



Insurance Commission
of Western Australia

GTE REFORM SUBMISSION

Insurance Commission

Submitted to the Department of Treasury Western Australia in November 2018

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1. BACKGROUND

Government Trading Enterprises (GTEs) in Western Australia – along with Government Business Enterprises (GBEs) in the Commonwealth and Government Owned Corporations in other States – were established for a number of reasons, including to introduce private sector discipline to the more commercial activities of government-owned trading bodies.

Governments utilise an array of different structures to facilitate the pursuit of policy objectives, deliver services to taxpayers and, in some cases, carry out business activities.

There is a broad spectrum of Government institution structures ranging from Departments of State, authorities, commissions, boards and trusts, with commercial corporations at the outer end of that spectrum. However, it has never been particularly clearly articulated in Western Australia what characteristics constitute, or should constitute, a GTE, and the governance arrangements that should be in place to best suit the structure and functions of those entities.

2. STRUCTURES TO DELIVER OUTCOMES

Consideration of the legislative and administrative structures for Government entities with a commercial focus is well-trodden ground in Australia and Western Australia.

Previous reviews of this subject include:

- 1992 Burt Royal Commission Report titled “Report of the Royal Commission into Commercial Activities of Government and Other Matters”;
- 1993 McCarrey Commission Review titled “Agenda for reform: Report of the Independent Commission to Review Public Sector Finances”;
- 1997 Humphry Review titled “Review of GBE Governance Arrangements”;
- 2003 Uhrig Review titled “Review of the Corporate Governance of Statutory Authorities and Office Holders”;
- 2009 Economic Audit Committee Report titled “Putting the Public First – Partnering with the Community and Business to Deliver Outcomes”;
- 2017 Service Priority Review Report titled “Working Together – One Public Sector Delivering for WA”; and
- 2018 Langoulant Report titled “Special Inquiry into Government Programs and Projects”.

The key GTE recommendation of the 2017 Service Priority Report was for Government to:

- *“...improve governance, accountability and transparency for public sector entities”.¹*

The actions proposed to effect that recommendation were to:

- *“Review and rationalise the categories of agencies and other organisations within the public sector to establish key organisational principles to guide future review and reform; and*
- *Prepare “‘umbrella’ legislation to reform governance, accountability and oversight of GTEs in light of key organisational principles.”*

The key GTE recommendations of the 2018 Langoulant Report were for Government to:

- *“undertake a review of the structure of government’s commercial and quasi-commercial entities to identify appropriate governance arrangements”; and*
- *“introduce legislative reform to standardise and strengthen governance arrangements”.²*

The Commonwealth Government Uhrig review in 2003 titled “Review of the Corporate Governance of Statutory Authorities and Office Holders” sought to conduct *“...an examination of structures for good governance, including relationships between statutory authorities, the responsible Minister, that Parliament and the public, including business.”³*

The Uhrig review identified a number of principles to incorporate in assessments of Government entities to determine the best structure for each organisation, including whether organisations should be structured as Government businesses. The principles outlined by the Uhrig review were:

- *“Owners or their representatives, need to establish, clearly, an understanding of success for the activity, including their expectations of performance.*
- *Owners of an organisation need to set its purpose clearly and state their expectations of performance.*
- *Governance should be present and the arrangements should be appropriate for the entity, given the nature of ownership and its functions.*
- *The appropriate organisational structure will vary from entity to entity and will depend on functions, complexity of operations, ownership characteristics and objectives.*

¹ Service Priority Review, *Working Together - One Public Sector Delivering for WA*, 2017, p.59

² Langoulant, John, *Special Inquiry into Government Programs and Projects: Final Report Volume 1 – February 2018*, 2018, p. 129.

³ Uhrig, John, *Review of the Corporate Governance of Statutory Authorities and Office Holders*, 2003, p. 15.

- *To be successful, power must be: in existence; delegated; limited and exercised.*
- *Power frameworks will influence the efficiency and effectiveness of decision making and the capacity of decision makers to produce quality outcomes.*
- *There should be clarity of roles within the governance arrangements or organisations to ensure that efforts are directed towards success and that responsibilities are performed in an efficient manner.*
- *Those who own, govern and manage an organisation should have a clear understanding of their roles and responsibilities.*
- *With responsibility there needs to be accountability.*
- *Individuals should understand what they are required to achieve, have the capacity to achieve and be held accountable for their performance.*
- *For a board of directors to be effective, it must have the full power to act, including the ability to appoint, supervise and remove senior management, as well as approve strategy.”*

These principles were applied to an assessment of some Commonwealth organisations and resulted in the alteration of structures for some entities.

