

From: Mossop, Kathy
Sent: Friday, 4 March 2016 2:44 PM
To: 22
Cc: Parliamentary Services
Subject: RE: Response to Bell Group question [DLM=Sensitive] [DLM=Sensitive:Legal]

Hi 22

- The Bell litigation will raise basic issues as to the interpretation and practical operation of fundamental tax collection provisions.
- There is a very large amount of outstanding tax. 37(2)(b)

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Let me now if you need anything else.

Regards
Kathy

From: Puckridge, Robert
Sent: Tuesday, 15 March 2016 4:21 PM
To: Mossop, Kathy
Cc: Mills, Andrew
Subject: RE: Minister is requesting further clarification on Bell Group [DLM=For-Official-Use-Only]

Kathy

This depends on what is meant by 'end of the matter'.

If the High Court decides that the Bell Act is valid then the Authority will undertake its statutory role and a split of funds will be made. I cannot, however, guarantee that one or more unhappy creditors will not attempt to litigate. The Bell Act tries to limit the ability to litigate but there are clear Constitutional limits on what they can do, which is recognised in specific provision of the Bell Act.

If the High Court decides that the Bell Act is invalid then the Corporations Law will apply. That is, we will be back to where we were prior to the Bell Act. There is certainly the possibility of lengthy litigation with no certainty as to outcome.

Robert Puckridge
Assistant Commissioner
Tax Counsel Network

1 47E(d)

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Will the decisions on the three applications (hearing 4 and 5 April) be the end of the matter?

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Sent: Tuesday, 15 March 2016 2:37 PM
To: Mossop, Kathy
Cc: Smith, Susie; Mills, Andrew
Subject: RE: Minister is requesting further clarification on Bell Group [DLM=For-Official-Use-Only]

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47B I suggest we send the response set out below.

Robert Puckridge
Assistant Commissioner

The basic difference between an intervener and an amicus curiae is the difference in the nature of their interests in the legal issues raised before the court. The High Court explained the difference in *Roadshow Films Pty Ltd v iiNet Limited* [2011] HCA 54. The relevant paragraphs are set out below. Given that the Commissioner is a significant creditor whose financial interests will be directly affected by the decision it was more appropriate to intervene. It should be noted that the written submissions that we filed as an intervener are not materially different to those that we would have files as an amicus curiae.

On the timing question the 3 applications have all been listed to be heard by the Full Court on the 4th and 5th of April this year. One of the applicant has requested that if possible the decision be published by the end of May 2016. Obviously the timing of any decision is solely within the discretion of the Court

1. ...
2. In determining whether to allow a non-party intervention the following considerations, reflected in the observations of Brennan CJ in *Levy v Victoria*, are relevant. A non-party whose interests would be directly affected by a decision in the proceeding, that is one who would be bound by the decision, is entitled to intervene to protect the interest likely to be affected. A non-party whose legal interest, for example, in other pending litigation is likely to be affected substantially by the outcome of the proceedings in this Court will satisfy a precondition for leave to intervene. Intervention will not ordinarily be supported by an indirect or contingent affection of legal interests following from the extra-curial operation of the principles enunciated in the decision of the Court or their effect upon future litigation.
3. Where a person having the necessary legal interest can show that the parties to the particular proceedings may not present fully the submissions on a particular issue, being submissions which the Court should have to assist it to reach a correct determination, the Court may exercise its jurisdiction by granting leave to intervene, albeit subject to such limitations and conditions as to costs as between all parties as it sees fit to impose.
4. The grant of leave for a person to be heard as an amicus curiae is not dependent upon the same conditions in relation to legal interest as the grant of leave to intervene. The Court will need to be satisfied, however, that it will be significantly assisted by the submissions of the amicus and that any costs to the parties or any delay consequent on agreeing to hear the amicus is not disproportionate to the expected assistance.
5. None of the applicants for leave to intervene demonstrates that any identified legal interest of that applicant will be directly affected by the outcome of this case. It follows that none of those applicants shows that it has a right to intervene in these proceedings.
6. In considering whether any applicant should have leave to intervene in order to make submissions or to make submissions as amicus curiae, it is necessary to consider not only whether some legal interests of the applicant may be indirectly affected but also, and in this case critically, whether the applicant will make submissions which the Court should have to assist it to reach a correct determination. Ordinarily then, in cases like the present where the parties are large organisations represented by experienced lawyers, applications for leave to intervene or to make submissions as amicus curiae should seldom be necessary or appropriate and if such applications are made it would ordinarily be expected that the applicant will identify with some particularity what it is that the applicant seeks to add to the arguments that the parties will advance.

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Sent: Tuesday, 15 March 2016 2:15 PM

To: Puckridge, Robert

Cc: Smith, Susie

Subject: RE: Minister is requesting further clarification on Bell Group [DLM=For-Official-Use-Only]

Hi,

47B

Kathy

From: Puckridge, Robert

Sent: Tuesday, 15 March 2016 2:10 PM

To: Mossop, Kathy

Cc: Welch, Robyn; Mills, Andrew; Parliamentary Services

Subject: RE: Minister is requesting further clarification on Bell Group [DLM=For-Official-Use-Only]

Kathy

47B

Robert Puckridge

Assistant Commissioner

Tax Counsel Network

1 47E(d)

From: Mossop, Kathy

Sent: Tuesday, 15 March 2016 1:48 PM

To: Puckridge, Robert

Cc: Welch, Robyn; Mills, Andrew; Parliamentary Services

Subject: RE: Minister is requesting further clarification on Bell Group [DLM=For-Official-Use-Only]

Hi Robert,

Some follow-up questions:

- 'Under the High Court Rules an intervener and an amicus curiae are treated in the same way.'
 - What does this statement mean? How does an intervener's participation in the appeal differ to that of the amicus curiae?
- - What's the ATO's expectation regarding the timetable for finalising this case?

Regards

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The advice will not change in substance but we can add the following sentence to the second dot point.

Under the High Court Rules an intervener and an amicus curiae are treated in the same way.

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Rule 44.01.2 of the High Court Rules defines an intervener as either someone who seeks to intervene or an 'amicus curiae'. The rules then just apply to 'interveners', however, there may be some practical difference during the hearing.

