The Bell Group litigation

Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Bill 2015
A wicked problem is a problem that is difficult or impossible to solve because of incomplete, contradictory, and changing elements that are often difficult to recognize.

The use of the term "wicked" denotes resistance to resolution, rather than evil.

Moreover, because of complex interdependencies, the effort to solve one aspect of a wicked problem may reveal or create other problems.

Adapted from: http://en.wikipedia.org/wiki/Wicked_problem
Summary

1. Bell Group of companies was the corporate vehicle of Robert Holmes a Court, later taken over by Bond Corporation.

2. Post 1987-crash, entire Bell Group collapsed, going into liquidation under the State Corporations Law.

3. Banks appointed receivers under invalid securities, taking and selling all worthwhile assets to reduce Bank debt.

4. Liquidators sought funding from creditors to challenge the securities taken by Bell Group’s Banks.

5. The Liquidators the were ultimately successful in settling proceedings against the Banks and recovering substantial amounts for their administrations.

6. The Bell Companies (Finalisation of Matters and Distribution of Proceeds) Bill 2015 deals with the distribution of the recovered amounts amongst creditors with claims to those amounts.
Outline timeline

WA Inc
- ICWA (SGIC) co-invests with Bond Corporation in The Bell Group Ltd (TBGL)
- Shares: $162M “Domestic” bonds: $140M

Bond takes control of TBGL
- Bond Corporation pillages TBGL and its group (which becomes insolvent)
- TBGL’s lenders demand and obtain security for previously unsecured loans

1990-92
- TBGL group becomes obviously insolvent
- Banks enforce security, sell available assets

1991-95
- Liquidators seek and obtain funding for investigations and litigation – TBGL (Totterdell) and BGF (Woodings)

1995 – 2013
- Liquidators litigate to seek recovery of funds from Banks, achieving $2.7 billion judgement and, ultimately, $1.7 billion (+) settlement

2014 –?
- Distribution issues arise between the remaining key creditors and distribution proceedings commence
Background

A Brief History of the Bell Group

1. In the mid-1980s The Bell Group Limited (TBGL) was a listed public company controlled by Robert Holmes à Court.

2. TBGL was the holding company of a large corporate group, the Bell Group, whose business activities included publishing and investment.

3. TBGL’s wholly owned subsidiaries included:
   • Bell Group Finance Pty Ltd (BGF) – which acted as the treasury entity for the Bell Group;
   • Bell Group NV (BGNV) – a company incorporated in the Netherlands Antilles for the purpose of issuing bonds in the Eurobond market and on-lending the proceeds to companies in the Bell Group; and
   • Bell Group UK Ltd (BGUK) – a company incorporated in the United Kingdom.

4. In addition to its wholly owned subsidiaries TBGL owned about:
   • 39% of the shares in Bell Resources Ltd (BRL) (another listed public company); and
   • 28% of the shares in JN Taylor Holdings Ltd (JNTH) (another listed public company);
Bank Borrowings by the Bell Group

1. In the mid-1980s TBGL and BGF had unsecured loan facilities with a syndicate of Australian Banks.

2. In 1986 BGUK established an unsecured loan facility with the European Bank syndicate lead by Lloyds.

3. Following the 1987 stock market crash the Bell Group became associated with Bond Corp. By August 1988 Bond Corp held approximately 75% of TBGL’s ordinary shares. By the end of 1988 the board of TBGL consisted entirely of persons associated with Bond Corp.

4. During 1988 and 1989 there was public speculation about the financial health of Bond Corp and, through it, the Bell Group.

5. A great deal of bank debt was repaid but by the middle of 1989 it became apparent that TBGL and BGF could not repay their loans to the Australian Banks.

6. The Banks forced a renegotiation which included taking security over the main assets of the Bell Group, its publishing assets and its BRL shareholding) - the Lloyds Syndicate Banks were included.
As at 26 January 1990 the total outstanding to the Banks was approximately $262.5 million comprising:

- about $131.5 million that TBGL and BGF between them owed to the Australian Banks (which was payable on demand); and
- about £60 million (then equivalent to about $131 million) owed by BGUK to the Lloyds Syndicate Banks (which was due for repayment on 19 May 1991).

