

Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Bill 2015

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**Schedule 1 — The WA Bell
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Schedule 2 — The Bell litigation

Defined terms

Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

**Bell Group Companies (Finalisation of Matters
and Distribution of Proceeds) Bill 2015**

A Bill for

**An Act to provide a legislative framework for the dissolution, and
administration of the property, of The Bell Group Ltd
ACN 008 666 993 (In Liquidation) and certain of its subsidiaries and
for related purposes.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Act 2015*.

2. Commencement

(1) This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) section 41 — on the day that is 14 days after the day on which the Fund is closed by section 40;
- (c) sections 48 to 50 — as set out in subsection (2);
- (d) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

(2) Sections 48 to 50 are deemed to have come into operation at 12 noon on the day before the day on which the Bill for this Act was introduced into the Legislative Assembly.

3. Terms used

(1) In this Act, unless the contrary intention appears —

ADI means an authorised deposit-taking institution as defined in the *Banking Act 1959* (Commonwealth) section 5(1);

Administrator means the person holding the office of Administrator of the WA Bell Companies established by section 8;

agreement means an agreement, arrangement or understanding —

- (a) whether formal or informal or partly formal and partly informal; and
- (b) whether written or oral or partly written and partly oral; and

1 (c) whether or not having legal or equitable force; and

2 (d) whether or not based on legal or equitable rights;

3 **ASIC** means the Australian Securities and Investments
4 Commission;

5 **Authority** means the WA Bell Companies Administrator
6 Authority established by section 7;

7 **Bell Group Subsidiary Indemnity Agreements** means —

8 (a) the Group A Companies Indemnity Agreement dated
9 4 July 1997 between Antony Leslie John Woodings as
10 liquidator of BGF, BGF, the Commonwealth, LDTC
11 (BGF), BGNV and ICWA; and

12 (b) the Deed of Indemnity dated 4 July 1997 between
13 Antony Leslie John Woodings, BGF, the Group A
14 Companies (as described in the Deed) and Antony
15 Leslie John Woodings as liquidator of each of the
16 Group A Companies; and

17 (c) the Group B Companies Indemnity Agreement dated
18 4 July 1997 between Geoffrey Frank Totterdell as
19 liquidator of TBGL, TBGL, the Commonwealth, LDTC
20 (TBGL), LDTC (BGF), BGNV and ICWA; and

21 (d) the Deed of Indemnity dated 4 July 1997 between
22 Geoffrey Frank Totterdell, TBGL, the Group B
23 Companies (as described in the Deed) and Geoffrey
24 Frank Totterdell as liquidator of each of the Group B
25 Companies;

26 **Bell litigation** means the litigation listed in Schedule 2;

27 **BGF** means Bell Group Finance Pty Ltd ACN 009 165 182
28 (In Liquidation);

29 **BGF AFI** means the Agreement for Indemnification dated
30 7 April 1995 between Antony Leslie John Woodings as
31 liquidator of BGF, the Commonwealth, LDTC (BGF), BGNV
32 and ICWA, as amended by agreements dated 5 March 1996,
33 4 July 1997, 1 October 1999 and 22 May 2012;

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1 **BGF Trust Deed** means the Trust Deed dated 25 July 1998
2 between BGF, TBGL, LDTC and Drayton Capital Pty Limited
3 ACN 009 238 377, as amended by an undated supplemental
4 deed between BGF, TBGL and LDTC;

5 **BGNV** means Bell Group NV ARBN 073 576 502
6 (In Liquidation);

7 **BGNV Indemnity** means the agreement made by
8 correspondence between ICWA and Garry Trevor as Australian
9 liquidator of BGNV in or about July 2001, under which ICWA
10 agreed to indemnify and advance funds to BGNV or Garry
11 Trevor as Australian liquidator of BGNV, to enable him to
12 defend claims made against BGNV in Supreme Court of
13 Western Australia proceeding CIV 2061 of 1996;

14 **BGNV Trust Deeds** means —

- 15 (a) the Trust Deed dated 20 December 1985 between
16 BGNV, TBGL and LDTC, as amended by the
17 Supplemental Trust Deed dated 6 February 1986; and
18 (b) the Trust Deed dated 7 May 1987 between BGNV,
19 TBGL and LDTC, as amended by the First
20 Supplemental Trust Deed dated 5 December 1999; and
21 (c) the Trust Deed dated 14 July 1987 between BGNV,
22 TBGL and LDTC;

23 **BGUK Liquidator's Indemnity Agreements** means —

- 24 (a) the Deed of Indemnity dated 1996 between BGF,
25 Antony Leslie John Woodings and Jacqueline Barbara
26 Stephenson; and
27 (b) the Indemnity Agreement dated 31 May 1996 between
28 Antony Leslie John Woodings as liquidator of BGF,
29 BGF, the Commonwealth, LDTC (BGF), BGNV and
30 ICWA;

31 **body corporate** includes a WA Bell Company;

32 **books** has the meaning given in the Corporations Act section 9;

33 **company** means a company registered under the Corporations
34 Act;

1 **corporation** has the meaning given in the Corporations Act
2 section 57A;

3 **Corporations Act** means the *Corporations Act 2001*
4 (Commonwealth);

5 **Court** means the Supreme Court;

6 **creditor**, in relation to a WA Bell Company, means a person in
7 relation to whom, immediately before the transfer day, the
8 WA Bell Company had a liability and includes a beneficiary of
9 any trust of, or with respect to, a liability;

10 **daily newspaper** has the meaning given in the Corporations Act
11 section 9;

12 **financial records** has the meaning given in the Corporations
13 Act section 9;

14 **Fund** means the WA Bell Companies Administrator Authority
15 Fund established by section 16;

16 **Genra Indemnity** means the agreement made by
17 correspondence between ICWA and Antony Leslie John
18 Woodings as liquidator of TBGL and BGF in or about
19 July 2012, in respect of claims, liability and obligations incurred
20 by Antony Leslie John Woodings as liquidator of TBGL and
21 BGF under the Deed of Indemnity and Funding Agreement
22 between Antony Leslie John Woodings as liquidator of TBGL
23 and BGF, and William Antony Batty as receiver of Genra
24 Limited (formerly Royal Trust Bank);

25 **ICWA** means the body continued by the *Insurance Commission*
26 *of Western Australia Act 1986* section 4 under the corporate
27 name “Insurance Commission of Western Australia”;

28 **Indemnity and Distribution Agreement** means the Indemnity
29 and Distribution Agreement dated 29 September 1999 between
30 the Commonwealth and ICWA;

31 **LDTC** means The Law Debenture Trust Corporation plc;

32 **LDTC (BGF)** means LDTC in its capacity as trustee under the
33 BGF Trust Deed;

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1 **LDTC (TBGL)** means LDTC in its capacity as trustee under the
2 TBGL Trust Deed;

3 **liability**, of a person, means any debt, expense, duty, obligation
4 or other liability of, or claim against, the person —

5 (a) whether actual, contingent, prospective, liquidated or
6 unliquidated; or

7 (b) whether owed alone or owed jointly or jointly and
8 severally with any other person;

9 **liquidator** includes a provisional liquidator appointed to, and
10 holding office with respect to, a WA Bell Company
11 immediately before the transfer day;

12 **Liquidators' Indemnity Agreement** means the Liquidators'
13 Indemnity Agreement dated 7 October 1999 between Geoffrey
14 Frank Totterdell as liquidator of TBGL and Antony Leslie John
15 Woodings as liquidator of BGF;

16 **Main Proceeding Indemnity Agreements** means —

17 (a) the LDTC Deed of Indemnity dated 2 June 2000
18 between ICWA, LDTC, Antony Leslie John Woodings
19 as liquidator of TBGL and BGF, and Geoffrey Frank
20 Totterdell as liquidator of TBGL; and

21 (b) the Deed of Indemnity dated 11 July 2011 between
22 ICWA, LDTC and Antony Leslie John Woodings as
23 liquidator of TBGL and BGF, as amended by an
24 Amendment Deed dated June 2013 between ICWA,
25 LDTC and Antony Leslie John Woodings as liquidator
26 of TBGL and BGF;

27 **officer**, of a body corporate, has the meaning given in the
28 Corporations Act section 9 and includes any person who has at
29 any time been an officer of the body corporate;

30 **property** means property of any kind (including any chose in
31 action or goodwill and any right, interest or claim) whether —

32 (a) tangible, intangible, real or personal; or

33 (b) arising from, accruing under, created or evidenced by, or
34 the subject of, an instrument or otherwise; or

- 1 (c) actual, contingent, prospective, liquidated or
2 unliquidated;
- 3 ***PTICA*** means the Agreement for Indemnification and Post
4 Termination Inter-Creditor Agreement dated
5 23 September 1999 between the Commonwealth, ICWA, Garry
6 Trevor as Australian liquidator of BGNV and BGNV, as
7 amended by an agreement dated 26 June 2000;
- 8 ***records*** includes books, financial records, financial statements,
9 minutes, registers, deeds, writings, documents and other sources
10 of information compiled, recorded or stored in written form or
11 on microfilm, or by electronic process, or in any other manner
12 or by any other means;
- 13 ***related body corporate***, in relation to a body corporate, has the
14 meaning given in the Corporations Act section 9;
- 15 ***right*** means any right, power, privilege or immunity whether
16 actual, contingent or prospective;
- 17 ***subsidiary***, in relation to a body corporate, has the meaning
18 given in the Corporations Act section 9;
- 19 ***TBGL*** means The Bell Group Ltd ACN 008 666 993 (In
20 Liquidation);
- 21 ***TBGL AFI*** means the Agreement for Indemnification dated
22 6 April 1995 between Geoffrey Frank Totterdell as liquidator of
23 TBGL, the Commonwealth, LDTC (TBGL), LDTC (BGF),
24 BGNV and ICWA, as amended by agreements dated
25 16 February 1996, 4 July 1997, 1 October 1999 and
26 22 May 2012;
- 27 ***TBGL Inter-Creditor Agreement*** means the
28 TBGL Inter-Creditor Agreement dated 21 March 1995 between
29 the Commonwealth, ICWA, LDTC and BGNV;
- 30 ***TBGL Trust Deed*** means the Trust Deed dated 25 July 1998
31 between TBGL, LDTC and Drayton Capital Pty Limited
32 ACN 009 238 377, as amended by an undated supplemental
33 deed between TBGL and LDTC;