GTE-type structures (for more commercial activities) are regularly utilised to be “at arm’s length from Government”⁴ and often include the appointment of independent Boards. Some GTEs maintain financial autonomy from Government and GTEs (generally) operate with some form of commercial focus.

However, not all GTEs operate commercially. The degree or volume of commercial activity each GTE performs, or is expected to perform, would prudently be assessed to determine whether the GTE model suits each function. GTEs that have primary activities that are commercial in nature would more likely warrant the use of Boards to oversee the performance of the entity. That conclusion was reached by the Uhrig Review and is captured in the statement that “Statutory authorities whose major activities are commercial in nature will generally be better suited to operate under a board.”⁵

Assessment of GTEs could make a distinction between decisions relating to Consolidated Account (CA) funded initiatives and those that are GTE capital decisions funded by the GTE. CA funding will, and should, always come with some obligations. Those obligations should be set out in funding agreements between GTEs and Government.

⁴ Langoulant, John, *Special Inquiry into Government Programs and Projects: Submission from the Department of Treasury September 2017, 2018*, p. 208.

⁵ Uhrig, John, *Review of the Corporate Governance of Statutory Authorities and Office Holders*, 2003, p. 8.

One outcome of such an assessment may be a conclusion that GTEs that are majority funded by the CA should not be structured as GTEs given the level of financial dependence on Government.

An assessment of GTEs may need to consider changes to existing GTE legislation and obligations for Directors if the principle identified by Treasury that “*a GTE’s mandate to operate commercially will always be subject to Government policy*”⁶ is to be put into effect.

It has not been evident during the GTE reform operational sessions that such assessments were being actively considered by Treasury. Doing so would better enable achievement of the recommendation of the Service Priority Review to “*review and rationalise the categories of agencies and other organisations within the public sector to establish key organisational principles to guide future review and reform*”.

The need for maintenance of independent Boards should also be assessed for GTEs. This point was made in the Uhrig Review, where that report found Boards to be an effective governance mechanism if delegated full power to act within the law. Uhrig noted that “*when these powers are diluted or modified, a board of directors is rendered useless*”⁷ and the performance of the entity is reduced.

Recommendation 1: The Insurance Commission considers that an assessment of GTEs utilising the Uhrig principles as part of the GTE reform process would add value if it results in accurate classification of GTEs and other government entity types.

3. STATEMENT OF EXPECTATIONS

An element of the Commonwealth GBE oversight regime is the development and publication of a Statement of Expectations from the shareholder Minister/s to the GTE. In Queensland, this is known as an Annual Performance Contract, which sets out the expectations and requirements of the Government.⁸ In the Commonwealth, these documents are made public and the GBE responds with documents equivalent to the Statement of Corporate Intent and the Strategic Development Plan utilised by most GTEs in Western Australia.

A Statement of Expectations may assist to address a point made by Treasury at one of the GTE sessions that “*Government objectives may not be always available or clearly articulated to the GTEs*.”⁹

⁶ WA Department of Treasury, *GTE Reform Program – Principles and Scope*, 2018, p. 2.

⁷ Uhrig, John, *Review of the Corporate Governance of Statutory Authorities and Office Holders*, 2003, p. 65.

⁸ Queensland Department of Treasury, *Commercialisation of Government Business Activities in Queensland: Policy Framework*, 2010, p18.

⁹ WA Department of Treasury, *GTE Reform. Operational Forum #1: Governance and Strategic Planning. Key takeaways*, 2018, p. 18.

This arrangement appears to provide a good vehicle or mechanism for the Government or shareholder Minister to articulate policy or other performance priorities for the GTE. It also promotes transparency, provides role clarity and ensures accountability to deliver against those expectations.

This type of arrangement between GTEs and Ministers is considered to be preferred over other options canvassed during GTE reform sessions.

One other option, suggested in the fourth operational forum facilitated by Treasury, proposed the mandating of a regime governing frequency and conduct of meetings between Ministers and GTEs or creating a “boot-camp”¹⁰ for Ministers.

Recommendation 2: The Insurance Commission recommends the establishment of a framework that uses Statements of Expectations issued for GTEs to consider when developing Statements of Corporate Intent and Strategic Development Plans.

4. GOVERNMENT RISK APPETITE

Most GTE reform documents produced by Treasury refer to the development of a ‘Government risk appetite’. The Insurance Commission would welcome the articulation of the Government risk appetite. Any GTE activity that sits outside that risk appetite can then be examined and decisions made about the future of that activity.

