

GOVERNMENT TRADING ENTERPRISES BILL 2022

Committee

Resumed from 18 May. The Deputy Chair of Committees (Hon Sandra Carr) in the chair; Hon Stephen Dawson (Minister for Emergency Services) in charge of the bill.

Clause 17: Terms and conditions of appointment —

Progress was reported after the clause had been partly considered.

Hon Dr STEVE THOMAS: I was vaguely hopeful that over the intervening few weeks, I might have convinced the minister of the risk of the conflict of interest in a GTE director being the CEO of that very GTE. I am just checking to see whether the government has changed its mind on that and might be looking at an alternative outcome.

Hon STEPHEN DAWSON: We have not. The member tried his hardest, but we firmly believe in the provisions in the legislation before us.

Hon Dr STEVE THOMAS: That is very disappointing, so we might as well progress to clause 18 under those circumstances.

Clause put and passed.

Clause 18: Remuneration —

Hon Dr STEVE THOMAS: Is the minister in a position to give us the approximate band of remuneration that GTE directors are receiving?

Hon STEPHEN DAWSON: I am not; it is disclosed in each of the annual reports for the various GTEs, but I understand that the Salaries and Allowances Tribunal is about to make a new determination very soon in relation to this.

Hon Dr STEVE THOMAS: I hope it is as equally generous as it is to members of Parliament when it deals with directors. We will see what that number looks like at the next round of annual reports. We are on clause 18 on page 12. Subsection (6) refers to directors who are not entitled to remuneration. Paragraph (a) of that is if the director is also the GTE's chief executive officer and we can no longer cast aspersions upon a decision of the house in relation to that.

Hon Stephen Dawson: Indeed.

Hon Dr STEVE THOMAS: Paragraph (b) is a director who holds a full-time office or position that is remunerated out of funds appropriated by Parliament. I wonder whom that might refer to, and do any examples currently exist?

Hon STEPHEN DAWSON: This relates to any public servant who might serve on a board.

Hon Dr STEVE THOMAS: This basically then excludes any public servant from getting remuneration?

Hon Stephen Dawson: Yes, from getting payment.

Hon Dr STEVE THOMAS: It was just a funny way to refer to that. I am happy to move on to clause 20.

Clause put and passed.

Clause 19 put and passed.

Clause 20: Expenses —

Hon Dr STEVE THOMAS: Expenses is a very sensitive area, particularly for some of us. In relation to expenses for directorships, what are the sort of expenses and to what level are we talking about? I presume it runs to transport incurred in performing their roles, but I presume it does not run to the provision of transport generally or cars or any of those things. I presume we are dealing with small things that are actually a part of their role. Can the minister give us an idea of what kind of expenses are being claimed? What are we looking at?

Hon STEPHEN DAWSON: It may well stretch to things such as travel and accommodation. As the member would be aware, there are regional based GTEs, so if a board meeting were to take place in Port Hedland, for example, a reasonable consideration would be that accommodation is paid for the board member to stay in Port Hedland overnight.

Hon Dr STEVE THOMAS: That is perfectly reasonable, minister. I presume boards are not providing vehicles for directors at all, I would have assumed.

Hon Stephen Dawson: They are not, other than CEOs, who may well have access to a vehicle in their package. They are directors on boards in some cases, but for other members, no.

Clause put and passed.

Clauses 21 and 22 put and passed.

Clause 23: Alternate directors —

Hon Dr STEVE THOMAS: I presume that alternate directors would generally be appointed because the director is unwell or simply out of the country, for example, and unable to be present. How often would an alternate director need to be appointed? Will a time frame be involved? Will directors be given a certain amount of time to recover and then a decision be made as to whether an alternate director is needed? At what point will the board say, “Where is the cut-off? Let us replace a director with an alternate director”?

Hon STEPHEN DAWSON: That will be at the discretion of the minister. Currently, there are no alternate directors on any of the boards of government trading enterprises. There would be a requirement for an alternate director that the minister would like to appoint to go through cabinet. There will be no time frame around it, but it would need to go to cabinet for consideration.

