

*Advocating for  
Self-Determination  
& Legislative Reform  
around Aboriginal &  
Torres Strait Islander  
Child Welfare*

MARAJA DYARGALI



*Terri Libesman*

Interviewed By:

Professor  
Robynne Quiggin

Dr Terri Libesman has a long history of working with First Nations, Australian and international organisations. Terri's advocacy and research has applied human rights principles in the child welfare space. This work has been successful at contributing to legislative reform nationally and internationally.

In this chapter, Terri discusses her involvement and advocacy to support principles of self-determination for Indigenous peoples. Terri's research spans advocating with the Committee to Defend Black Rights for a Royal Commission into Aboriginal Deaths in Custody, working for the Royal Commission into Aboriginal Deaths in custody, and working on The National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families, Bringing Them Home in the 1990s. Post Bringing Them Home, she has researched and advocated for the full implementation of the Aboriginal and Torres Strait Islander child placement principle and rights to participation and self-determination in looking after Aboriginal and Torres Strait Islander babies, children and young people. Terri stresses the importance of research being designed with Aboriginal communities and with principles of mutual benefit and reciprocity.

MARANA DYARGALI

INTERVIEWS

*“Without the commitment and interest of the Aboriginal partner organisations and members of the advisory committee, the project would have no direction and no form. It is about what they see as important. It is a privilege for researchers within the university to be involved with those organisations. It is about taking their remit, serving it and trying to offer the skills, experience and capacity we have. We also learn from those organisations. We develop a research project to learn and transfer skills back.”*

---

#### About Terri

---

Dr Terri Libesman researches in the fields of Indigenous peoples, children and the law. She works closely with Indigenous children's organisations and her work critically engages with the meaning and implementation of human rights with respect to child welfare. Her research focuses on national and comparative international models for Indigenous children's well-being. Terri has worked for major national inquiries and conducted research on cultural care, placement in out of home care and principles of self-determination.

***RQ Could you describe the research you have been doing on Aboriginal and Torres Strait Islander peoples' participation in child protection decision-making?***

**TL** My current project, which is a collaboration with the Aboriginal Legal Service NSW/ACT, funded by the Law and Justice Foundation, looks at how legislative rights which provide for Aboriginal and Torres Strait Islander kinship groups, families, communities and representative organisations participation in all significant child protection decision making in NSW, are breached or complied with. There are provisions in the NSW child protection legislation, specifically section 11, which provides for self-determination, section 12, which is quite an unusual provision, both nationally and internationally, states that Aboriginal families, kinship groups, communities, and representative organisations have a right to participate in all significant child protection decision making, and section 13 addresses the Aboriginal and Torres Strait Islander child placement principle, which must be applied when children are placed in out of home care. This research project is focused on the extent to which section 12 is breached or implemented, and what effective participation means.

The Aboriginal Legal Service is the peak Aboriginal organisation that goes to court, advocates for, and represents children and families in child protection matters. The Care and Protection Division of the NSW Aboriginal Legal Service is extremely underfunded making fulfilment of their remit difficult.

This research hopes to raise awareness of legal rights, and to achieve incremental improvement in implementation of these rights, because breach of Aboriginal families' rights is embedded in deep set colonial values. The aim is to advance the dialogue, make progress in implementing rights, and get better outcomes for Aboriginal families.

In developing this project, the researchers spoke with the key stakeholders and organisations including the community advocacy group Grandmothers against Removals (the peak New South Wales, Aboriginal children's organisation), NSW Child, Family and Community Peak Aboriginal Corporation (AbSec), The Secretariat of National Aboriginal and Islander Child Care (SNAICC) the peak National children's organisation, and local Aboriginal community organisations in Sydney and the northern and western regions of NSW.