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1 **transfer day** means the day on which Part 3 comes into
2 operation;

3 **Trust Deed Indemnity Agreements** means —

4 (a) the Deed of Indemnity in relation to Amendment of
5 Trust Deeds for TBGL and BGF Bonds dated
6 14 December 1998 between Geoffrey Frank Totterdell
7 as liquidator of TBGL, LDTC (TBGL), LDTC (BGF)
8 and ICWA; and

9 (b) the Deed of Indemnity in relation to Amendment of
10 Trust Deeds for TBGL and BGF Bonds dated
11 14 December 1998 between Antony Leslie John
12 Woodings as liquidator of BGF, LDTC (TBGL), LDTC
13 (BGF) and ICWA;

14 **WA Bell Company** means a corporation that existed at any time
15 before 12 noon on the transfer day (including a corporation that
16 was dissolved or deregistered before that day) and that is listed
17 in Schedule 1;

18 **Western Interstate** means Western Interstate Pty Ltd
19 ACN 000 224 395 (In Provisional Liquidation);

20 **Western Interstate Assignment Agreement** means the
21 Agreement dated 13 March 1996 between Geoffrey Frank
22 Totterdell as liquidator of Bell Bros. Pty Ltd ACN 008 672 375
23 (In Liquidation), Wanstead Pty Ltd ACN 008 775 120 (In
24 Liquidation) and Wigmores Tractors Pty Ltd ACN 008 679 221,
25 Antony Leslie John Woodings as provisional liquidator of
26 Western Interstate and as liquidator of BGF, the
27 Commonwealth, LDTC (BGF), BGNV and ICWA, as amended
28 by an agreement dated 4 July 1997;

29 **Western Interstate Indemnity Agreement** means the Agreement
30 dated 6 March 1996 between the Commonwealth, LDTC
31 (BGF), BGNV, ICWA and Antony Leslie John Woodings as
32 provisional liquidator of Western Interstate;

33 **Western Interstate Inter-Creditor Agreement** means the
34 Agreement dated 6 February 1996 made between the
35 Commonwealth, ICWA, LDTC and BGNV.

1 (2) A reference in this Act to a WA Bell Company includes a
2 reference to a body that was a WA Bell Company immediately
3 before 12 noon on the transfer day.

4 (3) A reference in this Act to a liquidator of a WA Bell Company
5 is, unless the contrary intention appears, a reference to a person
6 who was a liquidator of a WA Bell Company immediately
7 before the dissolution of that company by section 27.

8 **4. Objects of this Act**

9 The objects of this Act are —

10 (a) to provide a mechanism to resolve, without litigation,
11 disputes which have arisen in relation to the distribution
12 of funds (the *Bell litigation funds*) received by the
13 liquidator of TBGL and certain of its subsidiaries (the
14 *Bell group of companies*) as a consequence of the Bell
15 litigation and the settlement of it in 2013;

16 (b) to provide a form of external administration of WA Bell
17 Companies and require that it be carried out only in
18 accordance with the provisions of this Act;

19 (c) to provide appropriate compensation to the creditors
20 who funded the Bell litigation taking into account the
21 funding provided and the associated risks assumed by
22 them;

23 (d) to reflect the circumstance that without the funding
24 mentioned in paragraph (c), the Bell litigation funds
25 would not exist and the creditors of the Bell group of
26 companies would have received no (or only nominal)
27 dividends in the liquidation of those companies;

28 (e) to make reasonable provision for the distribution of the
29 property of the WA Bell Companies having regard to
30 the uncertainties existing as to the nature and extent of
31 that property;

32 (f) to make reasonable provision for the satisfaction of
33 liabilities owed to creditors having regard to the

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- 1 uncertainties existing as to the nature and extent of those
2 liabilities;
- 3 (g) to distribute the Bell litigation funds generally in
4 accordance with the intentions of the liquidator and the
5 creditors who funded the Bell litigation as set out in
6 agreements made before the enactment of this Act;
- 7 (h) to avoid further litigation that will waste the resources of
8 the State and other persons and consume the Bell
9 litigation funds.

10 **5. Crown bound**

- 11 (1) This Act binds the Crown in right of the State and, so far as the
12 legislative power of the State permits, in all its other capacities.
- 13 (2) Nothing in this Act makes the Crown in any capacity liable to
14 be prosecuted for an offence.

15 **6. Extraterritorial operation**

16 It is the intention of the Parliament that this Act should, so far as
17 possible, operate to the full extent of the extraterritorial
18 legislative power of the State.

1 **Part 2 — Authority and Fund**

2 **Division 1 — WA Bell Companies Administrator Authority**

3 **7. Authority established**

4 (1) The WA Bell Companies Administrator Authority is
5 established.

6 (2) The Authority is a body corporate with perpetual succession.

7 (3) The Authority has, both within and outside the State, the legal
8 capacity of an individual.

9 (4) The Authority has an official seal and may sue and be sued in its
10 corporate name.

11 (5) The Authority is to be governed by the Administrator.

12 (6) The Authority has the status, immunities and privileges of the
13 State.

14 (7) The Authority is not an organisation for the purposes of the
15 *Public Sector Management Act 1994*.

16 **8. Administrator appointed**

17 (1) An office called the Administrator of the WA Bell Companies is
18 established.

19 (2) The office is not an office in the Public Service.

20 (3) The office is not an organisation for the purposes of the *Public*
21 *Sector Management Act 1994*.

22 (4) The Minister may appoint a person to the office.

23 (5) Subject to this Act, the Administrator holds office for the term
24 specified in the instrument of appointment and is eligible for
25 reappointment.

1 (6) The Minister may determine the remuneration that the
2 Administrator is entitled to receive and the other terms and
3 conditions of appointment that apply to the Administrator.

4 (7) The Administrator may resign from office by notice in writing
5 given to the Minister.

6 **9. Functions of the Authority**

7 (1) The functions of the Authority are —

8 (a) to collect, and realise or otherwise deal with, the
9 property of the WA Bell Companies in accordance with
10 the objects of this Act; and

11 (b) to administer, invest and manage the Fund; and

12 (c) to perform any other functions that are conferred on it
13 by this Act.

14 (2) The Authority may perform any of its functions in the State or
15 elsewhere.

16 **10. Powers of the Authority**

17 (1) The Authority may do all things necessary to perform its
18 functions.

19 (2) Without limiting subsection (1), the Authority may, both within
20 and outside the State —

21 (a) acquire, hold, manage or dispose of real or personal
22 property;

23 (b) enter into a contract or other arrangement;

24 (c) employ, or engage under a contract for services, any
25 persons that are necessary to assist it to perform its
26 functions;

27 (d) exercise any power that a liquidator of a company can
28 exercise under the Corporations Act section 477;

- 1 (e) exercise any other power conferred on the Authority by
2 or under the law of the State or the law of a place other
3 than the State.
- 4 (3) Nothing in this section limits section 7(3) or any other power of
5 the Authority under this Act or any other written law.
- 6 **11. Use of government staff**
- 7 (1) The Authority may, by arrangement with the relevant employer,
8 make use (either on a full-time or part-time basis) of the
9 services of any officer or employee —
- 10 (a) in the Public Service; or
11 (b) in a State agency or instrumentality; or
12 (c) otherwise in the service of the State.
- 13 (2) The Authority may, by arrangement, make use of the facilities
14 of —
- 15 (a) a department of the Public Service; or
16 (b) a State agency or instrumentality.
- 17 (3) An arrangement under subsection (1) or (2) is to be made on
18 terms agreed to by the parties.
- 19 **12. Delegation**
- 20 (1) The Authority may, by instrument in writing, delegate to any
21 person any of the powers or duties of the Authority under this
22 Act or any other written law, other than this power of
23 delegation.
- 24 (2) A person exercising a power or performing a duty that has been
25 delegated to the person under this section is taken to do so in
26 accordance with the terms of the delegation, unless the contrary
27 is shown.
- 28 (3) Nothing in this section limits the ability of the Authority to
29 perform a function through an employee or agent.

1 **13. Execution of documents by the Authority**

- 2 (1) A document is duly executed by the Authority if —
- 3 (a) the official seal of the Authority is affixed to it in the
4 presence of the Administrator and the Administrator
5 signs the document to attest that it was so affixed; or
- 6 (b) it is signed on behalf of the Authority by —
- 7 (i) the Administrator; or
- 8 (ii) a person authorised by the Authority to sign the
9 document on its behalf.
- 10 (2) The Authority may, by writing under its seal, authorise an
11 employee of the Authority or other person to sign documents on
12 its behalf, either generally or subject to any restrictions that are
13 specified in the authorisation.
- 14 (3) A document purporting to be executed in accordance with this
15 section must be presumed to be duly executed, unless the
16 contrary is shown.
- 17 (4) If a document is produced bearing a seal purporting to be the
18 official seal of the Authority, it must be presumed that the seal
19 is the official seal of the Authority, unless the contrary is shown.

20 **14. Annual and final reports**

- 21 (1) The *Financial Management Act 2006* Part 5 applies in relation
22 to the Authority as if it were an agency and the Administrator
23 were its accountable authority.
- 24 (2) However, that Part does not apply so as to require reporting on
25 key performance indicators.

26 **15. Special reports**

- 27 (1) The Minister may, by order in writing, require the Administrator
28 to prepare a report for the Minister that contains —
- 29 (a) a report on the operations of the Authority over the
30 period specified in the order; and

- 1 (b) financial statements for the period specified in the order,
2 prepared in accordance with the *Financial Management*
3 *Act 2006* section 62; and
4 (c) any other information required by the Minister in the
5 order.
- 6 (2) The Minister may, in the order, require that the report be
7 submitted to the Auditor General for audit.
- 8 (3) The Administrator must submit the report to the Minister within
9 90 days after the day on which the order is made, or any
10 extension of that period granted by the Minister.
- 11 (4) If the order required that the report be submitted to the Auditor
12 General, the Administrator must submit, with the report, a copy
13 of the opinion of the Auditor General prepared and signed under
14 the *Auditor General Act 2006* section 15.

