to ‘control’ the activities of children as they grow towards their own achievement of ‘adulthood’.

Despite arguments that children are not able to claim rights for themselves, there are examples of children having asserted their rights in many different areas of enterprise. A number of children’s services exist, including help lines, children’s ombudsmen and children’s legal services (Freeman, 1992). In England during the 1970s, student unions and a children’s rights movement emerged (Wringer, 1981), and in 2001 a 14-year-old from Calgary in Canada rode his bicycle across the country to advocate for the rights of children to be heard in family court matters that affect them. The young person, Clayton Giles, has his own website that encourages children to speak up for their rights. He stated that of approximately 2500 children who have commented through the site “I’ve never come across one who doesn’t want a voice” (McLean, 2001: 28). Whether children can claim the rights to which they may be entitled has, however, led to a consideration of the
appropriateness of a ‘rights’ discourse for children (O’Neill, 1992). Instead of considering
children’s rights, discussion should centre on the list of obligations that adults have
towards children. Issues of children’s rights will be embedded in this discussion.

The inclusion of children’s rights in legal statutes would be a way of ensuring that ‘rights
talk’ leads to action. Adult rights, so enshrined, have led to greater clarity in relation to
how rights might be used and the same might occur with the rights of children; but history
indicates that legislation might not have such an effect for children. The development of
IQ tests, originally (in 1907) seen as a ‘fairer’ process for deciding the institutionalisation
of children, later became associated with a labelling process. Juvenile courts, originally
conceptualised in terms of children’s rights and as ‘saving’ children from injustices, are
now associated with the diminution of children’s rights (Australian Law Reform
Commission and Human Rights and Equal Opportunity Commission, 1997; Freeman,

In summary, children do not currently have any ‘rights’ and could not claim them if they
had them. Adults assume responsibility for children because they are seen as dependent
and vulnerable. It is feared that assigning rights to children may result in further erosion
of their position in society and continue to maintain them as vulnerable and dependent.
These concerns have prompted some theorists to consider ‘rights’ in a completely
different way: as a set of relationships between people (Roche, 1999). In this view, the
way in which the relationship between children and adults is constructed can lead to a
consideration of the interconnectedness between them. Rights then become part of an
attitude of reciprocal respect for each other and a cooperative sharing of resources for the
benefit of all.

6.4 Children’s Views of Rights
Ruck, Abramovitch and Keating (1998) explored the extent to which children aged
between 8 and 16 years understood the concept of rights. They concluded that the
acquisition of rights understandings did not follow an age-related progression, with
children at all ages perceiving ‘nurturance’ (or welfare) rights as important for children.
‘Self-determination’ (or freedom) rights were not as meaningful for children, however,
As mentioned earlier, in my study, children’s understandings of rights were more related to their having been exposed to discussions about the rights of children, rather than to any age-related criteria. When asked what they knew about children’s rights, the participants provided responses that indicated a number of different understandings.

For example, in response to the question, “Have you heard about rights before?” nine-year-old Olivia replied, “Kind of, but I forgot them”. Ellen, also 9, asked a question in return:

Ellen (9): Rights and wrongs?
Q: Yeah, kind of like that.
Ellen (9): That, mm, if you get something right it's a tick or if you get something wrong you get a cross.

Daniel’s comments indicated his understandings of ‘right’ and ‘wrong’ but from a wider perspective:

Daniel (10): Yeah. They've, they used to have ads on TV for like supporting for children's rights and stuff. Adult rights, what should be done to help the environment and stuff.

Daniel’s later comments reflected a ‘right-wrong’ discourse in greater detail:

Daniel (10): Well, they should, you should have reasonable rights to do, sometimes do what, what you think you should. And sometimes rights which you think you shouldn't. So, it's your decision, it's your decision to have rights that you actually want. So if someone just comes along from another family and says, like at school, ah one of your friends comes along, or an enemy, comes along and says, 'Hey guess what, I've found this bet on you because so and so', um, cos of the rights that they use, then don't just go, don't just go home and say, 'Hey, Dad, guess what. I've got a really good idea', and just say what they did, cos, they would have had to think it over through, cos they'd, everyone's different. So, yeah, don't just go along with what people say, like, learn to say no. And, like if someone says, 'Hey, check this out, here, try this', a drug or something, I'd just say, 'Nup'.

Callum related his understanding of rights to his own situation:

Callum (10): Like, you should have the right to go to the tap and get a drink, and (Yeah) stuff like that. (mm-hmm) Mm. Like if you want to go outside you should have the right to do that. It's not like your parents can go, ‘I don't want you to go outside (yep) you can stay in here’. (Yep) Should have a bit of a say.
Callum’s comments indicated his understandings of children’s rights to a level of freedom in one’s actions and opinions. Rights to freedom of speech were also mentioned by the older children in this research, alongside descriptions of ‘welfare’ rights. As has been pointed out previously, in discussing the issue of rights for children, comments made by the older participants reflected the amount of exposure they had had to ‘rights’ discourses:

*Petra (13):* Rights. Um, I don't really, but I know, I've never really been taught about them that much, but I just, I've picked up along the line that, you know, we have got a say, and it's not right if we don't. Um, if we, we have the right to learn, so no one can stop us from learning.

*Laurence (16):* Just, I don't know, like rights to an education, rights to having um, food and a place to live and I don't know what, just like (7 sec) yeah, and rights for them to choose what they want to do, live their own life, kind of thing, is what, is a fairly important one.

*Nick (13):* Um, I know the ones that, the right to feel safe, I think is one, but the right to be clothed, to have shelter, to be cared for and not to be abused. The right to, I think to be educated, is that one of the rights? ... Um, yeah, that, I think those kind of rights are very important, um, the right to, I think the right to have friends would be a very important thing. The right to be heard and not, yes, um, yeah, definitely to be heard.

Knowledge about a ‘rights’ discourse does not necessarily mean that children will talk in terms of ‘rights’, however. The children in this research did not refer to issues of rights when discussing the level of care they received from parents or how much decision-making they were involved in. For some, ‘rights’ were about ‘choice’ and deciding whether rights were even needed, as Daniel discussed above. This is reflected in Amy’s discussion about being with her father:

*Amy (9):* It's mainly not really rights. He mainly doesn't really tell me off or anything, so I mainly just ride my horse, that's all I really do.

Brenda discussed ‘choice’ in relation to her rights to become involved in various activities:

*Brenda (7):* I have the right to choose whether I go to something or not, like recorder, swimming; if I don't want to do it this way I can do it that way or something. Or if I'm making craft Mum wants to me do this thing or that thing I could do whatever I want.

Matthew discussed the choice of school:
Matthew (11): Um, ah, if like they're going to a bad school, I think they should like be able to, if there's another school that they could go to, and stuff. Um ... 

The children’s comments indicated the importance of placing ‘rights’ issues into context for children. When Amy, Ellen and Daniel were asked questions such as “What do you think you should be able to have a say about?” their comments indicated an understanding about these issues from their own world perspectives. The adult concept of ‘rights’ per se was understood by the majority of these children in terms of their own activities and social lives rather than in terms of formal, legally-based concepts. Indeed, they often discussed their views of ‘fairness’ rather than the concept of ‘rights’. For example, Ellen discussed contact arrangements:

Ellen (9): It's not very fair, because, um, they, if they don't get to see him in the week, like, it's not really fair, cos you only get to see him twice every week, or every second week.

Daniel said that he and his parents worked out Daniel’s living arrangements with the assistance of a third person:

Daniel (10): So, the person who we went to, the, they decided to do the switching over weeks one...cos it's fairer.

Laurence also discussed his understanding of the difficulties in contact arrangements:

Laurence (16): I don't think that there's really a way that you could solve it completely. Like, satisfactorily, like you, if you, there's, cos there's always going to have to be a time when you're not with like, one or the other parent, so there's no way that you could make it completely ah, to work, like, like you said, like they might want to see their father every weekend but their mum wouldn't want to do that because no one gets to see their mum at all, and there's no real way that you could um, make, that I could think of anyway, that you could make it totally fair, like.

One way in which children’s best interests might be determined is to invite them to participate in formulating social policies and decisions that directly affect them (Murray & Hallett, 2000). The social construction of children as unable to fully understand ‘adult’ issues and as being vulnerable, especially following parental separation, mitigates against this, however (Wallerstein & Kelly, 1980). The ways in which children’s ‘best interests’ are decided and their ability to participate in determining their own ‘best interests’ are examined in more detail in the following sections.
6.5 The concept of children’s ‘best interests’

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. (United Nations Convention on the Rights of the Child, Article 3)

……. the best interests of the particular child …… remains the paramount consideration (s65E). In that process the Court must consider the matters set out in s68F to the extent that they are relevant in a particular case, the weight to be attached to any one consideration depending upon the circumstances of the individual case and is a discretionary exercise by the trial Judge. (B and B: Family Law Reform Act 1995 (1997) (CCH, )

In both the United Nations Convention on the Rights of the Child and the Australian Family Law Reform Act 1995, the concept of children’s ‘best interests’ has been centralised, and is paramount in the Family Law Reform Act when parents and the Court are considering parenting issues. The term ‘best interests’ was adopted in the Family Law Reform Act 1995 because it was considered more ‘child-centred’ and less paternalistic than the concept of ‘welfare’ (CCH, 2000; Chisholm, 1996). Informed by psychological principles, the concept is intended to provide guidance to judiciary, parents and professionals in forming decisions that will affect children (Landerkin, 1997; Rotman, Tompkins, Schwartz, & Samuels, 2000).

The ‘best interests’ principle as it operates in the Convention is comprehensive, in that any issue that affects children, whether directly or not, must be considered in the light of their best interests (Australian Human Rights and Equal Opportunity Commission, 2001b). The principle covers decision-making across all levels of government and social institutions. Parents’ decision-making must also consider children’s best interests as paramount, including taking account of children’s own views.

In practice, however, adults control the process of determining the best interests of individual children, either through the court system itself or through decision-making processes which do not directly involve children (Campbell, 1992; Carmichael & Sarre, 1994; Landerkin, 1997; Rotman, Tompkins, Schwartz, & Samuels, 2000). Moreover, the concept of ‘best interests’ is unclear and poorly defined (Behrens, 1996; Kelly, 1997; Rayner, 1992, 1994; Thomas & O’Kane, 1998). The determination of a child’s ‘best interests’ involves value judgments and includes personal views about children and their position in society (Rayner, 1992). Additionally, children’s needs change as they grow,
making it difficult to achieve a definitive understanding of their ‘best interests’ (Kelly, 1997).

Nevertheless, attempts have been made to address issues surrounding the concept of ‘best interests’ and a system of evaluation has emerged. Acknowledgment of the indeterminacy of a single values base on which ‘best interests’ could be assessed (Thomas & O'Kane, 1998) has led to an interpretation of the concept in terms of the family or institution in which the child is situated, rather than in terms of a child’s ‘rights’ (Jones & Marks, 1996). Even here, though, it has been suggested that in some cases, for example when conflict occurs between parental authority and a child’s ‘best interests’, the concept of ‘rights’ is more significant that the concept of ‘best interests’ (Rayner, 1994).

6.5.1 Factors in Determining ‘Best Interests’

In an attempt to identify a framework for determining a child’s ‘best interests’, legislators have drawn up a set of factors that decision-makers must take into account when considering the future of children. In Australia, these factors appear in Section 68F of the Family Law Reform Act 1995. This section includes the requirement to consider children’s wishes alongside a number of other factors. Those factors include the nature of relationships between children and their parents or caregivers, their siblings and other significant people in their lives, the possible effects of any changes to their current status, the capacity of each parent to support the children, and the need to protect children from harm. While these factors are intended to provide guidance for adults (parents, judges and family law professionals) in making decisions about the future of children, the Act does not discriminate between the factors in terms of significance. This places a responsibility on decision-makers to consider the relevance of each of the factors when deciding on issues in relation to individual children. A high level of discretion is therefore involved (Landerkin, 1997; Rotman, Tompkins, Schwartz, & Samuels, 2000).

Those working in the family law area can have different views about what is in the best interests of specific children depending upon their professional backgrounds (Rotman, Tompkins, Schwartz, & Samuels, 2000). This has led to one judge warning that discretion can be indeterminate, vague and powerful (Landerkin, 1997). Another judge has commented that given the diversity of individual experience and knowledge the determination of ‘best interests’ can involve value judgments, but that reference to a list
of factors may provide some base from which to objectively evaluate children’s ‘best interests’ (Rotman, Tompkins, Schwartz, & Samuels, 2000). Landerkin argues that the principle can be guided by “common understandings” (Landerkin, 1997: 62) that can be applied in all cases when deciding on the ‘best interests’ of children. This is a modernist argument that reflects dominant discourses that universalise and essentialise children.

6.5.2 Children’s Views of ‘Best Interests’

In my research I advised the child participants about the way in which the Family Law Act and the Family Courts determine the ‘best interests’ of children and asked them to comment on this approach. Nick discussed the vagueness of the concept of ‘best interests’:

Nick (13): Oh, yeah. Yes, I've heard of that. (Uh-huh) Um, children's best interests, what really are they, it's kind of so unbelievably general. Um, cos best interests say, um, they, say one parent lived in South Australia and another lived in, say, WA, and the mother lived in WA, but they are currently living with their father. And they thought it was in the children's best interests to live with their mother in WA cos, say the mother had more money and had better access to facilities and things like that, but, um, if the father was a more respectful father and, say spent more time with the children, and the mother was working 24/7, I think that in best interests is not really the children's opinion at all, it's what other people think is best for them. So it's kind of making the decision for them and not listening to what they have to say, by um, stereotyping their best interests. That is what they think would be best for them, but not necessarily is.

Nick went on to discuss his perceptions of the universality of a ‘best interests’ principle:

Nick (13): Yeah. Cos you can't really say that every single child is going to have a best interest and this is it. That it's in their best interest to do this and we say that's so, so the people are just deciding what other people's best interests are for them. (Mm) And what's good. Like saying, This is what's good for you when it might necessarily not be.

Fran pointed out that decisions made by adults in children’s ‘best interests’ would probably not be very effective:

Fran (17): The sort of things that are overlooked or not known without good investigation on both parties and you know, personally trying to get to know the parents a little more, and the child.

Qvortrup (1990: 79) notes that “in European societies it is generally unquestioned that children are ‘dependents’, and are as such best served if they are subdued to adults’
understanding of ‘their best interests’ or ‘their own good’

Comments from some of the children in this research partly reflected this observation. The children qualified their understandings with references to their own situations:

Nick (13): Yeah. If there, there definitely should be some times when other people, um, it's possible that they do know best for you and that you don't know everything, and that you don't know that what you're doing is the right thing. And that someone else knows what will benefit you more, and that maybe you should listen to them instead of thinking that you can make every decision. But there are so many times when you should be able to make decisions and people don't know what's best for you. They just think from experience, from what they've experienced that this is what's right, but that might not necessarily be so.

Olivia (9): Well, I don't think that parents should say that they don't know what they want because, well, they do. Um, but some kids don't know what's best for them, so, just say they were on, they couldn't eat lots and lots of junk food and they really wanted to and they complained, and then they got their way and they got really fat, that's not good for them.

Petra (13): What's best for me? Um, I don't always know what's best for me, I, like I know what I want, but it's not always the best for me, and my auntie and uncle and my mum and dad and my whole family, they always support me, um, but they also, like in my decisions, but they also tell me, if they think something's not right for me, and I'll listen if I'm smart enough, I'll listen to them, and you know, I'll take their advice and make sure that whatever the decision is I can make it right.

Although Petra pointed out that she was not always aware of her ‘best interests’, she rejected the suggestion that adults would know them better than she:

Petra (13): I think that's crap. Because um, I always, like, and it's not just me, everyone I know always knows what they want. Like, you know, whether it's a lolly to whether it's something like changing schools or, you know. Um, I think that everyone knows what they want and, so I think that just, that adults that say that are wrong because, and sometimes, sometimes, if um, oh, like maybe they're like younger, seven, you know, eight, they might not be able to explain clearly what they want, but I still think they know what they want. I think everyone knows what they want.

When asked who should decide on children’s ‘best interests’ the children in this study replied that they should be consulted. For some of the children, consultation depended upon age:
Nick (13): Um, again I think you should ask them, but if they're not old enough to make that kind of decision, um, I think the, the parents could come to an agreement on what's best for their children, but in best interest: is there like one best interest for everyone or something?

Petra (13): I think, like I was saying before, I think maybe you should talk to your children about this, because the only way you can really find out is ask them. You know, talk to them about it, because I always like to be involved in the decision-making in where I live and stuff like that, so I think, I think you should just, you know, sit the children down, talk to them about it.

In summary, the children in this study recognised the difficulties in the principle of ‘best interests’ in issues relating to them. They rejected discourses that constructed them as being unaware of their ‘best interests’ but qualified this rejection with reference to discourses about age of children and safety issues.

McWinney (1997: 388) argued that “children as a class are not, and cannot be, responsible for themselves”. The discourse underlying this statement was sometimes strongly rejected by the children in my research, who argued that they do know what is in their ‘best interests’ and that they should be consulted in decisions that are made about them.

### 6.6 Participation (Article 12 of the Convention)

Smart (2001) argued that in Western cultures, having a ‘voice’ is considered a basic human right. Eekelaar (1992) agreed, arguing that when children’s opinions are heard adult interference in their lives is lessened. Article 12 of the United Nations Convention on the Rights of the Child asserts that children have a right to have and express an opinion and to have that opinion heard in matters that affect them.

The concept of ‘voice’ is closely aligned to the ability to participate directly in decisions that affect one’s future (Australian Human Rights and Equal Opportunity Commission, 2001a; Chisholm, 2000; Ludbrook, 1996; Mason & Urquhart, 2001; O’Kane, 2000; Roche, 1999; Sidoti, 1998). Participation may be seen as the actions that accompany the articulation of one’s ‘voice’, including the actions of others in hearing that voice. For this to happen, significant institutional barriers that lead to a lack of participation by children in issues that directly affect them and to their voices remaining unheard would need to be removed.
Australian courts have been criticised for being ‘adultist’ and inaccessible to children (Australian Law Reform Commission and Human Rights and Equal Opportunity Commission, 1997; Robinson, 1997; Smart, 2001). A 1997 report on the involvement of children and young people in Australian legal systems (Seen and Heard) indicated that there was almost no direct involvement of children in Australian court systems (Australian Law Reform Commission and Human Rights and Equal Opportunity Commission, 1997). Children were invisible (Robinson, 1997). The reasons given for this invisibility were several, and included the suggestion by the Australian Law Reform Commission that many children would not possess sufficient skills and experience to participate without legal representation. Even with legal representation, however, there appears to be no guarantee that a child’s voice will be heard.