Colonial institutional stakeholders have enormous power, and an aim of our project is to also engage with them about rights which appear to have been forgotten or minimised. We engaged with the president of the Children's Court and obtained permission to interview Children's Court magistrates. We also engaged with the Child Welfare Department, the Department of Communities and Justice, to discuss the project. The project advisory committee included SNAICC, AbSec, the Aboriginal Legal Service (NSW/ACT), Grandmothers against Removals and the President of the NSW Children's Court.

***RQ Could you speak about the development of the project with your research partner?***

**TL** Engagement with Aboriginal organisations is crucial to a project like this. The removal of Aboriginal and Torres Strait Islander children has been historically traumatic and has a significant impact on contemporary experiences of child welfare. The retention and strength of community-based care for children is important to communities and particularly for children involved with the care and protection system. Communities' values and experiences are at the heart of what this project is about. Without the commitment and interest of the Aboriginal partner organisations and the advisory committee members, the project would have no direction and no form. It is about what they see as important. It is a privilege

for researchers within the university to be involved with those organisations. It is about taking their remit, serving it and trying to offer the skills, experience and capacity we have. We also learn from those organisations. We develop a research project also to transfer skills back.

The Aboriginal Legal Services, our key partner, have an incredible history. They were established in the 70's and have had the very difficult task of having to work, resource and time poor, trying to best represent children in the Children's Court, which remains a colonial institution.

This project is about contributing to transforming how the voices of Aboriginal peoples are heard, bringing Aboriginal experiences and voices to decision making processes and institutions. The project aims to educate and to create authoritative information from the findings of this qualitative research project. Projects such as this offer front line service providers, such as the Aboriginal Legal Service, a space to step back from the immediate day to day work they do to respond to what they see as a need for reform. Relationship building is an important part of the research process, regardless of how long one has worked in a field. It is important to spend time. That is why we spent a year developing this project, working out what can be achieved, what the questions and goals are and each element of the project.

There is often tension in research projects, with universities and funding bodies needing projects to be developed, funded and completed quickly. Deep set, long-term problems, can't be addressed, as urgent as they are, in a rushed way. The tension between funding cycles and communities' priorities should resolve in favour of how communities and community organisations want to and can work. There is also tension with the urgency of the problem. Everyone wants to get some answers and progress quickly, but shortcuts often do not work. The relationship, how we frame the research questions and our methodology are based on action research. What we mean by this is that as you progress the project, you transform and carry out some of the change you are looking for through the research process. This partially responds to the need for the research to be relevant to community partners.

MARANA DYARGALI

INTERVIEWS

When looking at section 12 of the New South Wales care and Protection Act, which provides for participation in child protection decision making, we knew anecdotally that it had not been implemented, that people do not experience their rights to participation in a substantive way. We asked, what can we do to give this meaning along the way and not just wait for the outcomes and findings? We thought we could have an educational component in our research questions. For example, when interviewing Children's Court magistrates, we would ask them if and how they included Aboriginal families, kinship groups, communities, and representative organisations in their decision making. That would give us data about the use of s12. However, it would also be an opportunity to draw their attention to the provision. Our questions were developed with our research partner and commented on by our advisory group. The nuance in what is meant by participation, and how we asked questions, could through this process be reflected in our instruments. These processes took a lot of conversation and were built on a history of many peoples' experience.

***RQ Why would you say there is a tension between the university and the community partners in the project and why should the burden of that tension fall to the university?***

**TL** Our responsibility as researchers is to the communities that we are researching with and to the integrity of our research processes. We are accountable to the people we are working with, we hope to achieve the aims of our research for their benefit. To the extent that institutions allow us, we have to take on that responsibility and the tension has to be absorbed by the institution. It is a give and take because communities are benefiting and so is the university. There is a reciprocity that is always two ways. There is also, however, a power differential working in a colonial context. Universities are trying to decolonise through projects like this. They are trying to provide a fairer, more equal, more reflective approach to researching, but the resources, the power and history, mean that imbalance still exists. It is our responsibility to bear that imbalance and to try and redress it.