Robert Puckridge
Assistant Commissioner
Tax Counsel Network
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From: Mossop, Kathy
Sent: Tuesday, 15 March 2016 12:38 PM
To: Mills, Andrew; Puckridge, Robert
Cc: Welch, Robyn
Subject: RE: Minister is requesting further clarification on Bell Group [DLM=For-Official-Use-Only]

Hi,

Minister's Office just called – they want the advice asap...

Robert – will you make any changes based on Andrew's comment?

Kathy

From: Mills, Andrew
Sent: Tuesday, 15 March 2016 12:16 PM
To: Mossop, Kathy; Puckridge, Robert
Cc: Welch, Robyn
Subject: Re: Minister is requesting further clarification on Bell Group [DLM=For-Official-Use-Only]

Robert
Is there a difference in the amicus curiae role in the arguments that we would be putting?
Kind regards
Andrew

Andrew Mills
Second Commissioner of Taxation, Law Design & Practice
Australian Taxation Office

On 15 Mar 2016, at 11:33 AM, Mossop, Kathy <Kathy.Mossop@ato.gov.au> wrote:

From: Puckridge, Robert
Sent: Tuesday, 15 March 2016 11:56 AM
To: Mossop, Kathy

Cc: Parliamentary Services; tom.reid@treasury.gov.au; Michelle.Rak@treasury.gov.au
Subject: RE: Minister is requesting further clarification on Bell Group [DLM=For-Official-Use-Only]

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The summary points are as follows.

- 42
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Robert Puckridge
Assistant Commissioner
Tax Counsel Network
1 47E(d)

From: Mossop, Kathy
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To: Puckridge, Robert
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Hi Robert,

Are you able to get some email dot points to me fairly quickly?

I will call to confirm.

Thanks
Kathy

From: Mills, Andrew
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To: Mossop, Kathy
Cc: Smith, Susie; Welch, Robyn; Puckridge, Robert
Subject: RE: Minister is requesting further clarification on Bell Group [DLM=For-Official-Use-Only]

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Yes, that would be appropriate (thanks Robert).

I said to the Minister that we would be intervening. However, I also said that we would be restricting ourselves to ensuring that the tax issues were addressed in a way consistent with the Commissioner's interpretation, *a bit like an amicus curiae*. I think this is where the confusion has arisen (if it actually makes any difference! – Robert, can you consider this too, please?).

Should we point out that it is the Solicitor General that is the final arbiter of what arguments are put in our submission?

Kind regards
Andrew

Andrew Mills

Second Commissioner, Law Design and Practice
Australian Taxation Office

P47E(d)

<image001.png>

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From: Mossop, Kathy

Sent: Tuesday, 15 March 2016 10:42 AM

To: Mills, Andrew

Cc: Smith, Susie; Welch, Robyn; Puckridge, Robert

Subject: RE: Minister is requesting further clarification on Bell Group [DLM=For-Official-Use-Only]

Hi Andrew,

22 has asked for something in writing this morning explaining why the ATO has intervened in the proceedings rather than appear as amicus curiae as had been expected.

Shall I ask Robert to prepare something?

Regards

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>>>> On 15 Mar 2016, at 7:48 AM, Mossop, Kathy <Kathy.Mossop@ato.gov.au> wrote:

>>>>

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>>>>

>>>> Regards

>>>> Kathy

>>>>

>>>> Kathy Mossop

>>>>

>>>> 47E(d)

Australian Taxation Office
er FOI Act 1982

From: Parliamentary Services
Sent: Wednesday, 16 March 2016 5:18 PM
To: 22 [REDACTED]@treasury.gov.au'
Cc: Mossop, Kathy
Subject: Bell Group hearing [SEC=UNCLASSIFIED]

22 [REDACTED]

The Commissioner's application to intervene will be considered by the High Court at the beginning of the hearing which is scheduled to go for two days. Once they have decided that issue the Court will start to deal with the substantive issues raised by the various parties. It is expected that all the substantive issues will be covered in the two days, but there is apparently some scope for the Court to continue to hear the matter on the third day if necessary.

I have also been advised that the hearing will commence on the 5th of April, not the 4^h as previously stated.

Brett Dixon

Parliamentary Services | ATO Corporate
Australian Taxation Office

1

Australian Taxation Office
er FOI Act 1982

From: Puckridge, Robert
Sent: Wednesday, 16 March 2016 4:54 PM
To: Parliamentary Services
Cc: Mossop, Kathy; Mills, Andrew
Subject: RE: Bell Group [SEC=UNCLASSIFIED]

Brett

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Also, a correction the hearing will commence on the 5th of April not the 4th as previously stated.

Kathy

The Minister's Office seems to have an almost endless stream of question, many of them going to details of the litigation that are generally only relevant to the actual parties. Perhaps we should suggest a phone conference so that we can deal with as many of these questions at once rather than have series of emails back and forward.

Robert Puckridge
Assistant Commissioner
Tax Counsel Network
1 :47E(d)

From: Parliamentary Services
Sent: Wednesday, 16 March 2016 5:11 PM
To: Puckridge, Robert
Cc: Mossop, Kathy
Subject: Bell Group [SEC=UNCLASSIFIED]
Importance: High

Robert

I hope you are the right person to contact. Kathy is in a Committee Hearing at the moment and ²² has come back with another question in relation to the Bell Group hearing.

He wants to know whether the hearing on 4-5 April is merely to do with the Commissioner's application to intervene and any other preliminary matters which may be required, or will the hearing progress to looking at the rest of the case once the preliminary matters have been resolved.

Thanks

Brett Dixon
Parliamentary Services | ATO Corporate
Australian Taxation Office
1

From: Puckridge, Robert
Sent: Wednesday, 16 March 2016 1:49 PM
To: Mossop, Kathy
Cc: Mills, Andrew; Parliamentary Services
Subject: RE: Minister is requesting further clarification on Bell Group [DLM=For-Official-Use-Only]
Attachments: Bell group litigation - applications for leave to intervene as filed in the High Court [SEC=UNCLASSIFIED] [AGSDMS-DMS.FID2618949]

Kathy

Attached are copies of the documents seeking leave to intervene that were filed by the Commissioner. 22

Robert Puckridge
Assistant Commissioner
Tax Counsel Network
1 47E(d)

From: Mossop, Kathy
Sent: Wednesday, 16 March 2016 1:21 PM
To: Puckridge, Robert
Cc: Mills, Andrew; Parliamentary Services
Subject: RE: Minister is requesting further clarification on Bell Group [DLM=For-Official-Use-Only]

Hi Robert,

Thank you so much for your assistance yesterday 22

I have now been asked if they can have a copy of the documents that we filed with the High Court.

