

## GOVERNMENT TRADING ENTERPRISES BILL 2022

### *Second Reading*

Resumed from an earlier stage of the sitting.

**MR S.A. MILLMAN (Mount Lawley — Parliamentary Secretary)** [3.56 pm]: I do not propose to go on for too much longer. I will summarise some of the comments that I was making before question time, and I will then wrap up and conclude with my endorsement of the Government Trading Enterprises Bill.

Members will recall that I was contextualising my comments by talking about the dangers of neoliberalism and that privatisation was the manifestation of neoliberalism. In the 2017 state election, the McGowan Labor government was handed a ringing endorsement to preserve the public ownership of Western Power. It provided us with an opportunity to ensure that the social return to the community of Western Australia would be maintained instead of having this wonderful asset and public utility, which provides services to much of our community, flogged off as a temporary mechanism to try to place a fig leaf over the shocking economic mismanagement of the previous government.

The other point that I was making was that it appears as though privatisation is fundamental to the ethos of the Liberal Party. Whenever it sees an excellent piece of public infrastructure or a public asset, it has nowhere else to go. I thought that the Liberal Party would have learnt the lesson of the devastating losses of the last federal election and the 2017 state election in which it put forward a privatisation agenda.

I could not help but see the news reports today. Members will be aware that the wonderful Chris Minns, member for Kogarah, is running to be the Premier of New South Wales. I wish him and the New South Wales Labor Party all the very best. Dom Perrottet, the Liberal Premier of NSW, has his hands on Sydney Water, and he cannot wait to privatise it. Therefore, the thing to be aware of is that privatisation is fundamental to the Liberal Party's philosophy and it should be resisted. Privatisation is completely contrary to the interests of the community.

I will finish my contribution on this bill. The Government Trading Enterprises Bill will put a stop to the need for any more privatisation and will re-emphasise the important role that government plays in the oversight of these organisations. Government trading enterprises play an important commercial function for the state of Western Australia, but they cannot be motivated solely by profit; they must also act in the interests of the community as a whole.

With that, I commend the Treasurer and the Premier for bringing this reform forward. As I said in my contribution before question time, this bill is the function of a number of inquiries, not least of which are the Langoulant inquiry and the Public Accounts Committee inquiry, which I am fortunate enough to have been a part of. The bill will provide the regulatory framework for these government trading enterprises to succeed and for that I am incredibly grateful. I think this bill represents a great piece of work. I commend the Premier and the Treasurer for bringing it before the house, and I commend the bill to the house.

**MS J.J. SHAW (Swan Hills — Parliamentary Secretary)** [3.59 pm]: I rise to make a contribution to the Government Trading Enterprises Bill 2022. It is timely to review the governance frameworks for government trading enterprises. I am sure others have touched on the service priority review and the special inquiry into government programs and projects conducted by John Langoulant. John Langoulant was my boss twice in my past life. He was my boss when he was the CEO of the Chamber of Commerce and Industry of Western Australia and I spent some time there, and he was my boss again when he was the independent chair of the board of the Dampier to Bunbury pipeline. In both instances, I have an incredible amount of respect for John Langoulant. I know that that respect extends across both sides of the chamber. That report was incredibly illuminating. Both reports highlighted the importance of the clear relationship between GTEs and the state government to ensure well-informed decision-making and cohesive long-term planning across government.

In response to those reports, the state government committed to introduce legislation to standardise and strengthen the governance and oversight of GTEs, to provide more explicit direction to the boards to adopt higher standards of accountability and reporting on the progress of major projects, to review the requirements on GTEs to produce annual statements of corporate intent and strategic development plans and the content of those statements, and to foster a more collaborative working relationship between central agencies that support line agencies and the GTEs to enhance their skills and capabilities. I think it is a two-way thing that really does need to work, from not only the agencies to the GTEs, but also back. One thing that I observed when I worked for GTEs—I have worked for GTEs, private equity-owned energy companies and companies that have listing structures—is the exchange of capacity and information back into government, particularly the drivers of the corporate sector and the way businesses prioritise and make decisions. There is a lot to be learnt from government agencies and the private sector and vice versa, so the private sector also understands what the government's drivers are. The GTEs provide a very interesting halfway house for that. That was an observation that I made in my previous career in the corporate

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sector. Finally, the government committed to introduce measures that would improve governance accountability and transparency for public sector entities more broadly. This legislation is part of that program of work.

The reform program itself aims to standardise governance and accountability and strengthen oversight of GTEs, addressing inconsistencies between the provisions of different establishing acts. There are differences between the Water Corporations Act 1995 and the Electricity Corporations Act 2005. Just generally, as far as possible, corporate governance should be standardised, particularly across government trading enterprises. It really does help with expectations around public administration and what government entities are there to do. It clarifies it for government, board members, employers and the public. The reform program aims to clarify the relationship between GTEs and government to ensure well-informed decision-making and cohesive long-term planning. The program will also address issues raised by GTEs in navigating their relationship with government. Clarifying the relationship and decision-making is also important. One of the very interesting parts of the reform in the bill before us today is the requirement to bring to the government's notice very early on significant projects that might develop. One thing I observed in my past life was that very often companies could spend an inordinate amount of time working up a proposal and gating it through the internal approvals as some sort of commercial proposition, but when it got to board level or to the ministerial office, it was just a complete flat no. That was because sometimes the groundwork had not been done prior to understand what the government as the owner of these GTEs would countenance. Improving those relationships and those channels of communication is good in itself but it will also save a lot of inefficiency and waste within the entities themselves.

The government has adopted a tranche approach for this program of reform. The first tranche will capture the electricity corporations, the water corporations, the port authorities and the Western Australian Land Authority. Obviously, these reforms are necessary to respond to the priority service and the Langouant reviews. I think that post-COVID, we have never been so aware of the previously latent or unacknowledged capacity of public instrumentalities to address societal challenges. I do not think we have ever been as aware of the role and the power of subnational states in our commonwealth system. During COVID itself, we saw unprecedented actions being taken by subnational governments through their instrumentalities and their capacity to contribute to the pursuit of public value outcomes. If we are going to continue that, which I am quite sure we will, it is vital that the governance arrangements surrounding these instrumentalities are modern and fit for purpose.

This legislation introduces the concept of the purpose of a GTE, which reflects the government's expectations of GTEs to advance the public benefit through the performance of their functions. This highlights that the board should consider factors including, but not limited to, profit. It should have a mind to the delivery of government policy and the social licence to operate. That used to be part of the gating and business case development framework that I worked in when I worked for a government trading enterprise and, I might add, also the private sector companies that took their environmental, social and governance commitments very seriously as well, but it was not statutorily required. It is a significant step forward to have it enshrined in legislation that boards should now be considering these factors.

Pre-COVID, quite a bit of research was underway about the capacity of the state to pursue public benefit and public value. Quite a bit of academic work has been undertaken, reconceptualising the state and its core functions, and a growing recognition of the state's role as a facilitator and driver of innovation and economic growth and as a creator of public value. The first exponent of these concepts was Mark Moore. In 2009, he wrote a really important piece of work called *Creating Public Value: Strategic Management in Government*. His subsequent works over the following years have really created a framework for assessing and improving the effectiveness of public organisations in achieving these goals.

At its core, this public value concept emphasises the importance of creating positive outcomes for citizens and communities to demonstrate the value of public services and build public trust. It more basically states that public values are created when public organisations are able to address important social problems and improve quality of life for citizens. When we think that the government trading enterprises are basically public organisations, it is absolutely legitimate that the requirement to consider their purpose is incorporated or enshrined in legislation. It really does require public entities to consider results rather than just inputs. That is often a criticism levelled at the public sector. Having this purpose-oriented view of government trading enterprises instilled in its regulatory framework will really sharpen the GTE's mind, although I acknowledge that most GTEs that I have dealt with are really quite focused on what they are there to do for the people of Western Australia who own them.

In the USA and Europe more recently, a growing body of work has emerged around the concept of public value and acknowledging the role that states can play in fostering entrepreneurialism, innovation and economic growth, again towards the pursuit of broader public policy objectives. A lot of this is being driven from University College London by Mariana Mazzucato and Rainer Kattel, by Wolfgang Drechsler at Harvard University and by Erkki Karo from the Ragnar Nurkse Department of Innovation and Governance at TalTech. A really great emerging body of work is now challenging the traditional view that the private sector is the main driver of innovation. This work argues

that the state has a crucial role to play in shaping and supporting innovation-led growth. Particularly in her very influential book, *The Entrepreneurial State: Debunking Public vs. Private Sector Myths*, Mazzucato demonstrates how public investments in research, education and infrastructure have played a critical role in fostering technological breakthroughs and driving economic growth. She has been actively championing a more active role for the state by promoting innovation and making sure that the benefits are returned and more widely shared throughout society. Her work is replete with many examples of instances of public sector investment and government trading enterprise activities spawning entire new industries and technologies, and I will quickly clip through a few of them.

