Australian Government
Australian Accounting Standards Board

Staff Paper

Project:	**Revenue from licences issued by not-for-profit public sector entities**	**Meeting**	AASB August 2017 (M159)
Topic:	**Which AASBs apply to licences?**	**Agenda Item:**	5.2
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Introduction and objective of this paper

1 This Paper follows on from Agenda Paper 5.1 of this meeting, and expands on the discussion in Agenda Paper 8.1 considered by the Board at its June 2017 meeting. In particular, it considers specific examples of licence arrangements within the scope of current AASBs so as to identify the types of licences that are not adequately addressed in AASBs. It thereby further clarifies the accounting standards 'gap', and the scope of this project. Accordingly, while there is some overlap with the material in the June 2017 agenda paper[1], we think it is justified on the basis that we are now delving into the issues more deeply in assessing specific types of licences. In so doing, this Agenda Paper throws light on whether the principles in AASB 15 *Revenue from Contracts with Customers* could (and should) be extrapolated to the extent necessary to appropriately reflect the economic substance of transactions in accounting for

1 We have minimised repetition as much as possible, although some repetition is unavoidable as, subsequent to writing the June 2017 Agenda Paper, we tested the tentative views expressed in it against particular licences (eg in this Paper we test spectrum licences against AASB 16 *Leases* and come to a more definitive view than that reached in the June 2017 Agenda Paper). However, the primary purpose of this Paper is to expand on the analysis in the previous Paper by, consistent with the Board's June 2017 directions, analysing issues such as whether, under AASB 15, a licence is a 'contract', a right to perform is a 'good or service', and issuing licences is 'ordinary activities'. Also consistent with the Board's discussion at the last meeting, this Paper analyses the three different kinds of licences: rights to use a licensor's asset, rights to access a licensor's assets and rights to perform (which do not involve a licensor's asset).

revenue from licences[2] issued under statute and other licences issued by NFP public sector entities not within the scope of AASB 15 (or other AASBs).

2 Agenda Paper 5.1 (paragraphs 5-7) includes the background to this project, and includes the following table, which sets out features (evident from various researched sources) that are useful in identifying 'in-substance' licence arrangements, particularly as distinct from taxes as defined in AASB 1058:

Characteristic	Licence	Tax
(a) Is the arrangement discretionary rather than compulsory (based on AASB 1058 definition of 'taxes')?	Discretionary	Compulsory
(b) What is the primary purpose of establishment (based on AASB 1058 definition of 'taxes')?	Non-financial purpose (e.g. equitable allocation of a public resource)	Generating income for the public sector entity
(c) Does the arrangement create rights of a payer and, depending on the type of arrangement, obligations of a payee (based on AASB 16 *Leases,* AASB 1059 *Service Concession Arrangements: Grantors*)?	Creates rights of a licensee, and could create obligations for a licensor	No
(d) Does the arrangement give the payer specific permission that must be obtained prior to performing an activity or using or accessing asset of the payee that would otherwise be unlawful (based on dictionary definitions and other common licence attributes)?	Yes	No
(e) Does the arrangement transfer control of a payee's underlying asset (based on common law principles)	No	Not relevant
(f) Does the arrangement convey to the payer a right to use or access an asset of the payee or a right to perform an activity (based on AASB 15 and dictionary definitions)	Yes	No

3 The remainder of this paper is structured as follows:

(a) Summary of staff recommendations (paragraphs 4-5)

(b) Next steps (paragraph 6)

(c) Results of staff research (paragraph 7)

2 The focus of this project is on the accounting for revenue from licences. Accordingly, licences that are granted for no consideration are excluded from scope.

(d) Supporting staff analysis of AASB 16 *Leases* and AASB 15 *Revenue from Contracts with Customers* (Appendix A)

(e) Supporting staff analysis of AASB 1059 *Service Concession Arrangements: Grantors* (Appendix B)

(f) Other supporting material (Appendices C-E – for information only)

Summary of staff recommendations

4 The staff recommend the Board confirm its previous tentative view that revenue from all licences currently outside (or unclear whether they are within) the scope of AASBs are included within the scope of AASB 15. The revenue recognition requirements for them would be best addressed by expanding the scope of AASB 15 as necessary to apply to all such licences (which do not include those within the scope of AASB 16) rather than rely only on the existing scope of AASB 15 being interpreted in practice as encapsulating them.

5 Based on the discussion in this Paper, the following Table summarises our view as to which licences clearly fall into which AASBs, and which licences are arguably unclear but we think could be subject to the principles in AASB 15 (subject to further research – see paragraph 6 below – to be presented to the Board in October).

Description of arrangement	Type of right (use, access, perform, or ? [ie further analysis required])	AASB 16	AASB 1059	AASB 15	Debateable whether AASB 15 applies, but anticipate the principles being suitable if supplemented with NFP public sector specific guidance
Spectrum licence	use	X			
Service concession arrangement	access		X		
IP licence issued by a University/CSIRO	use or access			X	
Fishing licence	perform				X
Drivers licence	perform				X
Liquor licence	perform				X
Passports and visas	perform				X
Building permit	perform				X
Casino licence	?				X
Bed licence	?				X
National park licence	?				X
Taxi licence	?				X
Wildlife harvesting licence	?				X

Questions to Board members

Q1 Based on the analysis outlined in this Agenda Paper, do Board members agree with the staff recommendation in paragraph 4?

Next steps

6 Agenda Papers, intended to be brought to the Board in October 2017, will:

(a) analyse, for the types of licences identified in the last column in the Table in paragraph 5 above, whether revenue recognition should be point in time or over time or either one depending on when a performance obligation is satisfied; and

(b) includes staff recommendations for the amendments to AASB 15 anticipated in (a) above.