Recommendation 3: The Insurance Commission considers that a Statement of Expectations (see recommendation 2) may provide a useful vehicle to capture the Government’s risk appetite as it relates to each GTE.

5. ENABLING LEGISLATION/UMBRELLA LEGISLATION

Enabling legislation (generally) establishes each GTE, defines its functions and powers.

Treasury has advised that it seeks consistency in the enabling legislation of GTEs. The case for consistency has not been well articulated but it is generally acknowledged that it might be administratively easier for some GTE functions to be performed the same way. For example, for all GTEs to produce Statements of Corporate Intent and Strategic Development Plans, and for those documents to be prepared on a timetable that contributes to State Budget processes.

¹⁰ WA Department of Treasury, *GTE Reform. Operational Forum #4: Whole of Government Policy. Key takeaways*, 2018, p. 10.

Caution however should be applied when pursuing ‘consistency’ or ‘uniformity’ as a primary goal. Many GTEs will differ significantly from each other, examples include:

- Level of financial autonomy from Government. Only a few GTEs are financially independent.
- Operating in a commercial competitive market. This may limit the information that can reasonably be shared given potential access to that information by competitors in that market.
- GTEs operate in different sectors. This influences the functions and powers necessary, capital holding requirements and workforce profiles.
- Not all GTEs have enabling legislation. The Keystart Housing Scheme Trust appears to be an example of such an entity.
- Not all entities are recognised as public sector entities in the same way. The Forest Products Commission and the Animal Resource Authority are not listed in the *Public Sector Management Act 1994*.

Greater consistency in the enabling legislation of GTEs could provide improvements for GTEs:

- Clarity of purpose.
- Performance expectations.
- Accountability and disclosure to the shareholder.
- Compliance regime.

The Insurance Commission recognises that umbrella legislation for GTEs has been observed as a desirable goal for some time. The Economic Audit Committee in 2009 recommended that Government “*introduce umbrella legislation to standardise, strengthen and clarify governance arrangements for all GTEs*”¹¹.

The Under Treasurer has made a similar point in a hearing for the Special Inquiry into Government Programs and Projects on 20 October 2017, which is captured in the Langoulant Report as “*The Under Treasurer sees a need for umbrella legislation to achieve consistency across the Government Trading Enterprises in core financial provisions of their enabling legislation and core governance and approval requirements*”¹².

The Commonwealth introduced umbrella-type legislation for GTEs that differentiated those entities from Departments of State and other organisations solely funded from Consolidated Revenue in 1997. The legislation that covered GTE equivalents was the *Commonwealth Authorities and Companies Act 1997* (CAC Act).

Departments of State operated under the *Financial Management and Accountability Act 1997* (FMA Act). The *Public Governance, Performance and Accountability Act 2013* created a new framework for Commonwealth bodies that were previously governed by the CAC Act and the FMA Act.

¹¹ WA Department of Premier and Cabinet, *Putting the Public First – Partnering with the Community and Business to Deliver Outcomes - Recommendation 28*, 2015, page 10.

¹² WA Government, *Special Inquiry into Government Programs and Projects*, 2018, p. 10.

The Commonwealth PGPA Act requires that “Company GBEs” are also subject to the *Corporations Act 2001*. Non-Company GBEs are categorised as “entity GBEs” and are also subject to their enabling legislation but not the Corporations Act.¹³

GTEs in Western Australia have been established in multiple forms with different legislative obligations, in addition to differences in enabling legislation for the respective entities. A distinction such as that identified in the scope of the PGPA Act is not in place in Western Australia. The equivalent obligation for Commonwealth Company GTEs to be bound by the Corporations Act is the *WA Statutory Corporations (Liability of Directors) Act 1996*. That Act does not apply to a number of the entities classified as GTEs in WA.

While perceived shortcomings of the current GTE governance regime have not been fully articulated during the GTE reform program, the ‘lack of consistency’ point has been frequently made.

The Insurance Commission observes that umbrella legislation may assist achieve the desired greater consistency among GTEs, provided that care is taken to amend the enabling legislation for each GTE to avoid duplicate or inconsistent legislative obligations for those GTEs (i.e. some GTEs are currently required to comply with requirements of the *Financial Management Act 2006* and the *Public Sector Management Act 1994* that apply to Departments of State). As the Commonwealth has done with its Company GBEs, once umbrella legislation is introduced, government business entities no longer operated under the CAC Act.