Kathy

From: Puckridge, Robert
Sent: Tuesday, 15 March 2016 4:51 PM
To: Mossop, Kathy
Cc: Mills, Andrew
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Sent: Tuesday, 15 March 2016 11:56 AM
To: Mossop, Kathy
Cc: Parliamentary Services; tom.reid@treasury.gov.au; Michelle.Rak@treasury.gov.au
Subject: RE: Minister is requesting further clarification on Bell Group [DLM=For-Official-Use-Only]

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P47E(d)

<image001.png>

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[Redacted]

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>>>>

>>>> Kathy Mossop

>>>>

Australian Taxation Office
er FOI Act 1982

From: Thornton, Simon <Simon.Thornton@ags.gov.au>
Sent: Wednesday, 9 March 2016 9:51 AM
To: Puckridge, Robert
Cc: Faulkner, James; Murphy, Jeffrey; tom.reid@treasury.gov.au; 'McAuliffe, Daniel'; 'Rak, Michelle'; Olivia.Clark@ag.gov.au; Loughton, Gavin; Hall, Anthony; Lehane, Anna
Subject: Bell group litigation - applications for leave to intervene as filed in the High Court [SEC=UNCLASSIFIED] [AGSDMS-DMS.FID2618949]
Attachments: 15300637 Bell Group NV - Summons, Affidavit, Exhibit 1 & 2 - Filed 8 Mar....pdf; 15300637 Bell Group NV - List of Authorities Filed 8 Mar 2016.pdf; 15300637 W.A Glendinning - Summons & Affidavit - Filed 8 Mar 2016.pdf; 15300637 Maranoa Transport - Summons & Affidavit - Filed 8 Mar 2016.pdf

Dear Robert,

Please find attached for your records, copies of the Commissioner's applications for leave to intervene in each of the Bell group proceedings in the High Court. These documents were filed yesterday afternoon, have been sent by email to the parties to the litigation and will be served in hard copy today. The Commissioner's proposed submissions are included as an exhibit to the affidavit in support of the summons in the BGNV matter.

Regards,
Simon

Simon Thornton

Senior Lawyer

Australian Government Solicitor

1

Find out more about AGS at <http://www.ags.gov.au>

Important: This message may contain confidential or legally privileged information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the *Spam Act 2003*, this email is authorised by AGS.

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Docs attached – let me know if you need anything else.

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3. Where a person having the necessary legal interest can show that the parties to the particular proceedings may not present fully the submissions on a particular issue, being submissions which the Court should have to assist it to reach a correct determination, the Court may exercise its jurisdiction by granting leave to intervene, albeit subject to such limitations and conditions as to costs as between all parties as it sees fit to impose.
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5. None of the applicants for leave to intervene demonstrates that any identified legal interest of that applicant will be directly affected by the outcome of this case. It follows that none of those applicants shows that it has a right to intervene in these proceedings.
6. In considering whether any applicant should have leave to intervene in order to make submissions or to make submissions as amicus curiae, it is necessary to consider not only whether some legal interests of the applicant may be indirectly affected but also, and in this case critically, whether the applicant will make submissions which the Court should have to assist it to reach a correct determination. Ordinarily then, in cases like the present where the parties are large organisations represented by experienced lawyers, applications for leave to intervene or to make submissions as amicus curiae should seldom be necessary or appropriate and if such applications are made it would ordinarily be expected that the applicant will identify with some particularity what it is that the applicant seeks to add to the arguments that the parties will advance.

On the timing question the 3 applications have all been listed to be heard by the Full Court on the 4th and 5th of April this year. One of the applicants has requested that if possible the decision be published by the end of May 2016. Obviously the timing of any decision is solely within the discretion of the Court.

Regards

Kathy

From: 22 [REDACTED]@TREASURY.GOV.AU
Sent: Tuesday, 15 March 2016 1:33 PM
To: Mossop, Kathy
Subject: RE: Bell group [DLM=For-Official-Use-Only]

- Kathy
- Just a couple of follow up issues:
 - What does this statement mean? How does an intervener's participation in the appeal differ to that of the amicus curiae?
- 'Under the High Court Rules an intervener and an amicus curiae are treated in the same way.'
- - What's your expectation regarding the timetable for finalising this case?

Thanks

22 [REDACTED]

From: Mossop, Kathy [mailto:Kathy.Mossop@ato.gov.au]
Sent: Tuesday, 15 March 2016 1:05 PM
To: 22 [REDACTED]
Cc: 22 [REDACTED]
Subject: RE: Bell group [DLM=For-Official-Use-Only]

Hi 22 [REDACTED]

42 [REDACTED]

Regards
Kathy

-----Original Message-----

From: 22 [REDACTED]@TREASURY.GOV.AU
Sent: Tuesday, 15 March 2016 8:42 AM
To: Mossop, Kathy
Cc: 22 [REDACTED]
Subject: Re: Bell group [DLM=For-Official-Use-Only]

Can you also mention to Andrew that we'll need something in writing this morning that explains why the ATO has intervened in the proceedings rather than appear as amicus curiae as had been expected.

Thanks

> On 15 Mar 2016, at 8:39 AM, Mossop, Kathy <Kathy.Mossop@ato.gov.au> wrote:

>

> Hi [REDACTED]

>

> I believe you may need to speak to Andrew Mills this morning - he is travelling to Adelaide but is available between 10.00 and 11.30.

>

> Regards

> Kathy

>

> Kathy Mossop

>

> 47E(d) [REDACTED]

> *****

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e-FOI Act 1982

From: Mossop, Kathy
Sent: Tuesday, 22 March 2016 11:33 AM
To: 22 22 22
Cc: Parliamentary Services; 22
Subject: Bell Group [DLM=For-Official-Use-Only]

Good morning,

I have been asked to provide the Ministers with the following update regarding Bell Group.

Let me know if you need any further information.

