

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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Defined terms

Western Australia

LEGISLATIVE ASSEMBLY

(As amended in Committee)

**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 (*assent day*);
 - (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 the day after assent day.
- (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 **director**, of a company, means a person who is a director of the
15 company under paragraph (a) of the definition of **director** in the
16 Corporations Act section 9;

17 **Fund** means the WA Bell Companies Administrator Authority
18 Fund established by section 16;

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

28 **ICWA** means the body continued by the *Insurance Commission*
29 *of Western Australia Act 1986* section 4 under the corporate
30 name “Insurance Commission of Western Australia”;

31 **Indemnity and Distribution Agreement** means the Indemnity
32 and Distribution Agreement dated 29 September 1999 between
33 the Commonwealth and ICWA;

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

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- 1 **LDTC (BGF)** means LDTC in its capacity as trustee under the
2 BGF Trust Deed;
- 3 **LDTC (TBGL)** means LDTC in its capacity as trustee under the
4 TBGL Trust Deed;
- 5 **liability**, of a person, means any debt, expense, duty, obligation
6 or other liability of, or claim against, the person —
- 7 (a) whether actual, contingent, prospective, liquidated or
8 unliquidated; or
- 9 (b) whether owed alone or owed jointly or jointly and
10 severally with any other person;
- 11 **liquidator** means a liquidator of a WA Bell Company and
12 includes a provisional liquidator of a WA Bell Company
13 immediately before —
- 14 (a) for a WA Bell Company that was registered
15 immediately before the transfer day — the transfer day;
16 and
- 17 (b) for a reinstated WA Bell Company — the day on which
18 the company was deregistered;
- 19 **Liquidators' Indemnity Agreement** means the Liquidators'
20 Indemnity Agreement dated 7 October 1999 between Geoffrey
21 Frank Totterdell as liquidator of TBGL and Antony Leslie John
22 Woodings as liquidator of BGF;
- 23 **Main Proceeding Indemnity Agreements** means —
- 24 (a) the LDTC Deed of Indemnity dated 2 June 2000
25 between ICWA, LDTC, Antony Leslie John Woodings
26 as liquidator of TBGL and BGF, and Geoffrey Frank
27 Totterdell as liquidator of TBGL; and
- 28 (b) the Deed of Indemnity dated 11 July 2011 between
29 ICWA, LDTC and Antony Leslie John Woodings as
30 liquidator of TBGL and BGF, as amended by an
31 Amendment Deed dated June 2013 between ICWA,
32 LDTC and Antony Leslie John Woodings as liquidator
33 of TBGL and BGF;

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

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

- 6 (a) tangible, intangible, real or personal; or
7 (b) arising from, accruing under, created or evidenced by, or
8 the subject of, an instrument or otherwise; or
9 (c) actual, contingent, prospective, liquidated or
10 unliquidated;

11 **PTICA** means the Agreement for Indemnification and Post
12 Termination Inter-Creditor Agreement dated
13 23 September 1999 between the Commonwealth, ICWA, Garry
14 Trevor as Australian liquidator of BGNV and BGNV, as
15 amended by an agreement dated 26 June 2000;

16 **records** includes books, financial records, financial statements,
17 minutes, registers, deeds, writings, documents and other sources
18 of information compiled, recorded or stored in written form or
19 on microfilm, or by electronic process, or in any other manner
20 or by any other means;

21 **reinstated WA Bell Company** means a WA Bell Company that
22 was not registered immediately before the transfer day but
23 which had its registration reinstated on or after the transfer day;

24 **related body corporate**, in relation to a body corporate, has the
25 meaning given in the Corporations Act section 9;

26 **right** means any right, power, privilege or immunity whether
27 actual, contingent or prospective;

28 **subsidiary**, in relation to a body corporate, has the meaning
29 given in the Corporations Act section 9;

30 **TBGL** means The Bell Group Ltd ACN 008 666 993 (In
31 Liquidation);

32 **TBGL AFI** means the Agreement for Indemnification dated
33 6 April 1995 between Geoffrey Frank Totterdell as liquidator of
34 TBGL, the Commonwealth, LDTC (TBGL), LDTC (BGF),

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- 1 BGNV and ICWA, as amended by agreements dated
2 16 February 1996, 4 July 1997, 1 October 1999 and
3 22 May 2012;
- 4 ***TBGL Inter-Creditor Agreement*** means the
5 TBGL Inter-Creditor Agreement dated 21 March 1995 between
6 the Commonwealth, ICWA, LDTC and BGNV;
- 7 ***TBGL Trust Deed*** means the Trust Deed dated 25 July 1998
8 between TBGL, LDTC and Drayton Capital Pty Limited
9 ACN 009 238 377, as amended by an undated supplemental
10 deed between TBGL and LDTC;
- 11 ***transfer day*** means the day on which Part 3 comes into
12 operation;
- 13 ***Trust Deed Indemnity Agreements*** means —
- 14 (a) the Deed of Indemnity in relation to Amendment of
15 Trust Deeds for TBGL and BGF Bonds dated
16 14 December 1998 between Geoffrey Frank Totterdell
17 as liquidator of TBGL, LDTC (TBGL), LDTC (BGF)
18 and ICWA; and
- 19 (b) the Deed of Indemnity in relation to Amendment of
20 Trust Deeds for TBGL and BGF Bonds dated
21 14 December 1998 between Antony Leslie John
22 Woodings as liquidator of BGF, LDTC (TBGL), LDTC
23 (BGF) and ICWA;
- 24 ***WA Bell Company*** means a corporation that existed at any time
25 before the transfer day (including a corporation that was
26 dissolved or deregistered before that day) and that is listed in
27 Schedule 1;
- 28 ***Western Interstate*** means Western Interstate Pty Ltd
29 ACN 000 224 395 (In Provisional Liquidation);
- 30 ***Western Interstate Assignment Agreement*** means the
31 Agreement dated 13 March 1996 between Geoffrey Frank
32 Totterdell as liquidator of Bell Bros. Pty Ltd ACN 008 672 375
33 (In Liquidation), Wanstead Pty Ltd ACN 008 775 120 (In
34 Liquidation) and Wigmores Tractors Pty Ltd ACN 008 679 221,

- 1 Antony Leslie John Woodings as provisional liquidator of
2 Western Interstate and as liquidator of BGF, the
3 Commonwealth, LDTC (BGF), BGNV and ICWA, as amended
4 by an agreement dated 4 July 1997;
- 5 ***Western Interstate Indemnity Agreement*** means the Agreement
6 dated 6 March 1996 between the Commonwealth, LDTC
7 (BGF), BGNV, ICWA and Antony Leslie John Woodings as
8 provisional liquidator of Western Interstate;
- 9 ***Western Interstate Inter-Creditor Agreement*** means the
10 Agreement dated 6 February 1996 made between the
11 Commonwealth, ICWA, LDTC and BGNV.
- 12 (2) A reference in this Act to a WA Bell Company includes a
13 reference to a body that was a WA Bell Company immediately
14 before the dissolution of that company under section 29.
- 15 (3) A reference in this Act to a liquidator of a WA Bell Company
16 is, unless the contrary intention appears, a reference to a person
17 who was a liquidator of a WA Bell Company immediately
18 before the dissolution of that company under section 27.
- 19 (4) A reference in this Act to —
- 20 (a) the deregistration of a company is a reference to the
21 deregistration of the company under the Corporations
22 Act or the Corporations Law (as in force before 15 July
23 2001); and
- 24 (b) the reinstatement of the registration of a company is a
25 reference to the reinstatement of the registration of the
26 company under the Corporations Act.

