

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 University 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-

tention that crimes in the home were not to be treated as any less criminal than those outside. Dr Hatty's analysis of police training and her verbatim extracts from interviews suggest that both the directive and the legislative intention are regularly ignored. Something could obviously be done about this. On the other hand, the deeply rooted attitudes of police officers (for example, the most popular reason cited by officers for women's 'decision' to stay within a violent relationship was their supposed enjoyment of the violence) and the level of misogyny in the force make one suspect that resistance strategies will emerge that cannot easily be overcome, if at all. Whilst Hatty's report involves a complex construction of police attitudes and the way they conceptualise violence and their own role, this review concentrates on the more direct issue of law reform.

Over one-third of the officers could not comment on the amendments to the Crimes Act because they did not know anything about them. The figure probably understates the level of ignorance because some of those who did comment palpably knew very little about them. Take, for example, the revealing response (p 26):

I haven't read much up on it, but it's an area the police don't like getting into — it's people's private lives, not crime.

The ALRC commented on the need for specialist police training to deal with domestic violence:

Particular problems arise because of a lack of specialist police training and frustration generated by some of the unavoidable aspects of domestic violence prosecutions. The quality of police response to domestic violence nevertheless still very much depends on the maturity and personality of the particular officers who attend.

Dr Hatty's report comments on police training. Dr Parker writes concerning this part of the report.

The police training lectures at times contradicted each other or were internally inconsistent. They considerably diluted the

Commissioner's directive to arrest where an offence had been committed. They revealed a dense ideological texture of views about the responsibility of the victims for their own plight and a society that contains 'less attractive and less intelligent groups' (p 43). Approximately 70% of the officers had received training in 'domestic violence' and the vast majority of them considered the training to be either relevant or very relevant. Officers were, however, more negative about the *effectiveness* of this relevant training.

The equivocal messages during training about the police role, in particular over arresting violent men, were mirrored in the actual behaviour of the police. The male party was arrested in only about half the cases in which the woman sustained physical injury. Bearing in mind the officers' perceptions of the incident, this is not surprising. They were more likely to be in line with the offenders' perceptions than the victims. The incidents were frequently *trivialized* ('he'd given his wife a bit of a smack in the face' etc). An alarming number of officers regarded the victim as culpable, despite the fact that provocation is not a defence to assault.

In ALRC 30 the Commission said:

Some police officers have put to the Commission that no amount of class-room training and simulation exercises can be as effective as the real thing. In their view, police trainees should be given as much experience as possible in attending 'domestics', first of all as trainee observers, and then as police officers under the supervision of an older, experienced officer. The presence of such an officer would help to overcome difficulties for police that may arise because of age disparity between the disputants and the policemen and women who attend. Certainly, experience can be the best teacher. But there is a great deal of essential preparatory training which can be imparted in the classroom. Much of the dissatisfaction with the police response to domestic violence stems from inappropriate and sometimes unsympathetic attitudes shown by some police. Police training should be aimed at dispelling some of

the stereotyped responses to the offender's actions and the victim's plight, such as:

- married relationships are private and the police have no business intervening except in the most violent cases;
- 'they asked for it';
- 'it's the booze, not the person';
- a slap or a belting does not really amount to violence and is not criminal.

In ALRC 30 the Commission showed that the criminal law cannot by itself provide adequate protection to people from domestic violence offences. It proposed a domestic violence protection order to prohibit further violence or harassment, on pain of criminal penalties for the breach. It suggested such orders could be obtained from a magistrate's court. It suggested the kind of orders that should be able to be made include orders restraining the respondent —

- from entering or remaining in the family home;
- from entering or remaining in the workplace of a family member;
- from entering or remaining in specified areas;
- from approaching family members.

Dr Hatty's report discusses Apprehended Domestic Violence Orders, as Dr Parker notes:

Because the police can now make complaints for Apprehended Domestic Violence Orders one might assume that low arrest rates were partly 'compensated' by police applications for civil remedies. In other words one could expect that the police resorted to other means of addressing male violence. In fact, the percentage of police applications fell from 7.3 in 1983 to 6 in 1986.

