

## GOVERNMENT TRADING ENTERPRISES BILL 2022

### *Second Reading*

Resumed from 24 November 2022.

**MR M. HUGHES (Kalamunda)** [1.31 pm]: I remind members that debate on this bill concluded on 24 November. I just want to reiterate that the bill is an integral part of the important reform program embarked upon in the long-term interests of Western Australia. It has been systematically progressed by the McGowan Labor government since its election in March 2017.

This bill builds on the work already undertaken to construct an efficient, accountable and high-performing public sector. It will clarify and strengthen the governance and accountability arrangements of government trading enterprises. It will also consolidate the governance requirements of government trading enterprises, which are presently replicated across multiple establishing acts. In addition to transforming GTE governance, this bill will provide for a new transitional framework as part of the McGowan government's overall public sector reform program. It is a fact that concerns about the governance of government trading enterprises have existed for some time. Most recently, they were raised by the McGowan government's service priority review and by the *Special inquiry into government programs and projects: Final report*, the Langoulant report. The GTE reform program was established on 1 July 2018. It has involved shareholder consultation and collaboration across the enterprises and the Department of Treasury, which has been central to its success.

I am going to look in detail at some aspects of the Langoulant report that covered the issue of government trading enterprises. This is to point out to members how much this government stands in stark contrast to the way in which the previous government managed both the public sector and trading enterprises. I will also rove across royalties for regions a little bit, which received in the Langoulant report a particular level of scrutiny as one of the principal agencies, if you like, that was effectively destabilising the sensible management of finances. We had both the Liberals and Nationals operating, one would say, two quite separate budget processes and determining projects against quite different priorities. These were certainly not priorities in the interests of the state.

These reforms actually go to the issue of ensuring that there is a closer connection with government priorities and the way in which government trading enterprises go about their business. Again, I emphasise that we need to ensure that this is done at arm's length—in an operational sense—from executive government.

In the list of recommendation themes in the Langoulant report, the need to reform royalties for regions was followed by recommendations regarding the need for well-thought-out and clearly communicated strategic planning, adherence to cabinet protocols at all times, sound business case submissions, and practices to ensure the availability of coordinated central agency resourcing to provide sound advice to government.

The fifth of the top 12 recommendation themes of the Langoulant report, following commentary on royalties for regions, dwells upon government trading enterprises and public corporations, which is the subject of this bill. The special inquirer found that the roles and responsibilities of government trading enterprises and public corporations was muddy.

Interestingly, in written evidence for the Langoulant review, as he did not appear before it, Hon Colin Barnett observed —

“Government Trading Enterprises sit in a no-man's land between the government and private sectors. Their boards like to think of themselves as equivalent to private sector boards. That is not the case.”

Although government trading enterprises have been corporatised, they are still very much dependent on government funding. As it stands, essentially they have to respond neither to the accountability rigours of the corporate sector nor to the increasingly high standards imposed upon the public sector.

The statements of corporate intent and strategic development plans of the two major entities reviewed by the special inquirer—that is, Synergy and Western Power—provided little insight into the plans and intentions of either entity. The inquiry found that the regulatory framework through the Economic Regulation Authority and the Public Utilities Office was complicated. The inquiry also observed that government trading enterprises are not subject to the same standards of procurement, project management, transparency, reporting, budget preparation or record keeping as the rest of government.

In its submission to the inquiry, the Department of Treasury observed that the structures of government trading enterprises needed review and reform. Its submission is contained in appendix J of volume 1 of the final report. The advice that the Department of Treasury submitted to the incoming McGowan government recommended that the new government commit to a number of matters. The first matter was to undertake a review of the structure of the government's commercial and quasi-commercial entities to identify appropriate governance arrangements. Secondly, it recommended the introduction of legislative reform to standardise and strengthen governance arrangements. Thirdly, it recommended the establishment of a government trading enterprise oversight and advisory unit within

Treasury to implement the reform program and increase the effectiveness of ongoing performance monitoring of GTEs.

The background to these Treasury recommendations centred on the performance of a number of GTEs that raised concerns about existing governance arrangements and the adequacy of ensuring strong performance and the achievement of government objectives. In its submission to government, Treasury pointed to the key features of corporatisation—namely, for GTEs to operate at arm’s length from government. This bill provides for that. However, it noted that although the arm’s-length relationship is important in ensuring the transparent direction of policies to GTEs, it had failed to properly align the objectives and performances of GTEs with the objectives and expectations of government. Treasury also noted that the corporatisation model was intended to introduce private sector discipline to the activities of government trading enterprises. However, Treasury observed that private sector discipline is not achieved by simply introducing a profit objective and a limited number of statutory director responsibilities, noting that GTEs are protected against two major threats that are essential for encouraging sound management in the private sector—namely, takeover and bankruptcy—as well as the discipline derived from a complex interaction between the performance of listed share prices, the availability and cost of capital, performance-based contracts, reputation, annual general meetings and many other factors.

