GOVERNMENT TRADING ENTERPRISES BILL 2022

Committee

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

Clause 75: Annual performance statement for GTE —

Committee was interrupted after the clause had been partly considered.

Clause put and passed.

Clause 76: Submitting draft annual performance statement and related information —

Hon Dr STEVE THOMAS: It probably does not really matter what clause I ask this next question under but I refer to the annual performance statement because we have gone through the component of looking at the statement of expectations, which is effectively kept in-house. What level of availability for public scrutiny will exist over the performance statement, given that basically a draft will go forward and be submitted to the portfolio minister and the Treasurer? I am interested in what level of scrutiny there will be over the draft annual performance statement. Ultimately, we will get to the adoption of the performance statement and what scrutiny will be available for that.

Hon STEPHEN DAWSON: I think we are answering the next question, not the one the member asked. The draft annual performance statement will be sent to Treasury for quality assurance, essentially—to make sure it is in accord with what is required or to see whether there might be errors that do not align with the information that Treasury has. The annual performance statement will include full forward estimates, which are not currently provided.

Hon Dr STEVE THOMAS: We might adopt clause 76 then and go to clause 77.

Clause put and passed.

Clause 77: Adopting annual performance statement —

Hon Dr STEVE THOMAS: It is good to see a bit of enthusiasm from the opposition benches for adopting clauses! There is very positive work going on. We are here to help!

Hon Stephen Dawson: I think everybody is pleased with the progress, honourable member.

Hon Dr STEVE THOMAS: We are doing remarkably well.

It is interesting that clause 77(1) provides that as soon as practicable after budget day, the board must adopt the annual performance statement for the budget year. What would happen if it was not adopted by budget day? Would there be a legal issue or would the board simply be required to catch up? What would be the impact? Once it is adopted by the board, the budget will be a public document, and the community will get to read it. Will other details in the annual performance statement be available to the community?

Hon STEPHEN DAWSON: Essentially, the information in the annual performance statement will be provided to Treasury and that information will then be used and appear in the budget papers.

Hon Dr STEVE THOMAS: I imagine that some potentially supporting information will go into the annual performance statement. Will it effectively be just a cut-and-paste from the annual performance statement to the budget, so that everything in the annual performance statement ends up in the budget papers? A lot of it will probably end up in the annual report once it is in place, but I presume that it will not be a cut-and-paste, but perhaps it might be. All the information in the annual performance statement will come out in either the budget papers or the annual report, or will some stuff in the performance statement not come out?

Hon STEPHEN DAWSON: There may well be a limit on information that is commercial-in-confidence, but, essentially, the information in the annual performance statement will be cut and pasted into the budget, with the exception of things like information that might be commercial-in-confidence.

Clause put and passed.

Clause 78: Varying annual performance statement —

Hon Dr STEVE THOMAS: Subclause (4) interests me. This is about a variation of a performance statement. A board may vary the annual performance statement for the year, and that is fair enough if something comes along and it needs a significant shift. There needs to be some flexibility in the system. Subclause (4) states that the portfolio minister must cause the text of a notification under subclause (2) to be laid before Parliament. Subclause (2) provides that with the approval of the Treasurer, the GTE's portfolio minister may present to the board a variation and notify the board that the statement as varied is to be the new annual performance statement. I would think that the minister would consult with the board and that they would have a conversation and they would say that the annual performance statement, which is the equivalent of a statement of corporate intent, needs variation because something significant

has come along. The minister would present to the board a new statement and say that this is to be the new statement. The board could potentially make a variation to that but then consult with the minister. I will just get the minister to confirm that that is the case.

Then we need to look at the notification process. As that process goes on, the portfolio minister must cause the text of the notification to be laid before each house of Parliament within 14 sitting days, but subclause (5) indicates that the minister will not need to see the text of the variation. Am I to understand that what will come to Parliament is the fact that a change has been made to the annual performance statement but Parliament will not be told what that change is? What level of explanation will go on around that?

Hon STEPHEN DAWSON: The answer to the member's second question is yes. In relation to his first question, the tabling of the notification will apply only if there is not agreement between the board and the minister. If there is agreement between the board and the minister on the changes to the annual performance statement, that will be fine. If there is not, the minister will tell the board of their intention, and the minister will also need to cause the document to be tabled before both houses.

Hon Dr STEVE THOMAS: I think I understand that. The issue might be that if there is agreement between the board and the GTE minister to vary a document, which the public will not see until budget time, there will be no notification process. If there is disagreement between the board and the portfolio minister, the minister will have sway. The minister will control the outcome, but will then notify Parliament that a change has been made. That is not a disallowable instrument, as we discovered in debate last night on a different clause with the same wording. Presumably, the only way that Parliament or the opposition would be able to find out why there had been a change would be through questions in Parliament. It would be odd that the government would say that there had been a change but not tell us what the change was. Would it not be more useful for some explanation to be part of that process? I would have thought that that would be a useful process rather than saying, "There's been a change but we're not going to tell you what it is." If a member asks a question in Parliament, depending on the portfolio minister, they may or may not get an answer.