NASA is an absolute prime example. It is one of the most successful examples of government-led innovation. Its investments in research and development have led to numerous technological advancements that have benefited the economy and society. Its research on materials science and remote sensing technologies has led to the development of new industries in fields like telecommunications, weather forecasting and agriculture. The research on space travel has spurred advancements in energy storage, robotics and virtual reality. The Advanced Research Projects Agency–Energy is a United States government agency focused on promoting and funding advanced energy technologies. Again, the research and investments that have been made have basically provided very early stage funding for high-risk projects that the private sector may not necessarily be interested in. The investments that it made in battery technologies in particular has led to significant improvements in electric vehicles and renewable energy storage. Its investment in wind turbines has helped to make renewable energy far more cost-effective and that has, in turn, prompted a real escalation in investment from the private sector.

The Defense Advanced Research Projects Agency is a more recent example. It develops new technologies for national security purposes and invests in high-risk, high-reward projects that have significant potential benefits for society. Its investment in autonomous vehicles, cybersecurity and biotechnology has led to significant advances in those fields.

It is important to emphasise that much of Mazzucato’s research is in the United States, which is the bastion of free marketeer philosophy, but if we peel back the layer a little bit, we can see that so much private sector benefit has derived from public sector investment at a very early stage when it is difficult to get some sorts of innovation up off the ground, and it has generated invaluable intellectual property that has then been commercialised by the private sector and delivered society-wide benefits. That has happened through the work of government trading enterprises.

As well as all these examples, it is important to emphasise that the state is an actor in a much broader constellation of actors, but it has been working with the private sector, with each learning from and facilitating the other. However, it is public investment that moves the dial. It is the action of government trading enterprises that has spawned so much subsequent innovation and industry development. I have seen a growing appetite for this type of collaboration and activity by government trading enterprises in my time in Parliament. Very early on, I participated in the Deloitte Australia Shaping Future Cities project. The report on that project was released in November 2018. I was part of the advisory panel for it. I was the only politician on the panel. It had a whole range of government agency heads, but all the major companies in Perth were represented on that advisory committee. It really was a fantastic process to go through just to hear the appetite within the private sector for the government to play a more active role in this space. The report said that we should focus on nine key sectors: battery supply chains, hydrogen industries, Indigenous-owned businesses, biodiversity products, space industries, Indian Ocean defence, industry education, digital solutions and integrated energy solutions. It emphasised the importance of innovation and technology in driving economic growth. Deloitte suggested that the state government should invest in research and development, create innovation hubs and encourage entrepreneurship. I would argue that one of the prime ways in which that can occur in a practical sense is through the activities of government trading enterprises.

Indeed, one of the things that I started to think about during the microgrids inquiry—I will not go into too much detail about all the great energy innovations—was what is the role for government trading enterprises and what is the scope here, because it really is quite considerable. As part of writing the second report on that project, I shunted about 70 000 words off to the side. I had done some pretty extensive research into the concept of public value and the role of the state. Who knows? If the good people of Swan Hills kick me out, I might go and do a PhD and develop those ideas a little further. There are undoubtedly many ways in which governments can act to support innovation and entrepreneurialism. It can obviously do that by acting through government trading enterprises.

As the member for Mount Lawley pointed out, the energy utilities in Western Australia have not been privatised, and that is a major point of differentiation for us. It has meant that we have been able to pursue a whole range of public value outcomes through our ownership of GTEs, particularly aimed at effecting energy transition. It is seriously and practically addressing the challenges of climate change. The work that is undertaken in government trading enterprises is world leading. It will have a global impact in assisting us and other economies to transition. At the end of the day, these are the most profound and important challenges facing our society.

I will very briefly mention some of the projects that Horizon Power in particular has been pursuing. Last year, I presented at the World Renewable Energy Congress alongside Mike Houlahan from Horizon Power. He gave a fantastic presentation outlining the various projects that Horizon Power has been pursuing. I will say, with full disclosure, that I used to work for Horizon Power many years ago, so it is quite close to my heart. It is the last remaining vertically integrated state-owned energy utility. It has a full line of sight from molecule conversion to electron production to transition and distribution to the point of consumption. It also has direct relationships with the providers of both the fuels and generation capacity and also with the customers. It has done some absolutely incredible work piloting flywheel technology in Marble Bar, an incredibly orchestrated gas microgrid in Onslow and the first end-to-end demonstration plant in Denham incorporating green hydrogen into a microgrid that has a solar farm, an electrolyser, hydrogen compression and storage, and a fuel cell. It has also undertaken innovative work on standalone power systems, as has Western Power, another government trading enterprise.

These government trading enterprises are trialling new technologies. They are developing invaluable intellectual property. They have the ability to sandbox. They can partner with the private sector. Sometimes, these innovations are not profitable off the bat, but government can make the case for their pursuit because they deliver public value. They move innovation along. They develop capability. They prove technologies up to scale. They inform the development of projects that can go on and be commercial. They enable us to trial new technologies that will have significant future benefits. This is really exciting.

**Ms M.M. Quirk:** Do you want to ask for an extension?

**Ms J.J. SHAW:** Yes, I will. Could I have a brief extension, please?

[Member's time extended.]

**Ms J.J. SHAW:** Thank you, member for Landsdale. It is always good to have a wingman!

These government trading enterprises stand to deliver a lot of benefit to our society. They allow the sandboxing of a whole range of new technologies. They foster innovation when private investment may not necessarily be forthcoming. They allow capacity development within the instrumentalities of the state writ large. They promote entrepreneurial culture. They promote the understanding of the drivers of business that really helps foster collaboration. They allow the cross-fertilisation of ideas between the public and private sectors. They assist businesses to achieve scale. Boundary Power was formed by Horizon Power in a partnership with a private sector entity to upscale and then project into market these types of technologies. It is very hard for small businesses to do that alone. Sometimes they need a big partner, and government trading enterprises, by creating demand, can help a private industry to develop around it and then help it to achieve scale and project itself into new markets. When entities want to go into these new markets, government trading enterprises can also facilitate pathways, particularly outside of Australia where many of our potential counterparties, either states into which we may seek market entry or where private sector entities may seek market entry, prefer, off the bat, to deal with governments in the first instance. Government trading enterprises can help build the bridge that the private sector can then walk over into export markets. Obviously, as Parliamentary Secretary to the Minister for State Development, Jobs and Trade, that is something I am particularly interested in—and indeed is something we recommended that the state government explore in the inquiry into microgrids.

In the pursuit of broader government objectives, its public value concept is very important. I have talked about its role in addressing energy transition and climate change, but we can see it inform the development of significant pieces of infrastructure. The Dampier–Bunbury natural gas pipeline was built by the public service, but expansions were subsequently funded by government trading enterprise users underwriting the expansion of that asset, which is very significant for state development. Gas storage facilities have had government trading enterprises as foundation customers, which helps shore up the security of gas supply in Western Australia. Our GTEs delivered cost-of-living relief through Synergy. Government trading enterprises can be employers of best regard in that they can incorporate participation targets for Aboriginal employees, as Horizon Power did. They can look at equal opportunities, equal pay in the workforce and flexible workplace arrangements. They can be model employers—this is an important point—in sectors in which there is competition for labour with the private sector. It lifts the standards for all. If people will choose a government trading enterprise because labour standards are higher, it will make the private sector lift its game if it wants to compete for that labour resource.

But it is important that these entities are well governed. For far too long, the contributions that state-owned enterprises can have to driving innovation and economic growth have been overlooked or understated. Governments can achieve great things for their societies through state-owned enterprises by investing in research and development and taking measured, appropriately assessed risks on commercial projects. Modernising corporate governance brings government trading enterprises up to standard with best practice, ensures clarity of purpose and acknowledges that the corporations have a key role to play in delivering public value and ensures an alignment between the activities

of the GTEs and broader government objectives. These are exciting times. This legislation is an exciting and very significant step forward as we try to tackle some very profound changes.

Very briefly, I want to take a moment. I have discussed a lot of these concepts in quite some length with an employee of mine, a member of my team, called John Karoll. Today is his last day working in the Swan Hills office. His job interview with me was a two hour-long discussion of the concept of public value and how it is enshrined. So it was not about his capacity to do the job at all; it was a really weird interview! He has made a remarkable contribution to the Swan Hills state office. He goes out into the big wide world now he has finished his postgraduate studies, and he has told me he wants to pursue a career in which he will continue to develop these concepts. I want to wish you all the best, John; you have been great. Thank you very much.