Hon Dr STEVE THOMAS: Can I just confirm that there is no set standard at the moment. Is there an intent to develop a standard for it?

Hon STEPHEN DAWSON: No, there is not. There is currently no set standard and there is no intention to have one. As I said, it would need to go to cabinet. The minister would need to consider it appropriate to appoint an alternate director for a period. Obviously, cabinet would need to agree to that recommendation.

Clause put and passed.

Clause 24: Review of board performance: self-assessment —

Hon Dr STEVE THOMAS: We are on division 2, “Review of board performance”. After that, we will jump into a few meatier clauses. In terms of the self-assessment component, clause 24(1) states —

A GTE’s board must, on an annual basis, give the Portfolio Minister a report on its assessment of its performance over the year following the year covered by its previous report to the Minister under this section.

The board will report to the minister on itself, and in clause 25, we end up with an external review. When the board is doing its internal review, will the minister set the parameters by which it reviews itself? I am interested in the oversight of that review. How stringent will the self-assessment be and how much oversight will the GTE minister or the portfolio minister have in examining the review? I am nervous. Self-assessment is often a bit soft, so I am interested in how we are going to make sure that that self-assessment is a significantly robust system.

Hon STEPHEN DAWSON: If the member turns to page 16, under clause 24(3)(b) he will see that the self-assessment criteria has to be agreed between the portfolio minister and the board.

Hon Dr STEVE THOMAS: I thought there might have been a standardised model for that. Is there no intent to develop similar KPIs for board performance? Although the service delivery might be different, I would have thought the performance of the board should be fairly similar.

Hon STEPHEN DAWSON: Currently, the minister is not involved in the process. The boards would currently undertake a self-assessment but the minister is not involved. I think all boards would probably look at similar things but no guidelines are issued by central government and there is no intent to issue any. However, as I indicated previously, the self-assessment criteria moving forward needs to be agreed between the portfolio minister and the board.

Hon Dr STEVE THOMAS: There will be no oversight. I would have thought that an interesting and useful role of the GTE minister would be to oversee that. Then we might find some consistency across the various GTEs. At this stage we will potentially have different portfolio ministers assessing with different internal processes. Does the government not see any potential advantage in having that broader oversight of the GTE?

Hon STEPHEN DAWSON: That intention does not exist but I am happy to take the honourable member’s suggestion forward and bring it to the attention of the GTE minister.

Clause put and passed.

Clause 25: Review of board performance: external review —

Hon Dr STEVE THOMAS: This clause has the external review process and it states —

(1) A GTE’s board must arrange for its performance to be externally reviewed, and a report to be given to the Portfolio Minister ...

The legislation itself does not define who will do that external review. Is that likely to be done by regulation and who is likely to be on the list of external reviewers?

Hon STEPHEN DAWSON: I am told that there are consultants out there who do boutique board reviews. It is not our intention to list people in the regulations. There are companies that do it currently, and if the minister were not happy with something, it would be up to the minister to raise that with the board. If the board does not arrange for that external review in accordance with the regulations, the minister may arrange for that external review at the expense of the government trading enterprise. But certainly, if the portfolio minister was not happy with the review, it would be open to the minister to talk to the board about getting another review done.

Hon Dr STEVE THOMAS: Are any GTEs currently undergoing an external review; and, if there are, which ones?

Hon STEPHEN DAWSON: If the board chooses to do an external review, yes, it could be happening. I am not in the position to tell the member the reviews that are actually happening at this point because there is no central oversight of each GTE and their review processes at the moment. But, moving forward, under this legislation various reviews will have to take place.

Hon Dr STEVE THOMAS: I think this is a bit like clause 24 and the minister could take advice back to, I guess, the new Treasurer now that perhaps some standardisation and oversight of that process would be useful. The minister might be in a position to suggest there is some Treasurer's guidance on what should happen in an external performance review. I think there is an opportunity again to formalise and standardise that process. I would be interested to see how the government manages that. Perhaps, once this legislation passes and that process is put in place, we will seek a briefing on how that process will work. It is just a useful possibility.

