



Western Australia

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

Note: On 16 May 2016 the High Court of Australia declared this Act to be invalid in its entirety. (See **Bell Group N.V. (in liquidation) v Western Australia** [2016] HCA 21.)

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

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Defined terms



Western Australia

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

**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:

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 47 — on the day that is 14 days after the day on which the Fund is closed by section 46;
- (c) sections 54 to 56 — as set out in subsection (2);
- (d) the rest of the Act — on the day after assent day.

(2) Sections 54 to 56 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

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

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

ASIC means the Australian Securities and Investments Commission;

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

Bell Group Subsidiary Indemnity Agreements means —

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

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

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

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

Bell litigation means the litigation listed in Schedule 2;

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

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

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

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

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

BGNV Trust Deeds means —

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

BGUK Liquidator's Indemnity Agreements means —

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

body corporate includes a WA Bell Company;

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

company means a company registered under the Corporations Act;

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

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

Court means the Supreme Court;

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

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

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

director, of a company, means a person who is a director of the company under paragraph (a) of the definition of **director** in the Corporations Act section 9;

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

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

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

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

LDTC means The Law Debenture Trust Corporation plc;

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

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

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

- (a) whether actual, contingent, prospective, liquidated or unliquidated; or
- (b) whether owed alone or owed jointly or jointly and severally with any other person;

liquidator means a liquidator of a WA Bell Company and includes a provisional liquidator of a WA Bell Company immediately before —

- (a) for a WA Bell Company that was registered immediately before the transfer day — the transfer day; and
- (b) for a reinstated WA Bell Company — the day on which the company was deregistered;

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

Main Proceeding Indemnity Agreements means —

- (a) the LDTC Deed of Indemnity dated 2 June 2000 between ICWA, LDTC, Antony Leslie John Woodings as liquidator of TBGL and BGF, and Geoffrey Frank Totterdell as liquidator of TBGL; and
- (b) the Deed of Indemnity dated 11 July 2011 between ICWA, LDTC and Antony Leslie John Woodings as

liquidator of TBGL and BGF, as amended by an Amendment Deed dated June 2013 between ICWA, LDTC and Antony Leslie John Woodings as liquidator of TBGL and BGF;

Maranoa Transport means Maranoa Transport Pty Ltd ACN 009 668 393 (In Liquidation);

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

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

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

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

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

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

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

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

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

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

TBGL AFI means the Agreement for Indemnification dated 6 April 1995 between Geoffrey Frank Totterdell as liquidator of TBGL, the Commonwealth, LDTC (TBGL), LDTC (BGF), BGNV and ICWA, as amended by agreements dated 16 February 1996, 4 July 1997, 1 October 1999 and 22 May 2012;

TBGL Inter-Creditor Agreement means the TBGL Inter-Creditor Agreement dated 21 March 1995 between the Commonwealth, ICWA, LDTC and BGNV;

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

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

Trust Deed Indemnity Agreements means —

- (a) the Deed of Indemnity in relation to Amendment of Trust Deeds for TBGL and BGF Bonds dated 14 December 1998 between Geoffrey Frank Totterdell as liquidator of TBGL, LDTC (TBGL), LDTC (BGF) and ICWA; and
- (b) the Deed of Indemnity in relation to Amendment of Trust Deeds for TBGL and BGF Bonds dated 14 December 1998 between Antony Leslie John Woodings as liquidator of BGF, LDTC (TBGL), LDTC (BGF) and ICWA;

WA Bell Company means a corporation that existed at any time before the transfer day (including a corporation that was dissolved or deregistered before that day) and that is listed in Schedule 1;

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

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

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

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

- (2) A reference in this Act to a WA Bell Company includes a reference to a body that was a WA Bell Company immediately before the dissolution of that company under section 30.
- (3) A reference in this Act to a liquidator of a WA Bell Company is, unless the contrary intention appears, a reference to a person who was a liquidator of a WA Bell Company immediately before the dissolution of that company under section 30.
- (4) A reference in this Act to —
 - (a) the deregistration of a company is a reference to the deregistration of the company under the Corporations Act or the Corporations Law (as in force before 15 July 2001); and
 - (b) the reinstatement of the registration of a company is a reference to the reinstatement of the registration of the company under the Corporations Act.

- (5) Except in section 51(1), a reference in this Act to a WA Bell Company includes a reference to Maranoa Transport.

[Section 3 amended: No. 6 of 2016 s. 4.]

4. Objects of this Act

The objects of this Act are —

- (a) to provide a mechanism, that avoids litigation, for the distribution of funds (the *Bell litigation funds*) received by the liquidator of TBGL and certain of its subsidiaries (the *Bell group of companies*) as a consequence of the Bell litigation and the settlement of it in 2013;
- (b) to provide a form of external administration of WA Bell Companies and require that it be carried out only in accordance with the provisions of this Act;
- (c) to provide appropriate compensation to the creditors who funded the Bell litigation taking into account the funding provided and the associated risks assumed by them;
- (d) to reflect the circumstance that without the funding mentioned in paragraph (c), the Bell litigation funds would not exist and the creditors of the Bell group of companies would have received no (or only nominal) dividends in the liquidation of those companies;
- (e) to make reasonable provision for the distribution of the property of the WA Bell Companies having regard to the uncertainties existing as to the nature and extent of that property;
- (f) to make reasonable provision for the satisfaction of liabilities owed to creditors having regard to the uncertainties existing as to the nature and extent of those liabilities;
- (g) to distribute the Bell litigation funds generally in accordance with the commercial substance of the agreements between the liquidator and the creditors who

funded the Bell litigation, as made before the enactment of this Act;

- (h) to avoid further litigation that will waste the resources of the State and other persons and consume the Bell litigation funds.

5. Crown bound

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

6. Extraterritorial operation

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

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.

- (6) The Minister may determine the remuneration that the Administrator is entitled to receive and the other terms and conditions of appointment that apply to the Administrator.
- (7) The Administrator may resign from office by notice in writing given to the Minister.

9. Functions of the Authority

- (1) The functions of the Authority are —
 - (a) to collect, and realise or otherwise deal with, the property of the WA Bell Companies in accordance with the objects of this Act; and
 - (b) to administer each WA Bell Company until it is dissolved; and
 - (c) to administer, invest and manage the Fund; and
 - (d) to perform any other functions that are conferred on it by this Act.
- (2) The Authority may perform any of its functions in the State or elsewhere.

