

Australian Implementation Guidance for Not-for-Profit Entities re Control and Structured Entities

Collation of Responses to ED 238

AASB ED 238 *Consolidated Financial Statements – Australian Implementation Guidance for Not-for-Profit Entities* (March 2013) – the objective of any amendments resulting from this ED is to provide guidance on AASB 10 *Consolidated Financial Statements* and AASB 12 *Disclosures of Interests in Other Entities* for private and public sector not-for-profit entities.

Purpose of this Collation

The purpose of this collation is to give the AASB an overview of the responses to AASB ED 238. The AASB received 13 comment letters, one of which is confidential. (The comments in this confidential submission have not been included in this paper.) Staff have used judgement in classifying and interpreting the comments received in this paper – it is not a substitute for reading the full text of the submissions. Submissions 5 and 8 are not fully covered by this collation of comments and need to be read separately.

The ED posed eight Specific Matters for Comment (SMCs). The responses to those SMCs are presented first in this paper, followed by additional comments raised in the submissions.

Responses to the SMCs

As the two respondents from the religious sector (submission 5 – The Uniting Church in Australia National Assembly, and submission 8 – John Church) did not address the SMCs specifically, the responses to the SMCs are generally classified below across only 10 submissions. However, comments in those two submissions are included for SMCs 5 and 6.

SMC 1

Whether Australian implementation guidance for NFP entities should be added to AASB 10 and AASB 12 and, if so, whether it should, as proposed, be authoritative (i.e. “integral” to the Standard) or non-authoritative material.

Responses to this SMC have been analysed in two parts.

SMC 1(a) Whether guidance should be added to AASB 10 and 12?

View	Number
AASB 10 & AASB 12 (as proposed)	8
AASB 10 & AASB 12, but also a separate NFP pronouncement if necessary	1
AASB 10 only (no comment on AASB 12)	1
Total	10

Specific comments regarding the inclusion of implementation guidance are as follows:

Respondent	View	Comments
1 – Deloitte	10 & 12	We recommend that Australian implementation guidance for NFP entities should be added to AASB 10 and AASB 12 as it provides useful application guidance for such entities.

Responses to the Specific Matters for Comment

Respondent	View	Comments
2 – HoTARAC	10 & 12	HoTARAC agrees that authoritative Australian implementation guidance should be added for NFP entities to AASB 10 and AASB 12.
3 – Crowe Horwath	10 only	We are supportive of the inclusion of additional guidance on AASB 10 <i>Consolidated Financial Statements</i> to not-for-profit entities.
4 – CPA/ICAA	10 & 12	We agree with explaining and illustrating the principles in AASBs 10 and 12 from the perspective of not-for-profit entities when those explanations and illustrations are limited to addressing circumstances where those principles do not readily translate into a not-for-profit context. We also agree with the inclusion of comprehensive examples to illustrate the principles.
6 – ACAG	10 & 12	ACAG supports the inclusion of the implementation guidance for both AASB 10 and AASB 12.
7 – PwC	10 & 12	<p>We support the Board’s conclusion that the principles in AASB 10 <i>Consolidated Financial Statements</i> can be applied in a not-for-profit context.</p> <p>We believe it is appropriate to add implementation guidance to AASB 10 and AASB 12 to demonstrate the applicability of the key principles in a not-for-profit context and to explain particular terminology for application in a not-for-profit context.</p>
9 – Ernst & Young	10 & 12	<p>Our view is the NFP sector is diverse and whilst there will exist for some entities, elements of similarity in perspective with for-profit entities when applying the criteria within AASB 10 to determine control, we concur with the AASB’s viewpoint that circumstances exist where a for-profit perspective does not readily translate to a not-for-profit perspective. We believe that without the additional application guidance there exists the potential for misunderstanding and mis-application of the principles of AASB 10 which will only hinder goals towards improved transparency and accountability within the NFP Sector and the ability of users to easily compare financial reports of NFP entities.</p> <p>We support the proposal to amend AASB 12 <i>Disclosure of Interests in Other Entities</i> to explain the application of the definition of a structured entity by NFP entities.</p>
10 – Moore Stephens	10 & 12 but also separate NFP	<p>A1.1 We agree with the proposal to add implementation guidance for NFP entities to AASB 10 and AASB 12 as authoritative material, thereby making it integral to the application of the Standards. Such an approach:</p> <p>(a) is consistent with the current status of the public sector-specific guidance in AASB 127: <i>Consolidated and</i></p>

Responses to the Specific Matters for Comment

Respondent	View	Comments
		<p><i>Separate Financial Statements</i> regarding application of the concept of control; and</p> <p>(b) would be expected to facilitate comparability of financial statements between NFP entities and over time.</p> <p>A1.2 However, we also note that such an approach may not be appropriate in all circumstances, particularly where proposed NFP-specific requirements and/or guidance are not consistent with the corresponding IFRS requirements. In such circumstances, we would recommend the AASB issue a NFP-specific Australian Accounting Standard or Interpretation, consistent with the approach it has adopted with respect to the recently-issued first batch of compiled versions of Australian Accounting Standards and Interpretations applicable to annual reporting periods beginning on or after 1 January 2013.</p>
11 – Grant Thornton	10 & 12	<p>We welcome the AASB issuing additional implementation guidance on applying the ‘control concept’ in the not-for-profit (NFP) sector on the basis that this is an area where significant uncertainty exists in practice. While appreciating that the application of principles-based standards requires the use of professional judgement, we agree that additional guidance is necessary in this instance to assist Australian NFP entities in translating the for-profit perspective in AASB 10 <i>Consolidated Financial Statements</i> and AASB 12 <i>Disclosure of Interests in Other Entities</i> into the NFP environment.</p> <p>We also concur with the ED’s approach of explaining and illustrating the relevant terms and concepts in the NFP context rather than revising the IFRS-based requirements as we consider IFRS compliance to be paramount to the Australian economy.</p> <p>We support adding the Australian NFP implementation guidance into AASB 10 and AASB 12 on the basis that such guidance is necessary in translating the for-profit perspective in AASB 10 and AASB 12 into NFP perspective. As noted in our cover letter, this is an area where there is significant uncertainty in practice and we believe that issuing this guidance will help promote more consistent application of control concept in the NFP sector.</p>
13 – KPMG	10 & 12	<p>Overall we agree with the basic principle of adding an appendix to AASB 10 <i>Consolidated Financial Statements</i> (AASB 10) to explain and illustrate how the principles in the Standard apply from the perspective of not-for-profit entities without actually changing the fundamental principles of AASB 10. However, we do have concerns about the application of these principles, in particular to the examples highlighted below [refer to general comments on the</p>

Responses to the Specific Matters for Comment

Respondent	View	Comments
		Examples, in Appendix A]. Overall we support the proposals outlined in ED 238 and would support the proposals being authoritative.

Staff Analysis re SMC 1(a)

Most of the respondents are in favour of adding implementation guidance to both AASB 10 and AASB 12.

Some existing Standards already include differing NFP requirements alongside the FP requirements. The separate FP and NFP January 2013 compilations are needed because different versions of various Standards (including AASB 10 and AASB 12) apply to FP and NFP entities for the relevant periods due to the deferral of AASB 10 and related Standards for NFP entities until periods beginning on or after 1 January 2014.

Staff Recommendations

The AASB should continue to develop Australian implementation guidance for addition to both AASB 10 and AASB 12.

If the AASB decides to provide NFP guidance that differs from the requirements for for-profit entities, there is no need for a separate NFP pronouncement – that guidance can be included in the implementation guidance for the principal Standard.

Responses to the Specific Matters for Comment

SMC 1(b) Whether any implementation guidance should be authoritative or non-authoritative?

View	Number
Authoritative	9
Non-authoritative	1
Total	10

Specific comments regarding the status of any implementation guidance are as follows:

Respondent	View	Comments
1 – Deloitte	Yes	We further agree with the proposal that the guidance be made authoritative (i.e. “integral” to the Standard) to ensure consistency in application by all the entities covered in the scope of this standard and avoid any diversity in practice.
2 – HoTARAC	Yes	See comment above re SMC 1(a)
3 – Crowe Horwath	No	Due to the varying nature of NFP entities we are concerned that the examples can not contemplate all the various factors that need to be considered in assessing control. Hence, if the guidance is authoritative there is a risk that preparers and users may apply a conclusion based on the examples that is not appropriate in the actual specific circumstances. Therefore, we suggest that the guidance be non-authoritative material.
4 – CPA/ICAA	Yes	Yes we support the addition of authoritative material in the form of Australian implementation guidance to AASBs 10 and 12.
6 – ACAG	Yes	ACAG agrees with the proposed approach for both sets of guidance to be integral to the standards in the interests of consistent application by NFP entities. ACAG also supports the guidance being included as separate appendices as opposed to numerous Aus paragraphs being incorporated in either the main body of the standard or in existing appendices. This is consistent with the principle that Aus paragraphs in the body of the standard should only be used to amend requirements or add new requirements. Also the quantity of guidance material proposed for AASB 10 would significantly lessen the readability of the body of the standard or Appendix B if it were to be dispersed throughout these.
7 – PwC	Yes	We also believe the guidance should be authoritative, consistent with the status of the application guidance in AASB 10 (and IFRS 10).

Responses to the Specific Matters for Comment

Respondent	View	Comments
9 – Ernst & Young	Yes	<p>Although we note that the clarification of the definition of control under AASB 10 <i>Consolidated Financial Statements</i> will alleviate some of the historic issues encountered by the NFP sector in making an assessment of control, we welcome the recognition by the AASB that complexities remain and that the perspectives of NFP entities differ to those of the for-profit sector. We therefore support the inclusion of Appendix E <i>Australian Implementation Guidance for Not-for-Profit Entities</i> as an integral part of AASB 10 <i>Consolidated Financial Statements</i>.</p> <p>To support robust, consistent financial reporting within the NFP sector, the guidance must be authoritative.</p>
10 – Moore Stephens	Yes	See comment above re SMC 1(a)
11 – Grant Thornton	Yes	We believe the proposed implementation guidance should be issued as an integral part of the Standards as this will help promote consistency in financial reporting.
13 – KPMG	Yes	Overall we support the proposals outlined in ED 238 and would support the proposals being authoritative.

Staff Analysis re SMC 1(b)

There is substantial support for the inclusion of authoritative implementation guidance for AASB 10 and AASB 12 in the form of appendices.

Staff Recommendation

The Board should proceed to finalise authoritative implementation guidance in the form of appendices to AASB 10 and AASB 12.

Responses to the Specific Matters for Comment

SMC 2

Whether the proposed implementation guidance appropriately explains the definition of ‘control’ in AASB 10 for application by NFP entities, including the following aspects:

(a) the broad nature of returns from a controlled NFP entity, including non-financial and indirect benefits (paragraphs IG16 and IG17); and

(b) the four detailed sets of implementation examples in the proposed Appendix E for AASB 10.

Responses to this SMC have been split into three parts.

SMC 2(a) Whether the implementation guidance appropriately explains the definition of control in AASB 10 for application by NFP entities?

View	Number
Yes	3
Yes but ...	2
No	1
View not clear	1
No comment	3
Total	10

Specific comments regarding this issue are as follows:

Respondent	View	Comments
1 – Deloitte	Yes	We believe the implementation guidance appropriately explains the definition of ‘control’ in AASB 10 for application by NFP entities.
2 – HoTARAC	No comment	No comment made.
3 – Crowe Horwath	No	<p>We do not believe that the proposed guidance clearly and adequately illustrates the definition of control for application by NFP entities. By their nature, not-for-profit entities, whether in the public sector or private sector, often display unique characteristics that are not prevalent in the for-profit sector.</p> <p><i>[Staff note: the more specific comments and suggestions made by this respondent are noted in Appendices A and B.]</i></p> <p>AASB 10.B8 acknowledges that voting rights may not be the dominant factor in deciding who controls an investee and that the relevant activities may be “directed by means of contractual arrangements”. Given the comment above, we suggest the AASB clarify whether, for NFP entities, such assessments are limited to the existence of ‘contractual arrangements’ or whether non-contractual arrangements and other “less conventional means” could still give a party control over an investee. (see also examples below).</p>

Responses to the Specific Matters for Comment

Respondent	View	Comments
		<i>[Staff note: these examples are noted in Appendix B.]</i>
4 – CPA/ICAA	Yes but ...	<p>The AASB 10 definition of control requires evidence of ‘power’, ‘returns’ and a ‘link between power and returns’. Generally, we believe the proposed implementation guidance including the implementation examples provide a useful explanation. However, we think further improvements can be made in the following areas:</p> <ul style="list-style-type: none"> • Relationship of government and parliament • Example IG1A • Paragraph IG12 • Example IG2 • Example IG3; and • Further examples. <p><i>[Staff note: the more specific comments and suggestions made by this respondent are noted in Appendix A and suggested examples in Appendix B.]</i></p>
6 – ACAG	Yes	<p>In general ACAG considers that the proposed guidance adequately explains the three concepts of control in AASB 10, being power, variable returns and ability to use power to affect returns.</p> <p>The guidance for the concept of “<i>rights that give an investor power over an investee</i>” appropriately acknowledges that for many NFP entities in the public sector, rights are created from statutory arrangements such as enabling legislation. However, whether these rights are substantive or protective rights and whether they relate to relevant activities requires judgement. Preparers and auditors of financial statements will benefit from guidance material that aids professional judgement and effective decision making.</p> <p><i>[Staff note: ACAG goes on to provide comments and suggestions for enhancing the guidance on control – these are detailed in Appendix A.]</i></p>
7 – PwC	No comment	No comment made.
9 – Ernst & Young	View not clear	<p>We are supportive of the approach the AASB has taken to the Appendix in addressing matters impacting the NFP sector broadly in the order in which the related paragraphs appear in the body of AASB 10 and in Appendix B. As we note above, there will exist some common for-profit and not-for-profit perspectives in applying the requirements of AASB 10 and the cross referencing to relevant paragraphs of Appendix B serves the interests of the NFP sector in providing further examples of</p>

Responses to the Specific Matters for Comment

Respondent	View	Comments
		items for consideration in the control assessment.
10 – Moore Stephens	No comment	No comment made.
11 – Grant Thornton	Yes	We agree with the level of explanation and illustration provided in the ED.
13 – KPMG	Yes but ...	With the exception of Examples IG1 and IG2, we consider that the proposed implementation guidance appropriately explains the definition of ‘control’ in AASB 10 for application by NFP entities.

