

TREASURER'S INSTRUCTION GBE 13-114-08
GOVERNMENT BUSINESS ENTERPRISES ACT 1995

**OBTAINING LEGAL ADVICE AS TO THE SCOPE OF
FUNCTIONS, POWERS AND RESPONSIBILITIES**

BACKGROUND

Under section 114(1)(c) of the *Government Business Enterprises Act 1995* (GBE Act), the Treasurer may issue instructions in respect of the financial management of Government Business Enterprises (GBEs). Section 115 imposes an obligation on GBE Boards to ensure that all Treasurer's Instructions are complied with.

The purpose of this instruction is to construct GBEs which are manifestations of the Crown in the right of the State not to expend funds on obtaining legal advice in relation to the scope of their functions, powers and responsibilities elsewhere than from the Solicitor-General.

Underlying this instruction is the fundamental principle of the Westminster system of government that the Crown, in whatever its manifestation, must obtain legal advice as to its functions, powers and responsibilities from the Law Officers of the Crown, and must accept that advice as reflecting law until it is shown by a court of competent jurisdiction not to do so. Since the Solicitor-General does not charge for the advice which he provides, failure to observe the principle involves GBEs in incurring unnecessary and inappropriate expenditure.

DEFINITIONS

Terms used have the same meaning as those used in the GBE Act.

TREASURER'S INSTRUCTION

A GBE to which this Treasurer's Instruction applies must not incur expenditure by seeking advice on the interpretation and application of statutory provisions relating to its functions, powers and responsibilities from the private sector. In conformity with constitutional principle, all GBEs to which the Instruction applies must only seek such advice from the Solicitor-General.

This Treasurer's Instruction applies to all GBEs, with the exception of those GBEs specified under Schedule 8 of the Act, unless modified by a Private TI issued under section 114(2)(b)(ii) to a specified GBE.