

The South Australian Children's Interest Bureau:

Some Comments on its role with reference to implementing the UN Convention on the Rights of the Child at the local level

Sally Castell-McGregor

This story begins with a letter. It is a bureaucratic letter and rather boring. But it has significance. It comes from the Department Of Immigration, Local Government and Ethnic Affairs.

Dear

I refer to your application for an extension of stay in Australia as a visitor.

Applicants for visit visas are expected to apply overseas for the full period of intended stay in Australia. The application form contains advice to this effect and applicants, when applying, sign a declaration that they will depart at the conclusion of the authorised visit period.

Generally, visitors are granted a stay of six months in Australia. To be granted a further stay in a visitor class you must:

- * have complied substantially with any conditions attached to your visitor visa or entry permit; and*
- * have compelling personal reasons for seeking for (sic), extending your stay, or*
- * be seeking an extended stay for the purposes of tourism, or*
- * be seeking an extended stay for the purposes of business negotiations or arrangements.*

On 5 June 1991 you applied for an extension to enable you to stay with your father and step-mother until their baby was born in November 1991 and to see more of Australia.

You have failed to satisfy the requirements of Migration Regulation 120 in that you have been unable to establish compelling personal reasons which would warrant this department granting you a further temporary entry permit.

In addition you have failed to abide by your conditions of entry as you have studied during your stay in Australia.

I am sorry to inform you that your application to extend your stay in Australia has not been approved.

There is no right of review.

Your temporary entry permit has expired, you are now required to make immediate arrangements to depart Australia. You should notify this office of your departure arrangements within seven (7) days from the date of this letter when your passport will be returned to you.

Yours sincerely

It may or may not surprise you to learn that this letter was sent to a twelve-year old girl, a British citizen, who was visiting her father, an Australian citizen, in Australia. The girl's step-mother approached the Bureau and requested assistance to explain Immigration Department procedures to them and to ask for assistance in keeping the child in the country. The Immigration Department had threatened to take the child into custody unless a \$50 visa extension fee was paid forthwith. If not paid, the child was threatened with deportation. This situation had arisen because the family had originally been given conflicting information about the date the visa expired. So how did we, a local institution, respond to this crisis and protect the child's interests? First, the response had to be immediate as custody and deportation were imminent.

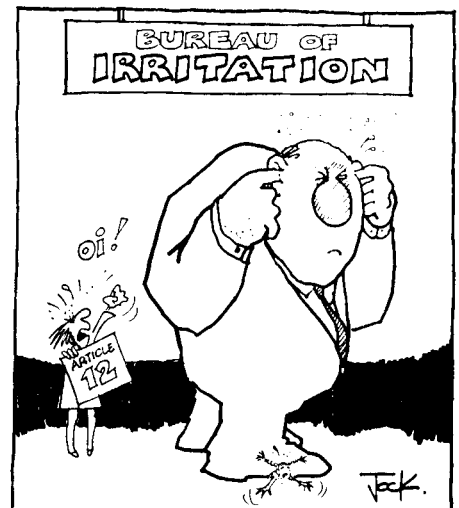
The only way out for the family was to pay the \$50 visa renewal fee even though it was not responsible for the initial confusion.

An exhaustive series of negotiations ensued with Immigration Department officials, the SA Attorney General's Department, a constitutional lawyer and the Legal Services Commission to clarify the information at hand, to ascertain the validity of the Immigration Department's proposed action and to put a case for the child to stay. The Bureau also facilitated contact between the family and the Immigration Department in Canberra and last, but not least, provided emotional and practical support for a family in distress.

We learned that the family had been given three different dates on which the child had to be deported and were quite confused about where they stood. It became clear that the child needed representation in her own right and pursuing this was in itself problematic. The family was forced to seek

private legal advice due to the urgency of the child's plight and the lack of response from the Department in question. We were against the family having to pay the \$50 visa extension fee as it was incurred through no fault of their own.

We also learned that to change one's status from illegal immigrant to a legal visitor you have to leave the country and re-enter it! You cannot, we were told, change your status while in the country. For this particular child this would have meant being returned to a mother in England, who had allegedly abandoned her, and separating her from her father who was also her legal guardian.



The Executive Officer eventually rang the office of the Minister of Family and Community Services to whom the Bureau is responsible and requested active intervention on behalf of the child. This occurred and eventually the Immigration Department reconsidered its position. This advocacy on behalf of the child took the best part of three days.