Staff Analysis re SMC 2(a)

There are mixed opinions as to whether the definition of control is appropriately explained, though a bare majority of the classified responses agreed that the proposed implementation guidance is appropriate or useful. Numerous suggestions for additional or revised guidance were made.

Staff Recommendations

It is appropriate to apply the definition of control to NFP entities.

Respondent #3 (Crowe Horwath) invites the Board to clarify whether the assessment of control by NFP entities is based only on contractual arrangements. Staff consider that paragraph IG5 makes clear that the assessment is not limited to contractual arrangements, and recommend that that approach be retained. In Appendix A, Section 1, staff recommend extending the illustrative sources of power in paragraph IG5 based on comments from respondent #7 (PwC) – see issue 1.2.

Respondents’ other suggestions are considered further under other SMCs and the comments on the examples and various paragraphs of the draft implementation guidance.

Responses to the Specific Matters for Comment

SMC 2(b) Whether the proposed implementation guidance appropriately explains the definition of ‘control’ in AASB 10 for application by NFP entities in respect of the broad nature of returns from a controlled NFP entity, including non-financial and indirect benefits (paragraphs IG16 and IG17)?

View	Number
Yes	4
Yes but ...	3
No	1
No comment	2
Total	10

Specific comments regarding this issue are as follows:

Respondent	View	Comments
1 – Deloitte	Yes	The guidance in paragraph IG16 and IG17 rightly explains that in application to NFP entities, the broad scope of the nature of returns encompasses financial, non-financial, direct and indirect benefits, whether positive or negative, including the achievement or furtherance of the investor’s objectives.
2 – HoTARAC	Yes	HoTARAC agrees that the proposed implementation guidance appropriately explains the broad nature of returns from a controlled NFP entity.
3 – Crowe Horwath	No comment	No comment made
4 – CPA/ICAA	Yes but ...	See comments above re SMC 2(a).
6 – ACAG	Yes	In general ACAG considers that the proposed guidance adequately explains the three concepts of control in AASB 10, being power, variable returns and ability to use power to affect returns.
7 – PwC	Yes	We believe the explanation of the returns criterion in a not-for-profit context is appropriate.
9 – Ernst & Young	No	We note examples IG1A, IG2 and IG3A discuss the concept of returns for the relevant scenario. However, in each example, the nature of returns are essentially the same – the contribution to the achievement or furtherance of the ‘investor’s’ goals and objectives. We would recommend the AASB to either supplement the scope and nature of returns with a list of examples or provide additional application examples where the returns are those other than including or furthering the investor’s objectives. In particular we note that it is often difficult to assess returns for Companies Limited by Guarantee, and recommend that these are included in the examples.

Responses to the Specific Matters for Comment

Respondent	View	Comments
10 – Moore Stephens	Yes but ...	A2.1 While we support including the proposed guidance in paragraphs IG16 and IG17 in AASB 10, we do not consider the concept of ‘returns’ to be integral to the consistent application of AASB 10 in a NFP context. In the absence of the proposed guidance in IG16 and IG17, we would anticipate the vast majority of (if not all) preparers and auditors would interpret ‘returns’ broadly, consistent with the requirements and guidance in paragraphs 15, 16 and B5(c) of AASB 10. In contrast, we consider the concept of ‘relevant activities’ to be much more difficult to interpret and apply in a NFP context and, therefore, more likely to give rise to inconsistencies in reporting outcomes.
11 – Grant Thornton	No comment	No comment made
13 – KPMG	Yes but...	We consider that the proposed guidance appropriately explains the definition of ‘control’ in AASB 10 including the broad nature of returns. However, the examples of returns predominantly focus on public sector NFP application compared to examples within the private NFP sector. We would encourage the AASB to provide additional examples of returns, covering a broader range of entities for example companies limited by guarantee. Within Appendix 2 in the discussion relating to Example IG1 we provide such an example in relation to a school that establishes a foundation. Inclusion of this example within the ED, together with others may be useful.

Staff Analysis re SMC 2(b)

A clear majority of respondents support the proposed guidance concerning the broad nature of returns. However, some of the respondents would prefer to see either further types of returns in the examples (i.e. besides achievement of objectives) or returns in relation to particular types of entities, e.g. companies limited by guarantee and other private sector NFP entities.

One respondent #10 (Moore Stephens) indicated that the nature of returns was not a major issue at all. The examples tend to support this view since the achievement or furtherance of the investor’s objectives is going to be relevant in many or most circumstances, which literally means that other types of returns might not need to be identified explicitly by an investor in making control assessments.

Some respondents consider that the examples of returns already included appear not to be relevant to companies limited by guarantee. It is unclear why that should be the case. Perhaps the lack of a specific reference to various types of private sector NFP entities has meant that some respondents have not appreciated the intended broad relevance of the types of returns listed in the ED. However, the guidance cannot simply list all types of entities in order to indicate the applicability of the implementation guidance to each of those types.

Responses to the Specific Matters for Comment

Staff Recommendation

The definition of control is appropriate, but in respect of the broad nature of returns, additional types of returns should be identified if possible and included in paragraph IG16 or IG17 or else their relevance to private sector NFP entities should be identified in the guidance. In addition, the Basis for Conclusions should explain the intended broad relevance of the general examples to a range of entities, including companies limited by guarantee, associations and other private sector NFP entities.

SMC 2(c) The four detailed sets of implementation examples

There was a mixed response from respondents in relation to the examples. Whilst some respondents agree with the examples, others expressed the need for further guidance and clarification and further, broader scope examples.

Appendix A collates the extensive comments from respondents in relation to the examples set out in ED 238, both the four comprehensive examples and the examples included in IG paragraphs.

Appendix B presents the examples suggested by respondents for inclusion in the implementation guidance.

The Appendices include staff recommendations.

Responses to the Specific Matters for Comment

SMC 3

Whether the proposed implementation guidance appropriately explains the definition of 'structured entity' in AASB 12 for application by NFP entities?

View	Number
Yes	6
Yes but ...	2
No	1
No comment	1
Total	10

Specific comments regarding this issue are as follows:

Respondent	View	Comments
1 – Deloitte	Yes	We agree with the Board's rationale that in the context of NFP entities; administrative arrangements or statutory provisions would be considered as dominant factors in determining control similar to voting or similar rights in the context of for-profit entities. The key concept in the definition of structured entities is the significance of contractual arrangement in determining control as compared to administrative arrangements, statutory provisions or voting interests and we believe this concept has been elucidated through examples for both public and private sector.
2 – HoTARAC	Yes but ...	HoTARAC agrees that the draft implementation guidance appropriately explains the definition of "structured entity" in AASB 12 for application by NFP entities. However, it is noted that a similar clarification is also relevant to FP public sector entities, which are often established under statutory provisions.
3 – Crowe Horwath	No	<p>Appendix E [for AASB 12] discusses structured entities. We agree with the statement in IG6 of Appendix E which states:</p> <p style="padding-left: 40px;">"... for not-for-profit entities, structured entities have been designed so that less conventional means – in the context of not-for-profit entities – are the dominant factor in determining who controls the entity. Therefore, in the not-for-profit context, the reference in the definition to "similar rights" encompasses administrative arrangements and statutory provisions, as these often are the dominant factor in determining control of not-for-profit entities."</p> <p>However, there does not appear to be discussion of what are "less conventional means" and how they are analysed in determining control in the context of AASB 10. Consistent with the points above, we suggest that this concept be specifically included in the NFP guidance within AASB 10.</p>

Responses to the Specific Matters for Comment

Respondent	View	Comments
4 – CPA/ICAA	Yes	Yes, we believe the draft implementation guidance appropriately explains the definition of “structured entity” in AASB 12 for application by NFP entities.
6 – ACAG	Yes but ...	ACAG considers that the guidance is necessary and appropriately explains the definition of ‘structured entity’. However, we suggest simplification of the wording in IG 6 [of Appendix E for AASB 12].
7 – PwC	Yes	We believe the proposed implementation guidance appropriately explains the definition of ‘structured entity’ in AASB 12 for application in NFP entities.
9 – Ernst & Young	Yes	We believe the guidance appropriately explains the definition of a structured entity.
10 – Moore Stephens	No comment	A3.1 We offer no comments in respect to the proposed implementation guidance in relation to the definition of a structured entity.
11 – Grant Thornton	Yes	We believe the ED adequately explains the definition of a structured entity in the context of the NFP sector. We appreciate that it is not easy to define a structured entity in the NFP context and agree with the AASB’s conclusion that the reference to ‘similar rights’ in the definition of a ‘structured entity’ encompasses administrative arrangements and statutory provisions as they are common means by which control is determined in the NFP public sector.
13 – KPMG	Yes	We consider that the proposed guidance appropriately explains the definition of a ‘structured entity’ in AASB 12 for application by NFP entities.

Staff Analysis re SMC 3

The majority of respondents considered that the definition of ‘structured entity’ is appropriately explained by the proposed implementation guidance.

Respondent #3 (Crowe Horwath) commented that there is no discussion of “less conventional means”. Paragraph IG6 indicates that less conventional means are the dominant factors in determining control of an entity, excluding voting and similar rights, such as administrative arrangements and statutory provisions. Therefore, less conventional means would include contractual arrangements, as indicated in paragraphs IG8 and IG9.

Staff Recommendations

The proposed general approach to identifying structured entities in the NFP sector should be retained, however the drafting of the guidance, particularly paragraph IG6, should be reconsidered.

The scope of administrative arrangements in relation to private sector NFP entities has not been specified in the proposed guidance, and staff recommend either limiting this factor to the public sector or providing private sector NFP examples. For example, how should

Responses to the Specific Matters for Comment

ecclesiastical arrangements be treated? Should ongoing church funding be expected in the same way as the ongoing government funding noted in paragraph IG7?

Responses to the Specific Matters for Comment

SMC 4

Whether it is appropriate to exclude all disclosure requirements in AASB 12 in respect of GGS financial statements (see the proposed amendments to AASB 1049 set out in the ED).

View	Number
Yes	8
No comment	2
Total	10

Specific comments regarding this issue are as follows:

Respondent	View	Comments
1 – Deloitte	Yes	<p>We agree with the Board’s decision to exclude the disclosure requirements in AASB 12 in respect of GGS financial statements:</p> <ul style="list-style-type: none"> i. The exemption is consistent with paragraph 45 of the existing AASB 1049 which exempts the General Government Sector (GGS) financial statements from complying with any of the disclosure requirements of the superseded AASB 127 Consolidated and Separate Financial Statements. ii. The disclosure would essentially duplicate the AASB 12 disclosures for the whole of government financial statements. As entities included in the GGS financial statements are also included in the whole of government financial statements, the entities’ association with structured entities could be addressed in either set of financial statements. The nature of the risks associated with interests in structured entities is unlikely to change between the GGS level and the whole of government level.
2 – HoTARAC	Yes	HoTARAC agrees that it is appropriate to exclude all disclosure requirements in AASB 12 in respect of GGS financial statements.
3 – Crowe Horwath	No comment	No comment made
4 – CPA/ICAA	Yes	Yes, we support the exclusion of all disclosure requirements in AASB 12 in respect of GGS financial statements.
6 – ACAG	Yes	ACAG considers the proposal to exclude all disclosure requirements in AASB 12 in respect of GGS financial statements as appropriate.
7 – PwC	Yes	We believe it is appropriate to exclude all disclosure requirements in AASB 12 in respect of GGS financial statements.

Responses to the Specific Matters for Comment

Respondent	View	Comments
9 – Ernst & Young	Yes	We concur with the Basis for Conclusions paragraph, BC24 that GGS financial statements need not be required to comply with the disclosure requirements of AASB 12, on the ground that such disclosures would essentially duplicate the AASB 12 disclosures for the whole of government financial statements.
10 – Moore Stephens	No comment	A4.1 We offer no comments in respect to the proposal to exclude all disclosure requirements in AASB 12 in respect of GGS financial statements.
11 – Grant Thornton	Yes	We do think it is appropriate to exempt GGS financial statements from AASB 12 disclosures on the basis that such disclosures would be captured in the whole of government financial statements.
13 – KPMG	Yes	We consider it appropriate to provide an exemption from AASB 12 disclosures for GGS financial statements on the basis that such disclosures would essentially duplicate the AASB 12 disclosures for the whole of government.

Staff Analysis re SMC 4

The majority of respondents are in favour of excluding GGS financial statements from AASB 12 disclosures and there were no comments to the contrary.

Staff Recommendation

GGS financial statements should not be required to comply with AASB 12 disclosures, as proposed in the ED.

Responses to the Specific Matters for Comment

SMC 5

Whether there are any regulatory issues or other issues arising in the Australian environment that may affect the implementation of the proposals, including GFS harmonisation issues.

