



TREASURER



29 APR 2015

The Hon Dr Mike Nahan MLA
Treasurer of Western Australia
13th Floor
Dumas House
2 Havelock Street
West Perth WA 6005

Dear Dr Nahan

Thank you for your letter of 13 April 2015 formally notifying of the Western Australian Government's plan to introduce legislation to finalise the liquidation of the Bell Group companies.

Australia's corporate law, including the *Corporations Act 2001*, is dependent on a referral of power from each of the States in the federation. As you note in your letter, that legislation provides a mechanism for the States to retain their rights to make laws in relation to corporate law matters, even where those laws conflict with the *Corporations Act*.

The Western Australian Government is choosing to exercise its right to displace the *Corporations Act* in this instance given the unprecedented circumstances of the long running Bell Group liquidation. I note this should not be seen as a precedent for future actions which may undermine the national corporations scheme.

I acknowledge the desire of the Western Australian Government to see an efficient and timely conclusion to the Bell Group insolvency process. It is important that the ensuing process result in, to as great an extent as possible, fair outcomes for creditors consistent with their legal positions before the legislation takes effect.

I understand that the proposed legislation will require any future determination in relation to creditor distribution to have due regard to the agreements between creditors on distribution issues. I consider that an outcome that mirrors as close as possible a commercially acceptable agreement, as would have been determined by the parties themselves, is the optimal outcome to be sought. I trust that the Western Australian Government will therefore continue to engage in good faith in the forthcoming mediation processes.

Given the significant nature of the proposed course of action, I urge the Western Australian Government to ensure that the utmost probity is evidenced throughout the process so as to ensure that Australia remains and continues to be seen as an attractive destination for foreign investment.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J. B. Hockey', written over a horizontal line.

HON J. B. HOCKEY MP



E-MAILED
13 April 15

**Hon Mike Nahan MLA
Treasurer; Minister for Energy;
Citizenship and Multicultural Interests**

Our Ref: 48-10680

Hon Joe Hockey MP
Treasurer of the Commonwealth of Australia
PO Box 6022
House of Representatives
Parliament House
CANBERRA ACT 2600

Correspondence Received - Office of the Treasurer	
Office Circulation	<input type="checkbox"/> Contact Adviser -
<input checked="" type="checkbox"/> Treasurer	<input type="checkbox"/> Other Adviser -
<input type="checkbox"/> Chief of Staff	<input type="checkbox"/> DLOs -
15 APR 2015	
Departmental Action	
<input type="checkbox"/> Acknowledge	<input checked="" type="checkbox"/> Briefing
<input type="checkbox"/> Substantive Response	<input type="checkbox"/> Speech
<input type="checkbox"/> Appropriate Action	<input type="checkbox"/> Refer to
<input type="checkbox"/> Information	<input type="checkbox"/> No Further Action
<input type="checkbox"/> Constituent Response	<input type="checkbox"/> URGENT
<input type="checkbox"/> Signatory	

Dear Mr Hockey

BELL GROUP RECOVERY

I refer to our discussion on Thursday, 19 March 2015 about the planned legislative solution to finalise the liquidation of the Bell Group companies.

As we discussed with you, the Western Australian Government is planning to introduce a bill into State Parliament to bring the long running Bell Group litigation to an end and distribute settlement proceeds to creditors. This letter is to flag the intention of the Western Australian Government to introduce this legislation in the coming months.

Background

The Bell Group litigation is infamous for its length and cost. The Insurance Commission of Western Australia ('ICWA') has spent about \$200 million funding the liquidator of the Bell Group in his successful action against the 20 Australian and foreign banks that had stripped all worthwhile assets from the Bell Group when it went into liquidation in the early 1990s. The liquidator now has approximately \$1.7 billion available to distribute to creditors but the distribution issues are hugely complex involving inter-company debts between Bell Group companies.

Litigation between the creditors about distribution issues is in full flight in both Australia and England and is likely to run for another 5 to 10 years. A mediation conference is scheduled to take place in Singapore in May 2015 in parallel to the litigation but there is not a great deal of hope that it will result in a settlement or even that a successful mediation can deliver an outcome, given the history of past contractual disputes between the parties.

Current situation

Accordingly, the Western Australian Government is planning to introduce legislation that will –

- deliver a more rapid financial return to the Commonwealth, the State Government and the other creditors;
- eliminate further speculation by professional litigation funders;
- ensure no 'misdistribution';
- only apply to Bell companies that are registered in Western Australia; and
- effectively be a legislated scheme of arrangement which the liquidator and the creditors are clearly unable to deliver themselves.

The Western Australian Government will rely on the power of the State to displace certain provisions of the *Corporations Act* which, as you will recall from when you negotiated the referral of corporations law powers from the States, was explicitly preserved in the *Corporations Act*.

Since 2001, the State parliaments have used these powers in a range of other situations, including the *James Hardie (Civil Liability) Act 2005* introduced by the NSW Government to wind up companies in the James Hardie group.

The particular circumstances of the Bell liquidation provide a compelling example of a situation in which it is entirely appropriate and necessary for Western Australia to exercise the capacity preserved for States to wind up companies under State legislation. The application of the *Corporations Act* would only be replaced by State legislation for the Bell Group companies in order to bring the long running Bell litigation to a close through an equitable and efficient distribution.

As this litigation heads into its third decade, it is more than clear that some circuit-breaking action needs to be taken.

The cost of resolving the intricacies of some of this country's better known entrepreneurs of the 1980s, and a particularly notorious Western Australian Government of the 1980s, has been immense. It is time to provide a robust and rapid mechanism to conclude this mess.

Incidentally, but not unimportantly, the proposed mechanism also offers a more rapid distribution of funds to the Commonwealth than the alternatives.

I trust that our discussion and this letter have conveyed to you the narrow and unique circumstances driving the Western Australian Government to introduce the planned legislation. I also trust that you would therefore see no need for the Commonwealth to contest the legislation we plan to introduce into the Western Australian Parliament.

Our officials stand ready to provide further briefing to your officials and advisers if that is desired.

Yours sincerely



DR MIKE NAHAN MLA
TREASURER
13 APR 2015