10. Powers of the Authority

- (1) The Authority may do all things necessary to perform its functions.
- (2) Without limiting subsection (1), the Authority may, both within and outside the State —
 - (a) acquire, hold, manage or dispose of real or personal property;
 - (b) enter into a contract or other arrangement;
 - (c) employ, or engage under a contract for services, any persons that are necessary to assist it to perform its functions;
 - (d) exercise any power that a liquidator of a company can exercise under the Corporations Act section 477;

- (e) seek the reinstatement of the registration of a WA Bell Company;
 - (f) indemnify a liquidator of a WA Bell Company against costs or liability in relation to the performance of a function as liquidator of the company, on the terms and conditions determined by the Authority;
 - (g) exercise any other power conferred on the Authority by or under the law of the State or the law of a place other than the State.
- (3) Nothing in this section limits any other power of the Authority under this Act or any other written law.

11. Use of government staff

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

12. Delegation

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

- (2) A person exercising a power or performing a duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation, unless the contrary is shown.
- (3) Nothing in this section limits the ability of the Authority to perform a function through an employee or agent.

13. Execution of documents by the Authority

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

14. Annual and final reports

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

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

15. Special reports

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

Division 2 — The WA Bell Companies Administrator Authority Fund

16. Establishment of Fund

- (1) The WA Bell Companies Administrator Authority Fund is established.
- (2) The Fund is to be administered by the Authority.
- (3) The following must be credited to the Fund —

- (a) all money transferred to the Authority under Part 3 or realised out of other property transferred to, or vested in, the Authority under that Part;
 - (b) money received from the investment of the Fund;
 - (c) any advances made to the Authority under the *Financial Management Act 2006* section 28.
- (4) The following are to be paid out of the Fund —
- (a) amounts recoverable from the Authority as a consequence of an advance referred to in subsection (3)(c);
 - (b) expenses payable out of it under section 18;
 - (c) amounts payable out of it under section 44.
- (5) All money credited to the Fund must be paid into an account established at a bank as defined in the *Financial Management Act 2006* section 3.

17. Investment of Fund

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

18. Administration expenses

- (1) The following expenses, as determined by the Authority, are payable out of the Fund —
- (a) expenses of, and incidental to, the administration of this Act by the Authority;
 - (b) expenses of, and incidental to, the administration of a WA Bell Company by the Authority;
 - (c) any amount payable under an indemnity under section 10(2)(f);

- (d) any remuneration or expenses payable to, or in respect of, the Administrator;
 - (e) expenses reasonably incurred by a liquidator of a WA Bell Company in complying with an obligation under this Act.
- (2) Expenses payable under this section are to be paid out of the Fund before the payment of amounts specified in the determination of the Governor under section 42(2).

19. Accounting for losses

- (1) If the Fund incurs any loss because of any fraud, dishonesty, negligence or wilful failure to comply with this Act by the Administrator, the Administrator is liable for the loss.
- (2) The Administrator is not liable for any loss incurred by the Fund that is not a loss covered by subsection (1) but he or she must provide details of the loss in a written report to the Minister as soon as practicable after becoming aware of it.
- (3) A failure to comply with subsection (2) does not make the Administrator liable for the loss.
- (4) Only the Minister may bring a proceeding in relation to a liability for a loss covered by subsection (1).

Division 3 — Assumptions

20. Assumptions entitled to be made

- (1) A person is entitled to make the assumptions in section 21 in relation to —
 - (a) dealings with the Authority; or
 - (b) dealings with a person who has, or purports to have, directly or indirectly acquired title to property from the Authority.

- (2) If a person is entitled to assume a matter, the Authority or anyone referred to in subsection (1)(b) is not entitled to assert in proceedings in relation to the dealings that the matter is incorrect.
- (3) This section does not entitle a person to make an assumption, and does not prevent an assertion being made in relation to an assumption, if —
 - (a) the person has actual knowledge that the assumption is not correct; or
 - (b) the person's connection or relationship with the Authority is such that the person ought to know that the assumption is not correct.

21. Assumptions

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

Part 3 — WA Bell Companies

Division 1A — WA Bell Companies continuing existence

[Heading inserted: No. 6 of 2016 s. 5.]

21A. WA Bell Companies continuing existence

- (1) If, immediately before the transfer day, a WA Bell Company was registered under the Corporations Act then, on and from the transfer day, the existence and legal personality of the company continues under this Act, and it continues as a body corporate.
- (2) If the registration of a WA Bell Company is reinstated on or after the transfer day then, on and from immediately after the reinstatement, the existence and legal personality of the company continues under this Act, and it continues as a body corporate.
- (3) Subsections (1) and (2) do not have the effect of creating new legal entities.
- (4) For the purposes of subsection (1), a person who held a share in the company immediately before the transfer day continues to hold that share.
- (5) For the purposes of subsection (2), a person who held a share in the company immediately before its deregistration as a company continues to hold that share.
- (6) The effect of this section is subject to the rest of this Act and the regulations.

[Section 21A inserted: No. 6 of 2016 s. 5.]

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.
- (2) 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.
- (3) In relation to a reinstated WA Bell Company, property revested in the company as a consequence of its reinstatement is taken to have been received by the company for the purposes of subsection (2).
- (4) Subsection (1) or (2), 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
 - (b) if the company was deregistered before the transfer day — immediately before the time at which the company was deregistered.

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

- (13) The Administrator may allow a person whom the Administrator is satisfied has a proper interest in a certificate under subsection (12) to have access to it.
- (14) If it appears to the Administrator that it is likely that a certificate will be required to be given to a relevant official under section 31, the Administrator must consult with that official (or each relevant official if there is more than one) as to its form and content.
- (15) The Administrator may correct any error in a certificate under subsection (12) and, for that purpose, may issue a replacement certificate.

23. Notice to property holder

- (1) The Administrator may give notice to any person who the Administrator believes may hold, or may at any time have held —
 - (a) property that, before the transfer day, was property of a kind referred to in section 22(1); or
 - (b) in relation to a reinstated WA Bell Company — property that, before the day on which the company was deregistered, was property of a kind referred to in section 22(1); or
 - (c) property to which section 22(2) applies.
- (2) A notice under subsection (1) may require the person to whom it is given to do one or more of the following —
 - (a) provide access to all records of that person relating to the property;
 - (b) account for all dealings with the property by or on behalf of that person;
 - (c) do all things necessary to deliver to the Authority the property specified in the notice.

Note for this section:

Under section 58(1) a failure to comply with a requirement may be an offence.

24. Steps to be taken to perfect transfer

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

Division 2 — Treatment of liabilities

25. Treatment of liabilities

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

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

[Section 25 amended: No. 6 of 2016 s. 6.]