View	Number
Not aware of anything	6
Need to consider ACNC reporting requirements	5
No comment	1
Total	12

Specific comments are as follows:

Respondent	View	Comments
1 – Deloitte	Need to consider ACNC reporting requirements	As noted in paragraph 6 of the basis of conclusion of the ED, the types of harmonisation differences between AASB 10 and the ABS GFS manual are not affected by the proposals in this ED since the proposed implementation guidance does not change or depart from the principles in AASB 10. The Board should also before finalising the proposal have discussions with and consider any additional reporting obligations such as those that may be mandated by the Australian Charities and Not-for-profits Commission (ACNC) and which may have to be complied by the NFP entities.
2 – HoTARAC	Not aware of anything	HoTARAC is not aware of any regulatory issues that may affect the implementation of the proposals.
3 – Crowe Horwath	No comment	No comment made.
4 – CPA/ICAA	Not aware of anything	We are not aware of any regulatory issues or other issues arising in the Australian environment that may affect the implementation of the proposals.
5 – The Uniting Church in Australia National Assembly	Need to consider ACNC reporting requirements	<p>We do appreciate the creation of the “basic religious charity” classification which is exempt from the governance standard disclosures and lodgement of annual financial reports, and therefore we believe the proposed accounting standard.</p> <p>We also need to state the Australian legislation generally makes a distinction between “charity” and “not-for-profit” whereas the Exposure Draft implies that the terminology of “not-for-profit” includes charities. We contend that this should be specifically stated in the Standard.</p> <p>Our various UnitingCare and other large community services organisations, our synods and treasury operations, and our schools, each have employed professionals and utilise appropriate accounting systems to comply with the</p>

Responses to the Specific Matters for Comment

Respondent	View	Comments
		national chart of accounts as the foundation of the annual financial reports. However, many of our smaller, local community activities are resourced by volunteers who do not have the professional accounting skills to prepare annual financial statements to the level required by accounting standards. Fortunately, the Australian Charities and Not-for-profits Act exempts many those who can be classified as “basic religious charity” under that Act.
6 – ACAG	Not aware of anything	ACAG is not aware of any such issues.
7 – PwC	Not aware of anything	We are not aware of any regulatory issues or other issues arising in the Australian environment that may affect the implementation of the proposals.
8 – John Church	Need to consider ACNC reporting requirements	<p>The AASB has refused to recognise Charities and merely puts them in with not for profits We have a separate Charities Act your refusal to discuss and why you ignore it is puzzling. History records that charities existed well before any accounting standards were ever designed or contemplated.</p> <p>I submit that the AASB should recognise this and design a standard for those charities that are caught by your provisions and not others that only have to comply with the ACNC.</p> <p>It is clearly an attempt by the AASB to apply its requirements selectively.</p> <p>One of the common criticisms today is of unnecessary additional redtape your approach clearly is evidence of this additional burden without any justification.</p>
9 – Ernst & Young	Need to consider ACNC reporting requirements	<p>The GAAP/GFS implications noted in the introduction to this Exposure Draft appears adequately assessed and considered as part of the process in issuing this Exposure Draft. We draw the Board’s attention however, to possible implications that may affect the implementation of the proposals in the proposed financial reporting regulations of the Australian Charities and Not-for-Profit Commission, specifically the concept of joint and collective reporting.</p> <p>Draft proposals stated that, depending on the circumstances, joint and collective reporting may diverge from the requirements in particular Australian Accounting Standards (AAS), including AASB 10. We strongly urge the AASB to engage with the ACNC in regards to the proposals of joint and collective reporting so as to avoid any potential for inconsistent application of AAS across the NFP sector.</p>

Responses to the Specific Matters for Comment

Respondent	View	Comments
10 – Moore Stephens	Need to consider ACNC reporting requirements	<p>A5.1 As you would be aware, pursuant to the <i>Australian Charities and Not-for-profits Commission Act 2012</i>, the Commissioner of the Australian Charities and Not-for-profits Commission (ACNC) has the power to, amongst other things, allow two or more registered entities to prepare and lodge one or more financial reports (‘joint and collective reporting’) with the ACNC. The Act provides the following example of such a situation.</p> <p><i>The Commissioner may allow a reporting group of affiliated registered entities that advance religion and relieve poverty to prepare and lodge 2 financial reports, one report in relation to the reporting group’s religious functions and one in relation to the reporting group’s welfare function.</i></p> <p>A5.2 In our response to the draft <i>Australian Charities and Not-for-profits Commission Regulation 2012</i> and accompanying Explanatory Material, we expressed in principle support for the proposal to permit registered entities to depart from the requirements in Australian Accounting Standards dealing with the preparation and presentation of consolidated financial statements by providing joint or collective reporting. We envisage a number of circumstances in which joint and collective reporting could facilitate the provision of useful information that might not be provided under AASB 10, including where a group of NFP entities that are subject to common control (all have the same ultimate ‘parent’) but do not prepare consolidated financial statements because their ‘parent’ is domiciled outside of Australia.</p> <p>A5.3 Notwithstanding our in principle support for the proposal for joint and collective reporting, the prospect that a NFP entity might, in preparing its financial statements, not comply with the requirements in applicable Australian Accounting Standards raises some questions (and concerns) regarding:</p> <ul style="list-style-type: none"> a) the basis on which the financial statements might be prepared; and b) how the auditor might deal with the divergence from the Accounting Standards in their audit report. <p>Accordingly, we recommend the AASB raise this matter (if it hasn’t already) with the ACNC and the Auditing and Assurance Standards Board (AuASB) with a view to establishing a clear position on the potential implications of any divergences from applicable Australian Accounting Standards as a consequence of the joint and collective reporting proposals.</p>

Responses to the Specific Matters for Comment

Respondent	View	Comments
11 – Grant Thornton	Not aware of anything	We are not aware of any regulatory issues.
13 – KPMG	Not aware of anything	We consider that the proposals address all the relevant regulatory issues or other issues in the Australian environment that may affect the implementation of the proposals, including GFS harmonisation issues.

Staff Analysis re SMC 5

Many respondents commented that consideration should be given to the reporting requirements of the ACNC. When ED 238 was being developed those requirements had not been finalised.

The AASB seeks to establish financial reporting requirements for all entities preparing GPFRs, rather than being selective. If other regulators choose not to apply such requirements to certain types of entities, then that is their decision. In that event, the AASB requirements need not be applied by such entities and auditors need to prepare their reports with reference to the relevant financial reporting framework.

Staff have discussed with senior ACNC staff the joint and collective reporting requirements of the ACNC. As an independent regulator, the ACNC is able to set requirements that modify the AASB's requirements for general purpose financial reports (GPFRs). However, that should not require the AASB to change the requirements that it considers appropriate for reporting entities and GPFRs.

Staff Recommendations

Staff recommend that the ACNC reporting requirements are reviewed with a view to acknowledging the differences in the Basis for Conclusions and explaining the major reasons for those differences (e.g. due to the differing objectives of the financial information required to be submitted to the ACNC compared with the objectives of general purpose financial reporting). The AASB should continue to liaise with the ACNC on matters of common interest.

Responses to the Specific Matters for Comment

SMC 6

Whether, overall, the proposals would result in financial statements that would be useful to users.

View	Number
Yes	5
Yes but ...	4
No	2
No comment	1
Total	12

Specific comments are as follows:

Respondent	View	Comments
1 – Deloitte	Yes	We believe the new standards AASB 10 and AASB 12 applicable to for-profit entities would improve financial reporting and provide users with more useful information. The implementation guidance applicable to NFP entities retains the concepts in AASB 10 and AASB 12 and adds additional examples and implementation guidance to elucidate those concepts and as such we believe the proposals would be useful to users of financial statements prepared by NFP entities as well.
2 – HoTARAC	Yes but ...	Subject to the comments above, overall, HoTARAC believes that the proposals would result in financial statements that would be useful to users.
3 – Crowe Horwath	No comment	No comment made.
4 – CPA/ICAA	Yes but ...	Subject to the comments above, overall we believe the proposals would result in financial statements that would be useful to users.
5 – The Uniting Church in Australia National Assembly	No	Our proposed direction is to consolidate where such financial reporting is beneficial to stakeholders and otherwise individually report where we deem necessary. The issues of control raised in the ED 238, especially in IG8 and IG9 are in many cases unworkable and questionable as to any cost benefit. Similarly, as good examples with our individual schools, each school's reporting should be to key stakeholders with the largest interested group being the fee paying parents of their students. Therefore, any group financial statements serve no real purpose to any one because the fees, governance, staffing and related operational matters are not consistent across our schools if they were grouped.
6 – ACAG	Yes	The proposals support a more consistent interpretation of Australian Accounting Standards in relation to control, which

Responses to the Specific Matters for Comment

Respondent	View	Comments
		in turn is useful to users. This is likely to lead to better comparability between entities, which is beneficial to users. Further, the guidance in defining control seems to be appropriate to support useful information to users in terms of what would be considered controlled.
7 – PwC	Yes but ...	Subject to the matters mentioned above, we believe that the current ED would result in financial statements that would be more useful to users.
8 – John Church	No	I believe that the AASB should move away from vague and uncertain, ambiguous principles which is your stated approach which lead to subjective interpretations and for Charities clearly set out accounting standards that are appropriate and proper for the members and donors and they are not required to resort <i>at times even well informed diligent users (i.e. members and donors) may need to seek the aid of an advisor to understand information about complex economic phenomena.</i> I would submit that your approach is contrary to good public policy let alone for the public good.
9 – Ernst & Young	Yes	Finally, we believe the proposals would result in financial statements that would be useful to users, the proposals are in the best interest of the Australian economy and we do not envisage that this application guidance would have any significant cost/benefit implications to the NFP sector.
10 – Moore Stephens	Yes but ...	A6.1 Subject to the outcomes from the matters discussed in paragraphs A2.1-A2.3 [see SMC 2(b) and Example IG1 comments in Appendix A, Section 2] and A5.1-A5.3 [see SMC 5], we would expect that the proposals in ED 238 would facilitate the preparation and presentation of financial statements that are useful to users.
11 – Grant Thornton	Yes	We agree that the proposals would result in financial statements that would be useful to users.
13 – KPMG	Yes	We consider that the proposals would result in financial statements that would be useful to users.

Staff Analysis re SMC 6

Overall the majority of respondents agree that the proposals would result in useful financial statements. However, respondent #5 (Uniting Church Assembly) commented that their preference is to consolidate when it is beneficial to stakeholders. They consider that the guidance in ED 238 and in particular paragraphs IG8 and IG9 would result in an unworkable outcome with little benefit.

Further, respondent #8 (John Church) believes that accounting standards should be written in a way that would result in easy to understand financial statements that would not require users to resort to professional advice in reading the statements.

Responses to the Specific Matters for Comment

Staff Recommendation

In regard to the comments made by respondent #5, staff consider that the reporting entity concept or the choice whether to produce general purpose financial statements if not a reporting entity addresses the issues raised. If other regulators, such as the ACNC, require consolidated financial statements for their purposes that is their business.

In response to respondent #8's comment above, staff believe this issue is beyond the scope of this project. It relates to paragraph 25¹ of the AASB's *Framework for the Preparation and Presentation of Financial Statements* rather than specifically to the proposed implementation guidance.

Therefore, the proposals should now be finalised, with consideration of the various issues raised.

1 An essential quality of the information provided in financial statements is that it is readily understandable by users. For this purpose, users are assumed to have a reasonable knowledge of business and economic activities and accounting and a willingness to study the information with reasonable diligence. However, information about complex matters that should be included in the financial statements, because of its relevance to the economic decision-making needs of users, should not be excluded merely on the grounds that it may be too difficult for certain users to understand (*Framework for the Preparation and Presentation of Financial Statements*, paragraph 25).

Responses to the Specific Matters for Comment

SMC 7

Whether the proposals are in the best interests of the Australian economy?

View	Number
Yes	7
Yes but ...	1
No comment	2
Total	10

Specific comments are as follows:

Respondent	View	Comments
1 – Deloitte	Yes	There are a number of NFP entities operating in the Australian economy. The guidance proposed in the exposure draft would enhance the financial reporting by such entities in the context of determining control and disclosure of interest in structured entities which will be more meaningful and insightful for the users of financial statements. We therefore believe that the proposals are in the best interests of the Australian economy.
2 – HoTARAC	No comment	No comment made.
3 – Crowe Horwath	No comment	No comment made.
4 – CPA/ICAA	Yes	Yes, we believe the proposals are in the best interests of the Australian economy.
6 – ACAG	Yes	ACAG considers the proposals are in the best interests of the Australian economy.
7 – PwC	Yes	We are not aware of anything that would suggest that the inclusion in the standards of implementation guidance for not-for-profit entities is not in the best interests of the Australian economy.
9 – Ernst & Young	Yes	Finally, we believe the proposals would result in financial statements that would be useful to users, the proposals are in the best interest of the Australian economy and we do not envisage that this application guidance would have any significant cost/benefit implications to the NFP sector.
10 – Moore Stephens	Yes but...	A7.1 Subject to the outcomes from the matters discussed in paragraphs A2.1-A2.3 [see SMC 2(b) and Example IG1 comments in Appendix A, Section 2] and A5.1-A5.3 [see SMC 5], we consider the proposals in ED 238 to be in the best interests of the Australian economy.
11 – Grant Thornton	Yes	We agree that the proposals are in the best interests of the Australian economy.

Responses to the Specific Matters for Comment

Respondent	View	Comments
13 – KPMG	Yes	We consider that the proposals would be in the best interests of the Australian economy.

Staff Analysis re SMC 7

The responses support the view that the proposals in the ED are in the best interests of the Australian economy.

Staff Recommendation

No specific action is required.

Responses to the Specific Matters for Comment

SMC 8

Unless already provided in response to the above specific matters for comment, the costs and benefits of the proposals relative to the current requirements, whether quantitative (financial or non-financial) or qualitative.