Regards
Kathy

42



Kathy Mossop
Senior Director, Parliamentary Services, ATO Corporate
Australian Taxation Office
1 [M 47E\(d\)](#)



From: Puckridge, Robert
Sent: Wednesday, 30 March 2016 4:36 PM
To: Mossop, Kathy
Cc: Niederle, Luke; Parliamentary Services
Subject: RE: Bell Group [SEC=UNCLASSIFIED]

Kathy

The hearing will be in Canberra from 5-7 April. Any idea what they want the briefing on?

Also, you should inform the Minister's Office that the Attorney-General decided today to intervene in the case and his submissions were filed at 4pm this afternoon. Those submissions adopt the Commissioner's earlier submissions and then deal with issues not covered in the Commissioner's application. The course of the litigation, at least from the Commonwealth's perspective, is now largely in the hands of the Solicitor-General.

Robert Puckridge
Assistant Commissioner
Tax Counsel Network

1 :47E(d)

From: Mossop, Kathy
Sent: Wednesday, 30 March 2016 5:01 PM
To: Puckridge, Robert
Cc: Niederle, Luke; Parliamentary Services
Subject: RE: Bell Group [SEC=UNCLASSIFIED]

Hi Robert,

The Minister's office has asked where will the hearing take place

And they also flagged that they will want a further briefing next week.

Regards
Kathy

From: Puckridge, Robert
Sent: Wednesday, 16 March 2016 5:24 PM
To: Parliamentary Services
Cc: Mossop, Kathy; Mills, Andrew
Subject: RE: Bell Group [SEC=UNCLASSIFIED]

Brett

The Commissioner's application to intervene will be considered by the High Court at the beginning of the hearing which is scheduled to go for two days. Once they have decided that issue the Court will start to deal with the substantive issues raised by the various parties. It is expected that all the substantive issues will be covered in the two days, but there is apparently some scope for the Court to continue to hear the matter on the third day if necessary.

Also, a correction the hearing will commence on the 5th of April not the 4th as previously stated.

Kathy

The Minister's Office seems to have an almost endless stream of question, many of them going to details of the litigation that are generally only relevant to the actual parties. Perhaps we should suggest a phone conference so that we can deal with as many of these questions at once rather than have series of emails back and forward.

Robert Puckridge
Assistant Commissioner
Tax Counsel Network

1 :47E(d)

From: Parliamentary Services
Sent: Wednesday, 16 March 2016 5:11 PM
To: Puckridge, Robert
Cc: Mossop, Kathy
Subject: Bell Group [SEC=UNCLASSIFIED]
Importance: High

Robert

I hope you are the right person to contact. Kathy is in a Committee Hearing at the moment and 22 has come back with another question in relation to the Bell Group hearing.

He wants to know whether the hearing on 4-5 April is merely to do with the Commissioner's application to intervene and any other preliminary matters which may be required, or will the hearing progress to looking at the rest of the case once the preliminary matters have been resolved.

Thanks

Brett Dixon
Parliamentary Services | ATO Corporate
Australian Taxation Office
1

From: Mossop, Kathy
Sent: Wednesday, 30 March 2016 5:00 PM
To: 22
Cc: 22 Parliamentary Services; Niederle, Luke
Subject: RE: Bell group [DLM=For-Official-Use-Only]

Hi 22

Following our conversation yesterday I can advise that the hearing will be in Canberra from 5-7 April.

Also, the Attorney-General decided today to intervene in the case and his submissions were filed at 4pm this afternoon. Those submissions adopt the Commissioner's earlier submissions and then deal with issues not covered in the Commissioner's application. The course of the litigation, at least from the Commonwealth's perspective, is now largely in the hands of the Solicitor-General.

Regards
Kathy

From: Mossop, Kathy
Sent: Tuesday, 15 March 2016 5:26 PM
To: 22
Cc: 22 Parliamentary Services
Subject: RE: Bell group [DLM=For-Official-Use-Only]

Hi 22

If the High Court decides that the Bell Act is valid then the Authority will undertake its statutory role and a split of funds will be made. The ATO cannot, however, guarantee that one or more unhappy creditors will not attempt to litigate. The Bell Act tries to limit the ability to litigate but there are clear Constitutional limits on what they can do, which is recognised in specific provision of the Bell Act.

If the High Court decides that the Bell Act is invalid then the Corporations Law will apply. That is, we will be back to where we were prior to the Bell Act. There is certainly the possibility of lengthy litigation with no certainty as to outcome.

Regards
Kathy

From: 22 [@TREASURY.GOV.AU](mailto:22@TREASURY.GOV.AU)
Sent: Tuesday, 15 March 2016 4:16 PM
To: Mossop, Kathy
Cc: 22 Parliamentary Services
Subject: RE: Bell group [DLM=For-Official-Use-Only]

Kathy – will the decisions on the three applications (hearing 4 and 5 April) be the end of the matter?

From: Mossop, Kathy [<mailto:Kathy.Mossop@ato.gov.au>]
Sent: Tuesday, 15 March 2016 3:57 PM
To: 22
Cc: 22; Parliamentary Services
Subject: FW: Bell group [DLM=For-Official-Use-Only]

The basic difference between an intervener and an amicus curiae is the difference in the nature of their interests in the legal issues raised before the court. The High Court explained the difference in *Roadshow Films Pty Ltd v iiNet Limited* [2011] HCA 54. The relevant paragraphs are set out below. Given that the Commissioner is a significant creditor whose financial interests will be directly affected by the decision it was more appropriate to intervene. It should be noted that the written submissions that the ATO filed as an intervener are not materially different to those that we would have filed as an amicus curiae.

