

standards. It also recommends changes to film and video classifications to restrict viewing of violence and pornography, recommends increased prosecution of illegal importation of violent and pornographic film and video material. This report notes that the Committee received more submissions from individuals on the subject of the effects on children of television violence than any other single topic. However, the majority report simply recommends that 'the Australian Broadcasting Tribunal should consider requiring more detailed classification and program description to enable television viewers to exercise informed choice of programs . . .'. In addition, the Committee endorses 'federal, State and territory initiatives which protect children from consuming and participating in the production of erotic materials, violent or otherwise'.

implementation. The report concludes with a plea for action, 'mindful of the fact that the shelves of Australian libraries are groaning with reports which have been forgotten and their recommendations ignored'. Releasing the report, Senator Tate gave an assurance that it 'would not be shelved' and that a federal implementation process had already been established. Most States and the Northern Territory have also established implementation bodies.

* * *

pornography and self-government in the ACT

The development of Canberra as the national capital is now virtually complete. The development of a diversified economy, incorporating a vibrant private sector is this community's right and need . . . The ideas and the drive for Canberra's future should come from the people of this Territory. They need their own elected government to make the laws, establish the framework and provide the creative spark that will change the focus of Canberra's development to make sure that the future

needs of the community are best met.

Senator Richardson,
Second reading speech
ACT Self-Government Bill 1988

diversifying the economy! Some would argue that parts of Canberra's vibrant private sector is responding to the wrong needs at the moment. The Canberra Times summed up the situation on 7 April 1990:

Opponents of pornographic videos have dubbed Canberra the porn capital of Australia because ACT distributors are able to sell or hire out pornographic videos by mail to customers in States which ban the videos.

opposition to pornography. The opponents wrote to newspapers citing research and clinical observations confirming the negative impact of pornography on beliefs about sexuality in general and on attitudes towards women in particular. Its role as a stimulus in sex-related crimes, particularly crimes involving child victims was also stressed. The federal Minister for Territories, David Simmons has expressed concern and has issued a warning to the ACT mail-order industry to be more discrete in its advertising.

defending pornography. A letter to the Canberra Chronicle on 17 April 1990 defended the pornography industry. It branded its opponents the 'anti-porn brigade' and 'a few paranoid wowsers' and said 'people in almost all other Western countries have the right to view such material'.

bill introduced. The leader of the Abolish Self-Government Coalition in the ACT, Mr Dennis Stevenson, introduced a Bill in the ACT Legislative Assembly (Publications' Control (Amendment) Bill 1990) to ban the sale of X-rated videos. However it was defeated by nine votes to eight.

handing back the problem. Some ACT residents may now be looking for other means to stifle the porn industry. It will be interesting to see whether they seek the assistance of their representatives in federal Parliament.

The debate over pornography and the ACT's ability to deal with the problem one way or another raises the question: How autonomous is the ACT after self-government?

Because of the ACT's unique position as the seat of government, the Commonwealth has retained legislative control over certain physical areas and over certain matters. For example, federal Parliament may provide that ACT Acts do not apply in the Parliamentary precincts. Certain areas of the ACT may be gazetted as 'National Land'. Apart from matters related to the position of the ACT as the nation's capital, in handing over control to the newly-formed polity, the Commonwealth did not divest itself of all areas of legislative responsibility. At present the ACT does not control its courts, classification of materials for the purpose of censorship, evidence law, companies and securities, legal practitioners and a number of other matters. However by 1 July 1992 all these will have been handed over, so that the Commonwealth will only retain control over those matters concerned with the ACT's role as the capital.

The Australian Capital Territory became a self-governing polity contrary to the wishes of a majority of its populace who had, through an earlier referendum, expressed their wish to remain a non-self-governing Territory of the Commonwealth. (At the first election of the ACT Legislative Assembly, there were, paradoxically, successful candidates for the Abolish Self-Government Party and the No Self-Government Party. Both parties have been taking part in the processes of government.)