**MS M.M. QUIRK (Landsdale)** [4.22 pm]: I am certainly enthusiastic about supporting the Government Trading Enterprises Bill 2022. Having some legislative prescription around state-owned enterprises or government trading enterprises or government business enterprises goes back to a period of macro-economic reform in the 1990s. Leading the way was New South Wales. I just quote from the foreword written by the former Premier of New South Wales Hon Nick Greiner to a book called *All Above Board* by Julie Garland McLellan.

It reads —

When I introduced the State Owned Corporations Act in 1989 in New South Wales, indeed when I first joined the boards of QBE and Stockland in 1992, the expression “corporate governance” was barely known, much less studied and the focus of massive political, regulatory and media attention.

These days, to paraphrase Paul Keating, every galah in every pet shop is talking about corporate governance.

Clearly, the origin of this focus in the last two decades lies in the many listed company failures and scandals that occurred in most western economies, and to which Australia was certainly not immune.

Governments and communities moved to develop and enforce new standards, structural and behavioural, to help protect the interests of shareholders and all stakeholders.

Groups representing investors and directors, among others, developed their own views and interpretations of best practice to go with a range of legislative and regulatory initiatives.

Naturally this has led to attention on governance practices at private companies, not-for-profit non-government organisations ... and of course, the public sector with its huge variety of institutional forms that often have boards.

The author goes on to say public sector directors need to ask and be able to provide answers to a number of simple but crucial questions —

Why are we here? How do we reconcile our role with expectations of shareholder, ministers, portfolio ministers and myriad stakeholder groups? What are our legal powers and responsibilities? To whom are we accountable? How do notions of best practice apply to the particular board on which I am invited to serve?

I think that is a good summary of the kinds of issues we have to address in this legislation.

It has probably been mentioned before—I have not heard all the speeches—but Western Australia has a plethora of government trading enterprises; I think the estimate is over 300. At a local level, the opinion has been expressed that government trading enterprises sit in a no-man’s-land between the government and private sectors. Their boards like to think of themselves as equivalent to private sector boards. That is not the case. That was the opinion of the former Premier in his submission to the *Special inquiry into government programs and projects final report: Final report: Volume 1—February 2018*, which is more affectionately known as the Langoulant report. I have to say that the former Premier’s views on a number of issues are somewhat jaundiced. He was notorious for not working well with others, and I suspect his opinions on government trading enterprises fall into that category.

GTEs are statutory authorities that operate in commercial business environments to deliver critical functions and services to the WA community. Historically, they have been established at arm’s length from government, usually each under their own enabling legislation to give the GTE the autonomy or independence to introduce private sector disciplines, incentives, sanctions and competition to facilitate operational efficiencies and ensure value-for-money service delivery relevant to its mandate. The scope and degree of the autonomy and independence and the risk of tensions with accountability for performance outcomes in the context of government’s overall strategic and longer term planning considerations was the subject of this Langoulant inquiry and also the service priority review in 2017. These reviews made a number of recommendations that have been accepted by the government and form the basis and the philosophy behind this bill we are debating today. Overall, it was found that there was a need for a more holistic and integrated whole-of-government approach across all public sector activities and agencies. I quote the former Premier in stating that GTEs currently sit in a no-man’s-land between the public and private sectors and

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are in need of substantive accountability and government reform. As I said, this bill is the government's response to these reviews.

I will quote the Langoulant report. I think there are a number of observations that are instructive. Page 61 states —

Despite there being a significant reduction in the number of these entities in recent years, and while many have small impacts on aggregate financial targets, the variety of their governance, financial management and accountability arrangements is of concern to the Special Inquirer. This inconsistency in governance arrangements clouds accountability practices and confuses performance assessment—both absolutely and comparatively. The Special Inquirer notes that previous reviews have also called for more uniform practices to be adopted across these entities.

Further, at pages 119 and 120 it states —

Western Australia differs from other States in not having a Minister who oversees the commercial performance of Government Trading Enterprises. In other States these Ministers are known as Shareholder Ministers with the title reflecting their interest and responsibility. The Special Inquirer believes the oversight of Government Trading Enterprises needs to be enhanced and supports the establishment of a Shareholder Minister. The Treasury should be required to develop its capability in this area to ensure oversight of the Government Trading Enterprises is at the most capable level possible.

Just to demonstrate the bipartisan nature of the need for reform, the then Leader of the Nationals WA observed in her submission—or evidence, I am not sure which it was—to Langoulant —

*“The challenge I found as a Minister was that arms-length process, and so ...having them (the GTE) in step with what Government policy or direction was—that’s an interesting dynamic between a Minister and a GTE.”*

The report goes on to state —

She went on to note that the Minister may not necessarily have the level of information that a departmental representative might have.

The Minister's concerns relate to the lack of awareness of demands on Ministers and their need for information by Government Trading Enterprises and indeed most public corporations.

The Special Inquirer notes that the interface between the Minister and the boards of the corporations which report to them is far too infrequent. While recognising that practices vary across Ministers, from the Special Inquiry's review it was clear that many Ministers did not engage with their boards on a regular basis. When those engagements occurred they were said to be too frequently in the nature of meeting briefings. No records of these meetings appear to have been maintained. In instances of compliance ... the Special Inquirer was told often that while no documentation was available, these matters would have almost certainly been covered in those briefings.

Finally, in conclusion at page 125, the special inquirer Mr Langoulant stated —

The Special Inquirer believes that there is a need for a structured review of the governance and operating arrangements between Government Trading Enterprises and the Government. This would be focussed on introducing clearer protocols for the Government Trading Enterprises on providing information to government regarding their operations, how the Government Trading Enterprises keep their Minister informed of their activities and what information is provided to the public on the Government Trading Enterprises plans for a period longer than 12 months. The Government Trading Enterprises should be required to report to Treasury on a more timely and comprehensive basis on all aspects of their operations. And the legislation for Government Trading Enterprises should be standardised, especially in the treatment of non-commercial requirements imposed on Government Trading Enterprises by Ministers.

Reviewing these matters for the Government Trading Enterprises would be a first step. The even more complex labyrinth of legislative provisions and management practices which exists across the State public sector corporations is resulting in a framework that is difficult to oversee and which facilitates non-transparency.

The Department of Treasury has provided the Special Inquirer with a submission recommending governance reforms for Government Trading Enterprises. Over the period of this Special Inquiry ... there have been a number of reports that have highlighted problems associated with the framework in which the Government Trading Enterprises, particularly the energy corporations, work.

Members will note that this bill does not cover all GTEs, but to use the common expression, it is the first tranche. It is important to note that it will set out some standardised practices that then should be applicable through subsequent legislation to more GTEs.

Overriding this bill is the need for a more holistic and integrated whole-of-government approach across the public sector. As I have said, this goes back to principles from the 1980s and 1990s, which was a significant period of micro-economic reform under the Hawke and Keating governments, and in New South Wales under the Greiner government. The goals of reform at that stage were productivity efficiency—in other words, to produce optimal output with minimal input—and allocative efficiency, which produces the right mix of goods and services, optimising consumer need and satisfaction. That included the demonopolisation of supply, delivery and the choice of provider. The evils sought to be addressed by these goals and evident in the existing government business enterprises included public sector bureaucracy and managerial inexperience in commercial endeavours, confusion between commercial principles to optimise enterprise value and government expectations of GTEs also performing social non-business functions, and the lack of competitive market neutrality, with GTEs competing against private sector providers on other than a level playing field. A GTE may have special concessions for tax or regulatory compliance and so forth.

The other thing I need to say is that the commercialisation and corporatisation of GTEs whereby the ultimate control and benefit of the enterprise remains with government or the public sector needs to be distinguished from privatisation whereby the control and benefit of such an enterprise moves totally to the private sector by way of asset sale, with the benefit of proceeds of that sale passing into consolidated revenue for redeployment in other areas of public need.

There were five operating principles that underpinned the reform wave in the 90s. There needed to be clear and non-conflicting objectives, like commercial or business objectives, compared with the social and politically driven functions. Also, drivers were looking at managerial responsibility, authority and autonomy; independent external performance monitoring and accountability; rewards and sanctions for performance or non-performance against a set of KPIs; and competitive neutrality in all markets such as stripping the enterprise of its legislative monopoly position and privileges, and subjecting it to market competition from private sector operators.