Results of staff research

7 The following table sets out a summary of staff thinking with respect to how the scope of current AASBs could apply to licences. The table identifies the AASBs reviewed, and summarises the main insights we drew based on our analysis (the table also cross-references to the supporting staff analysis contained in Appendix A or other Appendices of the paper):

AASB	Key points	Supporting analysis: Appendices and paragraphs
AASB 16	• AASB 16 only applies to licences outside the scope of AASB 15 that are 'leases'. • A 'lease' is 'A **contract** or part of a contract, that **conveys** the **right to use** an asset (the underlying asset) for a period of time in exchange for consideration'. The asset must be an **identified asset** (ie physically distinct) with no substantive right of substitution. • Accordingly, AASB 16 only applies to right to use contractual licences (that are outside the scope of AASB 15) – ie non-IP contractual licenses that are for an identified asset. • Whether licences are contracts is analysed in the context of AASB 15 rather than in the context of AASB 16 – see below. • Most non-IP licences issued by NFP public sector entities would not constitute 'right to use' licences, and therefore would not fall within the scope of AASB 16 because: o there is no pertinent licensor asset involved in the arrangement; or o where a licensor's asset is involved, it is in the nature of 'a capacity portion of an asset that is not physically distinct' (eg fibre optic cable). • Accordingly, the only type of current licence that we think possibly falls within the scope of AASB 16 is a spectrum licence.	Appendix A, paras A6-A12 Appendix A, paras A9-A12

AASB 15	• AASB 15 applies to a **contract** with a customer who has contracted with an entity to obtain **goods or services** that are an output of the entity's **ordinary activities** in exchange for consideration. • AASB 15.26(i) explicitly identifies licences as a possible good or service. Para B52 describes such licences as being over IP, and therefore IP licences are explicitly within the scope of AASB 15. • AASB 15 does not define IP, nor specify whether non-IP licences fall within its scope. However, it gives examples of IP including software and technology, motion pictures, music and other forms of media and entertainment, franchises, patents, trademarks and copyrights. • For a non-IP licence to fall within the scope of AASB 15 it must meet the following criteria: o be a contract with customers; for o goods or services; that are o an output of the licensor's ordinary activities. • Staff think a non-IP licence satisfies the meaning of: o a 'contract' despite arising from statutory requirements o 'goods or services', consistent with AASB 15 para 26 and Canada PSASB Exposure Draft proposals o 'ordinary activities', irrespective of whether a new licencing regime is being introduced (eg for cannabis growers) or a licence is infrequently issued (eg a casino licence). • Accordingly, staff think that all licences outside the scope of AASB 16 (and AASB 1059) that are contracts fall within the scope of AASB 15. • However, despite this view: o we acknowledge the alternative views that: – because many licences arise from statutory requirements, they are not contractual in nature; – because many licences involve rights that are not associated with underlying assets or are not an exchange, they are not goods or services; and – it is conceivable that some licences are not outputs of ordinary activities; o it is conceivable that future licencing arrangements are developed that do not have the character of a 'contract', 'goods or services' or 'ordinary activities' even under our analyses in this Paper; o we would be cautious about incorporating our view directly into AASB 15 as to do so would risk inconsistency with the Board's transaction neutrality policy[3] – given IASB has not described 'contracts',	Appendix A, paras A13-A40 Appendix A, paras A18-A27 Appendix A, paras A28-A36 Appendix A, paras A37-A40

3 June 2017 Agenda Paper 8.1 (paragraphs 33-38) analysed the possibility of modifying AASBs for licences and came to the tentative view that AASBs should be modified to clarify the accounting for

	‘goods or services’ or ‘ordinary activities’ in a manner that is explicitly consistent with our view; and o it would be unnecessary to incorporate our view into AASBs as a way of meeting this project’s objective of clarifying the revenue recognition requirements for licences. AASB 15 could be amended to provide sufficient clarity about what licences are within scope without needing to definitively interpret the criteria in that Standard. • In summary, staff view is that all licences (other than those within the scope of AASB 16 and AASB 1059) are within the scope of AASB 15, but feel it would be best to address revenue recognition requirements for them by expanding the scope of AASB 15 to apply to all such licences rather than rely only the existing scope of AASB 15 being interpreted in practice as encapsulating them.	
AASB 1059	• AASB 1059 applies to service concession arrangements, and does not intend service concession arrangements be referred to as licences, on the basis that “…the substance of the transaction appears more akin to financing the construction of the service concession asset, rather than a contract with a customer.” (AASB 1059.BC77) • Given AASB 1059, it is not necessary for this project to address any licences that meet the definition of service concession arrangements, and AASB 1059 should not be applied by analogy to other licences.	Appendix B
The following comments relating to other AASBs are provided for the sake of completeness:		
AASB 1058	• AASB 1058.7(d) states “licences outside the scope of AASB 15” are outside the scope of AASB 1058. • The principles in AASB 1058 should not apply to licence arrangements within the scope of this project as it is a ‘residual’ revenue recognition standard and AASB 15 is the more suitable vehicle because it is a ‘primary’ revenue recognition standard.	Appendix A, para A3
AASB 137	• It is arguable that the accounting requirements for some licences could fall within the scope of AASB 137 – to the extent the licences give rise to liabilities of the licensor that are uncertain in timing or amount (ie provisions). • However, AASB 137 would only be applicable if the accounting for the ‘provision’ is not covered by any other Standard (for example AASB 15). • Also, this project is focused on considering the suitability of AASB 15 for the recognition of revenue from licences outside the scope of other AASBs – AASB 137 is not a revenue recognition standard.	Appendix A, footnote 5 to para A3

revenue from licences issued by public sector NFP entities, but did not get into the specifics of what amendments should be made.

	• Therefore, AASB 137 is not a suitable vehicle for specifying requirements for the accounting for revenue from licences.	
AASB 116 & 138	• Although in practice some arrangements are referred to as 'licences' even though they are treated by licensors as the sale of an asset, our identified features of 'licence' (see paragraph 2, feature (e) above) excludes such arrangements. • Therefore, AASBs 116 and 138 are not suitable vehicles for specifying requirements for the accounting for revenue from licences.	Appendix A, footnote 7 to para A3

Appendix A: Supporting staff analysis of AASB 16 and AASB 15

A1 In identifying the AASBs that could apply to certain licences, staff considered the extent to which the scopes of the following AASBs include licences, because each of them refer to 'licence' from an issuer's perspective:

(a) AASB 16 *Leases*

(b) AASB 15 *Revenue from Contracts with Customers*.[4]

A2 AASB 1059 *Service Concession Arrangements* is excluded from the list because its applicability was discussed in June 2017 Agenda Paper 8.1. However, because that Agenda Paper preceded the finalisation of AASB 1059, for completeness, an analysis of AASB 1059 is included in Appendix B of this Paper.