Division 3 — Voiding of Agreements

26. Certain agreements voided

- (1) Each of the following is, and is taken to have always been, void —
- (a) the Bell Group Subsidiary Indemnity Agreements;
 - (b) the BGF AFI;
 - (c) the BGNV Indemnity;
 - (d) the BGUK Liquidator's Indemnity Agreement;
 - (e) the Gentra Indemnity;
 - (f) the Indemnity and Distribution Agreement;
 - (g) the Liquidators' Indemnity Agreement;
 - (h) the Main Proceeding Indemnity Agreements;
 - (i) the PTICA;
 - (j) the TBGL AFI;
 - (k) the TBGL Inter-Creditor Agreement;
 - (l) the Trust Deed Indemnity Agreements;
 - (m) the Western Interstate Assignment Agreement;

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

Division 4 — Administration of WA Bell Companies

27. Authority to administer WA Bell Companies

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

28. Role of Authority as administrator of WA Bell Companies

- (1) While a WA Bell Company is under the administration of the Authority, the Authority —
 - (a) has control of the company's property and affairs; and
 - (b) may manage that property and those affairs; and
 - (c) may dispose of any of that property; and
 - (d) may perform any function, and exercise any power, that the company or any of its officers could perform or exercise if the company were not under the administration of the Authority.
- (2) Nothing in subsection (1) limits the generality of anything else in it.
- (3) Nothing in this section limits any other power of the Authority under this Act or any other written law.

29. Powers of other officers

- (1) While a company is under the administration of the Authority, a person (other than the Authority) cannot perform or exercise, and must not purport to perform or exercise, a function or power as an officer of the company.
- (2) Subsection (1) does not apply to the extent that the performance or exercise is with the Authority's written approval or is in the exercise of a power or duty under this Act.
- (3) Subsection (1) does not remove a director or the liquidator of a WA Bell Company from his or her office.

Division 5 — Dissolution of WA Bell Companies

30. Dissolution of companies

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

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

Part 3 WA Bell Companies

Division 6 Miscellaneous

s. 31

- (1A) If section 21A does not have the effect of continuing the existence of a WA Bell Company under this Act, subsection (2) does not have effect in relation to the company.
- (2) On dissolution, the WA Bell Company ceases to exist.
- (3) If, immediately before its dissolution under this section, a WA Bell Company was a party to any proceeding pending or existing in any court or tribunal or before any person acting judicially, then, on and after that dissolution, the Authority is substituted as a party and has the same rights in the proceeding as the WA Bell Company had.
- (4) Subsection (5) applies to any agreement or instrument (other than the BGF Trust Deed, the BGNV Trust Deeds and the TBGL Trust Deed) in effect immediately before the dissolution of a WA Bell Company under this section —
- (a) to which the company was a party; or
 - (b) that was given to, or in favour of, the company; or
 - (c) that refers to the company; or
 - (d) that refers to the liquidator of the company, but to which the liquidator is not a party.
- (5) The agreement or instrument continues to have effect according to its tenor on and after the dissolution as if a reference in it to —
- (a) the WA Bell Company were a reference to the Authority; and
 - (b) the liquidator were a reference to the Authority.

[Section 30 amended: No. 6 of 2016 s. 7.]

Division 6 — Miscellaneous

31. Registration of documents to show effect of this Part

(1) In this section —

relevant official means —

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

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

(2) The Administrator may give a copy of a certificate under section 22(12) to a relevant official.

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

Part 4 — Completion of winding up of WA Bell Companies

Division 1 — Application of this Part

32. Application of this Part in relation to certain interests

- (1) In relation to a liability referred to in section 25(3), this Part has effect as if —
 - (a) the liability were, immediately before the transfer day, a liability of the WA Bell Company referred to in section 25(2) in relation to the liability; and
 - (b) the person who, immediately before the transfer day, had the benefit of the liability were, immediately before the transfer day, a creditor of the WA Bell Company.
- (2) If property vested in a WA Bell Company or held by a liquidator of a WA Bell Company, to which section 22(1)(a) or (b) applied at the beginning of the transfer day, was freed from an encumbrance, trust, equity or interest (the *interest*) by section 22 and the WA Bell Company was not the beneficiary of the interest, this Part has effect as if —
 - (a) the interest were, immediately before the transfer day, a liability of the WA Bell Company; and
 - (b) the person who, immediately before the transfer day, had the benefit of the interest were, immediately before the transfer day, a creditor of the WA Bell Company.
- (3) If property to which section 22(1) applied at the beginning of the transfer day was freed from an encumbrance, trust, equity or interest (the *interest*) by section 22 and subsection (2) does not apply in relation to the property, this Part has effect as if —
 - (a) the interest were, immediately before the transfer day, a liability of each WA Bell Company; and

- (b) the person who, immediately before the transfer day, had the benefit of the interest were, immediately before the transfer day, a creditor of each WA Bell Company.
- (4) In relation to a claim referred to in section 26(3), this Part has effect as if —
 - (a) the claim were, immediately before the transfer day, a liability of the WA Bell Company referred to in section 26(2) in relation to the claim; and
 - (b) the person who, immediately before the transfer day, had the benefit of the claim were, immediately before the transfer day, a creditor of the WA Bell Company.
- (5) If the Authority determines, under section 37, that an interest to which subsection (3) applies is a liability of each WA Bell Company, each company is jointly and severally liable.

Division 2 — Information gathering

33. Requirements on liquidator

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

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

- (11) A liquidator of a WA Bell Company has qualified privilege in making a report under subsection (8) and in relation to any fact or matter stated in the report.
- (12) This section has effect in relation to a reinstated WA Bell Company as if references in it to the transfer day were references to the day on which the registration of the company was reinstated.

34. Call for proof of liabilities

- (1) The Authority must give to each person whom it reasonably believes to have been a creditor of a WA Bell Company immediately before the transfer day a notice requiring the person to give to the Authority, within 30 days after the date of that notice, full particulars of all liabilities of the company in relation to the person.
- (2) The Authority must, as soon as practicable after the transfer day, publish in a daily newspaper circulating in Australia a notice requiring any person who believes that they were a creditor of a WA Bell Company immediately before the transfer day to give to the Authority, within 30 days after the publication of that notice, full particulars of all liabilities of the company in relation to the person.
- (3) The Authority may also publish the notice referred to in subsection (2) by any other means that the Authority thinks necessary to bring it to the attention of the persons referred to in that subsection.
- (4) The Authority must specify in a notice under subsection (1) or (2) —
- (a) the manner in which a liability may be proved; or
 - (b) how that manner may be ascertained.