15 **Division 2 — The WA Bell Companies Administrator**
16 **Authority Fund**

17 **16. Establishment of Fund**

- 18 (1) The WA Bell Companies Administrator Authority Fund is
19 established.
- 20 (2) The Fund is to be administered by the Authority.
- 21 (3) The following must be credited to the Fund —
22 (a) all money transferred to the Authority under Part 3 or
23 realised out of other property transferred to, or vested in,
24 the Authority under that Part;
25 (b) money received from the investment of the Fund;
26 (c) any advances made to the Authority under the *Financial*
27 *Management Act 2006* section 28.
- 28 (4) The following are to be paid out of the Fund —
29 (a) amounts recoverable from the Authority as a
30 consequence of an advance referred to in
31 subsection (3)(c);

- 1 (b) expenses payable out of it under section 18;
2 (c) amounts payable out of it under section 38.
3 (5) All money credited to the Fund must be paid into an account
4 established at a bank as defined in the *Financial Management*
5 *Act 2006* section 3.

6 **17. Investment of Fund**

7 The Authority may invest any money standing to the credit of
8 the Fund in the same manner as money in the Public Bank
9 Account may be invested under the *Financial Management*
10 *Act 2006* section 37.

11 **18. Administration expenses**

- 12 (1) The following expenses, as determined by the Authority, are
13 payable out of the Fund —
14 (a) expenses of, and incidental to, the administration of this
15 Act by the Authority;
16 (b) any remuneration or expenses payable to, or in respect
17 of, the Administrator;
18 (c) expenses reasonably incurred by a liquidator of a
19 WA Bell Company in complying with an obligation
20 under this Act.
21 (2) Expenses payable under this section are to be paid out of the
22 Fund before all other payments.

23 **19. Accounting for losses**

- 24 (1) If the Fund incurs any loss because of any fraud, dishonesty,
25 negligence or wilful failure to comply with this Act by the
26 Administrator, the Administrator is liable for the loss.
27 (2) The Administrator is not liable for any loss incurred by the Fund
28 that is not a loss covered by subsection (1) but he or she must
29 provide details of the loss in a written report to the Minister as
30 soon as practicable after becoming aware of it.

Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Bill 2015

Part 2 Authority and Fund

Division 3 Assumptions

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- 1 employee, agent or delegate of the Authority has been properly
2 appointed.
- 3 (3) A person may assume that anyone who is, or may be assumed to
4 be, an employee or agent of the Authority who has authority to
5 issue a document, or a certified copy of a document, on behalf
6 of the Authority also has authority to warrant that it is genuine
7 or is a true copy.
- 8 (4) A person may assume that the Administrator and any employee,
9 agent or delegate of the Authority properly performs their duties
10 to the Authority.

Part 3 — WA Bell Companies

Division 1 — Transfer of property

22. Transfer of property

(1) At the beginning of the transfer day the following are transferred to, and vested in, the Authority by force of this section —

(a) all property vested in a WA Bell Company, including property held by it on trust for any person;

(b) all property held by any person (including a liquidator of a WA Bell Company) on behalf of or on trust for a WA Bell Company;

(c) all property held by a person in the capacity of liquidator of a WA Bell Company on trust for any person other than the WA Bell Company.

(2) This section applies to property whether situated in or outside the State.

(3) A transfer takes effect despite any restriction arising under contract, written law, the common law or in any other way.

(4) All property transferred to the Authority under this section vests absolutely in the Authority freed from any encumbrance, trust, equity or interest (of any kind and however arising) to which it was subject immediately before so vesting.

(5) The Authority has all the powers of an owner over property vested in it under this section.

(6) A certificate signed by the Administrator certifying that property specified in the certificate has vested in the Authority under this section is conclusive evidence that the property so vested on the transfer day.

1 (7) The Administrator may allow a person whom the Administrator
2 is satisfied has a proper interest in a certificate under
3 subsection (6) to have access to it.

4 (8) If it appears to the Administrator that it is likely that a certificate
5 will be required to be given to a relevant official under
6 section 28, the Administrator must consult with that official (or
7 each relevant official if there is more than one) as to its form
8 and content.

9 (9) The Administrator may correct any error in a certificate under
10 subsection (6) and, for that purpose, may issue a replacement
11 certificate.

12 **23. Notice to property holder**

13 (1) The Administrator may give notice to any person who the
14 Administrator believes may hold, or may at any time have held,
15 property that, before the transfer day, was property of a kind
16 referred to in section 22(1).

17 (2) A notice under subsection (1) may require the person to whom it
18 is given to do one or more of the following —

19 (a) provide access to all records of that person relating to
20 the property;

21 (b) account for all dealings with the property by or on
22 behalf of that person;

23 (c) do all things necessary to deliver to the Authority the
24 property specified in the notice.

25 Note: Under section 52(1) a failure to comply with a requirement may be an
26 offence.

27 **24. Steps to be taken to perfect transfer**

28 If a transfer and vesting of property under section 22 is not, to
29 any extent, fully effective (whether because a matter is
30 governed by a law other than the law of the State, or for any
31 other reason), the Minister and the Authority are each
32 empowered and required to take all practicable steps for the

1 purpose of securing the effect sought to be achieved by that
2 section.

3 **Division 2 — Treatment of liabilities**

4 **25. Treatment of liabilities**

- 5 (1) If, immediately before the transfer day, a liability of a WA Bell
6 Company was admissible to proof against the company in the
7 winding up of the company under the Corporations Act Part 5.6,
8 that liability may be proved in accordance with Part 4
9 Division 1 of this Act.
- 10 (2) Subsection (3) applies to liabilities that have been incurred by a
11 liquidator of a WA Bell Company in preserving, realising or
12 getting in property of the company, in carrying on the
13 company's business or in the conduct of the liquidation that
14 have not been paid out of the assets of the company before the
15 transfer day.
- 16 (3) The liabilities may be proved by the liquidator (or by a creditor
17 of the liquidator if they have not been paid or satisfied) in
18 accordance with Part 4 Division 1.
- 19 (4) If, by section 22, property is freed from an encumbrance, trust,
20 equity or interest on being transferred to, and vested in, the
21 Authority, that encumbrance, trust, equity or interest may be
22 proved as a liability in accordance with Part 4 Division 1.
- 23 (5) No action, claim or proceeding of any nature arising out of, or
24 relating to, a liability that may be proved in accordance with
25 Part 4 Division 1 may, otherwise than in accordance with that
26 Part, be made or maintained against —
- 27 (a) the Authority; or
28 (b) the Fund; or
29 (c) a WA Bell Company; or
30 (d) a liquidator of a WA Bell Company; or
31 (e) the Administrator; or

1 (f) the State.

2 **Division 3 — Voiding of Agreements**

3 **26. Certain agreements voided**

4 (1) Each of the following is, and is taken to have always been,
5 void —

6 (a) the Bell Group Subsidiary Indemnity Agreements;

7 (b) the BGF AFI;

8 (c) the BGNV Indemnity;

9 (d) the BGUK Liquidator's Indemnity Agreement;

10 (e) the Genra Indemnity;

11 (f) the Indemnity and Distribution Agreement;

12 (g) the Liquidators' Indemnity Agreement;

13 (h) the Main Proceeding Indemnity Agreements;

14 (i) the PTICA;

15 (j) the TBGL AFI;

16 (k) the TBGL Inter-Creditor Agreement;

17 (l) the Trust Deed Indemnity Agreements;

18 (m) the Western Interstate Assignment Agreement;

19 (n) the Western Interstate Indemnity Agreement;

20 (o) the Western Interstate Inter-Creditor Agreement.

21 (2) Subsection (3) applies if an agreement made void by
22 subsection (1) provided, according to its terms, for the
23 repayment in specified circumstances of an amount of money
24 paid to or for the benefit of a liquidator of a WA Bell Company
25 in connection with the conduct of the liquidation or the funding
26 of the Bell litigation.

27 (3) The claim that a person, according to the terms of the
28 agreement, had to be repaid, may be proved in accordance with
29 Part 4 Division 1.

1 **Division 4 — Dissolution of WA Bell Companies**

2 **27. Dissolution of companies**

- 3 (1) At 12 noon on the transfer day, each WA Bell Company is
4 dissolved by force of this section.
- 5 (2) On dissolution, a WA Bell Company ceases to exist.
- 6 (3) If, immediately before its dissolution under this section, a
7 WA Bell Company was a party to any proceeding pending or
8 existing in any court or tribunal or before any person acting
9 judicially, then, on and after that dissolution, the Authority is
10 substituted as a party and has the same rights in the proceeding
11 as the WA Bell Company had.
- 12 (4) Subsection (5) applies to any agreement or instrument (other
13 than the BGF Trust Deed, the BGNV Trust Deeds and the
14 TBGL Trust Deed) in effect immediately before the dissolution
15 of a WA Bell Company under this section —
- 16 (a) to which the company was a party; or
17 (b) that was given to, or in favour of, the company; or
18 (c) that refers to the company; or
19 (d) that refers to the liquidator of the company, but to which
20 the liquidator is not a party.
- 21 (5) The agreement or instrument continues to have effect according
22 to its tenor on and after the dissolution as if a reference in it
23 to —
- 24 (a) the WA Bell Company were a reference to the
25 Authority; and
26 (b) the liquidator were a reference to the Authority.

Division 5 — Miscellaneous

28. Registration of documents to show effect of this Part

(1) In this section —

relevant official means —

- (a) the Registrar of Titles; or
- (b) the Registrar of Deeds and Transfers; or
- (c) any other person authorised by a written law to record and give effect to the registration of documents relating to transactions affecting relevant property; or
- (d) any other person required to record a transfer of relevant property or the affecting of a liability relating to relevant property, including a company secretary or other person maintaining a register required under the Corporations Act;

relevant property means property of a kind transferred to, and vested in, the Authority under this Part, whether it is an estate or interest in land or any other property.

(2) The Administrator may give a copy of a certificate under section 22(6) to a relevant official.

(3) Each relevant official to whom a certificate is given under subsection (2) is to take notice of this Part and of the certificate and is to record and register in the appropriate manner the documents necessary to show the effect of this Part as evidenced by the certificate.