The Australian *Family Law Act* 1975 listed the wishes of children as one of the matters that must be taken into account when the Court must decide on arrangements for the children of any marriage (S68F, paragraph a). These matters have provided a benchmark for all family law practitioners, including judges, family law solicitors, counsellors and mediators in assisting parents and the court in decision-making processes (Rotman, Tompkins, Schwartz, & Samuels, 2000). Children’s wishes are taken as part of the list of considerations and must be weighed against all other matters in reaching a decision. The presence of a significant level of discretion in any Court decision (Landerkin, 1997; Rotman, Tompkins, Schwartz, & Samuels, 2000) can, however, result in a child’s expressed wish being diminished by the weight of other factors deemed more important.

With the implementation of the *Family Law Reform Act* 1995, the terminology used in relation to children was changed, and the concept of ‘best interests’ replaced that of ‘welfare’ (Dickey, 1999). The way in which children could participate did not change, however. Although the *Family Law Reform Act* kept the provision to take into account any wishes expressed by children (Chisholm, 2000) the implementation of the ‘best interests’ principle did not consider in detail how those wishes could be ascertained.

Chisholm (2000) described the variety of ways in which children have been consulted within the Family Court of Australia since 1975. He reported, however, that many of these approaches, while having been used to some degree in the past, are now rarely, if ever, used. The Court can appoint a solicitor to separately represent a child, and many children are so represented (Chisholm, 2000; Redman, 1997), but a child representative is
not bound by a child’s instructions. Child representatives are expected to report the children’s wishes, but can then make submissions opposing those wishes if they consider them inappropriate (Redman, 1997).

Section 62G(2) of the Family Law Reform Act 1995 provides for the preparation of a report by a family and child counsellor, while Order 30A of the Rules provides for a similar report to be prepared by a Court ‘expert’ (Redman, 1997). These reports are not routinely prepared in every case, however, due to cost and time and are usually not ordered until late in the case history, restricting the opportunities for children to be heard (Redman, 1997). Moreover, family reports can present difficulties. It has been suggested that they are “largely investigative rather than preventive since only the most difficult cases have tended to be the subject of … reports” (Simpson 1989: 264). Additionally, it has been argued that some parents can pressure children to make specific choices, that older children have found the need to provide their wishes “intolerable”, and that parents could be manipulated by children through an “auction of their affections” (Carmichael and Sarre, 1994: 109). Questions must therefore be raised about the value of obtaining children’s wishes in a formal legal setting such as the Family Court.

6.6.1 Children’s Views on Participation

Fifteen of the sixteen children who participated in this research considered it important for children to have a right to an opinion on issues that directly affect them:

*Q: Tell me a bit more about children’s rights to have a voice.*
*Nick (13): I think if people, if like children aren't allowed to speak out and be heard by people they kind of think that they never will, and if they do speak out their opinions can be heard, and sometimes a lot of children's opinions are more logical or sometimes sensible than a lot of ones that adults might have. Say um, you know, and if they are heard then they won't, they won't be shy to voice their opinions and, yes.*

*Q: There's a bit of stuff in some of the other things that I've been reading about, if you want young people and children to be involved more, you have to involve them right from the start. So you have to, so they say that it would be important for you to talk to young people about even the design of a skate park and things like that. What do you think about those kinds of comments?*
*Kane (13): Yeah, I think they're good, kids should be involved from the start. If you're gonna do something that affects them, and yeah, they should have some say of how it's, how it looks and stuff.*
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Q: One of the other rights was to do with children’s rights to have an opinion and be heard. What do you think about that?
Laurence (16): I think that's probably important, cos you, pretty, if you have, a, if you don't have any say in your own life it would be a pretty bad life. I reckon, that you're, you know, if you're forced into living a, you know, it's important that you kind of...the whole thing about making choices is that you kind of enjoy life, kind of thing cos you have to.

Q: And what other rights kinds of rights do you reckon children should have?
Olivia (9): Um, children should have the right to talk to their parents if they're uncomfortable, really uncomfortable or something, they should have the right to be able to talk freely to them.

*Q: So let me ask, if children were able to have a say about things like that how do you think that would work? For children to have a say?
Iain (7): I think it would work pretty good. I mean, we never get a say, it's always those rich, important people.

The children argued that they should be consulted on a variety of matters that directly affect them. For example, when asked about the kinds of things children should “have a say” about, Callum mentioned a number of areas:

Callum (10): Ah, ...Um...Hmm. I'm not sure, um, how much they see their dad, or whoever they're with, mum or dad, um how much they see their friends, um, oh, if they need to get out more, or do some more stuff cos they're too bored. Stuff like that.

Gemma discussed the time at which she chose to do her homework:

Gemma (15): Yeah. Cos I'm not, like, cos if I, I'm the one doing it. So that I mean, it's OK if it gets, like, too late and then they can say, yeah, you have to do it. But, like, when I got told off it was like four o'clock. It's like I've still got ages to do it.

When the parents of Fran, Gemma and Harry separated, the father prevented the mother from leaving in the company of the children. Consequently, the children remained living with the father until circumstances changed sufficiently for them to relocate to the mother’s home. Fran expressed dissatisfaction with this situation:

Fran (17): Well we should have been allowed to make our decision because we obviously knew that we did not want to stay with Dad, and we were just basically forced by him to live there and I don't think that's very fair.

Petra argued that children should be consulted on a number of everyday issues:
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Petra (13): Um, I think, like everything, um, like I think that children should be able to have a say in, um, you know, from what they eat for dinner through till you know, what school they go to, what friends they have, um, I think that we should be able to have a say, because that's like who has been, having a say usually means you want to say what you want, and as I was saying before, like, I think everyone knows what they want.

In their research on decision-making with children in care, Thomas and O’Kane (1998) reported that while children considered it important to be listened to, they did not necessarily want to make decisions alone. Nor did they want adults to decide on issues that directly affected children without consulting with them. Similar findings were reported in a British study on children’s perceptions of ‘family’ (Morrow, 1998). Comments from the children in my research indicated some agreement with the children in these studies. For example, in his reply to a question about what issues parents might hear children’s opinions about, Nick said:

Um, well, I think everything, but they don't necessarily have to take, I think they should take all, everyone's opinions into account, they just um, they don't have to necessarily do what they say, they just have to listen to what they say and comprehend it and take everything they say into account as an opinion. (Mm). Um, like everyone else. So that everyone's equal, and like we don't have everyone older telling everyone younger what to do (...)

Children expect to be consulted on decisions that directly affect them, irrespective of the issues being addressed. Children indicated that they knew what they wanted and that their ‘best interests’ could be addressed through consultation about their ‘wants’. Moreover, children argued that at times their opinions might be more appropriate than those of adults and contain underlying reasons for holding specific opinions that may differ significantly from those of adults.

6.7 Chapter Summary

The comments from the children in this research reflect resistance to the discourses that construct them as unable to assert their ‘rights’, although often the children did not talk of ‘rights’ per se. Their comments reflected the importance of context for children’s discussions about their rights and indicated that concepts of fairness and respect were more meaningful for them than a ‘rights’ discourse.

The children in my study discussed the importance of their families in guiding and nurturing children as they grow. They argued, however, that they have a ‘voice’ and that
their voice should be heard in matters that directly affect them. Their comments indicated that they know their own ‘best interests’ and that adult decision-makers should consult them about those interests when making decisions about children. The way children’s voices are heard in decision-making processes can be either facilitated or made hard by adults. Children’s participation in decision-making processes will be considered in the next chapter.
Chapter 7: Children and Decision Making Processes

This chapter will explore how dominant discourses about children are reflected in their views of their level of involvement in decisions that directly affect them following parental separation. The chapter will compare the comments from the children who participated in this research with those of children in other studies and situate them in a broader review of the literature on children’s decision-making processes.

The chapter will begin with a review of decision-making processes, exploring children’s perceptions of how parents reached decisions about them following separation. It will then consider children’s constructions of adults, children and decision-making processes. Children’s perceptions of their level of involvement in decisions at different stages in their lives will be compared with adult discourses reflected in the literature about children.

7.1 Decision-making Processes Following Separation

“Classical theories of choice emphasise decision making as a rational process” (Dillon, 2003: 1). In decision theory the rational approach involves choosing from a range of options that have been systematically evaluated. Decisions are made in a variety of ways based on whether the issue is viewed holistically or broken down into different attributes, but in each case decision-makers will consider numerous options. Decision theory emphasises the importance of having extensive information available about the issue prior to entering the decision phase (Dillon, 2003).

An alternative approach, called “Satisficing”, argues that people make decisions that meet or exceed an established criterion or standard (Dillon, 2003: 3). In this approach, decision-makers discard options as they arise rather than evaluating them against all other available options. ‘Satisficing’ produces results, but does not optimise outcomes of decisions, which consequently may be flawed. Dillon’s research indicated that decision-makers employ a ‘Satisficing’ approach to decisions more often than taking an approach that is considered rational. He argued that decisions are made within human limits that cannot be exceeded, a concept called “Bounded Rationality” or “Limited Rationality” which was first proposed by Simon in 1955 (Dillon, 2003: 3). For Dillon, decision-making processes would always be likely to include “certain types of decision behaviour”
that would lessen the effectiveness of the outcome and inhibit “‘good’ decision making”. (Dillon, 2003: 8).

In the quotes that follow, children’s descriptions of their parents’ decision-making reflect parents’ use of a ‘Satisficing’ approach. At separation, parents are faced with the issue of the children’s residence. The major goal at this time is to provide a residence for the children that will meet the needs of all family members. The use of a Satisficing approach meets this goal by quickly resolving where the children might live.

Theories about how humans make decisions can be challenged. In postmodern terms, decision theory is an example of scientific determinism that explains the ‘truth’ about how decisions are and should be made. It ignores the influences of personal, cultural, social, political and legal frameworks, values and beliefs, economics and history, to name a few. It attempts to categorise human actions and thoughts, creating a binary between ‘good’, ‘rational’ decision-making and other forms such as ‘Satisficing’. In decision theory, the concept of ‘Bounded’ or ‘Limited Rationality’ has the potential to marginalise those whose decisions are less than ‘rational’. Indeed, the concept of ‘rationality’ itself is described and ‘scientifically’ measured by decision theorists.

In a postmodern framework, decision-making will reflect the knowledge bases arising from the institutional discourses in which the decision-maker is situated. The decisions that emerge will be socially contextualised and politically situated, reflecting the presence of “multiple poststructural selves” (Fine, 1994: 71). ‘Realities’ such as rationality and level of competence will have little relevance as decision-makers respond to the discourses that underlie the issues of concern.

From a postmodern perspective, when the children in this study discussed their perceptions of how parents reached decisions about children’s residence following separation, they described decisions that reflect dominant constructions of parenting roles. Gendered discourses that position mothers as the major caregivers for children and fathers as mainly absent (Andrews & Freeman, 1997; Behrens, 1996) were significant in children’s discussions:
Laurence (16): Um, Mum and Dad went to the Family Court, but not so much about um, custody of the kids. It was pretty much always, I don't know, sort of known that, I don't know why, like it was just kind of seemed, I don't know, normal that Mum would, um, that we would live with Mum, so that wasn't fought over too much, ah, but, more of the, they went to the Law Court more about um financial situation, and Dad paying maintenance and stuff.

Nick (13): I can't exactly remember, I think that was a decision cos we were so young, it was better that we lived with Mum or something, I can't remember, but ...

Nick and Laurence reflect a dominant gendered discourse in their statements that mothers should, or must, care for young children in preference to fathers. This discourse is dominant in the family law literature which focuses on the importance of mothers as primary caregivers (Behrens, 1996) and assumes that fathers would experience difficulties in assuming this role.

Later, Nick added to his discussion about why he was living with his mother, mentioning his father’s absence due to his career. This comment again reflects a dominant gendered discourse about the absence of fathers in children’s lives:

Nick (13): Oh, I remember another reason was um, cos Dad, he works in, he's wool classing, and cos that involves like staying at a shed for seven days at a time and he would, that'd mean he wouldn't be able to look after us, so it was more sense as well, to stay with Mum. Yeah.

Ellen was asked about her parents’ decisions following separation:

Q: OK. And when they separated you went to live with your mum.
Ellen (9): Yeah.
Q: Mm-hmm.
Ellen (9): She took me.
Q: She took you.
Ellen (9): Yeah. Probably cos I'm a girl and he's [her brother] a boy.

Ellen’s comment contains a suggestion that fathers ‘take’ boys in preference to girls and that it is appropriate for boys to live with fathers while girls live with mothers. Research in the modernist tradition has established links between father-son attachments and later ‘adjustment’ of sons. For example, young males whose fathers are physically or psychologically absent during the growth years are more likely to engage in delinquent behaviours (Robertson, 1999). Strong attachments between fathers and sons have been linked to more positive outcomes for males as they grow to adulthood (Belsky, 1996).
Ellen’s comment reflects these gendered discourses about the need for boys to have a ‘male influence’ in their lives.

Other children in this research argued for a stronger influence from mothers. For example, Callum’s description of a friend’s living arrangements reflects the strength of this argument and the traditional gender-role discourse in the construction of parenting roles:

Callum (10): I don’t know. My friend lives with his dad and I find that a bit weird somehow. With his two brothers. It’s just all boys.
Q: Yeah. Weird?
Callum (10): Yeah. You see...I don’t know why, but you should live with your mum, or and your dad, but you should live with your mum, mostly. I don’t know why, but...

When their parents separated, most of the children in this research were not included in discussions about their future. This does not seem unusual; a British study found that when parents separated they most often did not communicate with children about what was occurring (Dunn & Deater-Deckard, 2001). Even at older ages, some children were not given a choice about where they might live, as Fran, Gemma and Harry described. They reported that when their parents separated, their mother left the family home in the country and the father refused her request for the children to join her. They stayed in the country with the father for some time and moved to the mother’s home when circumstances changed enough for them to manage the move. In decision theory, the father’s decision at this stage would be considered to have taken a ‘Satisficing’ approach: his goal was to maintain the children’s current living arrangements, which meant they would stay when the mother left. The father’s decision reflects a patriarchal discourse of male as dominant, having control over women and children. Fran’s, Gemma’s and Harry’s comments, however, reflected a construction of the mother as being the appropriate parent with whom they should reside:

Fran (17): Well we wanted to come down since Mum left, basically, and eventually after a while we, well we weren’t allowed to leave at first, so after a few years we basically got settled in the school and it was sort of too difficult for us, like Mum kept wanting us to come down to Adelaide, but it was too difficult to sort of move down when we settled ourselves, settled into our years and our friends and all that sort of thing.

Fran’s comments, although indicating that she and her siblings thought they should have been with the mother following separation, reflect the importance of supportive networks, an issue that will be addressed in more detail later in this chapter. Having been denied the
option of moving away with the mother, the children had no choice but to remain with the father. They constructed themselves as “settled” and as being part of the school and community in the area of the father’s home. As Kitzinger (1990: 165) observes, the decision to adopt this social construction reflects children’s abilities to use protective mechanisms to “preempt, evade, or modify” situations which they find unsatisfactory and positions them as “agents in their own lives”. Such a construction represents a site of resistance to the dominant discourses that position children as innately vulnerable.

This finding has implications for the social construction of children as ‘rational’ decision-makers. Piaget’s developmental theory argues that rationality does not emerge until well into adolescence, when children attain the stage of ‘formal operations’ (Piaget, 1969). In decision theory, ‘rational’ decision-making approaches are considered superior to other approaches such as ‘Satisficing’. Decision theorists argue that the hypothesised state of ‘Limited’ or ‘Bounded Rationality’ holds that “all intendedly rational behaviour occurs within constraints, including cognitive ones” (Dillon, 2003: 3). Thus, if children’s cognitive processes do not become ‘rational’ until late in adolescence, they are not able to make appropriate decisions at younger ages. This construction of children can serve to marginalise them and deny them any ability to engage in decision-making activities as they grow. In this research, the children’s discussions of their decision-making activities reflected a degree of resistance to this construction. Many of the children argued that they were able to make positive decisions on a variety of issues, from what they wear, through what activities they might engage in and including where they might live and how they might maintain contact with other family members. Their discussions reflected a relational discourse that positioned the children relative to other children and to adults.

The social constructionist view that ‘the person’ and ‘the social context’ are not separate and discrete entities (Wetherell & Maybin, 1996) and that ‘the self” changes both through and within relationships was a central reflection in children’s texts. Children considered that although they could decide on some matters affecting them, there were some issues on which others might decide on behalf of them or about which there might be some consultation.
7.2 Social Constructions of Vulnerability and Competence Levels

The adult construction of children as lacking an ability to reason until well into adolescence (Piaget, 1969; Piaget & Cartalis, 1928) has resulted in children being excluded from decision-making processes. One justification for this exclusion is a construction of children as less than ‘rational’ (Taylor, 1998). In my research, the children’s comments constitute resistance to this construction on several dimensions.

According to Dillon (2003) the importance of having full information about the issue under consideration is a vital component in effective decision-making. The children in this research agreed that obtaining information was sometimes important in reaching decisions:

*Q: ...sometimes children do say that they don’t have much of a say at all about what’s going to happen with them. You know, sometimes they say, I just get told when I’m going to see my dad, or I get told what I’m going to do, where I’m going to go and things like that. When children do have those kinds of difficulties, what kind of advice would you give them about how they could make things better for themselves?
Daniel (10): Well, probably should figure out for yourself, figure out like to the bottom line, like if they're saying, like I was told that so and so's going to happen, should find out for sure, cos suddenly they might go 'Oh, it's not happening any more. Sorry', and then you just feel, 'Oh, oh, I was telling my friends and my teacher that we were going but now they think I'm a liar'. So you should stand up for yourself and, yeah.

Q: And um, so, when, when you get older, though, and you want to, you want to go further, you want to go, you want to press the boundaries a bit, Callum (10): Mm. Just like check it out first.
Q: Yeah. You would, you think you should check it out first?
Callum (10): Yeah, cos it's like really busy all the time and it's very dangerous; just leave it alone and go somewhere else. If it's OK, you can go there.

A further component of rational decision-making is the consideration of a number of options (Dillon, 2003). Thirteen-year-old Petra reflected on this issue. She stated that she had always made major decisions about her life on her own, but after having thought about them for some time.

