IN THE HIGH COURT OF AUSTRALIA
PERTH REGISTRY

P4 of 2016

BETWEEN:

MARANOA TRANSPORT PTY LTD (IN LIQ) (ACN 009 668 393)

First plaintiff

ANTONY LESLIE JOHN WOODINGS

Second plaintiff

ANTONY LESLIE JOHN WOODINGS IN HIS CAPACITY AS TRUSTEE UNDER A DEED OF SETTLEMENT DATED 17 SEPTEMBER 2013 IN RESPECT OF THE INTERESTS OF BELL GROUP (UK) HOLDINGS LIMITED (IN LIQ) AND MARANOA TRANSPORT PTY LTD (IN LIQ) (ACN 009 668 393)

Third plaintiff

and

STATE OF WESTERN AUSTRALIA

First defendant

THE BELL GROUP LIMITED (IN LIQ) (ACN 008 666 993) AND THE OTHER COMPANIES NAMED IN SCHEDULE A TO THE WRIT OF SUMMONS

Second defendants

PLAINTIFFS' WRITTEN SUBMISSIONS IN REPLY - ANNOTATED

Part I: Suitability for Publication

1. These submissions are in a form suitable for publication on the Internet.

Part II: Concise Reply to Submissions of First Defendant/Interveners

Inconsistency between the Commonwealth corporations legislation and the Bell Act

2. Western Australia, despite its pleaded denial of any inconsistency between the Commonwealth winding up provisions and the Bell Act, does not challenge the plaintiffs' analysis as to the inconsistencies that arise. The way in which Western Australia states the issues accepts implicitly that there are inconsistencies but for the

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purported operation of ss 5F & 5G of the Corporations Act.[1] Its contention is that ss 5F & 5G operate to avoid the inconsistencies.

3. None of the other States deny inconsistency but for the operation of ss 5F & 5G. Queensland accepts that there is a direct inconsistency.[2]

4. As such, apart from the additional argument as to Maranoa Transport[3] (addressed at [98] to [103] and [131] to [135] of the plaintiffs' submissions and [29] to [40] below), the question of inconsistency turns on the proper construction of ss 5F and 5G.

Section 5F(2) and 5G(11) of the Corporations Act

5. Arguments have been advanced that ss 5F and 5G must be given an operation which is as extensive as the law making power of the particular State invoking the provision. Amongst other reasons, this is said to be the case because the States had the ability to "opt out" of the preceding Corporations Law. These arguments should not be accepted for the following reasons.

6. First, the fact that the Corporations Act is a Commonwealth law fundamentally alters the extent to which an ability for a State to opt out may be reserved. Under the former co-operative law making scheme whereby the Corporations Law took effect as the law of each State, there could be an opt out arrangement which led to different laws in each State to be resolved on conflict of law principles.

7. However, once the law as to companies became a Commonwealth law, if a State was to opt out then - unless the Commonwealth law was expressed to cease to apply in its entirety as to the subject matter of the State law made under the opt out provision - the Commonwealth law would continue to have effect throughout Australia (that is, in the field outside the law-making power of the State). Therefore, under any opt out regime there was the potential for conflict between the continuing Commonwealth law and any State law. Any such direct inconsistency would give rise to constitutional invalidity. As a result, the opt out provisions that had existed under the Corporations Law could not continue in respect of the Corporations Act.

8. Secondly, the Corporations Act changed the character of the status of corporations in Australia by providing for companies to be incorporated throughout Australia rather than in a particular State or Territory. A State could not opt out in a manner that permitted it to treat companies as if they were incorporated in the particular State and therefore amenable to the laws of the State by reason of their status as companies incorporated in a particular State. Where a State law provided for incorporation then a State law could affect matters associated with the status of the company. But where, as in this case, the incorporation took effect under the Corporations Act, a State did not have plenary power based upon the place of incorporation of the company. It could not

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[1] WA submissions [5] & [6].

[2] Queensland submissions [29]-[33].

[3] Maranoa Transport not being declared to be an "excluded matter" by s 51(1) of the Bell Act.

make a law ending the incorporation of a company throughout Australia (or confining its incorporation to the State); as to this see also s 119A(3) and (4).

9. Thirdly, under the various *Corporations ([State])* Acts 1990 and the *Corporations Law* there were no direct analogues of today's ss 5F & 5G. See ss 5 & 6 of the *Corporations ([State])* Acts 1990, which are in quite different terms. Rather than reflecting the legislative history of the superseded national scheme, ss 5F and 5G are the result of a new nationally applicable law regulating corporations.