Hon STEPHEN DAWSON: Thank you, honourable member, for your suggestion. I am not in the position to make any promises this evening other than to bring the member's suggestion to the GTE minister.

Clause put and passed.

Clauses 26 to 36 put and passed.

Clause 37: Appointment —

Hon Dr STEVE THOMAS: Clause 37(1) states —

A GTE's chief executive officer is appointed by, and may be removed by, the GTE's board.

I presume that the appointment process is fairly standardised. Can the minister describe the current process for removing a chief executive officer and whether there will be any predicted changes once the Government Trading Enterprises Act is in force?

Hon STEPHEN DAWSON: At this stage, it really just depends on the CEO's contract. In some cases, the removal of a CEO can be done only with the approval of the portfolio minister, which I am told is a change to existing practice. It is not standardised at the moment, but moving forward it will be a new policy across the board that approval needs to be sought from the portfolio minister.

Hon Dr STEVE THOMAS: One of the issues that we often face is that the CEOs of organisations often get control of them. I am not suggesting that for any particular government trading enterprise. Perhaps it is more common at a local government level than a state government level.

Hon Stephen Dawson: By way of interjection, the appointment of board members and the chair is done by cabinet. I am not suggesting that it always happens, but in the private sector it could be that the CEOs might have control of everything. In this case, the CEO is appointed but the appointment of the board and the chair is done by cabinet. That is a safeguard.

Hon Dr STEVE THOMAS: I appreciate the interjection, but it is potentially a bit of a double-edged sword as well. Whilst that might be a safeguard, it might be useful for government to have a very strong CEO as well. There is a possibility in all directions. I am not going to cast aspersions upon any particular activity.

Hon Stephen Dawson: Again, by way of interjection, I think we always want to have a strong CEO. The minister responsible for an agency would certainly always want to have a strong CEO. Equally though, we want to see a board that is competent and capable and can hold the agency to account. I think a strong CEO and board will hopefully mean better outcomes for the state and the community.

Hon Dr STEVE THOMAS: Yes, to some degree. Would a CEO have to exclude themselves from the debate and vote regarding their removal based on vested interest or could they participate in the debate?

Hon STEPHEN DAWSON: Obviously, the CEO would be conflicted. There are conflict-of-interest provisions in the bill. In the case that the member mentioned, the CEO would not be part of the decision-making.

Hon Dr STEVE THOMAS: Can I confirm that they would be specifically precluded from the discussion and debate?

Hon STEPHEN DAWSON: That is correct.

Hon Dr STEVE THOMAS: Maybe this is more of a statement than a question. It relates back to the debate around the inclusion of the CEOs as board members. The potential to influence debate early before it gets to that point will be interesting. How do we judge a debate around the appropriateness of a decision made by a CEO? That might be a situation in which the CEO is required to be present, because otherwise all the information is not there. Whether the debate around a contentious decision becomes a point of excluding a CEO from a vote, for example, is a situation whereby I think we will have to suck it and see how it pans out. I can imagine a circumstance where a CEO wants to go down a certain path but the majority of the board members do not want to. There is a conflict and the CEO goes down the path anyway. The debate is actually around what the CEO's decision-making process was. We get to a point where the board might ultimately decide that the CEO has crossed the line and suddenly there is a debate about the removal of the CEO but the driving force was a decision that the CEO made, which would have been part of the debate earlier on. We will need to suck it and see, and see how it operates in practice. The power of the CEO to influence a board is not small, so we will have to look at it and see. I do not have an easy solution. The chamber has decided that the CEO can be a board member, so they will be a board member. Like I say, this is more of a statement than a question. It is something we will have to watch fairly carefully to see how it works in practice.

Clause put and passed.

Clauses 38 to 42 put and passed.

Clause 43: Executive officers —

Hon Dr STEVE THOMAS: We are in the part referring to the duties of directors, CEOs and staff, and it only goes for about four pages. I may use clause 43 for a more general question, but referring to part 5 of the bill, how do the duties of directors in particular—I am most interested in directors at this point—compare with their duties and requirements under other legislation, particularly the Corporations Act? Is there any significant difference between the duties for directors listed in this bill and the duties they currently hold under their establishing acts and, ultimately, the Corporations Act, which is what we are trying to model our operations on?