Comment	Number
Beneficial	5
Beneficial but ...	1
No comment	4
Total	10

Specific comments are as follows:

Respondent	View	Comments
1 – Deloitte	Beneficial	We believe that the NFP entities may have to initially incur additional costs to assess the impact as well change the existing systems and processes to align with the requirements of proposed changes. However we do not expect these costs to be incommensurate with the benefits expected in the long run in terms of consistency in reporting and the application of sound principles to the concept of control aligned with the for-profit entities resulting in more qualitative financial reporting across the NFP sector.
2 – HoTARAC	No comment	No comment made.
3 – Crowe Horwath	No comment	No comment made.
4 – CPA/ICAA	Beneficial	As Australian Accounting Standards cover sectors not addressed by IFRS, we believe the proposals will deliver benefits to users, preparers and auditors in excess of any cost.
6 – ACAG	Beneficial	In relation to the proposed guidance for AASB 10, ACAG considers that the proposals will provide benefits to preparers and auditors. The application of AASB 10 to NFP entities has potential to be costly to implement, due to shifting from a (at times) rule-based approach under previous standards (for example, local governments not being under the control of state governments) to a more principles-based approach. However, the implementation guidance in ED 238 assists in interpreting such requirements, and will therefore assist in minimising costs.
7 – PwC	Beneficial but ...	We believe the proposals have the potential to improve the quality of financial reporting by not-for-profit entities and so enhance the decision making of the users of the financial statements. Subject to our comments in (b) (ii) above [see SMC 2 and Appendix A, Examples IG1 and IG2] above, we do not believe the proposals in themselves will impose

Responses to the Specific Matters for Comment

Respondent	View	Comments
		significant costs on entities required to comply with the relevant standards. Indeed, the implementation guidance and disclosure relief may reduce the cost of compliance.
9 – Ernst & Young	Beneficial	Finally, we believe the proposals would result in financial statements that would be useful to users, the proposals are in the best interest of the Australian economy and we do not envisage that this application guidance would have any significant cost/benefit implications to the NFP sector.
10 – Moore Stephens	No comment	A8.1 We offer no comments in respect to the potential costs and benefits of the proposals in ED 238.
11 – Grant Thornton	No comment	We have no further comment.
13 – KPMG	Beneficial	We consider that the benefits of the proposals would outweigh the costs and would not be overly onerous from a cost perspective in comparison to the current requirements.

Staff Analysis re SMC 8

None of the ten respondents that addressed the SMCs raised any major concerns over the benefits of the proposals versus the costs, with some highlighting the potential reduction in costs of applying AASB 10 as a result of the implementation guidance.

Some noted the issues that they have raised under other SMCs, or questioned the need for consolidated financial statements. However, consolidated financial statements are required of reporting entities and for general purpose financial statements, not just because of a control relationship between entities.

Staff Recommendation

No specific action is required.

Additional Comments from Respondents

Additional Comments from Respondents

Most of the comments in submissions have been classified in relation to SMCs, the examples or certain groups of paragraphs. The additional comments noted here address some more general standard-setting issues.

AC1 Scope of the implementation guidance	
Respondent	Comments
9 – Ernst & Young	<p>We believe the scope of the proposed guidance is limited and should be revised. IG1 states ‘The appendix does not apply to for-profit entities or affect their application of AASB10’. However it is common for a for-profit entity to have a relationship with a NFP entity. In this scenario, the proposed application guidance would be of benefit to the for-profit entity in assessing whether it has control over the NFP entity.</p> <p>We propose the Board consider either expanding the scope of the proposed Appendix to include all public sector entities, whether for or not-for profit, or include in the preface to the guidance a statement that it may be applied by for-profit public sector entities with an interest in a NFP entity.</p> <p>Paragraph IG4 states ‘As an example, a not-for-profit investor would have power over an investee when the investor can require the investee to deploy its assets or incur liabilities in a way that affects the returns to the investee...’ We believe this should state ‘... the returns of the investee...’</p>

Staff Analysis re AC1

It would be appropriate for for-profit entities in the public sector to be able to apply the guidance explicitly. The guidance is considered to be consistent with IFRS requirements, despite the scope limitation in paragraph IG1 of the ED, and thus would not prevent public sector for-profit entities from complying with IFRSs if they wished to do so.

Staff Recommendation

Extend the scope of the implementation guidance to all public sector entities.

AC2 Application Date	
Respondent	Comments
6 – ACAG	ACAG considers the AASB would be justified to mandate that the appendices be adopted at the same time as AASB 10 and AASB 12 are adopted in the interests of consistent application of the guidance.
13 – KPMG	Application of the new Standard is complex, requires a significant amount of judgement and may change the control conclusion for certain entities, accordingly we consider that a mandatory effective date of 1 January 2014 will not give preparers sufficient time to be able to appropriately apply the new Standard. We would encourage the AASB to allow for an effective date of at least two years from the date of issuing the final standard.

Additional Comments from Respondents

Staff Analysis re AC2

Not-for-profit entities have already had a considerable time to consider the requirements of AASB 10 and 12. For entities with regular financial years ending 30 June, an application date for the Standards of periods beginning on or after 1 January 2014 for NFP entities means that initial application would be for the 2014/15 financial year, with comparatives affected for the 2013/14 financial year.

Staff Recommendation

Retain the application date of 1 January 2014 for AASB 10 and 12 with implementation guidance for NFP entities.

AC3 Comparison with the old AASB 127	
Respondent	Comments
2 – HoTARAC	<p>The previous AASB 127 Aus paragraphs have not been fully carried forward. For example, the following paragraphs on indicators of control have been omitted:</p> <ul style="list-style-type: none"> • Para Aus17.3(e) where an entity is required to submit to Parliament reports on operations that include audited financial statements • Aus17.4 on the government’s rights to residual assets. <p>It is important that the main differences for the public sector are made transparent and the reasons explained. Accordingly, HoTARAC recommends including a more detailed explanation in the Basis for Conclusions.</p> <p>A table of concordance would also be useful</p>
13 – KPMG	<p><i>Basis for Conclusions</i></p> <p>Insufficient explanation/background as to why certain Aus specific paragraphs contained within AASB 127 were not replicated in ED 238 or not replicated verbatim, for example:</p> <ul style="list-style-type: none"> • Aus17.2 – discussion as to why accountability is not given specific prominence when applying the new control model. <p>The Basis for Conclusion should set out the rationale for specific paragraphs not being carried forward.</p>

Staff Analysis re AC3

The AASB explicitly considered the disposition of the specific public sector requirements in the old AASB 127 *Consolidated and Separate Financial Statements* in the early development of the ED. Clarification of the differences to the final implementation guidance would be useful to public sector entities.

Staff Recommendation

The Basis for Conclusions should identify and explain the major differences from the previous public sector requirements.

Appendix A: Collation of Comments Relating to the Examples

Introduction

Appendix A, section 1, presents general comments from respondents on the four comprehensive examples and the examples included in the IG paragraphs proposed in the ED. Sections 2-5 address comments from respondents on each of the four comprehensive examples. Sections 6-12 present the comments on various IG paragraphs or groups of paragraphs.

Comments in the Submissions

1. General Comments on the Examples		
Respondent	Overall View	Comment
1 – Deloitte	Agree with the examples	<p>We believe that the four detailed sets of implementation examples provides application guidance which can either be referred directly or analogised to apply to specific fact patterns. We acknowledge that certain structure such as those described in Example IG2 (Control of LMN local government) and Example IG3 (Control of XYZ University) can be complex and to suggest there could be alternative options based on the specific facts and circumstances is an appropriate approach.</p> <p>In addition to the four detailed set of implementation examples, the examples provided in the paragraph discussion are useful in understanding the concepts and how the requirements of AASB 10 need to be applied in the context of NFP entities.</p>
2 – HoTARAC	Examples are helpful however further clarification and examples required	<p>HoTARAC is strongly supportive of the AASB’s decision to include implementation examples to help clarify the application of the AASB 10 requirements to NFP entities. However, HoTARAC offers ... comments on the examples, and an additional example, for further consideration.</p> <p><i>[Staff note: HoTARAC’s specific comments are incorporated in the following collation of comments relating to specific examples and issues.]</i></p>
3 – Crowe Horwath	Need more examples	<p>Examples 3 and 4 (universities and local government) are too narrow and entity specific and are of limited benefit and application to the broad NFP sector. We would prefer the Board provide illustrative examples of scenarios that are more common in practice and relevant to a broader constituency. For example:</p> <ul style="list-style-type: none"> • It can be difficult to establish statutory or contractual arrangements between entities within the same religious order. While an intuitive assessment may lead to a conclusion that the head religious body controls the activities of the entities within that religious order, such power may not arise from voting or equity rights (in the corporate sense) nor statutory or contractual arrangements. Hence, applying the factors discussed in AASB 10.11 may lead to an alternative view. <p>We suggest that additional guidance on the relative weightings of the factors described in AASB 10.B18 and B19, as well as recognising that power may be derived from other ‘non-traditional’ factors in the context of NFP entities would assist users and preparers.</p> <p><i>[Staff note: Crowe Horwath has also provided three ‘common examples</i></p>

Appendix A: Collation of Comments Relating to the Examples

1. General Comments on the Examples		
Respondent	Overall View	Comment
		<i>of NFP relationships' to illustrate the concepts. See Appendix B.]</i>
4 – CPA/ICAA	Need more examples	While we support the inclusion of comprehensive examples we would recommend the inclusion of several more examples relevant to a broader constituency of not-for-profit entities. More 'structured entity' examples should be included to explain how the control of these entities in the NFP sector operates through 'less conventional means' (IG6 of Appendix E in AASB 12).
6 – ACAG	Examples helpful however further clarification and examples required.	Overall, the implementation examples are helpful in understanding the requirements of AASB 10, and how to apply them to NFP entities. However, there are some issues where it would be helpful to explain through the examples, and some areas which would benefit from further clarification. <i>[Staff note: ACAG's specific comments are addressed below in the following collation of comments relating to specific examples and issues.]</i>
7 – PwC	Examples helpful however further clarification and examples required.	We believe it is important for the implementation guidance to highlight that the rights that convey power to investors in a not-for-profit context will normally be different to those that convey power to investors in a for-profit context. This distinction is addressed in a number of different locations in the exposure draft (both in relation to the discussion of 'control' in AASB 10 and 'structured entity' in AASB 12), however we think it might be helpful to emphasise the point early on in the implementation guidance for AASB 10. For example IG5 could be amended as follows: Paragraph 11 states that power arises from rights, and refers to voting rights granted by equity instruments and rights arising from contractual arrangements. <u>While these rights will often be the source of power for private sector entities, power will frequently arise through different sources for not-for-profit entities. For example, for many not-for-profit entities, rights arising from administrative arrangements or statutory provisions will often be the source of power.</u> The example in IG5 could then be located in a separate paragraph.
9 – Ernst & Young	Need more examples	We welcome the inclusion of the examples within the proposed Appendix. Our concern with the examples however is the predominant focus on public sector NFP application compared to examples within the private NFP sector. The NFP private sector has previously voiced this as an issue with the application guidance present with AASB 127, so we urge the AASB to include additional examples such as companies limited by guarantee. These entities are prohibited from paying dividends to their shareholders but may provide financial benefits by other means such as loans and by furthering common goals and objectives.
11 – Grant Thornton	Agree with the examples	We agree with the level of explanation and illustration provided in the ED.
13 – KPMG		However, we do have concerns about the application of these principles, in particular to the examples highlighted below. Our comments are

Appendix A: Collation of Comments Relating to the Examples

1. General Comments on the Examples		
Respondent	Overall View	Comment
		<p>outlined below and included in more detail in Appendix 1 and 2:</p> <ul style="list-style-type: none"> • Certain examples contained within the ED, more specifically example IG1 and IG2, do not appropriately apply the principles of AASB 10. The purpose and design of the entities in these examples have not been adequately addressed, the relevant activities are not clearly articulated and classification of rights as substantive or protective in nature is questionable. • We note that the application of AASB 10 is complex for the private sector and that it is important that the AASB does not inadvertently establish precedent via the not-for-profit guidance that may not have widespread support internationally, so it may be more appropriate for the more contentious examples around state control of local government to have clearer fact patterns that leave less interpretation. • When working through the more complex and unclear examples provided within the ED we would encourage the AASB to also consider the general principles contained within AASB 10, particularly the principles relating to agent and principle or de facto control as these principles may assist in providing further clarity on contentious areas.

Staff Analysis and Recommendations re General Comments

Two key issues were raised by respondents in their general comments:

1.1 Examples are narrow and entity specific with too much focus on the public sector.

In response to issue 1.1, it would be beneficial to provide one or more additional examples that are relevant to a broader constituency, such as private sector NFP entities. The examples raised by respondent #3 (Crowe Horwath), respondent #4 (CPA/ICAA), and respondent #7 (PwC) (see Appendix B) could be the basis of further examples. We propose providing another comprehensive example based on a charity that has established a separate entity that furthers the objectives of the charity. Staff envisage two scenarios, the first where the charity does control the separate entity and the second where it does not. This example would respond to the calls for examples regarding foundations and other entities that operate for the benefit of another entity.

The comment by respondent #4 (CPA/ICAA) regarding structured entity examples of control in the NFP sector through less conventional means is considered in the staff recommendations for SMC 3.

1.2 Clarification of some of the examples is required.

Staff agree that some of the examples could be clarified. Our comments on specific suggestions of respondents for clarifying the examples are provided throughout the remainder of this Appendix. The suggestion from respondent #7 (PwC) to modify paragraph IG5 to highlight sources of power for NFP entities appears to be a useful approach. This would also reflect the proposed approach to identifying structured entities in the NFP sector under AASB 12.

As the Board decided to include a realistic local government example in the ED, staff do not recommend revising the example to present “clearer fact patterns that leave less interpretation”.