Hon STEPHEN DAWSON: It would appear in the following year's budget papers. Yes, the member is correct in that a member could ask a question in Parliament about it. There may well be times when the decision has gone through the Expenditure Review Committee and cabinet, so it would be cabinet-in-confidence. We would not disclose exactly what it was, but a member could ask a question about it. The other safeguard is that the portfolio minister cannot do it alone. The portfolio minister will need the approval of the Treasurer to take that course of action.

Hon Dr STEVE THOMAS: This is probably more a comment rather than a question. I suspect that this is one of those things that those in opposition would like more scrutiny on, but those in government would be perfectly happy for it not to occur. It is not one of those things that is out there enough for me to oppose the clause, so we can proceed.

Clause put and passed.

Clauses 79 to 87 put and passed.

Clause 88: Right to request, obtain and retain information —

Hon Dr STEVE THOMAS: Clauses 88, 89 and 90 are relatively familiar to me because a range of establishing acts have similar sections. This clause refers to the right of a minister to request, obtain and retain information, clause 89 is about the duty to comply with that request and clause 90 provides that the minister must be kept informed. Let us start with the simple one. Is there anything in this legislation that will significantly change any of the establishing acts to either enhance or reduce the capacity of a minister to be fully informed of what goes on?

Hon STEPHEN DAWSON: Essentially, the only change is that there will now be a positive disclosure on providing that information. At the moment a minister can ask for information but they might need to know what to ask for. In this case, the disclosure will need to take place.

Hon Dr STEVE THOMAS: I will probably roll it into one a bit; we do not need to do it individually. Clause 90 quite clearly sets out that the GTE minister must keep the portfolio minister reasonably informed et cetera. I think that is positive.

Is there a restriction on the operations of the board? I am particularly interested in what will occur if a minister suspects that something is not completely right. Which minister will have the power to request the minutes of the board as opposed to a document that might be kept within the operational side of the department or the GTE? I might have to phrase it this way to make it clearer: I am looking for two sections to see what access a minister will have, firstly, to the operations of the board itself, so the minutes and financial statements of the board; and, secondly, to the documentation of the GTE itself, so obviously operational statements, statements of risk and reports that might come in on things. I read this clause as the minister should have access to all those things. Will there be any restrictions that might prevent that?

Hon STEPHEN DAWSON: No. The minister will be able to access all those things. Even if the document is commercial-in-confidence, that information could still be provided to the minister but the minister will be told that further disclosure should not occur.

The member also asked which minister has a certain power. I draw his attention to the definition of "relevant minister" on page 55 of the bill, which states —

> … the GTE's Portfolio Minister, the GTE Minister and the Treasurer;

Hon Dr STEVE THOMAS: That is interesting. In theory, all three, individually or separately, could basically order any document from a GTE. We assume there will be a cooperative approach. Someone could walk from one office in Dumas House—I will not call it what we sometimes call it—to an office down the hall or down a floor to another office and say, "We should have a look at this." In theory, as I read the bill, each of those individual ministers could effectively access any document of the board or the GTE.

Hon STEPHEN DAWSON: Yes.

Clause put and passed.

Clause 89 put and passed.

Clause 90: Minister must be kept informed —

Hon Dr STEVE THOMAS: Just quietly, I think this is a good clause. I recognise all the other stuff generally in a lot of the establishing acts of the GTEs. I might check to see whether this is fairly uniform in establishing acts as well. The clause states —

> A GTE must —
>
> (a) keep the Portfolio Minister reasonably informed of the operations, financial performance and financial position of the GTE and its subsidiaries, including the assets and liabilities, profits and losses, and prospects of the GTE and its subsidiaries; and
>
> (b) give the Portfolio Minister reports and information that the Minister requires …

Let us start with a simple question again. If something comes along that the minister is not aware of, what will the penalty be for not providing that information?

Hon STEPHEN DAWSON: I imagine the minister might seek to sack the board.

Hon Dr STEVE THOMAS: Excellent. I might hold the minister to that if we find a situation in which it occurs. There probably should be a bit more of that going on, but let us see.

Is there any defence in there? I can just imagine that something that seems fairly minor to a board might blow up because the opposition grabbed hold of it and whacked a government minister around with it. It is funny that legislation rarely has absolutes in it, and this just looks like an absolute. I am intrigued to see whether it is a genuine absolute. I do not mind if it is. It appears to have no defence. That is my point.

