

GOVERNMENT TRADING ENTERPRISES BILL 2022

Second Reading

Resumed from 23 March.

HON DR STEVE THOMAS (South West — Leader of the Opposition) [8.06 pm]: I shall now endeavour to do my best to remember what the Government Trading Enterprises Bill is all about!

Hon Pierre Yang: Where's your team?

Hon Dr STEVE THOMAS: No, everybody does their bit.

The interesting part about the Government Trading Enterprises Bill is that there is a tiny little second reading speech and it is a fairly significantly sized bill. It runs into a whole pile of clauses—300-plus—and there is a fair sized explanatory memorandum as well. That indicates the complexity of the bill, basically. What is the Government Trading Enterprises Bill all about? It is ostensibly to apply more commercial rules to the range of government trading enterprises that exist within the state. There are quite a few of them. We had a debate a bit earlier about government trading enterprises. For all those who were listening carefully, we know that the government is not averse to manipulating government trading enterprises in relation to the dividends that they pay when it is convenient to the budget process—shift a lazy \$1.5 billion from one financial year to another when it is convenient to the government, hold it over, use it for things. The intent of the bill is to get the best corporate outcomes by applying rules to government trading enterprises that are much closer to the corporate rules that apply in the private sector. They are not exactly the same—they are somewhat different—but it will get closer. The question we need to face as we work through the bill, and we will get to the Committee of the Whole stage in the fullness of time, is whether the bill before the house delivers on that intent. Will the bill before the house genuinely deliver the best commercial outcomes for government trading enterprises, will it simply deliver the best outcomes for government, or will it be a bit of a mismatch of the two? Those are the things that we need to get to in detail, because the concern is that it is a sort of half-pregnant situation. Yes, it might be an improvement on the current legislation for government trading enterprises, but is this genuinely the best outcome that we could have reached? I am still unsure of the answer to be honest. The opposition does not intend to oppose the bill. With great debate, we might be convinced to support the bill, but there are some concerns about the way that the bill has been put together.

This bill has taken a long time. My memory is that discussion on this bill started when my good friend and former colleague Hon Michael Mischin was the Minister for Commerce, I think, so it goes back quite a number of years, and it might even go back a bit before that. It has been discussed for a very long time. It has taken a long time to get here and it will undoubtedly pass. The question will be the form in which it passes. The Government Trading Enterprises Bill 2022 will not initially apply to all government trading enterprises, by the way. It will apply to only some of them. It will apply to Horizon Power, Synergy and Western Power, the three electricity corporations—that is, regional and the two parts of the south west interconnected system with generation, Synergy's generation and retail, and Western Power's distribution. These days, Synergy barely makes a dollar. It is not a great profit-making enterprise, let me say. The others are not so bad. The water corporations include Bunbury Water Corporation, Busselton Water and the Water Corporation itself. If you want a money spinning behemoth, that is the Water Corporation. When we talk about \$1.5 billion profits, it is the one making most of it in dividends and tax equivalents. It does very well, thank you very much, and has done for a long period. The port authorities include the Fremantle Port Authority, Pilbara Ports Authority, Mid West Ports Authority, Kimberley Ports Authority and Southern Ports Authority. It also will include DevelopmentWA, which is the land authority. I presume that the intent is that this bill will eventually incorporate all GTEs, adding the others over time.

The minister can probably confirm, but I understand that these initial corporations were chosen because their establishing acts were closest to the intent of the Government Trading Enterprises Bill 2022. Currently, all government trading enterprises have an establishing act that sets rules and formulates how it will operate. We will get to it during the clause 1 consideration, but I am interested to see whether there will be any conflicts with the establishing acts and what will ultimately be in the Government Trading Enterprises Act. The establishing acts for GTEs are not being repealed. Effectively, the GTEs that are incorporated and captured under the GTE bill will have establishing legislation under which they will operate and GTE legislation under which they operate. The extension of that is that a GTE will have a governing minister regarding the establishing act. For Synergy, that is the Minister for Energy, and it is the Minister for Water for the Water Corporation, but they will also have a GTE minister, who will presumably be the Treasurer, or could ostensibly be the Minister for Finance, I guess. It will be a minister who also has separate oversights. We did seek to see—we will chase it up during the debate a bit more—precisely which minister becomes responsible for what and how the powers either synergise or conflict with each other because, ultimately, we need to know who is responsible for which component of the functioning of the government trading enterprises.

GTEs are a bit weird in that they effectively operate as commercial operations under a government banner. In theory, as we do in the corporate sector, boards and management should be operating for the best interests of the GTE, but what do we do if the best interests of the GTE and the best interests of the shareholder, which is the government, are not necessarily the same? If members want the classic example of that, what happens if the best interest of a GTE is to invest \$100 million in critical maintenance or equipment upgrade in a year when the government has a normal budget cycle and is desperate for cash and says to the GTE, “You will deliver a dividend of X”? Under its establishing act, that is exactly what the government through the Treasurer has the power to do. It can say, “Water Corp, we want a bit more money this year. We have decided to invest in whatever. We do not want a budget deficit. You give us \$300 million and we will have a budget surplus. We want you to deliver that money.” Right now the board takes a direction and, effectively, the GTE is limited; it cannot have an alternative. It does not really operate in the same way that a truly commercial board would operate.

It does not operate in a truly commercial environment. It has the 400-pound gorilla that is the government over its shoulder all the time. I do not know whether the bill before us, as we get into debate, will make that better. I think it will raise some questions. I do not know how we do that really. Unless we make a board truly independent, it is hard to see how we would remove that government influence on it. If a board is truly independent, ultimately, when things go wrong, who is responsible? I think we will come in a bit more detail in the fullness of time to discussions around Gold Corporation and its board and Perth Mint. That is probably a good example of it being hard to know whose best interests were served under the set of circumstances there. I think more detail on that is absolutely required. For whom is the corporation working and, ultimately, most highly accountable?