Appendix A: Collation of Comments Relating to the Examples

2. Example IG1 – Community Housing Program	
Respondent	Comment
3 – Crowe Horwath	<p>We suggest the Board clarifies the operation of the following aspects of the implementation guidance:</p> <p>“As an example of contractual or statutory arrangements, a not-for-profit investor often will have power over an investee that it has established when the constituting document or enabling legislation specifies the investor’s rights to direct the operating and financing activities that may be carried out by the investee. However, the impact of the constituting document or legislation is evaluated in the context of other prevailing circumstances, as all facts and circumstances need to be considered in assessing whether an investor has power over an investee.” (IG5)</p> <p>While IG 5 suggests that such rights are not conclusive in assessing control, the conclusions in Example IG1 appear to focus on voting rights as determinative of control. Eg, Example IG1A suggests that control does exist because of the existence of such rights. Alternatively, Example IG1B suggests that control does not exist due the inability to appoint board members.</p> <p>We believe it would be useful to constituents for the Board to more clearly articulate the key determinants of control.</p>
4 – CPA/ICAA	<p>We understood the purpose of Example IG1A was to illustrate ‘power’, however, on reading the example we believe it illustrates ‘returns’ and not ‘power’. A new example for ‘power’ would be useful, and the current example could be used to demonstrate ‘returns’ and/or expanded into a comprehensive example.</p>
6 – ACAG	<p>ACAG supports the notion that returns to an investor that are non-financial in nature are of value to the investor. While we agree that the achievement of social objectives is a relevant example of a non-financial return, we note that Example IG 1 is the first time this concept is introduced in the guidance, which is not explained until paragraph IG 16.</p>
7 – PwC	<p>We believe these examples [IG1A and IG1B] appropriately explain the control definition.</p>
8 – John Church	<p>I started reviewing your paper and the first Implementation Example.</p> <p>I find it is vague and not clear.</p> <p>You have failed to define “Religious Organisation” is it incorporated association or unincorporated or a basic religious charity or created by Statute or a corporation limited by guarantee or even a corporation?</p> <p>It is pointless to comment further on the further discussion that you have provided as there is not clear statement on what you mean by the terminology “religious organisation”.</p>
9 – Ernst & Young	<p>...we suggest that the AASB consider the structure of example IG1. We note the conclusions set out in IG1A discuss rights to variable returns from the religious organisation’s involvement with the association, but this is presented before the concept of returns is discussed within the Exposure Draft. Our recommendation would be for this example to focus on the assessment of power to illustrate the concepts in paragraphs IG4 – IG8 and to either conclude the example at this point or to expand on it at a later point in the Exposure Draft when the concept of returns is discussed.</p>
10 – Moore Stephens	<p>A2.2 Example IG1 provides a useful explanation of how the notion of ‘relevant activities’ might be interpreted in a NFP context where power resides within a single entity within a group. However, for many NFP entities, the power to govern different aspects of a group’s activities often resides with more than one entity within the group. For instance, some NFP groups (particularly religious groups) are structured to ensure that their asset management and fundraising activities on the one hand, and their pastoral, educational, community and/or welfare activities on the other, are managed by separate and distinct entities. Such arrangements are likely to pose some difficulties for the consistent application of AASB 10,</p>

Appendix A: Collation of Comments Relating to the Examples

2. Example IG1 – Community Housing Program	
Respondent	Comment
	<p>particularly in determining the parent entity of a group of entities that are not linked by ownership/voting interests.</p> <p>A2.3 Some argue that asset management and fund-raising activities are the most important activities of NFP entities because they provide the entities with the capacity to undertake their NFP activities. However, an equally valid argument can be made for the pastoral, educational, community and welfare activities being the ‘relevant activities’ of a NFP entity, particularly when the monies they receive are premised on the entity providing such services. Accordingly, we recommend the AASB give further consideration to the different ways in which reporting groups of NFP entities, particularly private sector entities, are arranged and the potential implications of these different arrangements for identifying the relevant activities of the group.</p>
13 – KPMG	<p>We have the following concerns with this example as currently worded:</p> <p><i>Purpose and design and identification of relevant activities</i></p> <ul style="list-style-type: none"> • As part of the control analysis, the purpose and design together with the identification of relevant activities of the association including the impact of rights arising from any contractual arrangements in place have not been appropriately considered. We consider these steps to be critical in the control analysis [AASB 10.B3, B5-B8, BEx1]. • Consideration as to whether the religious organisation has the ability to change the constitution of the association and what impact this would have on the control analysis should be addressed. The capacity to change the constitution to enable change in appointment of directors is likely to be critical to the assessment of power. <p>We recommend the following in respect of our concerns:</p> <p>The purpose and design of the structure should be specifically addressed as we consider it to be a key element in the control analysis and more specifically the determination as to what the relevant activities are. For example, assume the same fact pattern as IG1 except that the board of governors consists of 10 people, 2 appointed by the religious organisation and the remaining 8 are considered to be independent of the religious organisation. Based on this fact pattern and applying AASB 10, there are two possible arguments that could be put forward when considering the purpose and design, the relevant activities and who ultimately controls the association:</p> <ol style="list-style-type: none"> (1) the association has been set up to achieve a specific objective i.e. the purpose and design is to provide low cost housing and since this objective has been set up at inception one could argue that while the association has the ability to make many of the day-to-day decisions it is operating within a defined framework as to where the funds are obtained from, to whom the funds can be distributed to and accordingly has no relevant activities that impact the variability of returns (everything has effectively been pre-determined). Therefore, the association could be considered to be an extension of the religious organisation itself. This together with the fact that the religious organisation, while not directly receiving any financial return from the association is exposed to variable returns by virtue of the fact that it directs where the returns go and there is congruence of objectives results in the religious organisation having control. (2) The association is considered to have relevant activities and is not merely operating under a defined framework determined at the initial set up by the organisation. Accordingly, an analysis must be performed in order to determine who has rights over those relevant activities and assuming it is not the organisation who holds these rights, one would conclude that the organisation does not control the association. <p>The purpose and design of the structure becomes very important in determining which of</p>

Appendix A: Collation of Comments Relating to the Examples

2. Example IG1 – Community Housing Program	
Respondent	Comment
	<p>these two alternatives is the most appropriate for the facts and circumstances.</p> <p>We have seen similar fact patterns where schools have established separate foundations, with independent boards, but the funds raised can only be used for capital projects of the school. In our view without consideration of the specific purpose and design of the foundation, the conclusion could be reached that there are relevant activities and that the school does not have control. However, in our view where the benefits can only be returned to the school and the framework of what can be done by the foundation is established at set up then we consider that the school has control, as there are no relevant activities, and should consolidate the foundation.</p> <p>As illustrated above, the consideration of purpose and design is a key aspect to be considered in the control analysis and we would recommend that the examples provided include a discussion in this regard.</p> <p><i>Basis for concluding power exists</i></p> <p>The first paragraph of Example IG1A concludes that the religious organisation controls the association by virtue of the fact that the organisation has rights that give it the current ability to direct the relevant activities of the association. The example does not elaborate as to what specific rights give the organisation power. In order to understand the outcome the example should identify the key relevant activities that have been assessed and why the religious organisation is considered to have power.</p> <p>We recommend that the paragraph is reworded to provide guidance as to what facts and circumstances result in the organisation having control. For example, is it the ability to appoint 8 members of the board of governors or the owning the land and contributing funds etc? Furthermore, we recommend that the paragraph is reworded to say initially that the religious organisation has power, on what basis it has power and only conclude at the end, after the discussion on all three aspects of control that the organisation controls the association.</p> <p><i>Exposure to variable returns</i></p> <p>Example IG1A states that the religious organisation has never received (and cannot receive) a financial return. We do not agree with this comment because while the organisation does not have a direct financial return, we do consider it to have an indirect financial benefit by virtue of the fact that the religious organisation has the ability to direct where the returns go i.e. it must be used for the community housing program and in the event of a wind up would generally be able to direct where any remaining assets should go. Whether financial returns are made to the religious organisation and then distributed to a 3rd party or whether the funds are distributed at the religious organisation's request to a 3rd party should not result in a different accounting outcome.</p> <p>We recommend that the example is reworded to include the additional reason as to why the exposure to variable returns test has been met – the ability of the religious organisation to direct where returns of the association go.</p>

Staff Analysis and Recommendations re Example IG1

Six key issues were raised by respondents in relation to Example IG1:

- 2.1 Whether the application of the control criteria for NFP entities should be clarified in the example. For example, whether further guidance is required in relation to the purpose and design of an investee, including the ability to change the constitution of the entity to enable the change in appointment of directors.

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In response to issue 2.1, staff agree the key determinants of control (power, returns and the link between power and returns) should be more explicitly articulated in the example. In particular, consideration should be given to clarifying ‘the role of an ability to appoint board members’ in the determination of control in light of the implication in paragraph IG5 that voting rights are not determinative. Voting rights may be strong indicators of power but need to be considered in the context of all the circumstances. For example, the ability to change the constitution of an entity to enable a change in the manner of appointment of directors would be likely to take precedence over existing voting rights.

2.2 Whether further guidance is required to address where power resides within a NFP group. For example, whether further consideration should be given to the different ways in which reporting groups of NFP entities are arranged and the potential implications of these different arrangements for identifying the relevant activities of the group.

In response to issue 2.2, while staff acknowledge there are situations in which multiple entities may have power to govern different aspects of an entity’s operations, AASB 10, paragraph 13 states ‘the investor that has the current ability to direct the activities that most significantly affect the returns of the investee has power over the investee.’ This principle applies equally to both for-profit and not-for-profit entities and therefore staff do not recommend further guidance be provided. We do not think that the AASB is in a position to provide relative weightings for different factors, since judgement will be required.

2.3 Whether the example should be expanded to identify the key relevant activities that have been assessed and why the religious organisation is considered to have power.

In response to issue 2.3, staff suggest expanding the example to identify the key relevant activities that have been assessed and why the religious organisation is considered to have power in Example IG1A.

2.4 Whether Example IG1A should be amended in relation to the statement that the religious organisation has never received (and cannot receive) a financial return.

In response to issue 2.4, staff agree that the example should not imply that financial returns cannot be received and suggest amending the example to state that ‘the religious organisation has never received (and cannot receive) a direct financial return...’ as opposed to financial returns in general.

2.5 Whether Example IG1 requires relocating, since it addresses returns prior to this discussion in the proposed implementation guidance.

In response to issue 2.5, Example IG1 should be relocated to follow paragraph IG18, so that it follows the discussion on returns and immediately precedes Examples IG2 and IG3. Since Example IG1 already addresses returns and the link between power and returns, staff do not recommend shortening the example to address only the power criterion.

2.6 Whether the IG needs to define ‘Religious Organisations’.

In response to issue 2.6, staff do not recommend providing a definition of ‘Religious Organisations’ because, consistent with the AASB’s transaction-neutral policy, AASB 10’s principles apply irrespective of an entity’s structure or the nature of its activities.

Appendix A: Collation of Comments Relating to the Examples

3. Example IG2 – Local Councils & State Governments	
Respondent	Comment
2 – HoTARAC	A majority of HoTARAC respondents consider that the "alternative outcome" paragraphs may be unnecessary, as all examples are based on judgements and will be impacted by alternative facts.
3 – Crowe Horwath	<p>We suggest the Board clarifies the operation of the following aspects of the implementation guidance:</p> <p>Example IG2 provides a scenario where a Minister can “give directions concerning rates and charges so as to limit the Council’s general income for a financial year”. Setting aside government grants, the power to determine the amount of total rates and charges is clearly a relevant activity that affects the investee’s returns.</p> <p>How the total rates and charges are divided across different categories of constituents does not change the fact that, in this scenario, the power to limit total income is a major substantive power that does <i>significantly affect</i> the Council’s returns.</p> <p>We would suggest that the allocation of rates across constituents is only an administrative decision, would not significantly affect the overall returns of the Council, and would not be a key determinant in assessing control.</p>
4 – CPA/ICAA	Example IG2 is restricted to illustrating a scenario where the State Government does not control the Council and does not illustrate the opposite scenario. There is a risk that this example will be relied upon in all facts and circumstances, unless a contrary example is presented. We believe it would be useful if Example IG2 contained both scenarios as in the University example (IG3). This is particularly needed given the superseded guidance which stated that local government could not be controlled by State or Territory government. We understand and appreciate the use of a principles based approach rather than a rules based approach but in the absence of examination of a scenario where control of local government does exist, the rule in the superseded guidance is more likely to be applied.
6 – ACAG	<p>ACAG supports Example IG2 as a demonstration of the application of the control concepts to the NFP sector. In particular, the example illustrates the importance of determining whether the investor has substantive or protective rights related to the investee.</p> <p>What becomes apparent in the example, is the judgement required to determine whether the State Government can direct relevant activities that significantly affect the Council's returns. This example raises the issue of what constitutes directions of relevant activities by an investor to an investee in the NFP sector. In a NFP context, differentiating between 'directing' relevant activities and the ability to give directions which relate to relevant activities will be at times complex.</p> <p>The example refers to the Minister's ability to give a direction that limits the raising of rates collected from ratepayers, but concludes that this does not have a major effect. It could be argued that if the Minister gave a direction to limit the raising of rates collected from ratepayers, then this may constitute the direction of relevant activities, as it could have a significant impact on the Council's ability to deliver services to the community, and consequently the Council's returns.</p> <p>There is potential for divergent application of this concept without the setting of parameters or further guidance on what constitutes "direction" of a relevant activity. This is because the notion of returns of an investee, where they are non-financial, may be difficult to objectively identify.</p> <p>Further, ACAG questions the validity of the assumption used in Example IG2 that the objectives of the State Government and Local Governments are aligned.</p>