A3 AASB 1058 *Income of Not-for-Profit Entities* is also excluded from the list, because AASB 1058. 7(d) states "licences outside the scope of AASB 15" are outside the scope of AASB 1058.[5] The Board decided to exclude such licences at the time AASB 1058 was issued to avoid pre-empting the outcome of this project. In particular, paragraph BC48 of AASB 1058 states:

> "… The Board heard that the accounting for licences in the public sector is a significant issue, and observed that the Board had not before considered whether public sector licences should be accounted for in accordance with AASB 1058, or whether the licences are more appropriately accounted for by analogy to AASB 15. The Board signalled its intention to undertake a separate project on the accounting for public sector licences, and as it did not want to presuppose the accounting outcomes of that project, decided to exclude licences that are outside the scope of AASB 15 from this Standard. …"

A4 As is evident from the analysis in this paper, staff have come to the view that AASB 1058 should continue to exclude licences from its scope as AASB 1058 is a 'residual' revenue recognition standard and we expect the principles in AASB 15 will be suitable because that standard is a 'primary' revenue recognition standard that already includes some licences within its scope.

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4 This Appendix is limited to assessing the extent to which the AASBs listed in paragraph A1 include licences within their scope. We do not describe the consequential accounting prescribed by them. For example, the accounting for a licence within the scope of AASB 16 would hinge on an assessment of whether it is a finance or operating lease – we do not assess whether particular licences are finance or operating leases.

5 Furthermore, AASB 116 *Property, Plant and Equipment* and AASB 138 *Intangible Assets* are excluded from the list. Although in practice some arrangements are referred to as 'licences' even though they are in substance the sale of an asset, our identified features of 'licence' (see paragraph 2, characteristic (e) above) excludes such arrangements. Furthermore, it is arguable that the accounting requirements for some licences could fall within the scope of AASB 137 *Provisions, Contingent Liabilities and Contingent Assets* – to the extent the licences give rise to liabilities of the licensor that are uncertain in timing or amount (ie provisions). However, AASB 137 would only be applicable if the accounting for the 'provision' is not covered by any other AASB (for example AASB 15). Also, this project is focused on considering the suitability of AASB 15 for the recognition of revenue from licences outside the scope of other AASBs – AASB 137 is not a revenue recognition standard.

A5 The scope, with respect to licences, of each of the AASBs listed in paragraph A1 above are analysed in turn below. We discuss them in that order, consistent with the expectation that to the extent any accounting standard 'gap' for licences is identified, AASB 15 is likely to be the most appropriate (and convenient) vehicle in which to locate any new requirements/guidance, given that AASB 15 already deals with the widest range of licences and consistent with the Board's previous deliberations.

Licences within the scope of AASB 16

A6 Paragraph 3(d) of AASB 16 states "licences of intellectual property granted by a lessor within the scope of AASB 15" are outside the scope of AASB 16. Therefore, AASB 16 only applies to licences outside the scope of AASB 15 that are 'leases' (where the licensor is the lessor).

A7 Relevant extracts from AASB 16 include (emphasis added):

(a) a lease is "A **contract**, or part of a contract, that **conveys** the **right to use** an asset (the underlying asset) for a period of time in exchange for consideration" (Appendix A);

(b) a contract is "An agreement between two or more parties that creates enforceable rights and obligations" (Appendix A) – a discussion of whether licences are contracts is deferred until the analysis of AASB 15 later in this Paper;

(c) "To assess whether a contract conveys the right to control the use of an **identified asset** … an entity shall assess whether, throughout the period of use, the customer has … the right to obtain substantially all of the economic benefits from use of the identified asset … and … the right to direct the use of the identified asset" (paragraph B9);

(d) "Even if an asset is specified, a customer does not have the right to use an identified asset if the supplier has the substantive **right to substitute** the asset throughout the period of use …" (paragraph B14); and

(e) "A capacity portion of an asset is an identified asset if it is **physically distinct** (for example, a floor of a building). A capacity or other portion of an asset that is not physically distinct (for example, a capacity portion of a fibre optic cable) is not an identified asset, unless it represents substantially all of the capacity of the asset and thereby provides the customer with the right to obtain substantially all of the economic benefits from use of the asset." (paragraph B20).

A8 Based on the above extracts, AASB 16, by definition, could only be potentially applicable to 'right to use' licences. Furthermore, consistent with the staff view in paragraph 32 of the June 2017 Agenda Paper 8.1, it is highly likely that most non-IP licences would be outside the scope of AASB 16, because:

(a) leases convey the right to use a lessor's asset to the lessee, whereas in relation to most non-IP licences issued by NFP public sector entities (eg marriage licences, drivers licences, casino licences), either:

(i) they are regarded as not involving a lessor asset, and therefore the licences are not leases, as they are a right to access or perform, not to use an existing lessor tangible or intangible asset; or

(ii) even if they are regarded as involving a lessor asset, the lessee does not have the right to obtain substantially all of the economic benefits from use of the identified asset; or does not have the right to direct the use of the identified asset; and

(b) some licences, although involving the conveyance or transfer of a right to use, involve 'a capacity or other portion of an asset that is not physically distinct' (paragraph B20 of AASB 16). For example, the government might licence certain internet service providers to use a capacity portion of fibre optic cables, and therefore the arrangement is not a lease.

Spectrum Licences

A9 However, some substantive right of use licences could fall within the scope of AASB 16. These are spectrum licences and licences of that nature. A spectrum licence authorises the licensee, or someone the licensee authorises, to operate radiocommunications devices in a particular frequency band within a particular geographic area. Spectrum licences are awarded for periods of up to 15 years, and do not have an automatic right of renewal. (See Appendix C of this Paper, based on information at www.acma.gov.au, for a fuller description of spectrum licences – provided for information only.) Most communication spectrum is a naturally occurring intangible asset, the allocation of which is controlled by the government. The licence arrangements may be simple and cheap for not-for-profit applications (eg emergency services) and may be more complex, expensive and longer term for spectrum that has commercial application (such as TV or mobile phone spectrum).

