

## ABA holds first Council meeting in Darwin

The Australian Bar Association held its first ever Council meeting in Darwin on 19 July 2003.

The ABA Council is comprised of the Executive (the President, Vice President, Treasurer and Secretary) and the presidents of each of the state and territory Bar associations.

To mark the occasion the Annual Bar Dinner was brought forward to Saturday 19 July. To give our interstate visitors a taste of Darwin's history and the great dry season weather the dinner was held under the stars at the old Fannie Bay Gaol. The night was organised by Mr Colin McDonald QC and, typically, had an Indonesian theme. Both events were a great success.

### Advocate's immunity from suit

There is an interesting article about the advocate's immunity from suit in the most recent edition of the *Australian Bar Review* ((2003) 23 ABR 220).

The article is based on a paper presented by Justice Charles to the Commonwealth Law Conference in Melbourne on 16 April 2003.

Justice Charles makes a couple of interesting observations about the House of Lords decision in *Hall v Simons* (2002) 1 AC 615. He points out

that each of the three cases involved in *Hall v Simons* concerned a solicitor settling a matter out of court and did not involve any in-court conduct by an advocate. Further, he notes that the effect of the decision was to retrospectively alter the position of advocates such that they may be liable for claims in negligence for past actions in relation to which they may have been either not insured at all, or inadequately insured.

Justice Charles suggests that if the advocate's immunity from suit is to be removed it should be undertaken by the legislature rather than the courts, so that the changes will take not take effect retrospectively.

The article also discusses two recent decisions, one in New Zealand (*Lai v Chamberlain* unreported, High Court of New Zealand, 19 December 2002) and one in Scotland (*Wright v Paton Farrell*, Court of Session, 27 August 2002) where *Hall v Simons* was not followed.

Justice Charles deals in detail with the four principal reasons for maintaining the advocate's immunity from suit: the

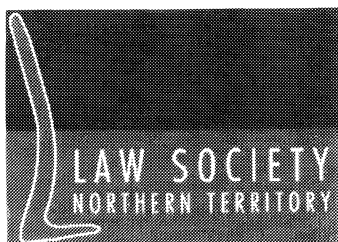


John Reeves QC, President of the NT Bar Association

cab rank rule, the advocate's duty to the court, the general immunity from civil liability for all participants in court proceedings and the problem of collateral attack or re-litigation.

He concludes by suggesting, among other things, that if the advocate's immunity from suit is to be retained it is incumbent upon the Australian Bar and its leadership to ensure that the cab rank rule and other professional standards inextricably linked to the immunity from suit i.e. the advocate's duty to the court, is maintained with "full vigor".<sup>①</sup>

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