On 26 January 1990 various companies in the Bell Group (including TBGL and BGF) and the Banks executed refinancing and security documents to restructure the two sets of banking facilities.

Further security documents were executed later. Among other things the Banks took security over substantially all the assets of the Bell Group Companies to support the existing borrowings with the Australian Banks and the Lloyds Syndicate Banks.

Collectively these were referred to as the “1990 Transactions”.

The Bonds

In addition to Bank borrowings the Bell group made use of funds raised by bond issues.

The Bell Group raised non-Bank finance through 5 bond issues, comprising

1. two domestic bond issues in registered form:
   - $75 million under the BGF Trust Deed, for the issue of domestic bonds by BGF, guaranteed by TBGL;
   - $75 million under the TBGL Trust Deed, for the issue of domestic bonds by TBGL; and

2. three Eurobond issues in bearer form under the BGNV Trust Deeds, for the issue of international bonds by BGNV, guaranteed by TBGL.

The relevant instruments are:

- the TBGL Trust Deed;
- the BGF Trust Deed; and
- the BGNV Trust Deeds.
Funding

The liquidator required funding to conduct litigation, procured by:
1. the **Preliminary Agreements** between the Liquidator and:
   - ICWA; and
   - Plaza;
2. as between the Liquidators and the Indemnifying Creditors:
   - the TBGL AFI;
   - the BGF AFI;
   - the WIAA;
   - the WIIA;
   - the TBGL SSDs; and
   - the BGF SSDs;
3. as between the Indemnifying Creditors themselves:
   - the TBGL Inter-Creditor Agreement;
   - the WIICA; and
   - the Confirmation Agreement.
Indemnifying Creditors

Contracts between the liquidators and indemnifying creditors and between the indemnifying creditors themselves govern the funding arrangements for litigation.

Ultimately, there were some 20 agreements.

Three indemnifying creditors:

1. Insurance Commission of Western Australia – a creditor of TBGL and BGF as bondholder;

2. Australian Taxation Office – a creditor of multiple companies through the Bell group; and

3. Bell Group NV (in liquidation) – a creditor of TBGL and BGF representing bondholders, funded by Louis Reytenbagh’s Plaza BV.

And LDTC, as trustee for bondholders, acting through ICWA.
The funding agreements

Those benefits comprised, principally:
1. The covenant in clause 7.1 and 7.2 of the TBGL AFI and the BGF AFI to bring applications under s. 564 in favour of those Indemnifying Creditors in accordance with those instruments.
2. The covenants in the WIAA by the Liquidator of Bell Bros to transfer 57,000 shares in Western Interstate to the Liquidator of BGF to hold on trust for the Indemnifying Creditors.
3. The modification of the terms of the TBGL Trust Deed and the BGF Trust Deed to ensure that the proceeds of any order made under s. 564 passed to the Indemnifying Creditors in whose favour such an order was made, and were not diverted to Senior Creditors who had not indemnified the Liquidator by operation of Clause 5 or Sub-Clause 9(C) of the TBGL Trust Deed and BGF Trust Deed, in turn facilitating the operation of the above agreements between the Indemnifying Creditors.
The Corporations Act and s564

The key to the funding arrangements, from inception, was the prospect of an order under section 564 of the applicable corporations legislation. In the early 1990s there was no mature litigation funding market and this provision was relied upon by the indemnifying creditors to justify their investment in funding highly speculative litigation against large and well-funded opponents.