10. Fourthly, the language of ss 5F and 5G is inapt to reserve a plenary power for the States to opt out to the full extent of their law making power. Indeed, the argument renders otiose the terms of s 5F(2). If the intention was that each State could opt out to the full extent of its law making power then there would hardly be the need to say that the effect of the State law was that the Corporations Act did not apply to the full extent of the State law (which is, in effect, the construction being contended for by a number of the States). The detailed provisions in ss 5F and 5G manifest an intention to provide specifically for the limited extent to which a State law may apply given the character of the Corporations Act as a national law in respect of corporations incorporated throughout Australia.

11. Fifthly, to construe the phrase "applies in the State" as simply allowing for an opt out law that applies to activities within the geographical limits of a State fails to engage with the practical difficulties that would arise from such a construction. Where, as here, the law that is declared is one which applies to an activity (the winding up of companies incorporated throughout Australia) that takes place indivisibly throughout Australia, there will be necessary ongoing inconsistency between the Commonwealth law that continues to apply outside the State that is opting out and the declared law.

12. Perhaps this is why Western Australia, amongst others, submits that s 5F permits a State by declaring its own law to be an excluded matter to bring to an end all operation of the Commonwealth law anywhere in Australia as to that subject matter. However, this would confer, in effect, a power on one State to bring to an end any aspect of the Corporations Act throughout Australia. The confining language used in ss 5F and 5G could not support such a construction. It would result in the words "applies in the State" being construed as having the effect that the law would apply in the State *and the Corporation Act as to the same subject matter would cease to apply elsewhere in Australia.*

13. Further, the practical difficulties with such a construction are self-evident and are exposed in the Commonwealth's submissions.[4] It is no answer to say that by Commonwealth regulations under s 5F(3) or legislation in the non-enacting States or Territories the position may be restored. Could another State then enact a law with similar national consequences? Could two states enact different laws as to the same

[4] Commonwealth's submissions [11]. See also NSW submissions [23]-[26], Queensland submissions [61]-[62] and Tasmania submissions [35].

subject matter with different national consequences? It should not be supposed that s 5F requires some such legislative ping-pong.

14. In any event, the construction is not open on the text of s 5F(2) or s 5G(11) read in its immediate statutory context. Section 5F(2) uses the word "in" to describe the required connection which must exist between the disapplication of the Corporations Act in relation to a particular matter and the State or Territory purporting to make the declaration bringing about the disapplication. So too, in s 5G(11), the word "in" is a word of connection.

15. Sixthly, the potential for referring States to invoke s 5G of the Corporations Act (other than s 5G(11)) to roll back the operation of the Corporations Act both within and outside the State's geographic area – in particular instances as prescribed – supports the narrower construction of ss 5F(2) and 5G(11).

16. The plaintiffs maintain their primary argument to the effect that s 5F is confined in its application to laws which, by their nature, allow for the relevant Commonwealth law to continue to apply outside the State. This cannot be done in the case of the laws concerning the winding-up of a company incorporated throughout Australia. The winding-up is a judicial process, conducted and supervised by courts throughout the Commonwealth,[5] with the various incidents set out in the provisions of Chapter 5 of the Corporations Act. The winding up proceedings are in federal jurisdiction, and such jurisdiction is exercised in Australia and not in any State or Territory.[6] The provisions of the Corporations Act as to the compulsory windings up of the WA Bell Companies thus cannot be said to apply "in" Western Australia, or any particular State or Territory, so as to enable disapplication of the federal winding up proceedings by a law of the State under s 5F(2) or s 5G(11).

17. In that regard it is noteworthy that neither Western Australia nor any of the intervening States address the plaintiffs' submissions based on the WA Bell Companies being incorporated, and being wound up, throughout the Commonwealth – establishing the indivisible existence of the companies and the indivisible conduct of their winding up.[7]

18. Section 5F should not be construed in a manner that gives rise to ongoing inconsistency between the opt out law (which "applies in the State" by reason of the space created by the operations of s 5F(2)) and the continuing Commonwealth law which applies in all other places. It is a provision that is manifestly intended to avoid inconsistency. It does not apply to laws of a State which, by reason of their character or subject matter, will give rise to ongoing inconsistency with the Corporations Act as it continues to apply elsewhere in Australia.

