

Implementing the UN Convention on the Rights of the Child in Australia

*The South Australian Children's
Interests Bureau, 11/14
Hindmarsh Square, Adelaide 5000;
i-xvii, 1-164 pp; \$25.00.*

Children's rights are not easily appreciated. Nor are rights an easily understood concept – especially when children and young people seek to exercise them. Even less appreciated are the responsibilities on adults to acknowledge and give effect to those rights.

Sally Castell-McGregor highlighted the significance of the problem in her introduction to this book:

The language of rights is all pervasive in the 1990s but there is still a danger that the dependency of children and their lack of representation in the political process at any level will result in their legitimate human rights being subsumed by more powerful adult interests.

Children still suffer abuse and neglect; children in the legal care of the state are often left to their own devices on the streets; children's views are not properly represented in court or administrative processes. Young people can no longer look forward to employment opportunities. Australia still has no integrated or co-ordinated children's policy; no State or Territory has a Children's Ombudsman or Commissioner.

Over 30 years ago the United Nations endorsed the Declaration of the Rights of the Child. Its Convention on the Rights of the Child is a significant landmark in the evolving appreciation of children's rights. The Convention resulted from approximately ten years' thinking and drafting by a working group in the United Nations. Australia played a leading role in this, particularly Commissioner Brian Burdekin, one of the contributors to this book. The value of this work is indicated by the many countries that have signed or ratified the Convention.

You may wonder why there is a need for a *Convention* given the longevity of the *Declaration*. A *declaration* is a doc-

ument of encouragement. In contrast, a *Convention* has the scope, if not always the mechanisms, for enforceability, and at least a measure of accountability.

For example, one such measure of accountability is that member nations are required to report regularly on the progress of their implementation to the monitoring committee of the United Nations. Australia's official government report is now due, if not somewhat overdue. That report will be complemented and possibly contradicted by an alternative report of the Children's Rights Coalition called '*Where Rights are Wronged*' and such submissions from non-government organisations are a very important safeguard. The Children's Rights Coalition was formed at the seminar which generated this book, to advance the recommendations made there. I congratulate the organisers and the participants for showing how to marry a thorough analysis of the Convention with a proposal for effective action for its implementation.

The Convention affords the Federal Government considerable scope of activity. Following High Court decisions such as in the *Tasmanian Dams* dispute, it is clear that Australia's ratification of conventions enables the Government to make laws to implement a convention. The Federal Government's new laws against Australian tourists sexually exploiting children overseas are a welcome recent example.

The Convention on the Rights of the Child also enables the making of laws based on its principles in what have been traditionally regarded solely as States' matters, such as criminal law, education and protection from abuse. Many commentators have called on the Federal Government to do exactly this where they believe the pressure and expediency of local politics have blinded legislators to greater responsibilities.

Such calls occurred in Western Australia concerning the juvenile sentencing laws (*Crime (Serious and Repeat Offenders) Act 1992*) and there are several references to this issue in the book. Calls also occurred recently in Victoria concerning the new laws granting police wide investigatory powers and introducing court procedures impeding the right of children to be heard in criminal proceedings (*Crimes (Amendment) Act 1993*). Organisations such as the Australian Section of the

International Commission of Jurists and children, youth, welfare and community groups joined to oppose these laws and express their concern as to the laws' breach of the Convention. It is a sign of the increasing relevance of the Convention that the Federal Government indicated it would consider intervening if the laws passed through the Victorian Parliament. The laws are now passed.

The formal responsibility for States and Territories to abide by international obligations ultimately lies with the Federal Government. Intervention is appropriate where there is a breach. But we should always remember that all States and Territories agreed to be bound by the Convention, and while the Commonwealth can seek redress, that does not excuse wilful refusal or blindness by State and Territory governments.

Some politicians have claimed that those who use the Convention to object to particular legislation are motivated by party politics. For me, the objections show the growing recognition and importance placed on international conventions as parameters within which legislatures must operate.

One could be forgiven for thinking that the Convention is some radical document. Indeed, during the discussions before Australia's ratification, concern and, in some cases, misinformation existed that this Convention would undermine parental authority or confer rights out of kilter with the limited experience (of necessity) of children. This review is a proper place to set the record straight.

First, the Convention is necessarily a product of compromise among the diverse political, social and cultural polities in which it must operate. It is, therefore, a statement of agreed principle. It provides the framework within which communities can shape the meaning of its rights through their public, political and educative systems. Community organisations are an important voice – and especially those representing children and young people's rights and interests such as the Children's Interests Bureau. They require and deserve continuing government support.

Second, the Convention is not a statement of standards against which, as a country, we can smugly assume we have achieved. As Michael Hogan

observes in the book, we have still to achieve a national agenda for children and their rights. This agenda must address fundamental inequities in the access to using rights. As Patricia Harris puts it in her chapter: 'If rights cannot be exercised by all people equally, they are simply another form of privilege'.

Through the contributions of advocates such as Brian Butler, Alf Bamblett, Roberta Sykes and Lola Edwards, the book makes clear that Aboriginal and Torres Strait Islander children in Australia remain severely disadvantaged in their capacity to exercise rights. Almost all of the papers referred to the appalling rates of mortality and sickness among Aboriginal and Torres Strait Islander children.