564 Power of Court to make orders in favour of certain creditors

Where in any winding up:

(a) property has been recovered under an indemnity for costs of litigation given by certain creditors, or has been protected or preserved by the payment of money or the giving of indemnity by creditors; or

(b) expenses in relation to which a creditor has indemnified a liquidator have been recovered;

the Court may make such orders, as it deems just with respect to the distribution of that property and the amount of those expenses so recovered with a view to giving those creditors an advantage over others in consideration of the risk assumed by them.
The Indemnifying Creditors’ original interests

The above agreements between the Indemnifying Creditors themselves (amongst others) provided for the pooling and distribution of certain monies received by the Indemnifying Creditors in the proportion:

- Commonwealth: 7.5%,
- ICWA and LDTC: 37.5%
- BGNV: 55%.
The funding rearrangement phase

In early 1999 following disagreements between the Indemnifying Creditors and Liquidators and (on or about 26 March 1999) BGNV's election to terminate its obligations to indemnify the Liquidators, and to cease to making any payments to the Liquidator the funding agreements were restructured.

The relevant instruments are:
- the PTICA;
- the Third Amending Agreements to the TBGL AFI and the BGF AFI;
- the BGNV Indemnity;
- the After the Event Insurance Policy; and
- the Commonwealth/ICWA Indemnity and Distribution Agreement.

By the PTICA the continuing Indemnifying Creditors agreed that BGNV should receive a share of any proceeds of an order under s. 564, contemplated by the TBGL AFI and the BGF AFI, notwithstanding that it no longer took any continuing financial risk in relation to the Main Proceeding. Those arrangements were also affected by amendments to the TBGL AFI and the BGF AFI.

By the BGNV Indemnity ICWA agreed to indemnify the Australian liquidator of BGNV against his costs of continuing to participate in proceedings CIV 2061 of 1996.

By the Commonwealth/ICWA Indemnity and Distribution Agreement, ICWA agreed to indemnify the Commonwealth against its liability to indemnify the Liquidators under the TBGL AFI and the BGF AFI, in exchange for a slight adjustment (as between the Commonwealth and ICWA) of the distribution ratios provided in the PTICA.

The After the Event Insurance provided some future costs, and adverse costs orders, protection for ICWA and the Liquidators.
The parties’ revised interests

Following those further agreements, the arrangements between the parties provide for the pooling and distribution of certain monies received by the Indemnifying Creditors in the proportion:

• Commonwealth: 9%,
• ICWA and LDTC: 53.5%
• BGNV: 37.5%.
BGNV Funding

1. Following the appointment of Curatoren to the Bankruptcy Administration of BGNV in early 1997, a new Bankruptcy Estate Agreement was entered into with Plaza under which it continued to fund the bankruptcy estate in consideration of the agreement of the bankruptcy estate to pay to Plaza (and any other funder):
   • The costs in funding the capital liquidator including litigation undertaken by BGNV;
   • The costs incurred in funding the bankruptcy estate including litigation undertaken by BGNV;
   • 80% of the first $100 million of net recoveries;
   • 75% of the next $100 million of net recoveries; and
   • 70% of the balance net recoveries.

2. In 2009, those funding arrangements were varied so that Plaza will receive:
   • The costs in funding the liquidator including litigation undertaken by BGNV;
   • The costs incurred in funding the bankruptcy estate including litigation undertaken by BGNV;
   • 80% of the first $225 million of net recoveries;
   • 75% of the next $225 million of net recoveries;
   • 70% of the balance net recoveries,
   • including the payment of interest upon amounts advanced, prior to the calculation of net recoveries.
THE SHAREHOLDING STRUCTURE
OF THE BELL GROUP
AS AT 26 JANUARY 1990

1. The Q-Net sale agreement was rescinded and Q-Net Pty Ltd, Bondnet Pty Ltd and Bond Communications (Australia) Pty Ltd companies were not part of the Bell Group as at 31/12/89.
2. Academy Investments was sold, and was not part of the Bell Group as at 31/12/89.
3. Arrows show direction of (potential) equity flows.
1. The Q-Net sale agreement was rescinded and Q-Net Pty Ltd, Bondnet Pty Ltd and Bond Communications (Australia) Pty Ltd companies were not part of the Bell Group as at 31/12/89.

