

GOVERNMENT TRADING ENTERPRISES BILL 2022

Committee

Resumed from 17 May. The Deputy Chair of Committees (Hon Sandra Carr) in the chair; Hon Stephen Dawson (Minister for Emergency Services) in charge of the bill.

Clause 14: Directors' skills matrix —

Progress was reported after the clause had been partly considered.

Hon Dr STEVE THOMAS: I know it has been only overnight, but I thought I might give the minister a last opportunity. We were talking about the directors' skills matrix, which I think is a good idea. The minister may have been in a position to get more information from the primary minister. He will not have the skills matrix, but he might have the time frame in which it might be developed. What thought has gone into it, because it will come in via regulation? Given the fact that the government will have to develop the regulations, has that started? I understand that we are talking about trying to get this done so that it can be introduced on 1 July. I would have thought that we would be well down the path of drafting some of these regulations. What update can the minister give us on the time frame for the skills matrix and are there any early indications of what it will look like, particularly compared with the expectations of the private sector under the Corporations Act?

Hon STEPHEN DAWSON: I do not have any further information to give the honourable member. As is normal practice, the regulations will not be worked on until the legislation passes the chamber, but we are confident that they will be done in time.

Clause put and passed.

Clause 15: Recommending candidates for vacancies —

Hon Dr STEVE THOMAS: If somebody resigns from the board or is removed from the board, there will be an internal recommendation, which, under subclause (3), the portfolio minister is not required to either wait for or follow. I thought that was an interesting bit of the clause. Under subclause (1), the board may make a recommendation, but the minister is quite explicitly not required to wait for or follow it. I think it is a good outcome that they could act almost immediately, but I just want to check. Will there be a time frame if someone resigns for perfectly reasonable reasons, such as health issues? What sort of minimum time frame would there be to undergo this process, assuming that the minister had an idea in mind? I presume it would happen relatively quickly.

Hon STEPHEN DAWSON: The only boundary is the 10-day rule for cabinet. If the minister has a name, he would get a submission into the cabinet process and out the other end.

Clause put and passed.

Clause 16: Chairperson and deputy chairperson —

Hon Dr STEVE THOMAS: I think we will have most of the debate on clause 17. This clause is about the appointment of a chair and a deputy chair. There are two steps to this. Subclause (1) provides that the minister must designate a director to be the chairperson and subclause (2) provides that the minister may designate a director to be the deputy chairperson. There is a "must" and a "may". I take it that there will not automatically be a deputy. There must be a chair, but there may or may not be a deputy. I would have thought it would be pretty wise to have a deputy. I am just wondering about the difference. I will start with that question and I have one quick one to follow on.

Hon STEPHEN DAWSON: I am told that the 12 government trading enterprises that are being captured by the legislation have deputies. But it would be conceivable in the future if a small agency had a small board of maybe five members. Would it need a deputy chair? I do not know. At the moment, the practice is to have a deputy chair.

The DEPUTY CHAIR (Hon Sandra Carr): Leader of the Opposition.

Hon Dr STEVE THOMAS: Thank you, deputy chair. There you go—there are several in the Parliament of Western Australia!

The DEPUTY CHAIR: I am feeling vindicated!

Hon Dr STEVE THOMAS: We could probably contract them out and try to make a profit for the Department of the Premier and Cabinet!

I will talk about much of this on clause 17. Subclause (3) provides that the portfolio minister cannot appoint a chair or deputy chair who is also the GTE's chief executive officer. We will probably have the substantive part of this debate on clause 17, because the CEO of a GTE could effectively be appointed to its own board. Why can they not be the chair or deputy chair but they can be a director? It just means that they cannot be the spokesperson. In theory, it would be for accountability but then that accountability is lost because they are a director on the board.

I know it comes a little bit to the debate we had last night, and I ran my race and lost. Why is there a substantive difference? Why can he be a director but not the chair?

Hon STEPHEN DAWSON: The chair could have the casting vote, so it has been decided it is not appropriate for the CEO as the chair to have that position.

Clause put and passed.

Clause 17: Terms and conditions of appointment —

Hon Dr STEVE THOMAS: This is probably a better place to have that debate. I will start with this bit first and we will try to do it in numerical order. Clause 17(1) says that the duties may not be performed on a full-time basis.