27 **4. Objects of this Act**

28 The objects of this Act are —

- 29 (a) to provide a mechanism, that avoids litigation, for the
30 distribution of funds (the ***Bell litigation funds***) received
31 by the liquidator of TBGL and certain of its subsidiaries
32 (the ***Bell group of companies***) as a consequence of the
33 Bell litigation and the settlement of it in 2013;

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- 1 (b) to provide a form of external administration of WA Bell
2 Companies and require that it be carried out only in
3 accordance with the provisions of this Act;
- 4 (c) to provide appropriate compensation to the creditors
5 who funded the Bell litigation taking into account the
6 funding provided and the associated risks assumed by
7 them;
- 8 (d) to reflect the circumstance that without the funding
9 mentioned in paragraph (c), the Bell litigation funds
10 would not exist and the creditors of the Bell group of
11 companies would have received no (or only nominal)
12 dividends in the liquidation of those companies;
- 13 (e) to make reasonable provision for the distribution of the
14 property of the WA Bell Companies having regard to
15 the uncertainties existing as to the nature and extent of
16 that property;
- 17 (f) to make reasonable provision for the satisfaction of
18 liabilities owed to creditors having regard to the
19 uncertainties existing as to the nature and extent of those
20 liabilities;
- 21 (g) to distribute the Bell litigation funds generally in
22 accordance with the commercial substance of the
23 agreements between the liquidator and the creditors who
24 funded the Bell litigation, as made before the enactment
25 of this Act;
- 26 (h) to avoid further litigation that will waste the resources of
27 the State and other persons and consume the Bell
28 litigation funds.

29 **5. Crown bound**

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

1 **6. Extraterritorial operation**

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

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Part 2 — Authority and Fund

Division 1 — WA Bell Companies Administrator Authority

7. Authority established

- (1) The WA Bell Companies Administrator Authority is established.
- (2) The Authority is a body corporate with perpetual succession.
- (3) The Authority has, both within and outside the State, the legal capacity of an individual.
- (4) The Authority has an official seal and may sue and be sued in its corporate name.
- (5) The Authority is to be governed by the Administrator.
- (6) The Authority has the status, immunities and privileges of the State.
- (7) The Authority is not an organisation for the purposes of the *Public Sector Management Act 1994*.

8. Administrator appointed

- (1) An office called the Administrator of the WA Bell Companies is established.
- (2) The office is not an office in the Public Service.
- (3) The office is not an organisation for the purposes of the *Public Sector Management Act 1994*.
- (4) The Minister may appoint a person to the office.
- (5) Subject to this Act, the Administrator holds office for the term specified in the instrument of appointment and is eligible for 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 (aa) to administer each WA Bell Company until it is
12 dissolved; and

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

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

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

18 **10. Powers of the Authority**

19 (1) The Authority may do all things necessary to perform its
20 functions.

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

23 (a) acquire, hold, manage or dispose of real or personal
24 property;

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

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

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

- 1 (da) seek the reinstatement of the registration of a WA Bell
2 Company;
- 3 (db) indemnify a liquidator of a WA Bell Company against
4 costs or liability in relation to the performance of a
5 function as liquidator of the company, on the terms and
6 conditions determined by the Authority;
- 7 (e) exercise any other power conferred on the Authority by
8 or under the law of the State or the law of a place other
9 than the State.
- 10 (3) Nothing in this section limits any other power of the Authority
11 under this Act or any other written law.

12 **11. Use of government staff**

- 13 (1) The Authority may, by arrangement with the relevant employer,
14 make use (either on a full-time or part-time basis) of the
15 services of any officer or employee —
- 16 (a) in the Public Service; or
17 (b) in a State agency or instrumentality; or
18 (c) otherwise in the service of the State.
- 19 (2) The Authority may, by arrangement, make use of the facilities
20 of —
- 21 (a) a department of the Public Service; or
22 (b) a State agency or instrumentality.
- 23 (3) An arrangement under subsection (1) or (2) is to be made on
24 terms agreed to by the parties.

25 **12. Delegation**

- 26 (1) The Authority may, by instrument in writing, delegate to any
27 person any of the powers or duties of the Authority under this
28 Act or any other written law, other than this power of
29 delegation.

1 (2) A person exercising a power or performing a duty that has been
2 delegated to the person under this section is taken to do so in
3 accordance with the terms of the delegation, unless the contrary
4 is shown.

5 (3) Nothing in this section limits the ability of the Authority to
6 perform a function through an employee or agent.

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

8 (1) A document is duly executed by the Authority if —

9 (a) the official seal of the Authority is affixed to it in the
10 presence of the Administrator and the Administrator
11 signs the document to attest that it was so affixed; or

12 (b) it is signed on behalf of the Authority by —

13 (i) the Administrator; or

14 (ii) a person authorised by the Authority to sign the
15 document on its behalf.

16 (2) The Authority may, by writing under its seal, authorise an
17 employee of the Authority or other person to sign documents on
18 its behalf, either generally or subject to any restrictions that are
19 specified in the authorisation.

20 (3) A document purporting to be executed in accordance with this
21 section must be presumed to be duly executed, unless the
22 contrary is shown.

23 (4) If a document is produced bearing a seal purporting to be the
24 official seal of the Authority, it must be presumed that the seal
25 is the official seal of the Authority, unless the contrary is shown.

26 **14. Annual and final reports**

27 (1) The *Financial Management Act 2006* Part 5 applies in relation
28 to the Authority as if it were an agency and the Administrator
29 were its accountable authority.

- 1 (2) However, that Part does not apply so as to require reporting on
2 key performance indicators.

3 **15. Special reports**

- 4 (1) The Minister may, by order in writing, require the Administrator
5 to prepare a report for the Minister that contains —
6 (a) a report on the operations of the Authority over the
7 period specified in the order; and
8 (b) financial statements for the period specified in the order,
9 prepared in accordance with the *Financial Management*
10 *Act 2006* section 62; and
11 (c) any other information required by the Minister in the
12 order.
- 13 (2) The Minister may, in the order, require that the report be
14 submitted to the Auditor General for audit.
- 15 (3) The Administrator must submit the report to the Minister within
16 90 days after the day on which the order is made, or any
17 extension of that period granted by the Minister.
- 18 (4) If the order required that the report be submitted to the Auditor
19 General, the Administrator must submit, with the report, a copy
20 of the opinion of the Auditor General prepared and signed under
21 the *Auditor General Act 2006* section 15.

22 **Division 2 — The WA Bell Companies Administrator**
23 **Authority Fund**

24 **16. Establishment of Fund**

- 25 (1) The WA Bell Companies Administrator Authority Fund is
26 established.
- 27 (2) The Fund is to be administered by the Authority.
- 28 (3) The following must be credited to the Fund —
29 (a) all money transferred to the Authority under Part 3 or
30 realised out of other property transferred to, or vested in,
31 the Authority under that Part;

- 1 (b) money received from the investment of the Fund;
2 (c) any advances made to the Authority under the *Financial*
3 *Management Act 2006* section 28.
- 4 (4) The following are to be paid out of the Fund —
5 (a) amounts recoverable from the Authority as a
6 consequence of an advance referred to in
7 subsection (3)(c);
8 (b) expenses payable out of it under section 18;
9 (c) amounts payable out of it under section 38.
- 10 (5) All money credited to the Fund must be paid into an account
11 established at a bank as defined in the *Financial Management*
12 *Act 2006* section 3.

13 **17. Investment of Fund**

14 The Authority may invest any money standing to the credit of
15 the Fund in the same manner as money in the Public Bank
16 Account may be invested under the *Financial Management*
17 *Act 2006* section 37.

18 **18. Administration expenses**

- 19 (1) The following expenses, as determined by the Authority, are
20 payable out of the Fund —
21 (a) expenses of, and incidental to, the administration of this
22 Act by the Authority;
23 (aa) expenses of, and incidental to, the administration of a
24 WA Bell Company by the Authority;
25 (ab) any amount payable under an indemnity under
26 section 10(2)(db);
27 (b) any remuneration or expenses payable to, or in respect
28 of, the Administrator;
29 (c) expenses reasonably incurred by a liquidator of a
30 WA Bell Company in complying with an obligation
31 under this Act.

- 1 (2) Expenses payable under this section are to be paid out of the
2 Fund before the payment of amounts specified in the
3 determination of the Governor under section 37(2).

4 **19. Accounting for losses**

- 5 (1) If the Fund incurs any loss because of any fraud, dishonesty,
6 negligence or wilful failure to comply with this Act by the
7 Administrator, the Administrator is liable for the loss.

- 8 (2) The Administrator is not liable for any loss incurred by the Fund
9 that is not a loss covered by subsection (1) but he or she must
10 provide details of the loss in a written report to the Minister as
11 soon as practicable after becoming aware of it.

- 12 (3) A failure to comply with subsection (2) does not make the
13 Administrator liable for the loss.

- 14 (4) Only the Minister may bring a proceeding in relation to a
15 liability for a loss covered by subsection (1).