2. Academy Investments was sold, and was not part of the Bell Group as at 31/12/89.

3. Arrows show direction of (potential) equity flows.
THE SHAREHOLDING STRUCTURE OF THE BG(UK) GROUP AS AT 26 JANUARY 1990

Lloyds Bank Syndicate

UK Facility

Intereuropean Properties NV

71%

29%

Bentray Investments Limited

Bell Bros (HK) Ltd

Merp Limited

Inter-Centre Development Limited

Town & General Properties Limited

**Breinton Properties Ltd

**Company in Liquidation


This chart does not show all shareholding relationships but shows principal shareholding relationships in accordance with the ABSA agreement annexure D.
Key actors

ATO

TBGL

$70m

$168M

BGNV

$400m

$86M

BGF

WAG
(by purchase)

$186M

LDTC

International bonds
(Plaza BV and other)

BGUK

Domestic bonds
(ICWA)

ATO

TBGL

BGNV

LDTC

WAG
(by purchase)

BGUK

International bonds
(Plaza BV and other)

Domestic bonds
(ICWA)
Complex set of agreements to fund litigation over many years

The deal:

- **Funding creditors:**
  - Fund in proportion to agreed percentages reflecting their debts;
  - Obtain 2/3 of all recoveries, shared in those percentages.
- **WAG was offered but declined the opportunity to participate (but disputes that).**
- **Provision for funders to “fall out” and “forfeit”**
Indemnifying Creditors (cont.)

From 1995 to 1999:
- ICWA advanced ~ $15 million,
- BGNV advanced ~ $22 million and
- the ATO advanced ~ $4 million.

to the Liquidators

ICWA has been the sole funder since 1999 when BGNV and ATO ceased funding.
ICWA has provided approximately $28 million to fund ATO’s interest in the litigation.

Since 1995, ICWA has provided aggregate funding to the liquidator of over $198 million.
In 1999 BGNV “fell out” – so did ATO. Both did deals to keep an interest. ICWA funded 100% of the costs thereafter.
Indemnifying Creditors

Since 1995, ICWA has spent $200 million on the litigation and another $35 million in other Bell-related costs. ICWA was the principal or only provider of support for the litigation for 13 years. BGNV has contributed 10% of total funding. ATO has contributed 2% of total funding.
Bell Milestones

2003: Trial commenced before Justice Owen.
2006: Trial ended.
2008: Justice Owen delivered judgment – Banks to pay $1.6 billion.
2011: Banks’ appeal heard by Court of Appeal.
2012: Appeal decision delivered – Banks to pay $2.7 billion. Banks appealed to the High Court.
Bell Milestones (cont.)

2013: Before the High Court hearing, settlement was reached with the Banks, leaving $1.7 billion for distribution between remaining creditors and the Banks not claiming for their debts.

– Plaza filed action against LDTC in UK.
– s 564 application filed by liquidator.
– Ancillary applications filed by ICWA.
– Other litigation threatened.
The proceedings and settlement
June – September 2013 a snapshot

Proceedings
Largest proceedings in WA history – second or third largest in Australian history.
• Three year trial commenced 2003 ended 2006
• Judgement late 2008 – Liquidators win $1.6bn
• Banks appeal May 2009
• Appeal heard for 2 months – April to June 2011
• Judgment August 2012 – Liquidator’s win increased to $2.7bn
• Banks appeal to High Court – September 2012
• Listed for hearing 3Q 2013

Settlement
Parameters:
• Through all this the Banks were still creditors >$400m
• BGNV’s status changed from subordinated (after trial) to unsubordinated (after appeal) creditor
• ICWA was always a subordinated creditor

Settlement @ $1.7bn net: Banks cease to be creditors (effectively ~$2.1bn gross).
To be distributed amongst remaining creditors of Bell group companies.
Remaining / Large Creditors

With the Banks gone, there are five principal remaining creditors:

- ICWA
- ATO
- BGNV
- W.A. Glendinning & Associates Pty Ltd
- BGUK

ICWA is a creditor
ATO is a creditor

BGNV is a Netherlands Antilles / Curacao company that is a creditor:
1. Bondholders are unknown.
2. Litigation funder expected to harvest 80% of recoveries.

