



Project:	Service Concession Arrangements	Meeting:	21 June 2016 (M152)
Topic:	Public Service Definition	Agenda Item:	4.3
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		Decision-Making:	High
		Project Status:	Redeliberations

Introduction and objective of this paper

- 1 The objective of this paper is to obtain the Board’s decision to address issues raised by constituents on the proposed definition of ‘public service’.
- 2 This paper is structured as follows:
 - (a) summary of staff recommendations (paragraph 3);
 - (b) background, including the relevant feedback received on ED 261 *Service Concession Arrangements: Grantor* (ED 261) (paragraphs 4-6); and
 - (c) Staff analysis (paragraphs 7-21).

Summary of staff recommendations

- 3 Staff recommend Approach 3 which proposes that, instead of including a ‘public service’ definition, indicators should be provided in the Application Guidance to demonstrate the existence of a ‘public service’

Background

- 4 ED 261¹ proposed that the final Standard applies to “arrangements that involve an operator providing a public service related to a service concession asset on behalf of the grantor” (ED 261.5). ED 261 proposed the definition of a ‘public service’ as a “service that is provided by government or one of its controlled entities, as part of the

¹ Link to Exposure Draft 261 *Service Concession Arrangements: Grantor*
http://www.aasb.gov.au/admin/file/content105/c9/ACCED261_05-15.pdf

usual government function, to the community, either directly (through the public sector) or by financing the provision of services” (ED 261.Appendix A).

Feedback received on ED 261

5 Constituents, in their feedback on ED 261² commented that while they support the inclusion of a ‘public service’ definition, they find the definition unclear. The table below summarises the areas of concern expressed by constituents:

Areas of concern	Constituents’ comments
Service that is provided by government or one of its controlled entities	<ul style="list-style-type: none"> • “this wording would scope out universities that are not controlled by the government. Some universities are directly controlled by (and are consolidated into) government. However in most jurisdictions universities are set up under their own acts and are controlled by independent senates, councils or trustees. ACAG recommends further clarification on whether and in what circumstances universities and other NFP entities are intended to be within the scope of the proposed standard” (ACAG)³. • HOTARAC also holds a similar view to the above ACAG view⁴.
Service provided as part of usual government function	<ul style="list-style-type: none"> • “usual government function will change over time and depending on government philosophy. ACAG believes this will potentially lead to application issues where the concept of ‘usual government function’ becomes increasingly difficult to define. Increasingly government commissions its services to the private sector. A few years ago ports, ferries, electricity, prisons and detention centres were all government services. Now these services are provided wholly or partially by FP private sector operators. Hence an issue arises that what may be considered a service concession asset today may not be in the future. Jurisdictional interpretation inconsistencies may also arise depending on differing government approaches, including differing budget and policy measures” (ACAG). • HOTARAC also holds a similar view to the above ACAG view.

² AASB Meeting 4 September 2015 Staff Issues Paper – Staff Collation and Analysis of Comment Letters and Outreach ED 261 *Service Concession Arrangements: Grantor*, paragraph 40.

Link to Staff Issues Paper

http://www.aasb.gov.au/admin/file/content102/c3/M147_6.2_Staff_Collation_and_Analysis_of_Comment_Letters_on_ED_261_SCA.pdf

Link to comment letters to ED 261

<http://www.aasb.gov.au/Work-In-Progress/Pending.aspx>

³ Link to Australian Council of Auditors-General submission to ED 261

http://www.aasb.gov.au/admin/file/content106/c2/ACAG%20response%20to%20ED%20261%20SCA_reduced_03-08-2015_120238.pdf

⁴ Link to Heads of Treasuries and Reporting Advisory Committee submission to ED 261

http://www.aasb.gov.au/admin/file/content106/c2/HotARAC%20submission%20to%20ED%20261%20service%20concession%2010%20aug%202015_11-08-2015_091729.pdf