Prior to self-government, the ACT's laws were largely made as Ordinances by the Governor-General under s12 of the Seat of Government (Administration) Act 1910 (Cth). An Ordinance could be disallowed by either the House of Representatives or the Senate.

a kind of autonomy. By passing a package of legislation, most of which became operative on 11 May 1989, the Commonwealth launched the ACT into a kind of autonomy. But, of course, under s122 of the Constitution, the Commonwealth retains full power to make laws for the ACT. Any ACT law which is inconsistent with a Commonwealth law would be invalid, although the test of inconsistency is less rigorous than that applied to the States. The 'covering the field' test is expressly displaced so that if an ACT law can operate together with the Commonwealth law then the former is not invalid. Thus the package of self-government legislation could be amended or repealed by federal Parliament. Assuming that the package of self-government legislation is left intact, what kind of autonomy does the ACT have?

A symbol of the ACT's new life is the renaming of all Ordinances (other than those where the Commonwealth retains control) as Acts which can be amended or repealed by the ACT Legislative Assembly. Thus the stigma of being ruled by mere delegated legislation has been cast off. But this symbolism loses some of its gloss because the Governor-General may disallow any Act passed by the Legislative Assembly within six months of its enactment. (Such disallowance may itself be disallowed by the Senate.) Alternatively, the Governor-General may recommend to the Assembly amendments to the Act.

There are some unique features of the new ACT which are worthy of note. First, the new polity started life with a complete package of administrative law, imitating the Commonwealth arrangements.

Secondly, the ACT Legislative Assembly may pass an entrenching law which places restrictions on future attempts to change it by providing, for example, for a special majority of the Assembly. There is no limit as to the subject matter of entrenched statutes. The entrenching law must first be approved by a referendum. The entrenching law itself must be passed by the highest majority, both at referendum and in the Legislative Assembly,

which the entrenching law specifies for future enactments.

Thirdly, the ACT has no Governor (though the Governor-General has power to dissolve the Legislative Assembly). The Chief Minister is elected by the Legislative Assembly in its first sitting after an election. The Chief Minister then appoints a Deputy Chief Minister and Ministers. The Executive consists of the Chief Minister and the Ministers. The Head of the Administration is appointed by the Chief Minister. Laws made by the Legislative Assembly are notified in the *Territory Gazette* by the Chief Minister and take effect on that date unless there is a contrary provision in the enactment. The Chief Minister can only be dismissed by the Legislative Assembly. The Governor-General has no such power but may dissolve the Legislative Assembly, as already noted.

Fourthly, the Legislative Assembly must sit for a fixed term of three years unless the Governor-General exercises his or her power to dissolve the Assembly or the Chief Minister is the subject of a no confidence motion and no new Chief Minister is elected by the Assembly within 30 days.

Finally, the ACT is to be treated by the Commonwealth in the same way as a State or the Northern Territory in relation to finance, except that the ACT government is not responsible for those matters specifically retained by the Commonwealth. The ACT can borrow from the Commonwealth, and from other sources with the approval of the Minister for Finance.

Returning to the pornography debate, one view expressed in a *Canberra Times* editorial of 26 April 1990 was that the Legislative Assembly at present has no power to control pornography:

The Assembly is denied the power to make any law which can be described as with respect to the classification of materials for censorship . . . So the power denied the Assembly is not simply the power to classify. The power denied is the power to make almost any law predicated upon existing

classifications. That being the case it seems the debate on Tuesday in the Assembly on Dennis Stevenson's bill to ban X-rated videos in the ACT was for practical purposes a waste of time . . . Assembly members would do better to spend their energies lobbying the Federal Government for the power rather than wasting its time on hypothetical Bills.

Another view is that the ACT cannot at present pass laws relating to classification of materials but can pass laws relating to censorship, that is, can ban certain material.

The ACT is thus at present in a state of limbo but will achieve a fuller autonomy by 1 July 1992.

* * *

children and other vulnerable witnesses

A child should always say what's true.
And speak when he is spoken to.
And behave mannerly at table:
At least as far as he is able.

Robert Louis Stevenson,
A Child's Garden of Verses, 1885.

The January 1990 issue of *Reform* contained an article on children's evidence in court (Jan [1990] *Reform* p29–31). Schemes making it easier for children to give evidence in court in the ACT, New South Wales, Tasmania, Victoria and Western Australia were discussed. The Law Reform Commission of Western Australia has now issued a discussion paper in which it seeks comments on its recommendations relating to the law and practice governing the giving of evidence in legal proceedings by children and other vulnerable witnesses.

protection for children. The paper points out that, traditionally, children because of their immaturity, have been treated as a special class of person requiring different treatment in law from adults.