WA Glendinning is a creditor (but bought its claim for $125 and is claiming $180+ million):
1. Circumstances of debt purchase unclear.
2. Debt purchase opportunity appears to have arisen as a result of Bank transactions that have been set aside by the Courts.

BGUK is a creditor for ~$58 million (gross) under the settlement,
Three options/paths for distribution

**Litigate**
- Very high cost.
- Potentially 5 – 10 years, possibly more.
- Already commenced in Australia and UK.

**Mediate**
- Material cost.
- 2+ years to reach agreement & implement scheme of arrangement if an agreement can be reached.
- Potentially will not deliver outcome because of execution risks.

**Legislate**
- (Relatively) minimal cost.
- (intended) 12 months for statutory administrator to distribute funds in line with funding arrangements and creditor rights.
- Scope for agreement between creditors.
- Scope for interim payments to creditors.
Mediation issues

Key risk areas:

• Getting a deal with everybody who counts and who can block a scheme of arrangement.

• Even if there is a deal with major creditors, getting execution certainty:
  • Scheme of arrangement risks – multiple schemes of arrangement required through multiple companies;
  • LDTC risks - challenges to operation of trust deeds by BGNV bondholders;
  • Complex issues in relation to discharge of undertakings in CIV 2061 and main proceedings to effect amendments to domestic bond trusts to “de-subordinate” and avoid turnover arguments
  • Injunction/Breach of trust proceedings in UK have commenced and may be replicated in/ transferred to Australia
  • Possible *Barnes v Addy* proceedings against ICWA to “undo” benefit of de-subordination by unidentified claimants including bearer bondholders

• Best case: agreement between senior creditors (explicitly including BGNV and known bondholders) to “modify” cl 5, sanctioned by scheme of arrangement, with voting agreements from all key creditors - but not 100% secure.
The distribution issues for resolution

There are an enormous number of legal issues in “perfectly” resolving any distribution:
Distribution Issues

Litigation between creditors over and relating to distribution and liquidation related issues.
There are 14 separate presently commenced or foreshadowed proceedings, since the settlement. Some of those deal with several issues.

More are inevitable.

Litigation both in Australia (Supreme Court and Federal court) and England (High Court, London).

The litigation will run for an extended period including appeals.
The introduction of Bill has not halted litigation.
Constitutional challenge to Bell Bill will result in more litigation, but of a shorter duration and more focused nature.
To understand the distribution issues

Entities and fund flows
Known claims - TBGL

Various claims have been made and subject to various levels of assessment.

These are the “not rejected” claims:

- May only have been accepted in part with balance stood over for further evidence
- Some rejected proofs may still be subject to appeal

<table>
<thead>
<tr>
<th>Schedule of creditors of TBGL</th>
<th>Claims not rejected</th>
<th>% ordinary creditors</th>
<th>% total creditors</th>
</tr>
</thead>
<tbody>
<tr>
<td>JNTH (challenged)</td>
<td>$291,147,573</td>
<td>56.2%</td>
<td>26.1%</td>
</tr>
<tr>
<td>BGF</td>
<td>$93,426,416</td>
<td>18.0%</td>
<td>8.4%</td>
</tr>
<tr>
<td>BGNV</td>
<td>$69,334,059</td>
<td>13.4%</td>
<td>6.2%</td>
</tr>
<tr>
<td>ACIL, Bell Resources Developments Pty. Ltd. &amp; Godine Developments Pty Ltd (mostly disallowed)</td>
<td>$45,783,852</td>
<td>8.8%</td>
<td>4.1%</td>
</tr>
<tr>
<td>Maradolf</td>
<td>$12,556,115</td>
<td>2.4%</td>
<td>1.1%</td>
</tr>
<tr>
<td>ICWA (part challenged)</td>
<td>$3,085,371</td>
<td>0.6%</td>
<td>0.3%</td>
</tr>
<tr>
<td>ATO</td>
<td>$936,981</td>
<td>0.2%</td>
<td>0.1%</td>
</tr>
<tr>
<td>LDTC</td>
<td>$596,444</td>
<td>0.1%</td>
<td>0.1%</td>
</tr>
<tr>
<td>West Australian Newspapers Limited</td>
<td>$532,732</td>
<td>0.1%</td>
<td>0.0%</td>
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<tr>
<td>Bond Corporation Pty Ltd</td>
<td>$491,677</td>
<td>0.1%</td>
<td>0.0%</td>
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<tr>
<td>Observation City Resort Hotel</td>
<td>$1,457</td>
<td>0.0%</td>
<td>0.0%</td>
</tr>
<tr>
<td>Parker and Parker</td>
<td>$613</td>
<td>0.0%</td>
<td>0.0%</td>
</tr>
<tr>
<td><strong>Subtotal ordinary creditors</strong></td>
<td><strong>$517,893,290</strong></td>
<td><strong>100.0%</strong></td>
<td><strong>46.4%</strong></td>
</tr>
</tbody>
</table>

