cases established according to a sliding scale.

- It should be administered by a public company representing relevant interests including the Attorney-General of NSW, the Law Society, the Legal Aid Commission, the Law Foundation and Law Consumer Interests.
- It should provide assistance to plaintiff's (including companies and partnerships) and to defendants in limited circumstances.
- It should provide assistance for cases which satisfy a merit test and to applicants who qualify under a means test (annual gross income and liquid assets not to exceed a ceiling in the vicinity of $60,000.
- Initially, CLAF should provide assistance for personal injury cases and proceedings to recover money or property, claims in regard to torts, breaches of contract and commercial disputes.

rationale for CLAF. The Working Party rationalised the establishment of a CLAF by arguing that, despite legal aid, there were many people who did not qualify and who could not afford the costs and the financial risks involved in litigation. They considered that CLAF should be established on a commercial basis and should aim to become self-funding within 5 years. An initial allocation of funds would be required.

other proposals for CLAF. Proposals involving contingent legal aid funds have been considered by the Law Council of Australia and the Queensland Legal Aid Office. The Law Society of Western Australia is also considering similar proposals. None of the Australian States or Territories has legislated to allow contingent fees but indications are that the time may not be too far away when this method of financing litigation will be permitted.

Submissions to the Legal Aid Commission on its CLAF proposals may be sent to

The Chairman
Legal Aid Commission of NSW
PO Box 47
Railway Square
SYDNEY NSW 2000 □

british lawyers face changes

> I could in no way approve of those turbulent and restless characters who, although not summoned by birth or fortune to the control of public affairs, are yet constantly effecting some new reform — in their own heads.
>
> R Descartes, *Discourse*

moves towards reform. At the end of January this year the Lord Chancellor, Lord Mackay, issued three discussion papers, known as Green Papers, which suggested reforms in many areas of legal practice including

- the rights of barristers and solicitors to appear in court
- the legal profession's monopoly on conveyancing and
- the rule against charging contingent fees.

Lawyers and judges were outraged by some of the proposals which they argued were unconstitutional, damaging to small firms and against their clients' interests. After further consultations and some significant modifications to the proposals, final recommendations were made in what is known as a White Paper. The Prime

Minister, Mrs Thatcher, intends to introduce legislation to bring these final recommendations into effect in the new year.

the green papers. The aim of the proposals in the Green Papers was to improve people's access to legal services by getting rid of restrictive practices and ensuring greater competition among lawyers. Lord Mackay acknowledged in an address to the Associated Law Societies of Wales in June this year that achieving the right balance between adopting commercial principles in order to compete for business and maintaining the profession's high standards of integrity, competence and service to clients is not an easy task.

> A solicitor is an officer of the court and as such owes a duty to the court as well as to his client. Sometimes this duty and strict adherence to commercial principles are incompatible. In such situations the former duty should prevail.

rights of solicitors and barristers. The first Green Paper, entitled 'The Work and Organisation of the Legal Profession', covered rights to appear in court and eligibility for appointment to the bench. The paper included proposals to

- replace the existing system which gives an automatic right to appear in courts to barristers, with a system of granting barristers and solicitors a general right to appear in all courts or a or limited right to appear in certain courts and tribunals, based on their competence and experience
- give solicitors a wider right to appear in higher courts
- appoint High Court judges from among those who had a general right to appear in court rather than confining appointments to barristers
- allow the Lord Chancellor to lay down general principles to be embodied in professional codes of conduct and to oversee the admission of advocates. Before exercising these powers the Lord Chancellor would have to consult a proposed new Advisory Committee on Legal Education and Conduct as well as the judges.

multi-disciplinary partnerships. The first paper also proposed that solicitors be allowed to enter into multi-disciplinary partnerships with other professionals such as accountants and surveyors. Lord Mackay acknowledged that there are difficult problems of suitable partners, control, discipline, insurance, privilege and conflict of interests. The director General of Fair Trading expressed the view that if a range of services under one roof is what clients want, that is what lawyers and other professionals should provide. Lord Mackay's said that, 'Multi-disciplinary practices also provide attractive opportunities for improved efficiency and economies'.

conveyancing by non-lawyers. The licencing of non-lawyers to do conveyancing work has already been introduced with, according to Lord Mackay, the effect of reducing costs without any evidence of a fall in the quality of the service. The main proposal in the second paper, 'Conveyancing by Authorised Practitioners', was to allow banks and building societies to do conveyancing work as long as they did not act for both the vendor and the purchaser or for people to whom they had also offered a loan.

contingent fees. The final paper, 'Contingency Fees', recommended that lawyers be allowed to agree with their clients that no fee would be charged if the case was lost but that an agreed percentage of the verdict would be paid to the lawyers if the case was successful.