When setting up a GTE board, there are a few things we want, basically. The question is whether the principles we want to put in place will be delivered by the legislation before us. Some operating principles would be clear and un-conflicted directions and functions. Are the directions and the functions of both the board and the senior administration clear? Is it clear whose role is what and where the powers lie? That is important. To have clear functions around managerial responsibility, authority and autonomy is also important. At what level is a director general or a CEO ultimately responsible? Are they the ultimate power holder? What role does the board have in overseeing that? How autonomous is the CEO and how autonomous is the board itself? Most boards under their establishing acts will take directions and are forced to take directions from ministers. What level of autonomy is necessary? That is not to say that I think that complete autonomy would necessarily be a good outcome, but these are the things that we need to talk through and get defined as part of the debate on the legislation.

Will the government trading enterprise provide reward for achievement? Most important for a government trading enterprise is the issue of competitive neutrality in the marketplace. This reflects on why GTEs exist—why a government trading enterprise versus the private sector? Different countries work this in different ways. For example, the United States did not have a unified communication provider. Australia started with Telecom in the old days, before it became Telstra. Now it is privatised, but that is an example of when competitive neutrality did not exist but government investment was needed when market forces dictated there was a market failure in fact. Where does that happen for us currently? Obviously, it happens in the supply of both water and wastewater, and the supply of electricity. They are probably the most obvious versions of that. Some are less obvious. If we look at where the private sector would like to get involved, we would think that the Water Corporation makes so much money that it would not mind getting involved in that, but for the most part, the provision of water is problematic. There are significant subsidies involved, so the government subsidises the provision of those services. There is a water neutrality subsidy, particularly in regional areas. It is less so for energy but it exists in some places. There are some other ones. Is there truly market failure in the provision of land, for example? If there is market failure in land provision, maybe the government makes it worse, not better. There is a worthy discussion around whether competitive neutrality truly exists.

A range of reviews have occurred in this area. Probably the most recent one of substance was the service priority review of 2017. It was also a recommendation of the Langoulant review. We had legislation along this path in 2018, but it certainly started before that process. There were discussions around the unification of government trading enterprise activities long before that.

Obviously, the intent is to provide standardised legislation whereby government trading enterprises effectively operate under the same rules all the time. It is proposed to provide some form of codification of directors’ duties, much along the lines of what is seen in the private sector under the Corporations Act, whereby directors’ duties will be much more defined. My notes refer to quasi-codification. There will be a form of codification. It is meant to substantially align, but not universally align, with the Corporations Act. It is also intended to provide a mandate for governance practices. Again, that will enforce what could be argued applies in the private sector under the Corporations Act. It probably will not necessarily go all that far. Of course, there will be ministerial approval requirements, including community service obligations. They will provide statements of expectations and annual performance statements, and ministers will oversee significant asset disposal and significant transactions. Under the legislation, ministers, through the Treasurer, will also continue to define and determine dividends.

That is kind of the intent of the legislation before us. In my view, it is incumbent on the government to demonstrate the improvements that are proposed in the legislation. I would like to see the government define how this bill, particularly on top of the establishing acts that currently exist, will improve accountability of trading enterprises in the state of Western Australia. During my consultations with various groups—when we get to the committee stage, I will ask the minister about the government’s consultations—I got the general feeling that there is support across the board for the intent of the Government Trading Enterprises Bill 2022 and that government trading enterprises should operate far more like private sector corporations do under the Corporations (Western Australia) Act 1990. Again, I probably consulted more private sector people than the government did, but there is a strong feeling that if the intent of the bill is to get as close as possible to the roles and procedures, particularly around boards, it should be supported, and that is the position that I have taken.

I would like to go through a range of issues; largely, we will go through them during the committee stage of the bill. In particular, I want to look at the various roles and authorities of the portfolio minister and the government trading enterprise minister and the level of dual accountability. For example, I understand that both ministers need to approve the CEO. When we get to the committee stage, we will go through whether that is an appropriate outcome. One of the principal issues that I think we will spend a bit of time on when we get into the committee stage is the make-up of the boards that oversee GTEs. The first question is whether it is appropriate for public servants, who currently fulfil roles on GTE boards, continue to do so. It is a question that is worth looking into. I understand that in many cases, public servants serve on GTE boards. The question is whether there is a vested interest within the GTE board along those lines. A comparative situation is the role of CEOs in local governments. In many cases, CEOs of local governments take a position of authority beyond what the people who formed the local government legislation intended them to take. They are meant to be servants and employees of the council and the council was designed to oversee—not necessarily to directly line manage, but to demand, review and give direction to, and many CEOs at the local government level become very good at deflecting and getting out of the oversight of council. If we are not careful, a similar thing could exist with GTEs if we start to have a lot of public servants serving on boards. Obviously, they would bring a set of skills with them; some of that might be important and it might be a justification to have them on the boards, but it is absolutely worth exploring to work out whether that is precisely the best outcome for the community.

Some of the other issues that I want to get to in the fullness of time include board tenure length under the bill versus the establishing legislation. I will also be debating whether board members with a vested interest will be able to vote and under what circumstances. This issue is most obviously managed at a local government level, but not so much at the state level. It is important that we work that out. The other one is whether the CEO is designated as a board member and whether that means they are effectively a board member with a vested interest. Can they manage both as a board member and a CEO? I would have thought there would be a degree of conflict there, so I think the circumstances in which that situation could occur are absolutely important to understand.

There are some other issues that I want to get to in the fullness of time around the degree of Treasury examination. As we get further on I will also be interested in exploring disposal processes, and around clause 100 looking at the harmonisation of government trading enterprise assets. There is a range of issues I would like to examine in detail, but I will be interested to hear, in the minister’s reply to the second reading debate, how we will define the role of the GTEs compared with the role of a board under the Corporations Act. How do the powers compare? What is the intent of the government and the responsibility of board members of a GTE? How do they compare with the responsibilities of a board under the Corporations Act? Was simply applying the Corporations Act an option that was looked at—applying legislation equivalent with the Corporations Act?

In the consultation process it was quite common to hear the question, “Why don’t you simply apply the same set of rules that the Corporations Act encompasses, where you hold board members to account?” I agree that it is a slightly different set of circumstances, because the Corporations Act requires board members to do the best by the shareholders of the company. In this case, the shareholder is the government. Is the government representative of the people? Is the requirement as it applies to government to mean that it is in the best interests of the community, or does it mean that it is in the interests of the actual shareholder, which is the government? The two might not necessarily be the same. At this stage the government effectively determines it, because we have ministerial oversight. Under the current circumstances it is the enabling act minister and under the new circumstances it will be two ministers. How we manage that conflict is highly important.