Hon STEPHEN DAWSON: I used the words "the minister might"; I did not say "the minister would" do it in all cases. It is fair to say that ministers do not like surprises, and we certainly do not like finding out things from the front page of the paper that our agencies have not told us beforehand.

This is a new clause that would not necessarily be in any of the establishing acts, but I think it is a very worthy clause, as I think the member would agree. It is a safeguard should something not be disclosed to the minister that may be material and which the minister is deeply unhappy about. The course of action may well be that the board would be replaced.

Clause put and passed.

Clause 91: Notice of financial difficulty —

Hon Dr STEVE THOMAS: I think this provision also currently exists. This government has been in power for six years. To date, has the government received any notices that the minister is aware of?

Hon STEPHEN DAWSON: My adviser from Treasury, who is here, tells me not in his recollection in the last seven years.

Clause put and passed.

Clauses 92 to 96 put and passed.

Clause 97: Consultation regarding disposal of significant asset —

Hon Dr STEVE THOMAS: This clause comes under division 3, "Matters requiring approval". There are probably a couple of nice little interesting components to this. There is a definition of "significant asset" in clause 96. I do

not want to contest how we define a significant asset. We just have to draw a line somewhere in the sand and pick one. I suppose I am comfortable with what that might be. Clause 97(1) states —

> A relevant entity considering disposing of a significant asset must inform the Portfolio Minister and the Treasurer of the contemplated disposal —
>
> (a) as soon as practicable; and
>
> (b) in any event before engaging advisers, consultants or agents in connection with the contemplated disposal.

Under clause 97(2), once they have informed the portfolio minister and the Treasurer, they —

> … must consult the Portfolio Minister and the Treasurer during the further development and realisation of the contemplated disposal …

Will that consultation include the need to go to a public tender process or will that be set by a separate piece of legislation? I will be interested to know at what point we tip into the ministers being able to proceed. When it comes to a significant asset, the GTE decides that it wants to dispose of that asset for a property—obviously over $100 million is probably significant. We are therefore talking about an absolutely significant asset. It does not seem to automatically go to a tender process. How will we determine what is in a tender process and what is not when we are disposing of those assets?

Hon STEPHEN DAWSON: There is no act that dictates the disposal route, if I can use those words. Certainly, if such an asset were to be disposed of, I am told that would come before Parliament and it would be a disallowable instrument. That is for something of that significance, in the order of magnitude of $100 million.

Hon Dr STEVE THOMAS: Would that be tabled in Parliament under this legislation?

Hon STEPHEN DAWSON: Yes, it would. It would be under the provisions at clause 98 on the next page.

Hon Dr STEVE THOMAS: It would become a disallowable item but it would not necessarily go to tender. I think that is what the minister said. I might have to ask this at clause 98 because we are jumping around a little bit.

Hon Stephen Dawson: Good practice would be an expression of interest or a tender process. We just do not dictate what process takes place. It would be quite extraordinary if such a process did not take place.

Hon Dr STEVE THOMAS: I think that is very true. One would hope in this era of anti-corruption, let me say, very carefully, that there would be a fairly open process for the disposal of an asset of that significance. We are talking about assets worth over $100 million. I think that is one of the categories. Obviously, that was not quite what the Department of Communities got to. That was $20-odd million, and it is easier to hide when the amount is lower. I would think that those at the higher end would be more difficult to hide. I am interested in why we would not automatically go to a tender process or call for an expression of interest over a certain value. It is something I am happy to note and would not necessarily have changed, but in the future it might be worth looking at a set value for expressions of interest rather than a process in which a statement is tabled in Parliament after the fact, effectively. I presume it will be tabled after the fact, or will the parliamentary document be tabled before the disposal of the asset? That is a good question for the minister to answer. Will that happen before the disposal of the asset or afterwards?

Hon STEPHEN DAWSON: No. It could not be sold until the disallowance passed, essentially. The other point I will make is that a sale of this magnitude would need to go through both the Expenditure Review Committee and the cabinet, so that is another safeguard in place. I cannot see cabinet signing off on a handover to a particular organisation without going through an expression of interest or whatever process.

Clause put and passed.

Clauses 98 to 103 put and passed.

Clause 104: Excluded transactions —

Hon Dr STEVE THOMAS: We are still in the part of the bill on accountability, which is a very important component. Clause 104 states —

> (1) With the approval of the Treasurer, the Portfolio Minister for a relevant entity may declare —
>
> (a) a specified transaction not to be a significant transaction for the relevant entity; or
>
> (b) transactions of a specified class not to be significant transactions for the relevant entity.
>
> (2) A declaration under subsection (1) may —

It is not "must" —

> set out conditions to which the declaration is subject.

A "significant transaction" is defined at clause 100. Clause 100(2) states it is a significant transaction —

> … if it is likely to have a significant social, economic, technological or industrial impact or a significant impact of another prescribed type.

