



PRESIDENT'S REPORT 2003

In November 2002 the Executive Committee of the National Product Liability Association identified a number of internal management and resource concerns which were overdue for attention. In addition to its annual external objectives, the Committee resolved that this year would include a focus on refreshing various long standing internal practices.

In part, this would necessitate revisiting relationships which may have been taken for granted. In part, it was to revitalise the Association to meet the challenge of promoting the objectives of the NPLA Charter and increasing the return on membership loyalty in an increasingly competitive environment. All of this at a time when the focus on tort law reform suggests an interesting time ahead for Australian product liability and those affected by its broad reach.

In 2003 this emphasis on internal reform has resulted in a substantial renewal of the NPLA's association with its secretariat, the Australian Industry Group. This change has been achieved through better use of the AIGroup connection rather than at any increased cost. Further micro-reforms have included a change in the role of the Committee Secretary and much closer attention to members who, for one reason or another, have outstanding subscriptions.

On the broader stage, two editions of Brief, a Melbourne seminar in relation to corporate document management and privilege, an active Sydney calendar and the address to be given by the Deputy Chair of the ACCC at this year's AGM are highlights.

The codification of Australian tort law, in addition to caps on damages, is finally making its presence felt in the southern States. In so doing, it reflects the remarkable way in which the recommendations of the Ipp Committee and the Council of Attorneys General are cutting a swathe through long guarded common law jurisprudence. Whether that process will actually get as far as s52 of the Trade Practices Act remains in the hands of the Senate. For those with a broader interest in Parts V and VA of the TPA, the need for concomitant statutory reform will be a platform for the NPLA in 2004.

In 2003 the Executive Committee consisted of :

Andrew Morrison	- President
David Poulton	- Vice President
Annette Hughes	- Treasurer
George Karalis	- Secretary
Maryjane Crabtree	- Immediate Past President/Editor of Brief

and Committee Members:

Derek Begg	Melissa Daly	Peter Holloway
Pam Madafiglio (NSW)	Peter O'Donahoo	Sally Sheppard
Belinda Thompson	Jane Wilhelm (leave of absence).	

Although elected, neither Ian Taylor nor John Waters were able to participate in the Committee this year.

Pam Madafiglio again assumed the demanding job of coordinating further growth in the New South Wales Committee and chapter. She was aided in that task by, amongst others, Fiona Geer and Greg Williams. As in previous years the Committee's correspondents in WA and Queensland were Gary Berson and Michael Klug.

Secretariat

As a result of a strong discussion at the 2002 AGM, this year the Committee set itself the task of reviewing and, where necessary, recasting its relationship with its Secretariat, the Australian Industry Group. A sub-committee comprising the President and the Treasurer, Annette Hughes, were tasked to explore the benefits and weaknesses of this retainer. This review was conducted with the Association's Executive Officer, Athena Tashevskva of AIGroup. Consideration was also given to potential alternative service providers.

It is fair to say that a number of Committee Members had expressed the view that the services being provided to NPLA by AIGroup had declined over a number of years to represent something less than full value on the contract. Equally, there was a view that the Committee had become complacent about effectively using the Secretariat, often preferring to do the work in-house. In addition, concern was expressed that the level of follow up on non-financial members was insufficient in the circumstances. This was of particular concern if, as a result, financial members were being disadvantaged.

It is therefore very pleasing to report that the airing of these concerns has seen a remarkable change in the way in which the Association and the Secretariat interact. This change is most noticeable in the substantially increased level of energy which the Secretariat is putting into the Association's affairs. In this regard, credit and thanks must go to Athena Tashevskva. Her participation in Committee meetings during the second half of the year has been invaluable, not the least because of her ability to act as a conduit to other organisations interested in product liability issues. In 2004 the Committee will be working with AIGroup to further enhance this renewed relationship.

It is also pleasing to report that in the same period inroads have been made into the finalisation of outstanding membership dues. This is reflected in the financial results and will be a continuing goal in 2004.

As a part of this internal focus, the Committee recognised that the role of Secretary has changed with the times. While the traditional minute taking function has been very important, it is now apparent that an officeholder should bear specific responsibility for the active growth of the Association's membership. Accordingly, in 2004 the Secretary will assume a membership focus in place of more traditional requirements. The official notes will be the province of both AIGroup and each of the Committee members in turn.

Brief

There will be two editions of Brief in 2003, including the usual substantial December edition.

The September 2003 edition contained excellent papers by Jennifer Gowan (Minter Ellison) on waiver of privilege in light of the Court of Appeal decision in *BATAS v Cowell (McCabe)* [2002] VSCA 197 (special

leave to the High Court was refused) and Francesca Bartlett and Belinda Thompspon (Allens) on legal professional privilege, particularly in light of the decisions in the *Daniels* and *Pratt Holdings* cases.