Appendix A: Collation of Comments Relating to the Examples

3. Example IG2 – Local Councils & State Governments	
Respondent	Comment
7 – PwC	<p>We note that consolidation of local governments by state or territory governments has been a controversial issue. We also note that the superseded guidance (i.e. the guidance in AASB 127 <i>Consolidated and Separate Financial Statements</i>) stated that under existing legislative arrangements state and territory governments do not control local governments.</p> <p>We understand the Board’s decision to not include a blanket statement in the replacement of guidance and instead to emphasise the need to apply the principles in the standard taking into account the relevant facts and circumstances. However, we wonder if the Board has undertaken sufficient research and analysis to establish whether control of local government could in fact arise in any state or territory in Australia and the implications of this. If control of a local government in Australia is only a theoretical possibility, then we would be concerned about the burden that might be placed on state and territory governments in having to undertake what may be a very time consuming and expensive analysis for no apparent benefit. Moreover, we are concerned about the risk of misapplication of what is a challenging standard, and about the possible flow on effects in other areas through analogous applications.</p> <p>We would be happy to discuss our concerns with you.</p> <p>If the Board decides to retain a local government example we believe it would be helpful to provide an additional example where the state or territory government controls the local government.</p>
9 – Ernst & Young	<p>In regards to example IG2, we do not believe the principles of AASB 10 are being appropriately applied and could lead to potential mis-interpretation and application of the control assessment. The relevant activities of the Council are not clearly defined in order to understand how the activities significantly affect returns and therefore how the actions of the State Government really impact those activities. For many of the activities noted as substantive, they appear to be protective in nature rather than substantive. For example, the statement that the ability to direct the rates and charges is substantive does not appear to be supported in the assessment, where it is concluded they do not have a major effect. This would therefore lead us to conclude they are not substantive powers over the relevant activities. Alternatively, some of the examples given as protective rights appear more substantive in nature – for example the ‘ability to enforce recommendations on the council’ – without more information about why this was assessed as protective.</p>
13 – KPMG	<p>We have the following concerns with this example as currently worded:</p> <p><i>Paragraph IG6</i></p> <p>This paragraph as currently worded seems to indicate that a State government would generally not have power to direct the relevant activities of a local government. This seems to contradict IG2 which requires an entity to apply the general principles contained within AASB 10 when assessing who has power over a local government.</p> <p>We recommend that this example is removed.</p> <p><i>Purpose and design and identification of relevant activities</i></p> <ul style="list-style-type: none"> • As part of the control analysis the purpose and design together with the identification of relevant activities of the Council, including the impact of rights arising from any contractual arrangements in place have not been appropriately considered. We consider these steps to be critical in the control analysis. <p>For example, if the ability to raise revenue outside of rates is restricted and required to be approved by the State then given the boundary constraints (i.e.</p>

Appendix A: Collation of Comments Relating to the Examples

3. Example IG2 – Local Councils & State Governments	
Respondent	Comment
	<p>State has unfettered ability to change boundaries which determines the volume of rates that can be charged) and the ability to cap revenue raised from rates it can be argued that the amount of revenue is limited/determined by the State and accordingly there are no relevant activities of the local government that impact the variability of returns (i.e. allocation of capped revenue is arguably not a relevant activity, as although the composition of where the monies may be spent may change, the actual quantum of spending is not able to be influenced by Council).</p> <p>In such circumstances, even though the Council is making a number of day-to-day decisions which impact returns these decisions may not be considered to be decisions over relevant activities as these have already been set by the State and therefore are considered to be irrelevant in the control analysis. The State is setting the framework under which the Council operates and accordingly there are no relevant activities. Based on the facts provided we do not consider the analysis to address the purpose and design concerns noted above, therefore we do not agree with the conclusion reached.</p> <ul style="list-style-type: none"> • Some of the protective rights appear more substantive in nature. We consider that under AASB 10 unfettered rights to change or step in are likely to be substantive rather than protective. Generally where there are conditional rights they are more likely to be protective [AASB10.14, B22-B28]. • Accordingly we would consider the right to restructure the Council through boundary changes a relevant activity as based on the facts it is an unfettered right, and where the State is able to change the boundaries without cause in our view is more akin to a substantive right than a protective right. Furthermore, we would also consider the ability to appoint inspectors of municipal administration without cause to be more akin to a substantive right than a protective right. Where it is conditional on issues with management etc. then we would consider the rights to be more protective in nature.

Staff Analysis and Recommendations re Example IG2

Five key issues have been raised by respondents in relation to Example IG2:

- 3.1 Whether the principles in AASB 10 have been appropriately applied in the example and whether further guidance on parameters or on what constitutes ‘direction’ of a relevant activity should be provided. For example, are the ‘relevant activities’ referred to in determining who controls the Council in the example appropriate?

In response to issue 3.1, staff note that there is a significant amount of judgement required for all entities – both for-profit and not-for-profit – in applying the principles in AASB 10. To address this concern, staff recommend that the Implementation Guidance be amended to give further guidance on what constitutes ‘direction’ of a relevant activity in the NFP sector, including explaining that the effect of the power to cap rate revenue changes is in the nature of price regulation rather than directing relevant activities.

- 3.2 Whether sufficient research has been undertaken to establish whether control of a local government by another government could arise and the implications of this, and whether the example should illustrate the opposite scenario (the State controlling the Council) to reduce the risk that the example will be relied upon in all facts and circumstances.

In response to issue 3.2, in developing Example IG2, the AASB did not identify any realistic scenarios that could be included in a contrary example to demonstrate a State controlling a Council. However, we think the Standard should contemplate such a scenario, perhaps based on a different view of the relevant activities. In any case, the paragraph at the end of Example IG2 regarding alternative outcomes should be sufficient to prevent reliance on the no-control scenario in all circumstances.

Appendix A: Collation of Comments Relating to the Examples

3.3 Whether the assumption that the objectives of the State Government and Local Governments are aligned is a valid assumption.

In response to issue 3.3, staff believe the stated assumption in the example is a fair assumption. The assumption that objectives of the Council and the State are aligned is based on the fact that the Council's objectives are driven by the Local Government Act set by the State. We suggest this basis is stated in the example.

3.4 Whether the activities noted as substantive rights and those noted as protective rights are accurately classified.

In response to issue 3.4, this issue has been addressed below under Section 9 protective rights, issue 9.2. Significant judgement is required.

3.5 Whether paragraph IG6, which states that a State government normally would not have power to direct the relevant activities of a local government, should be retained, revised or deleted.

In response to issue 3.5, staff suggest consideration is given to rewording paragraph IG6 to ensure it does not conflict with paragraph IG2 or Example IG1. It does refer to a "normal" conclusion regarding State governments and local governments, which does not obviate the need to consider the specific circumstances in any case.

Appendix A: Collation of Comments Relating to the Examples

4. Example IG3 – Universities	
Respondent	Comment
2 – HoTARAC	A majority of HoTARAC respondents consider that the "alternative outcome" paragraphs may be unnecessary, as all examples are based on judgements and will be impacted by alternative facts. It seems particularly unnecessary in IG3A, given that IG3B illustrates the alternative scenario of where a State government does control a university.
4 – CPA/ICAA	We support the inclusion of the University example as we understand control of Universities by government has been a difficult area for practitioners to determine. However, we would suggest including further complications. A situation where there are returns to the investor which are not directly aligned with the objectives of the University could be included, such as state government returns from universities attracting international students. It is argued that this improves the State's economy and can improve the State's image as a tourist destination which would not be the primary aims of the University. Also it is not clear in the example whether the University Council's responsibilities, powers and functions are established by the University's enabling legislation or by the Council itself. We understand this is an important factor to consider because if the enabling legislation sets the powers and functions, then this is evidence of the State Government's rights to direct the relevant activities of the University.
6 – ACAG	<p>ACAG supports Example IG3 as a demonstration of the application of the control concepts to the NFP sector, in particular, the concept of rights that give an investor power over the investee.</p> <p>The issue of indirect returns would be beneficial to apply to the university illustrative examples. Example 3A states that <i>'The State Government's objectives for the activities of the University are consistent with those specified in the Act for the University'</i> (p.26). It would be useful to clarify whether they are perceived to directly correlate with those objectives in the Act, or whether the provision of the university's returns necessarily produces returns for the investor.</p> <p>Incorporating a specific example of returns to an investor which are not directly aligned with the objectives of the university could assist in understanding that such returns should not be overlooked in ascertaining who has control. An example could be State Government's returns from universities attracting international students. This improves the State's economy, can improve the State's image as a desirable tourist destination, and may facilitate development in the form of student housing, all of which would not be returns the university is primarily aiming to achieve. It could be helpful to apply this scenario to the existing illustrative examples.</p> <p>Another factor which may be helpful to incorporate is the potential complexity in evaluating differing returns for different investors. For example, the Australian Government may achieve broad policy objectives through its support of universities, whereas a State Government may see its key returns as being related to the State's economy and supply of tertiary-educated people into the State's workforce. Regardless, Example IG3B would benefit from clearer articulation of the nature of the returns being obtained by the State.</p> <p>What is not clear in the example is whether the University Council's responsibilities, powers and functions are established by the university's enabling legislation, or by the Council itself. ACAG believes that this is an important factor that needs to be considered, because if the enabling legislation sets the powers and functions, then this may be evidence of the State Government's rights to direct the relevant activities of the university.</p> <p>The suggested solution refers to the Australian Government's grant agreements as protective rights due to the condition that allows misapplied funds to be reclaimed.</p>

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4. Example IG3 – Universities	
Respondent	Comment
	<p>However, this is not the only condition of these grant agreements, with the primary condition being that universities are required to perform education or research activities. The Australian Government can direct how many students are educated, and what type of research is performed. For example, the Australian Government could direct universities to only teach domestic students. Further, a university that performs poorly may not be awarded funding in the future, directly impacting the activities of the university. Consideration of such factors would assist in the usefulness of this example.</p>
7 – PwC	<p>We note that consolidation of tertiary institutions by federal, state or territory governments has been a controversial issue. As with local governments, the assessments would be heavily dependent on the particular facts and circumstances and may require considerable judgment.</p> <p>Given that the assessments will likely be less problematic than for local governments and the fact that two contrasting examples have been provided, on balance we think the examples may be helpful and could be retained.</p>

Staff Analysis and Recommendations re Example IG3

Three key issues were raised by respondents in relation to Example IG3:

- 4.1 Whether to expand the example to address situations where an investor's returns are not directly aligned with the objectives of the University (e.g. benefits to the state economy from international students) and to address the implications of different investors obtaining different returns from the University (e.g. benefits to the economy of the state government and satisfaction of broader policy objectives of the Federal Government).

In response to issue 4.1, staff agree there would be merit in making the example more comprehensive by including additional information in regard to these types of matters. Staff suggest additional commentary be added to the 'Returns' section of example IG3A discussing the returns of both the university and the State government. The additional commentary could address the fact that the returns of the investor and the investee may not necessarily always directly align. However, staff would not expect the additional information to change the conclusion.

- 4.2 Whether to clarify how the University Council's responsibilities, powers and functions are established – by the University's enabling legislation or by the Council itself.

In response to issue 4.2, staff agree that clarification should be provided but, when considered in the context of all the facts and circumstances, may not change the conclusion in the example. The State Government legislation might be regarded as setting the framework within which the University operates, leaving decisions about the relevant activities to the University's Council. However, the relative significance of University statutes (which are subject to Ministerial approval) and University regulations (which are made by the Council) would need to be considered.

- 4.3 Whether to expand the example to describe more comprehensively the relationship of the Australian Government and a University that arises through grant agreements.

In response to issue 4.3, staff agree that expanding the example along these lines should be considered, since some rights of the Australian Government under grant agreements might be assessed as substantive rather than protective.

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5. Example IG4 – Statutory Authorities, Departments & Whole of Government	
Respondent	Comment
2 – HoTARAC	<p><i>IG21 and the legal concept of delegations</i></p> <p>IG21 provides that "a department acts as a principal in its own right even under a delegation of power from the Minister if it is acting with its own discretion, not subject to specific direction by the Minister".</p> <p>This is not entirely consistent with HoTARAC's understanding of the concept of "delegation" (as summarised in AASB Agenda Paper 7.3, June 2012). We understand that where there is a delegated power, the person/entity exercising that power is always acting in their own right (in relation to that power) and with their own discretion and cannot be directed by the delegator. The wording in paragraph IG21, however, implies that it is possible that a person may be acting under delegation and may not always have discretion; i.e. they may be subject to specific direction by the delegator.</p> <p>We think that this paragraph confuses the concept of delegation and needs to be explained more clearly. That is, in HoTARAC's view, a delegated power of itself is not sufficient to demonstrate control or preclude control. The issue is more whether the delegated power is sufficiently wide to allow the delegate to control the relevant activities of the other entity.</p> <p><i>Example IG4A</i></p> <p>Example IG4A concludes that " ... the Department has delegated power over the statutory authority and is acting as an agent on behalf of the Minister".</p> <p>However, the information in Example IG4, which forms the background to Example IG4A, does not refer to there being a delegation even though the conclusion is that the Department has "delegated power". Instead, the facts refer to the Department "acting on behalf of the Minister" and requiring the Minister's approval for certain decisions. This is not consistent with HoTARAC's understanding of a delegation or "delegated power", where the delegate acts in its own right and cannot be directed by the delegator.</p> <p>In addition, in assessing control, the conclusion makes no mention of the key fact included in Example IG4, that the Minister appoints the statutory authority's governing council. Further, the reference to remuneration does not seem a particularly strong argument that supports the Department acting as an agent. This is because the nature of government is such that whether or not the Department is acting as a principal or agent the Department is likely to be explicitly remunerated.</p> <p><i>Example IG4B</i></p> <p>This example introduces a new term "delegated control", without explanation. Again, as per Example IG4A, there are no facts given which indicate that the Minister has delegated power to the Department. Further, the example varies the facts in IG4 to support the conclusion that the Department is acting as a principal. However, there is no variation to the core fact, which states that the Department "acts as 'system manager' for the State public health system on behalf of the Minister". The phrase "on behalf of" implies the Department is acting as an agent, which is contrary to the conclusion.</p>
6 – ACAG	<p>ACAG supports Examples IG 4A & 4B as effectively demonstrating the impact of delegated powers on NFP entities. ACAG agrees with the conclusions reached and the distinguishing factors.</p> <p>Example IG 4A identifies a situation where a statutory authority would be consolidated at a whole of government level while not being consolidated by the Department. ACAG believes it may be helpful to expand this example, or include</p>

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5. Example IG4 – Statutory Authorities, Departments & Whole of Government	
Respondent	Comment
	a separate example, which considers collective rights at a whole of government level. There are some situations where the powers of a single Minister or Department are unlikely to support the Minister having control but, when viewed in conjunction with the powers of another Minister or Department at the whole of government level, may result in a conclusion that the government as a whole controls the entity concerned.
7 – PwC	We believe these examples [IG4A and IG4B] appropriately explain the control definition.