Petra (13): Um ... (3 sec). There's lots of little decisions, I've never made a big gigantic decision because I always think about, you know, my decisions, so there's never been a big decision that's gone wrong, really. Everything's pretty good. Yeah.
A significant issue in decision-making is an assessment of risk in relation to the consequences of particular decisions. For parents and children, risk assessment sometimes results in adult restrictions on children’s movements in terms of their use of space and time (Kelley, Mayall, & Hood, 1997). Children in this research acknowledged that they had restrictions on their movements, but were often accepting of these restrictions as indicators that parents cared about them. For example, Daniel was earlier reported as saying that he could “tell that obviously our parents care for us”, while Ellen described her parents’ advice when she is at home alone:

Ellen (9): Mm-hmm, they've always told me to answer the phone and stuff, and answer the door. If it's no one I know, don't um, answer the door. That's why I always keep all the door, like the front door shut, so they think they've gone out.

For others, protection of children was appropriate when children were quite young, relatively small and powerless:

Laurence (16): Yeah, well, that's probably pretty important cos when you're young you can't really look after yourself as much. Like it doesn't take much for a, you know, for a 20-year-old or 30-year-old man to overpower a young child, so there needs to be, they need to be somewhere that you know that they're going to be safe, kind of thing.

Risk assessment and subsequent decisions to control children’s spaces and time present a two-edged sword. As Kitzinger (1990: 167) explains, protection of children “is neither a long term, nor even a short term, ‘solution’ to the exploitation of children. Such paternalistic approaches can, in fact, act against children’s interests” by marginalising children from wider society and denying their ability to decide on appropriate self-protection measures (italics in the original). As Gemma and Fran argued:

Gemma (15): Well they think they've only like been alive for so long and they don't know anything, you know? They haven't got experience and ...

Fran (17): Or they don't value the child's opinion because they see that child as worthless sort of thing.

One argument in favour of ‘protecting’ children from decision-making activities emphasises their inexperience and ‘tender years’ and that they can make mistakes in the decisions that they reach. Harding (1997) states that adults argue for children’s limited rationality in decision-making because of their ‘incompleteness’ and lack of competence.
She points out, however, that the concept of rationality is difficult to “pin down and use as a criterion distinguishing children from adults” (Harding, 1997: 117). Children agree, recognising that adults can also make mistakes:

Petra (13): Well, adults make mistakes, too, so, you know, I, I'm, like, I know a lot of adults that have made a lot of, like, big mistakes in their life, like not finishing school, not going to university, you know, so I think it's not just, I don't think that it's not just children that make mistakes, adults make mistakes too, and yeah, children do make mistakes, but so do adults.

Neale (2002: 462) found that the children in her study saw their mistakes as opportunities to “try out new ways of doing things, even to the extent of making mistakes and learning from them”. A comment by Laurence agreed with this finding:

Laurence (16): Yeah, like that's um, it's always, like everyone always makes some wrong decisions at some point, like, um, it's kind of that you make a wrong decision and it's kind of, you know that whole thing about if it doesn't kill you it only makes you stronger, kind of thing, like, if you if there's something like that again, you've been down that path, you know that's not the correct way to go, so ...

Neale’s (2002) research found that sometimes both children and parents were interested in exploring a number of options in decision-making. The children in my study argued that such exploration might benefit rather than harm them. Thomas and O’Kane (1998) report that the caregivers with whom they spoke recognised the need to balance risks in decision-making. One parent reported, “childhood is about learning to take risks themselves and to accept some responsibility and learn” (Thomas & O’Kane, 1998: 145). As has been previously reported, the children in my study sometimes agreed with this idea, while accepting that sometimes parents might guide them in their decisions.

7.3 Who Should Make What Decisions?

7.3.1 Parental Decisions

The children in my study reported that their parents (and in most cases the mother) made many decisions in relation to children’s activities. These decisions ranged from what the children might eat through to when they might do homework and go to bed.
Children’s responses to parental control of these decisions were mixed. Some considered that it was highly appropriate for parents to decide on issues of diet and bed time on behalf of children:

Q: And are there any decisions that you think should only be made by parents about children?
Daniel (10): Well, I would, some, maybe, like, like some decisions about food, what foods you should eat, and like what bed time you have, and like um, well, what things you should participate in, and, oh there's a lot more, but ...

Olivia (9): Yeah. Because some children just want to eat everything and do everything their way when what they really need is what their parents are telling them because they want them to be a healthy adult and not die from heart disease or something like that.

Others argued that parents’ responsibilities for making decisions for children varied with the age of the children involved, thus reflecting a dominant developmental discourse:

Fran (17): well, yeah, well see, when you get like um, Year 12 and stuff, it basically comes down, by then you should really know yourself, and if you were psyching off against parents well, you know, parents are allowed to have a say in everything, and there’s not much they can do to stop you in Year 12, sort of thing. But the rest of the years it's really up to them to sort of, to get you down if you're not doing the right thing, and to make sure you get your homework done.

Harry (13): Um, oh, well you got things like bed times and that, well, well when they're like little, um when they get older they, they should have the right to stay up till, say what time they go to bed. And when they're little their parents could step in, so things like that.

Kane (13): Oh it depends how young their kids are, because if they're young, like a toddler or younger, they don't really think about things like that. But if they're older and they can make decisions then I reckon kids should be allowed to help with that.

Kane also argued that decisions about a child’s contact with the ‘non-resident’ parent might relate to age:

Q: ... who do you think should make decisions about how they see the parent they’re not living with?
Kane (13): Ah, I reckon the kid should. Yeah, the kid should. Ah, it depends how old the kid is really. Cos if it's like 3 they, yeah. When they're old enough to think for themselves and like they're old enough to think, see if, if it's bad or good and things like that.
In general, Laurence sums up the thoughts of most of the children in this research about the relationship between age and decision-making ability:

*Laurence (16):* ... I suppose when they’re like real little that kind of stuff is OK, like cos you kind of say that like when you are like 2 or 3 years old it's reasonable to say that you have to, cos otherwise they'd just eat like ice cream all the time. And like, I don't know, and they tell them what they have to wear and stuff but, and when they go to bed, cos that's kind of, cos if they were left to their own devices they'd do things, they'd probably make the wrong sort of decisions. And as you get older you should be allowed to make more of those decisions for yourself. Yeah, you might feel when you're young, you might feel that it's harsh decisions, but ...

Comments made by the seven-year-olds in this study also reflected an age-related discourse. While none of the seven-year-olds suggested that they might be consulted about decisions, two offered opinions about decision-making processes:

*Q:* ...do you reckon I've missed anything, when I'm talking about decisions, decisions for kids?...OK. Well, I want to thank you.
*Brenda (7):* What parents should decide on.
*Q:* Hey?
*Brenda (7):* What the parents should decide on.
*Q:* Well, fair enough, what do you think?
*Brenda (7):* Um, Not what the kids do, cos the kids should decide what they do. Ummm ... They might should say what time they do like the swimming, cos I do mine at 4, after school. Um, they have to decide what time I do recorder or do swimming and all that.

*Q:* So, let me ask, um, if, if children were able to have a say, about things like that, [Iain (7):] Yeah] how do you think that would, how do you think that would work? For children to have a say?
*Iain (7):* I think it would work pretty good. I mean, we never get a say, it's always those rich, important people. I mean, us kids may not be rich, ...

Age-related discourses can influence parents’ ‘control’ of decision-making processes. Thomas and O’Kane (1998, 1999) pointed out that children’s experiences of decision-making were influenced by adult perceptions of levels of competence. Children were included more in decision-making processes as they grew older. In arguing for an age-related measure of decision-making ability, the children in this study focused on the binary relations embedded in concepts such as dependence-independence, young-old and good-bad. These binaries reflect the operation of Foucault’s concept of bio-power, a disciplinary technique that ensures the cohesion of social bodies (McHoul & Grace, 1993). The binaries listed above interact, so that young children will remain dependent while learning the differences between ‘good’ and ‘bad’. Children become ‘normalised’
through this process, building a sense of “self-surveillance” that assists them to maintain this ‘normalisation’ (Danaher, Schirato, & Webb, 2000: 76). The discourses produced through this process serve to “regulate and control” children (Danaher, Schirato, & Webb, 2000: 79).

Thomas and O’Kane (1999) argue that adult social constructions of children as becoming competent with increasing age influence the number and levels of experiences children ‘receive’ of decision-making at any given growth stage. This produces a circular effect: limited experiences restrict children’s ability to engage in more decision-making processes and ‘hide’ their capacity for involvement. At the same time, adult observations of the decisions made by children from their limited experiences confirm the construction of them as having limited ability to decide. This can sometimes result in contradictions in children’s perceptions, as indicated in Olivia’s discussion about her bed time:

Olivia (9): H-mm. Um, well, Mum decides most of them, and sometimes I disagree with her. Um, but sometimes I'm really tired and I just go to bed before bed time as well. But I would like to stay up a little bit later, cos I go to bed at 8.30, um, but Mum only let [her older brother] going to bed at nine or 9.30 when he was a lot older, so I've got to wait till then.

Olivia’s comments indicate her ability to decide for herself when she retires to bed. She also acknowledges the dominant developmental discourse relating to age differences in relation to appropriate activities. Her discussion reflects the circularity of the relationship between age and experience because her experiences in deciding for herself are discounted by reason of age.

Comments from other children in this research also reflect adult social constructions based on age, with the children assuming that those younger than themselves are not as able to make decisions because of limited capacity. Younger children, however, sometimes expressed dissatisfaction with this construction of them. For example, three seven-year-old children discussed their responses to the times set for them to go to bed:

Q: Who decides when you go to bed?
Jonathon (7): Mum.
Q: What do you think about that?
Jonathon (7): It sucks.
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Iain (7): Um, oh, my mum's, and I think the decisions are crummy because I used to have to go to bed at eight o'clock, that was fine with me, because, like most kids would have to go to bed at six o'clock or seven-thirty, well, mostly at six o'clock. So they can get to sleep and get up early. That's what most like doing. (Yeah). Cos most of them have X-Box, Play Station, Game Boy, Nintendo,

Brenda (7): (5 sec) Well, I kind of get a little bit frustrated when I go to bed at 7.30, I don't like going to bed at 7.30.

7.3.2 Decisions made by Children

Callum was asked what he thought about parents who make all the decisions for children. His comment reflects the thoughts of other children in this study about the importance of their being able to make decisions for themselves:

Callum (10): … it's not really that fair, cos when they grow up they won't know what, what decisions to make, like if they've never made decisions for themselves. They're never going to learn how to do it.

Mason and Steadman (1997) argue for a “new paradigm for conceptualising children” based on “priority to the ‘personhood’ of children, to their ‘lived experience’” (Mason & Steadman, 1997: 35) rather than to the scientific determinism of developmental theory. The consequences for children of not experiencing decision-making activities are clearly outlined in Callum’s statement and in one made by Laurence:

Laurence (16): Kind of, um, one thing that I've had that's been really helpful is, my mum's always said um like, kind of, it's your own life, kind of thing, like I may not want, want you to do, like this and that, but it's for you to decide what for yourself, kind of thing. Like, I don't think it's very good, like some parents, like some kids like they get forced into going to this school and like studying like law, because their dad was a lawyer and it's kind of expected that they do that. It isn't really all that good, I think. Kind of get forced into it. Having your decisions made for you, kind of thing.

Some of the children in this study had had significant experience in making decisions for themselves. Petra, for example, said that she makes all major decisions for herself:
Petra (13): Um, decision, um, well I get, decisions that no one ever makes a big decision for me in my family, and if they even tried to, which they wouldn't ever. I always, I'm a bit of a loudmouth, so I always, like I'm not scared to tell people if I'm not happy with something and I feel uncomfortable, I'm just not happy with it I tell them. So usually nothing turns out, like if someone else makes the decision it doesn't turn out to be bad because if it, like if I felt that it would, I'd say something. So, yeah.

Experience in decision-making does not seem to occur in a vacuum, however. Other considerations, such as personal and interpersonal responsibility, must be accounted for (Hubble, 2000). Eight of the sixteen children in my study argued that decision-making activities were accompanied by several responsibilities, both personal and interpersonal. Fran, for example, pointed out that at 17 she was responsible for her own achievements. This understanding was reflected in her mother’s advice to her:

Fran (17): 17 now, I don't really have to worry about it, comes down to me. Because I'm doing Regency and all that, see, cos I should by now, like basically, she's saying I should know better, and if I fail it comes out of my own something, of course if I do fail I'd be in heaps of trouble, and that I realise that, it's up to me to make sure I get the work in.

Comments from other children reflected their understanding of a responsibility to speak up about issues of concern to them, even when they felt able to decide for themselves.

Callum (10): I would just say talk to your parents, um, tell them that you should have some say in what you do, or what sport you play or whatever it is.

Olivia (9): Um, children should have the right to talk to their parents if they're uncomfortable, really uncomfortable or something, they should have the right to be able to talk freely to them. And um, I think, mm, they should also have the right, if like, if they are, say you're a teenager and your parents want to keep you as a small little boy, you have the right to say, “No I want to grow up, I don't want to stay little Action Man figures all my life.” You should have the right to say that ...

Nick argued that while children were able to decide on issues that affect them there were circumstances and responsibilities that might shape the way that decisions are made:
Nick (13): ... with the making their own decisions, say for example moving away from home, they, they wouldn't be able to do that without financial supports. So when someone has a decent job they would be able to move away from home, but say for example they were 16 and they wanted to move out but um, they didn't have a job and they just wanted to live off the dole I think that's, that's wrong, that that's just taking advantage of the government systems. And that if they want to make all the decisions for themself they should be responsible and find employment or something.

These comments reflect some of the arguments in the literature that suggest that rights are embedded in a concept of obligation to behave in certain ways towards others (O’Neill, 1992). There is also some reflection of adult discourses within the children’s comments. Laurence’s and Olivia’s discussions of studying for a career and Fran’s description of the consequences of failing reflect adult concerns for the future of the children rather than considering their present needs (Thomas & O’Kane, 1999). Nick refers to a perception of living on the dole as “taking advantage of the Government systems”, a reflection of the Australian cultural myth of the male as “fiercely independent” and “original” (Schaffer, 1988: 19-20). These discourses reflect binary relations embedded in the meanings of ‘successful-unsuccessful’ and ‘Australian male-non-Australian male’ and suggest an ‘othering’ process that reflects the power relations underlying the discourses.

In other comments the children in this study described the kinds of decisions they make on a daily or weekly basis, including what to wear, what activities to pursue and what to eat:

Q: On weekends, who decides what you will wear?
Jonathon (7): Me. Totally.

The children mentioned a range of issues upon which they could decide. For example, in discussing her after-school activities, Brenda argued:

Brenda (7): Um if you receive a notice from school that asks you if you want to do something I think the kid should make a choice, not the mother cos they, the mm the parents might not have asked the child so the child might, wouldn't want to do it, so I think the child should make a choice.

Matthew asserted:

I reckon we should be able to make some decisions for ourselves. What clothing we want and stuff like that.
At the time of his interview, Laurence had recently left school. He advised that the decision to take an apprenticeship was his and that he had experienced many decision-making initiatives:

Laurence (16): I don't know. Lots of decisions, like, I don't know, who I make friends with, who, what, like um, like, even when I went to high school that was pretty much my own decision and stuff, so

Choice of school was an issue on which some children decided, especially in the transition to high school:

Q: ... When you moved from primary school to high school, did you have a choice of high schools?
Kane (13): Yeah, I had a choice between F and L.
Q: OK. And how did you decide to go to L and not F?
Kane (13): Um, probably because of the people that went to F. A few people there that I didn't get along with.

Q: ... Um, let me ask about some other decisions. You're going to the high school close to here. Ah, how, who, who decided that you were going to go there?
Nick (13): Um, I think I did. Cos I was originally going to go to [another school, different area], we used to live around [that area], um ah, but a lot of my, cos most of my friends were in Year 7 when I was in Year 6, a lot of them came to [his current school], but a lot also went to [the other school], so, and because [the other school] doesn't have a very good SHIP program and [his current school] does, I decided I'd try and do that, see if I could get one better. And, yeah, that's pretty much why we, I went here.

Q: So it was you needing to move on in relation to your learning and career options.
Fran (17): Yep. And Gemma made the decision to follow. So she can get better schooling in Adelaide.

Nine-year-old Olivia linked children’s decisions with interests:

Olivia (9): ... Well, if you say you don't like something then your, you should be able to make the decision of that. I mean, if you didn't like it you can't be forced to eat it or wear it or something like that. And um, some things like um (7 sec) If you were saving up your money, just say, and you were making a decision of what you were going to buy it on, and the parents tell you what to buy, then you should be able to um, be independent enough to know what you want to buy with. Unless it's something really stupid. If it's something really stupid then the parents are allowed to say no.
Iain’s decision to wear his hair in a certain way was linked to his interest in the Jedi knights of the Star Wars movies:

Q: (…) Your hair. I noticed, that's a great haircut.
Iain (7): I didn't want her to do a rat's tail.
Q: A rat's tail. And …
Iain (7): I like it better when it's plaited, cos it's not going everywhere.
Q: Oh, OK. And um, who, who, whose idea was it to do that? Yours?
Iain (7): Well, you better look like a Jedi some time.

While children agreed on the importance of their making decisions for themselves, they nevertheless argued that parents might often contribute; but the way in which the contribution was given was important. Gemma, Fran and Harry discussed the issue of homework:

Q: Who should make those kinds of decisions about when you do your homework?
Gemma (15): I think I should, cos I’m the one doing it.
Harry (13): You’d be doing Internet all day, Gemma.
Fran (17): I think the parents should have a fairly big say in that, because
Gemma (15): Yeah, but they shouldn’t, like, push, cos then they, I, I’m, I hate it when people do that, it’s annoying.

Olivia considered that planning with her parent for some decisions in advance would avoid misunderstandings:

Olivia (9): Um, well, I know that school days, Mum would be really busy, so if there, I'm going to have a friend over, we have to plan it before. I can't just go up to Mum and ask if someone could come over on the day because we might be doing something else. So if we plan it Mum won't book anything for that day.

This comment suggests that decisions about the visits of friends involve both a decision and a request. While she can decide to invite a friend, Olivia must still gain her mother’s approval for the friend to arrive. The comment reflects the close relationship between decision, obligation and approval described by a number of the children. Indeed, although a child can decide on some matters, often the decision was accompanied by boundaries, as Kane pointed out:

Q: … So then, what about um, homework? How does that get fitted in?
Kane (13): Ah, I either do it when I get home or before I go to sleep.
Q: OK. And that's your decision too.
Kane (13): Yeah. But I have to do my homework. That's one thing.
In relation to children’s residence and contact following parental separation, the comments from the children in this study reflected their experiences of the decisions that were made on their behalf. Neale (2002) reported that children who had experienced disrespect from a parent “were forceful in insisting that children should be able to choose residence and contact arrangements” (Neale, 2002: 469). Comments from some of the children in this study reflected this view. When the parents of Fran, Gemma and Harry separated, the father prevented the mother from leaving in the company of the children. Consequently, the children remained living with the father until circumstances changed sufficiently for them to relocate to the mother’s home. Fran expressed dissatisfaction with this situation:

Fran (17): Well we should have been allowed to make our decision because we obviously knew that we did not want to stay with Dad, and we were just basically forced by him to live there and I don't think that's very fair.