Although some of these principles already apply under existing legislation for specific GTEs in Western Australia, a more extensive list of principles will now apply generically to all GTEs. They will standardise the GTE governance, accountability and board performance under the common umbrella of a legislative framework whilst maintaining the existing legislation under which each GTE is formally constituted and operates. There will be a quasi-codification and a legislative prescription of fiduciary-style corporate duties for directors. These will be aligned with the expectations of directors as in the Corporations Act. There will be mandated annual board performance evaluations, reporting of outcomes and board skills matrix analysis that will assist with monitoring board performance, succession planning and identifying gaps in the board's skill set. The strategic objectives and performance of the government trading enterprises will be more closely aligned with government policy, and these may include the need for each GTE to meet community service obligations and statements of expectations, and provide annual performance statements linked to government budget papers.

[Member's time extended.]

**Ms M.M. QUIRK:** Then, of course, there will be accountability and control measures through annual financial and director reports and interim reports to the relevant minister, and GTEs' annual reports will be tabled in Parliament. GTEs will have enhanced obligations to consult with and provide information to the relevant minister, and to keep the relevant minister reasonably informed of operations, performance, assets, financial standing and prospects. The GTEs' accountability will be to both the functional portfolio minister and a shareholding minister, and GTEs will need to continue to consult and obtain relevant ministerial approval for the disposal of significant assets and entry into significant transactions. GTEs will need to comply with ministerial directions to perform or not to perform specified functions, and the text of those ministerial directions will need to be tabled in Parliament. Financial accountability and compliance covers such things as bank accounts, investments, borrowings, Treasury guarantees, risk management, dividend payments, record keeping and audits. This legislation will be extended to other GTEs.

I want to quickly go through the duties of the board and directors. The fiduciary duties of directors are analogous to those under corporations law, including the duties of acting with care and diligence, acting in good faith in the best interests of the GTE and for a proper purpose, acting with honesty, not misusing the position or information, not providing false or misleading information knowingly or without taking reasonable steps to determine that it is not false or misleading, disclosing material personal interests, and observing prudential conflict-of-interest protocols. It is notable that the bill will limit the ability of GTEs to indemnify or fund insurance for directors who breach their duties. In addition to the duties applying to ordinary board members, page 96 of the *All Above Board* book notes —

In a government-owned organisation the chairman has the added complexity of deciding whether the minister/department or the organisation will handle communications on a particular subject and whether to speak in person or to have the chief executive take on the role.

Again, it states that it is a complex and vexed issue.

Just as it appears in common law and corporations law, the business judgement rule applies to directors and officers. This means that if they take all due care and diligence in making their decisions, courts will find they should be excused from liability if they acted honestly, but it should be noted that the relief of liability provisions will only extend to the duties the directors owe under the Government Trading Enterprises Bill 2022 and will not relate to duties imposed on directors by other legislation—for example, the work health and safety laws.

The bill also sets out good governance requirements that are generally accepted as good governance principles, such as doing annual board and director performance evaluation reviews and using a board or director skills matrix to give guidance for the skills, qualifications and experience required of the GTE directors, individually and collectively. Although GTE board appointments are the province of the relevant minister, the board may make advisory recommendations. The structure and remit of board committees, including the audit and risk functions, are also part of good governance requirements.

I quickly trespass onto the issue of the Perth Mint and Gold Corporation in the context of changes to the Australian Transaction Reports and Analysis Centre law in 2007. The changes to the law and to Gold Corporation's and the Mint's obligations, as they applied in 2007, should have been picked up by the audit and/or risk committee as something that would have an impact on the organisation. They needed to implement policies and procedures to respond to those law changes when they were brought within the purview of the AUSTRAC legislation. That is still under investigation, so I will not make any firm conclusions about that.

The bill will enhance the governance-related obligations, duties and responsibilities of GTE boards and their directors, with consistency of application across all GTEs generally as a class of statutory authority. The bill will also provide for greater engagement and consultation between GTEs and their relevant minister. It will give the government an opportunity via the relevant minister to exert influence and control over GTEs' strategic objectives, operations and performance outcomes.

Finally, my timing is usually terrible, but I uphold my legal practising certificate. As members will be well aware, one has to do some training every year to keep one's skills up to speed or thereabouts, and I did a webinar last Friday on government trading enterprises. It was conducted by barrister Steven Cole, so my speech heavily relies on what he told us in that webinar. I would be accused of being a plagiarist if I did not mention that fact. I commend the bill to the house.

**MS M.J. DAVIES (Central Wheatbelt)** [4.47 pm]: I am the opposition spokesperson for the Government Trading Enterprises Bill 2022, albeit I came a little late to the party on this. I will not be taking the full amount of time. Members can expect the member for Cottesloe to contribute, and there will also be significant scrutiny by the responsible shadow minister in the Legislative Council.

I have some experience in this topic. As the previous member mentioned, I spoke to John Langoulant as part of the special inquiry instigated by the McGowan government at the beginning of its term. Our discussion was on a number of issues, predominantly dismantling royalties for regions, but there were conversations about government trading enterprises. As a former Minister for Water and former Minister for Forestry, I had responsibility for the Water Corporation, Aqwest, Busselton Water and the Forest Products Commission. Government has quite a significant breadth of GTEs with different levels of funding, capacity and responsibility. The previous speaker reminded me that I had observed and had the view that there needed to be some clarity about the responsibility and connection to government policy for these GTEs.

It was my experience that because of the powers that were imbued in the board and the director to act in a commercial manner, albeit that the single shareholder was the government and therefore the taxpayer, they sometimes did not pay as much attention to what the government of the day was seeking to achieve. If a government-owned entity operates in a commercial manner, in many cases—not all—it has no natural competition. In the case of the Water Corporation, I think there are organisations that would very much like to have a larger share of delivering water services, but that is not something that we ever contemplated because the delivery of water, particularly in a state the size, scale and geography of WA, is complex. That would be the same for the delivery of power. With the Forest Products Commission, we talk a lot about the native forest industry and the softwood industry, but sandalwood is actually an incredibly lucrative and very complex international area that the state deals in. In fact, it is the oldest export of the state, even predating our gold industry. They are complex regulatory environments. They do have boards. They are asked to act and behave not only commercially, but also in the best interests of the shareholder, which is the government of the day and the taxpayers of Western Australia; however, there can sometimes be a disconnect. Although there are mechanisms to flag longer term projects with the government to avoid some of the shocks that the member for Swan Hills spoke about—in the case of the Water Corporation, it was strategic development plans and statements of corporate intent—organisations can do a significant amount of due diligence only to bring it to government and find that it does not align and is not going to be supported for various reasons. Those SDPs



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and SCIs have not always served the best interests of the government of the day when decisions are made across the board.

I also observe that we worked very closely with the Treasurer—there was a requirement to do so under the legislation—in terms of expenditure, dividends or making sure that the organisations were closely aligned with the broader financial requirements of the state at the time. We regularly met with Treasury officials. I know that that was a requirement for the Water Corporation, Aqwest, Busselton Water and the Forest Products Commission to a lesser extent. There was a signing authority and a relationship. The legislation that we have in front of us today will formalise that, but I think it will probably give significantly more power to the shareholder minister who will sit across all those portfolios. There is already a role for the Treasurer, as there is across all portfolios, to have an understanding of what is happening within those organisations. The government purports that this legislation will make sure that there is alignment and consistency across government. It is going to be a significant undertaking, particularly when we think about the responsibility of the Treasurer already to ensure that that is done properly. We have already had a discussion at length in Parliament today about some of the challenges that can take place within government trading enterprises and with who knew what when, when it is appropriate for ministers to be advised and when it is appropriate for ministers to actually ask questions when they have concerns. When we were sitting on the other side of this chamber, it was regularly put to me by shadow ministers that the buck stopped with the minister, and that if we were not asking the appropriate questions to try to deal with some of the challenges that inevitably arise within portfolios, we were not doing our jobs properly. I observe that although the Premier has repeatedly said that issues with Gold Corporation and the Perth Mint were not raised with him so he could not possibly have been responsible for knowing or taking action, the challenge with that line of defence is that it means he was not asking questions, even though it was flagged publicly and concerns had been raised in the Parliament. I think there is more to come on that issue.

It is concerning to me that the first tranche of this legislation does not include the Gold Corporation and other corporations. We are starting with Horizon Power, Synergy, Western Power, Aqwest, Busselton Water, the Water Corporation, the port authorities and DevelopmentWA, but tranche 2 will deal with the FPC, Gold Corporation, the Insurance Commission of Western Australia and the Western Australian Treasury Corporation. The first three at least have international exposure and significantly complex regulatory regimes and are probably the ones that pose the greatest risk, so it is interesting that they are not in the first tranche. The opposition will be seeking to understand why they have been split into two tranches. This government is now six years in. The Langouant report was done in the first few months of this government's term with a furious amount of focus because the government was very keen to make sure that royalties for regions in particular and our financial track record were well and truly demolished before it got on with delivering its own agenda. Why have we not seen some of those accountability mechanisms applied to those others in the tranche? I am sure the Treasurer can respond to that when we get to it.