Hon STEPHEN DAWSON: The question is how the duties of directors compare with the duties of directors captured by the Corporations Act. I am told that we have modelled the Corporations Act but have changed it to acknowledge that in this case there is state ownership rather than private ownership. Clause 45 talks about GTE directors and CEOs having the same fiduciary relationship with the GTE as the director of a company incorporated under the Corporations Act has with a company, and it goes on. We have modelled it on the Corporations Act but just tweaked things because of the ownership.

Hon Dr STEVE THOMAS: I accept that. I will use this opportunity to check something. I want to jump to clause 61 in relation to conflicts of interest in material personal matters et cetera. Clause 61(1) refers to clauses 59(1) and 60(1). Would the minister prefer to debate those under clause 61 or, because we are referring to clauses 59 and 60, does he want to do it under one of the earlier clauses?

Hon STEPHEN DAWSON: Let us do it at clause 59, if the questions are about clauses 59 and 61.

Hon Dr Steve Thomas: Yes.

Clause put and passed.

Clauses 44 to 58 put and passed.

Clause 59: Participation by interested members —

Hon Dr STEVE THOMAS: This is an interesting clause under the duties of directors. It is part 5 division 5, “Disclosure of material personal interests”. I am interested in this. I read to the house clause 59(1) —

A director of a GTE or a member of a GTE's committee (the *interested person*) who has, or has been determined under section 58(5)(b) to have, a material personal interest in a matter that relates to the GTE's affairs —

Clause 58(5)(b) calls on the director to disclose the nature of it. Clause 59(1) states —

... (the *interested person*) who has, or has been determined under section 58(5)(b) to have, a material personal interest in a matter that relates to the GTE's affairs —

(a) must not vote (whether at a meeting or otherwise) on the matter; and

(b) must not be present (whether in person or remotely) while the matter is being considered at a meeting.

It links into clause 60(1) on page 35 —

If a director of a GTE is unable because of section 59 to act in relation to a matter, a quorum is present for the purposes of considering and voting on the matter if the number of directors present, who are able to vote in relation to the matter, is —

- (a) at least the quorum under section 29, less 1; and
- (b) not less than 3.

We will reduce the number of people available for quorum. The interesting part is clause 61, and in particular clause 61(1). The minister may declare section 59(1) or 60(1) inapplicable. Clause 61 states —

- (1) The Portfolio Minister for a GTE may in writing declare that section 59(1) or 60(1) does not apply in relation to the GTE and a specified matter —
 - (a) either generally or for the purpose of dealing with particular proposed resolutions; and
 - (b) either wholly or to a specified extent.
- (2) The Portfolio Minister must cause the declaration to be laid before each House of Parliament within 14 sitting days of the House after the declaration is made.

I struggle to understand why, a member of a director of a GTE having, I guess, outed themselves under clause 58(5)—whether the director themselves or a member of the committee et cetera, the presiding officer calls on the director to disclose the nature then determines whether they have a material conflict of interest—the minister can override that. I am not sure why the minister has a complete sort of override in this. Let us just explore this a bit. What are the circumstances in which the presiding officer of a board might decide that a member has a material conflict of interest that a minister might override?

Hon STEPHEN DAWSON: I am told that this would happen infrequently, if it were to happen at all. If a member had a specific background and experience that would help the board to make a decision and the minister wanted that member on the board as part of the decision-making process, the minister could say that they still wanted that member as part of the decision-making process even though the member had declared a conflict of interest. However, the safeguard is that if that were to happen, the minister’s decision must be tabled in Parliament within 14 days. It would be a rare occurrence, but it would allow for that person or those people’s experience to be at the decision-making table so that the board could make a decision in the best interests of the GTE. If there were a conflict of interest and the member was still included in the decision, the declaration would need to be laid before Parliament.