Fran, Gemma and Harry all said on a number of occasions that were they given the choice when their parents separated, they would have chosen to move away with their mother.

For other children, decisions about residence were more situational. For example, Brenda argued that parents were more knowledgable about where children should live than some children:

Q: You said that...what you said was that um, if the parents are fighting over the kids, you know, and they're going to go their different ways that they should still be the ones to make the decisions cos they're the big people, they know what they're on about and so they should be the ones...
Brenda (7): And we don't really know so they should agree ...

One child in this study described her decision to move her residence to her aunt and uncle’s home. At age 12, Petra decided that her interests might best be served by a move away from residing with her parents who were planning to leave Adelaide at that time. Petra stated that consequently she decided to stay in Adelaide with her aunt and uncle:
**Petra (13): (...)** The reason I moved there was because um, like my mum and dad are very, they're like, they're not, like they are mentally stable, but like physically they're always moving, stuff like that. So they're just, so it was totally up to me, I could stay with my, like it was my decision whether I wanted to stay with my mum and dad. Mum and Dad wanted me to stay with them, but I had the choice to go and live with my aunt and uncle who are like, you know, they know where they are, they, you know, um, cos, cos I was my first year of high school, they thought it would probably be better, you know.

Other children were invited to consider their residence some time after separation. For example, at separation, brothers Laurence and Matthew moved with the mother to South Australia, leaving the father in northern New South Wales. Since then the mother has given them an option to try living with the father. Laurence reported that he did not take up the option:

**Laurence (16):** Yeah, like, um, Mum said that I could go and live with Dad if I wanted to and stuff, like, but, I don't know, it's just that seeing as I've moved down here I've kinda settled in too much.

Being ‘settled’ has a strong influence on children’s decision-making. Neale (2002) reports that the children in her study “valued being part of a network of supportive relationships” (Neale, 2002: 460) which, for the children in this research, included family, friends and environmental factors such as school and community. A concept of ‘independence’ in decision-making is elusive, in that any decision-making relies on relations between the decision-maker and those around her or him. Consequently decision-making processes reflect relations of power, where power “acts on [others’] actions, whether now or in the future” (Ivison, 1998: 139). An example of this is in Matthew’s description of his acceptance of the option to live with his father for a six-month period:

**Matthew (11):** I went up. Well, Mum just said OK and I just went up there for a while. Cos they weren't, because I liked seeing him so I went up there for a while to live.

Matthew’s decision to try living with his father was supported by the mother who encouraged him in his decision. His comments indicate, however, that the level of support from the father’s home and girlfriend was not as strong:

**Q: And, when you came back to South Australia, whose decision was it?**
Matthew (11): Ah, Dad’s.
Q: Was it?
Matthew (11): Yeah. Well, he didn’t. I just came back down cos he was doing lots of work and stuff. Yeah. So I just came back down. And his girlfriend was getting pissed off.

Matthew’s comments reflect discourses about absent fathers and unhappy “girlfriends” or ‘stepmothers’ and reflect power relations that determine or influence people’s actions. His move to the father’s home raised a different set of relations between people which included a decision to either exclude or ‘contract in’ Matthew (Danaher, Schirato, & Webb, 2000: 85).

7.3.3 Judicial Decisions
Taking decisions outside the support of family and friends was considered by children in my study to be inappropriate, as the children’s comments indicated in relation to questions of judicial decision-making.

*Q: ... what do you think um, is wrong with the court idea?
Callum (10): It’s just um just over like two or one kid, go to court about it, just a bit big, like...yeah.
Q: Yeah. It’s kinda like um, kinda like...
Callum (10): It’s kinda like stubbing your toe and then like suing the ground or something.

Judicial officers are very far removed from the families about whom they make decisions. They rarely meet the children who are subjects of litigation over residence and contact and they do not have extensive information about them (Chisholm, 2000). Judicial officers are therefore virtual strangers to family members, especially children.

Ten of the sixteen children who participated in this research expressed a dislike for the concept of a judicial decision being made in relation to their futures. Their comments indicated a range of responses to judicial determinations.

Q: What do you think about the idea of a judge talking to people about what should happen?
Matthew (11): Well, it’s OK, but sometimes they’re wrong and like stuff.
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Nick (13): Yeah. I reckon like, legal issues with, um, say if like young kids and their parents divorce, I don't think legal issues are going to make anything any better, I think it'll just make things more stressful for everyone.

Q: So, the parents should try to reach an agreement.
Nick (13): Yes. Without um, involving the Court, cos I think that just makes everything more stressful.

One way in which it would be made “more stressful” would be if a judge ordered something that the children did not want.

Q: What's, what's the problem with that idea?
Amy (9): That the judge just might just make a decision and the chi, the child doesn't really want to.

In their discussions, children’s responses reflected loyalty issues arising from discourses around the family as a ‘complete’ unit. Their comments indicated concern for parents who may be unfairly treated by a judicial decision that may shut a parent out of a child’s life.

Q: What do you think about the idea of someone like a judge deciding where children should live?

Olivia (9): Oh, well, I don't think that would be very fair, because the child, they might want to live with one parent and just say there were two children, one child might want to live with their mum cos they were closer to their mum and one child might want to live with their dad, cos they were closer to their dad, so if they just have to live with their dad, or they just have to live with their mum, it wouldn’t be very fair on both of them. And if, if that did happen, then I don't think it would be very fair on the mum or the dad, because they choose when they see, when the kids see them. It might not be very often or something like that. So, I've never actually heard that, but I don't think it's very good.

Daniel (10): Well, I'm not that keen on it, because sometimes if like the child's having trouble with the dad or the mum, they'll say, they'll just hug their mum or their dad, show how much they love them and the judge would just say, 'OK, you can stay with so and so for this long and so and so for that long’, and then like suddenly the child will just feel like, ‘Oh...Oh’. (Mm). That's not very good. Then you'll just realise what he's done. So, cos then, one of the parents will end up in tears, like, well, yeah, and it's just not fair, really.

Ellen (9): Not very nice. (Mm.) Cos if they want to live with their dad and they were living with their mum (Yeah) and they had to stay with their mum and they didn't want to, it wouldn't be very fair.

The issue of fairness was significant in all the children’s comments on the role of judicial decisions. For three of the children, judicial officers might facilitate a degree of ‘fairness’
under certain circumstances. Such circumstances included judicial decisions when parental conflict was significant and in cases when a judge might assume an investigative role:

*Petra (13):* I think, ah, sometimes because the parents don't, they fight about it and, you know, it just like gets really hard to make that decision, I think that as long as the judge um, is fair, I think that's fine.

*Fran (17):* Well, if you're going that far, I guess the judge should look at both sides and investigate both parents, so that's how serious you want to take it. Other than that the judge doesn't really know the people and hasn't, doesn't really sit down and talk to them or anything and see what the people like or what the child likes, it's just more of a decision based on a couple of facts. It's not, doesn't usually end up very fair.

Q: (...) How effective do you think that might be?

*Fran (17):* Probably not very effective. The sort of things that are overlooked or not known without good investigation on both parties and you know, personally trying to get to know the parents a little more, and the child.

*Laurence (16):* In some cases it's probably a wise decision like, if, to have a ah, impartial kind of person, but, like if any of the um, parents were like I don't know, abusive to the kids or something and, it's probably better to have someone overseeing it, but kind of like, they could make like wrong decisions, but, kind of they're expected to be able to make the right decision all the time, which is pretty much humanly impossible.

Children’s concepts of fairness emerge in early childhood: “young children are guided by such notions of fairness in the treatment they mete out to others” (Emler, 1991: 123). In the area of parental separation, children have a sense of trying to be fair towards both parents. This response is related to children’s understandings of family as a source of support and nurturance (Morrow, 1998). As the children commented above, however, attempts to be fair towards both parents in relation to choosing where to live can result in decisions that appear unfair to one or both of them.

The children’s comments mirrored those made by children in a British study of separated families (Neale, 2002). In describing children’s responses to their contact with counsellors and social workers, Neale reported that they “saw professional involvement not so much as ‘support’ but as ‘intervention’” (Neale, 2002: 466). Comments from the children in my study reflected this view in relation to the involvement of judicial officers. They ‘othered’ judicial officers and constructed them as different from family members in ways that determined children’s expectations of them (Neale, 2002: 467). It may be that greater
information needs to be provided to children about the role of Family Court judges (and to judges about specific children about whom they make decisions). This may increase levels of understanding between the two groups.

Children’s rejection of judicial decisions in relation to issues that directly affect them was based on their perceptions that judges and other professionals were not familiar with the families in which the children were situated. As argued earlier, the children in this research constructed decision-making processes around relationships between themselves and significant others in their lives. The closer the adult to the child, the more appropriate that person was seen to be as a decision-maker.

### 7.3.4 Consultation between Children and Parents

Many of the children in this study argued that decision-making is more appropriate if it involves a consultative process between parents and children. Consultation had two prongs: initiated by parents towards children and initiated by children towards parents.

#### Initiation by Children

Eleven of the sixteen children in my study argued that if the parents were in conflict or experiencing difficulties in reaching decisions, then the children might initiate discussion:

*Laurence (16)*: ... well, you just basically the only way you could, the only way I could think of is to talk to your, like I said to that question before, you just have to make your parents aware that, and that's all, all you can do really, like there's no other avenue that I know of that you could um, yeah, that you could make it, yeah that you could tell, tell them that you weren't happy with the situation you're in.

*Olivia (9)*: Um, well, I think the children should tell them, and then tell the adults what is wrong and how you can change it to make everyone happy. And that's what I did with my teacher, and we moved around again, cos the whole class was unhappy, and we had to pick out four people we liked and we made, um, we put our desks together and we sat with them.

Discussions with parents might include some advice from the children:

*Nick (13)*: (...) there's probably a reason maybe why they're not listening to him, and maybe he could give them some advice as to whatever's happening at the time. He could try to, that way, um, he might be heard to, yeah, sort of like that. I'm not sure really.
Children accepted that some of their decisions would require parental assistance. Ten-year-old Daniel, for example, pointed out that when he decided to visit a skate park he relied on his father or mother to drive him to the venue. Similarly, Matthew would require the cooperation of both his parents should he wish to visit his father in the future:

Q: If you wanted to um see your dad again. How do you arrange that?  
Matthew (11): Ah, see if he, see if he would think it's OK. And see if Mum would take me.

Initiation by Parents

In other issues, the children in this study suggested that parents might include children in their decision-making:

Q: ... Cos some, some adults and some children say that the only people who should decide on what happens with children after their mum and dad separate is the mum and dad.  
Amy (9): Mmm. I think it should be all of us: to sit down and say oh what do you want or what do you want or what do you want?  
Q: Are you saying kids should have a say?  
Callum (10): Well, y-yess, but not tell the parents what to do, 'I wanna do that', mm, so the parents should um yeah, talk about it and then the, they'll probably tell the kids and then if they don't want that to happen then they'll figure something else out. Cos it kind of depends on how many kids... sometimes.

Harry suggested that children need to be listened to but that this should be balanced with adult responsibilities to decide:

Harry (13): I was going to say that the child should get an opinion, but adults, yeah.  
Q: You're saying the child should have an opinion  
Harry (13): No, the adults should have the, the adults should have a lot to say, but oh, have a say in it, not all of it, like the child should at least be able to be heard.

The children offered a number of suggestions as to how parents might involve children. In Callum’s suggestion, above, the parents might reach a decision then discuss it with the children, changing the decision if the children were unhappy about it. Others suggested that parents might consult with children before deciding on action:
Petra (13): I think that they should um, have the child there as well, you know, ask what the child wants. You know, like, the parents can't just decide, well, I want, say I'm the mum, I wouldn't just say, OK, well, um, it doesn't matter what my kid says because I want her to live with me, so she's living with me. You know, what if the kid wants to live with the dad? You know, so, I think that they should have the child to, you know, help make these decisions.

Nick (13): Um, I think they should ask them what their opinion is. Say, say, for example, they could ask their children we're separating and we don't know where you want to live, where do you, um, do you want us to make that decision or would you like to make it, and do you like to live at one person's house, or move frequently. I think they should, they should ask. (mm). Before they tell them to make a decision cos that like puts people under pressure and makes, will make the children more stressed.

Nick described how his mother had consulted with his sister and him about a move to a new residence:

Q: (...) the decision to move here was made by who?
Nick (13): Um, Mum decided that, but she wouldn't move here without um, us wanting to, or um anything like that, so we had a say in the matter. (OK) The same with when we moved into the house at, our last house. The only time I didn't have a say in where we moved was when I was nine months old. (laughter) Um,

Another suggestion was to hold a family conference:

Daniel (10): Mm, well, yeah, it's, you should turn it into like, kind of like a mini family discussion, and like, first, what we did, they, we went into the family room, and that was like this h, well, living room type thing, and um, in our old home, that's where we got, that's where they got split up, and um, and we'd always have these family discussions if ever something went wrong. Like, someone was bullying me at school or something, which, this boy at school, T. W., he always bullies me, and um, yeah, we would have family discussions, so I reckon they should, well, you should have a little family discussion first, then take it to the place. (Mm-hmm). So, take your, first have a few ideas, mix them together, take them to the place and say, 'Look, we've come up with this. Is that OK?' Hope, cos, it's not really their decision, cos it's not their family, but if you're trying to like, fight against them they can just choose one person, so don't really like that.

Daniel’s comments reflect his experiences following his parents’ separation. He reported that he and his parents visited a building in the city where they talked with someone. Their decision to try a shared residence arrangement with Daniel was negotiated with this person. Laurence also suggested the use of a professional to assist family decision-making processes:
Laurence (16): Um, pretty much the same sort of thing that we're doing now, is probably the best way to do it. Just have a sort of one-on-one talk with, yeah, with the person. Like, I don't know, if you talk to, I don't know the words, I don't know who you talk to, but someone that's working for the court to like, gather the information.

That these children valued a consultation process between them and parents over issues that directly affect them is consistent with the findings of other studies, both for children of separated parents and for children involved in foster care situations (Morrow, 1998; Neale, 2002; Thomas & O’Kane, 1999). Twelve of the sixteen children in this study had experienced making decisions on major issues such as residence and contact and were supported by their mothers in their decisions. Mothers also supported these children’s involvement in this research. Children who were excluded from this research may have reported very different experiences of decision-making, perhaps never being involved: “genuinely worried parents may try to keep their children in the dark as a way of safeguarding them from harm for as long as possible” (Smart, 2001: 2).

7.3.5 The Role of Others in Decision Making

Q: What do you reckon might be other ways that, that they could make the decision, get the decision made?

Callum (10): Um, like talk with friends, um, talk about it like quite a bit. To sort of figure out...figure out something. Um, yeah, sort of talk with friends and stuff.

In a British study of children’s perceptions of ‘family’, Morrow (1998) reported that children defined ‘family’ in terms of emotional bond as well as in terms of blood ties. Children described step-siblings and half-siblings as integral to their concepts of the family to which they belonged. Smart (2001) agrees, stating, “‘Family’ represents a constructed quality of human interaction or an active process rather than a thing-like object of detached social investigation” (Smart, 2001: 10). For children, the quality of the relationships they experience is more significant than a structure known as ‘family’.

Friendship was also significant for older children in Morrow’s study. In other studies (Bagshaw, Campbell, & Jelinek, 2002; Dunn & Deater-Deckard, 2001), children have reported that they discuss their difficulties with friends rather than family members. Bagshaw, Campbell and Jelinek (2002) point out, however, that children will talk with adults at a later stage. Again, the choice of adult will depend on the child’s perceived relationship with the adults in her or his world rather than on the basis of blood ties.
Morrow reported that when children discussed decision-making processes they referred to the involvement of others in their social worlds, such as friends, extended family and teachers. Neale (2002) reported that “Kin were seen as useful sources of advocacy” by the children in her study (Neale, 2002: 464), while friends offered non-judgmental and egalitarian support and the opportunity to share experiences. In summing up, Smart (2001) suggests:

When we asked children who they most wanted to speak to about family matters they identified other family members, including sibling and, in some cases, grandparents. Very few identified ‘outsiders’, and if they did they were likely to be teachers – although this too was far from common (Smart, 2001: 2).

Comments from all of the children in my study concurred with the findings of the studies described above. Children suggested that other family members or friends know the family better than anyone else does. Therefore, if parents were experiencing difficulties in decision-making they might consult these people in preference to others such as professionals or the court:

*Petra (13):* I think um, if that did come to that, I think, you know, just like friends and family, like what they think's better. Um, not that they'll make the complete decision, but just, you know, give some advice on, because they know, because they're family and friends, they know how like, how the um, you know, whether the mum is probably better because maybe she doesn't work, and the dad works long hours, so I think you know, like family and friends. Yeah.

*Harry (13):* A thing you could do is, um, well, instead of having the judge investigate, you could um get members and relatives to come in. They will know the people, they might know the people. Some friends, and have them, and ask them questions about their parents. And about, I don't know, if it would help.

*Nick (13):* Um, they could talk to their relatives or their friends or, like, people who have gone through the similar situation and had to resolve it the same way. Um, yeah.

*Ellen (9):* (…) They should just all go to someone in their family, like an auntie or a nanna. I'd never go to my Nanna, she gets up too early.

Olivia underscored the significance of extended family to the children in this study. She expressed concern on a number of occasions during her interview that she should know the history of her family:
Olivia (9): ...but if it's something like not seeing the other parts of your family and not knowing about your family, not knowing what their names are, how, if anyone has died, um, then parents shouldn't just shut them out like that. They should, um, tell them.

Olivia’s discussion about decision-making then considered ways to maintain contact with significant family members:

Olivia (9): Um, maybe if there were some really close relatives to that particular part of the family, like just say um, your nanna or grandpa, if they were really close to you and they didn't want you to split up, then they could help with the arrangement. And um, so if one went one way and the other went another way, they could work out something like they swap over and then they come, they both go with Mum and when they're with Mum they go to the mum's parents and when they're with Dad they go visit Dad's parents, if they all live near together, but if they don't um, well, then I think that maybe they could go see them but if, yeah, so if only one of your parent's parents, ah-haaa, were really attached to you guys then I think that, and they're close to your mum or dad, whichever one, then when you go to see that parent then you should visit them as well. Because then they won't, never see you again.

Ellen also discussed the possibility of spending time with significant people in her family:

Ellen (9): Um, I don't know. They should...if, um, they can't decide where they want to live they could live with an auntie or something, near the school, or, who don't work and that, and will offer to take them to school and live with them.