16 **Division 3 — Assumptions**

17 **20. Assumptions entitled to be made**

- 18 (1) A person is entitled to make the assumptions in section 21 in
19 relation to —

- 20 (a) dealings with the Authority; or
21 (b) dealings with a person who has, or purports to have,
22 directly or indirectly acquired title to property from the
23 Authority.

- 24 (2) If a person is entitled to assume a matter, the Authority or
25 anyone referred to in subsection (1)(b) is not entitled to assert in
26 proceedings in relation to the dealings that the matter is
27 incorrect.

- 1 (3) This section does not entitle a person to make an assumption,
2 and does not prevent an assertion being made in relation to an
3 assumption, if —
4 (a) the person has actual knowledge that the assumption is
5 not correct; or
6 (b) the person's connection or relationship with the
7 Authority is such that the person ought to know that the
8 assumption is not correct.

9 **21. Assumptions**

- 10 (1) A person may assume that, at all relevant times, this Act has
11 been complied with.
12 (2) A person may assume that anyone who appears, from
13 information made publicly available by the Authority, to be an
14 employee, agent or delegate of the Authority has been properly
15 appointed.
16 (3) A person may assume that anyone who is, or may be assumed to
17 be, an employee or agent of the Authority who has authority to
18 issue a document, or a certified copy of a document, on behalf
19 of the Authority also has authority to warrant that it is genuine
20 or is a true copy.
21 (4) A person may assume that the Administrator and any employee,
22 agent or delegate of the Authority properly performs their duties
23 to the Authority.

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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 (in any capacity) by a person who is a liquidator of a WA Bell Company on trust for any person, other than property held in a capacity that does not relate to the liquidation of a WA Bell Company.
- (1A) Property received by a WA Bell Company or another person, on or after the transfer day, that would have been transferred to, and vested in, the Authority by subsection (1) were it vested or held by the company or person as described in subsection (1) before the transfer day, is transferred to, and vested in, the Authority by force of this section, at the time at which it is received.
- (1B) In relation to a reinstated WA Bell Company, property re-vested in the company as a consequence of its reinstatement is taken to have been received by the company for the purposes of subsection (1A).
- (1C) Subsection (1) or (1A), whichever is relevant, does not apply to a share in a company that was a subsidiary of TBGL —
- (a) immediately before the transfer day; or

- 1 (b) if the company was deregistered before the transfer
2 day — immediately before the time at which the
3 company was deregistered.
- 4 (1D) A share to which subsection (1) or (1A) would have applied but
5 for subsection (1C), is transferred to, and vested in, the
6 Authority by force of this section immediately before the earlier
7 of —
- 8 (a) the day specified by the Authority, by instrument
9 published in the *Gazette*, for the purposes of this
10 paragraph; and
- 11 (b) the day on which the WA Bell Company is dissolved
12 under section 27.
- 13 (1E) To the extent to which a right to make a taxation objection, or a
14 right or capacity to seek the review of, or to appeal against, a
15 decision of the Commissioner in relation to a taxation objection,
16 is property of a WA Bell Company, subsection (1) or (1A),
17 whichever is relevant, does not apply to the right or capacity.
- 18 (1F) Words and expressions used in subsection (1E) and also in the
19 *Taxation Administration Act 1953* (Commonwealth) Part IVC
20 have the same meanings in that subsection as they have in that
21 Part.
- 22 (2) This section applies to property whether situated in or outside
23 the State.
- 24 (3) A transfer takes effect despite any restriction arising under
25 contract, written law, the common law or in any other way.
- 26 (4) All property transferred to the Authority under this section vests
27 absolutely in the Authority freed from any encumbrance, trust,
28 equity or interest (of any kind and however arising) to which it
29 was subject immediately before so vesting.
- 30 (5) The Authority has all the powers of an owner over property
31 vested in it under this section.

- 1 (6) A certificate signed by the Administrator certifying that
2 property specified in the certificate has vested in the Authority
3 under this section is conclusive evidence that the property so
4 vested on the day specified in the certificate.
- 5 (7) The Administrator may allow a person whom the Administrator
6 is satisfied has a proper interest in a certificate under
7 subsection (6) to have access to it.
- 8 (8) If it appears to the Administrator that it is likely that a certificate
9 will be required to be given to a relevant official under
10 section 28, the Administrator must consult with that official (or
11 each relevant official if there is more than one) as to its form
12 and content.
- 13 (9) The Administrator may correct any error in a certificate under
14 subsection (6) and, for that purpose, may issue a replacement
15 certificate.
- 16 **23. Notice to property holder**
- 17 (1) The Administrator may give notice to any person who the
18 Administrator believes may hold, or may at any time have
19 held —
- 20 (a) property that, before the transfer day, was property of a
21 kind referred to in section 22(1); or
- 22 (b) in relation to a reinstated WA Bell Company —
23 property that, before the day on which the company was
24 deregistered, was property of a kind referred to in
25 section 22(1); or
- 26 (c) property to which section 22(1A) applies.
- 27 (2) A notice under subsection (1) may require the person to whom it
28 is given to do one or more of the following —
- 29 (a) provide access to all records of that person relating to
30 the property;
- 31 (b) account for all dealings with the property by or on
32 behalf of that person;

- 1 (c) do all things necessary to deliver to the Authority the
2 property specified in the notice.

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

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

6 If a transfer and vesting of property under section 22 is not, to
7 any extent, fully effective (whether because a matter is
8 governed by a law other than the law of the State, or for any
9 other reason), the Minister and the Authority are each
10 empowered and required to take all practicable steps for the
11 purpose of securing the effect sought to be achieved by that
12 section.

13 **Division 2 — Treatment of liabilities**

14 **25. Treatment of liabilities**

- 15 (1) If, immediately before the transfer day, a liability of a WA Bell
16 Company was admissible to proof against the company in the
17 winding up of the company under the Corporations Act Part 5.6,
18 that liability may be proved in accordance with Part 4
19 Division 1 of this Act.
- 20 (2) Subsection (3) applies to liabilities that have been incurred by a
21 WA Bell Company or a liquidator of a WA Bell Company in
22 preserving, realising or getting in property of the company, in
23 carrying on the company's business or in the conduct of the
24 liquidation that have not been paid out of the assets of the
25 company before the transfer day.
- 26 (3) The liabilities may be proved by the liquidator (or by a creditor
27 of a WA Bell Company or the liquidator if they have not been
28 paid or satisfied) in accordance with Part 4 Division 1.
- 29 (4) If, by section 22, property is freed from an encumbrance, trust,
30 equity or interest on being transferred to, and vested in, the
31 Authority, that encumbrance, trust, equity or interest may be
32 proved as a liability in accordance with Part 4 Division 1.

- 1 (5) No action, claim or proceeding of any nature arising out of, or
2 relating to, a liability that may be proved in accordance with
3 Part 4 Division 1 may, otherwise than in accordance with that
4 Part, be made or maintained against —
- 5 (a) the Authority; or
6 (b) the Fund; or
7 (c) a WA Bell Company; or
8 (d) a liquidator of a WA Bell Company; or
9 (e) the Administrator; or
10 (f) the State.

11 **Division 3 — Voiding of Agreements**

12 **26. Certain agreements voided**

- 13 (1) Each of the following is, and is taken to have always been,
14 void —
- 15 (a) the Bell Group Subsidiary Indemnity Agreements;
16 (b) the BGF AFI;
17 (c) the BGNV Indemnity;
18 (d) the BGUK Liquidator's Indemnity Agreement;
19 (e) the Gentra Indemnity;
20 (f) the Indemnity and Distribution Agreement;
21 (g) the Liquidators' Indemnity Agreement;
22 (h) the Main Proceeding Indemnity Agreements;
23 (i) the PTICA;
24 (j) the TBGL AFI;
25 (k) the TBGL Inter-Creditor Agreement;
26 (l) the Trust Deed Indemnity Agreements;
27 (m) the Western Interstate Assignment Agreement;
28 (n) the Western Interstate Indemnity Agreement;
29 (o) the Western Interstate Inter-Creditor Agreement.