Areas of concern	Constituents' comments
Community	<ul style="list-style-type: none"> • “this term is open to interpretation. For example: <ul style="list-style-type: none"> ○ it is difficult to determine whether this incorporates inter/intra government services which may ultimately be a service to the general public. ○ services provided to a subset of the community, rather than the whole community. Are these intended to be captured? <p>ACAG recommends additional guidance on this term is provided” (ACAG).</p>
Public service	<ul style="list-style-type: none"> • “this term in the draft standard is different from that in Interpretation 12 Service Concession Arrangements, which uses ‘<i>services to the public</i>’. This inconsistency may lead to differences in the interpretation of what a service concession asset is for the purposes of these standards. This terminology is fundamental to the intended scope of the new standard. ‘<i>Services to the public</i>’ may be delivered by private and public sectors, FP and NFP entities alike. Even ‘Public services’ traditionally delivered by government are increasingly being delivered by the private sector FP and NFP entities” (ACAG). <p>HOTARAC and Ernst & Young⁵ also hold a similar to view to the above view.</p> <ul style="list-style-type: none"> • “Whether the definition would apply to arrangements where the services are provided to the grantor. For example an operator that builds and maintains a public school, but which does not provide the education service for which the school was built (as discussed below). <p>Whether the definition would apply to commercial operations such as public car parks (for example for public hospitals and public buildings such as the Sydney Opera House) or child care / after school care facilities on school premises” (HOTARAC).</p> <ul style="list-style-type: none"> • “Service Concession Arrangements tend to have long terms, and whether the community considers those services to be public services may change during the concession term. The proposals should include guidance on when the assessment of a public service is made, at the beginning of the concession or continuously, and the reasons for that approach” (HOTARAC). pwc also shares this view⁶
Financing the provision of services	<ul style="list-style-type: none"> • “may capture arrangements with non-government organisations, such as independent social housing providers” (HOTARAC).

6 Staff also obtained input from the Service Concession Arrangements: Grantor Project Advisory Panel (the Panel) in the analysis of the issues in this Paper. The Panel feedback is incorporated into the staff analysis below.

⁵ Link Ernst & Young submission to ED 261
http://www.aasb.gov.au/admin/file/content106/c2/EY%20SCA-Grantor%20ED261_Submission_27-07-2015_115225.pdf

⁶ Link Pricewaterhousecoppers submission to ED 261
http://www.aasb.gov.au/admin/file/content106/c2/SCA%20submission%20-%20PwC_28-07-2015_092054.pdf

Staff analysis

- 7 The term ‘public service’ is fundamental to the application of the service concession arrangement Standard. This is demonstrated in its use in the following sections of ED 261:
- (a) Scope⁷; and
 - (b) Defined terms of an ‘operator’, ‘service concession arrangement’ and ‘service concession asset’⁸.
- 8 IPSAS 32 *Service Concession Arrangements: Grantor* provides similar defined terms as those in paragraph 7(b) above. However, IPSAS 32 and AASB Interpretation 12 *Service Concession Arrangements* do not provide a definition for ‘public service’.
- 9 The intent of the ‘public service’ definition was to scope in arrangements involving an operator that provides a public service related to a service concession asset on behalf of the grantor. However, in doing so, the proposed definition raised numerous potential interpretation issues as outlined in paragraph 5 above.
- 10 Staff have identified the following alternative approaches to address the feedback in paragraph 5 above on the ‘public service’ definition:
- (a) Approach 1: Redefine public service;
 - (b) Approach 2: Remove the definition; or
 - (c) Approach 3: Provide indicators to demonstrate the existence of public service.

⁷ “The [draft] Standard shall be applied to arrangements that involve an operator providing a **public service** related to a service concession asset on behalf of the grantor” (ED 261.5) (emphasis added).

⁸ ED 261. Appendix A defines (emphasis added):

- ‘operator’ – “The entity that has a right of access to the service concession asset to provide **public services** subject to the grantor’s control of the asset”
- ‘service concession arrangement’ – “A contract between a grantor and an operator in which:
 - (a) the operator has the right of access to the service concession asset to provide a **public service** on behalf of the grantor for a specified period of time; and
 - (b) the operator is compensated for its services over the period of the service concession arrangement”.
- ‘service concession asset’ – “An asset used to provide **public services** in a service concession arrangement that:
 - (a) is provided by the operator which:
 - (i) the operator constructs, develops, or acquires from a third party; or
 - (ii) is an existing asset of the operator; or
 - (b) is provided by the grantor which:
 - (i) is an existing asset of the grantor; or
 - (ii) is an upgrade to an existing asset of the grantor”.