**Part 4 — Completion of winding up of
WA Bell Companies**

Division 1 — Information gathering

29. Requirements on liquidator

- (1) A liquidator of a WA Bell Company must, within one month after the transfer day, give to the Authority an account and statement of a kind that the liquidator would have been required to lodge with ASIC under the Corporations Act section 539 if —
- (a) this Act had not been passed; and
 - (b) the liquidator had ceased to act as liquidator on the transfer day.
- (2) The Authority may cause the account and statement to be audited by a registered company auditor (as defined in the Corporations Act section 9), who must prepare a report on the account and the statement (if any).
- (3) For the purposes of the audit, the liquidator must give the auditor any books and information that the auditor requires.
- (4) The auditor has qualified privilege in relation to a report prepared by the auditor under subsection (2) to the same extent as the auditor would have if the report were one prepared under the Corporations Act section 539.
- (5) The costs of an audit under subsection (2) —
- (a) must be fixed by the Authority; and
 - (b) form part of the expenses of the administration of this Act.
- (6) If the Authority causes an account, or an account and statement, to be audited under subsection (2), the Authority must give the liquidator a copy of the report.

- 1 (7) A liquidator of a WA Bell Company must, within one month
2 after the transfer day, give to, or as directed by, the Authority all
3 books of the WA Bell Company and of the liquidator that are
4 relevant to the affairs of the company as at immediately before
5 the transfer day.
- 6 (8) The Authority may at any time, by notice given to a liquidator
7 of a WA Bell Company, require the liquidator to prepare and
8 give to it a report about the following as at immediately before
9 the transfer day —
- 10 (a) all property vested in the company, including property
11 held by it on trust for any person;
- 12 (b) all property held by any person (including the liquidator)
13 on behalf of or on trust for the company;
- 14 (c) all property held by the liquidator, in the capacity of
15 liquidator of the company, on trust for any person other
16 than the company;
- 17 (d) any liability of the company.
- 18 (9) The report must be in the form, and contain the information,
19 specified by the Authority.
- 20 (10) A liquidator of a WA Bell Company must comply with a notice
21 under subsection (8) within 14 days after receiving it.
- 22 (11) A liquidator of a WA Bell Company has qualified privilege in
23 making a report under subsection (8) and in relation to any fact
24 or matter stated in the report.
- 25 **30. Call for proof of liabilities**
- 26 (1) The Authority must give to each person whom it reasonably
27 believes to have been a creditor of a WA Bell Company
28 immediately before the transfer day a notice requiring the
29 person to give to the Authority, within 30 days after the date of
30 that notice, full particulars of all liabilities of the company in
31 relation to the person.

- 1 (2) The Authority must, as soon as practicable after the transfer
2 day, publish in a daily newspaper circulating in Australia a
3 notice requiring any person who believes that they were a
4 creditor of a WA Bell Company immediately before the transfer
5 day to give to the Authority, within 30 days after the publication
6 of that notice, full particulars of all liabilities of the company in
7 relation to the person.
- 8 (3) The Authority must specify in a notice under subsection (1)
9 or (2) —
- 10 (a) the manner in which a liability may be proved; or
11 (b) how that manner may be ascertained.

12 **Division 2 — Reports and recommendations by the Authority**

13 **31. Role of the Authority**

14 The role of the Authority under this Division is to —

- 15 (a) determine the property and liabilities of each WA Bell
16 Company, and report to the Minister on that, under
17 sections 33 and 34; and
18 (b) make recommendations to the Minister under
19 sections 35 and 36.

20 **32. Authority must seek submissions from affected creditors**

- 21 (1) The Authority must comply with this section before —
- 22 (a) finalising its determination of the property and liabilities
23 of each WA Bell Company under section 33; and
24 (b) finalising the recommendations that it is to make to the
25 Minister under sections 35 and 36.
- 26 (2) The Authority must prepare a document (a *draft report*) that
27 sets out —
- 28 (a) its preliminary determination of the property and
29 liabilities of each WA Bell Company under section 33;
30 and

1 (b) the recommendations that it is proposing to make to the
2 Minister under sections 35 and 36.

3 (3) The Authority must provide the draft report to any person who
4 gave particulars of a liability under section 30.

5 (4) A person to whom a draft report is provided under
6 subsection (3) may make a written submission to the Authority,
7 within 14 days after receiving the draft report, in respect of any
8 matter relating to that person arising out of the draft report.

9 **33. Determination of property and liabilities**

10 (1) The Authority must determine the property and liabilities of
11 each WA Bell Company.

12 (2) In doing so, the Authority must have regard to —

13 (a) any account and statement given under section 29(1);
14 and

15 (b) any books given under section 29(7); and

16 (c) any report given under section 29(8); and

17 (d) any particulars of a liability given under section 30; and

18 (e) any submissions made under section 32(4); and

19 (f) any other matters that the Authority in its discretion
20 considers appropriate.

21 (3) The Authority has an absolute discretion in determining the
22 property and liabilities of each WA Bell Company.

23 **34. Report to the Minister on property and liabilities**

24 (1) The Authority must report to the Minister on the property and
25 liabilities of each WA Bell Company, as finally determined by it
26 under section 33, as soon as practicable after making the
27 determination.

28 (2) A report under this section must contain any recommendations
29 of the Authority under section 35 or 36.

1 (3) The Authority has absolute privilege in making a report under
2 this section and in relation to any fact or matter stated in the
3 report.

4 (4) A failure by the Authority to comply with any provision of this
5 section does not invalidate a report made by it under this
6 section.

7 **35. Recommendations with respect to liabilities**

8 (1) The Authority must recommend, in writing, to the Minister the
9 amount (if any) to be paid to a person, or the property (if any) to
10 be transferred to or vested in a person (instead of or in addition
11 to the payment of money), in respect of the aggregate of all
12 liabilities of all WA Bell Companies to that person as a creditor.

13 (2) In making a recommendation under this section, the
14 Authority —

15 (a) must have regard to the objects of this Act; and

16 (b) must have regard to any agreement between any of the
17 creditors, as to the distribution of the proceeds of the
18 Bell litigation, entered into after 12 noon on the day
19 before the day on which the Bill for this Act was
20 introduced into the Legislative Assembly; and

21 (c) must have regard to any submissions made under
22 section 32(4); and

23 (d) may assess the priority of each liability of a WA Bell
24 Company (as determined under section 33) in
25 accordance with the Corporations Act Part 5.6
26 Division 6 Subdivision D as if it were winding up the
27 company under that Act; and

28 (e) may have regard to the following —

29 (i) liabilities under any guarantee or indemnity so as
30 to avoid double recovery;

31 (ii) the Authority's assessment of the value of
32 unliquidated liabilities;

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Division 2 Reports and recommendations by the Authority

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- 1 (iii) recoveries that might be made by a creditor from
2 subsidiaries of TBGL that are not WA Bell
3 Companies;
- 4 (iv) the relative size of each liability and the relative
5 importance of the satisfaction of that liability to
6 the relevant creditor;
- 7 (v) the detriment to a creditor of not receiving
8 payment of any liability in full;
- 9 (vi) any amount paid by a creditor for the acquisition
10 of, or of any interest in, a liability;
- 11 (vii) any recommendation as to the payment of
12 compensation under section 36.
- 13 (3) A recommendation need not contain reasons.
- 14 (4) The Authority has an absolute discretion as to —
- 15 (a) the quantification of any liability; and
- 16 (b) the amount recommended to be paid to a person or the
17 property recommended to be transferred to, or vested in,
18 a person; and
- 19 (c) the priority to give to that payment, transfer or vesting.
- 20 (5) Nothing in this section requires that the aggregate value of all
21 money recommended to be paid, and all property recommended
22 to be transferred or vested, under this section must be equal to
23 the value of the money or property held by the Authority or the
24 total liabilities of all WA Bell Companies as determined under
25 section 33.
- 26 (6) Nothing in this section creates any right in, or for the benefit of,
27 a creditor of a WA Bell Company or any other person.
- 28 (7) The Authority has absolute privilege in making a
29 recommendation under this section and in relation to any fact or
30 matter stated in the recommendation.

1 (8) A failure by the Authority to comply with any provision of this
2 section does not invalidate a recommendation made by it under
3 this section.

4 **36. Recommendations with respect to funding or indemnities**

5 (1) Subsection (2) applies with respect to a creditor of any kind of a
6 WA Bell Company who, before the transfer day, provided
7 funding for, or an indemnity against costs or liability in relation
8 to, the Bell litigation.

9 (2) The Authority may recommend, in writing, to the Minister an
10 amount to be paid to, or property to be transferred to or vested
11 in the creditor (instead of or in addition to the payment of
12 money to that creditor), as compensation for providing that
13 funding or indemnity.

14 (3) In making a recommendation under subsection (2), the
15 Authority —

16 (a) must have regard to the objects of this Act; and

17 (b) must have regard to any agreement between any of the
18 creditors as to the distribution of the proceeds of the Bell
19 litigation, entered into after 12 noon on the day before
20 the day on which the Bill for this Act was introduced
21 into the Legislative Assembly; and

22 (c) must have regard to any submissions made under
23 section 32(4); and

24 (d) may have regard to the following —

25 (i) the amounts of funding provided;

26 (ii) the terms of any agreement under which that
27 funding or indemnity was provided (including an
28 agreement made void by this Act);

29 (iii) the extent of any risks assumed in providing that
30 funding or indemnity (whether or not that
31 indemnity is or ever has been enforceable);

- 1 (iv) the extent of the benefit secured, or detriment
2 avoided, by the WA Bell Company and its
3 related bodies corporate on account of the
4 provision of that funding or indemnity;
- 5 (v) the extent of any benefits that may be received
6 by the creditor from a related body corporate of a
7 WA Bell Company that is not a WA Bell
8 Company;
- 9 (vi) any other matters that it considers relevant.
- 10 (4) The Authority has an absolute discretion as to —
- 11 (a) the quantification of any funding, indemnity, risk,
12 benefit or detriment; and
- 13 (b) the amount recommended to be paid to a person or the
14 property recommended to be transferred to, or vested in,
15 a person.
- 16 (5) A recommendation under subsection (2) may further
17 recommend that any amount payable to a creditor under this
18 Act —
- 19 (a) reduce to a specified extent a liability of a WA Bell
20 Company to the creditor; or
- 21 (b) be in addition to any amount otherwise payable to the
22 creditor under this Act; or
- 23 (c) be in addition to any payments to the creditor in respect
24 of liabilities mentioned in section 25 or 26 that are the
25 subject of a recommendation under section 35.
- 26 (6) A recommendation need not contain reasons.
- 27 (7) Nothing in this section creates any right in, or for the benefit of,
28 a creditor of a WA Bell Company or any other person.
- 29 (8) The Authority has absolute privilege in making a
30 recommendation under this section and in relation to any fact or
31 matter stated in the recommendation.