As we go through Committee of the Whole we will ask, firstly, whether there is conflict with the establishing legislation. I actually could not find any, and I looked. I will be asking the government to give a guarantee or statement in relation to that. Does it meet the objectives it is required to meet? What are the objectives? Effectively, they are strong control over GTEs with a representative board that is responsive to the equivalent of shareholders, whether that is, by definition, government or community. Another objective is the standardisation of processes. I would like to think that there would also be an enhancement of practices—improved practices, rather than practices continuing at the same level. The question that really needs to be asked is about the level of independence of GTEs

from government. Does the Government Trading Enterprises Bill 2022 mean that GTEs are more, less or equally independent of government? I do not suppose they can ever be entirely independent of government; the accountability mechanism is particularly important. A mechanism that allows for accountability is needed, and right now, that is through the minister. If something goes wrong with energy, I get to harangue the Minister for Energy, if something goes wrong with emergency services, I get to harangue the minister currently managing this bill. Relying on holding a CEO or board to account is an immensely more difficult process. I am not suggesting in the slightest that we should potentially take that power away, but I think the interaction of that power is particularly important. How do we manage the risk of undue ministerial and compliance intrusion? In the same way that we want the minister to be responsible and, ultimately, for us be able to use an accountability mechanism, how do we ensure with this legislation that ministers cannot interfere, particularly in a way that is difficult for the community or Parliament to oversee?

At the moment, if the minister is giving a direction to a department, we want a direction tabled so that the Parliament is aware that a department or GTE has been instructed by a minister, and therefore the government, to perform a certain function. It is a bit like the announcement of dividends. That happens in a relatively public manner. It is published in the budget papers and in the annual report so that we are aware of it. We need to make sure that other things that occur with instruction to government trading enterprises are not done in a way that lacks that level of accountability. In the same way that we do not want an unaccountable minister, there is a risk of the under involvement of a minister and of undue interference as well. I think we need to be very careful of that.

When we get into later clauses of the bill, we need to look at whether there is an absence of liability on the taking of advice. Will suitably qualified directors take roles if there is an issue around the level of control that they will have over the government trading enterprise that they will be on the board of? There could be highly regulated practices and exactly how things operate could be prescribed. Will appointees to the board have the level of control that they would have had in the private sector? If that is the case—if it is so restrictive that board members cannot take an active role in the debate and cannot change the direction that a government trading enterprises going in—will the government on behalf of GTEs be able to attract the standard of board appointment that it is really looking for?

I guess that applies across the board. We think we are a big state with a big population, but not really. There are generally only a certain number of people. It is interesting that people with corporate board experience often struggle to get appointed to government boards. It is not uncommon to see people who are most experienced at —

Hon Tjorn Sibma: Except at the Perth Mint.

Hon Dr STEVE THOMAS: Sorry?

Hon Tjorn Sibma: Except at the Perth Mint.

Hon Dr STEVE THOMAS: There are exceptions, yes.

For the most part, we do not tend to see that crossover. I find that interesting in itself. There are probably what I would consider to be a number of relatively political appointments to boards. I do not necessarily resolve from that; I think it happens a bit both ways. It is not universal. There is usually a valid reason why political people, particularly at the state level, are appointed to boards.

I suspect that the federal sphere is a little more, dare I say it, loose with its appointments process. Hopefully, I am not offending anyone in the federal sphere on either side. I think they are a little looser with the appointments they make and how political they are, whereas at a state level, we are probably much less so. Maybe it happens on the Labor side as well when we have these conversations around appointments. In the Liberal Party, there are always complaints that we do not clean out all the Labor people and appoint our own people, but tend to try to appoint on merit. Perhaps the same complaints exist in the Labor Party, whereby it is not cleaning out all the old Liberal people and putting good Labor people in instead. Perhaps there is a bit less. I am sure it occurs. It is probably fairly easy —

Hon Stephen Dawson: There's nothing like the AAT or any of that kind of stuff.

Hon Dr STEVE THOMAS: I will not name particular federal groups, but I agree—at a state level, it does not tend to be that way. There is probably a little nepotism involved on occasions. It is very hard to exclude from the political system. We always said about Sir Joh Bjelke-Petersen that he was not corrupt but he was highly nepotistic.

Hon Stephen Dawson: I wouldn't use the word "nepotistic". But, certainly, people in this place are involved in the cut and thrust of debate, but if you respect someone on the other side who made a good contribution and who has been a long-term servant of the state, who have been ministers or whatever, that experience you bring with you is good and worthwhile and quite often that can add to the value of a board. That happens on both sides, with previous ministers of both persuasions currently on boards that we have appointed, and you have done the same previously.

Hon Dr STEVE THOMAS: That is probably right. Probably because we are a smaller group at a state level, we are less likely to be quite so involved in that. I have said some nice things about ministers here tonight, only to cruel their preselection chances really!

Hon Tjorn Sibma: And dobbing yourself in at the same time.

Hon Dr STEVE THOMAS: We will see what happens. I think that is an issue.

One of the government trading enterprises that is not on the list of the first tranche but is probably a good example of how we need to be careful is Gold Corporation, which obviously operates Perth Mint. There are probably some salutary lessons for us as we go along. As a government trading enterprise, not in the first tranche, it would be shifted under the legislation before the house, but it is obviously one that has had a few issues in recent months. To be honest, I am not interested in dragging out much detail. I think the substitution component that people talk about in Gold Corporation is not even the primary issue that needs to be dealt with. I suspect that the Australian Transaction Reports and Analysis Centre investigation is. I think the report from AUSTRAC was originally due this month. Whether it comes down this month remains to be seen. It is a useful tool to use for the examination purposes of how a government trading enterprise functions and potentially how we need to make that better.