From my perspective, we have gone through the legislation. There is the concept of having standardised requirements for directors. The explanatory memorandum speaks about the skill matrix that will be required. That is something that the Water Corporation board did as a matter of course. When board appointments were coming up, the chair of the organisation and the CEO would bring a list of the current members of the board and outline how each board member addressed the skills required for that particular organisation. We then went through the process of recruiting and recommendations were made by the board. That may not have been the case in other GTEs—I cannot speak about those for which I was not responsible—but certainly it was in the Water Corporation. To my recollection, we instigated it in the Forest Products Commission, Bunbury Water and Aqwest. They are much smaller organisations but they still operated in a very complex environment. They sought to deliver some significant projects and needed to maintain the trust of the public. We understand that. If an organisation is responsible for delivering safe and reliable water or power services or managing our very busy ports and the exposure of that, we can understand that it needs people who have an understanding of the sector, have good connections across the corporate world and have an understanding of government. I think everyone in this chamber understands that it is different when looking at things from a government perspective. I agreed with what the member for Swan Hills was saying about the fact that these organisations are mechanisms for innovation and that we can use government policy to utilise government trading enterprises to deliver outcomes that the government desires, but at the same time, the boards have a responsibility to maintain a commercial outcome and are held to that under the legislation, so if they fail to do that, there are serious repercussions for board members. That is a very interesting space for those who serve on a board, on the executive or as staff of those government trading enterprises.

Do I think that we got it right all the time? I think any government that says that is arrogant and being misleading. No, I do not think that every decision a government makes is right. Certainly, governments can do some amazing things when they try to deliver policy through organisations like the Water Corporation, but there are also some challenging aspects to that. I return to the fact that we need those organisations to be beyond reproach because if the private sector is sitting on our doorstep saying it can do it better, and it is testing agencies and finding that they are not keeping up with the latest or the best governance processes or their commercial realities, we are failing the

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taxpayer. I know that the Water Corporation made sure that it kept capacity within the organisation so that when it went to tender with major projects, it could be assured that it would not be undercut and was tendering appropriately. It is something that one would hope the board keeps a close eye to.

I found it interesting when we came to government that we had a standalone Department of Water, which was the regulatory agency for water and the policy arm. Given water is such a significant resource, I thought it was something worth protecting. This government has rolled it into one of its mega-departments. The former Department of Water sometimes found that it played second fiddle to the Water Corporation, which had the capacity to employ people on a significantly different pay scale, attracting employees from different backgrounds with perhaps a more corporate approach. Governments of both persuasions have very heavily relied on the Water Corporation's board and executive, even to the point of creating policy. If one looks at proper government structures, one sees that the former Department of Water was actually the policy arm for government and the regulatory agency, and the Water Corporation was the delivery agent, as was Aqwest, or the Bunbury Water Corporation. It was an interesting dynamic, to say the least. We had Treasury, the Water Corporation and the Department of Water. No doubt some of the tensions still exist. Again, that is why it is really important to have very clear boundaries on the responsibilities of each government entity, particularly when it comes to our government trading enterprises.

Two years ago, the Water Corporation was 20 years old and I am not sure that a significant review of that corporatised model was undertaken before its licence was rolled over. If we were in government, that would be an interesting process to go through before simply renewing the licence and going down that path. That is not to say that I would change it. I am not making policy on the fly. But 20 years is a significant milestone. We heard the member for Mount Lawley talk about the impact of different ideologies and why corporatised entities were introduced in the pursuit of privatisation. I do not believe that privatisation always delivers the outcomes that communities need or deserve, particularly in a state the size of Western Australia. My electorate would not fare well if the government did not have a responsibility through community service obligations to make organisations like the Water Corporation and Western Power whole and commercial. I think we would be the poorer for it. Painting members on this side of the chamber as supporting the relentless pursuit of privatisation suits an ideological argument in this place, but it is not true. If we look at the history of the decisions made by various governments, we see there is usually context around why they were made, and successful or otherwise—I am thinking of Telstra—we find that promises were extracted around what could be delivered for those who would be disadvantaged by an eventual sale. I am not a proponent of wholesale privatisation and never have been because I see the impact it has, particularly in regional Western Australia, when people do not have the ability to hold government to account for the delivery of those services. Certainly, we are seeing the tail end of that with the Telstra sale, which was, of course, done under a federal government of our persuasion some years back. It is not always an easy argument.

I want to correct the record on some of the propositions that get put in this place that we are avidly pursuing privatisation at any cost. That is not true and certainly from a regional perspective it does not necessarily follow that the outcomes for our constituents are improved. We need to look at the context at the time in which governments of any persuasion make those decisions; we cannot simply look at them in a vacuum.

The umbrella legislation that is being introduced will essentially allow the government to introduce whole-of-government oversight and set policy for all the GTEs. The objective, as it was explained to us, is around standardising and strengthening that governance and accountability. I hope that that is what it will do because I suspect there is a certain amount of window-dressing in this bill. This government purports to hold itself to a gold standard of accountability and integrity, and this is an easy way to point to the introduction of a legislative framework, but proof of whether it actually delivers on that will be in how it is managed.

I spoke earlier about the skills matrix for appointments. I am interested to know which of the corporations do not already do that as a matter of practice, and do not have term limits for directors or the equivalent of a company secretary or probity auditors, and how that has operated for the last six years under this government, because that could be concerning. I hope the Premier can answer that question, if not in his second reading reply, during consideration in detail.

I would like some detail around the policy orders that come from the minister and the relationship between the new shareholder minister or the Treasurer, as will be appointed, and the portfolio minister. How will that relationship be managed and who will have priority in terms of reporting and responsibility? After the change of government, I remember at the first estimates hearings that it was very difficult for the opposition to ascertain which minister was responsible for which portfolio due to the change in portfolios and the creation of mega-departments. It would be unfortunate if we were unable to do our job as the opposition because the line of responsibility and who we should ask questions of is not clear. In fact, will we be able to ask question on matters specific to the Water Corporation to the Treasurer as the shareholder minister or will it be deflected to the Minister for Water? I would not like to think that we will set up a system whereby during question time or estimates or in this Parliament we have a circular argument between two ministers leaving the public none the wiser when there is a challenge, a question is asked

or we are seeking clarity. I would appreciate getting a clear understanding of how that will actually work. It is not something that was covered in detail during the briefings provided to the opposition. Although I understand that the shareholder minister relationship is present in other states and is not something new that has come from nowhere, we in Western Australia sometimes have a tendency to make these things our own and we pride ourselves on doing that. For the purposes of *Hansard*, the debate and clarity, an answer outlining who will have responsibility and the final say when we have questions would be appreciated.

I compliment the government for the changes in the budget estimates reporting of the Water Corporation to make it more transparent. When we were in government, I found the then process to be a very strange way to report. Again, if we seek to improve accountability mechanisms, that is one thing this government can take credit for. In the estimates process, instead of just a one-line entry with very little detail, people will see more information in the budget papers and the information will be available through annual reports. I think that is a step towards good practice. I would not like anyone to say that when something positive has been done, we do not acknowledge that as part of our role in opposition.

I will leave it there and allow the member for Cottesloe to make a contribution. We will have a few questions during the consideration in detail stage. As I said at the outset, it is disappointing that we have not heard an explanation of why the Gold Corporation and those other entities have not been included or why it has been done in two tranches. I suspect there were some furious conversations behind the scenes today about whether to leave this legislation on the agenda for debate given the focus on Gold Corp and whether it would give the opposition free range to dip in and out of the issues covered in the matter of public interest debate. I am pleased that the bill remained on the agenda. It is certainly not lost on me that we are talking about improving the transparency and strengthening governance for GTEs, yet we have a parallel debate about some of the most important organisations in the state—the Perth Mint and Gold Corp—and the Premier; Treasurer has been in charge of both of those entities. By any assessment, there has not been a clean record under this government. Significant questions need to be answered. I do not think the response from the Premier or the acting minister today will knock that on the head. There is certainly more to be discovered in relation to the Perth Mint. When we talk about international reputational damage and the potential for huge financial exposure for the state and taxpayers, it is a little rich sitting here listening to government members talk about accountability, governance, royalties for regions and the Langouant report when we have seen some serious failures in governance at the Gold Corp—and a large part of that has been while the Premier has been in charge. I look forward to the Premier's response. I look forward to making sure that this is not just window-dressing from the government and it points to its efforts to make good on the Premier's promise that he made at the beginning of the term that the Labor Party would deliver a government of gold-standard transparency and accountability, and focus on key economic and social benefits of government decisions when dealing with taxpayers money, because, if anything, we have seen over the last six days a significant lack of attention to that detail for something that has the potential to put us on the map for all the wrong reasons in an international space.