1. ...
2. In determining whether to allow a non-party intervention the following considerations, reflected in the observations of Brennan CJ in *Levy v Victoria*, are relevant. A non-party whose interests would be directly affected by a decision in the proceeding, that is one who would be bound by the decision, is entitled to intervene to protect the interest likely to be affected. A non-party whose legal interest, for example, in other pending litigation is likely to be affected substantially by the outcome of the proceedings in this Court will satisfy a precondition for leave to intervene. Intervention will not ordinarily be supported by an indirect or contingent affection of legal interests following from the extra-curial operation of the principles enunciated in the decision of the Court or their effect upon future litigation.
3. Where a person having the necessary legal interest can show that the parties to the particular proceedings may not present fully the submissions on a particular issue, being submissions which the Court should have to assist it to reach a correct determination, the Court may exercise its jurisdiction by granting leave to intervene, albeit subject to such limitations and conditions as to costs as between all parties as it sees fit to impose.
4. The grant of leave for a person to be heard as an amicus curiae is not dependent upon the same conditions in relation to legal interest as the grant of leave to intervene. The Court will need to be satisfied, however, that it will be significantly assisted by the submissions of the amicus and that any costs to the parties or any delay consequent on agreeing to hear the amicus is not disproportionate to the expected assistance.
5. None of the applicants for leave to intervene demonstrates that any identified legal interest of that applicant will be directly affected by the outcome of this case. It follows that none of those applicants shows that it has a right to intervene in these proceedings.
6. In considering whether any applicant should have leave to intervene in order to make submissions or to make submissions as amicus curiae, it is necessary to consider not only whether some legal interests of the applicant may be indirectly affected but also, and in this case critically, whether the applicant will make submissions which the Court should have to assist it to reach a correct determination. Ordinarily then, in cases like the present where the parties are large organisations represented by experienced lawyers, applications for leave to intervene or to make submissions as amicus curiae should seldom be necessary or appropriate and if such applications are made it would ordinarily be expected that the applicant will identify with some particularity what it is that the applicant seeks to add to the arguments that the parties will advance.

On the timing question the 3 applications have all been listed to be heard by the Full Court on the 4th and 5th of April this year. One of the applicants has requested that if possible the decision be published by the end of May 2016. Obviously the timing of any decision is solely within the discretion of the Court.

Regards
Kathy

From: 22 [REDACTED]@TREASURY.GOV.AU]

Sent: Tuesday, 15 March 2016 1:33 PM

To: Mossop, Kathy

Subject: RE: Bell group [DLM=For-Official-Use-Only]

- Kathy
- Just a couple of follow up issues:
 - What does this statement mean? How does an intervener's participation in the appeal differ to that of the amicus curiae?
- 'Under the High Court Rules an intervener and an amicus curiae are treated in the same way.'
- - What's your expectation regarding the timetable for finalising this case?

Thanks

22

From: Mossop, Kathy [<mailto:Kathy.Mossop@ato.gov.au>]
Sent: Tuesday, 15 March 2016 1:05 PM
To: 22
Cc: 22
Subject: RE: Bell group [DLM=For-Official-Use-Only]

Hi 22

42

Regards
Kathy

-----Original Message-----

From: 22 [[@TREASURY.GOV.AU](mailto:22@TREASURY.GOV.AU)]
Sent: Tuesday, 15 March 2016 8:42 AM
To: Mossop, Kathy
Cc: 22
Subject: Re: Bell group [DLM=For-Official-Use-Only]

Can you also mention to Andrew that we'll need something in writing this morning that explains why the ATO has intervened in the proceedings rather than appear as amicus curiae as had been expected.

Thanks

> On 15 Mar 2016, at 8:39 AM, Mossop, Kathy <Kathy.Mossop@ato.gov.au> wrote:

>

> Hi 22

>

> I believe you may need to speak to Andrew Mills this morning - he is travelling to Adelaide but is available between 10.00 and 11.30.

>

> Regards

> Kathy

>

> Kathy Mossop

>

> 47E(d)

> *****

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From: Puckridge, Robert
Sent: Tuesday, 5 April 2016 4:22 PM
To: Mossop, Kathy
Cc: Niederle, Luke; Parliamentary Services; Mills, Andrew; Fish, Kirsten; Walmsley, Peter
Subject: RE: Bell Group: 22 [DLM=Sensitive:Legal]

Kathy

The following is a brief summary of the first day of the Bell High Court litigation.

This was the first day of a three day hearing.

The High Court granted leave for the Commissioner to intervene in the litigation. This was in addition to the Commonwealth Attorney-General's intervention. The Commonwealth Solicitor General represented both the A-G and the Commissioner.

Oral submissions have now been made by the S-G, and the representatives of BGNV (a creditor) and the previous liquidator of the Bell companies. The Court is yet to hear from the final plaintiff (a creditor). It will then hear from WA and then from the various intervening States.

The oral submissions were essentially along the same lines as the filed written submissions, merely developing and highlighting various points.

The Court asked very few questions, and those seemed to be determining if particular arguments could be expanded upon. The judges did not seem to have any significant disagreement or concerns with the argument being put.

While it is almost impossible to say what the Court will finally determine it is fair to say that after the first day it seems more likely than not that the Court will hold the Bell Act to be invalid at least to some extent. Obviously this could change once WA and the other States have had an opportunity to present their arguments.

Robert Puckridge
Assistant Commissioner

Tax Coun
11 11
work
E(d)

From: Mossop, Kathy
Sent: Tuesday, 5 April 2016 12:07 PM
To: Puckridge, Robert
Cc: Niederle, Luke; Parliamentary Services
Subject: RE: Bell Group: 22 [DLM=Sensitive:Legal]

Hi Robert,

The Minister's Office would like an update at the end of the day re what outcome from court today – is that possible?

Regards
Kathy

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er FOI Act 1982

From: Mossop, Kathy
Sent: Tuesday, 5 April 2016 4:34 PM
To: 22
Cc: Parliamentary Services; 22
Subject: Summary of day one of Bell Group hearing [DLM=For-Official-Use-Only]

Hi 22

This was the first day of a three day hearing.

The High Court granted leave for the Commissioner to intervene in the litigation. This was in addition to the Commonwealth Attorney-General's intervention. The Commonwealth Solicitor-General represented both the A-G and the Commissioner.

Oral submissions have now been made by the S-G, and the representatives of BGNV (a creditor) and the previous liquidator of the Bell companies. The Court is yet to hear from the final plaintiff (a creditor). It will then hear from WA and then from the various intervening States.

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Regards
Kathy

Kathy Mossop
Senior Director, Parliamentary Services, ATO Corporate
Australian Taxation Office

1 (d)

 We're reinventing

From: Simpson, Kelly **On Behalf Of** Parliamentary Services
Sent: Friday, 8 April 2016 1:03 PM
To: Puckridge, Robert
Cc: Melihar, Marina; Parliamentary Services; Niederle, Luke
Subject: DUE COB Monday 11 April | QTB update - Commissioner and the Bell Group [SEC=UNCLASSIFIED]

Good afternoon

As discussed with your office, The Minister office has asked that we review and update the Commissioner and the Bell Group QTB for the upcoming sitting period.