Subclause (1) states it is a significant transaction —

> … if the amount or value of the consideration for the transaction, or the amount or value to be given or received … exceeds the amount prescribed for the purposes of this subsection.

Could I get the minister to check what that amount is? I presume that it refers to the definition of "significant asset" at clause 95. We are potentially talking about $100 million again, but I will get the minister to confirm that. Clause 104 states that the Treasurer may approve the portfolio minister to declare something that has kind of already been declared. There is a determination that it is a significant transaction for major events but the portfolio minister, with the approval of the Treasurer, can determine that it is not a significant transaction. I am interested to know why that exists and when it might occur.

I have a proposed amendment on the supplementary notice paper, which the minister might yet convince me not to proceed with. It is not to remove the clause. My first thought when I read this bill was to remove clause 104, or simply oppose it, to remove the portfolio minister's capacity to declare that a specified transaction is not actually a transaction that needs to be considered. The minister might first want to try to convince me that there is a good valid reason for clause 104 before we debate the amendment. I give notice that the amendment is not to remove or to oppose the clause but simply to have the fact that that has occurred notified to Parliament.

All the best work is generally stolen from somebody else, so I have stolen, in effect, the words used in other clauses, so I am using the government's own words for the notification of why this has occurred. My fallback position was to have the documentation tabled in the houses of Parliament to be disallowed, potentially. But I have fallen further back than that, because the opposition is trying to be incredibly helpful with this bill, to simply say that Parliament would be notified that an event had occurred, which is what the government has proposed in a number of places in this bill. I am not asking for full disclosure of what is happening. I am suggesting that perhaps Parliament would simply be notified that an event with an exclusion had occurred. The minister might perhaps try to convince us that it needs to exist for certain transactions and that Parliament does not need to know what those transactions are or whether the exemption had been applied. We might see how we go before I think about moving the amendment in my name.

Hon STEPHEN DAWSON: I am not sure I can convince the member, but let us give it a go. The ability to exclude transactions exists within the current enabling act provisions and will be replaced by the provisions in clause 104. The current thresholds are significantly higher than the threshold proposed to be included in the regulations for this bill, which is the lesser than $25 million or five per cent of assets. For example, the amount for Pilbara Ports Authority is currently $572 million and Western Power is $120 million based on total assets valued at 30 June 2022. That is $572 million and $120 million, and the new threshold will be $25 million or five per cent, so it is a significant difference—a safeguard, I would say.

The exclusion provisions aim to cater for those transactions that are part of a government trading enterprise's activities that are considered business as usual, such as repeat transactions on standardised terms and conditions that have low residual risk to the state. The types of transactions that may be considered as excluded transactions may include maintenance or service agreements. For example, the maintenance of a fire suppression system is procured under standard terms and conditions and funded in the forward estimates, and the extension of standard port user agreements that are based on industry standard provision or repeat transactions that have a high degree of similarity and/or intergovernmental or intragovernmental payments and transfers. This is an increased level of safeguarding, if I can use that language, but I again remind the Leader of the Opposition that it is $25 million, or five per cent, versus $572 million now, or the $120 million that exists currently for Pilbara Ports Authority and Western Power respectively.

Hon Dr STEVE THOMAS: How were the new numbers determined? What consideration was given to it and why did these particular numbers get landed on?

Hon STEPHEN DAWSON: There is a data request of GTEs, and they identify the quantum that would accurately reflect significant transactions. Therefore, $25 million, or five per cent, seemed to be an appropriate figure to land on based on the analysis of the data of the existing GTEs.

Hon Dr STEVE THOMAS: It is interesting that it has come on the advice of the GTEs themselves.

Hon STEPHEN DAWSON: It has not come on the advice of the GTEs. It is from the data. I can provide the proposed changes to the significant transactions and quantitative thresholds. For Synergy, the proposed change in quantitative threshold is 25 per cent. For Western Power, it is minus 79 per cent. For Horizon Power, it is 25 per cent. For Fremantle Port Authority, it is minus 71 per cent. For Pilbara Ports Authority, it is minus 96 per cent. For Mid West Ports Authority, it is minus 61 per cent. For Kimberley Ports Authority, it is minus 69 per cent. For Southern Ports Authority, it is minus 54 per cent. For Water Corporation WA, there is no change. For the Bunbury Water

Corporation, it is minus 54 per cent. For Busselton Water, it is minus 61 per cent. For the Western Australian Land Authority, or DevelopmentWA, it is minus 77 per cent. There is a significant change. We are putting in better safeguards than we have currently.