***RQ Do you think taking that approach has benefits for relationship development, trust building and increasing capacity to work with communities?***

**TL** Undoubtedly. There are so many things that need to be done, and communities will generally only participate if they see the benefit of the project. There has to be trust for research to work. If communities have a history of experience with you, this is a circular and recreating process. The shared purpose and relationship does not begin at the start date of the project and end when the project has completed. Some projects inevitably will be one off projects. However, major research questions tend to be long relationships, which span over research projects, advocacy, law reform, a whole range of work that happens. In my experience, these are the kinds of relationships that are necessary to work well with communities.

For example, going back to a project in the mid-2000s, I worked with SNAIC and the Victorian Aboriginal Child Care Agency (VACCA) around self-determination in child welfare. One of the outcomes of that project was the implementation of section 18 into the Victorian Child Welfare legislation. This allows for the transfer of delegated power to Aboriginal organisations, such as the Victorian Aboriginal Child Care Agency, to serve as the guardian for Aboriginal children in out of home care. That provision was implemented into the legislation with anticipation, but like section 12, lay dormant for a very long time. VACCA did a lot of lobbying and after a second inquiry, its dormant status was addressed. In 2018, there was funding for a pilot program which was very successful. VACCA and the Victorian Government are now rolling out the transfer of guardianship across Victoria. There has always been aspirations for self-determination, it has been the defining aim of most of these projects, and it has had different practical manifestations. This is a successful step along the way. Currently, VACCA and the Victorian Child Welfare department are seeing how there can be a delegation of greater powers to Aboriginal children's organisations in Victoria.

MARANA DYARGALI

INTERVIEWS

That was a project that formally ended a very long time ago. However, the ongoing impetus and conversations are still happening. I hope with our current project, while the write up will finish in the middle of 2022, that the conversations around its findings and the relationships between the research partners continue. In this field, communities and researchers have seen non-linear progression and movement back and forward over a very long time. We look to the long term goals, and how we can produce research together that has some immediate impact but also longevity.

***RQ It seems like the research is laying a foundation so there is an evidence base that can be at the service of better political times?***

**TL** Absolutely. I do not think the world is, in the western frame, a linear progression getting better and better. I don't think other non-Western frames see time that way, how past and future connect. While self-determination has been the language, and it is the language of international human rights, it is a political language that has absorbed its own meaning within the First Nations child protection and child well-being sphere. Having imagination and capacity to respond to different political situations, while keeping the aspirations of the community firm on the ground, is something that I have learnt from working with First Nations children's organisations. The research is looking towards the goal of culturally safe, community controlled care for children that connects them to their past, present, and future. This has been a consistent aim, and the research has had to be quite adaptive.

In the current environment, there is a move towards privatisation of many aspects of child welfare. A project that I'm developing with Jumbunna and with First Nations organisations asks how can we conceptualise the space of privatised child welfare to better serve Aboriginal children's organisations aspirations. This shift to privatisation is an international movement, not specific to First Nations children,





part of what people loosely describe as 'neoliberal' values. We are asking if we can harness this shift to the non-government sector for a different purpose, to facilitate greater Aboriginal self-determination in child welfare decision making and service provision.

Our research is always in the present, looking to greater community control, grounded in the history of experience, both traumatic and filled with strength and culture. It asks how to be adaptive to the current circumstances, because whatever one's aspirations are for the future, there are always children in the now. There is always a tension between the now and the future. The power imbalance has never shifted to anything that looks like equality, so the research is about taking the opportunities in this colonial environment and asking how to decolonise them and make them work for communities to the extent that one can.