- 1 (2) Subsection (3) applies if an agreement made void by
2 subsection (1) provided, according to its terms, for the
3 repayment in specified circumstances of an amount of money
4 paid to or for the benefit of a liquidator of a WA Bell Company
5 in connection with the conduct of the liquidation or the funding
6 of the Bell litigation.
- 7 (3) The claim that a person, according to the terms of the
8 agreement, had to be repaid, may be proved in accordance with
9 Part 4 Division 1.

10 **Division 3A — Administration of WA Bell Companies**

11 **26A. Authority to administer WA Bell Companies**

- 12 (1) The Authority is, by force of this section, the administrator of
13 each WA Bell Company.
- 14 (2) Subsection (1) has effect —
- 15 (a) for a WA Bell Company that was registered
16 immediately before the transfer day — from the
17 beginning of the transfer day; and
- 18 (b) for a reinstated WA Bell Company — from the time at
19 which the company's registration is reinstated.
- 20 (3) The Authority's administration of a WA Bell Company ceases
21 on the earlier of —
- 22 (a) the dissolution of the company; and
- 23 (b) the day specified in a notice given by the Authority to
24 the liquidator (or other officer if there is no liquidator)
25 of the company that the Authority will cease to be the
26 administrator of the company on that day.

27 **26B. Role of Authority as administrator of WA Bell Companies**

- 28 (1) While a WA Bell Company is under the administration of the
29 Authority, the Authority —
- 30 (a) has control of the company's property and affairs; and

- 1 (b) may manage that property and those affairs; and
2 (c) may dispose of any of that property; and
3 (d) may perform any function, and exercise any power, that
4 the company or any of its officers could perform or
5 exercise if the company were not under the
6 administration of the Authority.

7 (2) Nothing in subsection (1) limits the generality of anything else
8 in it.

9 (3) Nothing in this section limits any other power of the Authority
10 under this Act or any other written law.

11 **26C. Powers of other officers**

12 (1) While a company is under the administration of the Authority, a
13 person (other than the Authority) cannot perform or exercise,
14 and must not purport to perform or exercise, a function or power
15 as an officer of the company.

16 (2) Subsection (1) does not apply to the extent that the performance
17 or exercise is with the Authority's written approval or is in the
18 exercise of a power or duty under this Act.

19 (3) Subsection (1) does not remove a director or the liquidator of a
20 WA Bell Company from his or her office.

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

22 **27. Dissolution of companies**

23 (1) The Governor may, by proclamation, dissolve a WA Bell
24 Company.

25 (2) On dissolution, the WA Bell Company ceases to exist.

26 (3) If, immediately before its dissolution under this section, a
27 WA Bell Company was a party to any proceeding pending or
28 existing in any court or tribunal or before any person acting
29 judicially, then, on and after that dissolution, the Authority is

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Division 5 Miscellaneous

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- 1 maintaining a register required under the Corporations
2 Act;
- 3 **relevant property** means property of a kind transferred to, and
4 vested in, the Authority under this Part, whether it is an estate or
5 interest in land or any other property.
- 6 (2) The Administrator may give a copy of a certificate under
7 section 22(6) to a relevant official.
- 8 (3) Each relevant official to whom a certificate is given under
9 subsection (2) is to take notice of this Part and of the certificate
10 and is to record and register in the appropriate manner the
11 documents necessary to show the effect of this Part as
12 evidenced by the certificate.

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

3 **Division 1A — Application of this Part**

4 **28A. Application of this Part in relation to certain interests**

5 (1) In relation to a liability referred to in section 25(3), this Part has
6 effect as if —

7 (a) the liability were, immediately before the transfer day, a
8 liability of the WA Bell Company referred to in
9 section 25(2) in relation to the liability; and

10 (b) the person who, immediately before the transfer day,
11 had the benefit of the liability were, immediately before
12 the transfer day, a creditor of the WA Bell Company.

13 (2) If property vested in a WA Bell Company or held by a
14 liquidator of a WA Bell Company, to which section 22(1)(a) or
15 (b) applied at the beginning of the transfer day, was freed from
16 an encumbrance, trust, equity or interest (the *interest*) by
17 section 22 and the WA Bell Company was not the beneficiary of
18 the interest, this Part has effect as if —

19 (a) the interest were, immediately before the transfer day, a
20 liability of the WA Bell Company; and

21 (b) the person who, immediately before the transfer day,
22 had the benefit of the interest were, immediately before
23 the transfer day, a creditor of the WA Bell Company.

24 (3) If property to which section 22(1) applied at the beginning of
25 the transfer day was freed from an encumbrance, trust, equity or
26 interest (the *interest*) by section 22 and subsection (2) does not
27 apply in relation to the property, this Part has effect as if —

28 (a) the interest were, immediately before the transfer day, a
29 liability of each WA Bell Company; and

- 1 (b) the person who, immediately before the transfer day,
2 had the benefit of the interest were, immediately before
3 the transfer day, a creditor of each WA Bell Company.
- 4 (4) In relation to a claim referred to in section 26(3), this Part has
5 effect as if —
- 6 (a) the claim were, immediately before the transfer day, a
7 liability of the WA Bell Company referred to in
8 section 26(2) in relation to the claim; and
- 9 (b) the person who, immediately before the transfer day,
10 had the benefit of the claim were, immediately before
11 the transfer day, a creditor of the WA Bell Company.
- 12 (5) If the Authority determines, under section 33, that an interest to
13 which subsection (3) applies is a liability of each WA Bell
14 Company, each company is jointly and severally liable.

15 **Division 1 — Information gathering**

16 **29. Requirements on liquidator**

- 17 (1) A liquidator of a WA Bell Company must, within one month
18 after the transfer day, give to the Authority an account and
19 statement of a kind that the liquidator would have been required
20 to lodge with ASIC under the Corporations Act section 539
21 if —
- 22 (a) this Act had not been passed; and
23 (b) the liquidator had ceased to act as liquidator on the
24 transfer day.
- 25 (2) The Authority may cause the account and statement to be
26 audited by a registered company auditor (as defined in the
27 Corporations Act section 9), who must prepare a report on the
28 account and the statement (if any).
- 29 (3) For the purposes of the audit, the liquidator must give the
30 auditor any books and information that the auditor requires.

-
- 1 (4) The auditor has qualified privilege in relation to a report
2 prepared by the auditor under subsection (2) to the same extent
3 as the auditor would have if the report were one prepared under
4 the Corporations Act section 539.
- 5 (5) The costs of an audit under subsection (2) —
6 (a) must be fixed by the Authority; and
7 (b) form part of the expenses of the administration of this
8 Act.
- 9 (6) If the Authority causes an account, or an account and statement,
10 to be audited under subsection (2), the Authority must give the
11 liquidator a copy of the report.
- 12 (7) A liquidator of a WA Bell Company must, within one month
13 after the transfer day, give to, or as directed by, the Authority all
14 books of the WA Bell Company and of the liquidator that are
15 relevant to the affairs of the company as at immediately before
16 the transfer day.
- 17 (8) The Authority may at any time, by notice given to a liquidator
18 of a WA Bell Company, require the liquidator to prepare and
19 give to it a report about the following as at immediately before
20 the transfer day —
21 (a) all property vested in the company, including property
22 held by it on trust for any person;
23 (b) all property held by any person (including the liquidator)
24 on behalf of or on trust for the company;
25 (c) all property held by the liquidator referred to in
26 section 22(1)(c);
27 (d) any liability of the company.
- 28 (9) The report must be in the form, and contain the information,
29 specified by the Authority.
- 30 (10) A liquidator of a WA Bell Company must comply with a notice
31 under subsection (8) within 14 days after receiving it.

1 (11) A liquidator of a WA Bell Company has qualified privilege in
2 making a report under subsection (8) and in relation to any fact
3 or matter stated in the report.

4 (12) This section has effect in relation to a reinstated WA Bell
5 Company as if references in it to the transfer day were
6 references to the day on which the registration of the company
7 was reinstated.

8 **30. Call for proof of liabilities**

9 (1) The Authority must give to each person whom it reasonably
10 believes to have been a creditor of a WA Bell Company
11 immediately before the transfer day a notice requiring the
12 person to give to the Authority, within 30 days after the date of
13 that notice, full particulars of all liabilities of the company in
14 relation to the person.