Hon Dr STEVE THOMAS: The minister makes a reasonable argument. I think that was quite positive. I accept that there are probably some operational issues. I am not 100 per cent convinced that it is in the public interest to maintain excluded transactions. I intend to move the amendment in my name and not divide on it, just so that we can demonstrate that we have stimulated a significant debate on this. I move —

> Page 64, after line 26 — To insert —
>
> (3) 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.

Amendment put and negatived.

Clause put and passed.

Clause 105 put and passed.

Clause 106: Consultation regarding significant initiatives —

Hon Dr STEVE THOMAS: I am unsure why this exists as a separate clause outside of the process that we have discussed previously of the statement of expectations and the annual performance statement, which replaces the statement of corporate intent. Clause 106(1) states —

> A relevant entity considering undertaking a significant initiative must inform the Portfolio Minister and the Treasurer of the contemplated initiative as soon as practicable.

Then there is basically a consultation provision in relation to that. There might be a reason why that clause exists outside the other planning processes of the strategic development plan and performance statement, but I am not sure what it is.

Hon STEPHEN DAWSON: This will replace the public interest disclosure that exists in some of the establishing acts currently. The principles of transparency and accountability are reflected in the significant initiative for provisions. Matters of significant public interest, or with the potential to have significant impact in particular aspects of government policy delivery and outcomes, are rightly matters for which ministers should have early visibility.

Clause put and passed.

Clause 107: GTEs not generally subject to direction by Government —

Hon Dr STEVE THOMAS: I thought this was amusing. I do not know too many government trading enterprises that would resist. Apart from as provided by the act in which the minister gives a direction, how often has a government trading enterprise historically resisted a direction from government? I presume that all government directions come under the provisions of their establishing acts to date. The minister would have thought this is an interesting but slightly amusing clause, and I am anxious to see how he can explain the need for it.

Hon STEPHEN DAWSON: This is making clear that the mechanisms that exist in this bill are the only mechanisms that can be used. This clause exists in most, if not all, of the existing establishing acts for the GTEs.

Clause put and passed.

Clause 108: Ministerial directions —

Hon Dr STEVE THOMAS: First there was clause 107, "GTEs not generally subject to direction…", followed by clause 108, "Ministerial directions". It has been a long week. I find it pretty funny. Clause 108(1) states —

> Subject to subsection (5) and to section 109, the Portfolio Minister for a GTE may give a direction in writing to the GTE with respect to the performance of its functions …

Under clause 108(2), the portfolio minister may ask a GTE to not perform a function, as well as give it a direction, in writing generally, to perform a function, one presumes. This provision exists despite an inconsistency with the statement of expectations. In clause 6, we have a standard clause, which I actually contemplated and moved in relation to exclusions way before that. Clause 108(6) refers to causing the text of a direction itself to be laid before the houses of Parliament. Can I check again whether in this case we are talking abouta minister who gives a direction tabling the entire text of the direction? I presume that it is not a disallowable instrument, but that at least Parliament will get the full text of the direction that the minister has given.

Hon STEPHEN DAWSON: That is correct.

Clause put and passed.

Clauses 109 and 110 put and passed.

Clause 111: Policy orders —

Hon Dr STEVE THOMAS: This clause relates to policy orders rather than ministerial directions. It states that a minister may set out a policy order. I presume a ministerial direction gives a specific action that is required or a specific action of removal. How is a policy direction defined? How broad is it and to what level of minutiae can a policy order go down to?

Hon STEPHEN DAWSON: I am told it is the equivalent of a Premier's circular. An example of matters that may be dealt with through a policy order include prioritising that local workforces based in regional areas be accommodated within the local community, supporting industries to invest in programs to train specialist occupations in Western Australia and facilitating the development of alternative energy sources to meet the state's climate policy targets for 2030. Those are the types of things it will apply to. It is equal to what exists in a current Premier's circular.

Hon Dr STEVE THOMAS: Is this a new definition or is this a part of establishing acts that exist that we are now incorporating into everything else?

Hon STEPHEN DAWSON: This is a new inclusion.

Hon Dr STEVE THOMAS: I am interested to know whether the policy direction will be coming out in a standardised form. Has thought been given to what it might look like? For example, can the minister give a policy direction across the board to all GTEs? The GTE minister sets out the policy order. Will it be possible to do a policy direction for all GTEs? Could a policy direction include dividends et cetera, or is that too fine a detail to put in the general policy direction?

Hon STEPHEN DAWSON: A policy order would not be used for dividends because there are already relevant provisions in the bill. Regarding the transparency of policy orders, policy orders will be published in the *Government Gazette* and are required to be made publicly available as long as the order applies.

Clause put and passed.

Clauses 112 to 117 put and passed.

