



## HIGH COURT OF AUSTRALIA

16 May 2016

BELL GROUP N.V. (IN LIQUIDATION) v WESTERN AUSTRALIA;  
W.A. GLENDINNING & ASSOCIATES PTY LTD v WESTERN AUSTRALIA;  
MARANOVA TRANSPORT PTY LTD (IN LIQ) v WESTERN AUSTRALIA

[2016] HCA 21

Today the High Court unanimously held that the *Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Act 2015 (WA)* ("the Bell Act") is invalid in its entirety by the operation of s 109 of the Constitution because of inconsistency between its provisions and provisions of the *Income Tax Assessment Act 1936 (Cth)* and the *Taxation Administration Act 1953 (Cth)* (collectively, "the Tax Acts").

In November 2015, the Parliament of Western Australia enacted the Bell 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 Bell Act was enacted to deal with a list of companies, each defined in the Bell Act as a "WA Bell Company" and each either in liquidation or deregistered. The Commonwealth is a substantial creditor of a number of WA Bell Companies in respect of taxation liabilities.

The purported legal operation and practical effect of the Bell Act is that the State of Western Australia ("the State") collects, pools, and vests in a State authority, the property of each WA Bell Company. The State then determines in its "absolute discretion" who is paid an amount or has property transferred to or vested in them out of the pooled property (if anyone). To the extent that the State chooses not to distribute the pooled property of the WA Bell Companies, the surplus vests in the State.

In each proceeding, the parties stated a special case and questions of law arising for the opinion of the Full Court. The questions of law include whether the Bell Act (or certain provisions of the Bell Act) is invalid by the operation of s 109 of the Constitution because of inconsistency with one or more provisions of the Tax Acts.

By majority, the High Court held that the Bell Act purports to create a scheme under which Commonwealth tax debts are stripped of the characteristics ascribed to them by the Tax Acts as to their existence, their quantification, their enforceability and their recovery. The rights and obligations which arose and had accrued to the Commonwealth as a creditor of the WA Bell Companies in liquidation, and to the Commissioner of Taxation, under a law of the Commonwealth prior to the commencement of the Bell Act are altered, impaired or detracted from by the Bell Act. That alteration or impairment of, or deduction from, the Tax Acts engages s 109 of the Constitution which operates to render the offending provisions of the Bell Act invalid. It was not possible to read down offending aspects of the Bell Act nor were the offending provisions able to be severed from the rest of the Bell Act. The Court held, therefore, that the Bell Act is invalid in its entirety. That being so, the Court found it unnecessary to consider other challenges to the validity of the Bell Act.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*