

# BOOK REVIEW

BEN MATHEWS\*

**Lani Blackman, *Representing Children and Young People: A Lawyer's Practice Guide* (Victoria Law Foundation 2002) 304pp**

In this book, Lani Blackman gives lawyers practical information about representing children (those under 12) and young people (those between 12 and 18). *Representing Children and Young People* is a detailed practice guide organised into three parts: aspects of the lawyer/client relationship (Part 1), case management (Part 2), and aspects of specific jurisdictions - criminal law, family law, care and protection, and civil and administrative law (Part 3). Clearly organised and lucidly written, this book is an invaluable resource primarily for lawyers who practice in representing children and young people, and for practitioners who regularly deal with children and young people involved in the legal system in different capacities, for example, as witnesses, as victims and as people affected by the outcome of clients' cases. However, due to its wide range of concerns, this book is also aimed at other professionals who deal with children who have become involved in the legal system.

Blackman's aim is to promote best practice in the representation of children and young people who are involved in the legal system. It is encouraging to see that some of the objects of the emerging children's rights movement, embodied in the *United Nations Convention on the Rights of the Child 1989* (UNCRC), are promoted by Blackman's guide. In explaining the book's purpose, the Introduction (Chapter 1) refers to and adopts the UNCRC's approach to children's rights, in particular Article 12, which gives the child who is able to form their own views the right of participation: the right to express their views in all legal actions concerning them.

Flowing on from this basic concern, Part 1's discussion of the lawyer-client relationship emphasises the necessity of appropriate communication between the lawyer and their client in this context. Blackman's purpose is to encourage lawyers to deliver quality service to their child clients and stresses that a crucial element in fulfilling the lawyer's role in this context is effective communication. A focus of Blackman's book is to remedy this often ignored aspect of the lawyer/child client relationship. After Chapter 2's preliminary details on lawyers' roles when representing children and young people, Chapter 3 devotes significant attention to communication. Opening Chapter 3, Blackman emphasises that 'In being a lawyer for children and young people effective communication is the most crucial skill and the greatest challenge. Without it, the children and young people you represent will not have fair or just representation.'

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Blackman displays broad scholarship in explaining the reasons for the special types of communication needed when dealing with children, with sections within this chapter devoted to linguistics, developmental psychology and interviewing techniques. Useful case examples of appropriate and inappropriate communication and interviewing styles add to the value of this chapter, and reference material is listed at the end of this (and every) chapter for the reader's information and follow-up. Blackman has dealt with this focus of the book extremely well, making Chapter 3 by itself a valuable contribution to the literature on representing children.

Chapter 4 then moves on to the issue of assessing the client's capacity to instruct; a small point to make here is that at a mere six pages, this could have been included in Chapter 3. Chapter 5 elaborates on Chapter 3 by discussing children with special needs, and again makes a significant contribution to lawyers' practice. Chapter 3 detailed how communication with children and young people as a class of individuals requires certain skills and considerations because children are generally individuals having characteristics and needs that differ from those of adults. Chapter 5 further explores some particular groups of children within the broader class of children who will have additional special needs that their legal representatives must be alert to and must therefore adapt their communication style to fit. Blackman considers the positions of children who come from a non-English-speaking background, or who are indigenous Australians, or who have a mental illness or an intellectual disability, or who are victims of abuse and neglect, or who live in foster or institutional care, or who are homeless, gay, lesbian, transgender, or drug-dependent. Like Chapter 3, Chapter 5 makes a valuable and principled contribution to practice. Blackman's contribution in Part 1 is admirable, directing attention to individuals and matters traditionally ignored by the legal system. It is to be hoped that practitioners take particular note of this aspect of Blackman's work.

Part 2 of the book concerns case management. Despite devoting considerable attention in Part 1 to the lawyer's role and effective communication with the client, Blackman has been mindful of the wide range of people who deal with children and young people and their lawyers. Chapter 6 discusses the roles of youth workers, departmental officers, parents and carers, and police, and Chapter 7 discusses effective liaison with expert witnesses (medical practitioners, psychiatrists and psychologists) and adds an important caution against systems abuse. Blackman's concern in these two chapters is to make lawyers aware of the roles these people play, and of how the child is likely to deal with them. This helps the lawyer to understand the child's situation and to deal effectively with these other parties. As well, Blackman makes it clear that a lawyer's role, although vital, is limited. This chapter therefore also arms a lawyer against the danger of assuming roles they are not equipped to fulfil; instead of trying to be a counsellor, a social worker or a psychologist, a lawyer should make their client aware of available professional assistance in required areas.

Chapter 8 then discusses court appearances, beginning with the basic concern of ensuring that the child actually appears at the hearing – that they know where to go, when, and that they have a way of getting there. Blackman also notes the desirability of the child being accompanied by a parent or other supportive person. Emphasis is also given to the appropriate preparation of the child or young client for the hearing experience itself. The prior discussion of court procedure, personnel, physical layout, how long the hearing will take, what can happen at the end, and the role played by the

magistrate, the legal representative and the child, all help to ensure that the child or young person is able to participate in their hearing in a meaningful way, and overcomes the likelihood of the experience being traumatic and foreign. Chapter 8 then gives valuable advice on the receipt of evidence from the child and the process of cross-examination, observing that the process of giving testimony and the testing of it by cross-examination is one of the areas of legal practice where the rights of the child are most likely to be abused. This again is an admirable and principled contribution to the book. Chapter 9 discusses issues after the hearing including the importance of clearly communicating the outcome of the hearing, the appeal process, and ending the lawyer/client relationship in a sensitive and professional way.

In Part 3, Blackman gives some more detailed attention to practice in specific jurisdictions, aiming to 'highlight some of the major issues which affect the jurisdiction'. Chapter 10 gives a good guide to the jurisdiction of criminal law, with sections on children's rights, the age of criminal responsibility, representing children without instructions, arrest and police interviews, the police's power to dispose of a matter by simple caution, bail and remand, the pleading process and sentencing practice and options. Chapter 11 devotes some detailed discussion to family law matters, including the practice and problems of the child representative, working with court counsellors, and participating in negotiations. A section on dealing with allegations of abuse is also extremely helpful. Chapter 12 is a short chapter on the care and protection jurisdiction, and gives some more detailed consideration in this context to several of the themes discussed earlier in Chapters 3 and 5.

Chapter 13 is a longer chapter discussing the diverse involvement of children and young people in various parts of law's civil and administrative jurisdictions: as consumers, parties to contracts, tenants, employees, targets of discrimination, school students, recipients of social security, and immigrants. This chapter is another strength of Blackman's book, providing a valuable background resource concerning the main issues concerning children and young people in these jurisdictions. It is refreshingly contemporary, for example, by recognising the burgeoning problem of bullying at school, and the growing incidence of children as refugees. In these contexts again, Blackman encourages lawyers to directly represent children and young people wherever possible, rather than have the child represented less effectively by the traditional appointment of a litigation guardian.

The final contribution of this excellent work is the Directory of services and agencies throughout Australia at the back of the book, providing a valuable indexed resource both for practitioners and other professionals in the field, and for children and young people. Blackman has written an invaluable practice guide for lawyers representing children and young people and for associated professionals. It is hoped that this book will enhance the representation of children and young people and their experience of the legal system.