to override a council's zoning power by substituting himself or herself as the relevant consent authority, and approving a development prohibited under the relevant zone. For example, as a matter of law, the Minister may approve a shopping complex in a residential area although it is prohibited.

The changes to the Act have given the Minister a new power to override a decision by a council to refuse approval or attach conditions for a particular development application. The result of the amendments is an increased centralisation in executive power at the State government level.

Thus the power of third parties, environmental groups, local residents and the public generally to influence the planning process through their elected representatives and by comment and participation in the planning processes as envisaged by sections 5(b) and 5(c) has been reduced.

Mr Jim Thomson, barrister, commented on these developments: the 'small fry developer and those without political influence' appeared still to be subject to the initial framework of the Act, that is, a 'decision-making system ... which is subject to the safeguard of environmental review by the court'. On the other hand, there appeared to be another system 'whereby such open independent and public review of the decision-making process is avoided, for those developments with greater environmental significance or propounded by persons with political influence' (*Environmental Law Reporter*, 1 November 1985 para 50024 p21).

Nonetheless, environmental groups and local residents may still play a role in the planning process for developments of significant impact on the environment where State government control is not exercised and the relevant consent authority remains a local council. The recent decision of the Land and Environment Court (*King v Great Lakes Shire Council and Roger Beeston t/a Parkland Planning*, Land & Environment Court, No 40182 of 1984, Cripps J, 14/5/86; *Environmental Law Reporter*, 30 May 1986, p43) which declared void the approval granted by the Great Lakes Shire Council in October 1984 for a major caravan and camping complex at Seal Rocks, demonstrates that the Act still provides a democratic tool in the absence of executive intervention. The decision made by Mr Justice Cripps in the Seal Rocks case was based upon the Council's failure to properly consider questions such as sewerage disposal which would cause Seal Rocks, an environmentally sensitive and very beautiful area, to suffer detriment from the proposed development. It too involved third party litigation, that is, litigation brought by local residents who are given standing under the Act, and who would otherwise have no legal capacity to intervene in the determination by the Council of the development application.

contempt: disruption, disobedience and deliberate interference

> Courts and camps are the only places to learn the world in.
>
> The Earl of Chesterfield, 1747

discussion paper released. In April, the Australian Law Reform Commission published the third of its discussion papers arising out of its reference on the law of contempt. Entitled *Contempt: Disruption, Disobedience and Deliberate Interference* (ALRC DP 27), it deals with three discrete areas of contempt of court, and with the topic of contempt of commissions and tribunals. Like the earlier discussion papers, *Contempt and Family Law* (ALRC DP 24) and *Contempt and the Media* (ALRC DP 26), it includes a comprehensive outline of the current law in each area, a discussion of the policy considerations involved and provisional proposals for reform. The provisional nature of the proposals is stressed, and interested parties are invited to comment on them.

contempt in the face of the court. Perhaps the most controversial area of contempt dealt with in the paper is that known as 'contempt

in the face of the court'. This deals with courtroom conduct which disrupts proceedings, is offensive to the court, or is improper in some other way. Examples in recent times include:

- holding a political demonstration in a courtoom;
- casting missiles or hurling abuse at the judge; and
- endeavouring to introduce laughing gas into the airconditioning system of the courthouse.

Under present law, the judge presiding at the time determines: whether to charge the person responsible with contempt; what exactly this person has said or done; whether it amounts to contempt; and what punishment (there being no limit fixed by the law) should be imposed. Thus, the judge acts as prosecutor, chief witness, judge and jury in the case.

offence of 'serious disruption'. The paper proposes that the common law principles relating to contempt in the face of the court should be abolished and replaced by a series of statutory offences. The principal offence to be substituted for the existing common law should be drafted in terms of acting so as to cause serious disruption to a court hearing. Ancillary offences should be created to cover improper courtroom conduct which does not come within the concept of serious disruption. The proposed ancillary offences are:

- prevarication or refusal to answer a question;
- taking photographs, video-tapes or films in court; and
- misconduct by a legal practitioner.

All the offences proposed should include a requirement of *mens rea*, that is, intention to disrupt or impede the proceedings, or at least reckless indifference as to whether or not the conduct would have this effect. There should be two possible modes of trial for the proposed offences:

- trial by the presiding judge or magistrate; or
- trial by a three-member bench from within the same court.

The option to proceed by way of the latter mode of trial should lie with the presiding judge or magistrate, and, according to a majority view of the Commission, also with the accused. Finally, maximum sentences should be prescribed for the proposed offences.

deliberate interference with participants in proceedings. This branch of contempt law is concerned with cases where a participant in legal proceedings – such as the judge, a juror, a witness or a party – is subject to pressure – such as a threat or a bribe – to act in a certain way in relation to the proceedings, or is the victim of reprisals for having participated in the proceedings. Examples of such interference include:

- bribing or attempting to bribe a person holding judicial office;
- assaulting a witness at court; and
- dismissing an employee for having given evidence against the employer's interest.