A10 If we accept that the spectrum licence meets the definition of a 'contract' (see the analysis in paragraphs A18-A27 below), then such a licence appears to be within the scope of AASB 16[6] because it is non-IP and the 'particular frequency band within a particular geographic area' is an 'identified asset' (and not 'substitutable'), use of which is transferred/conveyed by the licensor to the licensee.

A11 We are not aware of any other types of current licences that would fall within the scope of AASB 16.

A12 Accordingly, staff view is that the range of licences within the scope of AASB 16 appears to be very narrow (albeit potentially significant) – being rights to use a licensor's identified (physically distinct) asset that is not substitutable, such as spectrum.

Licences within the scope of AASB 15

A13 The following provides relevant extracts from AASB 15 (emphasis added):

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6 footnote removed.

(a) "An entity shall apply this Standard to all **contracts** with **customers**, except the following: … lease contracts within the scope of AASB 16 *Leases* …" (paragraph 5(a))

(b) Contract is defined as "An agreement between two or more parties that creates enforceable rights and obligations" (Appendix A)

(c) Customer is defined as "A party that has contracted with an entity to **obtain goods or services** that are an **output of the entity's ordinary activities** in exchange for consideration" (Appendix A)

(d) "An entity shall account for a contract with a customer … only when all of the following criteria are met … the entity can identify **each party's rights** regarding the goods or services to be transferred …" (paragraph 9(b))

(e) "Depending on the contract, promised goods or services may include … granting **licences** …" (paragraph 26(i))

(f) "A licence establishes a customer's rights to the **intellectual property** of an entity. Licences of intellectual property may include, but are not limited to, any of the following:
   (a) software and technology;
   (b) motion pictures, music and other forms of media and entertainment;
   (c) franchises; and
   (d) patents, trademarks and copyrights." (paragraph B52)

A14 Based on the above extracts, it is apparent that AASB 15:

(a) explicitly applies to contractual intellectual property (IP) licences (even if they are in the nature of a lease[7]) – whether rights to use or rights to access; and

(b) implicitly applies to other licences (whether rights to use, rights to access or rights to perform) that are 'contracts with customers', 'goods or services' and 'output of the licensor's ordinary activities'.

The scope of each is discussed in turn below, for the purpose of identifying the types of public sector licences within the scope of AASB 15.

The scope of IP licences explicitly referred to in AASB 15

A15 AASB 15 refers to IP without defining it, although it provides examples in paragraph B52 (see paragraph A13(f) above). There are likely to be some NFP public sector issued licences that fall unquestionably within the scope – particularly those that are entered into under normal commercial arrangements and entail the government granting rights to a licensee to use or access IP (irrespective of whether that IP asset is recognised) of the government (eg universities, CSIRO). The question of what is IP would be a matter of judgement and might entail quite scientifically technical

7 As noted in paragraph A6 above, paragraph 3(d) of AASB 16 states "licences of intellectual property granted by a lessor within the scope of AASB 15" are outside the scope of AASB 16.

assessments in practice. These issues arise irrespective of the sector – for-profit or NFP – and therefore of themselves would not justify amendments to AASB 15. To do so would be inconsistent with the Board's transaction neutral policy.

A16 However, many licences issued by NFP public sector entities are unquestionably not for IP – either because they involve an asset that is not IP of the government or are created through government regulation as a right to perform. Many of these types of licences are unique to the public sector and fall outside the scope of IP licences, but still potentially fall within the scope of AASB 15, as analysed below.

The scope of non-IP licences within the scope of AASB 15

A17 Non-IP licences are not explicitly referred to in AASB 15. However, to the extent they convey a right to use or access an asset and are not leases, they would be within the scope of AASB 15, if they meet the various criteria analysed below. Similarly, AASB 15 could apply to licences that convey a right to perform (eg drivers licence, marriage licence) if they meet the same criteria, although that is a somewhat greyer area, as also analysed below.

The scope of 'contract' referred to in AASB 15[8]

A18 One significant issue is whether a statutory requirement (such as a licence established through statute) is, by definition, non-contractual. Although AASBs do not define statutory requirements, there are a number of references to such requirements that throw light on the question, particularly in AASBs that only apply to 'contracts':

(a) paragraph AG12 of AASB 132 *Financial Instruments: Presentation* states: "Liabilities or assets that are not contractual (such as income taxes that are created as a result of statutory requirements imposed by governments) are not financial liabilities or financial assets. …"

(b) paragraph Aus2.1.1 and Appendix C of AASB 9 *Financial Instruments* states: "… in respect of not-for-profit entities, the initial recognition and measurement requirements of this Standard apply to non-contractual receivables arising from statutory requirements as if those receivables are financial instruments." (paragraph Aus2.1.1); and "… in a not-for-profit context, a receivable may arise from statutory requirements rather than through a contract (for example, rates, taxes and fines). The nature of such a receivable arising from statutory requirements is, in substance, similar to a contractual receivable …" (paragraph C4)

(c) paragraph 2 of AASB 1058 *Income of Not-for-Profit Entities* states: "… governments are entitled to non-contractual receivables arising from statutory requirements such as taxes and rates without providing consideration to the other party …".

8 This section expands on the June 2017 Agenda Paper 8.1 analysis of 'contract', which came to a view that further research was required. This section reports on the results of that further research.

A19 It is notable that these references only explicitly refer to certain types of statutory requirements, being those in the nature of or similar to taxes – being compulsory rather than discretionary (see the discussion distinguishing between licences and taxes in paragraph A8 of Agenda Paper 5.1).

A20 We are aware that some are of the view that, based on the above extracts, something like long service leave, which is a statutory requirement, is not necessarily contractual and therefore would extend their argument to say that all licences that arise from statute are non-contractual unless or until they are incorporated specifically into a contract (ie an employer has an obligation to pay long service leave in accordance with the relevant Act, regardless of whether an individual's contract explicitly states that long service leave will be paid). We note that IFRIC had discussed whether long service leave falls within IAS 19 *Employee Benefits* or IAS 32 *Financial Instruments: Presentation* in November 2005. In rejecting the issue IFRIC stated: "The IFRIC considered whether a liability for long service leave falls within IAS 19 or whether it is a financial liability within the scope of IAS 32. The IFRIC noted that IAS 19 indicates that employee benefit plans include a wide range of formal and informal arrangements. It is therefore clear that the exclusion of employee benefit plans from IAS 32 includes all employee benefits covered by IAS 19. The IFRIC decided that, since the Standard is clear, it would not expect diversity in practice and would not take this item onto its agenda."