Q: Should that be what the children decide, or should it be Ellen (9): Or their grandmother. Oh, if, if they decide that, they should ask the parents and that, cos they might, they might want to live with the dad, they might want to live with the mum, so they can live with somebody else, part of their family. (Uh-huh.) They can see them any time, and if they don't have to decide which house they live at.

Fine (1994) points out that those who are ‘othered’ and subordinated spend significant amounts of time observing and learning about those who ‘other’ them. Children, as subordinates, have much knowledge about adults from observing them, even though “Rarely do they display/flaunt their knowledge of the Other” (Fine, 1994: 78). The comments of the children in this study reflect their understandings of the ways in which ‘family’ is constructed through their observations of parents and extended family members. Their suggestion that other family members and friends be involved in decision-making about children reflects these observations of the role of parents and children within families and the significance of support in decision-making.
7.4 Discourse and Children’s Views of Decision-making

Different institutional discourses interact with each other to build a ‘truth’ within which our identities are formed (Danaher, Schirato, & Webb, 2000). The way in which they interact is demonstrated by the relationship between Piagetian developmental theory and decision theory. Both emphasise rationality as an ideal towards which individuals must strive. According to developmental theory, children are not complete beings until rationality appears (Durkheim, 1982). Similarly, decision theory argues that rational approaches to decision-making, while often not possible due to Limited Rationality in adults, is the most desirable. It would follow therefore, that if adults find rational decision-making difficult, then children would find it impossible until they reach the rational stage of ‘formal operations’ (Piaget, 1969). Decisions about them must be managed by adult caregivers.

In contrast, a postmodern orientation argues that we are the product of ‘multiple selves’ (Fine, 1994) and multiple realities. Children and adults alike can sometimes decide on issues and sometimes find decisions impossible. Experience will play a significant part in the growth of children’s decision-making skills. Moreover, because children are observers of adults, they will often have knowledge about decision-making activities that they might not necessarily reveal to adults.

The comments from the children in this research reflect their understandings about rational decision-making approaches, as described by decision theory, and offer a site of resistance to adult discourses that suggest they are incapable of rationality. For example, children discussed their understanding of a need to seek information and to consider different options before making a decision. Descriptions of other decisions, however, reflected decision theory’s ‘Satisficing’ approach, for example when children make decisions that meet certain criteria (such as a specific hairstyle) or interests (such as specific sporting activities). On yet other occasions, children described decisions that they expected would be made by parents and other adults on behalf of children (for example, in deciding issues such as bed time, diet and in some instances, choice of school).

These descriptions reflect the concept of multiple selves, with decisions being grounded in context and relationships. Context included considerations about age of children, the timing of the decision, and stated reasons for deciding (such as a future orientation). Relationship issues included perceptions of levels of support from family and friends and
the importance of consultation before making a decision. In that respect, the concept of ‘independence’ in decision-making is of interest. Children’s comments reflected the value of making decisions in concert with others rather than being completely independent.

The child participants’ discussions reflected a number of discourses. Included in these discourses are those about age and decision-making, the value of being ‘responsible’, the concept of the ‘future adult’, and the binary of dependence-independence. Other binary relationships embedded in children’s texts included those relating to ‘good-bad’ and ‘successful-unsuccessful’. These discourses and binary understandings reflect the operation of bio-power in maintaining a social order that is regulated (Rabinow, 1984) for the ‘good’ of children (Kitzinger, 1990) and their future as socialised adults. While the children in this study presented some resistance to these discourses about them, the power of the knowledge that is represented by the discourses will take time to break down. The final chapter of this thesis will consider the possible emergence of a new discourse that includes children as decision-makers who respond from multiple constructions of themselves in the present rather than in the future.
Chapter 8: Centralising Children’s Voices

Discourses that socially construct children as vulnerable, incomplete and lacking in ‘sufficiently developed’ cognitive and emotional skills to effectively participate in decision-making activities arose throughout this research. I first became aware of these discourses when completing the University procedures for obtaining ethical approval, then through recruitment of children for the research, and finally they were evident in the texts of the children’s interviews. Alongside these strong discourses ran others, however, that constructed children as able, resilient and interested in participating in decisions that directly affect them, especially following parental separation.

In this chapter I will consider the ways in which my research experience reflected the dominant discourses that construct children as vulnerable and incomplete. I will then explore a ‘new’ social construction of children as active participants in decision-making activities in all social, political and legal issues including family law. I will conclude the chapter with a consideration of ways in which adults might centralise children’s voices in decisions that affect them following parental separation. The conclusions will be informed by the child participants.

8.1 Issues in Research with Children

Research projects that require the participation of children present unique difficulties. Most research designs (including this one) take a hierarchical approach to recruitment. The approach involves at least four steps, the first three of which involve ‘gatekeepers’: ethics committees, service providers/professionals who work with targeted families, parents and finally, the children themselves (Cree, Kay, & Tisdall, 2002; Gilbertson & Barber, 2002; Masson, 2000; Punch, 2002). Gatekeepers can perform a valuable service because they have a responsibility to “safeguard children’s welfare”, a “positive, protective function” (Masson, 2000: 36). They can also significantly hinder a research project. Current discourses that reflect the construction of children as vulnerable and/or lacking in either the competence or experience to effectively participate in research of a ‘sensitive’ nature can influence the way in which research proceeds in a number of ways.
8.2 Ethics and Children’s Participation

As described in Chapter 4, the University’s Human Research Ethics Committee deliberated for five months before approving this research project. In contrast, the Family Court of Australia’s Ethics Committee approved the research within two weeks of receiving the proposal and the Adelaide offices of Relationships Australia (SA) and Centacare approved the research within four weeks of being approached. The different response rates were due to a number of factors. Firstly, my level of expertise is well known and acknowledged by family law solicitors and service providers in the three major organisations approached because I have a long history of service provision, both locally and nationally, in this field. For example, all members of the Family Court, from the Chief Justice through administrative staff to counsellors and mediators, know of my work. I have also worked in community-based organisations and am well known to staff in both Relationships Australia and Centacare. The University’s Human Research Ethics Committee did not have access to this level of knowledge about my expertise. Members of that committee felt the need to ensure the safety of the children who would be interviewed.

Secondly, the field of family law is highly specialised in Australia. In an e-mail dated 15 November 2002, The University of South Australia’s Human Research Ethics Committee described family law as a significantly volatile area of endeavour, containing much emotion and sensitivity. Issues of consent and confidentiality are highly contentious in this arena. The United Nations Convention on the Rights of the Child (Articles 9, 10 and 18) and the Family Law Reform Act 1995 (Section 60B) spell out the child’s right to maintain contact with both parents and the common responsibilities of those parents. This creates nervousness in relation to whose consent should be obtained in issues relating to children. For those not involved in family law institutions, these issues become highly significant. The University’s cautious approach varied from that of the Family Court and the community organisations who work in family law and have different understandings of consent issues.

Thirdly, the Australian family law sector has become increasingly focused on the needs of children over the past decade, with a particular emphasis on ‘child inclusive practice’ (Gribben, 1998; Mackay, 2001). The Family Court, Centacare Australia and Relationships Australia have all expressed interest in developing ‘child inclusive
practices’ that are sensitive to the needs of children and that try to centralise their voices in service provision, as a very recent news article suggests (Reddy, 2004). The response from ethics committees and the managements of these organisations was quick and positive because of the growth of these practices and the implications this growth has for family services providers. Their interests are therefore quite different from those of the University, which has a responsibility to ensure that participants in research that is undertaken through its auspices are treated in a highly ethical manner.

Chapter 3 discussed the issue of risk in inviting children to engage in research. The ethic of ‘doing the least harm’ in research is a dominant feature in considering the appropriateness of specific research proposals. Smart, Neale and Wade (2001) observe, however, that Western constructions of what might ‘harm’ children have altered periodically since the 1950s (Smart, Neale, & Wade, 2001). While the effects of parental separation on children are now considered significantly ‘harmful’, earlier constructions of ‘harm’ revolved around issues of parental absence (whether or not the parents had separated), neglect and abuse of children and the strength of the mother-child bond. A focus on the ‘harm’ of parental separation ignores other ‘harms’ such as emotional and economic disadvantage and the ‘harm’ that can occur from an ongoing marriage that contains significant conflict (Smart, Neale, & Wade, 2001).

Assessing risk in social research includes assessing the researcher’s skills and expertise in the area of interest, the possible impact of the subject matter on the research participants, the value of the research project to the community and its potential contribution to knowledge. Children, however, are likely to consider a research project in terms of its context in their lives and its level of meaning for them. Indeed, “context and substance…inform how they understand the research and make decisions about whether or not to participate” (Edwards & Alldred, 1999).

When children are denied knowledge about research that directly affects them because of adult concerns about possible ‘damage’ to them, their ability to decide for themselves is violated. Rules designed by adults to ‘protect’ children from ‘sensitive’ issues in research reflect “rules for children, rather than for adults” (Kelley, Mayall, & Hood, 1997: 313, italics in original) and demonstrate the power of discourses that construct children as incompetent. Were ethical practices in relation to recruitment of children to be reviewed,
such a review would need to be accompanied by some cultural change in our understandings of children’s levels of expertise.

In a study that involved children who were being cared for by local authorities, Thomas and O’Kane (1999) recruited through an information pack that was given to the children by their social workers. Children were invited to contact the researchers in person or to discuss their willingness to participate in the research with their social worker. The researchers then contacted children’s social workers to obtain details of children who had expressed an interest in participating. This approach ensured that all ‘target’ children were well informed about the project and able to join the research if interested. A similar approach might have resulted in a larger sample for the current research. The design of my study placed gatekeepers between researcher and potential child participants, creating difficulties in recruiting that have been mirrored by other studies.

8.3 The Problem of Recruitment

That not one referral was received from service providers despite strong support from ethics committees and managers, does not appear unusual. Cree, Kay and Tisdall (2002), Gilbertson and Barber (2002) and Punch (2002) have all reported similar difficulties in recruiting child research participants through organisations. Reasons for the lack of referrals appear connected with the culture of the ‘helping professions’ and the organisations in which they are employed, gatekeepers’ perceptions of the issues faced by families, the discourses surrounding children and assessments of the suitability of specific issues for research.

8.3.1 Organisational Cultures

Managers often expressed surprise, disappointment and confusion in relation to the lack of referrals of children to this study from their staff. One manager suggested that this lack of referrals may be partly due to mediators trying to find the appropriate moment in their work to discuss the research with their clients. One service provider spoke of the difficulty in deciding when to introduce the research in his work. A service provider in another organisation spoke about the high workload that she and her colleagues were expected to manage. She wondered how she could add discussions about the research into her work, viewing it as an added burden. The issue of high workloads was discussed by researchers in another Adelaide-based study (Gilbertson & Barber, 2002), who suggested
that extremely high caseloads placed pressure on referring social workers to complete work as quickly as possible and to neglect lower priority tasks. The organisations in this study are facing increasing Government pressure to meet client quotas set in contracts and service agreements. Direct service provision becomes a priority.

Gilbertson and Barber (2002) discussed the possibility of feelings of enmity between social workers and researchers. While it is not clear whether such feelings were operating in my research project, there is a possibility that some degree of enmity existed. I was known to all staff in each of the organisations, and had spent time outlining the research project in detail with them. Nevertheless, a service provider in one organisation questioned whether the organisation’s managers had adequately reviewed the research design. Another service provider commented that he remained unsure about who he should refer to the project despite having been provided with extensive information, both verbal and written, which detailed this issue. These comments suggested a degree of dissatisfaction about some of the service providers’ involvement in the research, which could have manifested in feelings of enmity towards the researcher. Organisational cultures can become insular, leading to feelings of resentment towards people from ‘outside’ who enter the culture for short periods of time and expect its members to complete tasks with which they have little or no connection.

8.3.2 Family Issues

Periods of family breakdown and separation can be times of significant turmoil for family members (Fisher & Brandon, 2002). The process of separation has been likened to the psychological process of grief. During this time parents may find it difficult to make appropriate decisions about significant issues (Wallerstein & Kelly, 1980) and children may experience high levels of stress. Service providers raised these issues in relation to recruitment of children for this project.

A manager suggested that once parents have reached decisions about children’s future residence and contact arrangements, they may not wish to re-visit the issues. Their wish to ‘move forward’ could create difficulties for parents who are asked to consider engaging with family law related matters yet again.

A service provider suggested that the parents with whom she worked had many issues to consider. Although she and her colleagues had discussed the research project with some
parents, parents could consider it as “another thing they don’t have to do”. Priorities for parents in some of these families were focused on other matters, resulting in the research project being lost for them. In another instance, a mother had agreed that the children could be included in this project, but later called back to withdraw her consent. She stated that she had decided to move interstate, away from the children’s father and that the children were moving with her. She said that if she were to invite the children to participate in this research they would become anxious about decisions that she was making and to which they were not being asked to contribute.

In each of these comments, the emphasis is on the parents and their needs, not those of the children. The concept of children having a voice in issues directly related to them is not acknowledged or addressed. Children are denied a voice when parents and other adults ignore their needs. Dominant discourses operate that emphasise that children are the property of adults, vulnerable and incompetent to express a significant opinion (Maundeni, 2002).

8.3.3 Discourses Surrounding Children
Michel Foucault argued that discourses are produced by and through institutions. Discourses articulate rules, roles and procedures, regulate behaviours and produce hierarchies (Danaher, Schirato, & Webb, 2000). The organisations that were asked to assist in recruiting participants for this research are themselves examples of institutions. The discourses that are embedded in these institutions include those around children, rights and family law, the construction of families themselves, and the roles of children, parents, judges and counsellors (among others) in the family law ‘system’. Discourse also describes culture and maintains cultural expectations, whether they be those of particular groups of people or of organisations.

The first discourse that arose in relation to this research project constructed it as ‘sensitive’. This construction emerged through comments made by service providers, their managers and the University’s Human Research Ethics Committee. The concept of ‘sensitivity’ is related in the English language to words such as ‘acute’, ‘delicate’, susceptible’ and ‘tender’ (Collins, 1992b: 398). It suggests that the research and the participants require ‘delicate’ management because of the ‘tender’ nature of the subject matter and participants, and reflects the dominant discourses surrounding children as
vulnerable, incomplete and in need of protection. An assumption that children will become more distressed if they discuss ‘sensitive’ issues assumes, however, that by not discussing the issues there will be no distress. This assumption ignores research that suggests that children will often discuss ‘sensitive’ issues such as family breakdown and parental conflict at school with their peers long before they talk to an adult, as described by Bagshaw, Campbell, & Jelinek (2002), Maundeni (2002) and Mayall (2000). Olivia, for example, described the kinds of things that young people share with each other:

Olivia (9): ...my friend a person called Jackie, her parents were having a bit of trouble deciding if they were going to break up or not, and Jackie, she was eight, turning nine, and she was um, worried what was going to happen, and she knew that I, well, I hadn't really known what was going on because I was little, but, um she was asking what, me, what it's like, to be a bit more grown up and I said, well, it's not too bad because, um, your dad won't be living interstate, he'll be living in your area, so you'll be able to see him frequently, but if they're not sure, then you should talk to them.

Significant distress could occur during discussions about family separation when children are not participating in research and when adults are not present to manage the results. Constructions of children as being unable to manage emotional issues in the absence of significant adult support reflect the dominant discourses that maintain children as vulnerable and lacking in resilience. These discourses have been challenged by studies of street children (D'Abreu, Mullis, & Cook, 1999), child labour (le Roux & Smith, 1998) and child soldiers (Lopez-Calva, 2001). Some children are aware that parental separation is stressful, but argue that to shield children from it may cause more harm than exposure to it might engender:

Q: Some people also say, some adults say, that um, when parents separate, it's very, very stressful. Stressful on children, stressful on parents, stressful on everybody, so, but especially because it's stressful on children, they shouldn't be involved in the decision-making.
Petra (13): Um, no, I don't think, I think it's gonna be stressful anyway, whether they make the decision or not, so I think they just should be able to because it's not going to make a difference, it's still going to be stressful, because you might make it even more stressful if they don't want to make a decision because what if they have to live with their dad but they want to live with their mum?

The second discourse to emerge constructed children as lacking in competence and therefore as unable to participate in this research in an autonomous fashion. It revolved around a proposed initiative to conduct a phone-in where children would telephone me
directly if they wished to be involved in the project. The proposal was prompted by an understanding that, although obtaining parental approval to talk with children is an ethical issue, there is no law requiring researchers to obtain permission from adults to include children in research whether by telephone or in person. Researchers’ decisions “could be challenged only by a child who had been harmed by the research” (Masson, 2000: 35). A phone-in would assure anonymity for children who would also control the interaction through the ability to terminate the call when they wished. A phone-in would also provide an opportunity for children and young people to participate independently of adult influences.

The Human Research Ethics Committee sought further legal advice in relation to the involvement of young people in a phone-in without parental consent. While the Ethics Committee stated that it could approve the waiver of parental consent if the research was significant enough, members of the committee expressed concern about the sensitivity of the topic. The Ethics Committee stated that proposals to alter the recruitment processes required “careful consideration” (E-mail from University Human Research Ethics Committee to the researcher dated Thursday 14 November 2002).

The legal response in relation to this issue confirmed the opinion of Masson (2000) that there is no legal precedent for obtaining parental consent. The solicitor further confirmed the significance of this research project with regard to the need to hear the voice of children, a voice that has often been marginalised. She reported that in South Australia young people above the age of 16 are legally able to decide on their own medical and psychological needs, and concluded that this would include participation in research. The lawyer recommended, however, that the consent of parents be obtained for children under the age of 16 before they became involved. This emphasis on an age restriction reflects the dominant discourses of children as ‘human becomings’ rather than as social actors who operate on their worlds in a deliberate manner. It accords with comments made by the children in this research about the significance of age in defining childhood and adulthood. Age barriers raise questions about the transition of young people to adulthood and the assumed levels of competence and vulnerability in young people below the age barrier. Why has sixteen been chosen as the age at which young people can decide independently on medical and psychological intervention and not fourteen or younger? The arbitrariness of this boundary maintains adult power over children for a significant
part of their lives and reflects dominant institutional and cultural views of the status of children in Australian society.

Service providers also expressed concern about the discourse on children’s rights, with one commenting that to accept a child’s statements without question may be counterproductive. This comment reflects concerns in submissions to a 1997 inquiry into the implementation of the United Nations Convention on the Rights of the Child that a respect for the rights of children can create less protection for them, and therefore more vulnerability (Jones, 1999). It has the potential to further marginalise children because it implies that what they say may not be accepted as ‘truth’. The concept of ‘lying’, however, can be conceptualised as attempts by children to protect themselves from sensitive issues, or to help the adult with whom they are working (Punch, 2002). This raises additional issues with respect to adult-child power relations.