There is substantial overlap between this branch of contempt and the criminal law. Consequently, where such overlap exists, two distinct modes of trial – trial by an appropriate superior court in exercise of its summary contempt jurisdiction and trial as an ordinary criminal case (either on indictment before a jury or summarily before a magistrate) – are potentially available. On the other hand, only the former mode of trial is available where conduct amounting to 'deliberate interference' is not proscribed by the criminal law.

abolition of contempt procedure. The paper proposes that where conduct amounting to deliberate interference with a participant in court proceedings is both a contempt and a criminal offence, the contempt mode of trial should cease to be available. It further pro-

poses that the provisions of s36A of the Crimes Act 1914 (Cth), which prohibits reprisals against witnesses on account of their participation in proceedings, should be extended to include reprisals against other categories of participant, including parties. With respect to parties to proceedings, a statutory offence of taking reprisals with intent to punish the party for having instigated or defended or otherwise appeared should be created. This should be on the footing, however, that the only acts recognised as constituting a reprisal should be (a) acts which are unlawful in their own right, (b) eviction of the party from premises held under a lease and (c) dismissal from employment. Where a threat of a reprisal against a party would, if carried out, constitute an unlawful reprisal under the proposed offence, the threat itself should be an offence if intended to cause the party to desist from participation in the proceedings. The net effect of these proposals is that this branch of contempt will be abolished, and that all forms of unlawful interference will be a criminal offence and triable as such.

non-compliance with court orders and undertakings . Another branch of contempt, known as civil contempt, is concerned with the enforcement of court orders and undertakings. Unlike criminal contempt, it is essentially a private remedy, and civil contempt proceedings are generally instituted by the aggrieved party who has the right to waive the contempt. A unique feature of this branch of contempt, reflecting its enforcement rationale, is the imposition of open-ended sanctions, for example, an indefinite term of imprisonment, expressed to come to an end when the contemnor complies with the order, or expresses a willingness to do so. However, proceedings for contempt arising out of non-compliance may also result in the imposition of sanctions as punishment for past disobedience of an order in circumstances where enforcement is no longer an issue. Consequently, considerable uncertainty surrounds this branch of contempt law.

enforcement and punishment distinguished. Underlying the proposals for reform of this area of contempt is the recognition that the two functions served by the imposition of sanctions for non-compliance are quite distinct. The paper affirms the principle that contempt should be an enforcement measure of last resort, and contempt sanctions should be used for the purpose of enforcing an order only when no reasonable alternative exists, and only to the extent that they are likely to be effective in a particular case. Punitive sanctions should be available only to the extent that they are necessary to uphold the effectiveness of court orders generally. Punitive sanctions should not be imposed unless it is established that there was intention to disobey the order, or at least knowledge that the act or omission constituting the disobedience constituted a breach of the order. The summary procedure should be retained, but certain safeguards, including the requirement that the breach should be proved beyond reasonable doubt, should be incorporated into the procedure. Indefinite terms of imprisonment for the purpose of coercion should be abolished, and there should be maximum sentences set for sanctions imposed for the purpose of punishment.

contempt of commissions and tribunals. With respect to Royal Commissions, standing commissions and tribunals, the paper makes a series of proposals dealing with each of the areas of contempt dealt with in the paper. The particular characteristics of commissions and tribunals, in particular those relevant to contempt, are taken into account. With respect to deliberate interference with members of a commission or tribunal, for example, it is proposed that it should be an offence to 'influence or attempt to influence' a member 'to act otherwise in accordance with his or her duty'. The question of what constitutes the duty of a member would be taken to vary from case to case, thus acknowledging the duty of some tribunal members to pay particular regard to the interests of a 'constituency' from which they are chosen. It is not proposed to give commissions and tribu-

nals a power to punish for contempt-like offences, even where this is constitutionally feasible. Nor is it proposed that there should be a 'deemed contempt' provision in addition to the specific offences proposed.

comments welcome. The proposals for reform contained in the discussion paper are not final recommendations, but represent provisional views only. Consequently, comments on them by interested parties are most welcome.

child sexual assault — victorian moves

The Child is father of the Man
William Wordsworth, *My Heart Leaps Up*, 1807

victorian dp. The issue of sexual assaults on children, including incest, has recently received increasing attention. A discussion paper has recently been published on Child Sexual Assault, by Ms Lesley Hewitt, a consultant to the Victorian Government, as part of the process of reforming the laws in this area in Victoria. The discussion paper outlines social and legal reforms which, if adopted, could assist children who have been sexually assaulted and their families. It is the product of consultations with individuals and organisations throughout Victoria. The paper was published for further discussion so that the community would have an input into the formulation of government policy in this complex and sensitive area.

law reform. Of the 47 separate recommendations listed in the discussion paper, there are a number of particular significance to law reformers. These include recommendations for the restructuring of the criminal law concerning child sexual assault, in particular extending the offence of incest to cover children under 10 and all members of families. However, the separate offences of incest, indecent assault, gross indecency and sexual penetration of children should, the paper suggests, be replaced with a general offence termed 'child sexual assault'.

child's evidence. The Paper makes further recommendations about admission of evidence of children used in a child sexual assault prosecution. It draws considerably on the work of the ALRC in its *Interim Evidence Report* (ALRC26) on the competence and compellability of witnesses. There, particular attention was given to questions of the competence of children. Like the ALRC report, the discussion paper suggests that the requirement that the child understand the nature of the oath, as a test of competence, is unrealistic and should be replaced with an examination (if necessary, aided by experts in child development) of the capacity of individual children to give evidence and the particular meaning to be put on evidence given by individual children. There is a strong plea in the paper for increased use of experts in child psychology and child development. One recommendation of the Paper is that consideration be given to the use of presenting the child's evidence to the court through video taping of the original interview with police and tendering the video tape in evidence.

treatment for offenders. Further recommendations include the necessity for convicted offenders to undergo automatic psychiatric assessment before they are sentenced and for the Department of Corrections to develop appropriate treatment programs for convicted offenders.

criminal investigation. The investigation stage of a child sexual assault case is also given particular attention in the paper. The paper suggests that police procedures should ensure that all allegations of sexual assault are notified to police and adequately investigated. There should be as few number of interviews as possible during the police investigation stage. Child sexual assault cases should be dealt with by the Community Policing Squad. As to police interviewing technique itself, the paper suggests that to provide support and emotional security for the child, a child who is alleged to have been assaulted can only be interviewed by the po-