***RQ It has never occurred to me until we are talking to you now, how to some extent we have to be patient, but children don't have time, they are moving through childhood and out.***

**TL** That is why it is an area constantly filled with hope and grief, an urgency to look to the future and have long term aspirations, but also to work out what can be done now. To be pragmatic, as well, because one cannot afford the luxury of being utopian, they are children in the here and now. In every way and every project we work on, we ask how decision making relevant to children in the current situation can be improved. We discussed exactly that in this particular project. What can we do while we are doing this project to make those rights in the present work better? In the course of this project we got unwelcome reforms to the New South Wales Child Protection Act. There was no meaningful consultation or participation of the Aboriginal communities that we were speaking to—or any Aboriginal communities in New South Wales—about this reform. We took the opportunity during field work to speak to people about their participation or lack thereof in this law reform process. As part of our ethical obligations and reciprocity, we also took the opportunity to offer people information about the law reform. We have the privilege and benefit of people participating in our project

MARANA DYARGALI

INTERVIEWS

and telling us information that we use to write reports and to advocate for law reform, so we could offer people that information while we were doing field work.

***RQ How do these considerations flow into the questions in an ethics application in the university?***

**TL** We took the ethics application process as an opportunity to refine ideas and to hone down and think specifically how we would do the project. This included development of our questions, instruments and process for consulting with our advisory committee. When doing the ethics application, we thought about consent, reciprocity and risk. It gave us a structured opportunity to think about the safety and well-being of our participants. Talking about child protection is traumatic and painful for people. We had to think about how our interviews might impact participants. We included a protocol for referring people to local supports and services. We recognised that sometimes people would speak to us, but would not want us to use their information, so we had a willingness to do that and not feel we had a right to their information. We had to think; this is child protection, it is often connected to a range of issues like family violence, domestic violence, abuse and neglect. What would we do if participants disclose this kind of information to us?

As a part of our ethics application, we asked how are we going to get informed consent? How are people going to know what this project is about? We prepared community leaflets to provide a background to the project and spoke with the organisations in the local areas we were doing our fieldwork to form a project based relationship with them. This provided participants with some background in addition to the information sheets and conversations before obtaining usually written consent.

As we were developing the ethics application we thought about how we could reciprocate the hospitality and generosity of participants sharing with us. We hoped that in the medium term the research might contribute to law, policy and practice reforms and that it may be used for advocacy purposes. We also thought about what we could offer participants when doing field work. As mentioned, child protection legislation



was amended while we were doing the project. We offered information and to hold a meeting in each region we visited about these reforms. We also formed a partnership with a legal firm, so when we heard about unfair experiences which might give rise to administrative review, we could offer access to legal support.

There is an ethical accountability of all parties to each other in research. A lack of accountability back to communities has historically been prevalent in child protection. This project draws attention to this lack of accountability, including the breach of participant's rights in child protection decision making, and thereby contributes to highlighting failings in the child protection system. It was part of our action research methodology to draw solicitors and judicial officers' awareness to Aboriginal children, young people and family rights, through the focus of this project and the questions we asked them. The ethics process provided us with a structured way to think about our accountability to our research participants.

***RQ To what extent does this detailed and thoughtful work come out of your years of experience, or is there something you might say to earlier career researchers about the kind of process that you have just described?***

**TL** If they are working with communities and community organisations, they can speak to them about what they think the consequence of the research they do might be and what they would like it to achieve. They can then put their minds to the key ethical responsibility of not causing harm and being sure that the benefits of the research outweigh the burdens. The ethics process prompts researchers to think about consent, risk, reciprocity, and respect. Rather than seeing the ethics process as a hurdle and a nuisance before they get out there to do the research, I would encourage people to see it as an opportunity to think about how they can bring the greatest integrity and respect to the process. Be willing to take the time to do things appropriately and to serve the community's aims and purpose through collaborative research.

***RQ What is the process for data storage and***

***keeping the information safe and private when working with very personal information?***

**TL** Child protection raises sensitive issues. It is particularly sensitive in Aboriginal and Torres Strait Islander or any First Nations communities. There are processes. With qualitative research, there are methods that we use for de identifying participants, for making sure information your participants provide is either confidential, cannot be identified by context, or that they are anonymised post interview. If you are working with small communities in localised areas the information that participants share could make them or others in the community whose privacy must be respected identifiable. You are often going to have to make a decision about how much of that particularity you can use and how much you have to generalise to some other abstracted story or event that is not going to identify them or other people.