A.12 -
Commissioner a...

Would you please arrange to have this QTB fact checked and if required updated using track changes.

It would be greatly appreciated could you please send back to Parliamentary Services by **COB Monday 11 April 2016**.

Regards

Kelly Simpson
Parliamentary Services | ATO Corporate
Australian Taxation Office

1



From: Mossop, Kathy
Sent: Tuesday, 3 May 2016 2:32 PM
To: 22
Cc: Parliamentary Services; 22
Subject: RE: Summary of day one of Bell Group hearing [DLM=For-Official-Use-Only]
[SEC=UNCLASSIFIED]

Hi 22

Update below – let me know if you need anything further.

Regards
Kathy

THE BELL GROUP

- On 5 to 7 April the High Court hear oral arguments in the challenge to the constitutional validity of the WA Bell Act. All of the current constitutional challenges brought by other bell Group creditors relied to some extent on an argument that the Bell Act is inconsistent with various provisions of the Commonwealth tax law. These provisions involve some of the core administrative and collection provisions of the tax law.
- The Bell litigation raised basic issues as to the interpretation and practical operation of fundamental tax collection provisions. There is a very large amount of outstanding tax with liabilities (both income tax and GIC) 37(2)(b)
- The Commissioner of Taxation was given leave by the High Court to intervene in these proceedings. This is a normal and proper exercise of the Commissioner's powers to pursue tax. Additionally the Commonwealth Attorney-General also intervened. All of the other Australian States intervened in the proceeding and were represented by their respective Solicitors-General.
- The High Court reserved its decision, and at present there is no indication as to when the decision will be handed down.

37(2)(b)

From: 22 [mailto:22@treasury.gov.au]
Sent: Tuesday, 3 May 2016 9:45 AM
To: Mossop, Kathy; 22
Cc: Parliamentary Services
Subject: RE: Summary of day one of Bell Group hearing [DLM=For-Official-Use-Only]

Kathy

Can we have another update where this is up to, what is the timing from here, and what the next steps (and ATO steps) are likely to be?

Many thanks

22
Taxation, Foreign Investment & Financial Services
Office of the Treasurer
The Hon. Scott Morrison MP
Parliament House, Canberra

Office: 22 Mobile: 22
Direct (non-sitting weeks): 22
Email: 22 [treasury.gov.au](mailto:22@treasury.gov.au)

Take a look into Australia's Future:
<http://www.challengeofchange.gov.au/>

From: Mossop, Kathy [<mailto:Kathy.Mossop@ato.gov.au>]
Sent: Tuesday, 5 April 2016 5:04 PM
To: 22
Cc: Parliamentary Services; 22
Subject: Summary of day one of Bell Group hearing [DLM=For-Official-Use-Only]

Hi 22

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Regards
Kathy

Kathy Mossop
Senior Director, Parliamentary Services, ATO Corporate
Australian Taxation Office
1 M 47E(d)

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From: Niederle, Luke
Sent: Monday, 16 May 2016 4:15 PM
To: Mills, Andrew; Puckridge, Robert
Cc: Smith, Susie; Parliamentary Services
Subject: DUE 4pm 17 May 2016: Ministers Submission - Bell Group High Court decision [SEC=UNCLASSIFIED]

Good Afternoon Andrew and Robert

For action: The Minister's office has requested a Ministerial Submission summarising the outcomes of today's High Court decision and the impact on the ATO. Could you please return to Parliamentary Services by 4pm Tuesday 17 May 2016.

Background

Media have been reporting on today's high court decision. Various articles are attached below.

- <http://www.theaustralian.com.au/business/opinion/stephen-bartholomeusz/the-high-court-was-right-to-reject-was-bell-group-cash-grab/news-story/e7e5304e89ebedf8430a92e9e5a7abfd>
- <http://www.watoday.com.au/wa-news/blow-to-wa-government-as-bond-bell-group-bill-deemed-invalid-20160516-gow1c9.html>
- <http://www.abc.net.au/news/2016-05-16/court-rules-against-wa-government-bell-group-alan-bond-laws/7417122>
- <https://au.news.yahoo.com/thewest/wa/a/31608408/court-throws-out-state-govts-bell-laws/>
- <https://www.businessnews.com.au/article/High-Court-rules-against-Bell-bill>

We don't believe providing this submission breaches caretaker conventions given we will be providing factual information only.

I have attached the submission template.

Thanks in advance

Luke Niederle

Parliamentary Services, ATO Corporate
Australian Taxation Office

1

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From: Parliamentary Services
Sent: Tuesday, 17 May 2016 2:29 PM
To: 1 [redacted]; [redacted]@treasury.gov.au'
Cc: [redacted]@treasury.gov.au; Jordan, Chris; Leeper, Geoff; Mills, Andrew; Olesen, Neil; Curtis, Jacqui; Sinclair, Suzanne; Smith, Susie; Media Unit; Parliamentary Services; Policy, Analysis and Legislation; ATO Public Relations; Puckridge, Robert
Subject: ATO ministerial submission to the Minister for Small Business and Assistant Treasurer No. MS16-000058 (Bell decision in High Court) [DLM=For-Official-Use-Only]
Attachments: MS16-000058.docx

Attached is a copy of ATO ministerial submission to the Minister for Small Business and Assistant Treasurer:

No. MS16-000058 – Taxation Administration: High Court Decision in the WA Bell Act Case (17/05/16)

For information only.

This submission provides a briefing on the High Court's decision in the Bell Act case

Thanks

Brett Dixon
Parliamentary Services | ATO Corporate
Australian Taxation Office
1

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Australian Taxation Office
Ministerial Submission

N^o. MS16-000058

Date: 17 May 2016

Minister for Small Business and Assistant Treasurer

Taxation Administration: High Court Decision in the WA Bell Act Case

Action required by: For information only.

Recommendation:

That you note the contents of this submission.