However an evaluation of protection orders in South Australia (The Naffine Report) concluded that

- protection orders are a necessary complement to the criminal law to cater properly for the varying needs of domestic violence victims;
- they are an improvement on the South Australian equivalent of the 'keep the peace order';
- they are generally more effective than injunctions under the Family Law Act 1975 (Cth); and
- the attitude of police toward domestic violence victims is a key factor in improving the availability and effectiveness of protection orders to domestic violence victims.

The Naffine Report points out the vital role the police have in ensuring the effectiveness of protection orders. In fact, the perceptions of victims and of welfare workers very often depends on the attitude that police choose to adopt:

[A] common theme . . . is that whenever the police are committed, enthusiastic and conscientious, victims of domestic violence receive justice.

Dr Hatty's report also examines the role of the courts. Dr Parker says:

The courts do not come well out of the study either. Some officer disenchantment with the Crimes Act amendments stems from the willingness of the courts to excuse victims from giving evidence. As one officer said of the reforms (p 20):

It's not changed the situation a great deal. The courts are still lax — even if you charge one party with assault, and they're compellable, the court doesn't get her to give evidence.

These and many similar comments highlight the importance of law reformers focusing on behavioural change throughout the system; a point made strongly in the Law Reform Commission Report on Domestic Violence (ALRC 30). As Hatty says (p 34):

The awareness of all legal actors must be raised — through education, evaluation and monitoring of practice.

Dr Parker asks what a law reformer can take out of Dr Hatty's report. He says:

There is probably little in the report that would surprise a realistic reformer who knows that the gap between law on the books and the law in action is extremely difficult to close. Nevertheless, seeing the complexities of the gap may be a useful experience. One major question, which Dr Hatty does not tackle, is whether statute law should now attempt to control the operational discretion of police officers to decide on arrest and charge. Whilst the law has traditionally been reluctant to do this, one wonders how bad the situation must become before that reluctance is abandoned. What are the grounds for allowing the police commissioner internally to direct arrest rather than enshrining it in formal law? □

## consumer credit

Who goeth a borrowing  
Goeth a sorrowing

Thomas Tussen, 1570  
'September's Abstract'

The Credit Act 1984 is a legislative document which controls and regulates the provision of credit to Australian consumers. It affects holders of credit cards — Bankcard, Visa — shop credit cards, hire purchase agreements, personal loans, leases and loans from non-bank finance companies. Currently credit issued to Australians stands at around \$24 billion.

The Law Reform Commission of Victoria says the Credit Act is one of the least intelligible pieces of legislation ever drafted. It says the Act is difficult to read and the ideas are presented in a confusing and incoherent way.

The VLRC claims a new Bill it has drafted for the Standing Committee of Consumer Affairs Ministers will overcome these problems as it is written in a simple, straightforward, language and one which is compatible with the precision lawyers have come to expect in commercial legislation.

The draft Bill cuts the present Act by some 40 000 words. It includes new policy and loses none of the precision. It sets out consumers rights in words that can be easily understood and its major policy changes provide more effective protection for consumers.

The Credit Bill 1989 will apply only to consumer credit. It will not cover credit provision to business as the present Credit Act does. It will be a precise method of calculating the cost of the credit to the potential borrower.

Under the Credit Act 1984, it was sufficient to disclose an annual percentage rate of interest. Under this new Bill, a creditor or lender is required to disclose the full cost of credit including both the interest charge and any costs the creditor is allowed to charge separately. The new Bill will also make compliance easier, as the legal basis for credit provision is simpler and more straightforward.

The Credit Bill will not apply to housing finance. That will be governed in some jurisdictions, by a separate Act. □

## roads gone to pot

Its [The common law's] origin . . . is as undiscoverable as the Head of the Nile.

Sir Matthew Hale  
*History of the Common Law*, 1713

Motorists and pedestrians who suffer personal injury caused by the negligent failure to maintain roads and footpaths