Hon Dr STEVE THOMAS: Although the minister’s explanation has some logic to it, to me, it still presents something of a significant risk. I presume that this would only occur—I think this is right; the minister might want to correct me—if the presiding officer were to decide that there was a definite personal conflict of interest and asked a particular director to stand aside or leave the meeting. Unless it all happens outside of that, one would assume that the decision will be made and that the director, feeling aggrieved, will inform the minister. Otherwise, how would the portfolio minister know about a decision, unless it had been reported by the chair? Will it happen in advance? How would the minister reverse this decision unless they knew in advance that the decision had been made? Let us start with that.

Hon STEPHEN DAWSON: Clause 58 provides that a director or member must disclose a personal interest in a matter. To answer the member’s question, the chair or the person presiding may decide that it is in the best interests of decision-making that the director or member be at the table, so they would approach the minister and say, “There is a conflict. There has been a declaration that this person has a particular interest. However, I think it is in the best interests of the GTE that that person be at the table.” It would then be open to the minister to say, “Yes, I concur with you. They should be”, and they could then use the powers under proposed section 61. Obviously, if that decision were to be made, the declaration would need to be laid before the houses of Parliament within 14 days. It is likely that the suggestion would come from the presiding member to the minister that it would be in the best interests of decision-making of the agency, or whatever, that this person be at the table for the decision.

Hon Dr STEVE THOMAS: I thank the minister for that. I suspect he can understand my concern about this. We may not agree at the end of it. The presiding member may say, “I have decided there is a conflict of interest but we want you at the table anyway.” As we were saying before, if it happens in advance, presumably before the decision is made, the presiding member would have a discussion with the portfolio minister and say, “I want the information from director X”, and the minister would say, “Okay, there is a direct conflict of interest, I agree with you, but I am going to allow director X to participate.” Presumably the director would be allowed to both participate in the debate and also vote. I find that a little disturbing. I do not understand why the board, for example, would not have a discussion without that particular board member. Surely the board would be able to get the information it required and make a decision without that particular board member and the information that the board was provided would not be restricted to the existing board members. Do some boards not bring in other staff members to provide the information that is required? Are some board members out there the only repositories of information that a board might be required to make a decision on? It seems that we would be devaluing every other board member if one board member were to become so omnipotent and required.

The other side of that is that we are suddenly putting in the legislation an enormous amount of power. The minister could agree that a board member has a direct personal conflict of interest but let the board member debate and vote on the matter anyway. I am most concerned about the voting. That is the aspect that makes me nervous because the chair might decide that there is a direct conflict of interest and go to the portfolio minister, and although the minister could not argue that the chair was wrong because the minister agreed that there was no conflict of interest, the minister could accept that there was a conflict of interest but override it. Surely there is a better way of doing that than simply ignoring the conflict of interest and allowing the board member—in particular, the director—to vote. Are we so short of good directors in the government trading enterprise arena that we cannot find five board members who cannot function without a particular piece of advice?

Hon STEPHEN DAWSON: There was quite a lot to unpack in that contribution. I am not being disparaging, but I think the member is jumping at shadows a little bit. This provision would be used only in extraordinary circumstances. It may well be used to allow a board member to participate in a conversation and/or to participate in a vote. As I said, it would be used only in extraordinary circumstances. The safeguard in this case is that the minister would need to table the decision before both houses of Parliament within 14 days. We operate under the Westminster system. It is for the opposition and, indeed, anybody to call into question the minister's decision-making. It would be used in only exceptional circumstances. Ministers do not want their decisions tabled in Parliament. This would happen only in exceptional circumstances.

The member asked whether boards have access to external advice. Yes, they do. It would be up to the board to seek advice from consultancies or experts in the field or whatever. In the case in which a board member is the expert in the field—it might be a limited field—this provision will provide that, in exceptional circumstances, the minister can allow that person to participate. As I said, if they did participate, the minister's decision would be tabled.