**Subordinated creditors**

| LDTC (1st BGNV Bond Issue Guaranteed by TBGL) | $69,368,390 | n/a | 6.2% |
| LDTC (2nd BGNV Bond Issue Guaranteed by TBGL) | $191,576,389 | n/a | 17.2% |
| LDTC (3rd BGNV Bond Issue Guaranteed by TBGL) | $169,202,899 | n/a | 15.2% |
| LDTC (BGF Bond Issue Guaranteed by TBGL) | $82,104,167 | n/a | 7.4% |
| LDTC (TBGL Bond Issue) | $86,183,333 | n/a | 7.7% |
| **Subtotal subordinated creditors** | **$598,435,178** | n/a | **53.6%** |

**Total creditors**

| **$1,116,328,468** | **100.0%** |
Known claims –
BGF

Various claims have been made and subject to various levels of assessment.

These are the “not rejected” claims:

• May only have been accepted in part with balance stood over for further evidence

• Some rejected proofs may still be subject to appeal

<table>
<thead>
<tr>
<th>Schedule of creditors of BGF</th>
<th>Claims not rejected</th>
<th>% ordinary creditors</th>
<th>% total creditors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Western Interstate (challenged)</td>
<td>$758,386,538</td>
<td>35.7%</td>
<td>34.1%</td>
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<tr>
<td>BGNV</td>
<td>$394,809,068</td>
<td>18.6%</td>
<td>17.8%</td>
</tr>
<tr>
<td>Bell Bros</td>
<td>$349,874,478</td>
<td>16.5%</td>
<td>15.7%</td>
</tr>
<tr>
<td>TBGLE</td>
<td>$204,371,936</td>
<td>9.6%</td>
<td>9.2%</td>
</tr>
<tr>
<td>WA Glendinning Pty Ltd (largely finalised)</td>
<td>$164,202,173</td>
<td>7.7%</td>
<td>7.4%</td>
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<tr>
<td>Wigmores Tractors</td>
<td>$73,926,249</td>
<td>3.5%</td>
<td>3.3%</td>
</tr>
<tr>
<td>WAON</td>
<td>$47,773,145</td>
<td>2.2%</td>
<td>2.2%</td>
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<tr>
<td>ACIL &amp; Bell Resources Developments Pty. Ltd. (mostly disallowed)</td>
<td>$45,781,852</td>
<td>2.2%</td>
<td>2.1%</td>
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<tr>
<td>Wigmores Finance Pty. Ltd.3</td>
<td>$24,230,069</td>
<td>1.1%</td>
<td>1.1%</td>
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<tr>
<td>Wanstead</td>
<td>$16,096,384</td>
<td>0.8%</td>
<td>0.7%</td>
</tr>
<tr>
<td>ATO</td>
<td>$15,183,588</td>
<td>0.7%</td>
<td>0.7%</td>
</tr>
<tr>
<td>W &amp; J Investments 2</td>
<td>$9,712,119</td>
<td>0.5%</td>
<td>0.4%</td>
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<tr>
<td>BPG2</td>
<td>$3,945,505</td>
<td>0.2%</td>
<td>0.2%</td>
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<tr>
<td>Overells’ Limited3</td>
<td>$3,635,061</td>
<td>0.2%</td>
<td>0.2%</td>
</tr>
<tr>
<td>Davsell Pty Ltd3</td>
<td>$3,199,247</td>
<td>0.2%</td>
<td>0.1%</td>
</tr>
<tr>
<td>Godine Enterprises Pty Ltd3</td>
<td>$2,964,981</td>
<td>0.1%</td>
<td>0.1%</td>