Staff Analysis and Recommendations re Example IG4

Five key issues were raised by respondents in relation to Example IG4:

- 5.1 Whether to adopt a meaning of ‘delegation’ that implies that a delegate acts in its own right and cannot be directed by the delegator.

In response to issue 5.1, consistent with the first sentence of paragraph B59 of AASB 10, which states “An investor may delegate its decision-making authority to an **agent** ...” (emphasis added), a delegate acts in its own right and cannot be directed by the delegator, but can be removed by the delegator. Paragraph IG21 should be amended to be consistent with this view of delegation.

- 5.2 Whether to amend Example IG4A to clarify the implications of the Minister appointing the Statutory Authority’s governing council.

In response to issue 5.2, staff agree that the example should have explicit regard to the fact that the Minister appointed the Statutory Authority’s governing council.

- 5.3 Whether to amend Example IG4A to downplay the implications of remuneration arrangements.

In response to issue 5.3, whilst remuneration is often an important element in determining whether an entity has delegated power or control, staff acknowledge that it might not be a key factor in determining delegation in the NFP public sector and therefore agree that the implications of remuneration should be either downplayed or at least put into perspective.

- 5.4 Whether to explain or avoid the term ‘delegated control’ in example IG4B and add or amend the facts to better support the conclusion that the Minister has delegated power to the Department.

In response to issue 5.4, the term ‘delegated control’ could usefully be explained in the example. In addition, the term could be clarified in the proposed IG to assist in differentiating types of delegations and the scope of the decision-making authority of the entity. The facts provided in the example could be extended to better support a conclusion of delegation.

- 5.5 Whether to expand the example (or add a separate example) to consider collective rights at a whole of government level.

In response to issue 5.5, staff believe a situation in which two departments collectively have power to direct the activities of an entity would result in the entity being consolidated at the whole of government level. Consideration would need to be given to whether the Departments had joint control of the entity. It may be appropriate to extend Example IG4A to make this point.

Appendix A: Collation of Comments Relating to the Examples

6. Paragraphs IG4 – IG12: Power over relevant activities	
Respondent	Comment
3 – Crowe Horwath	<p>The narrow purpose and design of an entity established by a non-for-profit entity may make it difficult to clearly identify the ‘relevant activities’ over which the parties may have control.</p> <p>Some not-for-profit entities are established with pre-determined, well defined and narrow objectives. We believe it would be useful to constituents for the Board to clarify and provide further guidance on the application of the principles referred to in IFRS 10.BC80 to not-for-profit entities, especially where the financial returns are not the key purpose of establishing the entity.</p>
6 – ACAG	<p>ACAG provides the following comments:</p> <ul style="list-style-type: none"> • Paragraph B14 of AASB 10 requires the investor to have existing rights that give the investor the current ability to direct the relevant activities of the investee. In addition to the example provided in IG8 and the implementation examples, it would be beneficial if the guidance included more illustrations of relevant activities for NFP entities. • In order to determine if an activity is a relevant activity, it would be beneficial to include benchmarks or parameters that give further guidance that helps determine whether or not the investee's returns are significantly affected. • IG10 suggests that a government may not have the ability to direct the relevant activities of a financially dependent entity, if the investee's governing body has ultimate discretion over the activities. However, better practice financial governance would require that every governing body has ultimate discretion of all the entity's activities, as they have the responsibility for the oversight of the entity's operations and discharge of responsibilities. Therefore, the inference that the independence of a governing body is a distinguishing factor to determine power over an investee may not be valid in all circumstances, and has the potential to be misinterpreted in the NFP sector.
9 – Ernst & Young	<p>In almost all of the examples, there is a statement that: ‘They are substantive rights if they do not relate to fundamental changes or exceptional circumstances.’ While such a statement is true, it can lead to confusion, as this is not the basic concept used in AASB 10. Rather the approach is to consider whether the rights are in relation to relevant activities and only then consider if they need to be further assessed. That is, if they don’t relate to relevant activities they don’t need to be further considered. By concluding in these examples that certain rights are substantive, it has the potential to mislead the readers.</p>

Staff Analysis and Recommendations re Paragraphs IG4 – IG12

Five key issues were raised by respondents in relation to ‘Power over relevant activities’:

- 6.1 Whether to amend the examples in relation to power and relevant activities, for example to address the purpose and design of an investee and to acknowledge that once an assessment has been made that an investor does not have rights in relation to ‘relevant activities’, no further assessment is needed.

In response to issue 6.1, staff agree that the examples in the Implementation Guidance should be reviewed and amended where necessary to reflect accurately the AASB 10 principles to apply in determining whether an entity has power over an investee. For example, commentary about the purpose and design of an investee may assist in identifying relevant activities. The examples should also clarify that the rights that affect the control assessment are those that give the holder the current ability to direct the relevant activities of the investee – illustrations of substantive and protective rights should not mask that message.

Appendix A: Collation of Comments Relating to the Examples

6.2 Whether ‘better practice financial governance’ has implications for the inference that independence of a governing body helps in determining power over an investee.

In response to issue 6.2, staff have reviewed paragraph IG10 and believe that it appropriately reflects an example of economic dependence of an investee on an investor in the NFP sector. Staff do not consider amendments to this paragraph are required.

6.3 Whether to give more examples of ‘relevant activities’, including providing further guidance where two investors each direct different kinds of activities of an investee.

In response to issue 6.3, staff agree that providing more examples of ‘relevant activities’ in the NFP sector may benefit NFP entities.

In regard to providing further guidance where two investors each direct different kinds of activities of an investee, this is a difficulty that is addressed in paragraph 13 of AASB 10. Paragraph 13 states ‘the investor that has the current ability to direct the activities that most significantly affect the returns of the investee has power over the investee.’ It is not clear what else might be said about balancing the significance of different activities in the NFP context.

6.4 Whether the implementation guidance should include benchmarks or parameters that give further guidance that helps determine whether or not the investee’s returns are significantly affected by the entities activities, thus making them ‘relevant activities’.

In response to issue 6.4, staff acknowledge judgement is required in applying the principles in AASB 10 in assessing whether an investee’s returns are significantly affected by certain activities, thereby resulting in those activities being regarded as ‘relevant activities’. Staff note that the Standard is designed so that an entity applies the principles to their particular circumstances and arrives at a conclusion and consider that it is not feasible to determine a set of parameters that could be applied to all entities. Therefore, we do not think it is necessary or appropriate to include benchmarks or parameters.

Appendix A: Collation of Comments Relating to the Examples

7. Paragraphs IG7 – IG8: Rights that give an investor power over an investee	
Respondent	Comment
3 – Crowe Horwath	The example in IG8 suggests that the government has control over the statutory authority, but it is unclear on what basis that determination is made.
4 – CPA/ICAA	Paragraph IG8 illustrates an example of the power of a parliament to appoint and paragraph IG11 illustrates an example of the power of a government to appoint. As we understand it, and subject to other facts and circumstances, the outcomes in both examples would be consolidation into the whole of government general purpose financial statements. It is not clear to us why the power of a parliament to appoint would result in the government having control. We think the inclusion of an explanation would be helpful.
6 – ACAG	<p>IG7 provides additional examples of rights that can give an investor power. ACAG suggests that further guidance of how to apply B15 examples would be beneficial. In particular, B15(d) “rights to direct the investee to enter into, or veto any changes to, transactions for the benefit of the investor”, requires judgement as to what are benefits to the investor. A government may be able to direct a statutory authority to perform a certain function or transaction (deliver government services), which would benefit the government.</p> <p>In paragraph IG8, it is explained that, in the context of the Auditor-General or the judiciary, legislation governing the establishment and operation of an independent statutory office and setting out the broad parameters within which the office is required to operate, results in parliament having the ability to direct the relevant activities of the office. What is the difference compared to an Act of the State that establishes a University?</p>

Staff Analysis and Recommendations re Paragraphs IG7 – IG8

Two key issues have been raised by respondents in relation to ‘Rights that give an investor power over an investee’:

7.1 Whether further guidance and examples are required of how to apply paragraph B15 in the NFP sector.

In response to issue 7.1, staff agree that consideration should be given to providing NFP sector specific guidance in relation to rights that give an investor power over an investee.

7.2 Whether further guidance is required in paragraphs IG8 and IG11 to clarify the conclusions reached.

In regard to issue 7.2, staff think that paragraph IG8 should be amended to focus on the Government’s power (within the context of Parliament’s power) rather than on the Parliament’s power per se. We do not think the scope of whole-of-government financial statements should change depending on the nature of a government, such as a majority or minority government, with or without a hostile Senate or upper house.

Staff also agree that the examples should be reviewed to ensure consistency of logic in arriving at conclusions. This could be facilitated by adding further facts for each case that distinguish the two cases without arriving at conclusions that differ from those reached in the ED. For example, an Auditor-General’s organisation typically is required to comply with government policies generally, to the extent those policies do not impair the operation of the independent statutory office.

Appendix A: Collation of Comments Relating to the Examples

8. Paragraphs IG11 – IG12: Substantively enacted legislation vs. substantive rights	
Respondent	Comment
2 – HoTARAC	<p><i>Substantively enacted legislation</i></p> <p>Paragraph IG12 explains that sometimes rights can be substantive even though they are not currently exercisable. However, it then provides that rights in substantively enacted legislation cannot give the investor the current ability to direct the relevant activities.</p> <p>HoTARAC understands that the clarification in paragraph IG12 is based on paragraph 30 of IPSAS 6 <i>Consolidated and Separate Financial Statements</i>. However, given that IPSAS 6 has not yet been updated for the new IFRS 10, it is not clear that the principle in IPSAS 6 is consistent with IFRS 10. Instead it may be argued that the effect of paragraph IG12 is actually to amend IFRS 10. HoTARAC believes that this needs to be further considered by the AASB.</p> <p>Paragraph IG12, as it is written, is confusing and difficult to understand. HoTARAC recommends that the whole paragraph be reworded to improve clarity.</p>
3 – Crowe Horwath	<p>We suggest the Board clarifies the operation of the following aspects of the implementation guidance:</p> <p>“Paragraph B24 states that to be substantive, rights need to be exercisable when decisions about the direction of the relevant activities need to be made. Usually this means that the rights need to be currently exercisable. However, paragraph B24 also notes that sometimes rights can be substantive even though they are not currently exercisable. For many not-for-profit investors, power over an investee may be obtained from existing statutory arrangements. <i>Neither the power to enact or change legislation nor rights specified in merely substantively enacted legislation give the investor the current ability to direct relevant activities of the investee.</i>” (IG12) (emphasis added)</p> <p>We suggest that the Board clarifies why it believes that the power to enact or legislate change does not give the investor control, even of such power is currently exercisable (eg, the government has a majority in both Houses). Does the Board’s view alter if the statutory instrument is a Regulation or instrument that may be issued by a Minister rather than legislation passed by Parliament, and if so, why?</p> <p>In addition, it would be helpful for the Board to clarify how that statement in IG12 is reconciled to AASB 10.B24, including Application examples Example 3 within that paragraph, as well as the indicators in paragraph AASB 10.B23. It is unclear how the mere passage of time does not preclude the existence of currently exercisable rights, but the current ability to issue a regulation or statutory instrument does (especially if the conditions in B23 are satisfied).</p> <p>Further, in the case of amending legislation or regulations, there may be scenarios in which all the indicators in B23 would indicate the existence of substantive rights, although such power is expressly excluded from the assessment in IG 12.</p> <p>We contrast the scenario described in IG12 (that is, that the power to enact change does not give the investor the current ability to control) and the comment that “for some not-for-profit investors, political, cultural, social or similar types of barriers might make it difficult for the investor to exercise rights held in relation to an investee. However, the investor’s rights would be substantive, despite such barriers, if the investor can still choose to exercise those rights” in IG11.</p> <p>We believe there is a fine distinction between these two concepts and it would be helpful to constituents for the Board to clarify the difference between having the ability to direct the activities but being subject to barriers to exercise that ability, and the investor’s ability to exercise power by passing legislation or other instruments that are within its ability to do so. In both cases, the investor may have</p>

Appendix A: Collation of Comments Relating to the Examples

8. Paragraphs IG11 – IG12: Substantively enacted legislation vs. substantive rights	
Respondent	Comment
	the right to exercise its power to direct the relevant activities of the investee but chooses not to do so.
4 – CPA/ICAA	The paragraph IG12 reference to paragraph B24 notes “sometimes rights can be substantive even though they are not currently exercisable”. Despite this, paragraph IG12 concludes that rights in substantively enacted legislation do not give the not-for-profit investor the current ability to direct the relevant activities of the investee. We find this conclusion difficult to understand and suggest the inclusion of an explanation would be useful.
KPMG	<p><i>Paragraph IG12</i></p> <p>This paragraph concludes that power to enact or change legislation, and having rights specified in merely substantively enacted legislation, do not give the investor power. Additional explanation as to why this is the case would be helpful. It may be useful to contrast this to the unfettered ability of an entity to change the constitution of one of its investees (see discussion on Example IG1) to determine the composition of the board of directors which may result in obtaining power.</p> <p>We recommend that the paragraph include additional explanation as to why the power to enact or change legislation and having rights specified in merely substantively enacted legislation do not give rise to power. We note that this is one of the key interpretive elements of the guidance and it’s important not to inadvertently create a for-profit precedent. Reference to whether the power is currently exercisable may assist (i.e. legislative reform requires approval from parliament, substantive legislation may or may not give rights that are currently exercisable, depending on when the legislative change is effective).</p>

Staff Analysis and Recommendations re Paragraphs IG11 – IG12

Two key issues were raised by respondents in relation to substantive enactment and the power to enact:

8.1 There is no explanation as to why substantively enacted legislation would not give an investor power. Clarification is required.

