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.

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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.

> On the one hand, this has meant that children enjoy special protection: for instance, young children are not criminally responsible for their acts and cannot be held personally accountable for breach of contract or the law of torts; and, in matters specially affecting their welfare, the law enjoins the courts to treat the child's interests as paramount. On the other hand, the immaturity of children has led the legislature to restrict the sorts of activities children may lawfully enter into. They may not drive before the age of 17, drink before they turn 18, or buy cigarettes under the age of 16. If female children have sexual intercourse while under the age of 16 their sexual partner commits a criminal offence, and so on. (WALRC DP, p6).

other vulnerable people. The WALRC was also asked to review the law and practice governing the giving of evidence in legal proceedings by other vulnerable witnesses.

> Presumably the phrase 'other vulnerable witness' could include anyone who is a competent witness for whom the giving of evidence is likely to be especially traumatic, or even impossible. A number of possibilities spring to mind. Most obvious, perhaps, are the victims of violent sexual or physical assaults, but also mentioned as potentially vulnerable classes of witness have been the elderly and the mentally handicapped, and people disadvantaged as a result of 'cultural differences'. (WALRC DP, p64).

a written guide. One of the Commission's suggestions is the development of a guide for legal personnel in dealing with child witnesses – the Law Society of Western Australia has expressed interest in such a proposal – and the development of practice directions for magistrates and judges about appropriate procedures and terminology for dealing with child witnesses.

change the rules of evidence. The Discussion Paper discusses a range of other suggestions which would require some change to existing laws. One is changing the rules of evidence, to let children of any age give evidence if they understand how especially important it is to tell the truth in legal proceedings, and to let a court consider a child's unsworn evidence if it believes the child has reached a stage of cognitive development where the evidence might of assistance. Another is removing the requirement for corroboration of a child's unsworn evidence and leaving it to the discretion of a judge whether or not to warn a jury of the danger of convicting on such evidence.

out-of-court statements. The Commission also asks whether children who have to be witnesses in cases of sexual offences or intrafamilial assault or abuse could record out-of-court statements (including video tapes) instead of having to give evidence personally at a preliminary hearing. The child would have to be available to be cross examined personally at the trial, and the statements would need to be made and scrutinised in carefully prescribed ways. A magistrate could still allow a child to be called as a witness in a preliminary hearing in special and extraordinary circumstances where a decision couldn't be made whether or not to commit the matter for trial unless the child gave oral answers to particular questions.

strange surroundings. One of the major reasons any witnesses find court cases daunting is the strangeness of the surroundings, dress and language. The WALRC suggests that the the court could appoint someone specially trained to explain all these things to the child before, during and after the trial.

The paper also suggests that some of these suggestions could be used for other vulnerable or special witnesses if they would be likely to suffer unusual emotional trauma from giving evidence in the normal way, or so intimidated or stressed as to be unable to give effective evidence.'

Copies of the discussion paper are available from the WALRC at 44 St George's Terrace, Perth, 6000, Telephone(09)3256022 and comments may be made until the end of June 1990.

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