Division 3 — Reports and recommendations by the Authority

35. Role of the Authority

The role of the Authority under this Division is to —

- (a) determine the property and liabilities of each WA Bell Company, and report to the Minister on that, under sections 37 and 38; and
- (b) make recommendations to the Minister under sections 39 and 40.

36. Authority must seek submissions from affected creditors

- (1) The Authority must comply with this section before —
 - (a) finalising its determination of the property and liabilities of each WA Bell Company under section 37; and
 - (b) finalising the recommendations that it is to make to the Minister under sections 39 and 40.
- (2) The Authority must prepare a document (a *draft report*) that sets out —
 - (a) its preliminary determination of the property and liabilities of each WA Bell Company under section 37; and
 - (b) the recommendations that it is proposing to make to the Minister under sections 39 and 40.
- (3) The Authority may prepare more than one draft report.
- (4) The Authority must provide each draft report to each person who gave particulars of a liability under section 34.
- (5) The first draft report under subsection (2) must be prepared, and provided in accordance with subsection (4), within the period of 150 days beginning on the transfer day.

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

37. Determination of property and liabilities

- (1) The Authority must determine the property and liabilities of each WA Bell Company.
- (2) In doing so, the Authority must have regard to —
- (a) any account and statement given under section 33(1); and
 - (b) any books given under section 33(7); and
 - (c) any report given under section 33(8); and
 - (d) any particulars of a liability given under section 34; and
 - (e) any submissions made under section 36(6); and
 - (f) any other matters that the Authority in its discretion considers appropriate.
- (3) The Authority has an absolute discretion in determining the property and liabilities of each WA Bell Company.

38. Reports to the Minister on property and liabilities

- (1) The Authority must report to the Minister on the property and liabilities of each WA Bell Company, as finally determined by it under section 37, as soon as practicable after making the determination.
- (2) The report under subsection (1) must contain any recommendations of the Authority under section 39 or 40.
- (3) Before making a final determination under section 37, the Authority may make one or more interim reports to the Minister based on its preliminary determination of the property and liabilities of each WA Bell Company under section 37.

- (4) The Authority must make a report under subsection (3) if directed to do so by the Minister.
- (5) A report under subsection (3) may contain a description of any contingencies and uncertainties and any interim recommendations of the Authority under section 39 or 40.
- (6) The Authority has absolute privilege in making a report under this section and in relation to any fact or matter stated in the report.
- (7) A failure by the Authority to comply with any provision of this section does not invalidate a report made by it under this section.

39. Recommendations with respect to liabilities

- (1) The Authority must recommend, in writing, to the Minister the amount (if any) to be paid to a person, or the property (if any) to be transferred to or vested in a person (instead of or in addition to the payment of money), in respect of the aggregate of all liabilities of all WA Bell Companies to that person as a creditor.
- (2) In making a recommendation under this section, the Authority —
 - (a) must have regard to the objects of this Act; and
 - (b) must have regard to any agreement between any of the creditors, as to the distribution of the proceeds of the Bell litigation, entered into after 12 noon on the day before the day on which the Bill for this Act was introduced into the Legislative Assembly; and
 - (c) must have regard to any submissions made under section 36(6); and
 - (d) may assess the priority of each liability of a WA Bell Company (as determined under section 37) in accordance with the Corporations Act Part 5.6 Division 6 Subdivision D as if it were winding up the company under that Act; and

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- (e) may have regard to the following —
- (i) liabilities under any guarantee or indemnity so as to avoid double recovery;
 - (ii) the Authority's assessment of the value of unliquidated liabilities;
 - (iii) recoveries that might be made by a creditor from subsidiaries of TBGL that are not WA Bell Companies;
 - (iv) the relative size of each liability and the relative importance of the satisfaction of that liability to the relevant creditor;
 - (v) the detriment to a creditor of not receiving payment of any liability in full;
 - (vi) any amount paid by a creditor for the acquisition of, or of any interest in, a liability;
 - (vii) any recommendation as to the payment of compensation under section 40.
- (3) A recommendation in an interim report under section 38(3) is an interim recommendation.
- (4) A recommendation in the report under section 38(1) is a final recommendation and must take into account any amount or property that the Governor under section 41(2) has determined is to be paid to, or transferred to or vested in, a person.
- (5) A recommendation need not contain reasons.
- (6) The Authority has an absolute discretion as to —
- (a) the quantification of any liability; and
 - (b) the amount recommended to be paid to a person or the property recommended to be transferred to, or vested in, a person; and
 - (c) the priority to give to that payment, transfer or vesting.

- (7) Nothing in this section requires that the aggregate value of all money recommended to be paid, and all property recommended to be transferred or vested, under this section must be equal to the value of the money or property held by the Authority or the total liabilities of all WA Bell Companies as determined under section 37.
- (8) Nothing in this section creates any right in, or for the benefit of, a creditor of a WA Bell Company or any other person.
- (9) The Authority has absolute privilege in making a recommendation under this section and in relation to any fact or matter stated in the recommendation.
- (10) A failure by the Authority to comply with any provision of this section does not invalidate a recommendation made by it under this section.

40. Recommendations with respect to funding or indemnities

- (1) Subsection (2) applies with respect to a creditor of any kind of a WA Bell Company who, before the transfer day, provided funding for, or an indemnity against costs or liability in relation to, the Bell litigation, whether directly or indirectly.
- (2) The Authority may recommend, in writing, to the Minister an amount to be paid to, or property to be transferred to or vested in the creditor (instead of or in addition to the payment of money to that creditor), as compensation for providing that funding or indemnity.
- (3) In making a recommendation under subsection (2), the Authority —
 - (a) must have regard to the objects of this Act; and
 - (b) must have regard to any agreement between any of the creditors as to the distribution of the proceeds of the Bell litigation, entered into after 12 noon on the day before the day on which the Bill for this Act was introduced into the Legislative Assembly; and

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- (c) must have regard to any submissions made under section 36(6); and
 - (d) may have regard to the following —
 - (i) the amounts of funding provided;
 - (ii) the terms of any agreement under which that funding or indemnity was provided (including an agreement made void by this Act);
 - (iii) the extent of any risks assumed in providing that funding or indemnity (whether or not that indemnity is or ever has been enforceable);
 - (iv) the extent of the benefit secured, or detriment avoided, by the WA Bell Company and its related bodies corporate on account of the provision of that funding or indemnity;
 - (v) the extent of any benefits that may be received by the creditor from a related body corporate of a WA Bell Company that is not a WA Bell Company;
 - (vi) any other matters that it considers relevant.
 - (4) A recommendation in an interim report under section 38(3) is an interim recommendation.
 - (5) A recommendation in the report under section 38(1) is a final recommendation and must take into account any amount or property that the Governor, under section 41(2), has determined is to be paid to, or transferred to or vested in, a person.
 - (6) The Authority has an absolute discretion as to —
 - (a) the quantification of any funding, indemnity, risk, benefit or detriment; and
 - (b) the amount recommended to be paid to a person or the property recommended to be transferred to, or vested in, a person.