- 1 (9) A failure by the Authority to comply with any provision of this
2 section does not invalidate a recommendation made by it under
3 this section.

4 **Division 3 — Determination by the Governor**

5 **37. Governor may determine amounts and property**

- 6 (1) The Minister must submit to the Governor the report of the
7 Authority under section 34.
- 8 (2) The Governor may, by instrument in writing, determine the
9 amount to be paid to, or the property to be transferred to or
10 vested in, a person —
- 11 (a) in respect of the aggregate of all liabilities of all
12 WA Bell Companies to that person as a creditor; and
- 13 (b) by way of compensation for providing funding or an
14 indemnity.
- 15 (3) Nothing in this Act requires the Governor to determine that any
16 amount is to be paid to, or any property is to be transferred to or
17 vested in, any person on any account whatsoever.
- 18 (4) Nothing in this Act requires that the aggregate value of all
19 money determined by the Governor to be paid, and all property
20 determined by the Governor to be transferred or vested, under
21 this section must be equal to the value of the money or property
22 held by the Authority or the total liabilities of all WA Bell
23 Companies as determined under section 33.
- 24 (5) The Minister must give the determination of the Governor to the
25 Authority.
- 26 (6) The determination need not contain reasons.
- 27 (7) The determination is not subsidiary legislation for the purposes
28 of the *Interpretation Act 1984*.
- 29 (8) Nothing in this section creates any right in, or for the benefit of,
30 a creditor of a WA Bell Company or any other person.

- 1 (9) The Governor has absolute privilege in making the
2 determination and in relation to any fact or matter stated in it.
- 3 (10) On the making of the determination every liability of every
4 WA Bell Company to a person to whom nothing is to be paid
5 and to whom no property is to be transferred and in whom no
6 property is to be vested under the determination is, by force of
7 this Act, discharged and extinguished.

8 **Division 4 — Giving effect to Governor's determination**

9 **38. Authority to make payments or transfer property**

- 10 (1) Subject to subsection (3), as soon as practicable after receiving
11 the determination of the Governor under section 37, the
12 Authority must —
- 13 (a) pay out of the Fund the amounts specified, to the
14 persons specified, in the determination; and
- 15 (b) transfer or vest the property specified, to or in the
16 persons specified, in the determination.
- 17 (2) The Authority may determine the means by which any payment
18 is to be made.
- 19 (3) A person is not entitled to have a payment made to them, or
20 property transferred to or vested in them, under this section
21 unless the person gives to the Authority a deed that —
- 22 (a) is in the form approved by the Minister; and
23 (b) is executed to the satisfaction of the Authority; and
24 (c) provides for the release or discharge of any person from
25 any liability that the Minister considers appropriate.
- 26 (4) On a payment being made to, or property being transferred to or
27 vested in, a person in accordance with this section, every
28 liability of every WA Bell Company to that person is, by force
29 of this Act, discharged and extinguished.

- 1 (5) Subsection (6) applies if a person is not entitled to have a
2 payment made to them, or property transferred to or vested in
3 them, under this section because that person has not given to the
4 Authority a duly executed deed in accordance with
5 subsection (3) before midnight on the day immediately before
6 the first anniversary of the transfer day.
- 7 (6) On the first anniversary of the transfer day —
- 8 (a) every liability of every WA Bell Company to the person
9 is, by force of this Act, discharged and extinguished;
10 and
- 11 (b) the determination of the Governor under section 37 in
12 relation to the person ceases to have effect.

13 **Division 5 — Release of Liquidator**

14 **39. Release of liquidator**

- 15 (1) On the dissolution of a WA Bell Company under section 27,
16 each person who is, or has at any time been, a liquidator of the
17 company and each person who has at any time acted for or on
18 behalf of such a liquidator is discharged from all liability arising
19 out of or relating to anything done, or purportedly done, by
20 them in performing their duties, including complying with
21 obligations arising under this Act.
- 22 (2) In subsection (1), a reference to something being done includes
23 a decision not to do something or a failure to do something.
- 24 (3) This section does not prevent a liquidator making at any time an
25 application under the Corporations Act section 480 for an order
26 that he or she be released.

1 **Part 5 — Winding up of the Authority and Fund**

2 **40. Closure of the Fund**

- 3 (1) The Fund is closed by force of this section when whichever of
4 the following first occurs —
- 5 (a) the Administrator certifies in writing that all money that
6 the Authority is required to pay out of the Fund under
7 section 38 has been paid;
 - 8 (b) the first anniversary of the transfer day.
- 9 (2) Any money standing to the credit of the Fund when it is closed
10 is to be credited to the Consolidated Account.

11 **41. Abolition of Authority**

- 12 (1) The Authority is abolished.
- 13 (2) The office of Administrator is abolished.
- 14 (3) On the commencement of this section —
- 15 (a) any property that, immediately before that
16 commencement, was vested in the Authority vests in the
17 State by force of this section; and
 - 18 (b) any liabilities that, immediately before that
19 commencement, were liabilities of the Authority (other
20 than a liability to make a payment or to transfer or vest
21 property in accordance with section 38) become
22 liabilities of the State; and
 - 23 (c) any proceeding or remedy that, immediately before that
24 commencement, might have been brought or continued
25 by or available against or to the Authority may be
26 brought or continued by and is available against or to the
27 State; and
 - 28 (d) all records and data of the Authority pass to the
29 Minister.

- 1 (4) Any agreement or instrument (other than one to which
2 section 27(5) applies) in existence immediately before the
3 commencement of this section to which the Authority is a party
4 or that contains a reference to the Authority has effect on and
5 after that commencement as if —
6 (a) the State were substituted for the Authority as a party to
7 the agreement or instrument; and
8 (b) any reference in the agreement or instrument to the
9 Authority (unless the context otherwise requires) were a
10 reference to, or included a reference to, the State.

11 **42. Vesting of property in the State**

- 12 (1) Any property of a WA Bell Company accruing, payable or
13 vesting after the closing of the Fund accrues and is payable to or
14 vests in the State.
15 (2) Subject to this Act, the receipt of any money or property by the
16 State under this Part is a receipt by it for its benefit absolutely
17 and not on behalf of any other person or body.

18 **43. Final report on Authority's functions**

- 19 (1) Prior to the abolition of the Authority, the Administrator must
20 prepare a final report on how the Administrator carried out the
21 Authority's functions as outlined in section 9 of the Act.
22 (2) The Minister is to cause to be laid before each House of
23 Parliament the report referred to in subsection (1), prior to the
24 abolition of the Authority.

1 **Part 6 — Application of Corporations Act**

2 **44. Terms used**

3 In this Part —

4 ***Corporations legislation*** means the Corporations legislation to
5 which the Corporations Act Part 1.1A applies;

6 ***excluded Corporations legislation provision*** means any
7 provision of the Corporations legislation that does not apply in
8 the State, as a law of the Commonwealth, in relation to the
9 WA Bell Companies because of section 45.

10 **45. WA Bell Companies excluded from Corporations legislation**

11 (1) Each WA Bell Company is declared to be an excluded matter
12 for the purposes of the Corporations Act section 5F in relation
13 to the whole of the Corporations legislation, other than to the
14 extent specified in subsections (2) and (3).

15 (2) Subsection (1) does not exclude the application of the following
16 provisions of the Corporations legislation to the WA Bell
17 Companies to the extent that the provisions would otherwise be
18 applicable —

19 (a) provisions relating to a matter that the regulations
20 provide is not to be excluded from the operation of the
21 Corporations legislation;

22 (b) provisions relating to the role of a WA Bell Company in
23 the formation of, or the holding of shares in, a company
24 that is not a WA Bell Company.

25 (3) Subsection (1) does not apply to the extent necessary to
26 enable —

27 (a) a WA Bell Company that is dissolved by section 27 to
28 be deregistered under the Corporations Act;

29 (b) a liquidator of a WA Bell Company that is dissolved by
30 section 27 to apply for an order that he or she be
31 released.

1 **46. Displacement of certain provisions of Corporations**
2 **legislation**

- 3 (1) This section has effect if, and to the extent that, an excluded
4 Corporations legislation provision has any application, as a law
5 of the Commonwealth, in relation to a WA Bell Company.
- 6 (2) The provisions of Parts 3, 4 and 5 and sections 49 and 50(3) are
7 declared to be Corporations legislation displacement provisions
8 for the purposes of the Corporations Act section 5G in relation
9 to the Corporations legislation.

10 **47. Applying the Corporations legislation to WA Bell**
11 **Companies**

- 12 (1) The regulations may declare a matter relating to a WA Bell
13 Company to be an applied Corporations legislation matter for
14 the purposes of the *Corporations (Ancillary Provisions)*
15 *Act 2001* Part 3 in relation to a specified provision or provisions
16 of the Corporations legislation (including any excluded
17 Corporations legislation provision or provisions), with any
18 modifications that are specified in the declaration.
- 19 (2) Without limiting subsection (1), the regulations may do any one
20 or more of the following —
- 21 (a) specify modifications to the definitions and other
22 interpretive provisions of the Corporations legislation
23 relevant to any Corporations legislation provision to
24 which the declaration relates;
- 25 (b) provide for ASIC to exercise a function under any
26 Corporations legislation to which the declaration relates,
27 but only if —
- 28 (i) ASIC is to exercise the function under an
29 agreement referred to in the *Australian Securities*
30 *and Investments Commission Act 2001*
31 (Commonwealth) section 11(8) or (9A)(b); and
- 32 (ii) ASIC is authorised to exercise that function
33 under section 11 of that Act;

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- 1 (c) modify the circumstances in which a court may exercise
2 a function conferred on it by a Corporations legislation
3 provision to which the declaration relates;
- 4 (d) specify that a reference to ASIC in a Corporations
5 legislation provision to which the declaration relates is
6 to be a reference to another person;
- 7 (e) identify a Corporations legislation provision to which
8 the declaration relates by reference to the provision as in
9 force at a particular time;
- 10 (f) specify a court to exercise a function conferred by a
11 Corporations legislation provision to which the
12 declaration relates.
- 13 (3) Words and expressions used in this section and also in the
14 *Corporations (Ancillary Provisions) Act 2001* Part 3 have the
15 same meanings in this section as they have in that Part.