15 (2) The Authority must, as soon as practicable after the transfer
16 day, publish in a daily newspaper circulating in Australia a
17 notice requiring any person who believes that they were a
18 creditor of a WA Bell Company immediately before the transfer
19 day to give to the Authority, within 30 days after the publication
20 of that notice, full particulars of all liabilities of the company in
21 relation to the person.

22 (2A) The Authority may also publish the notice referred to in
23 subsection (2) by any other means that the Authority thinks
24 necessary to bring it to the attention of the persons referred to in
25 that subsection.

26 (3) The Authority must specify in a notice under subsection (1)
27 or (2) —

28 (a) the manner in which a liability may be proved; or

29 (b) how that manner may be ascertained.

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

2 **31. Role of the Authority**

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

- 4 (a) determine the property and liabilities of each WA Bell
5 Company, and report to the Minister on that, under
6 sections 33 and 34; and
7 (b) make recommendations to the Minister under
8 sections 35 and 36.

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

10 (1) The Authority must comply with this section before —

- 11 (a) finalising its determination of the property and liabilities
12 of each WA Bell Company under section 33; and
13 (b) finalising the recommendations that it is to make to the
14 Minister under sections 35 and 36.

15 (2) The Authority must prepare a document (a *draft report*) that
16 sets out —

- 17 (a) its preliminary determination of the property and
18 liabilities of each WA Bell Company under section 33;
19 and
20 (b) the recommendations that it is proposing to make to the
21 Minister under sections 35 and 36.

22 (2A) The Authority may prepare more than one draft report.

23 (3) The Authority must provide each draft report to each person
24 who gave particulars of a liability under section 30.

25 (3A) The first draft report under subsection (2) must be prepared, and
26 provided in accordance with subsection (3), within the period of
27 150 days beginning on the transfer day.

28 (4) A person to whom a draft report is provided under
29 subsection (3) may make a written submission to the Authority,

1 within 14 days after receiving the draft report, in respect of any
2 matter relating to that person arising out of the draft report.

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

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

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

7 (a) any account and statement given under section 29(1);
8 and

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

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

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

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

13 (f) any other matters that the Authority in its discretion
14 considers appropriate.

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

17 **34. Reports to the Minister on property and liabilities**

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

22 (2) The report under subsection (1) must contain any
23 recommendations of the Authority under section 35 or 36.

24 (2A) Before making a final determination under section 33, the
25 Authority may make one or more interim reports to the Minister
26 based on its preliminary determination of the property and
27 liabilities of each WA Bell Company under section 33.

28 (2B) The Authority must make a report under subsection (2A) if
29 directed to do so by the Minister.

1 (2C) A report under subsection (2A) may contain a description of any
2 contingencies and uncertainties and any interim
3 recommendations of the Authority under section 35 or 36.

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

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

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

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

16 (2) In making a recommendation under this section, the
17 Authority —

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

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

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

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

31 (e) may have regard to the following —

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

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Division 2 Reports and recommendations by the Authority

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- 1 (ii) the Authority's assessment of the value of
2 unliquidated liabilities;
- 3 (iii) recoveries that might be made by a creditor from
4 subsidiaries of TBGL that are not WA Bell
5 Companies;
- 6 (iv) the relative size of each liability and the relative
7 importance of the satisfaction of that liability to
8 the relevant creditor;
- 9 (v) the detriment to a creditor of not receiving
10 payment of any liability in full;
- 11 (vi) any amount paid by a creditor for the acquisition
12 of, or of any interest in, a liability;
- 13 (vii) any recommendation as to the payment of
14 compensation under section 36.
- 15 (2A) A recommendation in an interim report under section 34(2A) is
16 an interim recommendation.
- 17 (2B) A recommendation in the report under section 34(1) is a final
18 recommendation and must take into account any amount or
19 property that the Governor under section 36A(2) has determined
20 is to be paid to, or transferred to or vested in, a person.
- 21 (3) A recommendation need not contain reasons.
- 22 (4) The Authority has an absolute discretion as to —
- 23 (a) the quantification of any liability; and
- 24 (b) the amount recommended to be paid to a person or the
25 property recommended to be transferred to, or vested in,
26 a person; and
- 27 (c) the priority to give to that payment, transfer or vesting.
- 28 (5) Nothing in this section requires that the aggregate value of all
29 money recommended to be paid, and all property recommended
30 to be transferred or vested, under this section must be equal to
31 the value of the money or property held by the Authority or the

- 1 total liabilities of all WA Bell Companies as determined under
2 section 33.
- 3 (6) Nothing in this section creates any right in, or for the benefit of,
4 a creditor of a WA Bell Company or any other person.
- 5 (7) The Authority has absolute privilege in making a
6 recommendation under this section and in relation to any fact or
7 matter stated in the recommendation.
- 8 (8) A failure by the Authority to comply with any provision of this
9 section does not invalidate a recommendation made by it under
10 this section.
- 11 **36. Recommendations with respect to funding or indemnities**
- 12 (1) Subsection (2) applies with respect to a creditor of any kind of a
13 WA Bell Company who, before the transfer day, provided
14 funding for, or an indemnity against costs or liability in relation
15 to, the Bell litigation, whether directly or indirectly.
- 16 (2) The Authority may recommend, in writing, to the Minister an
17 amount to be paid to, or property to be transferred to or vested
18 in the creditor (instead of or in addition to the payment of
19 money to that creditor), as compensation for providing that
20 funding or indemnity.
- 21 (3) In making a recommendation under subsection (2), the
22 Authority —
- 23 (a) must have regard to the objects of this Act; and
24 (b) must have regard to any agreement between any of the
25 creditors as to the distribution of the proceeds of the Bell
26 litigation, entered into after 12 noon on the day before
27 the day on which the Bill for this Act was introduced
28 into the Legislative Assembly; and
29 (c) must have regard to any submissions made under
30 section 32(4); and

- 1 (d) may have regard to the following —
- 2 (i) the amounts of funding provided;
- 3 (ii) the terms of any agreement under which that
- 4 funding or indemnity was provided (including an
- 5 agreement made void by this Act);
- 6 (iii) the extent of any risks assumed in providing that
- 7 funding or indemnity (whether or not that
- 8 indemnity is or ever has been enforceable);
- 9 (iv) the extent of the benefit secured, or detriment
- 10 avoided, by the WA Bell Company and its
- 11 related bodies corporate on account of the
- 12 provision of that funding or indemnity;
- 13 (v) the extent of any benefits that may be received
- 14 by the creditor from a related body corporate of a
- 15 WA Bell Company that is not a WA Bell
- 16 Company;
- 17 (vi) any other matters that it considers relevant.
- 18 (3A) A recommendation in an interim report under section 34(2A) is
- 19 an interim recommendation.
- 20 (3B) A recommendation in the report under section 34(1) is a final
- 21 recommendation and must take into account any amount or
- 22 property that the Governor, under section 36A(2), has
- 23 determined is to be paid to, or transferred to or vested in, a
- 24 person.
- 25 (4) The Authority has an absolute discretion as to —
- 26 (a) the quantification of any funding, indemnity, risk,
- 27 benefit or detriment; and
- 28 (b) the amount recommended to be paid to a person or the
- 29 property recommended to be transferred to, or vested in,
- 30 a person.

- 1 (5) A recommendation under subsection (2) may further
2 recommend that any amount payable to a creditor under this
3 Act —
4 (a) reduce to a specified extent a liability of a WA Bell
5 Company to the creditor; or
6 (b) be in addition to any amount otherwise payable to the
7 creditor under this Act; or
8 (c) be in addition to any payments to the creditor in respect
9 of liabilities that are the subject of a recommendation
10 under section 35.
- 11 (6) A recommendation need not contain reasons.
- 12 (7) Nothing in this section creates any right in, or for the benefit of,
13 a creditor of a WA Bell Company or any other person.
- 14 (8) The Authority has absolute privilege in making a
15 recommendation under this section and in relation to any fact or
16 matter stated in the recommendation.
- 17 (9) A failure by the Authority to comply with any provision of this
18 section does not invalidate a recommendation made by it under
19 this section.

20 **Division 3 — Determinations of the Governor**

21 **36A. Governor may determine amounts and property: interim**
22 **determinations**

- 23 (1) The Minister may submit to the Governor an interim report of
24 the Authority under section 34(2A).
- 25 (2) The Governor may, by instrument in writing, determine an
26 amount to be paid to, or property to be transferred to or vested
27 in, a person.

