

GOVERNMENT TRADING ENTERPRISES BILL 2022

Committee

Resumed from 13 June. The Deputy Chair of Committees (Hon Steve Martin) in the chair; Hon Stephen Dawson (Minister for Emergency Services) in charge of the bill.

Clause 64: Disclosure of material personal interests —

Progress was reported after the clause had been partly considered.

The DEPUTY CHAIR: I bring to the attention of members supplementary notice paper 92, issue 2, with an amendment to clause 104.

Hon Dr STEVE THOMAS: The minister may well be about to provide a response, because I waxed lyrical last night about the comparison of clause 64 with the intent of clauses 59 and 60. I will recap quickly. Under clauses 59 and 60, a director of a government trading enterprise can be excused, even though they potentially have a material personal interest, if the minister presumes so, under clause 61. That was for a director or a member of the GTE committee.

It is interesting that under clause 64(1)(a) the GTE must disclose the nature of that interest and under paragraph (b) —
not take action or further action in relation to the matter unless authorised to do so by the GTE's board.

It appears that under paragraph (b) the board can effectively exempt the chief executive officer from issues that relate to material personal interest. Firstly, I do not like the fact that they can be exempt from material personal interest; and, secondly, that the board makes that possible—the difference between that and having the minister do it. The minister was going to describe why there was a difference and what happens, and potentially what happens if the CEO of the GTE is also a director and which of those clauses then applies.

Hon STEPHEN DAWSON: I will not go back over the debate we had yesterday, but just put on the record that clause 61 is essentially replicated in a number of the establishing acts: the Electricity Corporations Act 2005, the Water Corporations Act 1995, the Port Authorities Act 1999 and the Western Australian Land Authority Act 1992. Whether it is in full or in part, it corresponds with those other establishing acts. Clause 64 is a new provision; it is not in any of the establishing acts. Effective management of perceived or actual conflict of interest requires timely disclosure of the interest. Where the conflict for a particular matter cannot be effectively mitigated, it may be appropriate for another member of staff to act in relation to the matter. The penalty for a breach of this provision reflects the seriousness attached to timely and effective disclosure of material interests. Examples of where this provision may be applicable are as follows. When the CEO's family member is a director of a key service provider to the GTE and the CEO will declare a material personal interest. The procurement decision to award any work may be at a quantum that would normally require the CEO to approve the procurement. The board could authorise the CEO to sign the contract once the chief finance officer has approved the contract award in undertaking the recruitment of a new senior executive for the GTE. Another example is when a relative of the CEO applies for the role. The board may choose to still include the CEO in setting the requirements for the role as part of the recruitment process but require all recruitment recommendation reports not to be distributed to the CEO and the CEO not to participate in the final selection decision.

The mechanism in clauses 59 and 61 that applies to directors differs from the mechanism in clause 64 that applies to the CEO as the CEO is accountable to the board. It is therefore appropriate that the board is the accountable body that determines whether the CEO is able to undertake an action on a matter with which the CEO has a material personal interest. On the other hand, the board is accountable to the minister. Clause 59(3) allows the board to address the ability of a particular director to participate or vote on a matter. Further, to ensure effective operation of the board, the minister also has the ability under clause 61 to declare that the relevant director can participate in the board's consideration and vote on a matter, despite having a material personal interest in the matter. An example of where this may occur is if three or more directors have declared a material personal interest in the matter before the board and there are only five directors on the board. Given that quorum provisions cannot be met for a board decision to include the directors who have a material personal interest, the minister's involvement would be appropriate to make a declaration when they are satisfied that the conflict can be managed. The provision is the same as section 54 of the Infrastructure Western Australia Act 2019. That section of the IWA act is based on section 36 of the Building Queensland Act 2015 and the commonwealth's Infrastructure Australia Act 2008.

Hon Dr STEVE THOMAS: I thank the minister for that fairly comprehensive answer. I still do not like the principle; however, I am not disposed to drag it out much further. I presume that the authorisation will be a simple vote of the board to remove the CEO. I suspect that is how it will operate.

Hon STEPHEN DAWSON: Yes.

Clause put and passed.

Clauses 65 to 69 put and passed.