- (7) A recommendation under subsection (2) may further recommend that any amount payable to a creditor under this Act —
- (a) reduce to a specified extent a liability of a WA Bell Company to the creditor; or
 - (b) be in addition to any amount otherwise payable to the creditor under this Act; or
 - (c) be in addition to any payments to the creditor in respect of liabilities that are the subject of a recommendation under section 39.
- (8) A recommendation need not contain reasons.
- (9) Nothing in this section creates any right in, or for the benefit of, a creditor of a WA Bell Company or any other person.
- (10) The Authority has absolute privilege in making a recommendation under this section and in relation to any fact or matter stated in the recommendation.
- (11) A failure by the Authority to comply with any provision of this section does not invalidate a recommendation made by it under this section.

Division 4 — Determinations of the Governor

41. Governor may determine amounts and property: interim determinations

- (1) The Minister may submit to the Governor an interim report of the Authority under section 38(3).
- (2) The Governor may, by instrument in writing, determine an amount to be paid to, or property to be transferred to or vested in, a person.

42. Governor may determine amounts and property: final determination

- (1) The Minister must submit to the Governor the report of the Authority under section 38(1).
- (2) The Governor may, by instrument in writing, determine an amount to be paid to, or property to be transferred to or vested in, a person.
- (3) The amount or amounts to be paid to, and the property to be transferred to or vested in, a person under this Division —
 - (a) is in respect of the aggregate of all liabilities of all WA Bell Companies to that person as a creditor; and
 - (b) may be by way of compensation for providing funding or an indemnity.

43. Determinations: general provisions

- (1) Nothing in this Act requires the Governor to determine that any amount is to be paid to, or any property is to be transferred to or vested in, any person on any account whatsoever.
- (2) Nothing in this Act requires that the aggregate value of all money determined by the Governor to be paid, and all property determined by the Governor to be transferred or vested, under this Division must be equal to the value of the money or property held by the Authority or the total liabilities of all WA Bell Companies as determined under section 37.
- (3) The Minister must give a determination of the Governor to the Authority.
- (4) A determination need not contain reasons.
- (5) A determination is not subsidiary legislation for the purposes of the *Interpretation Act 1984*.
- (6) Nothing in this Division creates any right in, or for the benefit of, a creditor of a WA Bell Company or any other person.

- (7) The Governor has absolute privilege in making a determination and in relation to any fact or matter stated in it.
- (8) On the making of the determination under section 42(2), every liability of every WA Bell Company to a person to whom nothing is to be paid and to whom no property is to be transferred and in whom no property is to be vested under a determination under this Division is, by force of this Act, discharged and extinguished.

Division 5 — Giving effect to Governor's determination

44. Authority to make payments or transfer property

- (1) Subject to subsection (3), as soon as practicable after receiving a determination of the Governor under Division 4, the Authority must —
 - (a) notify each person specified in the determination to or in whom the Governor has determined an amount is to be paid or property is to be transferred or vested; and
 - (b) pay out of the Fund the amounts specified, to the persons specified, in the determination; and
 - (c) transfer or vest the property specified, to or in the persons specified, in the determination.
- (2) The Authority may determine the means by which any payment is to be made.
- (3) A person is not entitled to have a payment made to them, or property transferred to or vested in them, under this section unless the person gives to the Authority a deed that —
 - (a) is in the form approved by the Minister; and
 - (b) is executed to the satisfaction of the Authority; and
 - (c) provides for the release or discharge of any person from any liability that the Minister considers appropriate.

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- (4) Subsection (5) applies to a person covered by the determination of the Governor under section 42(2).
- (5) At the end of the period of 3 months beginning on the day on which notice of the determination of the Governor under section 42(2) is given to the person —
- (a) every liability of every WA Bell Company to the person is, by force of this Act, discharged and extinguished; and
 - (b) if the person has not given a duly executed deed in accordance with subsection (3) in relation to a determination of the Governor under Division 4 — the determination ceases to have effect in relation to the person.
- (6) Subsection (7) applies to a person covered by a determination of the Governor under section 41(2) but not covered by the determination of the Governor under section 42(2).
- (7) At the end of the period of 3 months beginning on the day on which the Governor makes the determination under section 42(2) —
- (a) every liability of every WA Bell Company to the person is, by force of this Act, discharged and extinguished; and
 - (b) if the person has not given a duly executed deed in accordance with subsection (3) in relation to a determination of the Governor under section 41(2) — the determination ceases to have effect in relation to the person.
- (8) A reference to a person covered by a determination of the Governor is a reference to a person to or in whom the Governor has determined an amount is to be paid or property is to be transferred or vested.

Division 6 — Release of Liquidator

45. Release of liquidator

- (1) On the dissolution of a WA Bell Company under section 30, 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.

Part 5 — Winding up of the Authority and Fund

46. Closure of the Fund

- (1) The Fund is closed by force of this section when whichever of the following first occurs —
 - (a) the Administrator certifies in writing that all money that the Authority is required to pay out of the Fund has been paid;
 - (b) the end of the period of 6 months beginning on the day on which the Governor makes the determination under section 42(2).
- (2) Any money standing to the credit of the Fund when it is closed is to be credited to the Consolidated Account.

[47. Has not come into operation.]

48. Vesting of property in the State

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

49. Reports on Authority's functions

- (1) The Administrator must —
 - (a) within 3 months after each anniversary of the commencement of Part 2 — prepare a report on how the Administrator carried out the Authority's functions as outlined in section 9 in the year prior to the anniversary; and

- (b) prior to the abolition of the Authority — prepare a final report on how the Administrator carried out the Authority's functions as outlined in section 9.
- (2) The final report under subsection (1)(b) must —
- (a) set out each recommendation of the Authority under sections 39 and 40; and
 - (b) set out each determination of the Governor under Part 4 Division 4; and
 - (c) state whether a determination of the Governor under Part 4 Division 4 of an amount to be paid to, or property to be transferred to or vested in, a person differed from a recommendation in a report of the Authority under section 38 in relation to the person.
- (3) A report under subsection (1) need not contain reasons in relation to the matters referred to in subsection (2).
- (4) The Minister is to cause to be laid before each House of Parliament —
- (a) a report under subsection (1)(a) within 6 sitting days after the preparation of the report; and
 - (b) the final report under subsection (1)(b) within 6 sitting days after the day on which the Authority is abolished.