It has to be said that the issues around the AUSTRAC investigation go back a fair way before the current government came to power. As much as it would be fun to blame the McGowan government for all the issues that currently exist in the Perth Mint, as it is managed by Gold Corporation, I suspect the ultimate report will demonstrate that some of the issues started before that. The question is: how responsible is the board of Gold Corporation versus how responsible is the government in relation to the enforcement of the requirements that do not appear to be enforced in a particularly good way? It was a fairly good example of how not to do it in relation to the questions and answers that were asked around Gold Corporation. We had a Premier who was the Treasurer who was originally the enabling minister—the minister with Gold Corporation in his portfolio—except that the Premier, who became the Treasurer at the last election, handed that process to the poor old Minister for Energy; Mines and Petroleum; Corrective Services, the minister he gives all the dirty jobs to. I thought that, in hindsight, that was a lovely hospital pass that the minister probably could have lived without, but anyway.

Hon Darren West: He wouldn't give it to someone who wasn't capable in that portfolio. Have a look around you!

Hon Dr STEVE THOMAS: The member keeps saying that. When someone get all the dirty jobs, the boss always says "I give you the dirty jobs because you're good at the dirty jobs", but sometimes they have to look at it and think maybe the boss just likes giving them the dirty jobs. It is picked up. Ultimately, for two years, on an issue that probably stretches back perhaps a decade, perhaps longer—who knows—in the identification of who is using Gold Corporation, the question mark now, though, is: How does the government improve that? Ultimately, right now, who is responsible for making that better? I thought the separation of the board and the minister was particularly clumsy in Gold Corporation's case. We had the chairman of the board, who did not want to make comment, who eventually had to make comment; we had a Premier who was ducking and weaving for a long time, who ultimately hand passed to the minister. There was not a good, obvious and usable chain of command in those circumstances. I think it looked bad and it made the situation worse, to be honest. It potentially made it look like there was much more untoward activity than there might have been. There might have been significant untoward activity; the report will come down in the fullness of time and we will hopefully find out exactly what it looks like. But it made it look worse, because the relationship between board and ministers—plural—looked really clumsy. It looked as though there was potentially a great significant issue there, and the media obviously picked that up and ran with it. Part of the reason the media ran with it is there was not a genuinely clear line of authority or responsibility.

All the things that the government says about the intent of the bill before the house—to try to improve that and make that look better—was absolutely missing in the Gold Corporation experience. I think the report will be interesting to see. I thought the debate we had in this house on Gold Corp was particularly interesting, with the Leader of the House saying, "Of course, I can't guarantee that there has been no money laundering going on. No-one is allowed to know." I actually think the minister got that wrong. I think Gold Corporation is able to inform the government if potentially illegal and certainly reportable activity has occurred that has not been reported. It may not be able to identify a specific case because it is under investigation by the Australian Transaction Reports and Analysis Centre, but I think the government is still obfuscating on this. I think the government is able to inform the community and the house of the generalities of what is going on, and I think it is not doing that.

I was intrigued by the answers to the questions I asked about when the minister was first briefed on this. The minister was briefed months before this thing hit the media. I think that the minister was well aware two or three months before this hit the press, because AUSTRAC made a public statement late last year. I do not remember the exact dates; I probably should have them with me, but I do not. The minister was briefed months before. The government's response should have been ready. The organisation should have been in place. If there was a good line of authority and a good line of responsibility, one would have thought that the government would have been ready to go on this. It obviously was not. A couple of months earlier, the minister was briefed that there was a problem here that AUSTRAC was investigating; a couple of months later, AUSTRAC announced it, and it looked like a shemuzzle. It looked embarrassing. I would have thought that if the government had a good administration in place and a good model to run this thing, that would not have been the case, but in this case it certainly was. I suspect we will find that

the issue will be more about poor administrative practice than anything else. Hopefully, it is not about the use of the Gold Corporation to launder money for highly questionable things. I would hate to think that terrorist organisations or organised crime were using it for money laundering. I am not sure who else would use it for money laundering other than those types of serious organisations. This will be the issue. The line of administration and responsibility then becomes particularly important. I think the performance was remarkably average and certainly needs to be lifted. The question that we will need to get to is whether the bill before the house will actually deliver improved accountability and improved management. It has the ability to, but it is not guaranteed. We need some reassurance because it is hard to see how what has been proposed will absolutely deliver the kinds of outcomes that corporate Australia would expect. That is not to say that corporate Australia has not had its own hiccups either, because it certainly has. These things do occur.

I am getting close to the end of my speech, because I think it is more important to get to the committee stage of the bill and look at it. The government trading enterprises that will initially be included in the process include the electricity corporations. They are particularly important, not so much because they are big money earners, although Western Power is not a bad contributor to the state government's coffers; it makes a reasonable contribution. Western Power is a bit funny because it is basically poles and wires, but it has an access arrangement that grants it significant payments from everybody else. Western Power makes its money that way. Both Synergy and Western Power will play a significant role going forward. We have just heard in the budget speech about the energy transition going forward. Ostensibly, the government was originally going to put in \$3.8 billion but right now it is going to put in, let us say, \$3 billion worth of investment into Synergy's renewable process. How will the Synergy board operate under the transition process proposed by the government?

This becomes one of those questions. In a corporate sense, the board would normally ask what is in the best interests of the corporation. Is that the transition program that has been presented by the government? I think the board would probably say, "No, you're asking us to go down a path but we do not know where the end of the path is. We do not know most of the path. You've given us only the first three steps and you have basically funded us for only the first one." A board that had true independence would be looking at this and saying, "There's an issue here", but the Synergy board cannot turn around and tell the minister no. Synergy cannot do that under the current legislation, and I am pretty certain it cannot do it under the proposed legislation. The board is a little bit stuck. Synergy is another good example of a board that has a political overlay—this intent of government policy—that is not necessarily in the best interests of the shareholders of the board if the shareholders of the board are the people rather than the party. I am really interested to know how that will pan out for Synergy. If Synergy says this is not the best outcome for the people of Western Australia, can Synergy say no? How will that be managed? What will the process for that be? What is the accountability and what is the line management? I think that would be a really interesting debate.

Ultimately, that is probably a better example than Gold Corporation, which is not in this first tranche of corporations coming in. I think the Water Corporation is a bit simpler in that it is a pretty good money producer.

Hon Darren West interjected.

Hon Dr STEVE THOMAS: That is a good question.

Hon Darren West: It has liquidity!