Failure of the governance framework was not the only issue identified by Treasury. Issues also arose because of the strong application of government trading enterprise management principles. Treasury analysis indicated that important matters to be resolved were the ambiguity of roles, a lack of capability and capacity to oversee GTEs, an avoidance of imposing sanctions on underperforming GTEs and a fall in the quality of GTE governance and reporting. The bill before us will address those concerns raised by Treasury. Treasury noted also that the need for comprehensive reform of GTE governance had been raised in a series of previous inquiries with limited appetite for broad reform, with previous governments committing only to agency-specific or sector-specific reform.

Western Australia is the only jurisdiction without overarching governance legislation that manages government trading enterprises. As mentioned at the beginning of my contribution to the debate, the legislative governance framework for Western Australian government commercial entities is set out in specific enabling acts for each of the individual entities. The 12 different enabling acts reflect the thinking at the time of their drafting over effectively a 10-year period. The proposed umbrella or overarching legislation contained within this bill details accountability, governance and financial provisions for all GTEs with the accompanying enabling acts for each GTE setting out provisions specific to each GTE’s particular circumstances. This bill will bring greater consistency to GTE governance and accountability provisions, fill gaps in the scrutiny of a government trading enterprise’s major transactions and deals, and better align a government trading enterprise’s strategic planning with state budget time lines.

I will bring my contribution to a conclusion. The Department of Treasury’s governance and enterprise resourcing directorate, through stakeholder consultation, has developed a governance framework to strengthen government trading enterprises’ connection with other areas of Western Australian government. The new framework requires a combination of legislative reform, administrative orders, ministerial responsibility and performance monitoring. The proposed overarching legislation will consolidate the governance requirements of GTEs that are presently contained in multiple instruments, while maintaining appropriate flexibility for practices to adapt to industry, market and government policy changes over time.

The first stage of the legislative reforms covers the 12 in-scope GTEs comprising the electricity corporations, Horizon Power, Synergy and Western Power; the water corporations, Bunbury Water Corporation, Busselton Water and the Water Corporation; each of the port authorities; and the Western Australian Land Authority, DevelopmentWA. The proposed legislation will ensure greater clarity in the relationship of GTEs with the government. The legislation will harmonise good governance and key financial arrangements across the enterprises referenced in the bill and support government trading enterprises in improving strategic documentation, quality information sharing and demonstration of outcomes they have agreed to deliver.

The legislation clarifies the purpose of government trading enterprises to ensure boards understand their role and government’s expectation that government trading enterprises exist to advance the public benefit, including through the provision of financial and non-financial returns on the state’s investment via the government trading enterprises. The bill clarifies the balance between commerciality and broader policy objectives, recognising that providing returns to the community is the paramount duty of a government trading enterprise. The bill provides a mechanism for the issuance of policy orders that allows government trading enterprises to contribute to the delivery of the policy outcomes of the government.

Notwithstanding the above, the proposed legislation, as mentioned previously, does not mandate how government trading enterprises will undertake day-to-day business activities in recognition of the principals of the corporatised model established more than 20 years ago acknowledging the skills and expertise of the boards of government trading enterprises, mostly, and their directors. However, the bill provides standardised provisions for ministerial approval of significant transactions with ongoing open consultation while retaining the ability of government

trading enterprises to pursue their commercial interests. Continuing strong engagement with relevant stakeholders will be essential to the success of the reform measures that are to come and the delivery of a sustainable and appropriate governance framework.

As I understand the situation, non-legislative aspects of the framework have been implemented in parallel with the drafting of the legislation. In-scope GTEs now have full budget statements, introduced in the 2021–22 budget. Government guidance notes will be developed to support the implementation of both legislative and administrative features of the framework and provide clear guidance on the governance and performance expectations covered by the government trading enterprise legislation.

I commend the government for heeding the strong advice of Treasury and the findings of the Langoulant review for the need to reform the way we manage the relationship between government trading enterprises and government, and for the careful and deliberate approach that has been taken since coming to office in 2017 to consult and work with stakeholders to bring about substantial and meaningful reform that will ensure the successful application of the new framework.

**MR S.A. MILLMAN (Mount Lawley — Parliamentary Secretary)** [1.46 pm]: I also rise to make a brief contribution on the Government Trading Enterprises Bill 2022. I thank the member for Kalamunda for his contribution that traversed a number of areas I was going to speak to. This is a very important bill that will consolidate and update the governance, strategic planning and financial management provisions in the establishing acts. The in-scope GTEs are those mentioned by the member for Kalamunda. In short, they are electricity corporations, water corporations, port authorities and the Western Australian Land Authority, DevelopmentWA.