Part 6 — Application of Corporations Act

50. 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 51;

matter has the meaning given in the Corporations Act section 5F(6).

[Section 50 amended: No. 6 of 2016 s. 8.]

51. WA Bell Companies excluded from Corporations legislation

- (1) Each WA Bell Company and Maranoa Transport are declared to be excluded matters 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).
- (1A) Each other matter the subject of this Act 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 —
 - (a) to the extent to which this Act does not apply or purport to apply to the matter; and
 - (b) 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 30 to be deregistered under the Corporations Act;
 - (b) a liquidator of a WA Bell Company that is dissolved under section 30 to apply for an order that he or she be released;
 - (c) the registration of a WA Bell Company to be reinstated, and (without limiting that) the functions in the Corporations Act section 601AH to be performed and the matters provided for in that section to occur.

[Section 51 amended: No. 6 of 2016 s. 9.]

52. Displacement of certain provisions of Corporations legislation

[(1) deleted]

- (2) The provisions of this Act other than this Part are declared to be Corporations legislation displacement provisions for the purposes of the Corporations Act section 5G in relation to the Corporations legislation.

[Section 52 amended: No. 6 of 2016 s. 10.]

53. Applying the Corporations legislation to WA Bell Companies

- (1) The regulations may declare a matter relating to a WA Bell Company to be an applied Corporations legislation matter for the purposes of the *Corporations (Ancillary Provisions)*

Act 2001 Part 3 in relation to a specified provision or provisions of the Corporations legislation (including any excluded Corporations legislation provision or provisions), with any modifications that are specified in the declaration.

- (2) Without limiting subsection (1), the regulations may do any one or more of the following —
- (a) specify modifications to the definitions and other interpretive provisions of the Corporations legislation relevant to any Corporations legislation provision to which the declaration relates;
 - (b) provide for ASIC to exercise a function under any Corporations legislation to which the declaration relates, but only if —
 - (i) ASIC is to exercise the function under an agreement referred to in the *Australian Securities and Investments Commission Act 2001* (Commonwealth) section 11(8) or (9A)(b); and
 - (ii) ASIC is authorised to exercise that function under section 11 of that Act;
 - (c) modify the circumstances in which a court may exercise a function conferred on it by a Corporations legislation provision to which the declaration relates;
 - (d) specify that a reference to ASIC in a Corporations legislation provision to which the declaration relates is to be a reference to another person;
 - (e) identify a Corporations legislation provision to which the declaration relates by reference to the provision as in force at a particular time;
 - (f) specify a court to exercise a function conferred by a Corporations legislation provision to which the declaration relates.

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- (3) Words and expressions used in this section and also in the *Corporations (Ancillary Provisions) Act 2001* Part 3 have the same meanings in this section as they have in that Part.
- (4) Regulations made for the purposes of this section may be expressed to take effect from a time that is earlier than the beginning of the day on which the regulations are published in the *Gazette*, but not earlier than immediately before the transfer day.

[Section 53 amended: No. 6 of 2016 s. 11.]

53A. Validity of certain provisions

If on the day on which the *Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Amendment Act 2016* section 12 comes into operation section 22 is not valid because of section 109 of the Constitution of the Commonwealth but afterwards becomes valid, this Act has effect as if the references to the transfer day prescribed for the purposes of this section were references to the day on which it becomes valid.

[Section 53A inserted: No. 6 of 2016 s. 12.]

Part 7 — Offences

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

(1) In this section —

scheme means —

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

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

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

(3) This section applies to a scheme —

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

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

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

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- (5) This section does not apply to the extent (if any) to which it would infringe any constitutional doctrine of implied freedom of political communication.
- (6) This section does not apply to or in relation to —
 - (a) proceedings in a court to challenge the constitutional validity of this Act; or
 - (b) proceedings in a court contemplated by this Act.

Example for this subsection:

For the purposes of subsection (6)(b), proceedings referred to in sections 73 and 74 are examples of proceedings contemplated by this Act.

55. Certain deregistered companies not to be reinstated by certain persons

- (1) A person (other than the Authority) must not take any step for achieving the reinstatement of the registration of a deregistered company listed in Schedule 1.
Penalty: a fine of \$10 000.
- (2) Before the day on which section 7 comes into operation, subsection (1) does not apply to a WA Bell Company, a liquidator of a WA Bell Company or a former liquidator of a deregistered company.
- (3) On and after the day on which section 7 comes into operation, subsection (1) does not apply to a person if the person has the written approval of the Authority to take the step referred to in subsection (1).

56. Dealings with property

- (1) In this section —
conceal includes transfer outside the State.
- (2) A person must not conceal property that is, or is to be, transferred to, and vested in, the Authority by section 22 or do any other act or make an omission of any kind in relation to

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

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

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

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

- (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.

57. Obstruction or hindrance of the Authority

A person must not obstruct or hinder —

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

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

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

58. Failure to comply with requirements

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

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

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

59. False information

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

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

60. Confidentiality of information

- (1) In this section —

confidential information means information that has not been made public.

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

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

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

- (a) in the course of duty; or
- (b) under this Act or another law; or
- (c) under the order of a court, tribunal or person acting judicially; or

- (d) for the purposes of the investigation of any suspected offence or the conduct of proceedings against any person for an offence; or
 - (e) with the consent of the person or persons to whom the information relates; or
 - (f) in prescribed circumstances.
- (4) If confidential information is lawfully disclosed, this section does not prevent the further disclosure of the information, or the recording or use of the information, for the purpose for which the disclosure was made.

61. Liability of officers of body corporate for offence by body corporate

- (1) If a body corporate is guilty of an offence under this Part, an officer of the body corporate is also guilty of the offence if the officer failed to take all reasonable steps to prevent the commission of the offence by the body corporate.
- (2) In determining whether things done or omitted to be done by the officer constitute reasonable steps, a court must have regard to —
 - (a) what the officer knew, or ought to have known, about the commission of the offence by the body corporate; and
 - (b) whether the officer was in a position to influence the conduct of the body corporate in relation to the commission of the offence; and
 - (c) any other relevant matter.