the response of judges and lawyers. Many of the proposals were attacked by

judges and lawyers as unconstitutional and damaging to the legal profession and their clients. (139 New Law Journal 6409, 707.) In particular, proposals for widening advocacy rights and increasing government control over the admission of advocates and the supervision of the profession were argued by the judges to threaten the independence of the judiciary thus infringing the doctrine of the separation of powers. Solicitors rejected any government involvement in the regulation of the profession, but welcomed increased rights of audience. No support was given by the solicitors to the ideas of extending the rights of non-lawyers to do conveyancing, permitting inter-disciplinary partnerships or to allowing contingent fees. They argued that there were no safeguards against the dangers of permitting lending institutions to do conveyancing for borrowers and that the conflict of interests would be overwhelming. Multi-disciplinary practices were argued to threaten client confidentiality and create potential conflicts of interest. In rejecting proposals for contingent fees the solicitors cited the American experience as evidence of the potential for abuse. They suggested that a better alternative would be to allow speculative funding (where no fee is charged if the case is lost but the normal fee, not a percentage, is charged if the case is won) and to make the upper income limit for legal aid more flexible.

the public's response. Whilst most commercial enterprises and consumer associations welcomed the proposals, The Legal Action Group, representing legal aid consumers, remained skeptical. (R Smith, 'The Green Papers and Legal Services' 52 *The Modern Law Review* 527.) The Group's director, Roger Smith, pointed out in an article on the effect of the Green Papers on legal services that little reference is made in the Papers to legal aid policy. He says that the loss of conveyancing work to lending institutions would threaten the economic viability of smaller firms which currently do legal aid work. Whilst not condemning the government for the removal of the conveyancing monopoly, Mr Smith criticises the Lord Chancellor for not looking at the effects of these and other proposals on recipients of legal aid.

the white paper. The White Paper, published in July this year, took into account many of these criticisms without changing the government's basic intention to improve competitiveness and efficiency within the legal profession. Barristers were successful in retaining their automatic right of audience in courts and all their existing rights of advocacy were preserved. It was recommended that the Law Society be able to recognise a solicitor as a qualified advocate, in a particular court or courts, or in particular tribunals. An Advisory Committee, to give advice on which bodies should be able to grant advocacy certificates, was proposed. The majority of the Committee would be non-lawyers.(New Law Journal Vol 139 No 6417, 998.) All advocates who hold full general advocacy certificates, whether they be solicitors or barristers, would be eligible for appointment to the High Court bench. Removal of statutory restrictions preventing solicitors from forming multi-disciplinary and multi-national partnerships was recommended. It was recommended that building societies and banks be able to offer conveyancing services as long as they did not, as a general rule, act for both vendor and purchaser. Conveyancing services should not be made conditional on any other service being undertaken. Clients should be offered an initial interview with an authorised practitioner to ensure there is not conflict of interests. Lawyers will be able to agree to be paid their normal costs only if successful. An uplift may be agreed with the

percentage of costs as a win bonus. The normal rule that the loser pays the costs will still apply. There is to be an improved complaints system, including the establishment of a new Legal Services Ombudsman who will have power to recommend both compensation and changes to unsatisfactory complaints procedures. The government intends to implement the recommendations next year. □

domestic violence and the police

> Yes, it's the worst job that we have to do. It's worse than deaths.
>
> Police officer; submission to ALRC on domestic violence

In its report: *Domestic Violence* (ALRC 30) the ALRC said:

> The task of policing domestic violence is an unpleasant, difficult and sometimes dangerous one. As one police officer said to the Commission:
>
> > Yes, it's the worst job that we have to do. It's worse than deaths. You get used to them. But with domestics you can never do the right thing. The parties have had years of rotten marriage and you're there to try and do something about it. You know that whatever you do it's going to happen again. And in most cases you can't do anything anyway because the wife decides she does not want to prosecute.

In a recent paper, ANU Law Faculty's, Dr Stephen Parker reviewed a 1988 report: *Male Violence and the Police: An Australian Experience*, by Dr SE Hatty, from the Unviersity of New South Wales' School of Social Work. Dr Parker said:

> Dr Hatty's report makes for compelling, if depressing, reading. It is the product of a research project partly funded by the National Research Fellowship Scheme, the Australian Research Grants Scheme and the NSW Police Department. Police officers were interviewed in ten police metropolitan districts in Sydney, with the data collection completed in 1986. The final sample comprised approximately 500 general duties officers. The fieldwork involved observation of police intervention in 'domestic violence'cases from the initial call-out stage to the reconstruction of events by officers immediately after the intervention. The officers were also questioned at large about their training to handle these crises, about the efficacy of the law and about their attitudes towards male perpetrators and female victims.
>
> The research had two facets: the application of recent legislation in NSW to address domestic violence and the relationship between written law and the law in practice. The results should be of interests to law reformers in general; not just those involved with family matters. The results might confirm cynical reformers in their beliefs that changing the law on the books need not change the attitudes and behaviour of those apply and enforcing the law. Undoubtedly some officers displayed sensitive and enlightened attitudes towards battered women, although the extent to which legislative change had contributed to these is not clear.
>
> During the 1980s the NSW Parliament introduced a number of measures to deal with male violence against women. These included amendments to the Crimes Act 1900 to make spouses compellable witnesses with regard to domestic violence offences. Powers of entry onto premises were clarified and procedures for telephone warrants instituted. New civil remedies were also created ('apprehended domestic violence orders') which could be obtained by victims and police officers. Breach of an order was made an arrestable offence and improved powers to attach conditions to police bail were designed to protect victims whilst proceedings were in progress.
>
> As a matter of police practice, officers were directed by the Commissioner to arrest where an offence had been committed. This was in line with the government's in-