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[5] Plaintiffs' submissions [69].
[6] *Commonwealth v Mewett* [1997] HCA 29; (1997) 191 CLR 471, 524-525; *John Pfeiffer Pty Ltd v Rogerson* [2000] HCA 36; (2000) 203 CLR 503, 530 [52]-[53] & 540 [88].
[7] See plaintiffs' submissions [67]-[70] and [77]-[83].

19. Finally, as to ss 5F(2) and 5G(11), it is convenient here to deal with Western Australia's contention that some of the Westpac term deposits were located in Western Australia rather than New South Wales.[8]

20. The relevant question is not that suggested by Western Australia, namely, where the debt would be paid in the ordinary course of business.[9] Rather, it is the earlier rule stated in the authority on which Western Australia relies: "[i]f a debtor has two or more places of residence and the creditor stipulates for payment at one of those places, the debt will be situated there."[10] In the case of a bank, such as Westpac, there is an implied stipulation that the obligation to repay is performable primarily at the branch where the account is kept.[11]

21. The Westpac term deposits, other than those for TBGL and BGF, but including those held on trust were held in New South Wales.[12] The *situs* of each was New South Wales.

22. The relevance of this, for ss 5F(2) and 5G(11), is that even if the intermediate construction of "in" the State is adopted there is an inconsistency between the Commonwealth winding up provisions (e.g. ss 468(1), 474(1) and 478 (1)) and s 22 of the Bell Act to the extent that the Bell Act purports to transfer to and vest in the Authority the property of the WA Bell Companies as located in New South Wales.

Section 5G of the Corporations Act

23. Only Western Australia disputes the plaintiffs' construction of s 5G(4). Victoria implicitly accepts the plaintiffs' construction of s 5G(4) insofar as it agrees with the construction advanced by the BGNV plaintiffs in S248 of 2015.[13] As to s 5G(4) the plaintiffs continue to rely on their principal submissions.[14]

24. Western Australia now relies on s 5G(5) in limited respects.[15] Where s 5G(5) applies a provision of the Corporations Act does not "prevent" a person from "exercising control or direction ... over [a] company or body". At best that may disapply a specific provision of the Corporations Act enjoining the sort of behaviour described in s 5G(5) – for example s 471A(1) – and enable provisions like ss 27 & 28 of the Bell Act to operate in the resulting vacuum. But it does not resolve inconsistencies that are not attributable to the Corporations Act "preventing" the exercise of control or direction over the body by the person. This is similar to s 5G(4) which, likewise, cannot displace Corporations Act provisions which are not attributable to the Corporations Act "prohibiting" or "imposing a liability for" the doing of an act. Accordingly, ss 474, 477 and 478 of the Corporations Act are not rolled-back and ss 27 to 29 of the Bell Act

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[8] WA submissions [126], [132] & [134].
[9] WA submissions [126].
[10] *Assetinsure Pty Ltd v New Cap Reinsurance Corporation Ltd (In Liq)* [2006] HCA 13; (2006) 225 CLR 331, 352 [58].
[11] *Societe Eram Shipping Co Ltd v Cie Internationale de Navigation* [2003] UKHL 30; [2004] 1 AC 260, 287-288 [72]-[73].
[12] ASC [35.3] (**SCB** 112).
[13] Victoria submissions [30].
[14] Plaintiffs' submissions [87]-[88].
[15] WA submissions [113]-[114].

continue to be invalid due to s 109 inconsistency insofar as the latter provisions alter, impair or detract from the powers, functions and duties under ss 474, 477 and 478.

25. As to s 5G(8), Western Australia, New South Wales and Queensland argue that the provision permits a State law to substitute for a winding up of a company under Chapter 5 of the Corporations Act any other form of external administration.[16] That construction is not open on the text of s 5G(8). The proper construction, as Victoria accepts, [17] is set out the principal submissions of the BGNV plaintiffs in S248 of 2015[18] – the plaintiffs advancing a like construction in these proceedings.[19]

26. Accordingly, the question of whether the regime under the Bell Act constitutes an "external administration" for the purposes of s 5G(8) is an irrelevancy.