GTEs are public entities that operate in a commercial business environment and in accordance with prudent commercial principles. Government trading enterprises' assets and investments significantly contribute to Western Australia's asset investment program and can impact on the legal, financial and economic standing of the state. Unfortunately, over time the concept of the GTEs operating at a distance from government has changed and there has been a divergence in their role and in the understanding of the role. These inconsistencies have the effect of inhibiting government's ability to manage the financial, legal and reputational risks effectively and efficiently, but it is hoped these changes will operate to ensure that GTEs' strategic and operational objectives are aligned with the expectations of government and of Western Australians. As the member for Kalamunda said, the importance of a clear relationship between GTEs and government to ensure well-informed decision-making and cohesive long-term planning has been highlighted by a number of inquiries. The two that were referenced by the member for Kalamunda were the *Special inquiry into government programs and projects: Final report* in 2018—in shorthand, the Langoulant inquiry—and the service priority review in 2017.

The purpose of GTEs has been clarified in the new legislation to ensure that boards responsible for the administration of GTEs understand their role more broadly and the government's expectations for GTEs to advance the public benefit, including through the provision of financial and non-financial returns on taxpayers' investment through GTEs. The bill will clarify the balance between pure commerciality and broader policy objectives, recognising that providing returns to the community is the paramount duty of a GTE. The bill meets the recommendations of the *Special inquiry into government programs and projects* headed by former Under Treasurer John Langoulant to strengthen the government's transparency and accountability arrangements that oversee state GTEs.

One of the things this bill will do that I think is very important is continue the McGowan government's strong tradition of avoiding privatisation and reversing the impacts of neoliberalism. When the McGowan government was elected in 2017, it was elected on an unequivocal platform of not privatising Western Power. When I doorknocked through the Mount Lawley electorate in the lead-up to the 2017 election, that promise resonated clearly with the community.

The McGowan government has a track record of retaining in public ownership the essential services and using the levers of procurement to deliver a positive return for our community, be that through retaining Western Power in public ownership, the Western Australian Jobs Act or procurement policies—for example, to promote Aboriginal employment and education. We took our commitment to keep Western Power publicly owned to the 2017 election, and that commitment was roundly endorsed by the people of Western Australia when we were elected with a mandate.

The McGowan government's position of keeping essential services and operations within public ownership stands in stark contrast to the attitude of the former Liberal government and its desire to edge towards neoliberalism and privatisation. I want to identify some of the problems with neoliberalism and some of the issues it has created for contemporary society. I refer to an article by the journalist George Monbiot in *The Guardian* of 15 April 2016 to provide some background because he provides a very good definition of neoliberalism. He wrote —

Neoliberalism sees competition as the defining characteristic of human relations. It redefines citizens as consumers, whose democratic choices are best exercised by buying and selling, a process that rewards

merit and punishes inefficiency. It maintains that “the market” delivers benefits that could never be achieved by planning.

Attempts to limit competition are treated as inimical to liberty. Tax and regulation should be minimised, public services should be privatised. The organisation of labour and collective bargaining by trade unions are portrayed as market distortions that impede the formation of a natural hierarchy of winners and losers. Inequality is recast as virtuous: a reward for utility and a generator of wealth, which trickles down to enrich everyone ... The market ensures that everyone gets what they deserve.

The failure of this philosophy and this ideology has now been cast into stark relief, but that defines the term. This ideology took hold in the 1970s after the post–World War II consensus of John Maynard Keynes was pulled apart by hyperinflation and the OPEC oil price shocks. In the 1970s, Jim Callaghan in the United Kingdom and Jimmy Carter in the United States introduced a number of reforms. The election of Margaret Thatcher in the United Kingdom and Ronald Reagan in the United States turbocharged the implementation of neoliberalism, and the consequences are with us today. I refer again to *The Guardian* article —

The privatisation or marketisation of public services such as energy, water, trains, health, education, roads and prisons has enabled corporations to set up tollbooths in front of essential assets and charge rent, either to citizens or to government, for their use.

I quote again from the article —

Perhaps the most dangerous impact of neoliberalism is not the economic crises it has caused, but the political crisis. As the domain of the state is reduced, our ability —

As citizens —

to change the course of our lives through voting also contracts. Instead, neoliberal theory asserts, people can exercise choice through spending.

That is the problem created by neoliberalism as identified by George Monbiot.

The issue was taken up more recently by Dr Alison Pennington, who is an author for Crikey and about to release a new book, *Generation F’d: How neoliberalism consumed the future*. She provides this definition —

Neoliberalism is a term associated with 19th-century ideas centred around free-market capitalism. Commonly, it refers to market-oriented reform policies, like lowering trade barriers, deregulating capital markets and eliminating price controls. Especially, though, neoliberalism refers to policies that diminish government’s role in shaping the economy and delivering services.