Recommendation 4: The Insurance Commission considers that work should be done to classify each GTE in WA to determine whether the *Statutory Corporations (Liability of Directors) Act 1996* should apply to each entity. That classification would presumably be largely determined by the extent to which the GTE has, or is expected to have, the characteristics of a ‘company’.

Recommendation 5: The Insurance Commission considers that if, and when, GTE umbrella legislation is introduced, GTEs would operate under that legislation. The *Financial Management Act 2006* and the *Public Sector Management Act 1994* would apply to Departments of State and non-commercial entities of Government.

¹³ Department of Finance, *Resource Management Guide No. 126: Commonwealth Government Business Enterprise Governance and Oversight Guidelines*, 2015, p. 2.

6. MINISTERIAL DIRECTIONS

It is not clear how a principle identified by Treasury that “a GTE’s mandate to operate commercially will always be subject to Government policy”¹⁴ would be given effect in the existing legislative framework for the various GTEs.

Most GTE legislation we are familiar with provides for powers of direction to be exercised by Ministers.

As identified by Treasury, that mechanism, while available to Government, is rarely utilised.

The Uhrig review also found that in the Commonwealth “...these powers of direction do not appear to provide a preferred vehicle to establish clarity in authorities’ purpose and function as they are rarely used.”¹⁵

Sections 22 and 93 of the Commonwealth PGPA Act provide a mechanism to “make a Government Policy Order (GPO) that specifies a policy of the Australian Government that is to apply to one or more GBEs”.

Recommendation 6: The Insurance Commission recommends that consideration be given to the adoption of a regime similar to the Government Policy Order framework set out in the Commonwealth PGPA Act to ensure GTEs are aware of the general policies of government that apply to GTEs.

7. DIRECTORS’ DUTIES VS SHAREHOLDER INTERESTS

While the Government and some GTEs may desire more contemporary relationships based on interdependence, some legislative impediments may exist to deliver that. For example, a GTE’s enabling legislation creates an obligation for its directors to act in the interests of that GTE (rather than the shareholder).

That obligation is also set out in the *Statutory Corporations (Liability of Directors) Act 1996*, which is an “...Act to declare the duty that persons who control the affairs of a statutory corporation owe to the corporation...”.¹⁶ Section 5 of the Act declares that “...a director of a corporation has the same fiduciary relationship with the corporation...as a director of a company incorporated under the Corporations Act 2001”.

¹⁴ WA Department of Treasury, *GTE Reform Program – Principles and Scope*, 2018, page 2.

¹⁵ Uhrig, John, *Review of the Corporate Governance of Statutory Authorities and Office Holders*, 2003, p. 38.

¹⁶ WA Department of Justice, *Statutory Corporations (Liability of Directors) Act 1996*, 1996, p.1.

Directors also have duties in the Corporations Act under s181 to “...exercise their powers and discharge their duties in good faith in the best interests of the corporation...” and to govern the company on behalf of the shareholders or members of that company.

Where a potential conflict exists between legislation and Government policy, GTE Directors (and Executives) understandably may lean towards legislated purpose first. The *Statutory Corporations (Liability of Directors) Act 1996* applies to a large number of GTEs. Directors have obligations and personal liabilities under that Act, which can place them in a difficult position.

Recommendation 7: The Insurance Commission recommends that complexities associated with directors’ duties to the GTE and the shareholder under GTE-enabling legislation and the *Statutory Corporations (Liability of Directors) Act 1996* be given closer examination.

8. PRICE SETTING FOR GTEs

The role of Government in price setting (and in some instances the roles of regulators in setting prices) is a significant one. As one Treasury officer asked at a GTE forum, “*why should Government be required to defend electricity price increases, when it is not responsible for managing the operations that deliver those services?*”

GTE product prices should be largely driven by the cost of delivering that service and maintaining the sustainability of the GTE business. Price is how GTEs strike a balance between the cost of services, their current and future capital requirements, other business requirements and the payment of dividends to its shareholder.

Where Government provides funding to that GTE from the CA via a subsidy to keep prices low for consumers, control of pricing by Government would be expected. However, the cost of that subsidy should be transparent. Later in our submission we describe how the use of Community Service Obligations (CSOs) could be used for the purpose of articulating in a transparent manner, the non-commercial functions/services delivered by government businesses at the request of the Government.

If a GTE does not receive funding from the CA, the role of Government as a price setter should be restricted to circumstances where there is monopoly provision of that government service. This should occur with the intent that price is set in line with community expectations and that revenue remains sufficient to maintain the solvency of the organisation.