Clause 118: Remuneration of directors —

Hon Dr STEVE THOMAS: Was any thought given to have the specific remuneration of directors determined by the Salaries and Allowances Tribunal rather than simply the range in which it is incorporated? Would it be less political to have SAT—not that it has been overly generous to lots of people in recent years—determine the actual salary rather than it being determined within the occurring range? Was that considered during the development of the legislation?

Hon STEPHEN DAWSON: This is solely about wholly owned subsidiaries. I am told that this would not apply to anybody in the current situation, but may apply to people in the future. Regarding the issue of bands and the exact amount of remuneration, SAT is used to dealing with bands at the moment. Local government authorities talk about bands. It certainly will not apply to anyone currently, but could in the future.

Clause put and passed.

Clause 119: Same remuneration for directors of subsidiary —

Hon Dr STEVE THOMAS: Is it possible for a board member to also be the director of a subsidiary? If that is the case, will the legislation exclude them from being paid twice as directors?

Hon STEPHEN DAWSON: Clause 118(6) excludes them from getting paid if they are already a director of the main board.

Hon Dr Steve Thomas: So they will be excluded from double dipping?

Hon STEPHEN DAWSON: Yes.

Clause put and passed.

Clauses 120 to 137 put and passed.

Clause 138: Solvency requirement —

Hon Dr STEVE THOMAS: I am happy to forgo "Hedging transactions" under division 5. We could spend a bit of time playing around with that if we wanted to, but I think that is fine. Clause 138 refers to the solvency requirement. It states —

> The amount of a payment to be made by a GTE under this 3 Division meets the solvency requirement if —
>
> (a) immediately before the payment is made, the GTE's assets exceed its liabilities …

Can the minister explain the solvency requirement? Debating Griffin Coal, which is obviously not a GTE, has dragged me back to the issue of solvency. What is the need for clause 138 and what are the circumstances in which it might be breached?

Hon STEPHEN DAWSON: The directors have a duty to make sure that the GTE is not trading insolvent and that it is a going concern. This relates to dividends. They need to take steps to make sure that the GTE is solvent before turning their mind to whether a dividend is paid or not.

Hon Dr STEVE THOMAS: We will get to the calculation of dividends in a bit, because that is a really interesting section of the bill. Given that it is backed by the government, I cannot imagine that a government trading enterprise could be deemed insolvent. Some of them carry significant debts, such as the major electricity corporations. I think Western Power carried a debt of about $9 billion at one point; I am not sure what its current debt level is. The problem is that the asset is calculated based on replacement value in a lot of cases, and replacement value is difficult. It is a bit like putting in depreciation on a government asset. The government is not necessarily putting money aside to replace an asset; depreciation is more of an accounting term than it is a practical term. There are major assets involved in government trading enterprises, but the question is one of solvency. In the debate we had earlier this week, we discussed that Griffin Coal, backed by ICICI Bank, is trading insolvent, unless ICICI dips in 75 million bucks a year. In this circumstance, the government can always tip in more money to a government trading enterprise. Are there circumstances when a GTE may be trading insolvent, and is it trading insolvent on paper rather than in practical terms?

Hon STEPHEN DAWSON: Essentially, this is a catch-all to make sure that a dividend payment does not make the GTE insolvent.

Hon Dr STEVE THOMAS: Again, this is more of a statement than a question, I kind of think —

Hon Stephen Dawson: It is probably not very good to compare it with Griffin Coal.

Hon Dr STEVE THOMAS: It is probably not good to compare any company or government trading enterprise with Griffin Coal at the moment.

Hon Stephen Dawson: Given the exceptional talents at Treasury and how stringently they manage the books, it is probably chalk and cheese.

Hon Dr STEVE THOMAS: Treasury is not dramatically good at predicting the budget surplus in advance, so there are a few question marks about that process, not that that I am suggesting that anything untoward is going on at Treasury, but perhaps perfection is a little step away. I suspect that clause 138 is there to make us feel comfortable but probably will not deliver a practical outcome for the state of Western Australia. On that basis, I am prepared to proceed to the next clause.

Clause put and passed.

Clause 139: Dividend formula —

Hon Dr STEVE THOMAS: The minister will be pleased to know that we are rapidly coming towards the end of our debate on this bill. We have come apace.

Hon Tjorn Sibma: We can slow it down!

Hon Dr STEVE THOMAS: Hon Tjorn Sibma is just waiting to throw a few bits in.

Hon Stephen Dawson: Nothing feels rapid at this time of the afternoon!

Hon Tjorn Sibma: Representations have been made that we are speeding things along too quickly. If it saves the government from embarrassment tomorrow, we can slow it down!

Hon Dr STEVE THOMAS: We are here to help!