A21 Although the IFRIC rejection does not say that long service leave is not contractual, some may infer from the rejection that long service leave is not contractual as it is not within the scope of IAS 32. However, the AASB staff view is that the IFRIC rejection merely clarifies that long service leave should be accounted for in accordance with AASB 119 *Employee Benefits* as that is the standard that deals specifically with employee benefits, including long service leave. We do not think this necessarily means that long service leave (or indeed other statutory requirements) is not contractual.

A22 For completeness, we also note that IPSASB staff explored the meaning of 'statutory receivables' in the context of the IPSASB's project on public sector specific financial instruments in June 2014 (IPSASB agenda paper 10.1). IPSASB staff referred to the IPSASB definition of a contract (paragraph AG20 of IPSAS 28 *Financial Instruments: Presentation*), and tested taxes, government transfers, penalties and fines and fees (including licences and permits) against the definition. IPSASB staff expressed the view that taxes, government transfers and penalties and fines would be non-contractual receivables on the basis that such arrangements were not entered into willingly, and did not create obligations for the government to provide specific goods or services for the taxes received. The IPSASB staff view acknowledged fees (including licences and permits) could be considered contractual, on the basis that an entity would need to agree to pay the fee, would receive a specific right in exchange, and that the payment of the fee would confer an obligation on the government to allow the entity to participate in a specific action. The IPSASB did not make any definitive decisions on whether the examples of statutory receivables put forward by IPSASB staff would be non-contractual in June 2014, and subsequently scoped the matter of statutory receivables out of the project on public sector specific financial instruments.

A23 In June 2016, IPSASB staff revisited the work carried out in June 2014 regarding statutory receivables in the context of the IPSASB's revenue project, and reiterated the

IPSASB staff view from June 2014 that statutory receivables are generally non-contractual. Paragraph 11.11 of Agenda Paper 11.8 presented at the IPSASB's June 2016 meeting states: "The June 2014 agenda paper described the features of these transactions and explained why they could give rise to statutory receivables. Essentially, it is because the transactions are non-contractual."

A24 The IPSASB decisions regarding statutory receivables at the June 2016 IPSASB meeting focussed on the accounting for statutory receivables in the context of the revenue project, but did not address the issue of whether all statutory receivables would be non-contractual.

A25 Taking into account the above factors (references in AASBs that focus on contracts, IFRIC work, IPSASB deliberations), the following reflects the AASB staff thoughts:

(a) The essence of a 'contract' is an agreement (and therefore entered into voluntarily even if out of economic necessity, as distinct from an imposition) that entails rights and obligations (albeit not necessarily equal). Accordingly, the existence of a contract is not predicated on the parties having equal bargaining power in reaching an agreement – for example, contracts can be between a monopoly and its customers.

(b) For many things, a government can use its sovereign power to effectively create a monopoly. Arguably, this is what a government does when it creates a licencing regime. (In contrast, when the government creates a tax regime, there is no contractual relationship between the government and taxpayer – a tax is an imposition that gives rise to obligations of the taxpayer who has no corresponding rights, and rights of the government that has no corresponding obligations[9]).

A26 Based on the above analysis, the staff preliminary view is that all licencing arrangements satisfy the definition of 'contract' in AASB 15[10]. In other words, we are not aware of any circumstances where a licence is granted automatically and does not require specific negotiation/application/notification of what is and is not allowable under the licence. This is different from the issue that has arisen in the context of insurance, where there are circumstances where insurance coverage is provided by statute regardless of whether there is an individual contract.[11] We think our view is consistent with the legal principles underpinning a contract (see Appendix D of this Paper – provided for information only).

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9 Consistent with the reference to 'each party's rights' in paragraph 9(b) of AASB 15, we have interpreted the reference to 'rights and obligations' in the definition of contract to mean each party to a contract has both rights and obligations (albeit with the possibility they are unequal).

10 This is despite the fact some might interpret paragraph IG12 of AASB 1059 as implying that a licence is different from a contract. In the row referred to as 'Typical duration', the last column relating to an arrangement that is a sale states "Indefinite (or may be limited by contract or licence)".

11 Consideration will need to be given to the interaction of any decisions the Board makes in relation to licences with other projects, such as the insurance project, where some statutory arrangements may not be contractual.

A27 However, we do not advocate reflecting our view directly in an amendment to AASB 15. Our reasons are provided in paragraph A41 below.

The scope of 'goods and services' referred to in AASB 15[12]

A28 To be within the scope of AASB 15, the granting of a licence must involve 'goods or services'. Therefore, a question is whether licences (whether a right to use, right to access or right to perform an activity) issued by a public sector entity is a good or service. AASB 15 does not define 'goods' or 'services'. However, paragraph 26(i) of AASB 15 states that 'goods and services' include "granting licences". It is also evident from AASB 15 that an IP licence is regarded as a good or service as there is specific guidance in AASB 15 on accounting for revenue from IP licences.

A29 Therefore, the only question is whether a non-IP licence is a good or service. For the purpose of discussion, it is useful to consider two types of non-IP licences:

(a) those for which the licencee is granted a right to use or access a licensor's asset; and

(b) those for which the licencee is granted a right to perform an activity, but there is no underlying asset of the licensor involved.

A30 In relation to paragraph A29(a) licences, the inclusion of IP licences within the scope of AASB 15 suggests that non-IP licences that similarly grant a right to use or access a licensor's asset (and that is not a lease) is also within the scope of AASB 15 (subject to the discussion of the other factors pertinent to whether an arrangement is within the scope of AASB 15, such as 'contract' [see paragraphs A18-A27] and 'ordinary activities' [see paragraphs A37- A40]).

A31 In relation to paragraph A29(b) licences, the question becomes whether the absence of a right to an asset of the licensor means that the rights obtained by the licensee are not 'goods or services'. That is, is a right to perform an act a good or service obtained by the customer? For example, is a right to drive a car a good or service? It could be argued that the right to drive is the promised good or service in a contract with the licencing authority (eg VicRoads) – the right is specified or promised in the contract and it has value. Furthermore, as noted in Appendix E of this Paper – for information only – we conclude from our analysis there that such licences stand the legal test of a 'good or service'.