Part 7 — Offences

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48. Scheme to avoid operation of Act or achievement of its objects

(1) In this section —

scheme means —

- (a) any agreement, promise or undertaking, whether express or implied and whether or not enforceable or intended to be enforceable by a legal proceeding; or
- (b) any plan, proposal, action, course of action or course of conduct.

(2) A person must not enter into or carry out a scheme for the purpose of directly or indirectly defeating, avoiding, preventing or impeding the operation of this Act or the achievement of its objects.

Penalty: a fine of \$200 000 or imprisonment for 5 years, or both.

(3) This section applies to a scheme —

- (a) whether the scheme is entered into or made before or after the enactment of this Act; and
- (b) even if the purpose referred to in subsection (2) was not the only or dominant purpose for the scheme, so long as it was a substantial purpose.

(4) It is not an offence under this section for a liquidator of a company —

- (a) to pay, in the ordinary course of the liquidation of the company, the ordinary expenses of conducting the liquidation; or
- (b) to invest money, in the ordinary course of the liquidation of the company, with an ADI.

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1 (5) This section does not apply to the extent (if any) to which it
2 would infringe any constitutional doctrine of implied freedom
3 of political communication.

4 (6) This section does not apply to or in relation to proceedings in a
5 court to challenge the constitutional validity of this Act.

6 **49. Certain deregistered companies not to be reinstated**

7 A person must not take any step for achieving the reinstatement
8 under the Corporations Act Part 5A.1 of a deregistered company
9 that immediately before its deregistration was a subsidiary of a
10 company listed in Schedule 1.

11 Penalty: a fine of \$10 000.

12 **50. Dealings with property**

13 (1) In this section —
14 *conceal* includes transfer outside the State.

15 (2) A person must not conceal property that is, or is to be,
16 transferred to, and vested in, the Authority by section 22 or do
17 any other act or make an omission of any kind in relation to
18 such property for the purpose of directly or indirectly defeating
19 the effectiveness of the transfer or vesting or proposed transfer
20 or vesting.

21 Penalty: a fine of \$200 000 or imprisonment for 5 years, or
22 both.

23 (3) A person must not refuse or fail to take any steps that are within
24 the person's power to take and that are necessary to ensure that
25 the transfer to, and vesting in, the Authority by section 22 of
26 property located outside the State is made effective.

27 Penalty: a fine of \$200 000 or imprisonment for 5 years, or
28 both.

- 1 (4) It is not an offence under this section for a liquidator of a
2 company —
- 3 (a) to pay, in the ordinary course of the liquidation of the
4 company, the ordinary expenses of conducting the
5 liquidation; or
- 6 (b) to invest money, in the ordinary course of the liquidation
7 of the company, with an ADI.

8 **51. Obstruction or hindrance of the Authority**

9 A person must not obstruct or hinder —

- 10 (a) the Authority in the performance of its functions; or
11 (b) a person assisting the Authority in the performance of
12 those functions.

13 Penalty: a fine of \$200 000 or imprisonment for 5 years, or
14 both.

15 **52. Failure to comply with requirements**

- 16 (1) A person must not, without reasonable excuse, fail to comply
17 with a requirement made by this Act or made by the Authority,
18 the Administrator or an employee, agent or delegate of the
19 Authority under this Act.

20 Penalty: a fine of \$50 000 or imprisonment for 2 years, or both.

- 21 (2) Subsection (1) does not apply in relation to a requirement made
22 by the Authority, the Administrator or an employee, agent or
23 delegate of the Authority unless, when the Authority,
24 Administrator, employee, agent or delegate makes the
25 requirement, they inform the person that a failure to comply
26 with it may constitute an offence.

27 **53. False information**

28 A person must not, in connection with a requirement made or
29 direction given by the Authority, the Administrator or an
30 employee, agent or delegate of the Authority under this Act,

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1 provide any information or produce any document that the
2 person knows is false or misleading in a material particular.
3 Penalty: a fine of \$50 000 or imprisonment for 2 years, or both.

4 **54. Confidentiality of information**

5 (1) In this section —

6 ***confidential information*** means information that has not been
7 made public.

8 (2) A person must not misuse confidential information obtained by
9 reason of any function that person has, or at any time had, in the
10 administration of this Act or in the course of the provision of
11 services for the purposes of this Act.

12 Penalty: a fine of \$12 000 or 12 months imprisonment, or both.

13 (3) A person misuses confidential information if it is, directly or
14 indirectly, recorded, used or disclosed, other than —

15 (a) in the course of duty; or

16 (b) under this Act or another law; or

17 (c) under the order of a court, tribunal or person acting
18 judicially; or

19 (d) for the purposes of the investigation of any suspected
20 offence or the conduct of proceedings against any
21 person for an offence; or

22 (e) with the consent of the person or persons to whom the
23 information relates; or

24 (f) in prescribed circumstances.

25 (4) If confidential information is lawfully disclosed, this section
26 does not prevent the further disclosure of the information, or the
27 recording or use of the information, for the purpose for which
28 the disclosure was made.

1 **55. Liability of officers of body corporate for offence by body**
2 **corporate**

3 (1) If a body corporate is guilty of an offence under this Part, an
4 officer of the body corporate is also guilty of the offence if the
5 officer failed to take all reasonable steps to prevent the
6 commission of the offence by the body corporate.

7 (2) In determining whether things done or omitted to be done by the
8 officer constitute reasonable steps, a court must have regard
9 to —

10 (a) what the officer knew, or ought to have known, about
11 the commission of the offence by the body corporate;
12 and

13 (b) whether the officer was in a position to influence the
14 conduct of the body corporate in relation to the
15 commission of the offence; and

16 (c) any other relevant matter.

17 **56. Further provisions relating to liability of officers of body**
18 **corporate**

19 (1) Section 55 does not affect the liability of a body corporate for
20 any offence.

21 (2) Section 55 does not affect the liability of an officer, or any other
22 person, under *The Criminal Code* Chapters II, LVII, LVIII and
23 LIX.

24 (3) An officer of a body corporate may be charged with, and
25 convicted of, an offence in accordance with section 56 whether
26 or not the body corporate is charged with, or convicted of, the
27 principal offence committed by the body corporate.

28 (4) If an officer of a body corporate who is charged with an offence
29 in accordance with section 55 claims that the body corporate
30 would have a defence if it were charged with the offence —

31 (a) the onus of proving the defence is on the officer; and

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1 (b) the standard of proof required is the standard that would
2 apply to the body corporate in relation to the defence.

3 (5) Subsection (4) does not limit any other defence available to the
4 officer.

5 **57. Conduct on behalf of bodies corporate and principals**

6 (1) In this section —

7 *engage in conduct* includes to fail or refuse to engage in
8 conduct;

9 *state of mind* of a person includes —

10 (a) the knowledge, intention, opinion, belief or purpose of
11 the person; and

12 (b) the person's reasons for the intention, opinion, belief or
13 purpose.

14 (2) This section applies to and in relation to proceedings for an
15 offence under this Act.

16 (3) If it is necessary to establish the state of mind of a body
17 corporate in relation to particular conduct, it is sufficient to
18 show —

19 (a) that the conduct was engaged in by an officer or agent of
20 the body corporate within the scope of his or her actual
21 or apparent authority; and

22 (b) that the officer or agent had the relevant state of mind.

23 (4) Conduct engaged in on behalf of a body corporate by an officer
24 or agent of the body corporate within the scope of his or her
25 actual or apparent authority is to be taken to have been engaged
26 in also by the body corporate, unless the body corporate
27 establishes that it took reasonable precautions and exercised due
28 diligence to avoid the conduct.

1 (5) If it is necessary to establish the state of mind of a person other
2 than a body corporate in relation to particular conduct, it is
3 sufficient to show —

4 (a) that the conduct was engaged in by an employee or
5 agent of the person within the scope of his or her actual
6 or apparent authority; and

7 (b) that the employee or agent had the relevant state of
8 mind.

9 (6) Conduct engaged in on behalf of a person other than a body
10 corporate (the *principal*) by an employee or agent of the person
11 within the scope of his or her actual or apparent authority is to
12 be taken to have been engaged in also by the principal, unless
13 the principal establishes that the principal took reasonable
14 precautions and exercised due diligence to avoid the conduct.

15 **58. Continuing offences: daily penalties**

16 For the purposes of the *Interpretation Act 1984* section 71, in
17 relation to an offence committed under this Act, the penalty for
18 each separate and further offence committed by a person is —

19 (a) for an individual, a fine of \$1 000; and

20 (b) for a body corporate, a fine of \$5 000.

21 **59. Bringing prosecutions**

22 (1) Proceedings for an offence under this Act may be commenced
23 prior to the expiry of this Act.

24 (2) If a prosecution notice alleging an offence under this Act
25 specifies the day on which evidence of the alleged offence first
26 came to the attention of a person authorised to institute the
27 proceedings, the prosecution notice need not contain particulars
28 of the day on which the offence is alleged to have been
29 committed.

30 (3) For the purposes of subsection (2), the day specified in the
31 prosecution notice as the day on which evidence first came to

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1 the attention of a person authorised to institute proceedings is, in
2 the absence of evidence to the contrary, to be presumed to be
3 that day.

4 **60. Injunctions to ensure compliance with this Act**

5 (1) In this section —

6 *offence provision* means a provision of this Act, contravention
7 of which may constitute an offence under this Act.

8 (2) The Administrator may apply to the Court for an injunction
9 restraining a person —

10 (a) from doing something that would, or would be likely to,
11 contravene an offence provision; or

12 (b) from aiding, abetting, counselling or procuring the
13 contravention of an offence provision; or

14 (c) from conspiring with others to contravene or bring about
15 the contravention of an offence provision; or

16 (d) from attempting to do anything referred to in
17 paragraph (a), (b) or (c).

