



President's Report - 2006

Peter Holloway, President, NPLA

I am pleased to report on a successful past 12 months for the National Product Liability Association.

Executive Committee

In 2006 the Executive Committee consisted of:

- Peter Holloway – President
- Annette Hughes – Vice President
- Melissa Daly – Treasurer
- Derek Begg – Secretary

and committee members:

- Maryjane Crabtree
- George Karalis
- Pam Madafiglio (NSW)
- Ric Morgan
- Andrew Morrison
- Peter O'Donahoo
- Robert Pelletelier
- David Poulton – Immediate Past President
- Cathy Scalzo (leave of absence)
- Belinda Thompson (joint editor of Brief with Annette Hughes)
- Jane Wilhelm (leave of absence)

Brief

As in past years, NPLA has continued with quarterly issues of the periodical magazine, Brief. Articles published in recent editions cover a broad range of topics, including:

- new legislation concerning destruction of documents
- a review of the Food Standards (Australia/New Zealand) regulations concerning food labelling and advertising
- the regulation of litigation funding in Australia
- several articles tracking developments in product liability litigation in the UK and the USA

As always, contributions to Brief from NPLA members are welcome and indeed encouraged.

Belinda Thompson and Annette Hughes have continued as joint editors of Brief and their efforts should not go unrecognised.

Lobbying

This year has been a particularly busy one for lobbying.

One of the more significant efforts this year was the NPLA submission to the Standing Committee of Attorneys-General in response to a discussion paper published in May 2006 concerning 'Litigation Funding in Australia'.

The submission was directed towards how best to regulate litigation funding, both by non-lawyers and lawyers, to achieve an appropriate balance in the civil justice system, outside the insolvency context. One of the main themes of the submission was that legislative controls are required to ensure that the interests of profit-seeking funders do not override those of potentially vulnerable plaintiffs, and that allowing litigation funding without certain checks and balances results in a substantial litigation risk transfer to defendants by encouraging plaintiffs to pursue claims that may be unmeritorious without any risk to themselves, in circumstances where a successful defendant may not necessarily be able to recover its costs. It was submitted that if "trafficking" in litigation is permitted, regulation is required both to ensure that the administration of justice is not undermined and to protect potentially vulnerable plaintiffs.

A copy of the submission was published in Brief.

Particular thanks to Peter O'Donahoo and Susie Downie from Allens Arthur Robinson who drafted this submission.

NPLA has continued to follow the review by the Productivity Commission into the consumer product safety system in Australia and whether a 'general safety provision' should be introduced, and also the Productivity Commission's examination of the area of standards and accreditation.

There is currently a review underway by the Victorian Law Reform Commission into the civil justice system in Victoria. This review, which is being led by Dr Peter Cashman, formerly of Maurice Blackburn Cashman, will have a potentially wide-ranging impact upon product liability litigation in Victoria and beyond. This is something that NPLA will be following closely throughout 2007 and it may be that submissions will be made on particular aspects of the review.

Treasurer

Melissa Daly has performed the function of Treasurer throughout the year, until her recent appointment as a Master of the Supreme Court of Victoria. Upon her appointment, Melissa resigned as member of the executive committee. I wish to record my and NPLA's appreciation for Melissa's efforts over a number of years, both in her capacity as Treasurer and as a member of the executive.

Website

Melissa Daly also performed the function of managing the upkeep of NPLA's website. This role has now been enthusiastically embraced by Andrew Morrison. Andrew has already made his mark and you can see this demonstrated by visiting the website www.npla.com.au.

Secretariat

I would again like to acknowledge the diligent and faithful assistance provided by Athena Tashevskva, the manager of our secretariat at the Australian Industry Group. Athena and her team have again provided high quality support throughout the year.

Seminars

In conjunction with the Australian Insurance Law Association, on 29 August 2006 NPLA conducted a seminar entitled "Product Liability Insurance – Not Always As It First Appears".

Papers were presented by Toby Preston of AON, Olivia Warwick of Minter Ellison and myself. The papers presented were an overview of the typical product liability insurance offerings, including in particular some of the common limitations and exclusions that appear in product liability insurance policies, and an examination of the effect of aggregation of claims provisions in instances of multiple claims or losses.

The seminar was followed by drinks hosted by Minter Ellison.

Membership

One issue that has received considerable discussion at executive committee meetings throughout the year is the membership of NPLA. Traditionally, the membership has in a large part comprised legal practitioners – members of private firms, in-house counsel and members of the Victorian Bar.

This has been supplemented by corporate members, including insurance companies and brokers, risk management advisers and various manufactures, retailers and distributors of products. In recent years, we have seen a decline in the numbers of corporate members and this is a concern to the executive committee. The strongly held view of the committee is that NPLA serves a very useful function not only for legal practitioner members but also, and, it might be said, more particularly, for corporate members. This is demonstrated in a number of ways, such as:

- (a) providing information and updates on current legal topics that impact upon the interests of corporate members. For a very moderate membership fee, members receive a quarterly magazine which is full of highly relevant information and views on matters of topical importance. I would hazard a guess that there are not too many other organisations of this nature that offer this level of service.
- (b) the lobbying function undertaken by NPLA. Often times, corporate members either do not have the resources or the time to prepare submissions on matters that directly impact upon their businesses. By NPLA being able to make submissions on their behalf, both of these issues – time and resources, are met, with the added advantage of a submission being made by an organisation which represents a wide spectrum of interests and views; and
- (c) NPLA also provides an informative and relevant seminar program. Whilst the seminar market is becoming increasingly crowded with the introduction of mandatory CLE programs, the view that the executive committee takes is that there is still a role to be played by NPLA in providing appropriately pitched and targeted seminars.

This is illustrated by today's event, at which we have the privilege of having Professor Greg Rice as our keynote speaker.

Professor Rice is the head of translational proteomics (a form of bio medical research and analysis) at the Baker Medical Research Institute. Professor Rice is also a National Health and Medical Research Council principal research fellow, Director of the Ovarian Cancer Institute, President of the International Federation of Placenta Associations and a member of the Australian Institute of Company Directors.

Professor Rice's research over the past decade has focussed on bio-marker discovery and the development of new medical tests. At the Baker Medical Research Institute his research team is using new mass spectrometry-based proteomic technologies to develop new approaches to diagnose disease. These technologies are affording the opportunity to identify signature elements in biological samples and, for example, identify pre-disposition to disease, implement preventative strategies, make early diagnosis, tailor treatments to reflect an individual's responsiveness and more effectively monitor treatment and disease recurrence.

This is particularly topical given the recent parliamentary debates concerning embryonic stem-cell research.

Over the next year we will continue with our seminar program. If members have any particular issues of interest, this is something that we would always welcome.

Looking forward

I would like again to thank all members of the executive committee for their contribution over the last 12 months. I am very pleased that all members of our Melbourne committee, with the exception of Melissa Daly, are continuing next year.



Peter Holloway
President
National Product Liability Association

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