- 1 **37. Governor may determine amounts and property: final**
2 **determination**
- 3 (1) The Minister must submit to the Governor the report of the
4 Authority under section 34(1).
- 5 (2) The Governor may, by instrument in writing, determine an
6 amount to be paid to, or property to be transferred to or vested
7 in, a person.
- 8 (3) The amount or amounts to be paid to, and the property to be
9 transferred to or vested in, a person under this Division —
- 10 (a) is in respect of the aggregate of all liabilities of all WA
11 Bell Companies to that person as a creditor; and
- 12 (b) may be by way of compensation for providing funding
13 or an indemnity.
- 14 **37A. Determinations: general provisions**
- 15 (1) 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 (2) 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 Division must be equal to the value of the money or
22 property held by the Authority or the total liabilities of all WA
23 Bell Companies as determined under section 33.
- 24 (3) The Minister must give a determination of the Governor to the
25 Authority.
- 26 (4) A determination need not contain reasons.
- 27 (5) A determination is not subsidiary legislation for the purposes of
28 the *Interpretation Act 1984*.
- 29 (6) Nothing in this Division creates any right in, or for the benefit
30 of, a creditor of a WA Bell Company or any other person.

- 1 (7) The Governor has absolute privilege in making a determination
2 and in relation to any fact or matter stated in it.
- 3 (8) On the making of the determination under section 37(2), every
4 liability of every WA Bell Company to a person to whom
5 nothing is to be paid and to whom no property is to be
6 transferred and in whom no property is to be vested under a
7 determination under this Division is, by force of this Act,
8 discharged and extinguished.

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

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

- 11 (1) Subject to subsection (3), as soon as practicable after receiving a
12 determination of the Governor under Division 3, the Authority
13 must —
- 14 (aa) notify each person specified in the determination to or in
15 whom the Governor has determined an amount is to be
16 paid or property is to be transferred or vested; and
- 17 (a) pay out of the Fund the amounts specified, to the
18 persons specified, in the determination; and
- 19 (b) transfer or vest the property specified, to or in the
20 persons specified, in the determination.
- 21 (2) The Authority may determine the means by which any payment
22 is to be made.
- 23 (3) A person is not entitled to have a payment made to them, or
24 property transferred to or vested in them, under this section
25 unless the person gives to the Authority a deed that —
- 26 (a) is in the form approved by the Minister; and
27 (b) is executed to the satisfaction of the Authority; and
28 (c) provides for the release or discharge of any person from
29 any liability that the Minister considers appropriate.
- 30 (4) Subsection (5) applies to a person covered by the determination
31 of the Governor under section 37(2).

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

Part 4 Completion of winding up of WA Bell Companies

Division 4 Giving effect to Governor's determination

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- 1 (5) At the end of the period of 3 months beginning on the day on
2 which notice of the determination of the Governor under
3 section 37(2) is given to the person —
- 4 (a) every liability of every WA Bell Company to the person
5 is, by force of this Act, discharged and extinguished;
6 and
- 7 (b) if the person has not given a duly executed deed in
8 accordance with subsection (3) in relation to a
9 determination of the Governor under Division 3 — the
10 determination ceases to have effect in relation to the
11 person.
- 12 (6) Subsection (7) applies to a person covered by a determination of
13 the Governor under section 36A(2) but not covered by the
14 determination of the Governor under section 37(2).
- 15 (7) At the end of the period of 3 months beginning on the day on
16 which the Governor makes the determination under
17 section 37(2) —
- 18 (a) every liability of every WA Bell Company to the person
19 is, by force of this Act, discharged and extinguished;
20 and
- 21 (b) if the person has not given a duly executed deed in
22 accordance with subsection (3) in relation to a
23 determination of the Governor under section 36A(2) —
24 the determination ceases to have effect in relation to the
25 person.
- 26 (8) A reference to a person covered by a determination of the
27 Governor is a reference to a person to or in whom the Governor
28 has determined an amount is to be paid or property is to be
29 transferred or vested.

Division 5 — Release of Liquidator

39. Release of liquidator

- (1) On the dissolution of a WA Bell Company under section 27, each person who is, or has at any time been, a liquidator of the company and each person who has at any time acted for or on behalf of such a liquidator is discharged from all liability arising out of or relating to anything done, or purportedly done, by them in performing their duties, including complying with obligations arising under this Act.
- (2) In subsection (1), a reference to something being done includes a decision not to do something or a failure to do something.
- (3) This section does not prevent a liquidator making at any time an application under the Corporations Act section 480 for an order 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 has been
7 paid;

8 (b) the end of the period of 6 months beginning on the day
9 on which the Governor makes the determination under
10 section 37(2).

11 (2) Any money standing to the credit of the Fund when it is closed
12 is to be credited to the Consolidated Account.

13 **41. Abolition of Authority**

14 (1) The Authority is abolished.

15 (2) The office of Administrator is abolished.

16 (3) On the commencement of this section —

17 (a) any property that, immediately before that
18 commencement, was vested in the Authority vests in the
19 State by force of this section; and

20 (b) any liabilities that, immediately before that
21 commencement, were liabilities of the Authority (other
22 than a liability to make a payment or to transfer or vest
23 property in accordance with section 38) become
24 liabilities of the State; and

25 (c) any proceeding or remedy that, immediately before that
26 commencement, might have been brought or continued
27 by or available against or to the Authority may be
28 brought or continued by and is available against or to the
29 State; and

30 (d) all records and data of the Authority pass to the
31 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. Reports on Authority's functions**

- 19 (1) The Administrator must —
20 (a) within 3 months after each anniversary of the
21 commencement of Part 2 — prepare a report on how the
22 Administrator carried out the Authority's functions as
23 outlined in section 9 in the year prior to the anniversary;
24 and
25 (b) within 3 months after each anniversary of the
26 commencement of Part 2 — prepare a report on how the
27 Administrator carried out the Authority's functions as
28 outlined in section 9 in the year prior to the anniversary.
29 (2) The final report under subsection (1)(b) must —
30 (a) set out each recommendation of the Authority under
31 sections 35 and 36; and

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- 1 (b) set out each determination of the Governor under Part 4
2 Division 3; and
- 3 (c) state whether a determination of the Governor under
4 Part 4 Division 3 of an amount to be paid to, or property
5 to be transferred to or vested in, a person differed from a
6 recommendation in a report of the Authority under
7 section 34 in relation to the person.
- 8 (3) A report under subsection (1) need not contain reasons in
9 relation to the matters referred to in subsection (2).
- 10 (4) The Minister is to cause to be laid before each House of
11 Parliament —
- 12 (a) a report under subsection (1)(a) within 6 sitting days
13 after the preparation of the report; and
- 14 (b) the final report under subsection (1)(b) within 6 sitting
15 days after the day on which the Authority is abolished.

Part 6 — Application of Corporations Act

44. Terms used

In this Part —

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

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

45. WA Bell Companies excluded from Corporations legislation

- (1) Each WA Bell Company is declared to be an excluded matter for the purposes of the Corporations Act section 5F in relation to the whole of the Corporations legislation, other than to the extent specified in subsections (2) and (3).
- (2) Subsection (1) does not exclude the application of the following provisions of the Corporations legislation to the WA Bell Companies to the extent that the provisions would otherwise be applicable —
 - (a) provisions relating to a matter that the regulations provide is not to be excluded from the operation of the Corporations legislation;
 - (b) provisions relating to the role of a WA Bell Company in the formation of, or the holding of shares in, a company that is not a WA Bell Company.
- (3) Subsection (1) does not apply to the extent necessary to enable —
 - (a) a WA Bell Company that is dissolved under section 27 to be deregistered under the Corporations Act;
 - (b) a liquidator of a WA Bell Company that is dissolved under section 27 to apply for an order that he or she be released;

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- 1 (c) the registration of a WA Bell Company to be reinstated,
2 and (without limiting that) the functions in the
3 Corporations Act section 601AH to be performed and
4 the matters provided for in that section to occur.