27. Western Australia, New South Wales and Queensland are the only States that contend that the Bell Act actually provides for the winding up of the WA Bell Companies.[20] It does not for the reasons advanced in the plaintiffs' submissions[21] and the submissions of the BGNV plaintiffs in S248 of 2015.[22]

28. Western Australia's suggestion that "from the first" voluntary winding up did not involve court supervision[23] misdirects. Voluntary winding up was first introduced in 1856.[24] The following year a procedure for enabling voluntary winding up to be continued subject to the supervision of the court was introduced.[25] The predecessor to today's s 511 of the Corporations Act, which allows application to exercise all or any of the powers the court might exercise if the company were being wound up by the court, was entrenched by 1862[26] but can be traced to 1858.[27] The position is, as Warren CJ observed in the context of a voluntary winding up, all windings up are supervised by the court to the necessary extent.[28] And that has been the case for some 150 years.

The operation of the Bell Act in relation to Maranoa Transport

29. Western Australia does not make any submission that, divorced from the Bell Act's invocation of ss 5F & 5G of the Corporations Act, s 22 of the Bell Act is consistent with ss 468(1), 474(1)(a) and 478(1)(a) as they apply to Maranoa Transport.[29] Instead

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[16] WA submissions [103]; NSW submissions [5(b)(ii)], [10(b)] & [30]; Queensland submissions [71].
[17] Victoria submissions [30].
[18] BGNV plaintiffs in S248 of 2015 submissions [108]-[110].
[19] Plaintiffs' submissions [90]-[92].
[20] WA submissions [104]-[109]; NSW submissions [5(b)(ii)], [10(b)] & [31]-[37]; Queensland submissions [73]-[83].
[21] Plaintiffs' submissions [59]-[66] & [94]-[97].
[22] BGNV plaintiffs in S248 of 2015 submissions [111]-[123].
[23] WA submissions [107].
[24] *Joint Stock Companies Act* 1856 (UK) (19 & 20 Vict, c 47), s 102. See *McPherson's Law of Company Liquidation* (Thomson: Lawbook Co) [1.350].
[25] *Joint Stock Companies Act* 1857 (UK) (20 & 21 Vict c 14), s 19. See *McPherson's Law of Company Liquidation* (Thomson: Lawbook Co) [1.360].
[26] *Companies Act* 1862 (UK) (25 & 26 Vict, c 89), s 138.
[27] *Handberg v MIG Property Services Pty Ltd* [2010] VSC 336; (2010) 79 ACSR 373 [13].
[28] *Handberg v MIG Property Services Pty Ltd* [2010] VSC 336; (2010) 79 ACSR 373 [16].
[29] C.f. Defence, para 60.

it is suggested that ss 5F and 5G overcome the inconsistency even though Maranoa Transport is not a WA Bell Company.[30]

30. It is said by Western Australia, as to s 5F(2), that the Bell Act's s 51 declaration has the effect of rendering inapplicable any provisions of the Corporations legislation that "relate to" WA Bell Companies;[31] and in this respect Maranoa Transport's interest is part of the excluded matter.

31. The text of s 5F(2) does not disapply the provisions of the Corporations legislation that "relate to" the WA Bell Companies; what is disapplied are the provisions of the Corporations legislation in the enacting State "in relation to" the matter, i.e. the WA Bell Companies.

32. The disapplication of the Corporations legislation in Western Australia in relation to the WA Bell Companies does not disapply the Corporations legislation in relation to Maranoa Transport.

33. Western Australia's argument mistakes what laws are applying and how. The application of a provision of the Corporations Act, which is what can be disapplied under s 5F(2), calls into question the legal consequences the provision produces. Sections 468(1), 474(1)(a) and 478(1)(a), as they apply to Maranoa Transport's winding up, are not purporting to produce any legal consequences in relation to the WA Bell Companies or their property.

34. For example, in the context of Maranoa Transport and the transfer and vesting effected by s 22 of the Bell Act, the only legal effect s 468 is purporting to produce concerns Maranoa Transport (by preserving Maranoa Transport's property in the trust assets against any void disposition) and the Authority (by voiding the attempted disposition of Maranoa Transport's property in its favour). Section 468 is not here purporting to have any legal effect "in relation to" the WA Bell Companies. The point may be illustrated by a simple example. Had s 22 of the Bell Act been drafted so as only to attract the WA Bell Companies' beneficial interest in the trust, and not any interest of Maranoa, s 468(1) would not apply.