While this continues, Australia fails to satisfy the principles of non-discrimination at the heart of the Convention.

Bill Guy's contribution on the role of the media deserves close scrutiny, both by those who lead and those who report public opinion. Mr Guy reminds us of the way that the media has an important part in monitoring the Convention's implementation. In my view, however, the media's capacity to sustain such interest is less than satisfactory.

After reading about the Commissioner for Children in New Zealand and the observations of Maalfrid Flekkoy, the first Norwegian Ombudsman for children, it seems imperative to me that Australia establish a similar position within the Federal Human Rights and Equal Opportunities Commission. At present there is not even a special unit in that important body dedicated to the Convention.

In saying this, however, I do not excuse other organs of government and the community from examining their practices, principles, laws and rules that affect children and measuring them against the Convention.

It is also important to appreciate that Australia's ratification means that judges such as I can and do refer to the Convention in deciding cases where interpretation is uncertain. The Convention is a touchstone for interpretation, and I have every confidence it will be used increasingly in a range of jurisdictions, not just the Family Court of Australia.

More controversial is the question whether Australia's ratification of the Convention (and its inclusion this year as a schedule to the *Human Rights and Equal Opportunity Act*) means it is a source of domestic law. The question has yet to be decided by the High Court.

In a recent case on child abduction, *Murray v Director Family Services ACT*

(1993) FLC 92-416, Justice Fogarty and I suggested that greater local force attaches to instruments incorporated into the schedule. We adopted the view of Justice Einfeld in the Federal Court in *Magno's case* (1993) 112 ALR 529. If this is correct, some very interesting legal questions will exist as to inconsistencies with domestic statutes and common law.

Above all, the Convention provides a framework within which we can measure our own development. Australia has much to be proud of in its concern for human rights abroad. But that concern must be matched by vigilance at home to ensure that we frame our laws within those minimum standards and not in deliberate opposition. We must also examine the practical effects of how we allocate resources and not just make laws to ensure we meet the minimum standards of non-discrimination.

Our communities can and should be aware of the various avenues for using the Convention for lobbying. For example, we can apply the principles in the Convention to promote debate about how we ensure the safety of those who care for children – primarily women – such as taking measures to curb spousal violence.

As a minimum, we must ensure that past mistakes are less likely to recur by ensuring that the Convention becomes an integral part of the culture in which our children grow up.

This book will be an invaluable aid. For we adults who are responsible for passing on the understanding of rights to future Australians, and who call for governments to measure their decisions against the Convention, collections such as this book provide a springboard for the future.

ALASTAIR NICHOLSON

The Hon. Alastair Nicholson AO, RSD is Chief Justice of the Family Court of Australia.

This review is based on an address given at the launch of this book on 21 December 1993 in Adelaide.

Benzo Junkie

by Beatrice Faust; Penguin Books, Melbourne, 1993; \$19.95.

It is tragic that it takes a well-known figure to bare all to bring to the general community's attention facts which have been well-known to the research community for many years. Faust's autobiographical expose, *Benzo Junkie*, is an account both of her experience as an addict of the benzodiazepine, Ativan

(lorazepam), and of her cumulated frustration with the nature and quality of the service provided to the vulnerable by the medical profession.

Faust's subject is important and her critique of the inability of the medical profession (especially in Australia) to address satisfactorily its extraordinarily high prescription rates of benzodiazepines well made. In 1990, enough benzodiazepines were dispensed to provide an average daily dose for about 3% of the Australian community. In 1991, 9.21 million benzodiazepine prescriptions were issued to Australians. This figure was down 14% from the previous year but still a massive rate of prescribing in spite of gathering community and research-based concern about the side-effects of long-term usage of benzodiazepines.¹

The author would probably not cavil at the proposition that *Benzo Junkie* is a difficult book to read. It is alienating because of the degree of personal revelation which it contains and because of the intimacy of the details of the author's medical circumstances to which the reader is made privy. The book is an unashamed journey into the author's self-absorbed grapplings with her ill-health fused with a somewhat journalistic assault on the corporate immorality of pharmaceutical multinationals and those who purvey their products – doctors.

Faust is well-known in Australia and overseas as an issues campaigner. Her previous works include *Women, Sex and Pornography* and *Apprenticeship in Liberty: Sex, Feminism and Sociobiology*. She has been a long-time contributor of provocative articles to Australian newspapers and was integrally involved in the resuscitation of the Victorian Council for Civil Liberties during the 1980s.

Benzo Junkie is Faust's attempt to work through the aggregate of frustrations that she feels she has endured at the hands of the medical profession during many years of ill-health. She overtly does so with a view to promoting reform of medical service delivery. However, as a public persona and as a result of laying herself open through the medium of publication, her work has to be evaluated on its own merits as a contribution to public debate on the issues that she has raised. This is so, regardless of her stature as a well-respected social justice and feminist campaigner.

The major problem with *Benzo Junkie* is that it lacks rigour and discipline. The text at times is indulgent, obsessive and unedifying. Does the public really want to know the details of Faust's bronchiectasis and what colour sputum she