Noted

Signature _____ **Date** ____/____/____

Key Points

1. This submission summarises the outcomes of yesterday's High Court decision on the WA Bell Act and the impact on the ATO. It would appear that most of the information is in the media today.
2. The High Court yesterday unanimously held that the WA Bell Act is invalid because of inconsistency with Commonwealth taxation laws.
3. There are two sets of reasons, one by Justice Gageler, and a joint judgement by the rest of the court.
4. In the joint judgment it was held that the WA Bell Act is inconsistent with many provisions of Commonwealth tax laws in particular the sections of the Act which:
 - makes a notice of assessment conclusive evidence of the making of a taxation assessment and that the amount and particulars of the assessment are correct;
 - makes tax assessments debts due to the Commonwealth and payable to the Commissioner, and recoverable in a court of competent jurisdiction;
 - imposes on a liquidator an obligation to retain monies for the satisfaction of pre-liquidation tax liabilities; and
 - imposes on a liquidator of a corporation an obligation to retain monies for the satisfaction of post-liquidation tax liabilities.
5. The ATO is currently considering the best method of ensuring that the Bell Group assets are returned as quickly as possible to the control of the Bell Group liquidator.

Copies to: Treasurer

For Official Use Only

6. The High Court decision returns all of the parties to the legal positions they held immediately before the Bell legislation was introduced into the WA parliament. The outstanding matters will now be determined under the ordinary liquidation provisions of the *Corporations Law*.
7. It is currently not possible to predict when the liquidation will be finalised.

1

Andrew Mills
Second Commissioner of Taxation

Contact Officer: Robert Puckridge
Contact Number: 1 /47E(d)

Australian Taxation Office
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From: Niederle, Luke
Sent: Wednesday, 18 May 2016 4:12 PM
To: 22
Cc: 22; Smith, Susie; Parliamentary Services
Subject: FW: ATO ministerial submission to the Minister for Small Business and Assistant Treasurer No. MS16-000058 (Bell decision in High Court) [DLM=For-Official-Use-Only]
Attachments: MS16-000058.docx

Good afternoon 22

In addition to yesterday's submission, we have provided some additional dot points that cover off on a couple more aspects that were raised in [an ABC article](#) overnight.


47B

Thanks

Luke

Luke Niederle
Parliamentary Services, ATO Corporate
Australian Taxation Office

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 We're reinventing

From: Parliamentary Services
Sent: Tuesday, 17 May 2016 2:59 PM
To: 22@treasury.gov.au'
Cc: 22@treasury.gov.au; Jordan, Chris; Leeper, Geoff; Mills, Andrew; Olesen, Neil; Curtis, Jacqui; Sinclair, Suzanne; Smith, Susie; Media Unit; Parliamentary Services; Policy, Analysis and Legislation; ATO Public Relations; Puckridge, Robert
Subject: ATO ministerial submission to the Minister for Small Business and Assistant Treasurer No. MS16-000058 (Bell decision in High Court) [DLM=For-Official-Use-Only]

Attached is a copy of ATO ministerial submission to the Minister for Small Business and Assistant Treasurer:

No. MS16-000058 – Taxation Administration: High Court Decision in the WA Bell Act Case (17/05/16)

For information only.

This submission provides a briefing on the High Court's decision in the Bell Act case.

Thanks

Brett Dixon

Parliamentary Services | ATO Corporate

Australian Taxation Office

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From: Puckridge, Robert
Sent: Friday, 22 July 2016 8:31 AM
To: Mills, Andrew; Mossop, Kathy
Cc: Smith, Susie; Parliamentary Services
Subject: RE: Minister meeting | consequences / ramifications of Bell group decision [SEC=UNCLASSIFIED] [DLM=For-Official-Use-Only]

Andrew & Kathy

There is very little new to report on the consequences/ramifications of the Bell Group decision. I am not sure there is anything sufficiently important to raise with the Minister, however, the dot point below set out the current position. Please let me know if you would like additional information.

- As a consequence of the High Court's decision the legal and factual positions have return to where they were immediately before the passage of the Bell Act on 26 November 2015. As far as we are aware the WA Government does not appear to be contemplating any further actions in respect of the Bell Group.
- The liquidator has regained all of his powers under the *Corporations Law*, and is now in possession of all of the Bell Group assets.
- The liquidator is continuing with the winding up. This involves a number of legal proceedings in State and Federal courts. It also involves renewed attempts to negotiate a global settlement with all the major creditors.
- The ATO has stated that it is more than willing to participate in such negotiations. 37(2)(b)
- The Supreme Court of WA has also stated that the creditors should engage in good faith mediation. If necessary court ordered and supervise mediation. We have also indicated our willingness to participate. This reflects the ATO long standing position that the outstanding issues should be resolved by negotiation rather than protracted litigation.
- 37(2)(b)

Robert Puckridge
Assistant Commissioner
Tax Counsel Network
1 47E(d)

From: Mills, Andrew
Sent: Thursday, 21 July 2016 9:11 PM
To: Mossop, Kathy
Cc: Puckridge, Robert; Smith, Susie; Parliamentary Services
Subject: Re: Minister meeting | consequences / ramifications of Bell group decision [SEC=UNCLASSIFIED]

Kathy

The briefing will be helpful. I have some comfort on this topic as I have been involved in a number of discussions regarding this including one yesterday with the liquidator and his advisers.

Kind regards
Andrew

Andrew Mills
Second Commissioner of Taxation, Law Design & Practice
Australian Taxation Office

On 21 Jul 2016, at 6:25 PM, Mossop, Kathy <Kathy.Mossop@ato.gov.au> wrote:

Hi Robert,

The ATO is meeting with Minister O'Dwyer on Tuesday 26 July.

22 [REDACTED] has asked if there are any consequences or ramifications from the outcomes of the Bell Group decision – if there are could he would like to add this to the meeting agenda for discussion.

What is your view? If we do need to discuss with the Minister could you please prepare some talking points for the Commissioner and Andrew and send them to me by COB tomorrow (Friday).

Please call if you would like to discuss.

Regards
Kathy

Kathy Mossop

Senior Director, Parliamentary Services, ATO Corporate
Australian Taxation Office

P¹ M^{47E(d)} [REDACTED]

<Picture (Device Independent Bitmap) 1.jpg>

From: Mossop, Kathy
Sent: Friday, 25 November 2016 4:05 PM
To: 22
Cc: Parliamentary Services; Niederle, Luke
Subject: Bell Group

Hi 22

This is information that Andrew had at Estimates.