62. Further provisions relating to liability of officers of body corporate

- (1) Section 61 does not affect the liability of a body corporate for any offence.

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- (2) Section 61 does not affect the liability of an officer, or any other person, under *The Criminal Code* Chapters II, LVII, LVIII and LIX.
- (3) An officer of a body corporate may be charged with, and convicted of, an offence in accordance with section 61 whether or not the body corporate is charged with, or convicted of, the principal offence committed by the body corporate.
- (4) If an officer of a body corporate who is charged with an offence in accordance with section 61 claims that the body corporate would have a defence if it were charged with the offence —
 - (a) the onus of proving the defence is on the officer; and
 - (b) the standard of proof required is the standard that would apply to the body corporate in relation to the defence.
- (5) Subsection (4) does not limit any other defence available to the officer.

63. Conduct on behalf of bodies corporate and principals

- (1) In this section —

engage in conduct includes to fail or refuse to engage in conduct;

state of mind of a person includes —

 - (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to and in relation to proceedings for an offence under this Act.
- (3) If it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show —

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

64. Continuing offences: daily penalties

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

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

65. Bringing prosecutions

- (1) Proceedings for an offence under this Act may be commenced prior to the expiry of this Act.
- (2) If a prosecution notice alleging an offence under this Act specifies the day on which evidence of the alleged offence first came to the attention of a person authorised to institute the proceedings, the prosecution notice need not contain particulars of the day on which the offence is alleged to have been committed.
- (3) For the purposes of subsection (2), the day specified in the prosecution notice as the day on which evidence first came to the attention of a person authorised to institute proceedings is, in the absence of evidence to the contrary, to be presumed to be that day.

66. Injunctions to ensure compliance with this Act

- (1) In this section —
offence provision means a provision of this Act, contravention of which may constitute an offence under this Act.
- (2) The Administrator may apply to the Court for an injunction restraining a person —
 - (a) from doing something that would, or would be likely to, contravene an offence provision; or
 - (b) from aiding, abetting, counselling or procuring the contravention of an offence provision; or
 - (c) from conspiring with others to contravene or bring about the contravention of an offence provision; or
 - (d) from attempting to do anything referred to in paragraph (a), (b) or (c).
- (3) The Administrator may apply to the Court to enjoin a person to do something if the person's omission to do it contravenes or would contravene an offence provision.

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

Part 8 — Miscellaneous

67. 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.

68. 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.

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

69. Protection of the Minister, the Authority and others

- (1) The Minister, the Authority, the Administrator or any person employed or engaged by the Authority (including a person covered by section 11(1)) is not liable for anything done by them, in good faith, in the performance or purported performance of a function under this Act.
- (2) The State is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

70. Protection of ICWA and others connected with it

- (1) In this section —
protected act, in relation to a person to whom this section applies, means anything done or omitted to be done, or purportedly done or omitted to be done, by the person in connection with —
 - (a) the conduct of the Bell Litigation; or
 - (b) the negotiation or execution of any agreement declared void by section 26; or
 - (c) the liquidation of any WA Bell Company; or
 - (d) the settlement of the Bell litigation; or
 - (e) preparing the Bill for this Act or recommending its introduction into the Parliament.
- (2) This section applies to ICWA and to any person who is, or has at any time been —
 - (a) the managing director of ICWA;

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

71. Protection for compliance with the Act

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

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72. Act not to give rise to liability against the State, Authority or Administrator

(1) In this section —

officer of the State includes —

- (a) an employee as defined in the *Public Sector Management Act 1994* section 3(1); and
- (b) an individual who is or was an agent or contractor of the State;

the State includes any State authority or officer of the State, and also includes —

- (a) the Crown in right of the State; and
- (b) the Government of the State; and
- (c) a Minister of the Crown in right of the State; and
- (d) a statutory corporation, or other body, representing the Crown in right of the State.

(2) The State, the Authority and the Administrator are not liable to any action, liability or demand arising from —

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

73. Stay of proceedings

(1) On and from the transfer day a person cannot begin or continue proceedings in a court with respect to property that was, immediately before that day, property of a WA Bell Company except with the leave of the Court and in accordance with the terms, if any, that it imposes.

- (2) To the extent to which a right to make a taxation objection, or a right or capacity to seek the review of, or to appeal against, a decision of the Commissioner in relation to a taxation objection, is property of the company, subsection (1) does not apply to the right or capacity.
- (3) Words and expressions used in subsection (2) and also in the *Taxation Administration Act 1953* (Commonwealth) Part IVC have the same meanings in that subsection as they have in that Part.

74. No appeal or review

- (1) Any decision made, or other thing done, by the Governor, the Minister, the Authority or the Administrator under or for the purposes of this Act —
 - (a) is final and conclusive; and
 - (b) must not be challenged, appealed against, reviewed, quashed or called into question in any court; and
 - (c) is not subject to review or remedy by way of prohibition, mandamus, injunction, declaration or certiorari, or a remedy having the same effect as a remedy that could be provided by means of such a writ, in any court on any account.
- (2) Nothing in this Act requires the Governor, the Minister, the Authority or the Administrator to perform a function, or exercise a power, in a particular way in any particular circumstance.
- (3) The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to, or in relation to, the doing or omitting to do, or the purported doing of or omitting to do, any act, matter or thing under Part 3 or 4 by, or by any person on behalf of —
 - (a) the Governor; or
 - (b) the Minister; or

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- (c) the Authority; or
 - (d) the Administrator.
- (4) Nothing in subsections (1) to (3) affects the jurisdiction of the Court to grant relief for jurisdictional error.

75. Conduct of inquiry

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

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

76. Judicial notice

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

77. Freedom of Information Act 1992

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

78. Power to obtain opinion

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

79. Constructive notice of contents of document

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

80. Translation of documents

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

81. Service of documents

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

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

82. Approved forms

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

83. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to this Act.
- (2) Without limiting subsection (1), regulations may be made as to the following —
 - (a) applications under this Act;

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- (b) records to be kept in relation to matters under this Act;
 - (c) the giving of notices or other documents under this Act;
 - (d) fees or charges payable in relation to any matter under this Act;
 - (e) imposing additional fees for the late giving of documents;
 - (f) providing that a contravention of a regulation is an offence and providing for a penalty not exceeding a fine of \$2 500;
 - (g) matters of a transitional, application or savings nature, including matters relating to the coming into operation of a provision of the *Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Amendment Act 2016*;
 - (h) matters relating to a provision of this Act that is partly or wholly invalid because of section 109 of the Constitution of the Commonwealth ceasing to be invalid, partly or wholly, including matters of a transitional, application or savings nature.
- (3) Regulations made for the purposes of subsection (3)(g) or (h) may be expressed to take effect from a time that is earlier than the beginning of the day on which the regulations are published in the *Gazette*, but not earlier than immediately before the transfer day.