The immediate crisis resolved, we then looked at the implications of the Immigration Department's decision for other children and analysed the human

rights issues involved. Apart from the lack of sensitivity as illustrated by the original letter, no attempt was made to engage legal representation for the child. We became her advocate. In 1988, in another highly political matter involving the deportation of the parents of two Australian born children, the Children's Interests Bureau asked the Department of Immigration what steps it took to ensure the independent representation of children in immigration decisions involving children. There were none. We reminded them of the article in the then draft convention of the United Nations on the Rights of the Child which emphasised the child's right to be represented in legal and administrative proceedings. Now the Convention is a reality and Article 12 states this principle clearly. We are in the process of asking the Department of Immigration what it intends doing to implement Article 12.

What is the point of having a 'right' as enunciated in Article 12, if no remedy exists when that right is infringed, or if the bureaucratic processes imposed in the pursuit of the remedy are so cumbersome and unresponsive as to make the right itself almost meaningless?

But this little girl's crisis raises other critical questions. How could her interests and views be given to the Department? Who would act as a 'next friend' to secure her representation? Who would pay? Who, apart from ourselves, recognised that this child had independent interests that had to be articulated to those in authority? What is the point of having a 'right' as enunciated in Article 12, if no remedy exists when that right is infringed, or if the bureaucratic processes imposed in the pursuit of the remedy are so cumbersome and unresponsive as to make the right itself almost meaningless? What attention, yet alone priority, have governments given to funding independent youth/children's legal centres? How many lawyers are there in Australia who have the training, commitment and skill to represent children?

These are among the questions that the Children's Interests Bureau will

put to a meeting, convened by the South Australian Minister of Youth Affairs, which will discuss the need for, and structure of, a Youth Legal Centre. We will argue that essential components of child advocacy are:

- separation and independence from any government agency
- a willingness to serve the child continuously in any legal or administrative process
- the power to pursue and achieve the interests of the child
- the willingness and ability to work co-operatively with non legal professionals

Pursuing Child Focussed and Responsive Policy and Practice

The determination to pursue matters to secure a beneficial outcome for the child has become the hallmark of the Bureau's working philosophy. We do this not withstanding that our statutory monitoring and reviewing function is officially limited to the State department of Family and Community Services. This situation could well change when new legislation establishing the Children's Interests Bureau under its own separate Act is introduced into State Parliament. In the meantime we justify our wider involvement by taking a very broad interpretation of Sections 26 3(a) & (b) (see Appendix).

The following example of Bureau intervention in a non welfare matter illustrates how practices and policies can be changed and made more child focussed and responsive.

The matter involved a complaint by parents about an alleged physical assault of their nine year old child by a teacher. A trivial incident in the classroom had escalated to the point that the teacher allegedly used physical force to restrain the child who had also been sat on. A subsequent visit to the doctor confirmed bruising. Other parents and children who witnessed the incident were upset and one parent reported the matter to the Department for Family and Community Services.

Further contacts with the parents, who were seeking redress for what had occurred, gave us cause to be concerned about the school's response. The school had adopted a collegiate

approach to decision making and its Executive had decided that efforts be made to reconcile the child and the teacher. It also transpired that the teacher had written to all parents of children attending the school to give his version of what had happened, some aspects of this were disputed by the parents.

From a child's rights perspective, we identified the following issues that needed action:

- the lack of behaviour management policy which respects the dignity of the child
- the absence of any clear accountability or complaint structures which could settle grievances
- lack of regard for basic rights to confidentiality

We wrote to the Non Government Schools Secretariat voicing our disquiet and our letter was in turn referred to the Non Government Schools Registration Board, the body that monitors educational policies in the independent school sector. The issues we raised were taken up by the Board with the school in a letter from the Board we were advised that:

...the problems identified... were recognised and were being addressed by the school through a re-definition of their committee roles and structures, together with a revision of policy and procedures for handling such matters in future.

I have just given just two examples of the sorts of children's rights issues the Bureau staff take up. There are many more: the child who complained that her lawyer, appointed by the Family Court, was not listening to her views about access; the mother of a hearing impaired child who needed help to apply for a disability allowance; the mother in prison who wanted to see her baby; the teenage boy who had been sexually abused and was unhappy with the way the police had prepared his statement. In every case we do our best to negotiate an outcome that is satisfactory to the child. In the process we try to humanise the bureaucracies with which parents and children have to deal. We have found that parents are often determined and tireless advocates for their children which should reassure those who perceive the notion of children's rights as being confrontational and conflicting.