In practice, neoliberalism has given untold powers to private enterprises, and in the process has eroded our access to good jobs, incomes, services and infrastructure.

Dr Pennington goes on to say later in the article —

Despite the damage wrought by neoliberalism, government—at federal, state and local levels—is still the biggest actor in the economy. It spends a whopping \$580 billion every year and employs 2.1 million people. Government once used its power to maximise human welfare, moulding private sector activity to complement its democratic vision. For instance, the post-war policy architecture up to Whitlam’s 1970s was all about “crowding in”, signalling what was important to the public through big public investment and planning in many areas including education, health care, infrastructure and the arts. Then, the private sector would be invited to come along for the ride.

But from the 1980s, government’s critical role in leading economic activity began narrowing. Privatisation, outsourcing and marketisation handed the reins to private interests, undermining our collective long-term vision.

The point I want to make is that neoliberalism’s hold on policymakers constrained the realm within which government could act, and this was identified by any number of reports, but, most particularly, I draw the Parliament’s attention back to a report that I was privileged enough to participate in—the thirteenth report of the Public Accounts Committee. I am gratified that the former Minister for Finance and the former chair of the Public Accounts Committee is in the chamber to hear this part of my contribution because I am about to quote from his foreword to that report, *Knowing what good looks like: Challenges in managing major public sector contracts*. The chair, the honourable member for Armadale and now the Minister for Education, wrote —

Whenever one is dealing with the use of public funds, it is important to ensure that there is appropriate oversight and creditable, workable and effective regulation ...

Our report, though, remains timely as it deals with high-level preparedness for better management practices on major contracts and for improving control, oversight and transparency in pursuit of good public outcomes.

One of the things that the chair emphasised both throughout the inquiry and during his tabling contribution was that the era of being motivated only by the lowest cost and monetary reasons was over; now is the time for governments to use the expenditure at their disposal. Whether it is in the procurement of goods and services or in the construction of significant public infrastructure, it is important for government to apply its resources and financial capability to deliver positive outcomes and social value to the community. Social value was the phrase the member used. This runs directly contrary to the overarching philosophy of neoliberalism, but it is entirely consistent with the McGowan government's approach to making sure that government has an important role to play in people's lives.

This legislation picks up our underpinning philosophy of opposition to the privatisation of essential services like Western Power. It tackles the pernicious rise of the neoliberal ideology advanced by members opposite, and it uses the power of the government, which is still a significant player in the economy, to make sure it delivers tangible and beneficial outcomes to the wider community. It delivers those outcomes based on not only a purely monetary perspective, but also what is in the best interests of the whole community.

If members look at the organisations that this tranche of reforms applies to, including DevelopmentWA, Western Power and the port authorities, they can see that the potential for community benefits is significant. All these organisations need not merely look at returning the greatest profit to shareholders but can look at what they can do to serve the overall interests of the state of Western Australia. DevelopmentWA can release industrial lands or release lands to tackle the issue of housing and homelessness. If we look at Western Power investing in renewable energy or how the port authorities can promote export industries and greater trade, we see that all these government trading enterprises have a role to play that moves beyond just maximising profit for shareholders and into the realm of supporting and advancing the overall interests of the Western Australian community. That runs directly contrary to the Liberal Party's philosophy, which is all about outsourcing, privatising and undermining the role of these organisations to make sure that there is a public benefit.

One of the things that Hon Colin Barnett lost sight of when he made his submission to the Langouland inquiry was that for government trading enterprises, the hint is in the name; they are "government" trading enterprises. They belong to the people of Western Australia. They should be dealt with responsibly and professionally, and they should be governed by a modern and effective regulatory regime. I commend the Premier for bringing this legislation to this Parliament because it will establish, as was said by the member for Kalamunda, the necessary framework to clarify the purpose of government trading enterprises and ensure that their boards understand their roles more broadly within the government's expectations of government trading enterprises.

That role is about advancing the public benefit, including through the provision of both financial and non-financial returns. The bill clarifies the balance between commerciality and broader policy objectives, and recognises that providing returns to the community is the paramount duty of GTEs. By picking up the recommendations of not just the Langouland inquiry and the public sector review, but also great inquiries like the inquiry of the former Public Accounts Committee into the management of government contracts, and picking up those ideas for reform, this legislation will reset the way in which government trading enterprises can operate to make sure that they are appropriately accountable and transparent. It will also make sure that the investment for our collective future for the wellbeing of Western Australia is enhanced.

Debate interrupted, pursuant to standing orders.

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