GTEs that do not receive funding from the CA and operate in competitive markets, should have the ability to set prices unless an external market regulator performs that function for all market participants.

Recommendation 8: The Insurance Commission recommends that if a GTE does not receive funding from the CA, the role of Government as a price setter should be restricted to circumstances where there is monopoly provision of that government service.

9. DIVIDEND POLICY

Treasury seeks consistency in Dividend payments across GTEs regardless of the business operated or industry. The vanilla preference is articulated in State Budget papers as being based on 65-75% Net Profit After Tax.

The legislation¹⁷ obliges directors to reach their own decisions about Dividend payments and make recommendations to the Minister. A regime that legally requires directors to exercise their own judgment alongside Budget papers published with policies that could be seen to restrain that judgement, may understandably result in differences of opinion at times.

Dividend policies based on the annual financial performance of a GTE could see significant fluctuations in Dividend payments to Government (some hundreds of millions for the Insurance Commission year on year). The Insurance Commission agreed a dividend policy with Government that is based on its financial position (i.e. balance sheet), allowing Treasury and the Government to budget for future Dividend revenue with greater confidence.

Insurance Commission Dividends are calculated as a percentage of Net Profit after Tax in line with legislation but that profit and loss (or income statement view) is conducted after the balance sheet analysis of its capacity to pay dividends to its shareholder. This is an example of legislation that was passed reasonably recently that does not fit the purpose, or industry to which that legislation applies, as well as it could.

The Insurance Commission does not seek to change that, as it has in place a regime that delivers certainty for government financial forecasts and substantial Dividends to its shareholder. This Dividend policy example is cited to point out that the desire for uniformity for GTEs may not always deliver policy intent.

Recommendation 9: The Insurance Commission considers that calculations of dividends based on a GTE's financial position (balance sheet) provides greater certainty for Government revenue forecasting.

¹⁷ Insurance Commission of Western Australia, *Insurance Commission of Western Australia Act 1987, 1986, s28 and s29.*

10. EXPENDITURE PROPOSALS

GTE asset/financial management has been a subject of considerable discussion during the GTE reform consultation sessions.

It has been pointed out that Directors/Executives of GTEs are accountable for the decisions made by those entities, including expenditure and investment decisions. The contrast between that responsibility and the Strategic Asset Management Framework requiring GTEs to seek approval for investments over \$1 million, has been identified.

The Insurance Commission considers that greater weight should be applied to the source of funds for expenditure decisions than strict financial amounts. The materiality of a \$1 million decision for some GTEs with operating budgets and assets running into the billions of dollars is vastly different than a State Department seeking Government approval to appropriate \$1 million in funding from the CA.

The rationale for GTEs being obliged to put expenditure proposals (especially at this low materiality threshold) to Government when funded from revenue sourced by GTEs could productively be reconsidered.

A principle that might be applied to that regime is to test the extent to which Government needs to be involved in the 'how' an organisation performs its functions, when Government attention may be better focused on 'why' the entity was established, 'what' functions it wants it to provide and monitoring 'who' is accountable for the performance of that function.

The Commonwealth Government Business Enterprises – Governance and Oversight Guidelines (Commonwealth Guide) provides that:

“Proposals for significant business initiatives are expected to be developed for inclusion in the normal corporate planning cycle. The threshold value at which an initiative is considered significant will be agreed and defined within the Commercial Freedoms Framework or the Statement of Expectations.

a) If an urgent initiative arises which is unable to wait for inclusion in the planning cycle, it is to be treated as a notifiable significant issue, pursuant to section 19 (entity GBEs) and section 91 (company GBEs of the PGPA Act). GBEs must notify Shareholder Ministers prior to entering into any identified business opportunities. This is expected to include, but not be limited to new business ventures, major contracts and capital raising proposals.

*... GBEs are expected to distinguish between business cases that relate to core business and those that relate to non-core business. The threshold dollar value for consultation for proposed non-core business opportunities will be lower than that for core business opportunities and are to be agreed in consultation between the board and Shareholder Ministers as part of the annual corporate planning process unless the threshold has been separately agreed with Shareholder Ministers...*¹⁸.

The framework described above appears to establish a regime that:

- Endeavours to ensure 'no surprises' for the Minister and the Government;
- Has materiality defined for the particular entity instead of an arbitrary financial amount for all GTEs;
- Distinguishes expenditure on core business from that involving new business opportunities; and
- Reflects that materiality will be set out in Statements of Expectations in advance, providing clarity for GBEs and Ministers.