35. The plaintiffs contend that ss 468, 474(1)(a) and 478(1)(a) of the Corporations Act, as they apply in Maranoa Transport's winding up, interact with the terms of s 22 of the Bell Act and lead to the invalidity of that provision and the Act as a whole. In this manner, a consequence is produced "in relation to" the WA Bell Companies and their property (because, for example, none of their property is transferred to the Authority under s 22). But this legal consequence is produced by s 109 of the *Constitution*, not by ss 468, 474(1)(a) and 478(1)(a).[32] Only a legal consequence produced by the Corporations Act itself can be disapplied under ss 5F and 5G. Those provisions do not – and cannot – permit disapplication of the *Constitution*.

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[30] WA submissions [115]-[121].
[31] WA submissions [116].
[32] *University of Wollongong v Metwally* [1984] HCA 74; (1984) 158 CLR 447, 455, 460, 473.

36. Western Australia's s 5G answer to the Maranoa Transport inconsistency is much the same as its reliance on s 5F(2).[33] So too the plaintiffs' response to the s 5G "answer" echoes what is said in response to s 5F(2). Insofar as ss 468(1), 474(1)(a) and 478(1)(a) of the Corporations Act apply to Maranoa Transport they do not have application, as a law of the Commonwealth, in relation to a WA Bell Company. Section 52 of the Bell Act does not have effect: Bell Act, s 52(1). (The definition of "excluded Corporations legislative provision" in s 50 of the Bell Act fortifies this conclusion.)

37. Even if, contrary to the preceding para, s 52 of the Bell Act could through invocation of s 5G disapply Corporations Act provisions in relation to Maranoa Transport ss 5G(4), (5) and (11) do not go far enough.[34] Here the plaintiffs rely on what has been said elsewhere.[35]

38. As a final resort Western Australia argues that s 22(10) of the Bell Act can be read down to avoid the inconsistency that arises. The "reading down" would add an exception to s 22(10) to preserve an equitable interest on the part of Maranoa Transport, but with the Authority as trustee in substitution of Mr Woodings.[36]

39. The suggested reading down is no answer. It assumes that Maranoa Transport has a fixed interest rather than a proportionate interest in the whole of the trust assets.[37] That is incorrect for the reasons given in the plaintiff' submissions.[38] So the suggested gloss on s 22(10) will not remove the inconsistency.

40. In addition what is proposed by way of reading down is essentially legislative, rather than judicial,[39] and would effect a radical change in operation of other Bell Act provisions.[40] Specifically:

    (1) The operation of s 22(1) will be altered. Only the legal interest will transfer and vest. There will be no extinguishment of Maranoa Transport's equitable interest. But that is inconsistent with the intended operation of s 25(4) of the Bell Act, as Western Australia accepts elsewhere in its submissions.[41] See also the plaintiffs' principal submissions at [134].

    (2) Section 16(3) of the Bell Act, which requires the Authority to credit to the "Fund" established under s 16(1) all money transferred to it under s 22 of the Bell Act, would not permit the holding by the Authority of a separate amount

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[33] WA submissions [118].
[34] In this respect Western Australia is correct not to rely on s 5G(8). It cannot be said that the winding up of Maranoa Transport is being carried out in accordance with the Bell Act.
[35] Plaintiffs' submissions at [87]-[88] (as to s 5G(4) and [72]-[83] & [86] (as to s 5G(11). Plaintiffs' submissions in reply at [24] (as to s 5G(5).)
[36] WA submissions [145]-[148].
[37] See WA submissions [141].
[38] Plaintiffs' submissions [44]-[46].
[39] C.f. *R v Burgess; Ex parte Henry* [1936] HCA 52; (1936) 55 CLR 608, 676; *Bank of NSW v Commonwealth (Bank Nationalisation Case)* [1948] HCA 7; (1948) 76 CLR 1, 252.
[40] C.f. *Bank of NSW v Commonwealth (Bank Nationalisation Case)* [1948] HCA 7; (1948) 76 CLR 1, 371; *Re Dingjan; Ex parte Wagner* [1995] HCA 16; (1995) 183 CLR 323, 348.
[41] WA submissions [117].

on trust for Maranoa Transport. Holding of money for Maranoa Transport is no part of the Authority's functions as specified in s 9 of the Bell Act.