Hon Dr STEVE THOMAS: It has good liquidity. It is overcharging on wastewater. Is that an imperative? We would probably argue that both the government and the Water Corporation would say it is in both their interests for Water Corporation to continue to overcharge on wastewater. That is not new, by the way. It is probably an inherited issue as well.

Hon Darren West: It was an attempted pun!

Hon Dr STEVE THOMAS: High liquidity—sorry! When the member makes a joke that is not very funny, he is supposed to wave so we will know it is a joke.

Hon Darren West: We are not all in the same league.

Hon Tjorn Sibma: We are all a bit flat tonight, aren't we?

Hon Dr STEVE THOMAS: It has been a long day.

The Water Corporation is a pretty good example.

The port authorities are also highly political. Let us say that Water Corporation is really a service provider. It is pretty straightforward. Electricity has a political overview. The ports have a political overview at the moment. The true independence of Fremantle Ports or the Southern Ports Authority might, for example, have a different outcome than the Westport proposal. With Westport, there is presentation to a board of a proposal to deliver a port that is largely unfunded. There is a few hundred million dollars in the Westport special purpose account, but that is a multibillion dollar project that also requires multibillion dollar road and train changes et cetera. It will be

highly expensive. If a truly independent board was asked whether this was the best outcome for the people of Western Australia and its organisation, it would be really interesting to get the result, particularly if it was dominated by Fremantle Ports in relation to the Southern Ports Authority when that proposal was put forward. The response would be really interesting. What does the board think is the best outcome for its community? Putting aside the intent of the bill for standardised board and reporting practices, and all those good things we will debate in the fullness of time in the Committee of the Whole House stage, the overall decision-making process about what is in the best interests of the board and the community will be a really interesting point to get to. We probably will not solve those issues even with the bill tonight. We will probably debate it and let it go through. We will not oppose it. We will just raise questions about how it might be better.

When we get to it, I will look at whether public service representation on boards is appropriate. If there is one place we could improve the legislation, it might be there. The government might be able to justify why the proposal should be left as it currently is, but let us get into that debate in a little more detail. That is probably a good idea as well.

That has probably covered most of those key areas. I look forward over the next few days to working through the committee stage of the bill, and we will see whether we can get through it in a timely fashion, given it is a fairly busy week with other things. In summary, the opposition is not opposed to the bill. We are not convinced that it really makes things a lot better, but we are open to being convinced that that is the case. I look forward to a fairly sensible debate about the current standing of the bill, the interactions with enabling acts and whether this will deliver all those things the second reading speech says it aims to deliver.

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Emergency Services) [8.59 pm] — in reply: At the outset, I thank Hon Dr Steve Thomas, the Leader of the Opposition, for his contribution and for indicating that, at the very least, the opposition will not oppose the Government Trading Enterprises Bill 2022. He made quite a comprehensive contribution. I will not try to answer every question in my response, because, obviously, we will go into committee and we will be able to delve into those issues at the appropriate junctures.

As members know, this legislation seeks to address concerns with GTE governance and will implement recommendations of the special inquiry into government programs and projects and the service priority review. The bill will standardise and enhance the governance of GTEs and specifically address the purpose and governance of GTEs, including the duties, performance, remuneration and liability of GTE boards of directors and CEOs. In terms of strategic planning by GTEs, current documents are to be replaced by the disclosure of financial statements in budget papers, known as annual performance statements in the bill, and four-year statements of expectations aligned to the term of government. This will increase transparency in line with other government agencies, align GTE strategic planning with government priorities and allow ministers to express expectations with less need for ministerial directions. The bill also seeks to deal with the issue of accountability and control of GTEs. There will be an increased requirement for consultation with, and provision of information to, ministers, and the introduction of policy orders, which essentially will be equivalent to what we know as Premier's circulars for departments. There will be a requirement for government approval of significant projects. GTE's will need to seek the approval of the portfolio minister and the Treasurer to undertake significant transactions or initiatives, or form or acquire a subsidiary. With the financial management of GTEs, there will be new requirements to operate via the public bank account and to standardise powers and controls over investment and borrowing risk management and dividends. The intention is that this piece of legislation will hopefully pass here this week. If it does, we will be in a position to have the new legislation commence from 1 July 2023—the next financial year—to align with the changes to the annual reporting and budgeting cycle.

As has been indicated, 12 GTEs will be captured by the bill, being Synergy, Horizon Power and Western Power; the Fremantle Port Authority and the Kimberley, Mid West, Pilbara and Southern Ports Authorities; the Water Corporation, Bunbury Water Corporation or Aqwest, and Busselton Water; and, finally, DevelopmentWA. The legislation outlines that the purpose of GTEs is to advance the public benefit through the performance of their functions. The GTE bill introduces the concept of public benefit to reflect what would be shareholders' interests in the absence of a GTE having a shareholder. The bill will standardise the obligation to act in line with prudent commercial principles to maintain the GTEs' focus on efficiencies in service delivery. The bill outlines that the boards should consider factors including, but not limited to, profit, the delivery of government policy objectives and social licence to operate when determining how a GTE undertakes its functions. The legislation will standardise the obligation to act in line with prudent commercial principles to maintain a GTE's service delivery in line with original corporatisation objectives. Further guidance on acting commercially in a government-ownership context will be included in guidance notes, noting the importance of balancing short and long-term financial, social and environmental impacts in business decisions.

The experience and expertise of GTE board directors will enable them to balance the various initiatives and projects that a GTE can undertake to carry out its functions. The GTE bill will allow the board to balance any competing interests. If directors cannot reconcile those interests, there will be the ability for the minister to direct the board. The current enabling act for GTEs requires the Treasurer's concurrence to be obtained by a minister for certain

matters. Where a requirement for the Treasurer's concurrence exists in current establishing acts, a minister cannot provide their approval if the Treasurer does not concur. This outcome will be materially unaltered in the bill. It is entirely appropriate for the Treasurer to have this power, particularly when there will be significant impacts on the state's finances or these may result. In practice, in circumstances in which the Treasurer is not willing to provide their concurrence, negotiation takes place to try to arrive at an outcome with which the Treasurer is prepared to concur. This practice will be materially unchanged with the passage of the GTE reform bill. The Treasurer's powers are clearly defined and limited within the bill.