Storage of information can become tricky when working with a community organisation, you want to be equal partners and both want to access the data. You have got your data stored in the university's cloud, in Stash, which is a secure storage system at UTS. You might have to get your interviews transcribed, deidentify them, and then securely share them with your community partner. Thought needs to go into how you collect your information, the point at which you deidentify if necessary, and separate your interview transcript from other interviewee information such as consent forms or verbal consent. You have to decide the point at which it's safe to share your data and interviews with your research partners. In the converse, some people want to be acknowledged for their knowledge and research. There is a trend to deidentifying everything. However, sometimes participants have great expertise and their preference is to have their ideas recognised as their work. That needs to be respected too. You cannot just be mechanical about how you go about it.

***RQ Could you talk to us about dissemination, sharing the findings and any protocols around acknowledgment and attribution?***

**TL** A component of our current project is action research, so the outcomes and the research take place simultaneously.



Talking to people about section 12, raising awareness amongst solicitors and community organisations that advocate for children and families, decision makers like judicial decision makers, and getting the provision into discussion. Part of the research asks, when people participate, what do their voices sound like? What is Aboriginal expertise? People have a lot of expertise that isn't heard. A response to that is to try and get discussion, consideration and change taking place as to who is recognised as an expert within the formal decision making processes.

For example, one event that arose out of this project, was a joint Public Interest Advocacy Centre (PIAC), ALS and Jumbunna, symposium which problematised who are experts in the child protection decision making about Aboriginal and Torres Strait Islander children. Raising awareness that there are experts such as clinicians and psychologists, the people that have historically been recognised for their knowledge in the Children's Court. However, there is a huge amount of Aboriginal community expertise that should be recognised within the formal court process. One of the key findings, which was not unexpected, is that section 12 of the NSW Care and Protection Act; Aboriginal and Torres Strait Islander families, kinship groups, communities, and representative organisations rights to participate in all significant child protection decision making, is routinely breached.

Most of our participants, because of the subject matter, have elected to keep their identity confidential and for this reason we cannot acknowledge them publicly. When we interviewed participants, we asked them about how they wanted us to report our findings back. There will be three formats, a page pamphlet, a summary, and the report.

***RQ Is there anything you have learned from this project or any unforeseen things you want to share with new researchers?***

**TL** There is always a lot happening in communities and you often have to deal with the unforeseen. You can turn up and your research participants might have had to go to a funeral, meeting, court or elsewhere. It is not specific to this project, but I think one always has to recognise that there are many complexities with the group of people you are working with

MARANA DYARGALI

INTERVIEWS

and a lot happening other than a research project. We are privileged to have community participants working with us and have to work around what is happening to make it work. One has to be self-conscious continuously. Australian institutions remain deeply colonial, with subtleties of colonial language, and practice recurring. Even if we have worked for a very long time with organisations and people it is our responsibility to be constantly reflective.

***RQ Is there anything you want to say about sitting on the Indigenous Research Advisory Panel (IRAP)?***

**TL** I am happy to sit on the IRAP. It is great that there are more and increasing numbers of Aboriginal and Torres Strait Islander researchers at UTS. I would never want to shirk or minimise my responsibility, I am happy to do it. However, I can see a point where the assessment of Indigenous research will take place by and for Indigenous researchers. Everybody is so under the pump at the moment, so pressured, and many First Nations academics within our institution are pulled in many directions, to do so many things, that there is often not availability, and I am happy to fill that role. I have enjoyed assessing ethics applications on the IRAP, and I have also enjoyed speaking to and consulting with Aboriginal and Torres Strait Islander HDR students. As members of the ethics committee, we generally speak to researchers, but on the IRAP committee, it has been a particular pleasure to talk with Aboriginal and Torres Strait Islander researchers. It is wonderful to see a much greater number of First Nations academics within the university.