</tr>
<tr>
<td>Armstrong Ledlie &amp; Stillman Pty. Ltd.3</td>
<td>$1,920,531</td>
<td>0.1%</td>
<td>0.1%</td>
</tr>
<tr>
<td>Harlesden Pty. Ltd.3</td>
<td>$1,632,686</td>
<td>0.1%</td>
<td>0.1%</td>
</tr>
<tr>
<td>Wanstead Finance Pty Ltd3</td>
<td>$1,530,145</td>
<td>0.1%</td>
<td>0.1%</td>
</tr>
<tr>
<td>Savidge &amp; Killer Pty. Ltd.3</td>
<td>$1,495,551</td>
<td>0.1%</td>
<td>0.1%</td>
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<tr>
<td>Belcap Enterprises2</td>
<td>$630,689</td>
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<td>0.0%</td>
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<tr>
<td>W &amp; J Financial Services Pty. Limited3</td>
<td>$342,699</td>
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<td>0.0%</td>
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<tr>
<td>Group Color (W.A.) Pty. Limited3</td>
<td>$131,081</td>
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<td>0.0%</td>
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<tr>
<td>Belcap Portfolio Pty Ltd3</td>
<td>$20,558</td>
<td>0.0%</td>
<td>0.0%</td>
</tr>
<tr>
<td>Subtotal ordinary creditors</td>
<td>$2,125,796,333</td>
<td>100.0%</td>
<td>95.7%</td>
</tr>
<tr>
<td>Subordinated Creditors</td>
<td>$96,145,833</td>
<td>4.3%</td>
<td>4.3%</td>
</tr>
<tr>
<td>LDTC (Bonds issued by BGF)</td>
<td>$96,145,833</td>
<td>n/a</td>
<td>4.3%</td>
</tr>
<tr>
<td>Subtotal subordinated Creditors</td>
<td>$96,145,833</td>
<td>n/a</td>
<td>4.3%</td>
</tr>
<tr>
<td>Total Creditors</td>
<td>$2,221,942,166</td>
<td>100%</td>
<td></td>
</tr>
</tbody>
</table>
These claims pass through the “washing machine”: this describes the situation that money in one company will pass through one or more other companies, in the course of being distributed - possibly several times.
Alternative distribution model

The legislative approach
**Optimum solution**

In a modern liquidation scenario it would be possible to group all of the assets of the Bell group companies and treat them as a singular pool to satisfy group debts (with court approval).

Only 2 of the asset holding group companies are not deemed incorporated in Western Australia:

- Maranoa (which is indebted to and almost entirely owned by TBGL);
- BGUK (the external creditor of which is UK Treasury, but otherwise holds its monies for BGF).

BGUK represents a leakage of approximately $35 million-$40 million from the total asset pool.

Maranoa represents a leakage of about $1 million to ATO from the total asset pool.
Key factors

Statute:
1. Transfers all property of WA companies to Fund (includes debts owed by non-WA companies and right to shares in those companies);
2. Voids all funding agreements to eliminate litigation risk on agreements.