18 (3) The Administrator may apply to the Court to enjoin a person to
19 do something if the person's omission to do it contravenes or
20 would contravene an offence provision.

21 (4) The Court may grant an injunction whether or not the person
22 has previously contravened the provision, or would, if the
23 injunction is not granted, be likely to contravene or to continue
24 to contravene the provision.

25 (5) An interim injunction may be granted before final determination
26 of an application under subsection (2).

27 (6) The Court is not to require, as a condition of granting an interim
28 injunction, that the Administrator give an undertaking as to
29 damages or costs.

- 1 (7) Proceedings against a person for an offence under this Act are
2 not affected by —
- 3 (a) the making of an application for an injunction in relation
4 to the commission of the offence; or
- 5 (b) the grant of, or refusal to grant, an injunction; or
- 6 (c) the rescission, variation or expiry of an injunction.

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Part 8 — Miscellaneous

61. Privilege

- (1) If a provision of this Act provides that a person has qualified privilege for an act, matter or thing, the person, in relation to the act, matter or thing —
 - (a) has qualified privilege in proceedings for defamation; and
 - (b) is not, in the absence of malice on the person’s part, liable to an action for defamation at the suit of a person.
- (2) In subsection (1) —
malice includes ill will to the person concerned or any other improper motive.
- (3) If a provision of this Act provides that a person has absolute privilege for an act, matter or thing, the person, in relation to the act, matter or thing is not liable to an action for defamation at the suit of a person.
- (4) Neither this section nor a provision referred to in subsection (1) limits or affects any right, privilege or immunity that a person has, apart from this section or that provision, as a defendant in proceedings, or an action, for defamation.

62. Effect of things done under Act

- (1) This section applies to the following —
 - (a) the enactment, commencement or operation of this Act or the making, commencement or operation of any subsidiary legislation made under this Act;
 - (b) the transfer of property to, and the vesting of property in, the Authority by section 22;
 - (c) the affecting by this Act of a liability;
 - (d) the doing, or omitting to do, of any other act, matter or thing under, or for the purposes of, this Act.

- 1 (2) Except as otherwise expressly provided by this Act, the acts,
2 matters or things to which this section applies —
- 3 (a) are not to be regarded as placing any person in breach of
4 contract or confidence or as otherwise making any
5 person guilty of a civil wrong;
- 6 (b) are not to be regarded as placing any person in breach
7 of, or as constituting a default under —
- 8 (i) any law of the State; or
9 (ii) any principles or rules of common law or equity;
10 or
11 (iii) any provision in any agreement including, but
12 not limited to, any provision prohibiting,
13 restricting or regulating the assignment or
14 transfer of any property or the disclosure of any
15 information;
- 16 (c) are not to be regarded as fulfilling any condition which
17 allows a person to exercise a right or remedy in respect
18 of, or to terminate, any agreement or obligation;
- 19 (d) are not to be regarded as giving rise to any remedy for a
20 party to a contract or an instrument or as causing or
21 permitting the termination of any contract or instrument
22 because of a change in the beneficial or legal ownership
23 of any property, right or liability;
- 24 (e) are not to be regarded as causing any contract or
25 instrument to be void or otherwise unenforceable;
- 26 (f) are not to be regarded as frustrating any contract;
- 27 (g) do not release any surety or other obligee wholly or in
28 part from any obligation.

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- 1 **63. Protection of the Minister, the Authority and others**
- 2 (1) The Minister, the Authority, the Administrator or any person
3 employed or engaged by the Authority (including a person
4 covered by section 11(1)) is not liable for anything done by
5 them, in good faith, in the performance or purported
6 performance of a function under this Act.
- 7 (2) The State is also relieved of any liability that it might otherwise
8 have had for another person having done anything as described
9 in subsection (1).
- 10 (3) The protection given by this section applies even though the
11 thing done as described in subsection (1) may have been
12 capable of being done whether or not this Act had been enacted.
- 13 (4) In this section, a reference to the doing of anything includes a
14 reference to an omission to do anything.
- 15 **64. Protection of ICWA and others connected with it**
- 16 (1) In this section —
- 17 *protected act*, in relation to a person to whom this section
18 applies, means anything done or omitted to be done, or
19 purportedly done or omitted to be done, by the person in
20 connection with —
- 21 (a) the conduct of the Bell Litigation; or
- 22 (b) the negotiation or execution of any agreement declared
23 void by section 26; or
- 24 (c) the liquidation of any WA Bell Company; or
- 25 (d) the settlement of the Bell litigation; or
- 26 (e) preparing the Bill for this Act or recommending its
27 introduction into the Parliament.
- 28 (2) This section applies to ICWA and to any person who is, or has
29 at any time been —
- 30 (a) the managing director of ICWA;

- 1 (b) a member of the board of Commissioners;
2 (c) an officer or employee of ICWA;
3 (d) an agent, custodian, broker or attorney appointed or
4 engaged by ICWA;
5 (e) a person engaged under the *Insurance Commission of*
6 *Western Australia Act 1986* section 12(4).
- 7 (3) Each person to whom this section applies is released and
8 discharged from any claim, demand or proceeding of any nature
9 whatsoever by a person, other than ICWA or the State, under
10 any law of the State or any principles or rules of common law or
11 equity, arising out of or relating to a protected act.
- 12 (4) Except as provided by subsection (5), subsection (3) does not
13 operate to release or discharge any liability of a person to ICWA
14 or the State for breach of —
- 15 (a) the *Insurance Commission of Western Australia*
16 *Act 1986*; or
17 (b) the *Statutory Corporations (Liability of Directors)*
18 *Act 1996*; or
19 (c) the *Public Sector Management Act 1994*.
- 20 (5) Subsection (4) does not apply to conduct covered by
21 paragraphs (d) and (e) of the definition of ***protected act*** in
22 subsection (1).

23 **65. Protection for compliance with the Act**

- 24 (1) No civil or criminal liability attaches to a person for
25 compliance, or purported compliance, in good faith, with a
26 requirement of or under this Act.
- 27 (2) In particular, if a person produces a record or other information
28 as required under this Act, no civil liability attaches to the
29 person for producing the record or information, whether the
30 liability would arise under a contract or otherwise.

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- 1 **66. Act not to give rise to liability against the State, Authority or**
2 **Administrator**
- 3 (1) In this section —
- 4 *officer of the State* includes —
- 5 (a) an employee as defined in the *Public Sector*
6 *Management Act 1994* section 3(1); and
- 7 (b) an individual who is or was an agent or contractor of the
8 State;
- 9 *the State* includes any State authority or officer of the State, and
10 also includes —
- 11 (a) the Crown in right of the State; and
- 12 (b) the Government of the State; and
- 13 (c) a Minister of the Crown in right of the State; and
- 14 (d) a statutory corporation, or other body, representing the
15 Crown in right of the State.
- 16 (2) The State, the Authority and the Administrator are not liable to
17 any action, liability or demand arising from —
- 18 (a) the enactment, commencement or operation of this Act
19 or the making, commencement or operation of any
20 subsidiary legislation made under this Act; or
- 21 (b) the transfer of property to, and the vesting of property
22 in, the Authority by section 22; or
- 23 (c) the affecting by this Act of a liability; or
- 24 (d) the doing of, or omitting to do, any other act, matter or
25 thing under, or for the purposes of, this Act.
- 26 **67. Stay of proceedings**
- 27 On and from the transfer day a person cannot begin or continue
28 proceedings in a court with respect to property that was,
29 immediately before that day, property of a WA Bell Company
30 except with the leave of the Court and in accordance with the
31 terms, if any, that it imposes.

1 **68. No appeal or review**

2 (1) Any decision made, or other thing done, by the Governor, the
3 Minister, the Authority or the Administrator under or for the
4 purposes of this Act —

- 5 (a) is final and conclusive; and
6 (b) must not be challenged, appealed against, reviewed,
7 quashed or called into question in any court; and
8 (c) is not subject to review or remedy by way of
9 prohibition, mandamus, injunction, declaration or
10 certiorari in any court on any account.

11 (2) Nothing in this Act requires the Governor, the Minister, the
12 Authority or the Administrator to perform a function, or
13 exercise a power, in a particular way in any particular
14 circumstance.

15 (3) The rules known as the rules of natural justice (including any
16 duty of procedural fairness) do not apply to, or in relation to, the
17 doing or omitting to do, or the purported doing of or omitting to
18 do, any act, matter or thing under Part 3 or 4 by, or by any
19 person on behalf of —

- 20 (a) the Governor; or
21 (b) the Minister; or
22 (c) the Authority; or
23 (d) the Administrator.

24 (4) Nothing in subsections (1) to (3) affects the jurisdiction of the
25 Court to grant relief for jurisdictional error.

26 **69. Conduct of inquiry**

27 The Authority, when inquiring into a matter which it is to
28 determine or recommend under this Act —

- 29 (a) is to act with as little formality as possible; and

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- 1 (b) is not bound by the rules of evidence and may inform
2 itself on any matter in any manner it considers
3 appropriate; and
4 (c) may receive written or oral submissions as it considers
5 appropriate.

6 **70. Judicial notice**

7 All courts, judges and persons acting judicially must take
8 judicial notice of the official signature of every person who is
9 for the time being, and every person who has at any time been,
10 the Administrator and of the fact that the person holds or has
11 held that office.

12 **71. *Freedom of Information Act 1992***

13 The *Freedom of Information Act 1992* has effect as if the
14 Authority were mentioned in Schedule 2 to that Act.

15 **72. Power to obtain opinion**

- 16 (1) The Authority is entitled to submit to the State Solicitor a
17 question concerning the functions or powers of the Authority.
18 (2) The State Solicitor must give the Authority a written opinion on
19 a question submitted under subsection (1).

20 **73. Constructive notice of contents of document**

21 A person to whom the Authority or the Administrator gives a
22 notice or other document under this Act is taken to know its
23 contents from the time it is given to the person.

24 **74. Translation of documents**

25 A requirement imposed under this Act to give a document is, in
26 the case of a document that is not in the English language, taken
27 to include a requirement that a translation of the document be
28 given at the same time.

1 **75. Service of documents**

2 A document required or permitted by or under this Act to be
3 given to a person may —

- 4 (a) be given in any of the ways provided for by the
5 *Interpretation Act 1984* section 75 or 76; or
6 (b) by electronic means of communication approved by the
7 person to whom the document is to be given.