5 **46. Displacement of certain provisions of Corporations**
6 **legislation**

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

14 **47. Applying the Corporations legislation to WA Bell**
15 **Companies**

- 16 (1) The regulations may declare a matter relating to a WA Bell
17 Company to be an applied Corporations legislation matter for
18 the purposes of the *Corporations (Ancillary Provisions)*
19 *Act 2001* Part 3 in relation to a specified provision or provisions
20 of the Corporations legislation (including any excluded
21 Corporations legislation provision or provisions), with any
22 modifications that are specified in the declaration.
- 23 (2) Without limiting subsection (1), the regulations may do any one
24 or more of the following —
- 25 (a) specify modifications to the definitions and other
26 interpretive provisions of the Corporations legislation
27 relevant to any Corporations legislation provision to
28 which the declaration relates;

- 1 (b) provide for ASIC to exercise a function under any
2 Corporations legislation to which the declaration relates,
3 but only if —
- 4 (i) ASIC is to exercise the function under an
5 agreement referred to in the *Australian Securities*
6 *and Investments Commission Act 2001*
7 (Commonwealth) section 11(8) or (9A)(b); and
- 8 (ii) ASIC is authorised to exercise that function
9 under section 11 of that Act;
- 10 (c) modify the circumstances in which a court may exercise
11 a function conferred on it by a Corporations legislation
12 provision to which the declaration relates;
- 13 (d) specify that a reference to ASIC in a Corporations
14 legislation provision to which the declaration relates is
15 to be a reference to another person;
- 16 (e) identify a Corporations legislation provision to which
17 the declaration relates by reference to the provision as in
18 force at a particular time;
- 19 (f) specify a court to exercise a function conferred by a
20 Corporations legislation provision to which the
21 declaration relates.
- 22 (3) Words and expressions used in this section and also in the
23 *Corporations (Ancillary Provisions) Act 2001* Part 3 have the
24 same meanings in this section as they have in that Part.

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Part 7 — Offences

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.

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 —

5 (a) proceedings in a court to challenge the constitutional
6 validity of this Act; or

7 (b) proceedings in a court contemplated by this Act.

8 Examples for this subsection:

9 For the purposes of subsection (6)(b), proceedings referred to in
10 sections 67 and 68 are examples of proceedings contemplated by this
11 Act.

12 **49. Certain deregistered companies not to be reinstated by**
13 **certain persons**

14 (1) A person (other than the Authority) must not take any step for
15 achieving the reinstatement of the registration of a deregistered
16 company listed in Schedule 1.

17 Penalty: a fine of \$10 000.

18 (2) Before the day on which section 7 comes into operation,
19 subsection (1) does not apply to a WA Bell Company, a
20 liquidator of a WA Bell Company or a former liquidator of a
21 deregistered company.

22 (3) On and after the day on which section 7 comes into operation,
23 subsection (1) does not apply to a person if the person has the
24 written approval of the Authority to take the step referred to in
25 subsection (1).

26 **50. Dealings with property**

27 (1) In this section —

28 *conceal* includes transfer outside the State.

29 (2) A person must not conceal property that is, or is to be,
30 transferred to, and vested in, the Authority by section 22 or do
31 any other act or make an omission of any kind in relation to

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1 such property for the purpose of directly or indirectly defeating
2 the effectiveness of the transfer or vesting or proposed transfer
3 or vesting.

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

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

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

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

14 (a) to pay, in the ordinary course of the liquidation of the
15 company, the ordinary expenses of conducting the
16 liquidation; or

17 (b) to invest money, in the ordinary course of the liquidation
18 of the company, with an ADI.

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

20 A person must not obstruct or hinder —

21 (a) the Authority in the performance of its functions; or

22 (b) a person assisting the Authority in the performance of
23 those functions.

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

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

27 (1) A person must not, without reasonable excuse, fail to comply
28 with a requirement made by this Act or made by the Authority,
29 the Administrator or an employee, agent or delegate of the
30 Authority under this Act.

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

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

7 **53. False information**

8 A person must not, in connection with a requirement made or
9 direction given by the Authority, the Administrator or an
10 employee, agent or delegate of the Authority under this Act,
11 provide any information or produce any document that the
12 person knows is false or misleading in a material particular.

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

14 **54. Confidentiality of information**

- 15 (1) In this section —

16 *confidential information* means information that has not been
17 made public.

- 18 (2) A person must not misuse confidential information obtained by
19 reason of any function that person has, or at any time had, in the
20 administration of this Act or in the course of the provision of
21 services for the purposes of this Act.

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

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

- 25 (a) in the course of duty; or
26 (b) under this Act or another law; or
27 (c) under the order of a court, tribunal or person acting
28 judicially; or
29 (d) for the purposes of the investigation of any suspected
30 offence or the conduct of proceedings against any
31 person for an offence; or

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1 (e) with the consent of the person or persons to whom the
2 information relates; or

3 (f) in prescribed circumstances.

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

8 **55. Liability of officers of body corporate for offence by body**
9 **corporate**

10 (1) If a body corporate is guilty of an offence under this Part, an
11 officer of the body corporate is also guilty of the offence if the
12 officer failed to take all reasonable steps to prevent the
13 commission of the offence by the body corporate.

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

17 (a) what the officer knew, or ought to have known, about
18 the commission of the offence by the body corporate;
19 and

20 (b) whether the officer was in a position to influence the
21 conduct of the body corporate in relation to the
22 commission of the offence; and

23 (c) any other relevant matter.

24 **56. Further provisions relating to liability of officers of body**
25 **corporate**

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

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

- 1 (3) An officer of a body corporate may be charged with, and
2 convicted of, an offence in accordance with section 55 whether
3 or not the body corporate is charged with, or convicted of, the
4 principal offence committed by the body corporate.
- 5 (4) If an officer of a body corporate who is charged with an offence
6 in accordance with section 55 claims that the body corporate
7 would have a defence if it were charged with the offence —
8 (a) the onus of proving the defence is on the officer; and
9 (b) the standard of proof required is the standard that would
10 apply to the body corporate in relation to the defence.
- 11 (5) Subsection (4) does not limit any other defence available to the
12 officer.

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

- 14 (1) In this section —
15 ***engage in conduct*** includes to fail or refuse to engage in
16 conduct;
17 ***state of mind*** of a person includes —
18 (a) the knowledge, intention, opinion, belief or purpose of
19 the person; and
20 (b) the person's reasons for the intention, opinion, belief or
21 purpose.
- 22 (2) This section applies to and in relation to proceedings for an
23 offence under this Act.
- 24 (3) If it is necessary to establish the state of mind of a body
25 corporate in relation to particular conduct, it is sufficient to
26 show —
27 (a) that the conduct was engaged in by an officer or agent of
28 the body corporate within the scope of his or her actual
29 or apparent authority; and
30 (b) that the officer or agent had the relevant state of mind.

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- 1 (4) Conduct engaged in on behalf of a body corporate by an officer
2 or agent of the body corporate within the scope of his or her
3 actual or apparent authority is to be taken to have been engaged
4 in also by the body corporate, unless the body corporate
5 establishes that it took reasonable precautions and exercised due
6 diligence to avoid the conduct.
- 7 (5) If it is necessary to establish the state of mind of a person other
8 than a body corporate in relation to particular conduct, it is
9 sufficient to show —
- 10 (a) that the conduct was engaged in by an employee or
11 agent of the person within the scope of his or her actual
12 or apparent authority; and
- 13 (b) that the employee or agent had the relevant state of
14 mind.
- 15 (6) Conduct engaged in on behalf of a person other than a body
16 corporate (the *principal*) by an employee or agent of the person
17 within the scope of his or her actual or apparent authority is to
18 be taken to have been engaged in also by the principal, unless
19 the principal establishes that the principal took reasonable
20 precautions and exercised due diligence to avoid the conduct.

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

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

- 25 (a) for an individual, a fine of \$1 000; and
26 (b) for a body corporate, a fine of \$5 000.

27 **59. Bringing prosecutions**

- 28 (1) Proceedings for an offence under this Act may be commenced
29 prior to the expiry of this Act.
- 30 (2) If a prosecution notice alleging an offence under this Act
31 specifies the day on which evidence of the alleged offence first

1 came to the attention of a person authorised to institute the
2 proceedings, the prosecution notice need not contain particulars
3 of the day on which the offence is alleged to have been
4 committed.

5 (3) For the purposes of subsection (2), the day specified in the
6 prosecution notice as the day on which evidence first came to
7 the attention of a person authorised to institute proceedings is, in
8 the absence of evidence to the contrary, to be presumed to be
9 that day.