A32 It is also relevant to note that the Canadian Public Sector Accounting Standards Board (PSASB) has issued an Exposure Draft *Revenue, Proposed Section PS 3400* (May 2017), which includes a proposal that "Goods or services include rights granted by licences or permits" (paragraph A12). Paragraph A6 states that "Promised goods or services may include, but are not limited to, the following: … (g) granting the right to use intangible assets owned or controlled by the Crown (for example, fees charged to licence patented technology); … (j) providing a decision and having the appropriate documentation ready (for example, fees to apply for a driver's licence and its issuance to a qualifying driver). …". We understand, based on correspondence with Canadian

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12 June 2017 Agenda Paper 8.1 did not explicitly address this issue.

PSASB staff, that the rationale underpinning the position adopted is consideration of the unilateral or exchange nature of the transaction itself. Where a transaction is representative of an exchange, it follows that the exchange must pertain to goods or services. Licences are not precluded from constituting exchange transactions.

A33 Before considering whether to accept the current Canadian thinking as influential for Australia, we acknowledge that Canada may not have the same transaction neutral policy that guides the AASB's decisions in relation to NFP modifications to IFRSs. However, if the 'exchange' argument is accepted, many licences in Australia could be regarded as fees for service, even if not full fee for service. For example, without at this stage getting into how they should be accounted for (which is intended to be the subject of the next project paper):

(a) passport fees, being for a licence to travel overseas, are in exchange for a physical passport and also arguably for access to consular services, which might be regarded as an equal exchange;

(b) immigration visa fees might be regarded as exceeding the value of the visa; and

(c) certain primary production licence fees might be regarded as less than the value of the services that are received in exchange, including marketing and product development assistance.

A34 However, other licences might be regarded as merely an intangible right to perform an activity, with no other direct benefits received in exchange. Examples of these types of licences might include a marriage licence.

A35 Based on the above analysis, we tentatively come to the view that the types of licences issued by the NFP public sector that grant permission to a licensee to perform an activity without involving an asset of the licensor is a 'good or service' – 'good or service' is not predicated on there being 'direct benefits' received in exchange, as that term is used in paragraph 16 above. In any event, as a minimum, the licensee/customer obtains a licence certificate.

A36 However, consistent with our concluding comments on 'contracts' above (paragraph A27), we do not advocate reflecting our view directly into AASB 15 as a NFP modification. Our reasons are provided in paragraph A41 below.

The scope of 'output of the entity's ordinary activities' referred to in AASB 15[13]

A37 To be within the scope of AASB 15 a licence would need to be an output of the public sector entity's ordinary activities. AASB 15 does not define 'ordinary activities'. Paragraph BC53 explains that this is because the notion of ordinary activities is

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13 This section reports the results of the further research noted as being required in June 2017 Agenda Paper 8.1. It might also be relevant to recall the discussion in paragraphs 16 to 29 of the Board's September 2014 Agenda Paper 15.2, which considered 'an output of the entity's ordinary activities' in the context of service concession arrangements. The staff view expressed in that paper was that, in the context of a service concession arrangement, "…determining conclusively whether a right to charge users in a service concession arrangement can represent output of the grantor's ordinary activities" is difficult.

derived from the definitions of revenue in the conceptual framework. Paragraph 72 of the Framework notes that the distinction between ordinary activities and other activities is made on the basis that the source of an item is relevant in evaluating the ability of the entity to generate cash and cash equivalents in the future. The example given is incidental activities such as the disposal of a long-term investment that are unlikely to recur on a regular basis are not ordinary activities. When distinguishing between items, consideration needs to be given to the nature of the entity and its operations.

A38 As noted in paragraph B2(a) of Appendix B of this Paper, the Board has noted there are differing views on whether the ordinary activities of government include undertaking service concession arrangements as a grantor. Although many types of licences are issued frequently to a range of licensees (and therefore are unarguably an ordinary activity of the licensor), perhaps there is a view that the issue of certain licences is not ordinary activities. For example:

(a) a government might decide to only issue one casino licence, and only once every ten or so years; or

(b) a government might decide to create a new licencing regime to implement a new policy (eg governments are currently working through the implementation of policy on the medicinal use of cannabis, which might involve the licencing of growers).

A39 However, even in these cases, we do not regard the issue of the licences as incidental as it is an ordinary activity of governments to issue licences and typically it would be a major responsibility of the issuing authority – even if it only happens infrequently. Accordingly, we are not aware of any licences issued by NFP public sector entities within the scope of this project that would be anything other than an output of the licensor's ordinary activities.

A40 Despite our view, consistent with our comments on 'contracts' and 'goods or services', we do not advocate reflecting our view directly in an amendment to AASB 15 as a NFP modification. Our reasons are provided in paragraph A41 below.

Our overall conclusion

A41 In relation to our view that all licences within the scope of this project (ie licences outside the scope of AASB 16 and AASB 1059) fall within the scope of AASB 15:

(a) we acknowledge the alternative views that:

(i) because many licences arise from statutory requirements, they are not contractual in nature;

(ii) because many licences involve rights that are not associated with underlying assets, they are not goods or services; and

(iii) it is conceivable that some licences are not outputs of ordinary activities;

(b) it is conceivable that future licencing arrangements are developed that do not have the character of a ‘contract’, ‘goods or services’ or ‘ordinary activities’ even under our analyses above;

(c) we would be cautious about reflecting our view directly in AASB 15 as to do so would risk inconsistency with the Board’s transaction neutrality policy[14] – given IASB has not described ‘contracts’, ‘goods or services’ or ‘ordinary activities’ in a manner that is explicitly consistent with our view; and

(d) it would be unnecessary to reflect our view directly in AASBs as a way of meeting this project’s objective of clarifying the revenue recognition requirements for licences. AASB 15 could be amended to provide sufficient clarity about what licences are within scope without needing to definitively interpret the criteria in that Standard.