In terms of the bill reining in government trading enterprise independence, we do not agree that the bill will significantly constrain the ability for GTEs to determine how they undertake their operations. Under their establishing legislation, GTEs are already obligated to do much of what will be standardised by the bill. The GTE model is not a no-touch approach to ownership. The GTE bill clarifies the commercial freedoms of GTEs and embeds the role of GTEs in advancing public benefit while undertaking their functions.

I will briefly touch on the role of the GTE minister. The GTE minister will be the minister to whom the administration of the GTE act is assigned. It is not a new ministerial portfolio. There will not be a minister for GTEs. It is envisaged it will be either the Premier or the Treasurer. The GTE minister will issue policy orders for GTEs equivalent to Premier's circulars for the departments. There is flexibility to separate the role of the Treasurer in relation to financial matters from that of the GTE minister in setting policies for GTEs. The GTE bill will give the minister and the Treasurer earlier visibility of activities that may pose a significant risk to government. Additional approvals are not expected to be burdensome, but GTEs will be required to act as part of government. The minister will have discretion, with the approval of the Treasurer, to exclude certain transactions and initiatives from the approvals process. Treasury and policy agencies can advise the appropriateness of excluding certain initiatives or transactions based on risk.

Hon Dr Steve Thomas had a question about the Corporations Act. I am advised that the GTE bill drafting uses the Corporations Act as a foundation with variation from the Corporations Act reflecting the unique accountability and transparency mechanism appropriate for entities that have government as the sole owner.

The honourable member asked a number of questions about consultation on the bill. We are getting that information and we will provide it during Committee of the Whole. Certainly, the GTEs have been consulted over the past few years. The member made the point that this piece of work commenced a while ago so they have been engaged in the process. However, there are others who have been consulted so I will have that for the member later.

The honourable member had questions about the level of independence and government staff members or public sector workers being on the board. I think we will tackle that in committee. I will leave my commentary there. The honourable member touched on Gold Corporation and then quite rightly pointed out that Gold Corp will not be captured by the bill before us. It is not one of the 12 GTEs.

Hon Dr Steve Thomas: It makes a good example of what not to do!

Hon STEPHEN DAWSON: Certainly, we have 12 in this tranche. The intention is to have a second tranche of legislation because it is quite a complex piece of legislation. We will deal with the first 12 and the intention is to come back at a later stage to deal with those other GTEs. I am happy to talk about Synergy or the other GTEs but we will park Gold Corp, noting, of course, the member made a contribution and it is on the record.

With that, I will leave my contribution there. I commend the bill to the house and look forward to having further discussions during the Committee of the Whole stage.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Dr Sally Talbot) in the chair; Hon Stephen Dawson (Minister for Emergency Services) in charge of the bill.

Clause 1: Short title —

Hon Dr STEVE THOMAS: I do not plan to spend a huge amount of time on clause 1 because I think we can deal with most substantive issues as we go through the bill, and that might facilitate the process. Hopefully, we will get close to finishing clause 1 tonight and move on from there. The minister mentioned consultation. I have to assume that every corporation on the list of those to be included was consulted significantly. Rather than ask the level of consultation with those, I am more interested in external consultation outside of that. I do not know how comprehensive a list the minister is able to so supply, but I would be interested to know where else consultation occurred.

Hon STEPHEN DAWSON: I am told that, as has previously been suggested, the various government trading enterprises were consulted broadly as the bill was drafted and worked on. On external organisations consulted, I am told that the Chamber of Minerals and Energy was briefed as well as the Office of the Auditor General, the

Public Sector Commission and the Salaries and Allowances Tribunal. They were the external organisations consulted other than GTEs and the general consultation across government.

Hon Dr STEVE THOMAS: Is the minister able to give an indication of the input from those organisations? I am particularly interested in the CME and SAT—the CME more from a philosophical viewpoint and the SAT from a more technical viewpoint. I imagine all submissions are probably confidential, but is there information the minister could give us on those four groups, particularly those two? Is there anything from all four groups, perhaps? What is available for us to see what they thought?

Hon STEPHEN DAWSON: For those two groups in particular, the CME was briefed on the legislation some time ago. No formal submission was received from the CME. The SAT was consulted on its role in the GTE bill, particularly on director remuneration, but, again, there was no submission or written document.

Hon Dr STEVE THOMAS: I raised, and the minister responded in his second reading reply, that changes in this bill were partly modelled on the Corporations Act, and the government is trying to get it as uniform as possible. Does the minister have a list of variations where there are differences in the Corporations Act and the responsibilities under the Government Trading Enterprises Bill?

Hon STEPHEN DAWSON: I do not have a list, but I am told that the changes that were made essentially modernise what was in the establishing acts of the various organisations and acts over the years. I have the list somewhere; it is from 1999 to 2005 or whenever. What was in the existing acts has now been updated to essentially reflect what is currently in the Corporations Act. It modernises the various legislation that existed prior to this. I do not have a list, but I am told that it is modernising and also based on the Corporations Act.

Hon Dr STEVE THOMAS: I suspect this might be difficult to come up with. If, in the interim before we finish the bill, the minister happens to have that sort of information, that would be useful. The minister is saying that it is essentially the same, but would indicate that there are some variations between them. I imagine the variations exist because we are dealing with a government entity as opposed to a purely corporate entity?

Hon Stephen Dawson: Yes. They have very different stakeholders and shareholders. In this case, it is the government. For a business outside it would be shareholders, which would be very different.

Hon Dr STEVE THOMAS: We could argue that taxpayers are shareholders, but in effect, it is the government.

Hon Stephen Dawson: The member is right, but it is all through one. The taxpayers' share is owned by one, the government, whereas for an external corporation it may well be millions of shareholders. It is a very different structure.

Hon Dr STEVE THOMAS: The point is still the same. There are probably valid reasons why there would be some variations between the rules under the Corporations Act and the GTE bill, both the enabling legislation that is being incorporated and updated into the GTE bill. It may not be possible for the minister to say so, but perhaps he could give an indication that if the department, for example, is able to provide some information in the fullness of time, that would be sufficient for comparison.