Hon Stephen Dawson: Sorry, that says “need not”.

Hon Dr STEVE THOMAS: It says “need not”; apologies, the minister is quite right.

Apart from a CEO who is also put on as a board member, I would not have thought that too many directors would be performing full time on a particular board. I guess the odd chairperson might. Does the minister have any idea how frequently that occurs?

Hon STEPHEN DAWSON: Currently none of our board directors are full time on the government trading enterprises.

Hon Dr Steve Thomas: Does that include chairs and deputies?

Hon STEPHEN DAWSON: Yes.

Hon Dr STEVE THOMAS: That is very good to know. I would not have been surprised if the minister had said a couple were. Some of those very big corporations would be fairly onerous. I can imagine the chair of Water Corporation would spend a fair bit of time there, but I guess it can be argued that the chair of Qantas is only part time and the chair of Wesfarmers the same. I am quite comfortable with that.

Clause 17(4) is what I am most interested in. It states —

A director of a GTE who is also the GTE’s chief executive officer —

- (a) holds office for the period specified in the instrument of appointment; and
- (b) is eligible for reappointment.

That could relate to clause 17(3) as well, which states —

A director of a GTE, other than a director who is also the GTE’s chief executive officer ...

I presume that a CEO’s contract would define them as a director of the board, or define the position. I suppose it would be the person because the contract would be with a specific person. Under their contract, that CEO is set for a specific time frame. Other directors are limited to each appointment being for three years and they are not eligible for more than three consecutive terms, so nine years. How long can a chief executive officer sit in their contract as a director of a GTE board under which they are employed, which, I have to say, is kind of a weird system?

Hon STEPHEN DAWSON: As long as they are CEO, they can remain on the board. There is no time limit.

Hon Dr STEVE THOMAS: I would be interested to know something. Maybe the minister’s officials can assist him with a question about what that tenure is for. I am particularly talking about the 11 GTEs we are currently looking at. I do not think we will finish this bill today because we have a very limited time frame, given the excellent speeches given on the budget today, and a forthright debate and excoriation of the government in motions this morning. We are going to run out of time.

Hon Kyle McGinn: It is Thursday.

Hon Dr STEVE THOMAS: It is Thursday; that is when that happens.

We could probably use the establishing legislation that exists, but I apologise, it is hard to ask the minister a question on the establishing legislation when it is not the bill we are dealing with. It is hard because the two pieces of legislation have to be read together, and they obviously have to concur, so this is an immensely complicated piece of legislation, which is why it is taking us a little while to go through it. What is the normal tenured contract of a CEO of one of these GTEs? Are any of them open-ended or are they all five years plus an extension? I would like to know how long a CEO might sit as a director of a board under which they are also employed, which is still a fairly difficult concept to be happy about.

Hon STEPHEN DAWSON: I understand that the existing acts do not specify term limits for CEOs; however, the bill in front of us specifies term limits of up to five years for the CEO, but they would be eligible for reappointment.

I am told it would not be generally desirable to have the CEO as a director of the board, so it would be a rare occasion, and it might be related to the experience they bring to the organisation based on previous experience outside it.

Hon Dr STEVE THOMAS: This is a really important part of the debate. We are talking about those three people we mentioned last night, in that they are CEOs who have been appointed as directors.

Hon Stephen Dawson: No.

Hon Dr STEVE THOMAS: No. Is this a different group? I might get the minister to tell us exactly what that is before we have that debate.

Hon STEPHEN DAWSON: The three members of existing GTE boards are not CEOs. The three directors currently on GTE boards are senior public servants, they are not CEOs.

Hon Dr STEVE THOMAS: I thank the minister for that clarification. They are not CEOs. Let us start with this then: are we making a change to this legislation by allowing CEOs to be directors on GTE boards or is it simply that the circumstances in which the government has selected board membership have meant that it was able to select CEOs previously but did not appoint them because of the selection process it used?

Hon STEPHEN DAWSON: Currently it is allowed for electricity corporations under the existing establishing acts but not for the port authorities. The legislation before us will allow the CEO of the agency, in particular the GTE, to be appointed to that board.

Committee interrupted, pursuant to standing orders.

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