Inconsistency between the Bell Act and the relevant Taxation Legislation

41. The Commonwealth intervenes and adopts and proposes to present the proposed submissions of the Commissioner of Taxation.[42] The Commonwealth undoubtedly has standing to raise the various issues of claimed invalidity due to inconsistency between the Bell Act and the Commonwealth taxation legislation.[43] As the Commonwealth has standing the remaining issues as to standing as between the plaintiffs and the State ought to now fall away.[44]

42. Western Australia's answer to the Bell Act's inconsistency with ss 215 and 254 of the ITAA36 is essentially a contention that there is no inconsistency as: (1) the funds to be set aside or retained prior to final distribution continue to be held – albeit by the Authority rather than the liquidator;[45] and (2) as the Authority has the same assets available for distribution the Commissioner is in the same position in respect of the Bell Act as it would be under the legislation that would otherwise be applicable.[46]

43. It is no answer to say that the funds to be set aside (or not parted with) in accordance with s 215 ITAA36 and to be retained in accordance with s 254 ITAA36 continue to be held elsewhere. The Commonwealth taxation provisions require that the funds be set aside (or not parted with) and retained *by the liquidator*. It is for the Commonwealth to choose the repository of the obligation; it is impermissible for a State to interfere with – thus impairing and detracting from – the Commonwealth's legislative choice.

44. Nor does the suggested answer deal with the obvious difference between the statutory regimes: the Authority has none of the duties, and potential liabilities, that ss 215 and 254 of the ITAA36 impose on a liquidator. As to that the plaintiffs repeat their principal submissions at [113] to [119].

45. Nor is it a sufficient answer to say that the Commissioner is in the same position.[47] It is necessary also to consider the position of the liquidator. The Bell Act plainly interferes with the liquidator's duty to set aside (or not part with) and retain assets in the winding up. It also interferes with the liquidator's authority under s 254(d) ITAA36 to retain. Putting the WA Bell Companies assets out of the reach of the liquidator means that he cannot fulfil his duties – nor can the companies – and exposes the liquidator to correlative liabilities.

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[42] Commonwealth's submissions [2].
[43] *Judiciary Act* 1903 (Cth), s 78A(1).
[44] *Williams v Commonwealth* [2012] HCA 23; (2012) 248 CLR 156, 181 [9], 223 [112], 240 [168], 342 [475] & 361 [557].
[45] See e.g. WA submissions [31], [32], [33], [35], [36], [51], [58]-[59] & [72].
[46] WA submissions [31], [32], [35] & [73].
[47] The plaintiffs do not concede, however, that the Commissioner is in the same position. The proposed submissions of the Commissioner explain why this is so: [12]-[13], [19], [20], [26]-[27], [33], [35]-[37] and [54]. The plaintiffs rely on and adopt those submissions.

46. Finally, so far as Western Australia suggests that no issue arises with s 254(1)(h) of the ITAA36,[48] that can only be the case – as in *Bell Group Ltd v Commissioner of Taxation*[49] – where s 468(4) of the Corporations Act applies. But the taxation legislation inconsistencies must be considered on the footing that s 468(4) has been disapplied by the Bell Act's invocation of ss 5F & 5G of the Corporations Act.[50] The inconsistency between the Bell Act and s 254(1)(h) must then be addressed.

47. Western Australia also submits that the inconsistency between the Bell Act and ss 215 and 254 of the ITAA36 can be avoided by reading down s 16(2) of the Bell Act.[51] This is not an answer to the inconsistency that arises:

    (1) First, the inconsistency with ss 215 and 254 of the ITAA36 principally affects s 22 of the Bell Act for the reasons identified in the plaintiffs' submissions.[52]

    (2) Second, the general words of s 22 of the Bell Act cannot be read down or severed for inconsistency with ss 215 and 254 having regard to the principles stated in *Pidoto*.[53]

    (3) Third, the suggested reading down of s 16(2) of the Bell Act, as contended for by Western Australia, is also inconsistent with the principles stated in *Pidoto*; among other things it would change the operation of other provisions of the Bell Act, notably s 28(1)(c).[54]

Part III: Orders Wanted

48. The plaintiffs note that the State of Western Australia has now informed the plaintiffs that the State will not seek costs against Mr Woodings, in any capacity, with respect to the proceedings if he is not successful in his claims in the proceedings.

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[48] WA submissions [70].
[49] *Bell Group Ltd v Commissioner of Taxation* [2015] FCA 1056.
[50] See plaintiffs' submissions [106].
[51] WA submissions [75] & [76].
[52] Plaintiffs' submissions [113]-[115] and [118].
[53] *Pidoto v Victoria* [1943] HCA 37; (1943) 68 CLR 87, 110-111.
[54] Which provides that the Authority may dispose of any of the property of a WA Bell Company.