The dividend formula is one of my final key areas of interest. We are nearly halfway through the number of clauses, but the later stages—I think from about clause 178 onwards—are consequential amendments. Effectively, from clauses 139 to 180 is where I want to go, so we are significantly through the bill, you will be very pleased to know, deputy chair. I turn to the dividend formula. Clause 139 states —

> (1) For each financial year, the Portfolio Minister for a GTE and the Treasurer may —
>
> (a) determine a formula for calculating the final dividend …

And paragraph (b) states that at any time before the final dividend is fixed, the Treasurer may vary the formula. Can the minister give us an example of a formula for calculating the dividend of a GTE?

Hon STEPHEN DAWSON: They are normally a percentage of profit. They are set by the Expenditure Review Committee of cabinet, and that has been an ongoing process under whichever administration has been in place. This allows it to not have to be a percentage; it can be an amount. The ERC can decide that an amount of the profit

will be the dividend required to be paid. If I deal with clauses 139 to 141, the GTE bill clauses with regard to determining the formula to be used in calculating the final dividend do not limit the calculation to the relevant financial year. As such, the GTE reform bill provisions enable prior year profits to be considered in the consideration of the dividend payable. Current arrangements can lead to an accumulation of cash with GTEs that can be inconsistent with the effective management of the state's finances over the whole-of-government level. The GTE provisions require the board to recommend a dividend amount that will meet the GTE's solvency requirements.

Hon Dr STEVE THOMAS: There is a fair bit to unpack even just in that statement. I think what the minister said was that for the first time, a GTE dividend calculation can take into account prior and future years. Is this the first time that that has been allowed under the legislation?

Hon STEPHEN DAWSON: It is only prior years, but, yes, it is the first time that prior years can be taken into consideration.

Hon Dr STEVE THOMAS: In previous years, for example, when ministers or the Treasurer or a combination of the two have determined the calculation, if you will —

Hon Stephen Dawson: It would likely have been the Expenditure Review Committee and the cabinet.

Hon Dr STEVE THOMAS: Okay. I presume that the responsibility lies with the Treasurer to take it to them. It will be interesting if that is significantly different. I might ask the minister to check with his advisers. I presume it is the Treasurer. It seems that the Treasurer announces dividends, so I will just check that it is the Treasurer who delivers that under the establishing acts.

Hon STEPHEN DAWSON: Although the Treasurer announces them, it is a matter of practice that the Treasurer will bring this information to the ERC and cabinet for a decision to be made.

Hon Dr STEVE THOMAS: As has occurred in recent years, it is not uncommon for the government to announce a formula, announce a dividend and then have those GTEs retain that dividend. Do those retained dividends still sit in a separate pot? I think largely it is the Water Corporation. It is a good economic tool. It is a bit of budget chicanery but it is also a good economic tool, and far be it from me to cast aspersions upon the Treasurer's use of accounts—for example, the debt recovery account, but that is a debate for another day. I presume that when cabinet makes a decision to retain a dividend, there is still a calculation—there is still a dividend retained. Under this legislation, would that potentially still exist? I presume there would then be retained dividends sitting in a GTE account simply not being transferred to the consolidated fund. Is that how that will operate?

Hon STEPHEN DAWSON: There is nothing in this bill that necessarily needs to change current practice. The example the member gave was the Water Corporation, and I think there is $2 billion set aside for the next desalination plant. We understand that is held in a special purpose account in the name of the Water Corporation for the purpose of the new desalination plant.

Hon Dr STEVE THOMAS: I thank the minister. I appreciate that, because he tries very hard to give us information, which is good. I think he is right. It is not sitting in a Treasury special purpose account; it is what I would call a departmental special purpose account, which in this case is not a department but a GTE special purpose account. If we looked at the annual report of the Water Corporation, would we find those retained dividends in the special purpose account of the Water Corporation? Is that what the minister said?

Hon STEPHEN DAWSON: That is correct, honourable member; it should be on its books.

Hon Dr STEVE THOMAS: I think that is right. You see, deputy chair, it is very agreeable today. I think it is because it is a Wednesday and not a Thursday. We will be very close to finishing this bill by the time we get to Thursday, so there will not be much room for dissent.

I refer to dividends that are taken from GTEs under the establishing acts or will be taken under this legislation. Did the Economic Regulation Authority provide any advice to the government on the process of dividends, given that it is the principle overarching accountable entity?

Hon STEPHEN DAWSON: No, but I am told that the ERA would not ordinarily provide advice. It is a matter for the owner of the business, which essentially is the state. To our knowledge, the ERA has not previously provided advice on this type of thing.

Hon Dr STEVE THOMAS: I actually find that quite interesting. Given that the ERA has made significant comments on fees and charges, for example, of government trading entities, it is interesting that it would not involve itself at all in the debate on the returns on that. I will ask this; I might be stretching it a bit. Did the ERA give commentary on the wider bill? Did it just miss this bit? Was there consultation with the ERA—that is the Economic Regulation Authority, not the other versions of the ERA—on this bill?