**The DEPUTY SPEAKER:** Leader of the Liberal Party.

**DR D.J. HONEY (Cottesloe)** [5.13 pm]: Not quite!

**The DEPUTY SPEAKER:** Not anymore. The member for Cottesloe.

**Dr D.J. HONEY:** The ex-Leader of the Liberal Party.

**The DEPUTY SPEAKER:** Yes. Sorry, I forgot about that.

**DR D.J. HONEY:** I am only one step away!

As I think our lead speaker on this bill indicated, the opposition does not oppose the Government Trading Enterprises Bill 2022. There is much to like in it. Establishing a common framework for governance of government trading enterprises is of itself a noble objective. As was discussed by the member for Central Wheatbelt, a lot of the governance procedures in this bill clearly already exist within GTEs. If they did not exist, one would ask serious questions as to why they did not exist.

I will cover a couple of general topics before I get into the substance of the bill. The first is a general comment for us as a chamber: the governance of government and government business generally is decades behind the private sector, and this is to the detriment of the public sector. Considering the invidious position that the Premier; Treasurer and the Minister for Mines and Petroleum who has responsibility for the Perth Mint now find themselves in, I think it is very unlikely that that sort of problem would have arisen in the private sector simply because many checks and balances are in place to ensure that the senior manager—in this case, the CEO of the Western Australian government is the Premier—is aware of those problems because the system would have demanded that the information went to the senior manager, the Premier. I look at a number of aspects across government. For example, aspects of this bill cover accounting practices and the like. If we look at the big businesses on the Terrace such as Rio Tinto and BHP, they have about the same number of employees as the state government, but they have businesses right around the

world. They have a chief financial officer and all businesses have a dotted-line report to the chief financial officer. There is never a situation in which any part of the business has a different financial reporting process, for example. Collectively between both sides, coalition and Labor governments, we must have invested billions of dollars on bespoke computing systems that have never worked or not delivered value. We heard that the government made an attempt to introduce new computer systems for the Perth Mint, and now there is a second attempt to do so. I am not criticising the Premier for that; I do not seek to do that here. I am saying that the private sector does not allow individual parts of its business to have bespoke systems. For example, if I asked the BHP CEO how many employees he or she had, he or she could literally tell me at the press of a button. They could tell me how many positions were filled, how many positions had been advertised, how many contractors BHP has and how many contractors are on site. Government cannot do that, and that is wrong. Those businesses could tell me their cash flow today. For all of the Premier; Treasurer's skill, I do not believe it is possible for government to do it. Government is decades behind the private sector. In the area of governance, all major businesses have separate independent audit arms to audit all aspects of a business that are covered by this bill. That is done separately. So, again, the issue we have seen with noncompliance at the Mint covering a number of years, as the Premier pointed out today, for a major requirement not being picked up, would not have occurred with those businesses. They would have been picked up in the private sector because it has a completely independent audit arm. One of the questions asked is: are you complying with all the laws and rules that govern your business? The business has to demonstrate that. Auditors with experts come and dig in and so on. For us all as parties responsible for government, I think public sector governance is in the 1980s or 1990s compared with the situation in the private sector. This bill is an attempt in reasonable part to give commonality to governance procedures around GTEs, and that is a good step forward. However, between us, we have a long way to go to ensure we have best practice governance. That would mean that ministers, the Premier and others ultimately do not get blindsided by issues that arise with noncompliance with important rules or laws.

The member for Central Wheatbelt commented on government philosophy. I thought there would be a spontaneous burst of the *Internationale* from the member for Mount Lawley after his contribution that everything that the government does is wonderful and the evil private sector is gouging innocent citizens. As was pointed out by the previous speaker, this is a very colourful yet inaccurate portrayal. The truth is that some things are best done by the government, some things are best done by the private sector, and sometimes things will be done by both in a healthy, competitive way.

This is not my original thought, I have heard others say it, but it is a good phrase: all monopolies are bad. Whether it is a government monopoly or a private monopoly, all monopolies are bad. However, if we have to have a monopoly, it is better to have a government monopoly than a private monopoly. We see this in a number of areas. The provision of water was discussed. It is interesting that sometimes we can look at the division in the way we provide that service; for example, I have said that I support the public ownership of Western Power. In fact, we went to the last election with that policy. We said that Western Power should stay in public hands. The reason I support that is it provides a mechanism for the control of power across that network. In terms of the provision of power, we have now gone to the almost ultimate extent of privatising it. Around half our daily average power consumption is provided by rooftop solar, at least during the day on suitably sunny days. There is now a number of other private providers of power. It is not entirely clear to me, though. Over time—I think this will happen by attrition—the government will be in a position in which it does not provide power but will have a critical role in its regulation. As I say, that backbone of Western Power providing the distribution network, which gives us the engineering control over how power is distributed and input, will remain. Perhaps my view is not as jaundiced as the member for Mount Lawley's view in terms of private versus public ownership. But whatever we do, we should not have a public monopoly.

The previous contributor said that some decisions had been bad. I am not sure whether the wholesale privatisation of the rail network to a single provider worked out well for many customers on that network. It was clearly sold at a bargain basement price, I might say, because it was on sold for a substantially higher value a very short period after the government sold it. There is a whole heap of other issues with the way that was done. I worked for Alcoa and there was no proper delineation of what assets were in that sale. Subsequently, to this day, there are probably still arguments between the rail network owner and the customers of that network about who physically owns what actual pieces of land. Mistakes were made and we need to make sure we do not do that again. We can also do things in a clever way. I was talking to Richard Court once about the issue of private versus public monopolies. When the gas pipeline was privatised, it was sold to a private consortium of companies at the time, and the way that was done was a really clever piece of governance. Before the state government sold that pipeline, it created an easement for another pipeline, from the gas production through to Perth. It meant that whoever bought that pipeline had the constant threat that if they did not do the right thing, if they tried to gouge the users or customers of that pipeline, another operator could very quickly come in because another easement was already established. Of course, the Economic Regulation Authority was also given power over the increases in the prices charged to customers. Again,

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a government mechanism prevented a private monopoly from gouging customers. Therefore, there are many nuances in the way we can do this.

I will get into the substance of the bill. As I said, overall, the bill has a good framework for proper governance. I have concerns in some areas. I am a little concerned that this bill will give an enormous amount of power to the Treasurer. I am intrigued to see how the ministers in this room feel about this because, really, a lot of ministers' autonomy in managing government trading enterprises will be removed by this bill. We will have a bit of a chance to go through the clauses in consideration in detail. We will not drag it out, but there are some areas to explore. The minister for GTEs will have enormous power in this and at the moment we have a Premier who is the Treasurer as well. It will be a huge workload to take on all those other responsibilities with the requirements in this bill for the GTEs to refer to, and get approval from, the Treasurer. I would imagine that it would be almost impossible to be the Treasurer and Premier once this is enacted because of the workload that will come in.

In a normal governance situation in a normal company, the Premier would give directions to his ministers who would then carry out those directions. Under this bill, the Premier as the Treasurer will have a direct say on, direct access to and a direct veto on what happens within those government trading enterprises. Therefore, under this bill, we may have a situation in which—as the Premier pointed out, sometimes the Premier has been the Treasurer, but we may have a separate Treasurer—the Treasurer will have enormous power. Make no mistake, this bill will remove an enormous amount of authority from ministers.

I have said a number of times in this place that putting too much power in the hands of one minister can be a bad thing for governance. The discussion about this issue is cabinet-in-confidence, but I would be interested to know whether there were at least some forceful conversations around the table, I am hopeful there were, about how much power we want to take away from ministers or how much we want ministers to be subject to veto from the Treasurer.

I will go through and refer further to the second reading speech. Somehow there was a lack of transparency under the previous government. I might say that this government does not have a good track record on accountability or transparency in particular. I have spoken to a good number of people and I do not recollect a government that has been less transparent. Today, the Leader of the Opposition showed that transparency in the freedom of information documents that he got back with blanked-out pages. That is the norm. I do a reasonable number of FOI requests, and I can say that I typically do not get any information back or it is blanked out. It seems ridiculous because, in a lot of cases, the information is not politically damaging; it is just information that would be useful to understand an issue. For some ministers—I might say, some are better than others—it seems to be a game in that they will go out of their way not to disclose anything. But, more particularly, this government is not transparent. It will be interesting to see whether this bill improves accountability.