The concept of the social contract is relevant to the arguments that position children as less able than adults. Discussions about the rights of children to participate in decisions that directly affect them violate the unwritten social contract that is implicit in the dominant discourses that position children as incomplete and vulnerable, requiring adult control and guidance (Mason, 2002). Postmodern thought would argue that the children’s rights discourse represents a site of resistance to the dominant discourses and centres on the power relations in the binary of adult-child (Moss, 1998). The resulting challenge to the construction of children as dependent rather than autonomous represents a potential for those power relations to be transformed in some way. Comments made by some of the service providers who were asked to refer children to this research project may reflect concerns that children will obtain levels of power considered unsuitable for their age and stage of life and highlight the potential challenges that a rights discourse might pose.

Denial of access to children for research denies them any opportunity to participate in decisions of any kind and is of particular concern where the research relates to their views of their rights and abilities to participate. Relying on consent from adults further denies children direct access to information that would be considered essential for other research participants. This includes information about the aims of the research, the participants’ role, and their right to decide whether or not to participate (Masson, 2000).
The group of children who finally participated in the research was recruited through a snowball technique, explained in Chapter 4. The research population may, however, have been unusual. Although I initially discussed the research alone with the parents, each parent advised me that the children would decide whether to participate rather than the parent. Indeed, in four families I introduced the project to the children and parent together rather than separately. Children were therefore provided with the opportunity to decide independently on their participation. Moreover, two children who were invited to participate declined the invitation, but were informed about the project and its aims before making that choice.

Smart, Neale and Wade (2001) used a variety of approaches to recruitment for their research with children of parental separation. In addition to the snowballing technique, Smart et al recruited children through voluntary agencies and professional organisations, advertisements and personal contacts. Even so, they stated that nearly fifty percent of the parents who were approached did not agree to their children’s participation. The reasons given by these parents were similar to those offered by adults in my recruitment strategies and included the assumptions that if children were to discuss issues of parental separation they could become distressed and that their involvement could increase the conflict between parents.

Smart et al pointed out that seven of the children who participated in their research were recruited directly. After the children expressed interest in the research parental consent was sought. In their study of children in care, Thomas and O’Kane (1999) recruited children through the use of a sealed information package. These experiences indicate that the ability to inform children directly about research and to issue personal invitations for them to participate prior to seeking parental consent may be a crucial prerequisite for their subsequent involvement.

### 8.3.4 What is ‘Appropriate’ Research?

A review of recent studies in which children participated suggests that there is a dominant discourse around ‘appropriate’ topics for research with children. This discourse would argue that the degree of ‘sensitivity’ in a research topic is related to the level of potential emotionality embedded in the topic. Topics in which there appears to be little emotionality would, in this discourse, be less damaging for children than those with high
levels of emotionality. For example, Ruck, Abramovich and Keating (1998) asked children what they knew of their rights, a topic that appeared to hold little emotional content. Eder and Fingerson (2002) described research on the experiences of street children, children’s television viewing habits, children’s views on sexuality and love and children as consumers. These topics can be considered as representative of objective inquiries that are imbued with few emotional issues. Bagshaw, Campbell and Jelinek (2002) evaluated a program designed for children who had experienced domestic violence. While the topic of domestic violence can be considered to contain issues of high emotionality, the evaluation of a program to address this emotionality is one step removed from research on the actual experiences of children. In other research, Thomas and O’Kane (1998, 1999, 2000) and Gilbertson and Barber (2002) explored children’s experiences in decisions about their foster care placements. While the focus of these inquiries remained general the research proceeded appropriately; but when Gilbertson and Barber proposed to talk with children described as ‘disruptive’, or who had experienced a recent breakdown of fostering arrangements, they met with opposition from social workers. Reasons given for not referring children to Gilbertson and Barber’s project included that the child’s placement was fragile or that the child was too stressed to take part or “too dangerous to interview” (Gilbertson & Barber, 2002: 256). These comments reflect a discourse that assesses research as inappropriate when the perceived level of emotionality and consequent potential for difficulties to arise are high.

Research that does not ask children about their experiences in situations where they are perceived as vulnerable could be considered less ‘threatening’ to children’s emotional states [and perhaps to adults’ perceptions of “parental authority” (Barnes, 1998: 8)] than the focus of my research. It is possible that my focus on children’s decision-making abilities was perceived as having the potential to emotionally ‘damage’ children because of its direct attention on children’s levels of agency within families. Had the research taken a less direct approach or focused on topics further removed from children’s direct involvement, fewer difficulties might have been experienced in recruitment of children.

8.3.5 Implications for Recruitment of Children in Research about Them

The lack of referrals from five key organisations whose staff work with separating and divorcing families presents a serious concern. On the one hand these agencies were promoting child-inclusive practice and on the other hand they appeared to give low
priority to providing opportunities for children to have a voice in research that directly concerned them. This stance had consequences for the ability of children to participate, not only in this research that directly concerns them, but also in any endeavour that might involve them. Here I do not refer to ‘abilities’ that relate to issues of biological or psychological ‘readiness’ to participate, but to the practicalities of children’s rights to involvement in forums that address matters of ‘childhood’ and ‘children’. Gatekeepers who deny children access to information about research projects in which they might be interested marginalise children and reinforce discourses that construct children as being unable to decide for themselves whether or not they will participate.

These issues are reflected in ‘child inclusive’ practice initiatives across Australia at this time (Mackay, 2001). While some family services organisations include children in therapeutic and group work, a discourse surrounding children’s vulnerability emerges in descriptions of the services offered. In some organisations, children are invited to participate in group work, but Mackay makes the comment that “The child is usually not ‘the customer’, with the parent typically presenting the child for help to deal with problem behaviour” (Mackay, 2001: 19). This ‘presentation’ constructs children as different from adults and as needing to be protected and ‘cured’. Children who are positioned in the discourse in this way may not feel able to decide on whether or not they will participate.

During the review of the original research proposal one of the reviewers commented on the ethical need to seek consent from adults for children’s involvement in this research prior to seeking children’s consent. The research project’s major emphasis was on the participation of children, yet I could not go directly to them to invite them to participate. It may be timely to consider alternative approaches to including children in research and procedures for both informing children and parents and gaining consent for children’s participation. Recent written information from Bren Neale (dated 29 July 2004) indicates that some UK research has recruited children through courts and other legal agencies as well as through schools. It would be useful for Australian researchers to follow up these initiatives through the Nuffield and Joseph Rowntree Foundations which funded these projects. An Internet search provided little information about how researchers approached children to recruit them for specific research projects. Direct contact with researchers through Nuffield and Joseph Rowntree may assist Australian researchers in expanding recruitment options for research with children.
8.4 Limitations of This Research

The use of a snowballing approach in recruitment of children for this research resulted in a small sample with specific characteristics. All of the children who participated had significant experience in making decisions, both autonomously and with adult support. The parents in the sample did not seek the services of the Family Court for the majority of the decisions that they made about the children in their care. In addition, there appears to have been little ongoing conflict between the majority of the parent couples in this sample. While Daniel described the involvement of a professional person in helping to reach decisions about his residence, other children in the research did not. None of the children in the sample reported the existence of child abuse or domestic violence in their families.

These children are therefore not representative of the wider group of people who make applications to the Family Courts of Australia and Western Australia. In my experience as a Counsellor and Mediator with the Family Court of Western Australia, parents who make application to the court in relation to post-separation arrangements for children are often in significant conflict with each other, unable to agree on any issue relating to the children. Children from these families were not included in the sample for this research and their voices remain silent. Additionally, the sample did not include any children from Indigenous or ethnic backgrounds other than Anglo-Celtic, nor did children who had never experienced decision-making activities participate.

McKechnie (2002: 55) points out that the research context can “influence the interpretation of children’s skills and abilities”. For example, in Ruck et al’s (1998) study, children were asked to discuss a number of vignettes prepared by the researchers, who expected that the vignettes would tap into children’s views of ‘rights’. It is possible, however, that the children read the vignettes in different ways from the way the researchers hoped. While the concept of ‘fairness’, for example, might equate to the concept of ‘rights’ it is possible that children construct the two concepts differently from the way that adults do. Indeed, some of the comments from the children in my study reflect differences in their constructions of ‘fairness’ and ‘rights’. The importance of context for children has implications for researchers who wish to explore children’s understandings of ‘rights’ and reflects the postmodern argument that “representations of [the] self are always politically situated…[and] personally negotiated” (Fine, 1994: 72).
The research process itself might have influenced the comments made by the children in this study. As I explained in Chapter 1, my reasons for undertaking this research were partly based on my growing dissatisfaction with the way in which decisions are made about children in the family law context. I therefore brought my own agenda to the research task. At times I recognised that I reacted favourably to some of the children’s comments, by smiling or leaning forward in my chair when I heard comments from the children that fit with my agenda. These actions might have encouraged the children to provide me with comments that would elicit favour from me. These issues should be borne in mind when considering the suggestions arising from this work about how to centralise children’s voices in family law issues.

8.5 The Texts of Children’s Interviews

The interview texts that formed the data for this research reflected the concept of politically-situated multiple selves discussed by Fine (1994). Children’s multiple selves were embedded in the contexts of the issues under discussion during the interviews. While they sometimes constructed themselves as competent and able to participate in decisions that directly affect them, they also sometimes perceived themselves as not so competent and able.

Children’s discussions often reflected the binary adult-child relations described by Archard (1993), Cheek (2000) and Flax (1990), but their comments also indicated the fluidity and indeterminacy of these binaries (Fine, 1994). Children found it difficult to define the differences between childhood and adulthood and between ‘right’ and ‘wrong’. Their attempts to define childhood and adulthood appealed to legal definitions focused on age, thus they accessed adult institutional discourses to explain differences. When legal definitions were gently challenged the children expressed confusion about the differences between children and adults. Further discussions on differences between adults and children focused on physical size, levels of responsibility, types of activities, levels of focus (for example, children’s play focus versus adults’ work focus) and levels of maturity. Further binaries are embedded in each of these foci (e.g., big-little, responsible-not responsible and mature-immature). Consequently, children’s discussions around child-adult status reflected the dominant discourses of the developmental literature in relation to growth towards adulthood.
The concepts of ‘dependent’ and ‘independent’ were also difficult to define, with children’s comments reflecting different degrees of (in)dependence, depending on the context of the discussion. For example, Olivia discussed her stipulated bed time but stated that she sometimes makes an independent decision to go to bed at a time different from that. As Smart, Neale and Wade (2001) point out, an individual’s levels of dependence and autonomy are fluid and the self is constructed within a “web of relationships and interdependencies” (Smart, Neale, & Wade, 2001: 97). Autonomy is only possible through varying levels of dependence on others.

Attention by children in interviews to binary differences reflects the major themes of ‘bio-science’, competence, vulnerability and dependence discussed in Chapter 2 and the connection between the visible and the sayable (Kendall & Wickham, 1999). These themes work together to produce a construction of children as small and vulnerable, unable to fully participate in society because of their ‘incomplete’ status. This construction serves to dehumanise children (Jenks, 1982) and maintain a view of them as ‘not really people’, as seventeen-year-old Fran argued.

Children in this study also positioned themselves on an age continuum, constructing those younger than themselves as less competent and those older as more competent than themselves. These constructions indicate the complexity of binary relations. While social and political institutions can build discourses based on binary relations it can be difficult to maintain clear boundaries between them. Children can be more or less ‘childlike’ and adults more or less ‘adult-like’, as Olivia’s discussion of the 45-year-old man who still resides with his mother reflects. The blurring of the boundaries between adult-child, dependent-independent and parent-child in children’s texts reflects Fine’s (1994) argument that we construct ourselves and the world in which we live in different ways depending upon context and situation.

Children’s comments reflected a view of a ‘natural order’ to the world in which ‘truths’ are embedded (Husserl, 1996). In this natural order, mothers care for children while fathers are often absent. For example, one participant, Callum, asserted that children should live with their mothers. Parents make decisions about children’s daily activities, including what they eat, what time they will go to bed and when they will do certain things such as homework. While children themselves might choose which activities they might undertake (such as Brenda’s list of recorder, swimming and gymnasium) parents
could decide when they did them. Parents also set boundaries for children in relation to where in the community they could go. Children sometimes constructed these decisions and restrictions as indicators of parents’ levels of care for them while at other times they questioned the fairness of the decisions and restrictions. Their comments were similar to those made by children in another study of their accounts of risk: “…when children thought they were being treated unfairly they criticized parents’ rules based on discourse around social or psychological risks” (Kelley, Mayall, & Hood, 1997: 312).

The construction of a natural order in the world can be extended to children’s understandings of the tasks that are assigned to each age of growth. Children can run around and make noise, but adolescents should not engage in such behaviours, as the conversation between the siblings Fran, Gemma and Harry indicated. Adults should demonstrate significant responsibility, managing money and a house, owning property and parenting children. These constructions reflect the dominant developmental narrative that positions adults as responsible and economically and emotionally independent and adulthood as the desired end-goal of growth (Lefrancois, 1993). Such a narrative values a future- rather than a present-orientation and positions children as “becoming” (Alldred, 1998: 150; Durkheim, 1982: 147) rather than as ‘being’. The vision of the romantic child, discussed by some of the children in this research, adds to this narrative and maintains a construction of children in general and these children in particular as having no responsibility and no ability or obligation to accept any.

Whilst denying that they should have any responsibility, the children in this study argued that they are capable of making decisions and of voicing a reasoned opinion when asked. In discussing children’s rights, all the children in this study expressed a belief that they should be heard by adults and that their opinions should be taken into account in any decisions that might be made about them by adults. The children’s comments agreed with those made by children in other studies (e.g., Australian Law Reform Commission and Human Rights and Equal Opportunity Commission, 1997; Neale, 2002; Thomas and O’Kane, 1998, 1999, 2000; Ruck, Abramovitch and Keating, 1998) in supporting children’s rights to be heard in matters that directly affect them. This did not mean that children wanted to make decisions independently of others. They distinguished between autonomous decision-making and consultation:
Fran (17): I'd say the majority of decision comes from adults, but (...) the child should still get an opinion.

Having an opinion and being heard equated to feelings of being respected and valued in the child-adult relationship:

Q: So, what you're saying is that it's important for adults to listen equally to children as they listen to other adults.
Nick (13): Yes. Yes, which is something that's not really happening much in the world at the moment, but I think that kind of thing should happen, where people should have equal social rights and they should be able to be heard, as equals.

Q: What kind of rights do you think children ought to have?
Kane (13): That we also have, um, that we should get some more respect from most people, because most people when they see people our age, they just think children, they don't know anything and stuff like that. Um, ah, that's all, really. Cos most who have children don't have any idea about anything.
Q: Yep. And so respect would mean what?
Kane (13): (Sighs). Um, kind of that they have more say in things. That they, yeah, that they have more say in things (...)

These comments reflect those of other children of separated parents in a study conducted in Britain (Smart, Neale, & Wade, 2001). One of the researchers (Neale, 2002: 460) describes “an ethic of respect”, which is mutual in that “it is not just a matter of being respected and trusted but of respecting and trusting others”. The children’s comments in my study offer a site of resistance to the discourse that constructs children as unable to express a ‘reasoned’ opinion because of incompleteness or a lack of understanding. Alternative discourses reflected in the children’s comments constructed children as competent, as an integral part of the institution of ‘family’, as knowledgeable about their own needs and interests and as able to understand social issues if they are exposed to them. Adolescents and children were constructed in these alternative discourses as having an agency and an ability to participate in ‘adult’ decision-making activities. In this respect, the children appealed to adults to focus on “the ways that young people acquire and master skills, construct positive identities, and learn how to negotiate social roles” (Furstenberg, 2000: 900).

In decisions that affect children following parental separation, the texts of the children’s interviews reflected a number of different viewpoints and the contextual and relational issues that contribute to a concept of ‘multiple selves’ (Fine, 1994). For example, while
seven-year-old Brenda argued that adults were more knowledgeable and should therefore decide on behalf of children about residence and contact issues, she makes her own decisions about whether she will visit with her father. This apparent incongruity reflects the different contexts in which decisions are made and the fluidity of narratives that “reveal our partialities and pluralities” (Fine, 1994: 79).

Children’s comments often reflected issues of loyalty towards both parents. They discussed ‘fairness’ in relation to spending time with each parent and commented on the difficulties of living in separate homes and states. In discussing issues around residence and contact, the children posed questions that reflected their own difficulties (e.g. “What if the child wanted to live with Mum or Dad?”) and the problems of making definite decisions (Daniel (10): “Then you'll just realise what he's done. So, cos then, one of the parents will end up in tears, like, well, yeah, and it's just not fair, really”). Many children in the study discussed the contribution that extended family members can make to decision-making about children following parental separation. These comments reflect the network of relations in which human beings are situated and through which they construct a sense of self. Additionally, the children’s comments indicate the strength of discourses about ‘family’ as a site of bonding and emotional ‘health’. These discourses underscore the approach to family policy reflected in Australian Parliamentary Inquiries that attempt to ‘strengthen’ families and maintain children’s contact with both parents despite changes in family structures (House of Representatives Standing Committee on Family and Community Affairs, 2003; House of Representatives Standing Committee on Legal and Constitutional Affairs, 1998). The children in this study did not express any strong wishes to change the situation in which they were living, however. Many of the fathers were residing interstate while fathers who were more accessible for children were often engaged in work or other activities. When asked what they would change about their lives, almost all of the children said they would change very little, indicating their satisfaction with their current circumstances. Loyalty to both parents and reflection of a discourse about the sanctity of the family in Australia (Rayner, 1994) does not necessarily predispose children to feeling stress over the loss of members of the family or wishing to change their situation.

Other comments from the children in this research reflect a dominant discourse about age and ability and differing levels of responsibility and independence. While comments made by Laurence, Callum and Nick reflected these issues, Nick also pointed out that
children know what they want and can decide on issues that affect them. This argument was also put forward by Matthew and Petra. These comments reflect the way in which our construction of the self can change in different contexts. Edwards and Alldred (1999) argued that contexts contain three levels, described as the personal level, the sociostructural level and the level of institutionalisation. Each of these levels interacts with the meanings embedded in the decision-making task and the self is positioned in relation to the relative influence of each. Children weigh their responses, both to decision-making situations and to questions about these situations, against the contexts in which they are required to respond. Sometimes their responses will reflect the discourses that position children as young, not able to accept responsibility and not understanding of ‘adult’ issues, while at other times their responses will construct children as capable and responsible.