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

11 (1) In this section —

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

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

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

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

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

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

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

27 (4) The Court may grant an injunction whether or not the person
28 has previously contravened the provision, or would, if the
29 injunction is not granted, be likely to contravene or to continue
30 to contravene the provision.

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- 1 (5) An interim injunction may be granted before final determination
2 of an application under subsection (2).
- 3 (6) The Court is not to require, as a condition of granting an interim
4 injunction, that the Administrator give an undertaking as to
5 damages or costs.
- 6 (7) Proceedings against a person for an offence under this Act are
7 not affected by —
- 8 (a) the making of an application for an injunction in relation
9 to the commission of the offence; or
- 10 (b) the grant of, or refusal to grant, an injunction; or
- 11 (c) the rescission, variation or expiry of an injunction.

Part 8 — Miscellaneous

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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.

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- 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.

- 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;

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- 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.

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 (1) 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.

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1 (2) To the extent to which a right to make a taxation objection, or a
2 right or capacity to seek the review of, or to appeal against, a
3 decision of the Commissioner in relation to a taxation objection,
4 is property of the company, subsection (1) does not apply to the
5 right or capacity.

6 (3) Words and expressions used in subsection (2) and also in the
7 *Taxation Administration Act 1953* (Commonwealth) Part IVC
8 have the same meanings in that subsection as they have in that
9 Part.

10 **68. No appeal or review**

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

- 14 (a) is final and conclusive; and
15 (b) must not be challenged, appealed against, reviewed,
16 quashed or called into question in any court; and
17 (c) is not subject to review or remedy by way of
18 prohibition, mandamus, injunction, declaration or
19 certiorari, or a remedy having the same effect as a
20 remedy that could be provided by means of such a writ,
21 in any court on any account.

22 (2) Nothing in this Act requires the Governor, the Minister, the
23 Authority or the Administrator to perform a function, or
24 exercise a power, in a particular way in any particular
25 circumstance.

26 (3) The rules known as the rules of natural justice (including any
27 duty of procedural fairness) do not apply to, or in relation to, the
28 doing or omitting to do, or the purported doing of or omitting to
29 do, any act, matter or thing under Part 3 or 4 by, or by any
30 person on behalf of —

- 31 (a) the Governor; or
32 (b) the Minister; or

- 1 (c) the Authority; or
2 (d) the Administrator.

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

5 **69. Conduct of inquiry**

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

- 8 (a) is to act with as little formality as possible; and
9 (b) is not bound by the rules of evidence and may inform
10 itself on any matter in any manner it considers
11 appropriate; and
12 (c) may receive written or oral submissions as it considers
13 appropriate.

14 **70. Judicial notice**

15 All courts, judges and persons acting judicially must take
16 judicial notice of the official signature of every person who is
17 for the time being, and every person who has at any time been,
18 the Administrator and of the fact that the person holds or has
19 held that office.

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

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

23 **72. Power to obtain opinion**

- 24 (1) The Authority is entitled to submit to the State Solicitor a
25 question concerning the functions or powers of the Authority.
26 (2) The State Solicitor must give the Authority a written opinion on
27 a question submitted under subsection (1).

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

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

5 **74. Translation of documents**

6 A requirement imposed under this Act to give a document is, in
7 the case of a document that is not in the English language, taken
8 to include a requirement that a translation of the document be
9 given at the same time.

10 **75. Service of documents**

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

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

17 **76. Approved forms**

- 18 (1) The Administrator may approve forms for use under this Act.
19 (2) An approved form may require information provided in the
20 form to be verified by statutory declaration.

21 **77. Regulations**

- 22 (1) The Governor may make regulations prescribing all matters that
23 are required or permitted by this Act to be prescribed or are
24 necessary or convenient to be prescribed for giving effect to this
25 Act.
26 (2) Without limiting subsection (1), regulations may be made as to
27 the following —
28 (a) applications under this Act;
29 (b) records to be kept in relation to matters under this Act;

- 1 (c) the giving of notices or other documents under this Act;
2 (d) fees or charges payable in relation to any matter under
3 this Act;
4 (e) imposing additional fees for the late giving of
5 documents;
6 (f) providing that a contravention of a regulation is an
7 offence and providing for a penalty not exceeding a fine
8 of \$2 500.

9 **78. Expiry of Act**

10 This Act expires at the end of the 6 years beginning on the day
11 on which the Governor makes the determination under
12 section 37(2).

Schedule 1 — The WA Bell Companies

- 1
- 2 [s. 3(1)]
- 3 1. Albany Broadcasters Limited ACN 008 674 600 (In Liquidation)
- 4 2. Ambassador Nominees Pty Ltd ACN 009 105 800 (In Liquidation)
- 5 3. Belcap Enterprises Pty Ltd ACN 009 264 537 (In Liquidation)
- 6 3A. Belcap Nominees Pty Ltd ACN 009 265 178 (Deregistered)
- 7 4. Belcap Portfolio Pty Ltd ACN 009 265 169 (Deregistered)
- 8 5. Bell Bros. Holdings Ltd ACN 008 695 056 (In Liquidation)
- 9 6. Bell Bros. Pty Ltd ACN 008 672 375 (In Liquidation)
- 10 7. Bell Equity Management Limited ACN 009 210 208 (In Liquidation)
- 11 8. Bell Group Finance Pty Ltd ACN 009 165 182 (In Liquidation)
- 12 9. Bell Properties Pty Ltd ACN 008 675 625 (Deregistered)
- 13 10. Bell Publishing Group Pty Ltd ACN 008 704 452 (In Liquidation)
- 14 10A. B. P. T. Pty Ltd ACN 009 190 292 (Deregistered)
- 15 11. Dolfinne Pty Ltd ACN 009 134 516 (In Liquidation)
- 16 12. Dolfinne Securities Pty Ltd ACN 009 218 142 (In Liquidation)
- 17 13. Godine Enterprises Pty Ltd ACN 009 237 316 (Deregistered)
- 18 14. Godine Finance Pty Ltd ACN 009 237 325 (Deregistered)
- 19 15. Group Color (W.A.) Pty Ltd ACN 008 687 769 (Deregistered)
- 20 16. Harlesden Finance Pty Ltd ACN 009 227 561 (In Liquidation)
- 21 17. Harlesden Pty Ltd ACN 008 773 411 (Deregistered)
- 22 18. H.J.W. Engineering Pty Ltd ACN 008 975 746 (Deregistered)
- 23 19. Industrial Securities Pty Ltd ACN 008 728 792 (In Liquidation)
- 24 20. Maranoa Developments Pty Ltd ACN 009 244 900 (Deregistered)
- 25 21. Maranoa Holdings Pty Ltd ACN 009 244 893 (Deregistered)
- 26 22. Neoma Investments Pty Ltd ACN 009 234 842 (In Liquidation)
- 27 23. Option Securities Limited ACN 008 737 291 (Deregistered)

- 1 24. TBGL Enterprises Ltd ACN 008 669 216 (In Liquidation)
- 2 24A. TBGL Securities Pty Ltd ACN 008 713 513 (Deregistered)
- 3 25. The Bell Group Ltd ACN 008 666 993 (In Liquidation)
- 4 26. Wanstead Finance Pty Ltd ACN 009 227 570 (Deregistered)
- 5 27. Wanstead Pty Ltd ACN 008 775 120 (In Liquidation)
- 6 28. Wanstead Securities Pty Ltd ACN 009 218 160 (In Liquidation)
- 7 29. WAON Investments Pty Ltd ACN 008 937 166 (In Liquidation)
- 8 30. Wigmores Air Services Pty Ltd ACN 008 742 863 (Deregistered)
- 9 31. Wigmores Finance Pty Ltd ACN 008 679 230 (Deregistered)
- 10 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.

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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.

3

Defined Terms

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)
ADI	3(1)
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)
director,	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)
interest	28A(2), (3)
LDTC	3(1)
LDTC (BGF)	3(1)
LDTC (TBGL)	3(1)

Defined Terms

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)
officer of the State.....	66(1)
principal	57(6)
property	3(1)
protected act.....	64(1)
PTICA.....	3(1)
records.....	3(1)
reinstated WA Bell Company	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)