[Section 83 amended: No. 6 of 2016 s. 13.]

84. Expiry of Act

This Act expires at the end of the 6 years beginning on the day on which the Governor makes the determination under section 42(2).

85. The Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Amendment Act 2016

(1) In this section —

Amendment Act means the *Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Amendment Act 2016*;

commencement day means the day on which the Amendment Act section 14 comes into operation.

(2) Even if an amendment effected by section 4, 5, 6, 7, 8, 9 or 10 of the Amendment Act is not effective from the transfer day, it is intended to be effective from commencement day.

(3) Section 3(5) does not have effect so as to make a person criminally liable for a thing done or omitted to be done before the day on which section 3 of the Amendment Act comes into operation.

(4) The rights, obligations and liabilities of all persons are to be taken to be, and to have always been, the same as if the Amendment Act had received the Royal Assent on 26 November 2015 and sections 4 to 10 of that Act had come into operation on 27 November 2015.

(5) Anything done, or purportedly done, on or after the transfer day and before commencement day is as valid and effective, and is to be taken to have always been as valid and effective, as it would have been if the Amendment Act had received the Royal Assent on 26 November 2015 and sections 4 to 10 of that Act had come into operation on 27 November 2015.

(6) To the extent to which a provision of this Act that does not have effect in relation to a matter to which it would otherwise have effect (including at a time before commencement day) begins to have effect in relation to the matter on a day that is on or after commencement day, this Act has effect in relation to the matter on and after that day and, to the extent to which subsections (4) and (5) do not have effect in relation to the matter —

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- (a) anything done or effected or purported to have been done or effected in relation to that matter before that day is, to the extent possible, to be treated as having been done or effected on that day; and
 - (b) to the extent to which paragraph (a) does not have effect in relation to a thing done or purported to have been done in relation to that matter before that day, it may be done on or after that day; and
 - (c) to the extent to which paragraph (a) does not have effect in relation to a thing effected or purported to be effected in relation to that matter before that day, it is effected on that day.
- (7) In subsections (5) and (6), a reference to the doing of anything includes a reference to an omission to do anything.
- (8) Subsection (6) does not limit section 83(2)(g) or (h).

[Section 85 inserted: No. 6 of 2016 s. 14.]

Schedule 1 — The WA Bell Companies

[s. 3(1)]

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

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

Schedule 1 The WA Bell Companies

26. TBGL Enterprises Ltd ACN 008 669 216 (In Liquidation)
27. TBGL Securities Pty Ltd ACN 008 713 513 (Deregistered)
28. The Bell Group Ltd ACN 008 666 993 (In Liquidation)
29. Wanstead Finance Pty Ltd ACN 009 227 570 (Deregistered)
30. Wanstead Pty Ltd ACN 008 775 120 (In Liquidation)
31. Wanstead Securities Pty Ltd ACN 009 218 160 (In Liquidation)
32. WAON Investments Pty Ltd ACN 008 937 166 (In Liquidation)
33. Wigmores Air Services Pty Ltd ACN 008 742 863 (Deregistered)
34. Wigmores Finance Pty Ltd ACN 008 679 230 (Deregistered)
35. Wigmores Tractors Pty Ltd ACN 008 679 221 (In Liquidation)

Schedule 2 — The Bell litigation

[s. 3(1)]

The Main proceedings comprising:

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

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

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

The related proceedings comprising:

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 Dnro 99/2515	Proof of debt in liquidation of Skopbank.

Supreme Court of Western Australia proceedings:

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

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

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

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

Notes Compilation table

Notes

This is a compilation of the *Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Act 2015* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Act 2015</i>	38 of 2015	26 Nov 2015	s. 54-56: 12 noon on 5 May 2015 (see s. 2(1)(c)); Pt. 1: 26 Nov 2015 (see s. 2(1)(a)); Act other than Pt. 1, s. 47 and s. 54-56: 27 Nov 2015 (see s. 2(1)(d))
<i>Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Amendment Act 2016</i>	6 of 2016	5 Apr 2016	s. 4-10: 27 Nov 2015 (see s. 2(b)); s. 1 and 2: 5 Apr 2016 (see s. 2(a)); Act other than s. 1, 2 and 4-10: 6 Apr 2016 (see s. 2(c))

Note: On 16 May 2016 the High Court of Australia declared this Act to be invalid in its entirety. (See **Bell Group N.V. (in liquidation) v Western Australia** [2016] HCA 21.)

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
<i>Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Act 2015</i> s. 47	38 of 2015	26 Nov 2015	On the day that is 14 days after the day on which the Fund is closed by s. 46 (see s. 2(1)(b))

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)
Amendment Act	85(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)
commencement day	85(1)
company	3(1)
conceal	56(1)
confidential information	60(1)
corporation	3(1)
Corporations Act	3(1)
Corporations legislation	50
Court	3(1)
creditor	3(1)
daily newspaper	3(1)
director,	3(1)
draft report	36(2)
engage in conduct	63(1)
excluded Corporations legislation provision	50
financial records	3(1)
Fund	3(1)
Genra Indemnity	3(1)
ICWA	3(1)
Indemnity and Distribution Agreement	3(1)
interest	32(2), 32(3)
LDTC	3(1)

Defined terms

LDTC (BGF).....	3(1)
LDTC (TBGL).....	3(1)
liability.....	3(1)
liquidator.....	3(1)
Liquidators' Indemnity Agreement.....	3(1)
Main Proceeding Indemnity Agreements.....	3(1)
malice.....	67(2)
Maranoa Transport.....	3(1)
matter.....	50
offence provision.....	66(1)
officer.....	3(1)
officer of the State.....	72(1)
principal.....	63(6)
property.....	3(1)
protected act.....	70(1)
PTICA.....	3(1)
records.....	3(1)
reinstated WA Bell Company.....	3(1)
related body corporate.....	3(1)
relevant official.....	31(1)
relevant property.....	31(1)
right.....	3(1)
scheme.....	54(1)
state of mind.....	63(1)
subsidiary.....	3(1)
TBGL.....	3(1)
TBGL AFI.....	3(1)
TBGL Inter-Creditor Agreement.....	3(1)
TBGL Trust Deed.....	3(1)
the State.....	72(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)