

Chapter 1

Background

1.1 On 29 November 2016, the Senate referred the following matter to the Legal and Constitutional Affairs References Committee for inquiry and report by 21 March 2017:

- 1) The nature and scope of any agreement reached by the Commonwealth and Western Australian governments in relation to the distribution of proceeds of the liquidation of, and litigation concerning, the Bell Group of companies (the proceeds), with particular reference to:
 - a) the priority order for distribution of the proceeds;
 - b) the Commonwealth's position in relation to the distribution of, and litigation concerning, the proceeds;
 - c) any connection between the above and the settlement of other disputes between the Commonwealth and Western Australian governments, including regarding the distribution of GST revenue between the states;
 - d) any direction or instruction given by the Attorney-General to the Solicitor-General, either directly or through his office or department, in relation to the conduct of litigation concerning the proceeds;
 - e) any connection between the above and the issuing of the Legal Services Amendment (Solicitor-General Opinions) Direction; and
 - f) any other related matter.
- 2) That the Senate directs the Attorney-General (Senator Brandis) and the Minister for Finance (Senator Cormann) to appear before the committee to answer questions.¹

1 *Journals of the Senate*, No. 22, 29 November 2016, pp. 664–665.

Note: Senator Cormann made himself available to attend public hearings for this inquiry. However, the Senator was unable to attend at the time he was initially invited to a hearing. Although the Senator subsequently made himself available to attend a hearing at another time, the committee decided not to invite him again to give evidence. Ultimately, the Senator did not provide any evidence to the committee, and the inquiry findings have been made on the basis of evidence heard from other witnesses.

1.2 The Bell Group of Companies (Bell Group) was a large diversified conglomerate of companies, which had several member companies go into liquidation between 1991 and 1993.

1.3 The Insurance Commission of Western Australia, which was previously called the State Government Insurance Commission, led a long running legal case against a number of Australian and international banks to recover money following the collapse of Bell Group. The litigation began in 1995 and focused on the issue of loans to the Bell group of companies. The litigation was undertaken in several jurisdictions, including in the High Court of Australia.

1.4 While the distribution of funds to creditor banks occurred following the collapse of the Bell Group, litigation to recover funds for other creditors is ongoing.² As the result of a 2006 Federal Court judgment, the banks were found liable to pay \$1.7 billion to the other creditors, including the Australian Taxation Office (ATO) and the Insurance Commission of Western Australia (ICWA).³

1.5 After more than two decades of litigation, the matter has still not been resolved, which makes it the longest-running and most costly corporate liquidation process in Australian history.

Statement of the Attorney-General to the Senate

1.6 On 28 November 2016, the Attorney-General, Senator the Hon George Brandis QC, made a statement to the Senate, in which he outlined his understanding of the Commonwealth's awareness of and action in the Bell Group matter.⁴ This statement will be discussed in detail in Chapter 2.

Order for the production of documents

1.7 On 30 November 2016, the Senate moved and passed an order for the production of documents by the Attorney-General as follows:

That—

(a) the following documents relating to the Bell Group liquidation and the Western Australian Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) legislation be provided to the Legal and Constitutional Affairs References Committee by the Attorney-General:

(i) correspondence, including but not limited to, briefings, letters, memoranda and aides memoire between the Attorney-General and:

(A) the Treasurer of Western Australia,

2 Statement to the Senate by Senator George Brandis, Attorney-General, *Senate Proof Statements*, 28 November 2016, p. 21.

3 *West Australian Assembly Hansard*, 6 May 2015, p. 3167.

4 *Senate Hansard*, 28 November 2016, pp.3323–3329.

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- (B) the Attorney General of Western Australia, and
 - (C) the Solicitor-General,
- (ii) any file notes held of any meetings between the Attorney-General and:
- (A) the Treasurer of Western Australia,
 - (B) the Attorney General of Western Australia, and
 - (C) the Solicitor-General,
- (iii) briefings to the Attorney-General from the Solicitor-General, Australian Government Solicitor and Attorney-General's Department, and
- (iv) correspondence between the Australian Government Solicitor and the Attorney-General's Department and the Western Australian Department of the Attorney General, or the Western Australian State Solicitor's Office;
- (b) the time frame for the documents covered by this motion is 1 November 2015 to 30 March 2016; and
- (c) the documents be provided by no later than 14 December 2016.

1.8 Pursuant to this order, the Attorney-General provided documents to the Senate on 14 February 2017.

Conduct of the inquiry

1.9 Details of the inquiry were advertised on the committee's website, including a call for submissions by 17 January 2016.⁵ The committee did not receive any submissions but did receive evidence at public hearings and through tabled documents. The committee held public hearings in Canberra on 7 December 2016, 17 February 2017, and 8 March 2017. A list of witnesses who attended these hearings to give evidence is available at appendix 2 of this report. Full Hansard transcripts of the hearings are available on the committee's website.

1.10 This is an interim report, due to the fact that the committee has been frustrated in its request for information from the Attorney-General's Department and the Attorney-General. The committee intends to table its final report by 21 June 2017.

Structure of this report

1.11 There are two chapters in the report. This chapter sets out the administrative details of the inquiry, as well as a brief outline of the Bell Group liquidation process.

5 The committee's website can be found at www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs

1.12 Chapter 2 sets out the facts of the Bell inquiry. It includes a timeline of events, including evidence gathered over the course of this inquiry about when members of the government and Commonwealth departments first became aware of the *Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Act 2015* (WA) (Bell Act). It also discusses the key issues raised during the inquiry and sets out the committee's views and recommendations.

Acknowledgements

1.13 The committee thanks all witnesses who gave evidence at public hearings.