Clause 70: Statement of expectations —

Hon Dr STEVE THOMAS: This is all part of part 6, so there will be a bit of crossover as we go through it. We will hopefully not spend a huge amount of time on it.

The bill proposes some changes to the planning and reporting processes of government trading enterprises. None of that looks horrendous, but I just want to check a few bits and pieces. The initial change is that the annual planning process will effectively be removed and a parliamentary term planning process will be put in place. It will be called a statement period and will basically go from election to election, when the election notice is published. We are moving effectively to a parliamentary term. As a result, there will be not an annual planning document, but an annual reporting process. I guess we are shifting from having more intimate knowledge before to having more of a review process. We are shifting from having an annual strategic development plan. Are they in every establishing act or is there a bit of variation? We will move from that to a statement of expectations, which will be a four-year plan. I assume that the statement of expectations will be a far broader plan and will not necessarily go down to the detail of a year-by-year development process.

Can the minister outline what is likely to change and how the GTEs and the government will be better served by shifting to, as I read it, a four-year plan instead of an annual plan?

Hon STEPHEN DAWSON: The strategy of a GTE should not materially change from year to year. The statement of expectations will be consistent with the existing strategic development plan. An annual performance statement will replace the statement of corporate intent and include all key information currently included in the SCI along with financial statements for the budget year and forward estimates. The existing requirement to review and approve the strategic development plan every year is not consistent with the longer time frame over which strategic priorities are often progressed. That is why it was felt that a longer period—the four years that the member mentioned—is more appropriate.

Hon Dr STEVE THOMAS: In terms of strategic objectives, I do not disagree with that. One of the issues we have in politics is that too many plans are four-year electoral term plans, and one-year plans are even worse. The fact that we will have a longer term strategic plan is a good outcome. I think that is a positive. My question is very much around the detail that will be delivered. Right now, we effectively get a statement of corporate intent for the next 12 months; we get a 12-month plan. Are we still going to see a 12-month plan or, as the explanatory memorandum tends to suggest, are we going to shift to a four-year plan with a yearly report after the fact of what has been delivered? I am interested in the level of detail that will be in the four-year strategic development plan versus the report that will come in each year. If the four-year plan will be more general in nature, a government could come in with almost anything in its annual report in the second year and there would be nothing to apply to work out whether it had delivered on that strategy. I am interested in the level of detail and technicality that will be applied.

Hon STEPHEN DAWSON: As I indicated, the statement of expectations will be a term-of-government document. It will replace the current strategic development plan, which is the document that the government uses at the moment. The strategic development plan is not disclosed, and the statement of expectations will not be disclosed moving forward. As I indicated, an annual performance statement will replace the statement of corporate intent and will include all the key information that is currently included in the statement of corporate intent along with financial statements for the budget year and forward estimates. That information will still be provided. There will be a mechanism to vary the statement of expectations during a term of government if there are material changes to the information contained in that SOE, such as the strategic direction or imperative of the GTE—for example, due to a significant disruption to the industry in which the GTE operates. The terminology will change. Essentially, there will now be a four-year document and also an annual document called the annual performance statement, which will be the same as the current statement of corporate intent.

Hon Dr STEVE THOMAS: I think that is reasonable, minister. It is kind of a shame that the wider community will not perhaps see a bit more detail in advance, but I think that is a reasonable outcome. The level of detail in the actual planning process will therefore not change.

Clause put and passed.

Clauses 71 to 74 put and passed.

Clause 75: Annual performance statement for GTE —

Hon Dr STEVE THOMAS: The minister just mentioned the annual performance statement. Clause 75(3)(a) states that it must be —

... in a form acceptable to the Portfolio Minister and the Treasurer ...

There are a couple of clauses in this bill in which the form is acceptable to or approved by the portfolio minister and the GTE minister, who will generally be the Treasurer, but this paragraph specifically references the Treasurer. Is there a reason that this specifically relates to the Treasurer as opposed to what might be an alternative GTE minister?

Hon STEPHEN DAWSON: It relates to the budget paper, so it needs to be consistent with the budget papers. The Treasurer is responsible for the budget papers and the process around the budget papers. A GTE minister would not have that power.

Committee interrupted, pursuant to standing orders.

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