Brief has and will continue to report the various tort law and product liability reforms changes in the Australian jurisdictions.

In September this year, the Editor of Brief, Maryjane Crabtree, indicated that, after nearly a decade of editions, perhaps it was time that someone else assumed the role. Maryjane then convinced two of her colleagues, Annette Hughes and Belinda Thompson, that, between them, they would be "just the ticket". With the benefit of an editing aspirant's primer (an exquisite set of guidelines), Annette and Belinda agreed. The Association welcomes the new joint editors.

Seminars

In 2003, the Executive Committee again looked to its Back to Basics seminar series as an important educative tool for practitioners and executives alike. However, a combination of later than desirable timing and increasingly stiff competition in the seminar market meant that attendances were not as strong as hoped. While the series is still regarded as important, in 2004 it is likely that a smaller number of sessions will be held earlier in the calendar year.

Thanks go to the partners and solicitors at Minter Ellison, Freehills and Middletons for their work in presenting these sessions.

Around this series, the Victorian chapter of the Association arranged two keynote sessions. The first seminar focused on the law in relation to document management and legal professional privilege, as relevantly confirmed or modified by the decisions in the McCabe appeal, ACCC v Daniels and the Pratt Holdings case. As noted above, the presenters' papers were then published in Brief.

The second will be the Keynote Address to follow the Annual General Meeting. This year, the Committee was intent on securing a keynote speaker to provide a high level regulatory focus on the broad range of commercial and legal interests at play in Australian product liability. It is therefore an honour to confirm that Louise Sylvan, Deputy Chair of the Australian Competition & Consumer Commission, accepted this invitation. It will certainly be a privilege to hear what one of Australia's most senior consumer protection guardians has in mind for the ACCC's agenda in 2004.

In 2004 the Committee has identified a need to ensure that more higher level seminars are arranged so as to meet the interest and knowledge needs of members at every level of business and legal practice.

The NSW Chapter Committee had a reasonably productive year holding three seminars on the topics of 'cancerphobia', 'addiction' and 'advertising'. Bret Walker SC spoke at the cancerphobia seminar which was well received by all attendees. The NSW Committee anticipates holding a seminar on genetic engineering early in the new year.

Lobbying Committee

After a flurry of activity in 2002, the Lobbying Committee has been quiet this year. In the main this is attributable to the way in which the various States and Territories have generally adopted the recommendations of the Ipp Report on a wholesale basis. At present the removal of s52 of the TPA

(misleading or deceptive conduct) from the personal injury arena is dependent on the Senate. If that reform fails then, coupled with wider concerns about statutory law reform, the Lobbying Committee will have an issue specific focus in 2004.

Website

With thanks to Melissa Daly, the NPLA website has been resurrected and is now receiving the ongoing attention it requires. In 2004 the Committee has resolved to consider the more effective use of technology for members including the provision of material in one or more electronic forms. The website will figure as part of this process. Go to www.npla.com.au

Retirement and Thanks

There can be no doubt that the NPLA's reputation and reach has long been built on the quality of its periodical publication, Brief. It is essential that this journal be edited consistently in the interests of the NPLA Charter and its members. For nearly a decade, that task has fallen to Maryjane Crabtree. Anyone who reads Brief, and has done so over that period, will appreciate the role which Maryjane has played. Anyone who sees what is involved in the process will appreciate the effort that is required time and time again. On behalf of the Committee, Committees past and the readership, a very special thanks and congratulations to Maryjane is thoroughly deserved.

In 2004, the Association will have a new Secretary. In part this reflects the increased role now being played by the Secretariat. In part it is because that role has been somewhat redefined to give greater emphasis to membership needs. Either way, it means that George Karalis will now be able to serve, as he has done so conscientiously for so long, as a Committee Member without having to take detailed notes. George's service as the Secretary is also deserving of public thanks.

My thanks to those Committee members who were able to participate in the Committee and its activities during 2003. The Committee requires participation and energy, which is something more than interest and attendance. I again encourage all those who are seeking re-election to provide support to an organisation which has an important and worthwhile charter.

Having now completed my term of office, I look forward to serving the Association under different leadership. The privilege of being President is the pleasure of working with an executive that is plainly interested in and committed to product liability in theory and practice. The burden of that role is to ensure that the Association sustains the principles set out in its charter, specifically the need to ensure that members know of and understand product liability developments and issues as they occur. I congratulate my successor and the new office holders. I wish the Committee and the Association the very best for 2004.

Andrew Morrison

President

National Product Liability Association

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