Perhaps I will leap ahead a little bit. One of the areas in the bill refers to transparency. In reading clause 78, “Varying annual performance statement”, the government will, in effect, get the report from the board that it wants because if the report is not what it wants, it will send it back and require the GTE to change it. We are talking about an organisation that is supposed to be an independent group operating like a private company, yet its annual report will be subject to editing by the minister. I am not sure that that is very transparent. I will talk about transparency a little. The Minister for Transport is one minister who seems to enjoy, perhaps more so in the planning area, not giving anything back. The Auditor General called for more accountability on major projects. What was the minister's response? She said that the Auditor General can waste her time informing the public about progress on major projects but she was not going to waste her agency's resources by being accountable to Parliament and the public. It is incredible that a minister would say that the Auditor General was wasting her time calling for more transparency.

I will go through some more aspects of the bill. In terms of integrity, the bill is about transparency.

[Member's time extended.]

**Dr D.J. HONEY:** In his second reading speech, the Treasurer stated that the bill will “provide clear expectations of what information should be shared with government”. The government already has the right to see any information it wants. I appreciate that some clauses in this bill are effectively redundant. I should have said at the outset, with due regard to the good officers who have edited the bill, that it is a pleasure to read a bill that does not refer to 20 other bills in about 300 different places and give us no hope whatsoever of following it. It was good to see the bill rewritten. At the back, the bill has a few references to other legislation to make sure that it is consistent. I congratulate the Premier; Treasurer for that. As an opposition, it is a lot easier to follow than many of the bills we have seen of late. The government does have the right to see information. GTEs cannot hide information from the government.

The bill also seeks to ensure the use of strategic planning documentation. As has already been mentioned, if GTEs are not doing that already, perhaps the board should be sacked! That can be done. The bill puts that in there. I assume that is happening but the government wants to make sure it is happening to make it clear.

Furthermore, the Treasurer acknowledged the skills and expertise that the directors of GTE boards bring in managing the strategic direction of GTEs. In fact, the Treasurer will have complete control over the direction with those boards.

At one level, we can understand that in the sense that these are government agencies and therefore should be carrying out the will of the government, but, equally, one of the reasons for having a government trading enterprise is that they can exercise some degree of independence. That level of independence is significantly reined in by this bill.

There also appears to be a significant increase in paperwork. It will be interesting to see how agencies handle that. When we look at the breadth of GTEs, I genuinely think the Treasurer will be overwhelmed by the number of things he is required to do under this bill. I hope that does not distract the Treasurer, whether it is the Premier or a separate Treasurer, from their other important work.

The GTE minister will still be responsible for board appointments. We see the skills matrix. The devil is always in the detail, is it not? If the skills matrix is generally about the capacity of someone to carry out a role, that is a good thing. If it is used for political purposes, if you like, to define skills matrixes that effectively result in political appointments, that will be a bad outcome. It will be interesting to see that skills matrix.

I might also say, just as an aside, that sometimes people who have no particular formal qualifications are outstanding board members. The reason they are outstanding board members is that they come from a very different background and see things very differently. We will see what this matrix comprises. For example, I have said in this place a number of times that I have a lot of regard for people who come up through the union movement. They are shop stewards and move further up in the organisation. People who may not have any formal qualifications because they mucked around at school or whatever can be extremely talented and able people. I have said this a number of times.

**Mr R.R. Whitby:** Not looking at anyone in particular.

**Dr D.J. HONEY:** I do not think I am allowed to address the Deputy Speaker directly in this capacity, but if the minister were to say that, I would agree with him!

Individuals do come up. I hope that we do not have a narrowing of diversity of people coming onto those boards. Yes, it is important to have people with business experience or perhaps people representing a particular group within the community that is under-represented, but, equally, there are some other very talented people who may not have formal qualifications. I hope that skills matrix does not see a narrowing to university trained, inner-city representatives who happen to have done all the right board of directors courses and whatever but do not reflect the diversity of the community at large and ultimately do not give good governance because of that.

I talked about the skills matrix. We were also informed that the GTE minister's role will extend to consideration of strategic documentation and material transactions. Again, that will intersect with the responsibilities and roles of the responsible minister. Ultimately, there could be some real issues with this if a minister wants to get on with things and things are constantly being second-guessed by the Treasurer of the day rather than just receiving clear direction from the Premier, "I want you to do this; you go away and do it", without having to come back every moment.

The second reading speech referred to providing returns to the community. We need to be careful that it is not simply about financial returns. Clause 7 of the bill states —

A GTE's purpose is to advance the public benefit through the performance of its functions.

That is a very clear way of putting it. I appreciate that "returns" is a term we could look at in a number of different ways, but if it is only about the financial returns back to the public purse, that is not an outcome we want. That view was reflected in a number of contributions already made in this chamber.

Some changes to the nature of information to be publicly disclosed by the GTEs is involved. Statements of expectation and annual performance statements will replace the current strategic development plan and statement of corporate intent. I would like to know how the proposal will improve where we are. Why has that change been foreshadowed? Those current corporate intent and strategic development plans serve a real purpose in the community to assist understanding where government is taking us with activities in GTEs. Will the annual performance statement tell us any more than we already know? I will be very direct. I have made this comment before, particularly in consideration in detail. If we are talking about KPIs, the good majority of the KPIs I see in estimates are a complete waste of time. They seem to be deliberately chosen to be KPIs that do not tell us anything about the performance of an organisation. For example, some organisations have a KPI around the number of communications with the community. I am very reliably informed that some organisations that are struggling on that will just send a mass mail-out or include a letter with the bill to all customers towards the end of the financial year. All of a sudden, that is an individual communication to every customer, so that KPI statistic goes up, but it will not give the customer useful information; it will simply meet a KPI that does not tell us a lot. If we are going to have that, there need to be KPIs that reflect the performance of that organisation as it affects the customers, and, by and large, the customers are the ordinary members of the public who are receiving the services of that organisation.

There are some things in the bill that will give the ministers a little bit more control. The bill will enable the government to set thresholds for transactions that can be approved by the minister, and larger transactions will require

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the approval of the Treasurer. That is obviously sensible. We cannot have agencies being profligate. Ultimately, we can say that they are government trading enterprises, but the sole shareholder is us, the public of Western Australia, and we need to have reasonable control.

The bill includes a proposal to enable prior year profits to be considered in the determination of a dividend payable. I am intrigued to see what that will really mean, because a dividend should be based on the current year's performance. Whatever happened in the previous year should not matter, because any debts or liabilities would be carried forward in normal accounting practice.

I think the overall intent of the bill is good. The bill has been well presented. The reason we do not oppose the bill is that we support the great majority of the parts in the bill that are about sensible reform. I am not sure that the removal of the autonomy of ministers will make government easy. I think that for ministers, there will be a real risk of the Treasurer, whoever they may be, constantly interfering in the actions or the running of the business, whereas the Premier of the day could just give the minister direction and they would have to do that without being second-guessed.

As I said right at the very start of my comments, members will find me to be an enthusiastic supporter of government modernising its practices. Although we like to think that everything we do is good, and I know we have many good public servants who do good work, there are major aspects of the way that government governs its business that are literally decades behind the private sector, and for the worse. There is not clarity. There is not transparency. There is not an ongoing sufficient level of audit so that ministers and Premiers do not get surprised.

**MR M. MCGOWAN (Rockingham — Treasurer)** [5.43 pm] — in reply: I thank members for their contributions on the Government Trading Enterprises Bill 2022. In light of the time, I will be brief because I know that members want to go into the consideration in detail stage. We are seeking to transform the governance of government trading enterprises and provide a much more accountable framework for GTEs across the public sector in Western Australia. I understand that other states have this regulatory regime; in fact, all other states have this regulatory regime in place, except for Western Australia. It was identified by the Langouant review in 2017. A lot of work has been done since then to come up with this bill based on best practice across Australia. It will basically mean that GTEs will be accountable to government, which is their major shareholder. I would hope that most people agree with that. It will maximise the benefit to Western Australians of having state-owned GTEs.

I do not want to talk for long because I understand that members want to ask questions and there is some agreement about when the debate is going to conclude.

Question put and passed.

Bill read a second time.

[Leave denied to proceed forthwith to third reading.]

*Consideration in Detail*

**Clauses 1 and 2 put and passed.**

**Clause 3: Terms used —**

**Ms M.J. DAVIES:** I am looking at the terms used and the clause defines the corporations that this legislation will apply to. In the second reading debate, I went to the question about why it is being done in two tranches. My question is about an explanation of why there will be a division. Secondly, will we see an amendment to this piece of legislation when the other corporations come through or will there be an entirely new piece of legislation to deal with Gold Corporation, the Insurance Commission of Western Australia and the others that are not covered by this bill?