Limited duration special purpose statutory authority;
1. Gets in property of WA Bell companies;
2. Calls for and assesses all creditor claims;
3. Recommends award of compensation for funding;
4. Recommends amounts to be paid in relation to composite creditor claims;
5. Proposes plan of distribution for approval by Governor;
6. Cabinet recommends distribution to Governor;
7. Governor makes decision;
8. Authority implements decision;
9. All claims barred upon payment;
10. Strong protections around the distribution process;
11. Surplus funds (if any) forfeit to State.
Legislative solution

Legislation will:

- deliver a more rapid financial return to the Commonwealth, the State Government and other creditors;
- eliminate further litigation in relation to distribution issues between creditors;
- ensure no ‘misdistribution’ due to group complexity or leverage through litigation or a scheme;
- only apply to Bell companies that are registered in WA; and
- effectively be a legislated scheme of arrangement which the liquidator and the creditors are clearly unable to deliver themselves.
How does this sit with the Corporations Act?

The Government’s proposal uses explicit reserved powers of the State to which the Commonwealth has agreed.

Part 1.1A of the Corporations Act contains specific ‘roll back’ provisions that facilitate State legislation to govern corporations. Section 5F provides the State can declare the Bell companies to be excluded matters to roll back the Corporations legislation. Section 5G enables the State to declare a State law to be a Corporations legislation displacement provision.
Section 5G(8) was intended to facilitate the winding up of companies under State laws when needed:

The provisions of Chapter 5 of this Act do not apply to a scheme of arrangement, receivership, winding up or other external administration of a company to the extent to which the scheme, receivership, winding up or administration is carried out in accordance with a provision of a law of a State or Territory.
Creditors would do very well based on Treasurer’s indicative numbers

<table>
<thead>
<tr>
<th>Party</th>
<th>Investment in litigation (rounded)</th>
<th>Total Return (approx)</th>
<th>Return On Litigation Investment</th>
</tr>
</thead>
<tbody>
<tr>
<td>ICWA</td>
<td>$199 million</td>
<td>$700 million</td>
<td>~250%</td>
</tr>
<tr>
<td>BGNV</td>
<td>$21 million</td>
<td>$480 million</td>
<td>~2,200%</td>
</tr>
<tr>
<td>ATO</td>
<td>$4 million</td>
<td>$430 million</td>
<td>~10,000%</td>
</tr>
<tr>
<td>WAG</td>
<td>$125</td>
<td>$50 million</td>
<td>39,999,900%</td>
</tr>
<tr>
<td>BGUK</td>
<td>$0</td>
<td>$50 million</td>
<td></td>
</tr>
</tbody>
</table>

No creditor suffers on this split. But they may not get as much as they want.
Objectives

The objects of this Act are to —

(a) resolve litigation which has arisen in relation to the distribution of funds received by the liquidator of The Bell Group Limited and certain of its subsidiaries as a consequence of litigation commenced against various Banks in 1996 and the settlement of the litigation against those Banks in 2013; and

(b) distribute the funds in the hands of the liquidator, comprising the proceeds of the Bell Litigation and all accretions thereto, in accordance with the intentions of the liquidator and the various creditors who funded the Bell litigation as set out in various agreements;

(c) for that purpose, provide a flexible framework for the distribution of those proceeds to allow appropriate and proportionate responses to any action taken to delay or defeat the operation of this Act;

(d) reflect the circumstance that without substantial funding provided by various creditors in differing amounts and at differing times, the Bell Litigation would not have been successfully concluded and the creditors of the Bell Group of companies would have received no or nominal any dividends in the liquidation of those companies;

(e) provide an appropriate reward or benefit to those creditors which provided funding and those persons or entities interested in them for the funding provided and associated risks assumed;

(f) make reasonable provision for the satisfaction of the claims of creditors of Bell Group companies;

(g) in so doing to resolve various disputes in relation to the distribution of the proceeds of the Bell Litigation; and

(h) avoid further protracted and wasteful litigation that will consume the resources of this State and the proceeds of the litigation.

The legislation’s objects clause, and the procedural mechanisms, support the concept of a rapid and effective resolution of the distribution issues.