

Summary of February Address

Guest Speaker – Bill Butterell
Dispute

Subject: “The 1998 Waterfront

Like so many of our members, we think we know this jovial fellow who monthly gives us a light hearted and comforting summary of the Club’s financial state. In this case, just how well we don’t know is clearly evident from Bill’s CV and from his presentation. John Young was intentionally brief in his introduction, no doubt well aware that a detailed resume would eat substantially into valuable time available for this enthralling insight. For the same reason I will be equally brief. Suffice to say that Bill’s qualifications in accountancy, trusteeship and liquidation and his career spanning audit, tax, corporate recovery, insolvency and financial advice fitted him well for appointment as senior co-administrator of the Patrick Stevedores Administration, arguably the largest and most complicated Voluntary Administration to that date conducted under Australian corporate law. His many other interests have included various directorships, active political involvement and a Rostrum critic. *(My real appreciation of Bill’s substantial involvement in this final draft of the summary. Ed.)*

Bill commenced by indicating the role of an administrator being a bit like an iceberg – 10% is what you see with 90% under the surface. At the date of Bill’s appointment as Administrator on 7 April 1998 the 10% of knowledge was that the 4 labour supply companies to Patricks were insolvent and the Administrators task was to terminate the employment of 1400 workers. The 90% of unknown knowledge included the application to the Federal Court by the Maritime Union of Australia to prevent Patricks from terminating the employment of workers, which had resulted from a deep throat within Patricks informing the Union of Patricks plans. These plans had included the offshore training of non union workers in Dubai which became public knowledge about December 1997, the subsequent leasing of part of Webb Dock in Melbourne to a company formed by the National Farmers Federation which employed non union workers, and a restructure of the Patrick Group in September 1997. The restructure converted 4 subsidiary stevedore companies into labour supply companies by selling the working assets to other companies in Patricks and basically writing off the consequent debt by reducing capital. Patricks reasons for these actions was borne out of 2 years of frustrated attempts to upgrade work practices on the wharves (hourly container movements were 18 moves per hour compared with best overseas practice of 23-25 movements per hour). Patricks also wanted the management of the wharves to reside in the stevedores not the Union which meant a complete change in entrenched culture.

The Federal Court action evolved into the wider alleged conspiracy action when the Union became aware of the various actions taken by Patrick as information came to light through the various Court hearings and the Administrators investigation into the Patrick Group.

From the date of Bill's appointment he was enjoined against taking any action to terminate the employees until Justice North delivered his judgement at 8.00pm on April 21. That judgement enjoined the Administrators from terminating or employing new workers and treated the Labour Supply Agreements (terminated by Patricks) as being on foot and exclusive to Patricks, (previously they were non exclusive). At 9.30pm that night an immediate application was lodged with the Full Court of the Federal Court to appeal the decision. The Full Court of the Federal Court handed down its decision on 23 April basically upholding North's Orders. At 10.30pm that night an application was made to the High Court to stay the Orders and appeal the Judgement. All 7 Justices of the High Court heard the application to Appeal and the matter itself concurrently. The High Court decision was handed down on May 4 which re-established the primacy of the Corporations Law and the right of the Administrators to take commercial decisions.

First decision of the Administrators was to trade or not to trade. Because during the Court hearings the Union had given the Court an undertaking that the employees would not claim that the Administrators became personally liable for wages and other employee entitlements, it was determined that \$3.65 million would be required to trade the companies for 10 weeks. The Union declined the offer to fund, Patricks ultimately agreed and trading commenced 7 May.

Bill painted a picture of what was happening on the wharves during this time. An ugly sight with Australian pitted against Australian. Locked out wharfies on one side of the fence, security staff in balaclavas with dogs on the other side. Non union workers unloading ships with containers building up because the Union picket lines would not allow goods to be moved except for perishables. Patricks wharves were at a standstill around Australia. As Patricks had 50% of the stevedoring business half of all the docks in the country were not working. Bill explained his difficulty in initially getting the Court to accept his independence, that he was not a stooge of Patricks or of the Government. Eventually it did. The Union was more difficult because of Bill's Liberal Party background. Seeking to resolve the impasse Bill contacted Graham Richardson who Bill knew was in favour of waterfront reform. After a secret meeting "the fixer" agreed to speak with Coombs and Combet and paved the way for more congenial dealings.

In the High Court decision it contemplated the likelihood of a successful action for damages as a consequence of a claim of conspiracy. If such an action would be successful the "damages would be enormous". In Bill's eyes this meant that either Patricks or the Union as the loser could be bankrupted. The focus then shifted to compromise. As Patricks were funding the trading operations there was a lever for them to begin talks. The Union also had reasons to commence negotiations. Initially these talks failed. On 15 May Corrigan stated that he was walking away as discussions were not going anywhere. Pressure was brought to bear by various parties, and a sense of survival prevailed and talks recommenced. Eventually on 25 June a Framework Agreement was signed which provided for redundancies funded by the Government, a restructured waterfront which incorporated the

Government's Benchmark reforms, and a cessation of all actions between the parties.

Bill then summarised the Winners and Losers in Patricks, the Union, the Banks, the Government and the non-union workers. Basically a win/win for all parties, although each did not achieve all they wanted. The only lone loser was the non-unionised workforce which did not get paid all their entitlements. Bill indicated that the Patrick annual report for 2001 stated that in all Australian ports the Government benchmark of 25 crane moves per hour were being exceeded, thus achieving moves on a par with worlds best practice. Toll made a takeover offer for Patricks in 2006 offering \$24-\$25 per share compared with \$1.98 comparable value in May 1998 .He referred to the Asciano tragedy in the hive off from Toll.

Patricks competitor P&O also restructured its workforce along similar lines and consequently also improved its crane moves per hour. The difficulties and pain experienced by various parties during these times resulted in improved work practices which has continued to benefit Australian competitiveness in a global environment.

Clyde Dickens admirably thanked Bill on our behalf. Another excellent member presentation thoroughly enjoyed by all.