A42 To summarise, staff view is that all licences issued by NFP public sector entities (other than those within the scope of AASB 16 and AASB 1059) are within the scope of AASB 15, but feel it would be best to address revenue recognition requirements for them by expanding the scope of AASB 15 to apply to all such licences rather than rely only the existing scope of AASB 15 being interpreted in practice as encapsulating them.

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14 June 2017 Agenda Paper 8.1 (paragraphs 33-38) analysed the possibility of modifying AASBs for licences and came to the tentative view that AASBs should be modified to clarify the accounting for revenue from licences issued by public sector NFP entities, but did not get into the specifics of what amendments should be made.

Appendix B: Supporting staff analysis of AASB 1059[15]

B1 Extracts from AASB 1059 *Service Concession Arrangements: Grantors*, which applies to service concession arrangements, that are relevant to determining whether any types of licences fall within its scope include (emphasis added):

(a) A service concession arrangement is "A **contract** effective during the reporting period between a grantor and an operator in which: (a) the operator has the **right of access** to the service concession asset (or assets) to provide public services on behalf of the grantor for a specified period of time; (b) the operator is responsible for at least some of the management of the public services provided through the asset and does not act merely as an agent on behalf of the grantor; and (c) the operator is compensated for its services over the period of the service concession arrangement." (Appendix A)

(b) A grantor is "The entity that grants the right to access the service concession asset to the operator" (Appendix A)

(c) An operator is "The entity that has a right of access to the service concession asset to provide public services" (Appendix A)

(d) A service concession asset is "An asset (other than goodwill) to which the operator has the right of access to provide public services on behalf of the grantor in a service concession arrangement that: (a) the operator constructs, develops, upgrades or replaces major components, or acquires from a third party or is an existing asset of the operator; or (b) is an existing asset of the grantor, including a previously unrecognised identifiable intangible asset and land under roads, or an upgrade to or replacement of a major component of an existing asset of the grantor." (Appendix A)

B2 Consistent with the analysis in June 2017 Agenda Paper 8.1, it is apparent from the Basis for Conclusions that accompanies AASB 1059 that the Board does not intend any licences other than those that meet the criteria in AASB 1059 be accounted for under AASB 1059. Relevant extracts from the Basis for Conclusions, that speak for themselves, include (emphasis added):

(a) "… the application of AASB 15 without further guidance may lead to divergence in accounting for a service concession arrangement, as significant judgement would be required to determine whether a service concession arrangement in which the grantor transfers an intangible asset to the operator is within the scope of AASB 15. The Board noted **differing views on whether a service concession arrangement involves a contract with a customer** (ie whether the right to charge users is considered a licence, whether the operator is considered a customer, or whether the ordinary activities of government include undertaking service concession arrangements as a grantor) … The Board preferred the view that **the substance of the transaction appears more**

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15 Although this issue was considered in the June 2017 Agenda Paper 8.1, that paper preceded the finalisation of AASB 1059. Now that AASB 1059 has been issued, for completeness, this appendix provides an assessment of whether the previous analysis still holds.

akin to financing the construction of the service concession asset, rather than a contract with a customer." (paragraph BC77)

(b) "… The Board acknowledged that the grantor's promise, or the operator's expectation, that the grantor will undertake activities that benefit the operator may in some instances be comparable to promises made by a licensor or expectations of a licensee that the licensor will undertake activities in relation to intellectual property that will benefit the licensee. …" (paragraph BC78)

(c) "The Board decided that facts and circumstances would need to be assessed for each arrangement to determine whether the arrangement represented a right-of-access licence or a right-of-use licence. The Board preferred all service concession arrangements to be treated the same way, as it did not see the substance of service concession arrangements being different in respect of commitments under the arrangements. …" (paragraph BC79)

(d) "In some service concession arrangements, the right to charge users is described as a licence. The Board noted that accounting for licences other than those relating to service concession arrangements should be subject to further research to inform the Board as to whether a separate project would be required. Determining whether a particular licence granted by a government is within the scope of AASB 15 would depend on the facts and circumstances." (paragraph BC81)

(e) "Given the importance of service concession arrangements to governments and the lack of accounting guidance for such arrangements in the absence of AASB 1059, the Board decided that **service concession arrangements should be treated separately from other licences granted by governments**." (paragraph BC82)

B3 Although the body of AASB 1059 does not explicitly refer to licences, the Basis for Conclusions accompanying AASB 1059 does, particularly in explaining the Board's reasons for when the 'grant of a right to the operator (GORTO) model' is required to be applied. Paragraph BC76 states that "Under the GORTO model, the grantor transfers to the operator an intangible asset (being a right to charge users of the service concession asset) in exchange for the construction, development, acquisition or upgrade of a service concession asset and the provision of related future services." Accordingly, although a service concession arrangement is conceivably a licence, the Board decided arrangements that meet the criteria in AASB 1059 should be outside the scope of AASB 15 and within the scope of AASB 1059. Other arrangements should not be accounted for under AASB 1059, even by analogy.

B4 Accordingly, there are no licences within the scope of this project (whether right to use, right to access or right to perform) that would fall within the scope of AASB 1059.

Appendix C: Spectrum Licences (for Board information only)

This Appendix, sourced from www.acma.gov.au, outlines the nature of a spectrum licence.

Every spectrum licence includes core conditions and other statutory conditions that must be followed. This page has information on those conditions and penalties for not following them and links to more detail.

A spectrum licence authorises you, or someone you authorise, to operate radiocommunications devices in a particular frequency band within a particular geographic area. Details of current licences in each of the spectrum licensed bands are available from the spectrum licence search page.

The core conditions for spectrum licences are set out in section 66 of the *Radiocommunications Act 1992* (the Act) and specify:

1. the parts of the spectrum in which the operation of radiocommunications devices is authorised under the licence
2. the area of Australia within which the operation of radiocommunications devices is authorised
3. the maximum permitted level of radio emissions outside these spectrum and area boundaries.

The core conditions define the spectrum space within which the licensee is authorised to operate radiocommunications devices under the licence.

Other statutory licence conditions under the Act include:

1. payment of charges
2. use of licensed spectrum by third parties, especially in relation to handsets
3. registration of transmitters for the purpose of interference management
4. any other matters that The Australian Communications and Media Authority (the ACMA) may need to include in the licence

Licence conditions are used to ensure efficient coordination with other devices and protect Australia's international treaty obligations.