Hon Dr STEVE THOMAS: I have to say that I am still struggling with this one. I agree with the exceptional circumstances, but I suspect that the exceptional circumstances will make this worse, not better. That makes me even more concerned. Let us jump to another component of it. The minister could decide to grant an exemption to a board member who has a direct personal interest and the minister would then table that direction in both houses of Parliament. How would that compare with a decision that was made and debated by the board? How long would it take and what would happen to the decision-making process in the meantime if a decision was made and the minister exempted a director from the rule relating to direct personal interest because the minister wanted their advice and the minister wrote that in a statement that was tabled in Parliament and a disallowance motion was moved?

Hon STEPHEN DAWSON: I am told that the minister would only ever intervene if the board said there were no other experts out there who could provide the same level of information or experience for a decision. I am not sure the honourable member is going to get anything more from me that will bring him closer to my way of thinking. I stand firm, and the government believes that this is a good inclusion, noting of course that it will be used infrequently and, if it were to be used, it would be tabled before the house.

Hon Dr STEVE THOMAS: The minister is right that we probably will not come to a point at which we agree and that is not the ultimate goal. Occasionally, deputy chair, you have to let other people be wrong. However, can I just check —

Hon Stephen Dawson: Or conversely, honourable member, you have to let other people be right.

Hon Dr STEVE THOMAS: You are an eternal optimist, minister. I think that is fantastic. Clause 61(2) reads —

The Portfolio Minister must cause the declaration to be laid before each House of Parliament within 14 sitting days of the House after the declaration is made.

I wonder whether we should do this under clause 61, because we are still on clause 59.

Hon Stephen Dawson: I am happy for you to go between them if there are interrelationships.

Hon Dr STEVE THOMAS: Okay. The problem is I do not like any of it. I will ask it under clause 61 and we will pass clauses 59 and 60.

Clause put and passed.

Clause 60 put and passed.

Clause 61: Portfolio Minister may declare section 59(1) or 60(1) inapplicable —

Hon Dr STEVE THOMAS: I will read this again for the sake of members. It reads that the portfolio minister must declare in writing that sections 59(1) or 60(1) do not apply in a specified manner and will —

... be laid before each House of Parliament within 14 sitting days of the House after the declaration is made.

Is the statement being “laid before the house” a disallowable instrument?

Hon STEPHEN DAWSON: No, it is not.

Hon Dr STEVE THOMAS: Effectively then, the minister makes a decision. He tells the Parliament about it afterwards, but there is not a damn thing anybody can do about it except maybe try to take it to the media, who do not always show great interest in government trading enterprise board machinations. Effectively, the minister makes a decision. Does the sequence look like this: the chair would go to the minister and say, “Director X has a direct personal interest, but I would like them to be present and to vote; can you therefore write an exemption?”, and the minister would say yes and would write an exemption? Would that be tabled immediately, at the next sitting of the house? The bill says that it is within 14 sitting days. If a decision were signed today, 14 sitting days would be, what—September? Ostensibly, a decision could be made now and Parliament notified four months down the track that a person had an exemption at that point. Is that potentially what we are looking at?

Hon STEPHEN DAWSON: As the bill says, it will need to be laid before each house of Parliament within 14 sitting days of the declaration being made. The honourable member knows as well as I do that a decision of a minister last week, last month or last year could be called into account by the media or, indeed, members of Parliament. Even if a decision were made today and we found out about it only in September, that would not stop the honourable member from asking parliamentary questions and delving into exactly why that decision was made, or from going to the media, calling for a parliamentary inquiry or whatever. I think the safeguard is that it needs to be tabled before the house. As I said previously, it would be used only in extraordinary circumstances, but we believe that its inclusion in the legislation is warranted.

Hon Dr STEVE THOMAS: Is there no possible way of dividing up attendance at the meeting and discussion, and the vote? The vote is more technically critical to a member with a material personal interest. I know it is not in the legislation, but can I convince the government that it might be good to have them at the meeting but not given a voting role? Is there no capacity to do that?

Hon STEPHEN DAWSON: As it stands, the decision could be made to allow the person to solely participate or to participate and vote. As I said, there would need to be extraordinary circumstances and the decision would need to be tabled before each house of Parliament.