Hon STEPHEN DAWSON: Although a list does not exist, I am happy to undertake that we can, at least for tomorrow's debate, provide the member with some examples of how the changes align with the Corporations Act. We will provide that. It will not be an extensive or exhaustive list, which would probably take some time because the list does not exist, but we can certainly provide the member with some examples of how the changes before us align with the Corporations Act.

Hon Dr STEVE THOMAS: I thank the minister. That would be great. In an ideal world we would push a button and print off a report. One day the machines will make it up for us and we will just sit here and watch.

Hon Stephen Dawson: I might use ChatGPT overnight to see what we can do.

Hon Dr STEVE THOMAS: I already struggle to use all the bits on my iPhone before we add any of that stuff in! One day the machines will rise up, but hopefully it will not be when I am here.

Let us just work through some of these clause 1 questions. How dividends are established will be of interest when we get into the debate on that. Can the minister give us a quick rundown on how dividends are determined and applied at this point? We will come after that to what changes might occur in the bill before us? What is the current process in a government trading enterprise for government to determine the dividend that should be delivered and what role does the GTE have in determining what a dividend should be?

Hon STEPHEN DAWSON: There will not be too many changes to what exists, honourable member, but certainly at the moment the GTE board makes a recommendation to the minister and the minister can accept or reject that recommendation. Under part 8 of the legislation before us will be an ability to set a dividend formula. The member may ask about that a while later when we get to part 8. In the bill we make it clear that it can be required or requested that a special dividend be paid and an example of when that might happen is if a sale is made, such as a sale of a part of the agency, infrastructure or whatever.

Hon Dr Steve Thomas: I do not mind a bit of privatisation myself.

Hon STEPHEN DAWSON: That is not what I am suggesting. We have talked about partial commercialisation in this place previously.

Hon Dr Steve Thomas: Wind farms, for example. You might sell some wind farms.

Hon STEPHEN DAWSON: In the case of such a thing, we can require that special dividend be handed over essentially immediately.

Hon Dr STEVE THOMAS: In his reply speech the minister suggested that it is appropriate that the Treasurer be the GTE minister. Are there circumstances in which an alternative minister might be the GTE minister, as opposed to the Treasurer, and in what circumstances?

Hon STEPHEN DAWSON: As with any piece of legislation, it is the Premier's gift as to which minister is made responsible for a piece of legislation. It could conceivably in the future be the minister for blah who is the GTE minister. It does not have to be the Treasurer.

For example, in relation to the Future Health Research and Innovation Fund, I think the act specifically states the Minister for Health. However, a decision was made that the Minister for Medical Research has the responsibility for that act.

Hon Dr Steve Thomas: Is that you?

Hon STEPHEN DAWSON: Yes. At the beginning of every term a list is provided in the *Government Gazette* to show which minister holds responsibility for which piece of legislation and so it is conceivable that it is somebody else. At this stage though the intention is that it be the Treasurer.

Hon Dr STEVE THOMAS: I think I said in my second reading contribution that I would have assumed it would be the Treasurer or perhaps the Minister for Finance. It is hard to see a circumstance in which the government would not put one of its two economic ministers in that role.

Hon Stephen Dawson: It is the Treasurer. It could be the Minister for Finance. Conceivably in the future we could have an assistant minister for something, so an assistant minister for finance or minister assisting the minister for and it could conceivably be that person, but at this stage it is the Treasurer.

Hon Dr STEVE THOMAS: That is amusing. Federally, they have parliamentary secretaries, like we do here, and they have all become assistant ministers now. I do not think their role has changed one iota, but they get to call themselves "the honourable". I remain unconvinced of whether that is a good move theoretically.

Hon Stephen Dawson: I am not necessarily talking about parliamentary secretaries. Both administrations have had the minister assisting the minister for blah—so, the minister assisting the Minister for Planning with road safety or whatever. They would still be a minister.

Hon Dr STEVE THOMAS: It would still be a full ministerial role.

Hon Stephen Dawson: Yes, rather than a parliamentary secretary.

Hon Dr STEVE THOMAS: I guess that would make sense. It would make sense to me that it would be the Treasurer or the Minister for Finance. I imagine that it would generally be the Treasurer, but I understand why there might be some variation. I was quite interested to see the transfer of the Gold Corporation to the Minister for Mines and Petroleum, for example. I thought that was interesting.

The minister mentioned in his reply to the second reading debate that the Treasurer's refusal will be a defined action. Before I ask the substantive question, can the minister define what a Treasurer's refusal will be and under what circumstances might we see one?

Hon STEPHEN DAWSON: Under this bill, in practice, there will be no change to what we have currently. At the moment, the Treasurer can decide not to accept or give concurrence to a decision, but I said earlier that the current enabling acts for GTEs require the Treasurer's concurrence to be obtained by a minister for certain matters. When a requirement for the Treasurer's concurrence exists in current establishing acts, a minister cannot provide their approval if the Treasurer does not concur, and this outcome will be materially unaltered by this bill. It is entirely appropriate for the Treasurer to have this power, particularly when there are significant impacts on the state's finances or these may result. In practice, in circumstances in which the Treasurer is not willing to provide their concurrence, negotiation then takes place to try to arrive at an outcome with which the Treasurer is prepared to concur. Again, this practice will be materially unchanged with the passage of the GTE reform bill.

Hon Dr STEVE THOMAS: Lots of legislation deals with potential conflict between a GTE minister and a portfolio minister; it is like a ministerial disagreement. I assume that, ultimately, these decisions go to cabinet for debate. I cannot imagine that there is not a natural process for that sort of decision-making. I do not know whether it is written

into the bill, but it would be standard procedure. If it is not in the bill, should it be in the bill? Of course, it requires cabinet to stand up and be counted, but that is not always the case. We have become much more presidential across the spectrum of government. It requires a robust debate of cabinet and people to form a cabinet decision. I cannot imagine that is not the case in these circumstances, but if it is not, perhaps the minister can tell us why.

Hon STEPHEN DAWSON: It is obviously not in the legislation before us, honourable member; indeed, I am told that to the best of our knowledge, it does not appear in other legislation. In the ordinary course of events, when there is a divergence of views between two ministers with responsibility for an area, the decision would be elevated to cabinet. It happens, and it has happened. During previous roles that I have had, if there was a difference of opinion between two ministers and concurrence was not achieved, it was elevated. That is the proposal. We do not believe that it is needed. It is a convention of government that is widely recognised and understood.