**Mr M. MCGOWAN:** Thank you for the question; it is a good question. The staged inclusion of GTEs in the GTE bill reflects the current inconsistencies amongst GTE establishing acts and the subsequent undertaking required to achieve legislative uniformity for standardised governance of GTEs through legislative amendment. There are huge complexities associated with harmonising eight different establishing acts. As such, priority has been given to GTEs with core service delivery roles for government whose establishing acts are most consistent with the broader framework of the reform. The government intends to bring in the others in another tranche. The second tranche is expected to include the Forest Products Commission, Gold Corporation, the Insurance Commission of Western Australia and the Western Australian Treasury Corporation. I am advised that it will be just a regulation change. I am advised that the act will not change, but it will be a regulation to allow them to come under this bill.

**Ms M.J. DAVIES:** I just want to clarify that last point. There will be a regulatory change to bring in Gold Corporation, ICWA, the Forest Products Commission and Treasury Corp, as opposed to amending the legislation. Will we not have any capacity to scrutinise those particular entities coming in? Will they come in under the exact same framework that we are talking about now?

**Mr M. McGOWAN:** It will be a regulation change. I am advised that in order to bring in new ones, it will be a regulation change. They are not in yet because of those reasons I outlined before.

**Ms M.J. DAVIES:** Could the Premier give me an example of the complexities that he referred to that mean that Gold Corporation, ICWA and the others are not consistent or could not be brought in under this legislation? What needs to be done before the regulatory framework can be used to incorporate them?

**Mr M. McGOWAN:** There are complexities of the establishment legislation of those agencies that the member referred to in that it is not consistent with that of the ones coming in. The ones that are coming in are, up-front, GTEs with core service delivery roles whose establishment acts are most consistent with the broader framework of the reform. The intention is to bring in the others and make them more accountable—make sure they act with more accountability in their activities, their policies and so forth. That is because their establishment act does not allow them to come in as easily as the initial 12.

**Ms M.J. DAVIES:** Is there a time frame for when we might see those entities brought in by regulation, presumably when this bill becomes legislation?

**Mr M. McGOWAN:** A review is being undertaken by Treasury to assess the suitability of those GTEs. As I said, there are obviously complexities around the legislation. The government will do it as soon as we are confident it can be done, or Treasury is confident it can be done, sensibly and expeditiously, and the complexities around their legislation are dealt with by transitional regulations or changing or removing their act in due course, which I thought would be a last resort. That is the methodology the government will use.

**Ms M.J. DAVIES:** Is there a contemplation that the government might need to repeal some of those acts that established Gold Corporation or the Insurance Commission of Western Australia? That is a significant piece of work for Treasury and government, I presume. There is a shortage of drafters and a significant backlog already, so are we likely to see these changes introduced in the next two years or will Gold Corp, Treasury Corporation, ICWA and the Forest Products Commission remain under the older frameworks? Given there is a commitment to move towards greater accountability, I would have thought, particularly for those organisations, that would be a priority. I am just trying to understand when we might see some action on the next tranche.

**Mr M. McGOWAN:** The intention is that we want them under the standardised framework, and Treasury is very keen that they come in with their existing acts. The existing acts would be repealed only if it was required to bring them in, because of the complexities, and then put in new legislation governing the GTEs. I doubt it will happen, but we are trying to bring them under this regime as quickly as we can.

**Clause put and passed.**

**Clauses 4 to 6 put and passed.**

**Clause 7: GTE's purpose —**

**Dr D.J. HONEY:** In my second reading contribution I referred to something at the top of page 6 of the bill. It states —

A GTE's purpose is to advance the public benefit through the performance of its functions.

In the Treasurer's second reading speech he referred to the fact that GTEs needed to maximise return to the public. I appreciate that "return" could cover things other than finance, but could the Treasurer please clarify that comment?

**Mr M. McGOWAN:** The GTE's purpose is to advance the public benefit through the performance of its functions. The public benefit is to reflect the shareholders' interests in the absence of a GTE having a shareholder. The bill standardises the obligation to act in line with prudent commercial principles and to maintain the focus on sufficient service delivery. The board should consider the fact that it is including, but not limited to, profit, delivery of government policy objectives and the social licence to operate when determining how a GTE undertakes its functions. The legislation standardises the obligation to act in line with prudent commercial principles, to maintain GTEs' focuses on efficiencies, act prudently, act within commercial principles and be aware of government priorities, whatever agency it might be. It might be DevelopmentWA making sure that there is some social housing or opportunities for public benefit in parks or whatever it might be. Those are the sorts of things that would be a public benefit through the performance of a GTE's functions.

**Dr D.J. HONEY:** Typically, many of the services, but not all of them, are government monopolies, and I would have thought it was a fair purpose that the role was to provide that service at the lowest economic cost, if you like—"economic" being that the agency is viable—but at cost to the consumers and the public.

**Mr M. McGOWAN:** It is to act prudently in a commercial sense, but, obviously, a government trading enterprise is different from a private business that has the overriding and, perhaps, sole aim to maximise commercial benefit. Government has broader responsibilities than that. As to whether there is the cheapest price, for instance, consider



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that as part of this legislation, the port authorities are coming into it. The government obviously makes money out of port authorities, which then goes to fund health, education and so forth. Providing support and revenue to government through that source, particularly some of the higher volume ports that make a lot of money, is not a bad thing for governments. It is a broader obligation for government trading enterprises than it is for a commercial business. I suppose that is the point being made. If this was the articles of association, or whatever it might be, for a company, I suspect that clause would just say “maximise profit”.

**Clause put and passed.**

**Clauses 8 and 9 put and passed.**

**Clause 10: GTE may act at its discretion —**

**Ms M.J. DAVIES:** The clause says that the GTE may act at its discretion, so it has a function given to it by its establishing act, which I presume does not change. Can the Premier explain the clause for me? It says it “does not impose a duty on it to do any particular thing.” I presume that is a catch-all clause. I just wonder what it seeks to achieve.

**Mr M. McGOWAN:** The provision of a function to a GTE does not impose on the GTE an obligation or duty to do a particular thing. This discretion enables a board to exercise its powers to determine how and when to undertake performance of the GTE’s functions. This discretion is subject to limitations set out in the clause.

**Clause put and passed.**

**Clauses 11 to 13 put and passed.**

**Clause 14: Directors’ skills matrix —**

**Ms M.J. DAVIES:** Clause 14(1) states —

A GTE’s board and the Portfolio Minister must endeavour to agree a skills matrix for the board ...

I presume there will be a time frame, but what will happen if it fails to be achieved? Obviously, it is a desire, but “endeavour” is not a particularly strong word. If we were doing transparency, accountability and wanting all the GTEs to go down that path, I would have thought we would say “must”. Why do we have the word “endeavour” included in that particular subclause?

**Mr M. McGOWAN:** We are not suggesting that the GTE bill is going to result in GTEs beginning to use skills matrixes and other governance tools for the first time. This is about standardising the requirements to ensure that good governance practices are front of mind for GTEs in their operations. I do not think it is going to be mandated, but it is encouraged.

**Ms M.J. DAVIES:** Perhaps the Premier could share which of those GTEs do not currently use a skills matrix when appointing directors to a board?

**Mr M. McGOWAN:** They all do to varying degrees. It is just about the quality of the matrix; the bill is trying to make sure that the quality of the matrix is improved.

**Ms M.J. DAVIES:** Who will have responsibility for providing best practice? Would that come from Treasury or from—what are we calling it—the portfolio minister?

**Mr M. McGOWAN:** There will be guidance notes on the best practices that agencies can use.

**Ms M.J. DAVIES:** Will there be a measurement? I am struggling with this, because the whole purpose of this bill is that we are standardising, but it does not say that GTEs must use them. If it is best practice, why not just say that we must agree upon a skills matrix. If I understand correctly what the commercial sector does, is there a reason why we would not expect a GTE to go down that path?

**Mr M. McGOWAN:** Each GTE has to have a skills matrix with a minimum standard, but we are not standardising. It can be better than the minimum standard.

**Ms M.J. DAVIES:** I understand that the Premier needs to go. Will the skills matrix be public information? Can they be tabled? Will they be part of annual reporting? Are they documents to be shared outside the board? Those are the kinds of transparency questions that we have.

**Mr M. McGOWAN:** They are not currently public documents, but we can consider that in the future.

**Clause put and passed.**

Debate adjourned, on motion by **Mr D.A. Templeman (Leader of the House)**.