Accountability for an initiative should also be linked to the responsibility to deliver it. For example, if a significant GTE initiative is to be funded via CA revenue (even if that initiative is to be delivered by a GTE), Government involvement would be expected. However, if the initiative is not funded via CA revenue, the GTE should retain responsibility to deliver it and be held accountable for its performance.

The principle of accountability and responsibility based on ownership of the risk and financial liability for it would help assess where an entity should sit on the spectrum of Government entities between Departments of State and State-owned companies.

It would also ensure that a 'one size fits all' policy does not compromise an independent Board's ability to make commercial decisions where directors have personal liability under the *Statutory Corporations (Liability of Directors) Act 1996*.

Recommendation 10: The Insurance Commission encourages the establishment of a similar framework for expenditure proposals, as established for Commonwealth GBEs, for each GTE in Western Australia.

Recommendation 11: The Insurance Commission recommends consideration be given to better linking GTE accountability and financial independence. This would presumably enhance Government involvement in the decision making of GTEs who are reliant on the Consolidated Account.

¹⁸ Department of Finance, *Resource Management Guide No. 126: Commonwealth Government Business Enterprise Governance and Oversight Guidelines – Keeping Shareholder Ministers Informed*, 2015, p. 24.

11. TRANSPARENCY

While changes are being sought to GTEs' enabling legislation to formally require GTEs to share certain information, avenues already exist to improve information flow from GTEs if that is desired. In almost all cases, we expect that Government and central agencies can simply ask the GTE for information.

For example, Treasury recently asked the Insurance Commission to produce a new quarterly performance report, which it immediately did. It is unfortunate that a perception appears to exist that a new GTE framework and legislative regime is needed to improve reporting when desired improvements can presumably be implemented quickly, without legislation, whenever the perceived shortfalls are identified and then articulated.

One example of perceived reporting shortfalls identified during GTE operational forum sessions was that GTE hedging policies are not transparent. And that reform is needed to ensure central agency oversight.

GTE hedging varies widely based on the sector and the risk profile of the organisation. For example, the Insurance Commission has a Global Equity Currency Hedging Policy. The Insurance Commission's international equities are held in foreign currencies. An AUD/USD hedge is set to address the currency risk.

It would be unwise to have GTEs become unresponsive to managing liquidity and credit risks by removing their ability to make hedging decisions, as has been suggested in one GTE operational forum. The Insurance Commission, with a core function to manage its investment portfolio to ensure assets are available to pay claims to people injured in car crashes or at work, is expected to manage this type of risk.

Many GTEs offered to provide additional information if Treasury just asked them for it. Treasury minutes of its third operational forum recorded that "*GTE Boards currently manage their own financial risk profile, with financial reporting working well with regards to GTE reporting of hedging products and policies in annual reports.*"¹⁹ So, if the reporting of hedging is being done well and disclosed in public documents, it is unclear whether there is a transparency issue to be addressed.

While the above text identifies two practical examples of transparency sought by central agencies and delivered by GTEs, it does not respond to the perceived issue about transparency of activity in GTEs as the Insurance Commission is not aware of the facts underpinning that perception.

¹⁹ WA Department of Treasury, *GTE Reform. Operational Forum #3: Financial Management and Investments – Key Takeaways*, 2018, p. 12.

Legislation underpinning the Insurance Commission provides for the Treasurer to obtain any information in its possession. When others speak of the problems with GTEs, we fail to identify many of them. We recognise there are GTE framework deficiencies and this paper, as requested by Treasury officials from the Insurance Commission, has aimed to provide several suggestions to improve the framework.

The papers promulgated on the proposed GTE Reforms appear to contemplate some sort of regulated or, even worse, legislated regime governing the scheduling and conduct of meetings between GTEs and Ministers. That is not warranted.

The principle of disclosure of material facts to shareholders should be well understood by directors familiar with disclosure requirements in listed entities. That principle should therefore be similarly applied in the relationship between the GTE and its shareholder.

The Commonwealth Guide provides guidance on keeping shareholder ministers informed including to:

- Immediately disclose any information that may have a material effect on the value and/or performance of the GTE. This may include significant changes to the business environment and risks, which may impact on the achievement of planned activities and financial projections such as revenue or dividends;
- Disclose other information about the GTE's activities as required by the Minister in legislation and the Statement of Expectations;
- Submit business cases and proposals above agreed thresholds to the Minister; and
- Conduct annual strategic meetings to which the Minister is invited to attend²⁰.