Hon Dr STEVE THOMAS: Therefore, the minister would decide whether they just participate in the debate or also vote. Okay. I am still not happy, but I accept that explanation. Does any minister currently have the capacity under any of the establishing acts to override a declaration of material personal interest?

Hon STEPHEN DAWSON: We do not believe that the establishing acts deal with material conflicts, but I cannot confirm that. I think the existing establishing acts are silent on this issue.

Hon Dr STEVE THOMAS: Is the minister saying that the existing establishing acts are silent on the issue of material personal interest or that they are silent on the position of a minister being able to override that? I guess the question is: is there no mention of material personal interest in the establishing acts?

Hon STEPHEN DAWSON: I cannot confirm either way. We cannot be certain about what all the establishing acts currently say.

Hon Dr STEVE THOMAS: I guess that is fair enough, except I remain concerned that we are creating a power that does not currently exist because there are no exemptions under the establishing acts. We are not certain whether the establishing acts have the exclusion for personal material interests; I would be very surprised if there were not some form of exclusion for personal material interests, so I remain concerned. I do not think this is a requirement; I think there are other ways to deal with this. As much as I am trying to be helpful to the minister, I think there are alternative ways of dealing with personal material interests that do not simply allow a minister to exclude them and to potentially include someone with a personal material interest in both discussions on an issue and votes on an issue. It is therefore my intention to oppose the clause.

Division

Clause put and a division taken with the following result —

Ayes (18)

Hon Klara Andric
Hon Dan Caddy
Hon Sandra Carr
Hon Stephen Dawson
Hon Kate Doust

Hon Sue Ellery
Hon Lorna Harper
Hon Jackie Jarvis
Hon Ayor Makur Chuot
Hon Kyle McGinn

Hon Shelley Payne
Hon Martin Pritchard
Hon Samantha Rowe
Hon Matthew Swinbourn
Hon Dr Sally Talbot

Hon Darren West
Hon Pierre Yang
Hon Peter Foster (*Teller*)

Extract from Hansard
[COUNCIL — Tuesday, 13 June 2023]
p2631b-2639a
Hon Dr Steve Thomas; Hon Stephen Dawson

Noes (7)

Hon Martin Aldridge
Hon Donna Faragher

Hon Steve Martin
Hon Tjorn Sibma

Hon Dr Steve Thomas
Hon Neil Thomson

Hon Colin de Grussa (*Teller*)

Pairs

Hon Stephen Pratt
Hon Rosie Sahanna

Hon Peter Collier
Hon Nick Goiran

Clause thus passed.

Clauses 62 and 63 put and passed.

Clause 64: Disclosure of material personal interests —

Hon Dr STEVE THOMAS: I just want to make the point on clause 64 that there will be a slightly separate process for the disclosure of material personal interests of CEOs. If the CEO of a government trading enterprise has a material personal interest, as soon as practicable the CEO must disclose the nature of it and not take action or further action on the matter unless authorised to do so by the GTE's board. I assume that that is what this provision is saying. Instead of a director being exempted by the portfolio minister, as provided for under clause 61, which was just passed by the chamber, it appears that the CEO will be exempted by the board itself. Will that be the case?

Hon STEPHEN DAWSON: Yes. The board will make the decision.

Hon Dr STEVE THOMAS: We have just gone through a circumstance in which the portfolio minister, as a minister of the Crown, can exempt a director from a direct conflict of interest and allow them to not only participate in the meeting, but also vote in that meeting, which the opposition opposed. If the CEO has a material personal interest—I had better use the right terminology—the CEO should not take any action unless authorised by the GTE's board. The CEO who has a material personal interest will still be part of the discussion on something that they are getting a direct benefit from. I will just check that this would apply to a CEO who is not, I presume, a director. As we discovered before, the CEO can be a director, but if the CEO is a director, the minister will be able to exempt them from the rules about personal conflict, but if the CEO is not a director, but just the CEO, the board itself will be able to exempt them from having to leave the discussions, and I presume under those circumstances, because they are not a director but just a CEO, they would not get a vote anyway.

Progress reported and leave granted to sit again, pursuant to standing orders.