Many of the children discussed the value of consultation in decision-making activities. For example, Kane considered that children could “help” with decisions relating to their residence and contact following parental separation. The children stressed the importance for them of being able to talk with parents about their feelings and interests and of being consulted on what would happen to them following separation. These comments reflect those of children in other studies focusing on separation (Smart, 2001) and foster care situations (Thomas & O’Kane, 1999). Children’s participation in decision-making, however, even at the level of being consulted, requires a change in adult assessments of children’s abilities and social position. How this can be achieved is complex, requiring us to challenge the current discourses about the status and competence of children.

8.6 What is Required for Children to Actively Participate?
Murray and Hallett (2000) argued that the concept of ‘participation’ in decision-making is not relevant when an individual is able to exercise ‘self-determination’. Should children become self-determining, they would not require a right to participation because that right would become redundant. Murray and Hallett point out that adults do not generally ‘participate’ in a decision to move house, for example. Self-determination means that they simply do it, although this has not always been the case for women (Schaffer, 1988). While women and children remain marginalised the right to participate is significant.
There are examples of children’s active participation in social change. In the United Kingdom, an organisation called *Article 12* has been established by and for children to advocate for their rights to be heard (Van Bueren, 2001). Another movement, *Underground Power*, was formed in the early 1990s to address issues in the implementation of the United Nations Convention on the Rights of the Child. In South America and Africa child labour movements have been established (Mason & Urquhart, 2001). In Canada, in 2001, a 14-year-old boy rode his bicycle from Calgary, Alberta to the Capital in Ottawa, to speak with Government members about the need for family law personnel to listen to children (McLean, 2001). In Australia, children have spoken to an inquiry that listened to their experiences of the Court system and its treatment of them (Robinson, 1997). Australian children are also making significant contributions in the political arena through membership of organisations such as the Young Democrats (Ludbrook, 1996). Children’s participation in ‘adult society’ is, however, somewhat patchy. Some of the children in this study reported that they are not always consulted about decisions that directly affect them. In some cases their participation in decisions has not been considered at all.

Past initiatives aimed at trying to include children in decision-making activities following parental separation have met with little permanency. While Chisholm (2000) described a number of approaches, such as engaging children in discussions in chambers and the use of family reports, he points out that few of these approaches are actually used. The greatest opportunity for children’s participation at this time is through programs offered by community-based organisations, including counselling, group work and mediation (Mackay, 2001).

Full participation of children in decision-making activities involves more than simply providing different processes and approaches and deciding from an adult perspective which to use in a specific situation, however. Children themselves must be able to access the system in their own right, determining what processes they might use and contributing fully to decision-making activities through their own initiatives. There are a number of stages throughout the separation and divorce process in which children might participate in decisions that directly affect them, as outlined in Table 4 below.
Table 4: Children’s Participation: Family Law Processes
Adapted from Murray and Hallett (2000: 17)

<table>
<thead>
<tr>
<th>At separation</th>
<th>At mediation:</th>
<th>During Court processes</th>
<th>After the hearing/decision-making process</th>
</tr>
</thead>
<tbody>
<tr>
<td>At separation</td>
<td>At mediation:</td>
<td>During Court processes</td>
<td>After the hearing/decision-making process</td>
</tr>
<tr>
<td>The child is informed about the parents’ decision to separate</td>
<td>The child has the opportunity to initiate mediation with parents</td>
<td>The child is fully informed about relevant court processes and expectations</td>
<td>The child receives any decisions that directly and indirectly affect him or her in writing</td>
</tr>
<tr>
<td>The child is invited to discuss future arrangements with both parents</td>
<td>The child determines her or his involvement from a range of options</td>
<td>Court processes are modified to be less formal and more understandable for children</td>
<td>There is an appeal system that the child knows how to access</td>
</tr>
<tr>
<td>The child contributes to the parents’ decisions and her or his opinions carry some weight</td>
<td>Advocacy/representation is available to the child</td>
<td>The child can initiate court proceedings</td>
<td>There is a review system that the child knows how to access</td>
</tr>
<tr>
<td>The child initiates discussion with adults about future parenting arrangements</td>
<td>The child contributes to the discussion about future arrangements</td>
<td>The child has access to advocacy/representation</td>
<td></td>
</tr>
<tr>
<td>The child has access to detailed information about separation, divorce and family law processes</td>
<td>The child expresses a view about what should happen with him or her</td>
<td>The child determines his or her involvement from a range of options</td>
<td></td>
</tr>
<tr>
<td>The child has input into the design and implementation of processes to resolve disputed issues that directly or indirectly impact on her or his well-being</td>
<td>The child’s contribution to decision-making carries weight</td>
<td>The child contributes to the way in which the court hearing proceeds</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>The child has the opportunity to directly address the court</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>The child expresses a view about what should happen with her or him in a way that she or he chooses</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>The child’s contribution carries weight</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Options, including those proposed by the child, are discussed with the child before the decision is made</td>
<td></td>
</tr>
</tbody>
</table>
Participation in programs that affect children includes their involvement in the design and implementation of the programs from the beginning (Cree, Kay, & Tisdall, 2002). Access to relevant, appropriate, comprehensive and understandable information is a significant factor (Murray & Hallett, 2000). Attendance and a degree of choice of the processes for decision-making are also key components (Murray & Hallett, 2000).

There are indications that the situation for children in the family law system is gradually changing. At the end of 2003 a Government Inquiry into arrangements for children following separation acted upon strong suggestions that Inquiry members hear from children. Members of the Inquiry attended two focus groups where children themselves discussed the terms of reference for the Inquiry (House of Representatives Standing Committee on Family and Community Affairs, 2003). Consequently, the children involved in the focus groups were able to voice an opinion and have it carefully considered in a national forum. Other initiatives, including ‘child-focused’ and ‘child-inclusive’ practices, are growing throughout the country (Mackay, 2001).

Nevertheless, there is still much to achieve. Currently, courts, including the Australian Family Courts, need to change the culture of the legal system, to introduce ‘non-lawyer’ child advocates who truly speak for children (Robinson, 1997), and increase the use of non-litigious processes such as conciliation and mediation. These processes place the emphasis on participants’ needs (Folberg & Taylor, 1984), with an added acknowledgment that when mediating matters involving children, the ‘best interests’ principle will apply (Evans & Havercamp, 1994; Lawson, 1989; Saposnek, 1985; Simpson, 1989). Recently the House of Representatives Standing Committee on Family and Community Affairs (2003) recommended (Recommendation 9) that separating parents be required to undertake mediation prior to applying to the court for assistance. Additionally, at Recommendation 13 the Inquiry urged that all family law initiatives build in opportunities for “appropriate inclusion of children in the decisions that affect them”. Mediators are required under the Family Law Reform Act 1995 to consider the best interests of children, but there is no requirement for them to involve children in any way in the mediation process (James & James, 1999). As in court processes, in mediation children’s own views may be subordinated to adult perceptions of ‘best interests’. I acknowledge the need to protect some children (e.g. those whose parents are in high conflict, those who have witnessed violence between their parents and other family members and those who have been abused). I argue, however, that a blanket prohibition
on the involvement of children in decisions that directly affect them could be more harmful for them than their non-involvement.

When children’s levels of autonomy to actively make decisions about their lives are considered, Olsen (1992) pointed out that regardless of issues of ‘competence’ and dependence, children do make decisions on a daily basis. These decisions extend to those about whether or not to discuss any abuse that they may have experienced and how to deal with abuse when it occurs (Kitzinger, 1990). The types of decisions that children can make, however, appear limited to certain areas of decision-making. In family law, children remain highly dependent on adult understandings of their rights and ‘best interests’ with few provisions for their autonomous involvement in matters that directly affect them (Chisholm, 2000).

Until now, children’s participation in decisions that affect them has not been considered significant for a number of reasons. Firstly, children’s level of awareness of those rights that have been ‘given’ to them has been shown to be minimal. For example, a New South Wales research project indicated that children are unaware of their rights to participate in decisions about their placement in foster care (Mason & Urquhart, 2001). Secondly, on a wider scale, “Whilst independent political action by children is not unknown (for example, the Burston school strike of 1914 or the role of children in the Soweto uprising of 1976) its history is frequently hidden or suppressed. This...frustrates any continuity in children’s political organization” (James & Prout, 1990: 30). Thirdly, the adult construction of children’s rights means that children have received a set of rights that they may consider irrelevant for their own lives. Whether children would choose the rights that have been bestowed on them through the United Nations Convention, and not some other set of rights, has been questioned (Eckelaar, 1992; Freeman, 1992). In my study, although children did not discuss ‘rights’ per se in detail, they expressed a clear request for their opinions to be taken into account when decisions were made that affect them and discussed protection issues in relation to parental control of their movements.

If children are to become more aware of their right to participate, then there is a need for them to be better informed. Participation depends upon having knowledge about how to participate. Currently, full participation may be limited for children, not because of developmental issues but because they are not properly informed about the institutions, processes and issues that are relevant to their participation. An African study concluded
that children who expressed satisfaction with the level of communication between themselves and their mothers following their parents’ separation had indicated that their mothers had informed them about the reasons for the separation and sought their opinions on it. In contrast, those who expressed dissatisfaction with the level of communication with their mothers reported inadequate explanations about the separation and that their mothers did not seek or ignored their opinions. Moreover, the children expressed dissatisfaction with the way in which their questions were answered (Maundeni, 2002).

In addition, there is a need for adults in Western society to act towards and think about children differently from the way they have been. This means accommodating children in an ‘adult world’ and providing opportunities for them to speak and be heard (Roche, 1999). It also means a re-evaluation of the construction of children, especially in relation to perceptions of them as vulnerable and incompetent. A paradigm shift of this nature has implications for future understandings about children and their social position, and raises issues about the role of parents and the family.

8.7 Children’s ‘Best Interests’?
The paramountcy of a child’s ‘best interests’ in forming decisions that will affect them, both within the Family Court and outside it, has been discussed throughout this thesis. One of the major concerns about the application of the ‘best interests’ principle, not only in family law but also in other aspects of children’s lives, is its adultist orientation, often described as ‘paternalistic’. Many authors, including Campbell (1992), Carmichael and Sarre (1994), Coady (1996), Redman (1997) and Woodhead (1990), have commented on the ‘adultist’ nature of the concept.

Determination of a child’s best interests involves the application of value judgments that arise from adult conceptions of what children might need (Woodhead, 1990). For example, the statement ‘children need love’ implies that without it they will not achieve emotional security, but this is a value judgment that is never explicit. The statement relies on consensual knowledge between those making the statement and those receiving the message. It is apparent that both the speakers and the audience are mainly adult, and that parents, teachers, policy makers and professionals make judgments with little reference to children. This places the issue of children’s ‘best interests’ in the realm of ‘personal
choice and political discussion” (Woodhead, 1990: 65). Decisions made on their behalf deny children their right to direct input, maintaining adult power over them.

The existence of the principle of ‘best interests’ and guidelines for determining what might be in a particular child’s ‘best interests’ may provide some assistance for adults who are faced with difficult decisions. Wringe (1981) argued that the ‘best interests’ principle should ensure that children will have some autonomy as individuals in their own right, and that at law the rights of parents would be subordinated in favour of these ‘best interests’. Chisholm (2002) points out that there are two approaches to considering a child’s ‘best interests’. In the first approach, these interests are paramount and override the interests of all others, including parents, while in the second, a child’s ‘best interests’ are balanced against those of parents, societal norms and other factors. Moreover, Chisholm points out that the principle of ‘the best interests of children’ does not apply to all issues in Australian family law, such as a decision to appoint a legal representative for a child. Chisholm’s conclusion that the practice of Australian family law reflects an ambivalence towards children’s ‘best interests’ raises questions about the way in which those interests are used in making decisions that directly affect children.

Nyland (1999) and Thomas and O’Kane (1998) have criticised the cultural specificity of the ‘best interests’ principle and the way in which it is defined in law. While it has been suggested that determination of a child’s best interests might be made according to current social standards (Landerkin, 1997), this raises a question of whose social standards are to be used. In the past, a belief that their best interests could be served by isolation from traditional life, led to the removal of Aboriginal children from their biological families and a dislocation of Indigenous society in Australia (Nyland, 1999).

In summary, the concept of ‘best interests’ of the child remains vague (Kelly, 1997). That vagueness is also evident to children, as the comments of the children in my study indicated. Additionally, other considerations, such as the “relevance of enumerated statutory provisions” or “the legitimate interests and desires of the parents” (Chisholm, 2002: 15) may take precedence over the paramountcy of the child’s ‘best interests’. The principle cannot be explained with scientific certainty (Freeman, 1983; Landerkin, 1997) and relies significantly on adult discretion, and therefore, adult values.
In its submission to the 2003 Inquiry into Child Custody Arrangements, the Family Court presented a chart indicating the level of importance placed by judiciary on the matters contained in Section 68F of the *Family Law Reform Act* 1995 in determining a child’s ‘best interests’. This chart indicates that significant weight is placed on the ‘nature of the relationship between parents and children’, issues relating to the likely effects on a child of significant change, the ‘capacity of parents to care for children’ and parent’s attitudes towards the children. Significantly less weight is placed by the judiciary on the wishes expressed by children in relation to residence and contact (House of Representatives Standing Committee on Family and Community Affairs, 2003: 8). The significance placed on parent-child relationships and parental capacity suggests a construction of children as highly dependent upon parents. Concurrently, the judiciary’s tendency to consider children’s wishes as of less significance suggests a construction of children as less able than parents to claim autonomy in expressing a wish. Whether children want to express a ‘wish’ in relation to residence and contact issues is questionable, however. In my study, the children’s comments reflected confusion over the place of children’s ‘wishes’ in family separation. For ten-year-old Daniel, expressing a wish about residence could lead to significant stress for families, a theme that repeated itself in other children’s comments.

While children are considered as dependent, adults will continue to protect them from issues about which they consider children to have little understanding (Qvortrup, 1990). A number of authors, among them James (1990), Leach (1994), Nyland (1999) and Redman (1997), have argued that direct consultation with children themselves can bring clarity to the concept of ‘best interests’ and focus more directly on children’s needs. When children in my study discussed their involvement in decision-making, they emphasised the importance of consultation between themselves and parents rather than children simply expressing a ‘wish’ and expecting parents to act upon it. It may be that the requirement in Section 68F the Australian *Family Law Reform Act* 1995 for children to express their wishes is counter-productive both to the ability of family members to support children during separation and to the court processes themselves.
8.8 Suggestions for Centralising Children’s Voices

8.8.1 Challenging the Social Construction of Children

Sometimes during the research for this thesis the children’s comments reflected a social construction of themselves as vulnerable and ‘developing’ towards the ‘ideal’ of ‘rational adult’. At other times their comments reflected a construction of themselves as competent, of knowing their own needs and of being able to communicate them effectively and clearly. They agreed that they sometimes make mistakes, but argued that because adults also make mistakes, this should not prohibit them from making decisions on matters that affect them. Children presented the concepts of “partialities and pluralities” (Fine, 1994: 79) in their discussions, reflecting a fluid construction of self as it relates to context and experience. A construction of children as social agents who operate on their worlds in effective ways and who sometimes (rather than always) require assistance to negotiate difficult issues and events would help to establish greater cooperation between children and adults and greater communication about the needs of each. A cooperative approach has the potential to change adult perceptions that they must assume a ‘top-down’ approach to communication that positions them as decision-makers and children as passive recipients of the decisions that are made.

At the same time, the ways in which children socially construct themselves and those around them can change depending upon the context and situation in which they find themselves. Adult attempts to essentialise all children through descriptions that rely on what we see of them (physical size, relative strength, expertise in language use, perceived levels of understanding) do not take changes in children’s presentations into account. The emphasis in Section 68F of the Australian *Family Law Reform Act* 1995 on a list of factors designed to determine the ‘best interests’ of all children in this country denies that individual children are different from each other, with different experiences, needs, understandings, environments, cultures and values. An emphasis on the individual child requires an abandonment of a universal list of factors in favour of an understanding of the specific circumstances of each child.
The construction of children as social agents in their own right has implications for the positioning of children in relation to decision-making activities that directly affect them. Other authors have argued for the involvement of children in social and environmental planning (Harding, 1997; Henderson, 2000; Mason & Urquhart, 2001) and political activity (Ludbrook, 1996). These initiatives require that children be considered as equal and able partners in the activities that they encompass and that they are fully informed about the initiatives. Additionally, the initiatives require that adults invite children to participate in their own right. Children who are fully informed can then decide independently on their participation and the level of support they might require from parents and other adults.

To achieve this, children might first be provided with information about research in which they might participate. Children would be invited to participate after they demonstrated an interest and an understanding of the aims and procedures of the research. Researchers would then approach adult gatekeepers (service providers and parents) to seek their consent for the children to be involved. A difficulty with this approach is that there would be no guarantee that, following a child’s expression of interest in participating in the research, an adult would provide consent. Adults would also be required to believe in a child’s ability to make an informed decision about her or his participation and to value the child’s opinion and social agency. Parents would be obliged to discuss with the child her or his reasons for wanting to participate and assess the benefits of participation for the child, the family and society in general.

8.8.2 Communication Issues:
Consultation
The children in this research emphasised the importance for them of being able to talk with their parents about issues of concern and of their parents being able to raise issues with them in return. Their comments agree with those made by children in research

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3 Australian researchers and practitioners interested in how the social construction of children affects their participation in decision-making processes would benefit from a closer relationship with researchers in other countries, particularly the United Kingdom. For example, Bren Neale and her colleagues have undertaken recent research on children’s views of their lives following separation, but their work is currently not available in Australian libraries or on the world wide web (Neale, Flowerdew, Smart & Wade, 2003; Neale & Smart, 2001). Additionally, some later references relevant to the issues discussed in this thesis are either not currently available in Australia (Jensen & McKee, 2003) or are limited in number, making it difficult to access (Alanen & Mayall, 2001; Mayall, 2002; Pryor & Rodgers, 2001).
undertaken by Smart, Neale, & Wade (2001), Tapp & Taylor (2001) and Thomas & O’Kane (1998). Children in this research stressed the value of their opinions and asked that their opinions be taken into account during decision-making processes, as the following comment indicates:

Nick (13): ...sometimes a lot of children's opinions are more logical or sometimes sensible than a lot of ones that adults might have.

As other authors (Freeman, 1983; Ludbrook, 1996; Mason & Urquhart, 2001; Qvortrup, 1990; Wringe, 1981) have argued, children’s participation in matters that affect them could begin at the planning stages of projects rather than at later stages. Their participation in these early stages might satisfy adult concerns about how a project will subsequently emerge. For example, children could address issues about appropriate behaviours in planned skate parks and other spaces for young people. They could also assist in planning appropriate services for children, so they will feel comfortable to attend and take part.

