

COPY



SENATOR THE HON MATHIAS CORMANN
Minister for Finance
Deputy Leader of the Government in the Senate

Senator Louise Pratt
Chair
Senate Legal and Constitutional Affairs References Committee
Parliament House
Canberra ACT 2600

Yours
Dear Chair

I refer to the answer provided by the Australian Taxation Office to questions taken on notice from Senator McKim in a hearing on the Bell Group matter on 7 December 2016, relating to a 'for information only' minute by the ATO on matters related to the Bell liquidation.

For your information, please find a copy of that 15 September 2015 minute enclosed.

As you will note, this minute does not relate in any way to the questions previously raised with me about legal advice on a potential constitutional challenge or indeed on whether such a challenge should be pursued by the ATO (or indeed the Commonwealth) against the WA Bell Group legislation.

Instead, the minute provided a brief update on where the ATO was at with achieving a timely resolution of the Bell liquidation, including coming to a settlement of the Commonwealth's claim in the matter, and on its discussions with various parties involved in the Bell Group liquidation and the Bell Group liquidator.

Nothing in this minute is inconsistent with my previous evidence to the Senate Economics Committee Estimates hearing on 19 October 2016.

At the 19 October 2016 Estimates hearing Senator Gallagher clarified that the questions she was asking me in relation to the Bell Group liquidation were "specifically in relation to the line of questioning that Senator Watt had just been pursuing".

The relevant line of questioning pursued by Senator Watt on that occasion was whether a Minister had contacted the ATO about legal advice having been obtained by the ATO from the AGS or the Solicitor General about the WA Bell Group legislation and a potential constitutional challenge against that legislation.

He further asked the ATO whether any concern had been expressed by any Minister or their office about such advice having been sought.

He finally asked me directly whether I remembered having any discussions with any other federal government ministers about that legislation or the decision of the ATO to intervene in that case.

I can confirm my previous evidence in response to these questions, that:

- The relevant decision by the ATO to intervene in the case against the WA Bell Group legislation was not something that I was involved in in any way;
- It was a decision that, appropriately, was made and progressed independently by the Australian Taxation Office.

In fact, at the relevant time, I was not aware that the ATO was seeking or had obtained legal advice in relation to a potential constitutional challenge against the WA Bell Group legislation.

At no point did I ever discuss the issue of the ATO's or the Commonwealth's involvement in a potential constitutional challenge against the WA Bell Group legislation with other Federal Ministers or indeed with the ATO and I certainly was not involved in any discussions with WA or other Federal Ministers about any 'deal' not to challenge that legislation in the High Court.

For completeness – and as I indicated during my evidence on 19 October 2016 before the Senate Economics Committee – I was of course aware of what the State Government in Western Australia was doing in relation to the Bell Group legislation. These matters were widely reported in the Western Australian media at the time.

In fact, I first became aware of the proposed legislation (which incidentally was not opposed by Labor and which was explicitly supported by the Greens in the WA Parliament) when the matter was reported in The West Australian newspaper on 6 May 2015.

Coincidentally, that same day (6 May 2015) a copy of a letter from then Treasurer Joe Hockey to WA Treasurer Mike Nahan acknowledging notification of the WA Government's plans to introduce the relevant legislation was also received in my Canberra office (though I cannot be certain on which precise day on or after 6 May 2015 I would have read it).

Finally, unrelated to those specific questions raised with me before, but connected to the broader Bell Group liquidation matter, in a conversation in Canberra towards the end of August 2015, WA Treasurer Mike Nahan raised with me his strong view that a timely settlement of relevant claims in that liquidation was important and in the interests of all creditors, including and in particular the ATO and the Commonwealth.

That is why at a subsequent meeting with senior ATO officials on other matters I asked for an update on where the settlement process was at from an ATO perspective. The 15 September 2015 (for information only) minute provided that update. No further action was taken by me in relation to the Bell Group liquidation issue as a result of that update subsequently.

I trust this information provides you with the appropriate context to the ATO minute received in my office on 15 September 2015.

I have also copied this letter and its attachment to the Senator Jane Hume, the Chair of the Senate Economics Legislation Committee for the information of members of that Committee.

Best wishes

Mathias Cormann
Minister for Finance

22 December 2016

Unclassified

Australian Taxation Office
Minute Paper

N^o. 128

Date: 15 September 2015

Minister for Finance

Taxation Administration: Bell Group Liquidation

Action required by: For information only.

Recommendation:

That you note the contents of this minute.

Noted

Signature _____ Date ____/____/____

Key Points

1. This submission provides the information you requested in a meeting last week on the ATO's approach and engagement with key stakeholders in relation to the Bell Group liquidation matter.
2. The ATO continues to have ongoing conversations with all parties involved in the liquidation including the Insurance Commission of Western Australian (ICWA) and the Bell Group liquidator with a view of coming to a settlement of the Commonwealth's claims in the liquidation.
3. The ongoing engagement has included a Distribution Proposal (settlement offer) from ICWA on 7 August 2015 which was subsequently withdrawn on 11 August. Despite that withdrawal, in a letter dated 27 August 2015 the ATO indicated broad agreement with the offer, with the exception of matters outside its control, and reaffirmed our willingness to discuss and resolve the Bell matter.
4. In the light of the impending WA legislation, and with the view to protecting the Commonwealth's interest, we issued notices of assessment in respect of certain post liquidation years. These have been followed up with garnishee notices which themselves have been challenged.
5. Recently, the liquidator has filed an application in the Supreme Court of WA seeking directions as to whether he should cause the Bell Group companies to mount a constitutional challenge to the validity of the Bell Bill, if enacted. In his affidavit, the liquidator states he believes that two of the creditors to the Bell Group, BGNV and WAG will commence proceedings in a court to challenge the constitutional validity of an Act in terms of the Bell Bill.

Copies to: Treasurer; Assistant Treasurer

Unclassified

6. In common with ICWA, the ATO is keen to ensure all creditors have the same level of urgency to bring the matter to a close. The ATO continues to strive for a speedy resolution in this matter.

Second Commissioner