Licence term

Spectrum licences are awarded for periods of up to 15 years, and do not have an automatic right of renewal. At the end of the licence period, licences are usually reallocated following a price-based procedure. This does not prevent a spectrum licence being reissued to a current licence holder.

The ACMA sends expiry reminders to license holders during the last two years of their licence. For example, notices arising from allocations made in 2000 will be issued in 2013.

The ACMA periodically publishes notices in the Commonwealth Gazette about spectrum licences that are due to expire within the next two years. This information can also be obtained from the ACMA website or one of the ACMA's offices. Expressions of interest are invited from members of the public who would like a spectrum licence.

A spectrum licence can be reissued to you without participating in a price-based allocation process where this is in accord with a determination by the Minister, or where the ACMA is satisfied that special circumstances exist that makes it in the public interest for you to continue to hold the licence.

Suspending and cancelling spectrum licences

Under the Act, if you or an authorised third party has:

1. breached a licence condition or the Act, or
2. has operated a device in breach of any other Commonwealth, state or territory law whether statutory or unwritten, such as the common law, or
3. operated the device in the course of contravening such a law

the ACMA may suspend a spectrum licence. The suspension will be set out in a written notice to you detailing reasons, and will cease within 28 days unless proceedings start for an offence against the Act. The ACMA may revoke the suspension at any time. The ACMA may also cancel a spectrum licence.

You can apply to the ACMA for reconsideration of a decision to suspend or cancel a spectrum licence. In the event that licence conditions are breached by you or an authorised third party, other licensees may also undertake civil proceedings against you.

The ACMA can resume spectrum licences by agreement, or by compulsory process subject to payment of just compensation. The ACMA may only compulsorily resume spectrum licences where the Minister has given written approval.

Spectrum licence tax and charges

The ACMA recovers some of the overhead costs of maintaining the spectrum through an annual spectrum licence tax. The taxation arrangements and the method for calculating the contribution of spectrum licence holders to the base amount are contained in the *Radiocommunications (Spectrum Licence Tax) Act 1997* and the *Radiocommunications (Spectrum Licence Tax) Determination 2000.*

Under its enabling legislation, the ACMA may recover its costs. Any services provided by ACMA to spectrum licensees will be charged at the ACMA’s normal charging schedule, which includes GST if applicable. In many instances, the ACMA has set a standard charge for services, such as device registration and registration of trading of spectrum space. Each spectrum licence includes a condition that you will meet your obligations to pay any cost recovery charges levied by the ACMA.

Appendix D: Legal attributes of a contract (for Board information only)

Australian law considers a contract to be valid, and legally binding, if an agreement contains the following elements:[16]

(a) offer and acceptance;

(b) an intention between the parties to create binding relations;

(c) consideration to be paid for the promise made;

(d) legal capacity of the parties to act;

(e) genuine consent of the parties; and

(f) legality of the agreement.

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16 From the Law Hand Book 2017, accessed via: http://www.lawhandbook.org.au/2017_07_01_02_elements_of_a_contract/

Appendix E: Legal Analysis of the Definition of 'Goods or Services' (for Board information only)

This appendix considers whether our view that a 'right' transferred to a licensee satisfies the definition of 'goods or services' under a legal analysis.

Staff considered the following legal resources in developing a high-level analysis of the terms 'goods' and 'services':

(a) Black's Law Dictionary; and

(b) *A New Tax System (Goods and Services Tax) Act 1999* and *A New Tax System (Goods and Services Tax) Regulations 1999* (the GST Law).

The relevant extracts from the abovementioned resources are as follows:

<u>Black's Law Dictionary</u>

A Good or Goods: Tangible or movable personal property other than money; esp., articles of trade or items of merchandise (goods and services) the sale of goods is governed by Article 2 of the UCC. Things that have value, whether tangible or not (importance of social goods vary from society to society).

Service:

(a) A person or company whose business is to do useful things for others;

(b) An intangible commodity in the form of human effort, such as labor, skill or advice (contract of service)

(c) Personal Service: is an economic service either the intellectual or manual personal effort of an individual, as opposed to the saleable product or service.

<u>*A New Tax System (Goods and Services Tax) Act 1999*</u>

Taxable supplies (Section 9-5)

"You make a taxable supply if:

(a) you make the supply for * consideration; and

(b) the supply is made in the course or furtherance of an * enterprise that you * carry on; and

(c) the supply is * connected with the indirect tax zone; and

(d) you are * registered, or * required to be registered.

However, the supply is not a * taxable supply to the extent that it is * GST-free or * input taxed."

A New Tax System (Goods and Services Tax) Regulations 1999

REG 81.15.01 Fees and charges which do not constitute consideration

"(1) For section 81-15 of the Act, the following kinds of Australian fees and charges are prescribed:

(a) a fee or charge for:

(i) the kerbside collection of waste; or

(ii) the supply, exchange or removal of bins or crates used in connection with kerbside collection of waste;

(b) royalties charged in relation to natural resources;

(c) a fee or charge imposed on an industry to finance regulatory or other government activities connected with the industry;

(d) a fee or charge to compensate an Australian government agency for costs incurred by the agency in undertaking regulatory activities;

(e) a fee or charge imposed in relation to a court, tribunal, commission of inquiry or Sheriff's office;

(f) a fee or charge for a supply of a regulatory nature made by an Australian government agency;

(g) a fee or charge for entry to a national park;

(h) any other fee or charge:

(i) specified in the *A New Tax System (Goods and Services Tax)(Exempt Taxes, Fees and Charges) Determination 2011 (No. 1)* , as in force immediately before the commencement of Schedule 4 to the *Tax Laws Amendment (2011 Measures No. 2) Act 2011*; and

(ii) imposed before 1 July 2013." (emphasis added)

AASB staff comment:

Some might argue that because licences are 'a supply of a regulatory nature made by an Australian government agency' and therefore not subject to GST, they are not goods or services. However, the operation of the law is indicative that this is not on the basis that the licences are not goods and services, but rather, the licence fee is not treated as consideration for the purposes of the GST Law. Accordingly, staff think, despite its GST exempt status, a licence issued by a NFP public sector entity could be considered goods and services.