Recommendation 12: The Insurance Commission considers that WA shareholder ministers could be informed of key GTE matters in a similar way to the Commonwealth GBE transparency regime.

²⁰ Department of Finance, *Resource Management Guide No. 126: Commonwealth Government Business Enterprise Governance and Oversight Guidelines – Keeping Shareholder Ministers Informed*, 2015, p. 24.

12. COMMUNITY SERVICE OBLIGATIONS

Community service obligations (CSOs) are the non-commercial functions/services delivered by government businesses, preferably clearly established for an identified social purpose. The policy intent behind the identification of CSOs was to assist transparency and for those obligations to be published and regularly reviewed to provide accountability and allow public scrutiny.

The Productivity Commission identified in its 1997 'Community Service Obligations Report' that such obligations "*...should be costed at avoidable cost and should be funded directly from consolidated revenue*"²¹.

Clear identification of CSOs as the non-commercial functions performed by commercial entities (GTEs) would provide clarity for GTEs about those obligations. That clarity would assist GTEs, central agencies and Governments understand the real cost of service provision. The drive to provide that transparency during the 1990s delivered real benefits to Commonwealth Government owned enterprises at that time such as Telstra and Australia Post.

While the focus on that transparency has diminished in recent times, the efforts made by Commonwealth and State Governments to fund more telecommunications towers are an example of Governments continuing to fund CSOs. However, this has occurred without the clear identification of what Government does, what it pays for and what the GTE (or former GTE in a publically listed ownership) along with its competitors and infrastructure providers now do.

The identification and costing of CSOs can assist governments and GTEs identify the most suitable funding sources for those functions. That activity can also assist Treasury to achieve its goal "...to define or legislate what 'act commercially' means"²², as if CSOs are defined, that will effectively describe the non-commercial activities of GTEs.

Recommendation 13: The Insurance Commission considers that improved identification costing, and publication of Community Service Obligations, would be a productive outcome of the GTE reform exercise.

²¹ Productivity Commission, *Community Obligations: Policies and Practices of Australian Governments*, 1997, p. 1.

²² WA Department of Treasury, *GTE Reform. Operational Forum #1: Governance and Strategic Planning. Key takeaways - Key takeaways*, 2018, p. 4.

13. GTE RELATIONSHIP WITH SHAREHOLDER REPRESENTATIVES

The Insurance Commission considers it has had a good relationship with its shareholder and Treasury, as the shareholder representative, at least since 2012. The Insurance Commission executive recognise government policies and take active steps to implement those within the bounds of the duties imposed upon it through its enabling legislation and other related obligations on the entity and its officers.

Any well-run organisation is expected to listen to its shareholders. The Insurance Commission works to discharge the functions that Government policy (enacted through its enabling legislation) has deemed it should have, to the best of its ability. The Insurance Commission seeks to perform those functions in a manner that assists the Government to meet its policy objectives, and deliver value for its shareholder.

We are active participants in Government initiatives. That includes, but is not limited to the GTE Reform agenda, government efforts to reduce red tape, and significant contributions to areas of government policy where the Insurance Commission has specific expertise.

The Insurance Commission is subject to more Government compliance requirements than other GTEs. This is a product of being a Schedule 2 entity under the *Public Sector Management Act 1994*, long after two previous Governments recognised the Insurance Commission should be listed under Schedule 1 with other GTEs.

The Insurance Commission is therefore inefficiently captured by both the governance requirements that apply to GTEs and the governance legislation that applies to Departments of State and government agencies. This includes being subject to the *Financial Management Act 2006*, the *Auditor General Act 2006*, the *Public Sector Management Act 1994* and the *Freedom of Information Act 1992*. It is unfortunate that this compliance burden has not been of greater focus for the GTE reform team, who initially set out to 'diagnose the source of GTE concerns'.

This dual compliance regime adds additional red tape for the Insurance Commission. The role clarity referred to in the Uhrig Review and delivered for Commonwealth GBEs through its current governance regime, is not achieved for the Insurance Commission by maintaining the 'dual listing' framework.

Recommendation 14: The Insurance Commission recommends the compliance burden and overlap, between arrangements for GTEs and those for Departments and other agencies funded by the CA, be addressed in any examination of individual GTEs as recommended elsewhere in this document.