Approach 1: Redefine public service

11 One suggestion for redefining public service (Approach 1) is to redefine ‘public service’ as:

“A service that is provided by government to the public, as a matter of public policy”⁹.

12 The Panel commented the suggested alternative definition is no clearer than the proposed definition in ED 261. That is, the alternative definition will give rise to interpretation issues as to what would be included and excluded from the terms of:

- (a) the ‘government’ entity;
- (b) services provided to the ‘public’; and
- (c) ‘public policy’.

Approach 2: Remove the definition

13 Approach 2 adopts the view the definition should be removed and not be included in the final Standard as any definition would result in similar interpretative issues as raised by constituents in relation to the currently proposed definition. This approach is consistent with IPSAS 32 and AASB Interpretation 12 which do not contain a definition of ‘public service’.

14 The Panel had mixed views regarding the removal of the definition. The Panel members who supported the removal of the definition expressed a similar view to paragraph 13 above and preferred the inclusion of indicators to demonstrate the existence of public service as per Approach 3.

15 The Panel members who support the retention of the definition commented no definition will be perfect and the proposed definition in ED 261 is a starting point for scoping in the arrangement for further assessment as to whether the grantor controls the asset under paragraphs 8 and 9 of ED 261¹⁰ for the arrangement to be accounted for as a service concession arrangement.

⁹ As proposed by Ernst & Young in their submission to ED 261.

¹⁰ ED 261 states that:

“8 The grantor shall recognise an asset provided by the operator and an upgrade to an existing asset of the grantor as a service concession asset if the grantor controls the asset. The grantor controls the asset if, and only if:

- (a) the grantor controls or regulates what services the operator must provide with the asset, to whom it must provide them, and at what price; and
- (b) the grantor controls – through ownership, beneficial entitlement or otherwise – any significant residual interest in the asset at the end of the term of the arrangement.

9 The grantor shall recognise an asset that will be used in a service concession arrangement for its entire useful life (a ‘whole-of-life’ asset) if the conditions in paragraph 8(a) are met.”

Approach 3: Provide indicators to demonstrate the existence of public service

- 16 Approach 3 proposes that, instead of including a definition, indicators be provided in the Application Guidance to demonstrate the existence of a ‘public service’. The indicators would have the following advantages:
- (a) address constituents’ comments in paragraph 5 above by incorporating them into the indicators; and
 - (b) attain the objective of providing guidance for the application of the concept of ‘public service’ that is fundamental to the final Standard.
- 17 This approach is supported by Panel members who preferred the removal of the proposed ‘public service’ definition in ED 261 (refer paragraphs 14 and 15 above).

Staff recommendation

- 18 Based on the above analysis, Staff recommend adopting Approach 3 of providing indicators to demonstrate the existence of ‘public service’.
- 19 Staff are of the view that if the Board does not agree with the staff view and decides that a definition for a ‘public service’ is included in the final Standard, the definition would need to be:
- (a) prescriptive and unambiguous in its application and robust enough to still apply to future arrangements that are yet to be contemplated; or
 - (b) broad so as to scope in any arrangement that involves a public sector grantor and a private sector operator constructing and delivering an infrastructure asset on behalf of the public sector grantor.

Staff think both the above approaches to redefine the ‘public service’ definition would require time to develop and further outreach conducted with constituents to help ensure there are no unintended consequences arising from the application of the definition.

Questions to the Board

- Q1. Does the Board agree with Staff recommendation of adopting Approach 3 by providing indicators that demonstrate the existence of ‘public service’?
- Q2. If the Board does not agree with any of the approaches above, what alternative approach(es) does the Board prefer?

Indicators to demonstrate existence of public service

- 20 If the Board agrees with the staff recommendation above, some indicators that staff have identified as being potentially useful in addressing the issue include:
- (a) for the public service to exist, which parties other than the government would need to provide the service to the public;
 - (b) whether the service can be on a commercial and/or non-commercial terms; and
 - (c) whether the service needs to be available to everyone in the general public and whether this includes inter/intra government services or a specific sector of the public.
- 21 Staff intend to work with the Panel in the drafting of the indicators for the Board's consideration at the next meeting.

Questions to the Board

- Q3. Does the Board agree with the indicators of public service noted in paragraph 20 above?
- Q4. Are there any further indicators that the Board would like to be incorporated in the final Standard?