Hon STEPHEN DAWSON: I am told that it was one of the stakeholders that was consulted at the very beginning of the reform process.

Hon Dr STEVE THOMAS: I think that is good; that will be a good thing. I am going to test my luck here, deputy chair. Is it possible that the ERA gave a submission on the bill; and, if so, would that submission be available to us, the public or the opposition, to examine and have a look at?

Hon STEPHEN DAWSON: Although it was consulted, there were no submissions given. It was simply advised and spoken to about the bill, but it was not a submissions process.

Hon Dr STEVE THOMAS: Is there no paperwork at all from the Economic Regulation Authority on the development of this bill? I thought that would be really interesting, even if it did not approach this particular clause.

Hon STEPHEN DAWSON: I am told that it is not relevant to the current remit of the ERA, so no. Although the ERA was consulted earlier on, there has been no physical submission.

Clause put and passed.

Clause 140: Final dividend —

Hon Dr STEVE THOMAS: There is a dividend formula that appears to be kind of a percentage, but there is a bit of negotiation on it. The GTE board must recommend to the portfolio minister whether it should pay a dividend. I would have thought there would be a minimum profit requirement for that, so the government will not get much of a dividend out of Synergy at the moment, given its portfolio issues.

The board will make that recommendation; the portfolio minister will accept the recommendation or not, presumably in consultation with the Treasurer on a final dividend. Then under clause 140(6) —

> The GTE must pay a final dividend to the Treasurer —
>
> (a) as soon as practicable after the amount is fixed under subsection (3) …

It is supposed to come in as soon as practicable, not more than six months after the end of the financial year to which the dividend relates. Is there capacity to demand it earlier if the government is a bit skint, or is it the case that it just happens as the GTE is able to afford it?

Hon STEPHEN DAWSON: I am told that once there is an agreed dividend, it is usually a very swift process for the dividend to be paid. Although, as the member pointed out, this allows for a time period—it says six months after the end of the financial year—I think it would be extraordinary for it to take that long.

Clause put and passed.

Clause 141: Interim and special dividends —

Hon Dr STEVE THOMAS: This is almost the last of my interesting points, the minister will be pleased to know—special dividends. You have to love a set of special dividends! Governments of all sides have partaken of special dividends under certain circumstances. Certainly, I suspect that the previous government partook of far more special dividends than the current government has, but perhaps the minister can tell us how many special dividends of GTEs his government has taken over the last six years?

Hon STEPHEN DAWSON: We would not know. We do not have that advice with us this afternoon.

Hon Dr STEVE THOMAS: The minister might be able to find out for tomorrow how many have been taken. I am not aware of a huge number, because I think that the government has been rolling in cash fairly well and probably did not need a lot of special dividends. Special dividends seem to come out a bit more frequently when the budget is tight. Although the last six years might be a lean time for special dividends, I suspect that in the next few years, with the correction of the iron ore price, they might become a bit more of a regular feature. Perhaps the minister might be able to give us that information tomorrow or, if necessary, at a later date; it is not something that will slow or block the bill's passage.

Hon Stephen Dawson: By way of interjection, I will see what I can provide tomorrow—no promises.

Hon Dr STEVE THOMAS: Okay. Noting that we are very soon about to complete the debate, just to give the minister some indication, the last clauses I might have a look at are probably clauses 148, 150 and 151.

Hon Stephen Dawson: Shall we move to 148 now? We have another minute, if the member is happy to move forward.

Hon Dr STEVE THOMAS: No; I just have a couple of extra questions on special dividends. Is there a limit to how often a special dividend can be requested from a GTE?

Hon STEPHEN DAWSON: There is not.

Hon Dr STEVE THOMAS: Effectively, does a special dividend occur whenever the government needs more cash?

Hon STEPHEN DAWSON: I would not say that, no. An example of a situation in which a special dividend might happen or be paid would be if there were a big asset sale. Rather than an amount of that sitting on the GTE's

books, the government might decide to bring it into consolidated revenue. Certainly, it is not about what the member suggested.

Hon Dr STEVE THOMAS: I am sorry, but I am not convinced. If the minister gets a chance to look at previous special dividends, with the exception, probably, of the Insurance Commission of Western Australia, I am not sure how many special dividends he would see have come about because of the sale of a significant asset and how many have basically occurred out of the operating revenue because of a need for cash. I think there are specific examples. The minister might be able to let us know that tomorrow.

Hon Stephen Dawson: By way of interjection, as the honourable member alluded to, we have been very good financial managers as a government, so there would have been few reasons to rely on special dividends to manage the budget.

Hon Dr STEVE THOMAS: I do not actually remember saying anything about good financial management, but I will have to go back overnight and check *Hansard*.

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