14. COMPLIANCE AND RED TAPE

The matters identified in the section above impose a considerable compliance burden on the Insurance Commission. That burden has underpinned Insurance Commission efforts to continuously improve its business processes and reduce red tape. Submissions have been made to highlight that the number of compliance obligations on public sector agencies is not diminishing. The inefficiency of those regimes manifests itself in allocating staff time and cost to address compliance obligations, many of which do not appear to add particular value to the State Government.

In a submission last year to a Public Sector Efficiency – Red Tape Review, we identified almost 200 compliance obligations on public sector agencies from:

- Premier's Circulars;
- Public Sector Commissioner Circulars;
- Public Sector Administrative Instructions;
- Public Sector Approved Procedures; and
- Treasurer's Instructions.

We understand that Treasury seeks to increase the number of those obligations as an output of the GTE Reform work. The following new compliance regimes are proposed by Treasury:

- New GTE umbrella legislation;
- New obligations inserted in GTEs' enabling legislation;
- New GTE Framework; and
- New GTE Administrative instructions.

Unfortunately, there has been no indication that the existing compliance regime for GTEs will be changed. If so, that outcome would be a poor one.

A further layer of administrative obligations will not improve efficiencies for GTEs or Government.

That additional layer would be particularly unwelcome for the Insurance Commission as it is already obliged to comply with obligations established for GTEs as well as those designed for Government Departments and Authorities.

Recommendation 15: The Insurance Commission recommends that GTE reform clarifies the legislation, policy and instructions that apply to GTEs.

15. GTE OVERSIGHT/SHAREHOLDER REPRESENTATIVE

In line with the model generally deployed by the Commonwealth, other agencies that have a policy interest in GTE activities do so via regulators (e.g., Private Health Insurance regulatory functions were performed by an entity separate to the Health Department while Medibank Private Limited was owned by the Commonwealth).

It has been suggested that a GTE oversight function be created within WA Treasury. The Insurance Commission is supportive of that suggestion. The GTE oversight function in WA Treasury would need additional resources to carry out the shareholder representative function equivalent to that performed by the Commonwealth Finance Department. The 'shareholder representative' function would not be to 'second guess' all decisions made by management and Boards of GTEs, but it can and should provide valuable policy advice to Ministers.

The Operational Forum papers distributed by Treasury point to some shortcomings GTEs may have in dealings with its shareholder. Practically, improved inductions for individuals new to functions within GTEs, the two central agencies (WA Treasury and Premier and Cabinet) and Ministerial offices may assist to address those issues.

Recommendation 16: The Insurance Commission recommends that all related GTE oversight functions should prudently be consolidated in WA Treasury.

Recommendation 17: The Insurance Commission recommends that inductions be improved for individuals new to GTEs, the two central agencies (WA Treasury and Premier and Cabinet), and Ministerial offices.

16. GTE COMMERCIAL DECISIONS

The area where some friction can be expected is if Government requires GTEs to act in a way that is not perceived by the GTE as commercially prudent. For example, GTEs aim to, and are obliged to, act efficiently and effectively to provide high quality services at an optimal price.

Examples of pressure on GTEs to act in ways that are less than commercially prudent are documented in the Langoulant Inquiry into Government Programs and Projects.

The Report outlines that *“Western Power’s decision to spend \$2.7 million on placing a transmission line underground in Woodlands did not represent value-for-money and was influenced by a desire to meet community and external stakeholder expectations.”*²³

The Report stated that *“A business case for placing the transmission line underground was completed in June 2014 — 19 months after the announced action. The business case analysed six options designed to address the concerns of the nine residents. Placing the lines underground was the most expensive of the options at \$2.73 million.”*

The Report, stated that *“Western Power acknowledged that this expenditure would not meet an efficiency test set by its regulator, the Economic Regulation Authority”*.

How matters involving community pressure should be prudently dealt with is a perennial challenge for GTE Boards and Executives, and for the Governments that are the shareholders of those GTEs.

The Insurance Commission can demonstrate an incredibly expensive example of unfortunate influence in its commercial operations. Many years ago, the Insurance Commission’s predecessor organisation made investments in the Bell Group companies. This decision was well documented by the subsequent ‘WA Inc’ Royal Commission.

These examples pose questions about the extent of shareholder involvement in commercial decisions made by GTEs.

As previously described, accountability for an initiative should be linked to the responsibility to deliver it. Government involvement in GTE initiatives would be expected if an initiative is to be funded via CA revenue. If it is not funded via CA revenue, the GTE should remain accountable.

²³ Langoulant, John, *Special Inquiry into Government Programs and Projects: Final Report Volume 2 – February 2018*, 2018, p. 72.