

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 17: Terms and conditions of appointment —

Committee was interrupted after the clause had been partly considered.

Hon STEPHEN DAWSON: Although I said to the member earlier on that no drafting instructions have been issued for the directors skills matrix at this time, I have been further advised that drafting has been able to be commenced on the regulations more generally. This is a break from normal practice in this place. Normally, a bill needs to be fully drafted before the regulations are commenced; however, in this case, because of the time frame ahead of us between now and 1 July, a special consideration has been given so that drafting could commence on the regulations.

Hon Dr STEVE THOMAS: Thanks for that, minister. To be honest, it would have been tough to get through otherwise so I am not surprised. I think that would have been an enormous demand—to try to get through this bill, get to promulgation, then start the process and have it in place by 1 July. I thank the minister for the update on that.

We were discussing the terms and conditions of appointment when we were rather rudely interrupted by question time. I will probably just recap where we were in asking the questions on this. At this stage, none of the directors is full-time, which is reasonable. Then, the question was around clause 17(3) and (4). We were discussing —

(4) A director of a GTE who is also the GTE's chief executive officer —

Can I just check? I think the advice the minister gave before we were interrupted was that at this point none of the directors serving on government trading enterprise boards is currently a chief executive officer. They are other staff and, in fact, it is only in specific circumstances that a GTE's CEO could currently serve as a board director. We will be opening up that in this legislation. I apologise; obviously I do not have the uncorrected *Hansard* to check whether the minister said that the electricity corporations could appoint their CEOs or not. Could the minister recap and tell us which way that ran and confirm that we are changing this for every other government trading enterprise so that every GTE that comes under the auspices of this bill will be able to appoint its own CEO to the position of director on the board but not chair or deputy chair?

Hon STEPHEN DAWSON: I have been talking about three public servants being on existing GTE boards. They are not CEOs of those organisations. I am further advised that we understand that the CEO of the Water Corporation may well be on the Water Corporation board; however, that position is not seen as a public servant because it is a staff member of a GTE, if that makes sense.

Hon Dr Steve Thomas: As established under the establishing act of the Water Corp specifically?

Hon STEPHEN DAWSON: Yes.

Hon Dr STEVE THOMAS: Okay. Every time we turn around this gets a little more complicated. It is not a criticism of the minister or the government; it is a very complicated section of the legislation.

Hon Stephen Dawson: Hence it took 30 years to get here.

Hon Dr STEVE THOMAS: Thirty years? I thought we were going back only a decade.

Hon Stephen Dawson: From go to whoa.

Hon Dr STEVE THOMAS: Yes, and this is for only the first tranche of 11 GTEs.

Hon Stephen Dawson: I just hope it doesn't take 30 years for us to get through the legislation in this place!

Hon Dr STEVE THOMAS: Even I might struggle to drag out a piece of legislation that long.

Hon Stephen Dawson: Honourable member, is actually 12 GTEs.

Hon Dr STEVE THOMAS: Sorry, 12 GTEs; I do not know why I had 11 in my mind.

It would be no surprise to members to learn that I have concerns around the process relating to public servants across the board, those members of the public service captured by the Public Service Act. I do not want to canvass what we have already gone through and voted on. We are now dragging out the technical detail. There is, ostensibly, currently one CEO of a GTE that is included in the tranche of 12 in the first group who is already a member of the board that controls that GTE. Under this legislation, they cannot be the chair or deputy chair and I am grateful for that small removal of risk of something untoward, which is about as polite as I can make it at the end of a sitting week that has been very busy. I am grateful for the fact that they cannot be the chair or deputy chair. However, we are about

to open with this legislation the circumstance that in the other 11 GTEs that we are about to put under the umbrella legislation, the Government Trading Enterprises Bill 2022, that another 11 chief executive officers could ostensibly be appointed to the boards for which they are the chief executive officer. That raises some genuine questions. As they go on the board under clause 17, what decisions of the board might a chief executive officer be forced declare a conflict of interest in? The obvious ones would be pretty simple one would assume. Maybe I should not assume anything. What do I say about assumptions? One would assume that a chief executive officer who was a board member would not be a part of setting remunerations et cetera for chief executive officers. Part of the question is: is that a specific exclusion? Specifically, it is those. One would assume that they would be excluded in that.

The second part of this question is: beyond that, what are the things that a chief executive officer might have to set themselves aside from in a meeting because they have a vested interest—or because they are the chief executive officer, can they not be excluded from anything? The problem is that the person who should have the greatest knowledge of the operation of the government trading enterprise, and should have the most detailed knowledge sought at a board level across the board—not individual directors in directorates—is the CEO. The CEO should have the greatest depth of knowledge across the body. Therefore, I would have thought the government would want the CEO in the discussions to give frank and fearless advice, but at the same time, in many circumstances, they will have a vested interest. A simple point is that a CEO might be having a discussion about whether to shift resources from one part of a GTE to another. The CEO would potentially have a vested interest in that. How does the government propose to manage that? What conflict-of-interest processes would be in place with that CEO being appointed as a fully-fledged board member and possibly a one-in-five vote on a potentially contentious issue? On a small board, would that CEO vote be 20 per cent of the vote? How will the government manage that potential conflict?

Hon STEPHEN DAWSON: Clause 64 goes to the disclosure of material personal interests for CEOs. In practice, the CEO in this case would absent themselves from a decision around remuneration, because, of course, the CEO is paid a CEO's wage. The CEO's remuneration is set in a band by the Salaries and Allowances Tribunal external to the organisation. The minister would sign off on the remuneration for the CEO, so it would not be them as a board member signing off on that.

Hon Dr Steve Thomas: Will the board make a recommendation to the minister on the terms and conditions of the CEO or would it be completely sidelined from it?

Hon STEPHEN DAWSON: Clause 39 deals with remuneration and I am advised that the remuneration of a chief executive officer must be determined by the GTE's board within the range determined by the Salaries and Allowances Tribunal under section 7C of the Salaries and Allowances Act 1975.

Hon Dr STEVE THOMAS: We are going to run out of time. My apologies to the poor old advisers who have had to come in and sit around.

Under those circumstances, surely the CEO would exempt themselves from the board meeting when the terms and conditions are discussed and a recommendation made. It is just a bit complex and messy, and maybe it has to be complex and messy and there is no simple way to do this. It is partly why I like the private sector, where one can walk in and do what needs to be done. I find the public sector an immensely complex process to try to work through. I presume that they would exempt themselves. Then there is this issue of a range of other things. All the other decisions might have a specific impact on a CEO.

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