8 **76. Approved forms**

9 (1) The Administrator may approve forms for use under this Act.

10 (2) An approved form may require information provided in the
11 form to be verified by statutory declaration.

12 **77. Regulations**

13 (1) The Governor may make regulations prescribing all matters that
14 are required or permitted by this Act to be prescribed or are
15 necessary or convenient to be prescribed for giving effect to this
16 Act.

17 (2) Without limiting subsection (1), regulations may be made as to
18 the following —

- 19 (a) applications under this Act;
20 (b) records to be kept in relation to matters under this Act;
21 (c) the giving of notices or other documents under this Act;
22 (d) fees or charges payable in relation to any matter under
23 this Act;
24 (e) imposing additional fees for the late giving of
25 documents;
26 (f) providing that a contravention of a regulation is an
27 offence and providing for a penalty not exceeding a fine
28 of \$2 500.

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1 **78. Expiry of Act**

2 This Act expires on the sixth anniversary of the day on which it
3 receives the Royal Assent.

Schedule 1 — The WA Bell Companies

[s. 3(1)]

- 1 1. Albany Broadcasters Limited ACN 008 674 600 (In Liquidation)
- 2 2. Ambassador Nominees Pty Ltd ACN 009 105 800 (In Liquidation)
- 3 3. Belcap Enterprises Pty Ltd ACN 009 264 537 (In Liquidation)
- 4 4. Belcap Portfolio Pty Ltd ACN 009 265 169 (Deregistered)
- 5 5. Bell Bros. Holdings Ltd ACN 008 695 056 (In Liquidation)
- 6 6. Bell Bros. Pty Ltd ACN 008 672 375 (In Liquidation)
- 7 7. Bell Equity Management Limited ACN 009 210 208 (In Liquidation)
- 8 8. Bell Group Finance Pty Ltd ACN 009 165 182 (In Liquidation)
- 9 9. Bell Properties Pty Ltd ACN 008 675 625 (Deregistered)
- 10 10. Bell Publishing Group Pty Ltd ACN 008 704 452 (In Liquidation)
- 11 11. Dolfinne Pty Ltd ACN 009 134 516 (In Liquidation)
- 12 12. Dolfinne Securities Pty Ltd ACN 009 218 142 (In Liquidation)
- 13 13. Godine Enterprises Pty Ltd ACN 009 237 316 (Deregistered)
- 14 14. Godine Finance Pty Ltd ACN 009 237 325 (Deregistered)
- 15 15. Group Color (W.A.) Pty Ltd ACN 008 687 769 (Deregistered)
- 16 16. Harlesden Finance Pty Ltd ACN 009 227 561 (In Liquidation)
- 17 17. Harlesden Pty Ltd ACN 008 773 411 (Deregistered)
- 18 18. H.J.W. Engineering Pty Ltd ACN 008 975 746 (Deregistered)
- 19 19. Industrial Securities Pty Ltd ACN 008 728 792 (In Liquidation)
- 20 20. Maranoa Developments Pty Ltd ACN 009 244 900 (Deregistered)
- 21 21. Maranoa Holdings Pty Ltd ACN 009 244 893 (Deregistered)
- 22 22. Neoma Investments Pty Ltd ACN 009 234 842 (In Liquidation)
- 23 23. Option Securities Limited ACN 008 737 291 (Deregistered)
- 24 24. TBGL Enterprises Ltd ACN 008 669 216 (In Liquidation)
- 25 25. The Bell Group Ltd ACN 008 666 993 (In Liquidation)

Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Bill 2015

Schedule 1 The WA Bell Companies

- 1 26. Wanstead Finance Pty Ltd ACN 009 227 570 (Deregistered)
- 2 27. Wanstead Pty Ltd ACN 008 775 120 (In Liquidation)
- 3 28. Wanstead Securities Pty Ltd ACN 009 218 160 (In Liquidation)
- 4 29. WAON Investments Pty Ltd ACN 008 937 166 (In Liquidation)
- 5 30. Wigmores Air Services Pty Ltd ACN 008 742 863 (Deregistered)
- 6 31. Wigmores Finance Pty Ltd ACN 008 679 230 (Deregistered)
- 7 32. Wigmores Tractors Pty Ltd ACN 008 679 221 (In Liquidation)

1 **Schedule 2 — The Bell litigation**

2 [s. 3(1)]

3 **The Main proceedings comprising:**

4 Proceeding No. CIV 1464 of 2000 in the Supreme Court of Western Australia,
5 and includes the Applications by Gentra Ltd (formerly Royal Trust Bank) dated
6 25 August 2011 and amended application dated 4 November 2011 filed by the
7 Gentra Judgment Creditors, and the application dated 21 October 2011 filed by
8 Gentra Ltd.

9 The proceeding commenced in the Court of Appeal of the Supreme Court of
10 Western Australia (Proceeding No. CACV 52 of 2009), and includes all
11 cross-appeals and notices of contention filed in that proceeding.

12 High Court proceeding No. P18 of 2013, commenced by Notice of Appeal filed
13 on 27 March 2013, and includes the Notice of Cross-Appeal and Notice of
14 Contention filed on 9 April 2013.

15 **The related proceedings comprising:**

16 **Foreign proceedings:**

CH 1995 B No. 7955 Proceedings in the High Court of Justice of
England and Wales similar to the First Instance
Proceeding.

CH 4771 of 1995 Proceedings in the High Court of Justice of
England and Wales — application for the
production of documents and related relief.

CH 4772 of 1995 Proceedings in the High Court of Justice of
England and Wales — application for the
production of documents and related relief.

Helsinki District Court Proof of debt in liquidation of Skopbank.
Dnro 99/2515

1 **Supreme Court of Western Australia proceedings:**

CIV 2285 of 1995	Allegation of negligence against Coopers & Lybrand in relation to 1989/1990 audit of BGNV.
CIV 2287 of 1995	Claim for breach of directors duties.
CIV 2301 of 1995	Claim for breach of directors duties.
COR 206 of 1995	Application for leave to extend time for appeal against admission of Australian Consolidated Investments Ltd's proof of debt in BGF liquidation.
COR 218 of 1995	Application under Corporations Law s. 1321 appealing decision to partially accept Australian Consolidated Investments Ltd's proof of debt in BGF liquidation.
CIV 1863 of 1996	Application by BGNV against the defendant banks, in CIV 1464 of 2000, under the <i>Property Law Act 1969</i> section 89.
COR 162 of 1996	Application for extension of time.
COR 253 of 1996	Appeal against partial admission of Australian Consolidated Investments Ltd's proof of debt in BGF liquidation.
COR 254 of 1996	Appeal against admission of Australian Consolidated Investments Ltd and Bell Resources Ltd proofs of debt in BGF liquidation.
COR 255 of 1996	Appeal against partial admission of Australian Consolidated Investments Ltd and Bell Resources Ltd proof of debt in TBGL liquidation.

COR 256 of 1996	Appeal against partial admission of Godine Pty Ltd proof of debt in TBGL liquidation.
COR 257 of 1996, FUL 185 of 1997 and P59 of 1998	Appeal against admission of JN Taylor Holdings Limited (In Liquidation) ACN 007 600 339 proof of debt in TBGL liquidation.
CIV 2061 of 1996	Proceedings relating to the TBGL Inter-Creditor Agreement.
COR 358 of 1997	Application under the Corporations Law s. 596B for examination and production of books by Aspinall, Mitchell and Simpson.
COR 37 of 1998	Application under the Corporations Law s. 596B for examination of bank officers and former bank officers.
COR 127 of 2000	Application for the examination of Totterdell, Lonergan and Watson of PWC.
CIV 1320 of 2001	Proceedings relating to the TBGL Inter-Creditor Agreement.
CIV 1126 of 2002	Proceedings relating to the Western Interstate Assignment Agreement.

1 Any counterclaim, appeal, cross-appeal, notice of contention or interlocutory or
2 other application filed in relation to any such proceeding.

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Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
Administrator	3(1)
agreement.....	3(1)
ASIC	3(1)
Authority.....	3(1)
Bell group of companies	4
Bell Group Subsidiary Indemnity Agreements	3(1)
Bell litigation	3(1)
Bell litigation funds	4
BGF	3(1)
BGF AFI.....	3(1)
BGF Trust Deed.....	3(1)
BGNV	3(1)
BGNV Indemnity.....	3(1)
BGNV Trust Deeds.....	3(1)
BGUK Liquidator's Indemnity Agreements.....	3(1)
body corporate	3(1)
books.....	3(1)
company.....	3(1)
conceal	50(1)
confidential information.....	54(1)
corporation.....	3(1)
Corporations Act.....	3(1)
Corporations legislation	44
Court	3(1)
creditor.....	3(1)
daily newspaper	3(1)
draft report	32(2)
engage in conduct	57(1)
excluded Corporations legislation provision.....	44
financial records.....	3(1)
Fund.....	3(1)
Genra Indemnity	3(1)
ICWA.....	3(1)
Indemnity and Distribution Agreement	3(1)
LDTC.....	3(1)
LDTC (BGF)	3(1)
LDTC (TBGL).....	3(1)
liability.....	3(1)
liquidator.....	3(1)
Liquidators' Indemnity Agreement.....	3(1)

Main Proceeding Indemnity Agreements.....	3(1)
malice.....	61(2)
offence provision	60(1)
officer.....	3(1)
principal	57(6)
property.....	3(1)
protected act.....	64(1)
PTICA.....	3(1)
records.....	3(1)
related body corporate	3(1)
relevant official	28(1)
relevant property	28(1)
right.....	3(1)
scheme	48(1)
state of mind	57(1)
subsidiary	3(1)
TBGL.....	3(1)
TBGL AFI	3(1)
TBGL Inter-Creditor Agreement	3(1)
TBGL Trust Deed.....	3(1)
the State	66(1)
transfer day	3(1)
Trust Deed Indemnity Agreements	3(1)
WA Bell Company.....	3(1)
Western Interstate	3(1)
Western Interstate Assignment Agreement.....	3(1)
Western Interstate Indemnity Agreement	3(1)
Western Interstate Inter-Creditor Agreement.....	3(1)