There has been much attention in the Australian literature about the perceived need for a Government-appointed Children’s Commissioner or an Office of the Child. While a number of authors and inquiries in Australia, among them the Australian Law Reform Commission and Human Rights and Equal Opportunity Commission (1997), the Australian Human Rights and Equal Opportunity Commission (2001), Fogarty (1995) and Jones (1999), have urged Governments to consider such appointments, little has occurred. From a postmodern perspective there needs to be caution as the position of Children’s Commissioner would create another institution with its own discourses about children and their relation to adults. This could maintain specific power-knowledge bases that may or may not promote the voices of children in social decisions. An alternative is to “take action to increase [children’s] involvement in the public sphere” by offering children “opportunities to engage in deliberation about matters affecting them” (Bessant, 2002: 38). One way to do this is to invite children to join discussion panels to consider issues that directly affect them, at all levels of government in Australia. These panels could be convened on each occasion that issues directly affecting children arise. Children could be invited to express an interest in the panel through schools and the media. Such an initiative, dependent on changed social constructions of children as positive social actors, could be significantly beneficial to society as a whole.
Comments made by the children in this and other studies indicate that they will talk with friends and peers long before they talk with adults about ‘emotional’ issues such as parental separation. It is possible that they are more knowledgeable about parents’ difficulties than parents and other adults understand. Indeed, in one Australian study (McIntosh, 2000) parents indicated that they had little understanding about how the children in their families were addressing the separation issues. Were parents more open to hearing from children and listening to their opinions, it is possible that much of the stress experienced by children at separation would be minimised. As Petra observed, “I think it's gonna be stressful anyway, whether they make the decision or not”. Two recent Australian reports have recommended ‘child-inclusive’ practice in family law but have not defined the term or provided guidelines for their visions of such practice (Family Law Pathways Advisory Group, 2001; House of Representatives Standing Committee on Family and Community Affairs, 2003). At a minimum, child-inclusive practice might provide children with opportunities for their opinions to be accounted for in decisions that directly affect them. Opportunities for children to talk together with parents, both formally and informally, and to have their opinions taken into consideration, have the potential to improve decisions that directly affect them. Forums in which children might talk with parents include family conferences, counselling, mediation and group activities.

When children do provide their opinions in family law matters (indeed, in any matters than directly affect them) their opinions must be accepted and respected. The current practice of seeking the ‘truth’ behind a child’s opinion (for example, that it is based on faulty logic, that it reflects parental views, that the child is not sufficiently ‘competent’ to hold a specific opinion) denies that a child’s opinions are ‘valid’ in their own right. There seems no point in seeking a child’s opinion if it is then to be challenged for its ‘truthfulness’. Adults would be required to adopt a ‘new’ attitude of respect and acceptance of the opinions given, seeing children as social equals with adults (Bessant, 2002).

**Inclusion of Extended Family**

The children in my study and in other similar studies (Smart, 2001) emphasised the importance of extended family in decision-making processes. A number of the children suggested that if parents were experiencing difficulties in deciding on issues involving children, they could consult with extended family and friends, who were described as having significant knowledge about the family. It is interesting to note that the House of
Representatives Standing Committee on Family and Community Affairs (2003) recommended (Recommendation 24) that “a range of strategies” be developed “to ensure that grandparents, and extended family members, are included in mediation and family counselling activities when it is in the best interest of the child”. The concept of family group conferencing (Bargen, 1996; Murray & Hallett, 2000) could be adapted for use in family law matters. Bargen (1996: 225) warns, however, that “procedural and other safeguards” for participants would be essential for families to feel satisfied with the process. Were family group conferencing attempted, issues surrounding abuse of children, family violence and levels of conflict between family members would need to be closely addressed prior to the conference.

8.8.3 Addressing Children’s ‘Best Interests’

The comments of the children in my research reflected adult discourses about children including confusion over how to assess their ‘best interests’. Children asserted, however, that they know what is in their interests and that adults might consult with them about these interests.

One of the difficulties within Section 68F of the Family Law Reform Act 1996 is the emphasis on children’s wishes. While in practice the Court takes into account many issues including children’s wishes, the presence of the narrow requirement to elicit wishes from children presents difficulties. An emphasis on the wishes of children can present opportunities for abuse to occur when parents try to coerce children into expressing wishes in accord with parents’ preferences. Children themselves expressed confusion in relation to ‘wishes’ during their interviews for this research. While some discussed children’s wishes to reside with one or another of the parents, they also expressed strong loyalty for both parents.

This research suggests that removal of the requirement to obtain children’s wishes from the Australian Family Law Act and replacement with a clause that obliges parents and family law professionals to consider children’s opinions and understandings of the separation and the situation as they perceive it might benefit families in gaining a more global view of children’s perceptions. Such a clause would also remove some of the potential for abuse to occur towards children who express a preference for one parent or who are victimised because they expressed a specific wish. It would present opportunities
for parents to hear children’s opinions and consider their ‘best interests’ in consultation with them without the perception of ‘win-lose’ that a child’s wishes can sometimes engender in parents.

8.8.4 Court Processes
The way in which courts are structured, the emphasis on determining ‘truth’, the process of cross-examination and the rules of evidence in court are major barriers to the appropriate involvement of children in court processes (Australian Law Reform Commission and Human Rights and Equal Opportunity Commission, 1997; Hubble, 2000). In postmodern terms, courts reflect institutional discourses about the social order of a culture, in no small measure shaping the ways in which groups and individuals are constructed within society. While there have been calls in the past to change courts to reflect more sensitivity to children, this seems to be a long-term project that may take several decades.

In December 2003, the House of Representatives Standing Committee on Family and Community Affairs recommended the establishment of “a national, statute-based, Families Tribunal with power to decide disputes about shared parenting responsibility” (Recommendation 12). This recommendation, if implemented, would create yet another tier of external decision-making that would add to the institutional discourses about how families ‘should’ work. In most Australian states there are now two courts that deal with family matters (the Family Court of Australia and the Federal Magistrates Court) and assume responsibility for decision-making in families where significant conflict is present. The children in this study rejected judicial decisions as inappropriate in family matters. To impose further quasi-judicial processes through a tribunal would add little to improve decision-making processes.

Both the Family Law Pathways Advisory Group in 2001 and the House of Representatives Standing Committee on Legal and Constitutional Affairs in 2003 recommended the expansion of mediation and counselling services within Australia. The latter report also recommended that mediation and counselling occur prior to families making applications to the Family Courts. Mediation and counselling can provide an alternative to court systems and offer opportunities for children’s direct participation in decisions that directly affect them. As has been argued elsewhere in this thesis, however,
children’s participation is dependent upon a social construction of children as social actors in their own right, able to participate in decision-making as equals with parents. Challenges to the current constructions of children need to be public and supported by examples of children who, like Peta, have successfully participated in decisions in their own right.

The children in my research all responded negatively to suggestions that judges could make appropriate decisions that would directly affect them. Indeed, when asked how parents in conflict could reach decisions, children did not discuss the possibility of using external decision-makers. There is a possibility that these responses arose because of children’s limited information about the ways in which courts work.

Two similar initiatives have begun to address the level of information available to children about Family Court processes. In Melbourne, the Family Court of Australia and in Adelaide, the University of South Australia’s Conflict Management Research Group have both begun to explore the possibility of hosting visits to the courts by groups of children. During these visits, children would hear how the court works, meet a counsellor and a judge and spend time in discussion with family law professionals about what to expect during the family’s contact with the court. It will be interesting to monitor children’s responses to this initiative and to hear from them their opinions of the court’s work following their visit. The level of information they receive could change children’s attitudes about judicial decisions under specific circumstances such as the presence of significant conflict, family violence or abuse of children.

8.9 The Way Forward
Throughout this research I have struggled with the task of centralising the voices of the children who participated. I was privileged to spend significant time with sixteen children who had a wealth of information to give me and whose opinions I valued and respected. Having talked with them, however, I was obliged to take their information and re-present it in the form of a written, academic work. Already, their comments, the richness of the information they gave me and their own presence have been diluted. I have presented second-hand, and in my own fashion, their stories, but without the children’s physical presence. I have felt an enormous responsibility in writing this work to report the
Chapter 8: Centralising Children’s Voices

children’s comments as faithfully as I could, to centralise their voices in the way in which they spoke with me.

Alldred (1998) points out that researchers have a responsibility to ‘re/present’ (interpret) children’s comments in order to describe the underlying meanings that they assign to their experiences. For me, the difficulty in doing this lay in trying to avoid imposing my own values, understandings and beliefs on the children’s texts. To do so would be to continue to ‘other’ children, marginalising their voices and presenting not their views but my own (Fine, 1994). I remain acutely aware that in presenting this work I may “collude in structures of domination” (Fine, 1994: 80) by changing the meanings and understandings given to me by the children in my analyses of their texts. This collusion extends to my being heard through this thesis while the children who talked with me must rely on the quality of my reporting of their opinions.

I have argued in this thesis that it is important for us to hear directly from children on every occasion that we can by inviting them to speak for themselves in many different forums. While Fine writes about groups other than children, her comments are equally valid for children when she states:

If we recognise race, class, gender, and sexuality to be socially and historically contingent … then silence, retreat, and engagement all pose ethical dilemmas. All are tangled with ethics of knowing, writing, and acting (Fine, 1994: 81).

Australians have an opportunity to lead the world in centralising the voices of children in matters than directly affect them, not only in family law, but in all decisions that could directly affect them. In the past ten years much debate has occurred in this country about the social position of children, their rights to be heard and their part in family separation. Now is the time to re-construct the concept of ‘child’ and take action to create initiatives that will invite them to directly engage in social issues in which they have an investment.
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Appendix A. Forms

Letter to Parents

18 November 2002

Dear Parent(s)

Thank you for agreeing to consider the involvement of your child(ren) in a research project that is looking at children from separated families and their involvement in decisions that affect them. This letter is to provide you with more information about the research.

I am interested in children’s views about how they could be involved in decisions that affect them following separation. The research is not looking at the actual decisions that were made for children, but about whether, and how, children who have been through family separation think they could be involved in decisions. The information from the research will help parents and those who work with separating families to better understand ways of assisting children following separation and/or divorce.

The research is being carried out from the University of South Australia. If both you and the child(ren) agree to their involvement they will be involved in a discussion of about one hour's length with myself.

There are a number of benefits for being involved in research of this nature. Sometimes children feel happy about having the opportunity to talk about what they think. The advice obtained from your children will be valuable in building services that will better meet the needs of children and parents from separated families. Sometimes parents report that children seem more settled after having a talk with someone who is not trying to counsel them but who will value what they say. I invite you to consider involving your child(ren).

I am a highly experienced professional with many years’ experience in working with children and young people, both as a teacher and a counsellor. This experience means that I can ensure that children who are involved in the research will enjoy the experience.

I have attached some information to further explain the research. Included is a form that you can fill out if you agree that your child(ren) can be involved. The form can be signed at the time of the interview itself or at some time before the interview if you wish.

If you would like to discuss the research in more detail before agreeing to involve the children please contact me on 8302 4711 or 0417 557 609.

Thank you for considering this information.

Yours sincerely

Alan Campbell, PhD Researcher
CHILDREN’S INVOLVEMENT IN FAMILY LAW DECISIONS

My name is Alan Campbell. I am seeking approval for your child(ren) to participate in a project that is looking at how children might be involved in family law decisions that affect them.

PARTICIPATION IS COMPLETELY VOLUNTARY. INDIVIDUAL PARTICIPANTS WILL NOT BE IDENTIFIED IN ANY WAY.

Purpose of the Project

This project looks at how children think they could be involved in decisions that affect them (such as residence and contact) after their parents separate. Decisions that are made by parents, judges, counsellors or other people will be looked at from the children’s point of view. The research aims to investigate whether children believe they have the ability to give opinions about these decisions and what they think is important for adult decision makers to know. The focus of the research is not on what decisions were made but how they were made, and whether children think they can or should be involved.

Involvement in the project

With your approval, your child(ren) will be invited to speak with me for about one hour. The information that your child(ren) gives to me will be confidential and neither the child(ren) nor your family will be identified in any way in subsequent reports. The interview will be tape recorded. The tape will be transcribed and then erased. The transcript of the interview and all other information collected as part of the study will be kept in locked storage at the University of South Australia for seven years, and will only be identified by a case number.

If you agree for your child(ren) to be involved we want you to know the following:

• you will be asked to sign the attached consent form agreeing for your child(ren) to be part of the study;
• all records containing personal information will remain confidential and no information which could lead to identification of any individual or family will be released;
• no child will be asked to disclose any information they do not wish to share;
• children can withdraw from the project at any stage without having to give a reason why;
• involvement in this project is voluntary and no payment will be made for cooperation.

Outcomes of the research

The results of this research will provide adult decision makers with valuable information about what is important for children with regard to their involvement in decision-making at the time of their parents’ separation. This research will provide information that may help to influence government thinking on the involvement of children in family law matters.

If you agree to the involvement of your child, please contact:

Alan Campbell

School of Social Work and Social Policy
University of South Australia
St Bernards Road
Magill SA 5072

Telephone: (08) 8302 4711  Mobile: 0417 557 609

The PhD Supervisor: Dale Bagshaw  Telephone: (08) 8302 4375 or 0408 805 641 and the Chairperson of the University’s Human Research Ethics Committee: Dr Eimear Muir-Cochrane, telephone 8302 2751 will also be available to discuss specific concerns you may have.

Thank you for your cooperation.
Consent Forms

Parent and Child

Project Title    CHILDREN’S INVOLVEMENT IN FAMILY LAW DECISIONS

Researcher’s name: Alan Campbell
Supervisor’s name: Dale Bagshaw

We have read the information sheet and the nature and the purpose of the project has been explained to us (parents/caregivers and child(ren)).

We understand that:
• participation in this research by participants is entirely voluntary;
• participants may not directly benefit from taking part in the research;
• while information gained from the project may be published, no person will be identified and personal comments will remain confidential;
• participants can withdraw from the project at any stage.

We give permission for the interviews to be audio-tape recorded for the purpose of evaluation and understand that the tapes will be erased after transcription and evaluation has occurred.

Participants under the age of 18 normally require parental consent to be involved in research. The consent form should allow for those under the age of 18 to agree to their involvement and for a parent to give consent.

Name of Parent/Caregiver: ..............................................................
Name of Child Participant: .............................................................
Signed (Parent/Caregiver) : ......................................................
Date ..............................................................

Signed (Child Participant) : ......................................................
Date: ..............................................................

I have provided information about the research to the research participant and believe that he/she understands what is involved.

Researcher’s signature and date:
Consent for Service providers to Forward Contact Details

Educating Professionals • Creating and Applying Knowledge • Serving the Community

Project Title: CHILDREN'S INVOLVEMENT IN FAMILY LAW

Researcher’s name: Alan Campbell

Supervisor’s name: Dale Bagshaw

I have read the information sheet and the nature and the purpose of the project has been explained to me (parent/caregiver).

I authorise _________________________________________ to provide the researchers named above with my contact details as described below.

Name: 
____________________________________________________________________

Address: _____________________________________________________________

____________________________________________________________________

Preferred contact telephone: ________________________________

Other contacts: ________________________________________________

Signed (Parent/Caregiver) : ___________________________

Date ________________________________
Child Representative

Project Title  CHILDREN’S INVOLVEMENT IN FAMILY LAW DECISIONS

Researcher’s name Alan Campbell

Supervisor’s name Dale Bagshaw

I am the Child Representative in proceedings in relation to the child/ren (name/s)
____________________________________

I have read the information sheet and I understand the purpose and the nature of the project.

I understand that:

- participation in this research by participants is entirely voluntary;
- participants may not directly benefit from taking part in the research;
- while information gained from the project may be published, no person will be identified and personal comments will remain confidential;
- participants can withdraw from the project at any stage.

I give permission for the involvement of my child client/s in this project. I understand that interviews will be audio-tape recorded for the purpose of evaluation and that the tapes will be erased after transcription and evaluation has occurred. I further understand that any statements made by child/ren in research interviews will be fully confidential, and no identifying material will be kept by the researchers.

I understand that both the parents and the children will provide their consent before the researcher conducts interviews.

Name of Child Representative:  ..........................................................

Child Representative’s Company: ..................................................

Signed: ..........................................................

Date  ..........................................................

I have provided information about the research to the research participant, the participant’s parents and the Child Representative and believe that the child understands what is involved.

Researcher’s signature and date:  ..........................................................

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Appendix B: Interview Schedule

Introduction: Explain the research and its purpose; voluntary; confidential; can receive results in general form; interview for about one to one & a half hours; check comfort with surroundings, refreshments, etc.

Current Situation

1. Please draw for me a picture of your family
   (Discuss the picture with the child: Who is included in the drawing? What relationship to the child? Where does each live? Ages? What are they doing in the drawing? How the child thinks about each one/who they are aligned with/bonded to)

2. Where are you living, and who with?

3. For how long have you lived where you are now?

4. What’s it like living there? What do you like about living where you are? What don’t you like about it?

5. How often do you see the parent with whom you are not living?

6. What are the arrangements for seeing that non-resident parent? (e.g., where and when? Handover arrangements? Overnight? During the week? Etc.)

7. What do you think of these arrangements? (level of satisfaction).

8. If you could wave a magic wand, how would you like the arrangements to be different?

9. What things are the same in each house? What are different?

Decisions

1. In your family, who decides:
   - what you will wear each day?
   - what you eat?
   - when you go to bed?
   - when you come home from school?
   - when you do your homework?
   - when you use the telephone? (to call friends? Your other parent?)
   - when you see your other parent?
   - when you see your sisters and brothers?
   - when, and how often, you see your grandparents?

2. Who do you think should decide these things? Why do you think that?

3. After your parents separated, how was it decided where you would live?
4. If you could wave a magic wand, how would that decision be made differently?

5. After they separated, how was it decided when you would see the parent you are not living with?

6. If you waved your magic wand, how would have liked that decision be made differently?

7. When your parents were separating, were you able to talk to them about what you wanted?

8. In order to help other children who might be going through the same situation, what advice would you give to them, their parents and other helpers (such as judges and counsellors) about how to do it differently?

Children’s Rights and Best Interests

1. Do you know what a ‘right’ is?

2. Can you give me some examples of any rights that you may have as a child.

3. How much do you think children know about their rights?

4. Which rights do you think children know about and use?

5. Which rights do you use?

6. What rights do you think are most important for children to have? Why?

7. When parents separate, what rights do you think children should have?

8. How could adults make certain that children’s rights are considered when their parents are separating?

9. Some people (adults and children) say that the only people who should decide where children live after their parents separate is the children themselves. Do you agree? Why/why not? How do you think these decisions should be made?

10. Is there anything else that you think that I haven’t asked? Anything you want to add?

Thank you for talking to me.

Discuss what happens next.