Hon Dr STEVE THOMAS: That is almost a challenge; I will have to find the legislation that I remember it being in. I have obviously been too busy today to find it and pull it out. I will have a crack at some point to see whether I can find it. Certainly, whether it has been in practice or legislated, I suspect that the same process is in train, effectively. At some point when I have time and I am not busy doing legislation, I will have a crack to see whether I can find the bits of legislation I remember it being in.

One of the other things that the minister said in his second reading response was that the bill clarifies “commercial interests”. I wrote that down in inverted commas quite specifically because I am interested to see exactly how the bill clarifies commercial interests and whether the minister can provide a definition of “commercial interests”. One of the key points of the bill is: how do we define commercial interests versus government interests as part of the process? The first step is defining the two. Is there a specific definition?

Hon STEPHEN DAWSON: I think the honourable member misheard me. What I did say was that the bill standardises the obligation to act in line with prudent commercial principles to maintain a GTE’s focus on efficiencies and service delivery. I also said that the GTE bill allows boards to balance competing interests. When directors cannot reconcile those interests, the minister will have the ability to direct the board. The third thing I said—it might be this one—was that the GTE model is not a no-touch approach to ownership. The GTE bill clarifies the commercial freedoms of a GTE while embedding its role in advancing public benefit while undertaking its functions. Upon reflection, I think it is probably the last one that the member misheard.

Hon Dr Steve Thomas: I will check *Hansard* tomorrow to see whether I can find it.

Hon STEPHEN DAWSON: We do not believe I said “commercial interests” at any other stage.

Hon Dr STEVE THOMAS: I thank the minister. I will have a look tomorrow and see whether I can find the bit that triggered me. It is just that I wrote it down as a quote. If it was the last one, we are clarifying “commercial freedoms”. I will be interested to see whether there is a definition of that because, again, that comes back to the role of the freedom of government from the government policy of commercial decision-making, and whether that is defined would, in itself, be an interesting thing. Is there a definition or is it more of a statement of policy intent?

Hon STEPHEN DAWSON: Clause 10 talks about the government trading enterprise being able to act at its discretion. It states —

- (1) The fact that a GTE has a function given to it by its Establishing Act or any other written law does not impose a duty on it to do any particular thing.
- (2) A GTE has a discretion as to how and when it performs its functions, subject to —
 - (a) this Act; and
 - (b) the GTE’s Establishing Act; and
 - (c) any direction given to the GTE under this Act or the GTE’s Establishing Act.

We do not have a definition of “commercial freedoms”, but I understand that there is a definition in the commonwealth legislation.

Hon Dr Steve Thomas: The Corporations Act.

Hon STEPHEN DAWSON: Yes. We do not have it in ours, but is around clause 10; that is what is meant—that GTEs are able to make decisions of a commercial nature.

Hon Dr STEVE THOMAS: That probably runs itself in. It is interesting that the minister phrases it that way, because a few things are probably more defined in the Corporations Act, but I understand that the intent of this legislation is to provide some corporate freedom without necessarily providing too much. There seems to be a focus in the Government Trading Enterprises Bill 2022 on self-assessment and regulation, more so than prescribing functions and duties as such. I think that is the case; I presume that is the government’s intent. The minister might be able to say whether it is. Is it designed to give that freedom, and how does the minister see the balance of corporate freedom

with the accountability process? That will lead to my next question—I am coming to the end of my questions on clause 1—in relation to ministerial oversight, the level of ministerial oversight, and the ability of ministers to question boards. That will probably be where I finish my questions on clause 1 and move on to other clauses.

Hon STEPHEN DAWSON: I guess the legislation before us seeks to balance corporate freedom with the requirements of the shareholder—namely, government. Part of the role of the board of the GTE is that boards can exercise discretion based on their expertise. If a board has good experience, it can exercise discretion to enable the best outcome, whether it is profit or, indeed, service provision or otherwise.

Hon Dr STEVE THOMAS: It is a bit loose but I guess it has to be a bit loose. When we get into the clauses that make provision for the appointment of board members we will have a bit more of a discussion about the qualifications and the requirements of that. I do not necessarily think we need to do that at clause 1.

I think this is my last line of questioning on clause 1 because there is plenty of scope throughout the bill to talk about things that I am interested in talking about.

I am very interested in the accountability process and ministerial oversight. I will give a good example. Most ministers who are portfolio ministers under an establishing act often have to wait for the board chair and the CEO to come in for a meeting. If there is an issue in Western Power—let me pick a real GTE that the minister has responded to—connections are remarkably slow because there is a building boom and the planning process for connections is slow because there are a lot more of them in the system and we need another 25 planners or electrical engineers to put them together. The process of the minister understanding and being told about that interests me. I just picked an example; it is not necessarily the only one. What is the obligation of a GTE, be it the board chair or the CEO, to inform the minister of an issue that is potentially politically problematic? The opposition is jumping up and down and I am throwing rocks at the Parliamentary Secretary to the Minister for Energy. Hon Tjorn Sibma cannot get the power connected to his new house in time because of these damn delays et cetera. What is the obligation under the current legislation, these establishing acts, to require the disclosure to ministers of that information? Will that change under the GTE bill in terms of it being required to be disclosed? I will come to it, but I suspect ministers walk into a lot of circumstances fairly unaware because the CEO of the GTE decides that it is easier if nobody knows that it is a bit slower to connect people these days.

Hon STEPHEN DAWSON: Sometimes CEOs of these places might not have the same political antennae as a minister would. Certainly under existing arrangements, responsible ministers have the ability to seek information from GTEs. However, a minister needs to know what information to ask for. We are reversing the onus to some extent in requiring GTEs to keep the government informed. The consultation provisions in the bill are similar to the ongoing disclosure requirements applicable to publicly listed companies. There is a need to share information early or more widely with government to support key decision-making processes and management of government risks, which may have wider implications for the state. Governments should have full visibility of information in order to judge when a decision relating to a GTE might be contrary to government policy or to the interests of another agency or GTE.

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