The Bell Group Ltd (In Liquidation) (Creditor's High Court constitutional challenge)

> 37(2)(b)

- > [Redacted]
- > The WA Parliament passed the *Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Act 2015* which received royal assent on 26 November 2015 to bring all current litigation to an end, with an authority having been appointed to distribute the liquidator's funds.
- > On 27 November 2015 one of the Bell Group creditors filed a constitutional challenge to the Act in the High Court. The Attorneys-General for the Commonwealth, NSW, Victoria, South Australia, Queensland and Tasmania intervened. On 16 May 2016 the High Court unanimously found that the Act was invalid in its entirety due to s109 inconsistency with Commonwealth taxation laws.

Also I have attached the QTB which might be useful for them.

Kathy



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Commissioner a...

Kathy Mossop
Senior Director, Parliamentary Services, ATO Corporate
Australian Taxation Office

1 47E(d)

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COMMISSIONER AND THE BELL GROUP

TOP LINES:

- On 5 to 7 April the High Court heard oral arguments in the WA Bell Act proceedings. Challenges to the constitutionality of the Bell Act have been instituted in the High Court by two creditors of the Bell Group and the liquidator of that Group
- The Commissioner of Taxation was given leave by the High Court to intervene in these proceedings. This was in addition to intervention of the Commonwealth Attorney-General.
- The Commissioner's intervention did not delay the resolution of the issues by the High Court
- All the States intervened in the proceedings and were represented by their respective Solicitors-General.
- I have been advised by the Commissioner that he restricted his arguments to the apparent inconsistencies between the Bell Act and the Commonwealth taxation law.
- This is a normal and proper exercise of the Commissioner's powers to pursue tax.
- The Commissioner expressed no opinion in respect of any of the other legal issues raised by the litigation. However, the Commonwealth Solicitor-General did make submissions on these wider issues on behalf of the Attorney-General.
- The High Court unanimously held that the WA Bell Act was invalid because of inconsistency with Commonwealth taxation laws.
- The High Court decision returns all of the parties to the legal positions they held immediately before the Bell legislation was introduced into the WA parliament. The outstanding matters will now be determined under the ordinary liquidation provisions of the Corporations Law.
- It is currently not possible to predict when the liquidation will be finalised. There are a significant number of ongoing Court cases involving both the liquidator and some or all of the creditors, including the Commissioner of Taxation.
- Questions were asked at Senate Estimates on 19 October 2016 concerning interactions between the Commissioner, Commonwealth Ministers, representative of the WA Government and the Commonwealth Solicitor-

QTB Number:	A.26	QTB Category:	ATO
Contact Officer:		Date and time:	25/11/2016 9:47 AM
Contact Number:		Next update:	

General and the Australian Government Solicitor. A number of those questions were taken on notice and the responses are scheduled to be tabled on 9 December 2016.

COALITION ACTION:

- Minister's office will complete this section.

KEY FACTS AND FIGURES:

- The Bell Constitutional challenge raised basic issues as to the interpretation and practical operation of fundamental tax collection provisions.
- There is a very large amount of outstanding tax with liabilities (both income tax and GIC) 37(2)(b)
- The Commissioner had no option but to intervene in the litigation as it goes to fundamental issue of the tax system which he administers.

KEY QUOTE:

BACKGROUND:

- The WA Bell Act is inconsistent with many provisions of Commonwealth tax laws in particular the sections of the Act which:
 - makes a notice of assessment conclusive evidence of the making of a taxation assessment and that the amount and particulars of the assessment are correct;
 - makes tax assessments debts due to the Commonwealth and payable to the Commissioner, and recoverable in a court of competent jurisdiction;
 - imposes on a liquidator an obligation to retain monies for the satisfaction of pre-liquidation tax liabilities;
 - imposes on a liquidator of a corporation an obligation to retain monies for the satisfaction of post-liquidation tax liabilities.
- There is continuing press interest, particularly in WA, in the Bell liquidation and the involvement of various Government Ministers and statutory office holders, for example the Commonwealth Solicitor-General.

QTB Number:	A.26	QTB Category:	ATO
Contact Officer:		Date and time:	25/11/2016 9:47 AM
Contact Number:		Next update:	

From: Mills, Andrew
Sent: Tuesday, 29 November 2016 8:27 AM
To: Jordan, Chris; Smith, Susie; Puckridge, Robert
Subject: FW: Clarification [SEC=PROTECTED]
Attachments: FW: Possible Attorney-General's direction under the Judiciary Act [DLM=Sensitive:Legal]

Chris

I have had a further conversation with the Minister this morning following Robert identifying some relevant emails. The below email trail and attached email give some greater clarification.

Kind regards
Andrew

Andrew Mills

Second Commissioner, Law Design and Practice
Australian Taxation Office

P47E(d)



From: O'Dwyer, Kelly 22 [redacted] [@treasury.gov.au](mailto:22@treasury.gov.au)
Sent: Tuesday, 29 November 2016 8:31 AM
To: Mills, Andrew
Cc: 22 [redacted]
Subject: RE: Clarification [SEC=PROTECTED]

Many thanks Andrew for the clarification.
Kind regards
Kelly

From: Mills, Andrew [<mailto:Andrew.Mills@ato.gov.au>]
Sent: Tuesday, 29 November 2016 8:13 AM
To: O'Dwyer, Kelly
Cc: 22 [redacted]
Subject: RE: Clarification [SEC=PROTECTED]

Minister

I have made some minor tweaks to your note below in the light of the email we identified overnight (attached). While I have marked the additions in red, I have not blacklined the deletions I made (although you will see that they were not significant).

I trust this is of assistance.

Please do not hesitate to call me if you require anything additional or would like to clarify anything.

Kind regards
Andrew

Andrew Mills

Second Commissioner, Law Design and Practice



From: O'Dwyer, Kelly 22 [redacted] [@treasury.gov.au](mailto:[redacted]@treasury.gov.au)
Sent: Tuesday, 29 November 2016 8:01 AM
To: Mills, Andrew
Cc: 22 [redacted]
Subject: Clarification [SEC=PROTECTED]

Hi Andrew
Thank you again for your time last night.

I would be grateful if you might have a look at whether the below is a fair and accurate representation of our discussion.

Many thanks
Kelly

I spoke to the Commissioner of Taxation, Chris Jordan, and he referred me to Second Commissioner, Andrew Mills. 42

[Large redacted area containing the main body of the email content]

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