Some Elements of Effective Advocacy

I am often asked what it is that makes the Children's Interests Bureau effective in its advocacy role. While we have not been subject to any objective review as to our effectiveness or otherwise, we suggest that the many public contacts (often by word of mouth), the requests to sit on major committees and working parties, and the many requests to talk about the children's rights indicate the value of our work. I have identified some of the elements that make the Children's Interests Bureau an effective advocate for children.

1. The Bureau has a unified, philosophical focus. We are there for the child. This does not mean that we are against parents or others but our focus must be the child.
2. We attempt to emulate the best standards of a University Department by having top class academics and others as members of the Bureau. We are not experts on everything. We do, however, seek out advice from those qualified to give it when we need it. Thus, in our submissions and policy statements, those members of the Bureau with an expert competence in the subject are key advisers and contributors.
3. The Bureau is an unusual combination of research and 'hands on' practice. We do our best to keep up to date with research in child related areas overseas and nationally. This is particularly necessary in the child

protection field, where the Bureau's Child Advocacy Unit has a specific advocacy function in relation to children in the state care system, and in child advocacy developments. It is important that we are well prepared so that when an issue arises we do not need to reinvent the wheel.

We also make our knowledge and information available to others and recognise the knowledge and expertise of others.

The 'hands on' work, particularly the duties of the child advocates, means that we never become divorced from the reality of how miserable life is for some children.

4. The Bureau has detailed local knowledge with a network of contacts with politicians, governmental heads and academics. We know who to contact and how to get action. This enables us to mediate on behalf of children or on behalf of parents who have taken up matters for their children.
5. The Bureau reviews and monitors by following matters up and asking 'What have you done?'
6. The Bureau responds immediately and is accessible to everyone.
7. The Bureau has credibility which we think is evidenced by the number of people who learn about us by word of mouth; 'They did something for me, why don't you ring them?'
8. The Bureau does its best to remind government and other agencies to listen to children and to seek their views and to treat them as people not appendages of adults.

For all the reasons I have outlined, local child advocacy institutions such as ours have a vital part to play in making the convention a reality in Australia. Local must not be dismissed as parochial. Matters we have taken up at a local level, such as children with AIDS and services for their families, were national firsts, and put the needs and interests of HIV infected children on the national AIDS agenda for the first time.

Neither should local imply narrowness. Our international contacts with children's rights organisations show a remarkable similarity as to the issues identified as needing action, such as implementing proper complaint systems for children in State care; requiring governments to produce child impact statements when policies and legislation affecting children are being considered and, last but not least, establishing independent, properly funded Ombudsman-type offices for children at the local and national level.

Do not underestimate the importance of local child advocacy institutions. They have a vital and important part to play in making children's rights a reality in Australia. ♦

*The Children's Interest Bureau of South Australia,
3rd floor, Da Costa Building
68 Grenfell Street
Adelaide 5000
Tel: 08 226 7052*

APPENDIX

Legislative Basis of the Children's Interests Bureau

Under Section 26 of the Community Welfare Act the Bureau now has the following functions and duties:

1. To increase public awareness of the rights of children, and of matters relating to the welfare of children, by the dissemination of information, or by any other means the Bureau thinks appropriate
2. To carry out research or conduct inquiries into such matters affecting the welfare of children as the Bureau thinks fit or the Minister directs
3. To develop within the Department such services for the promotion of the welfare of children as the Minister directs
4. To monitor, review and evaluate the policies of the Department in relation to children
5. To carry out such other functions as the Minister may assign to the Bureau
6. To report in writing to the Minister, in accordance with his directions, on the work carried out by the Bureau

The additional legal mandate is:

"(ca) to provide the Minister, on request, with independent and objective advice on the rights and interests of any child who is, has been or is likely to be, the subject of proceedings under this Act or any other Act dealing with the care and protection of children;"

– Community Welfare Act Amendment Act 1988, Section 26(30) (ca).

This strengthened role of the Children's Interests Bureau is echoed in the 'Children's Protection and Young Offenders' Act 1979 as amended. This states that before the Minister makes an application to the Children's Court seeking a declaration that a child is in need of care, the Minister:

"(a) should, except in cases where urgent action is required, arrange for a conference between appropriate employees of the Department and the Children's Interests Bureau to provide advice assisting the Minister to decide on the action that should be taken in relation to the child;"

– Young Offenders Act Amendment Act 1988, Section 12(1) (a).

In addition, a Children's Interests Bureau staff member or some other person not an employee of the Department for Family and Community Services must be present at Reviews of children under State guardianship.

– Children's Protection and Young Offenders' Act Amendment Act 1988, Section 24(2) (a).