Rights under substantively enacted legislation are not currently exercisable. However, rights can be substantive even if they are not currently exercisable – provided that they are exercisable when decisions about the direction of the relevant activities need to be made (paragraph B24). If the progression from substantively enacted legislation to enacted legislation is merely a matter of form (e.g. the formal approval of the legislation by the Governor in Council) and limited time, then perhaps in some circumstances it is possible for the substantively enacted legislation to give substantive rights to an investor. Staff recommend that this issue should be reconsidered by the Board. In any case, the rationale should be further explained through paragraph IG12 and in the Basis for Conclusions.

8.2 There is no explanation as to why the power to enact or change legislation would not give an investor power. Clarification is required.

Staff suggest that to include such rights in the control assessment is not feasible, because there would be no limit on the entities in respect of which a government could be considered to have power, subject to the reach of their constitutional powers. The Basis for Conclusions should address this.

Appendix A: Collation of Comments Relating to the Examples

9. Paragraphs IG13 – IG15: Protective rights	
Respondent	Comment
2 – HoTARAC	<p>HoTARAC proposes an additional example to be added to paragraph IG15 to further illustrate protective rights, as follows:</p> <p style="padding-left: 40px;">Use of a regulator's intervention powers where a regulated entity is non-compliant with performance standards or due to failure to comply with a requirement or direction issued under an Act.</p> <p style="padding-left: 40px;">Such powers include appointment of additional members to the governing body under certain restricted circumstances. For example, a State housing regulator may recommend the appointment of one or more appropriately qualified persons to the governing board of a regulated entity, when the entity has failed to comply with performance standards. The regulator must first consult with the governing body of the entity about a proposed recommendation and must consider any nominations put forward by the governing body. The regulator-appointed members will become part of the governing body of the regulated entity. The appointed members do not report to the regulator nor does the regulator direct them on how to govern. Their duties and responsibilities are exactly the same as other members of the governing body.</p>
9 – Ernst & Young	<p>We believe IG14 would benefit from clarifying how an entity assesses whether the regulatory powers are substantive or protective. The example given in this paragraph merely repeats the first half of the paragraph rather than being an example of how the assessment is made. Instead an example of the 'particular circumstances' referred to that would make it substantive would be more useful.</p>

Staff Analysis and Recommendations re Paragraphs IG13 – IG15

Two key issues have been raised by respondents in relation to 'protective rights':

9.1 Whether paragraph IG14 needs to be clarified, by reference to 'particular circumstances', to explain how an entity assesses whether the regulatory powers are substantive or protective.

In response to issue 9.1, staff agree that paragraph IG14 should be expanded by including an example of regulatory powers representing substantive rights and regulatory powers representing protective rights.

9.2 Whether an additional example should be added to paragraph IG15 to illustrate further protective rights in the public sector.

In response to issue 9.2, staff agree that an additional example should be added to further illustrate protective rights in the public sector and believe the example suggested by respondent #2 (HoTARAC) (see Appendix B) could be the basis for an example.

Appendix A: Collation of Comments Relating to the Examples

10. Paragraphs IG16 – IG17: Returns	
Respondent	Comment
6 – ACAG	<p>Paragraphs IG16 and IG17 state that an investor's return from its investee can be broad, and can include non-financial returns and direct or indirect benefits. In addition, returns can include the achievement or furtherance of the investor's objectives. However, there is limited material in either Appendix B of AASB 10 or the proposed Appendix E which assists in understanding non-financial returns. Further discussion of the nature of variable returns than that provided in IG16 and IG17 could be warranted.</p> <p>Where returns comprise, for example, the furtherance of the investor's objectives, guidance on how to differentiate between negative returns and no returns may be helpful. It would also be beneficial to include how the achievement of the investor's objectives is to be determined or measured.</p> <p>Appendix B paragraph B57(c) of AASB 10 infers that an investor may derive returns which the investee may not itself be primarily driven towards. ACAG presumes this tries to demonstrate the concept of indirect returns. It would be helpful to explicitly state that returns to the investor do not need to directly relate to the investee's returns.</p>
9 – Ernst & Young	<p>We note examples IG1A, IG2 and IG3A discuss the concept of returns for the relevant scenario. However, in each example, the nature of returns are essentially the same – the contribution to the achievement or furtherance of the ‘investor’s’ goals and objectives. We would recommend the AASB to either supplement the scope and nature of returns with a list of examples or provide additional application examples where the returns are those other than including or furthering the investor’s objectives. In particular we note that it is often difficult to assess returns for Companies Limited by Guarantee, and recommend that these are included in the examples.</p>

Staff Analysis and Recommendations re Paragraphs IG16 – IG17

In relation to ‘returns’, the issue raised by respondents concerns whether further guidance on returns should be added and/or expanded, including:

- differentiating between negative and no returns;
- how achievement of investor’s objectives are determined or measured;
- noting that returns to the investor do not need to directly relate to the investee’s returns; and
- providing a list of examples of returns other than those that include or further the investor’s objectives.

Staff agree that it would be beneficial to provide further guidance, including examples, on the scope and nature of non-financial returns in the NFP sector. We propose expanding the examples of non-financial returns in paragraph IG17 by including an example of an entity providing concessional loans to its beneficiaries.

However, staff consider that the implementation guidance should not seek to address how to determine or measure the achievement of objectives or to distinguish negative or zero returns in respect of objectives. Such issues are more the subject of service performance reporting.

Appendix A: Collation of Comments Relating to the Examples

11. Paragraph B65: Removal rights	
Respondent	Comment
2 – HoTARAC	<p>HoTARAC believes that additional guidance should be provided regarding the concept of removal rights within government. Paragraph B65 provides that when a single party holds substantive removal rights and can remove the decision maker without cause, this, in isolation, is sufficient to conclude that the decision maker is an agent.</p> <p>A government Minister will often have the power to remove a decision maker. For example, the relevant Minister can always remove the Head of a Department and legislation often gives the Minister power to remove directors of statutory authorities. This seems to imply that a Department can never, and statutory authorities can only rarely, control another entity and that those other entities are acting as agents. This was previously addressed in the Basis for Conclusions to IASB ED 10 (paragraphs BC96-97), the precursor to IFRS 10, where it was explicitly stated that the IASB did not believe the guidance on agency relationships would prevent an intermediate parent from preparing consolidated financial statements. However, when IFRS 10 was issued, these paragraphs were omitted from the Basis for Conclusions.</p> <p>In HoTARAC’s view, a Minister’s power of removal discussed above arises from a control relationship rather than a principal/agent relationship. That is, a Minister can dismiss a public sector entity’s key personnel irrespective of any relationship that the entity has with other entities. Given that this is a particular issue in the public sector, where individual entities are controlled as part of the Total State Sector/Whole of Government, HoTARAC believes that this view should be confirmed by the AASB.</p>

Staff Analysis re Paragraph B65

Staff have consulted IASB staff on this issue (i.e. the effect of the parent/subsidiary relationship where the parent can remove subsidiary board members) and have been informed that in clarifying and expanding the guidance on the agent/principal relationship, the IASB had no intention of preventing such intermediate parent entities preparing consolidated financial statements. We were advised that the ED 10 paragraphs BC96-BC97 were not included in the BC for IFRS 10 because they were considered to be unnecessary, and no change in the approach was intended.

Staff recommend that this issue should be addressed in the implementation guidance, consistent with the approach to delegated control in Example IG4B.

Appendix A: Collation of Comments Relating to the Examples

12. Paragraphs B73 – B75: De facto agents	
Respondent	Comment
2 – HoTARAC	HoTARAC notes that the AASB has not proposed implementation guidance in respect of some topics, such as de facto agents, due to its assessment that the issue arises for both FP and NFP entities. However, HoTARAC recommends that further consideration should be given to the issue of de facto agents and what it means in the public sector context, where all public sector entities are related parties to all other public sector entities. Additional guidance on this matter is critical for the application of the AASB 10 concept in the public sector context. It would be preferable for the AASB to apply its NFP deliberations and decision on this matter to FP entities as well.

Staff Analysis and Recommendation re Paragraphs B73 – B75

Respondent #2 (HoTARAC) identified that the ED's proposals do not address the issue of de facto agents in a NFP environment. Such guidance was not included so as to be consistent with the Board's policy of limiting additional guidance to NFP-specific issues.

Staff recommend giving consideration to the facts provided by respondent #7 (PwC) (see Appendix B) to form the basis of an NFP example of a potential de facto agency relationship.

Appendix B: Examples Suggested by Respondents

Respondent	Suggested examples
<p>2 – HoTARAC (also in Appendix A, Section 9 Protective rights)</p>	<p>HoTARAC proposes an additional example to be added to paragraph IG15 to further illustrate protective rights, as follows:</p> <p style="padding-left: 40px;">Use of a regulator's intervention powers where a regulated entity is noncompliant with performance standards or due to failure to comply with a requirement or direction issued under an Act. Such powers include appointment of additional members to the governing body under certain restricted circumstances. For example, a State housing regulator may recommend the appointment of one or more appropriately qualified persons to the governing board of a regulated entity, when the entity has failed to comply with performance standards. The regulator must first consult with the governing body of the entity about a proposed recommendation and must consider any nominations put forward by the governing body. The regulator-appointed members will become part of the governing body of the regulated entity. The appointed members do not report to the regulator nor does the regulator direct them on how to govern. Their duties and responsibilities are exactly the same as other members of the governing body.</p> <p><i>[Staff have recommended in Appendix A, Section 9: Protective Rights that this example could form the basis of another example to further explain protective rights in the public sector.]</i></p>
<p>3 – Crowe Horwath</p>	<p>As discussed above, a religious organisation may have the practical ability to direct the activities of an investee notwithstanding such ability does not arise from 'statutory or contractual arrangements'. To aid a broader group of users, we suggest more common examples of NFP relationships be included to illustrate the concepts discussed, such as:</p> <p><u>Example 1:</u></p> <p>NFP is a private sector not-for-profit organisation whose objectives is the provision health services to the sick and injured and provides first aid training to the community. NFP establishes NFPE, a company limited by guarantee, whose sole objective is to teach first aid to school children. The Board of NFPE comprises like-minded individuals but who are not directors of NFP. Vacancies on the Board of NFPE are decided by a majority of NFPE's directors. Other than appointing the initial Board of NFPE, NFP does not have the power to remove or appoint the directors of NFPE. NFPE's sole source of funding is donations from NFP and NFP donates training equipment and logistical and administrative support to NFPE. NFPE decides which schools it will visit and the types of first aid training it will deliver.</p> <p>Some suggest that NFPE is an extension of NFP and should be consolidated by NFP. It is viewed as a structured entity that has been established by NFP for the furtherance of its objectives and whose existence is dependent upon the continued support of NFP. NFP can exercise power over the activities of NFPE by varying the level of funding and other support it provides to NFPE. Further, one could argue that NFPE is, in substance, an agent for NFP in furthering NFP's objectives and can effectively remove NFPE simply by terminating funding and support and refer to IG20(a) to support this proposition. However, applying the guidance described in IG9 (economic dependency), IG10 (financial dependency), IG14 (protective rights) and Example IG2 (local council), one might conclude that NFP does not control NFPE.</p> <p><u>Example 2:</u></p> <p>NFP sets up an entity to provide services to NFP (whether it be catering / training</p>

Appendix B: Examples Suggested by Respondents

Respondent	Suggested examples
	<p>/ recruitment services) and NFP initially is the only user of that entity’s services. The entity is unable to direct profits back to the NFP. NFP is able to set the prices for which the entity charges its services (which therefore determines the profits and manages their costs) and set service standards/requirements. However, the NFP can not appoint a majority of the members of the board of the entity. Applying the rationale in Example IG1, one would conclude that NFP does not control the entity because the voting process does not give NFP the power to appoint board members. However, others would suggest that the entity is an extension of the reporting entity that should be consolidated with that of NFP.</p> <p><i>Example 3:</i></p> <p>Schools, elite sporting organisations and the arts establish foundations to raise funds that are directed towards the creator NFP although their Constitutions do not prohibit alternative directions of funds. In many cases the governing board of the foundation contains a majority of high-profile business, political or sporting persons that support the objectives of the NFP but would be assessed as being independent of the NFP. In the absence of voting rights or other ‘contractual arrangements’ that give the creator direct power over the foundation, it could be suggested that the NFP does not control the foundation.</p> <p>Under AASB 127 and Interpretation 112, all three examples above would generally be consolidated with the NFP, although for the reasons above, a different view may be taken under the Exposure Draft.</p> <p>Given the potential impact on the NFP sector, we strongly suggest that the Board clarify:</p> <ul style="list-style-type: none"> (a) whether the accounting for such arrangements would likely change under AASB 10, and if so why; and (b) under what circumstances members of the governing board of the foundation (or similar entity) would be considered nominees of the NFP. <p>Given the potential inconsistency between the statements in IG 6 in Appendix E for AASB 12 and AASB 10.B8, referred to above, we suggest that the Board clarify its views in the final standard.</p> <p>We are concerned that some of the examples contained in the proposals appear to start with a conclusion that is consistent with current practice and then attempts to justify that conclusion. However, the arguments used in some of those examples either appear to be inconsistent or may require further information and clarity so that the principle supporting the AASB’s reasoning is more transparent.</p> <p><i>[Staff have recommended in Appendix A, Section 1: General Comments, that these examples (and those from respondent #4 (CPA/ICAA), and respondent #7 (PwC)) could form the basis of a further NFP private sector comprehensive example. We propose including an example based on a charity and will review these examples to develop a credible scenario.]</i></p>
4 – CPA/ICAA	<p><i>Further examples</i></p> <p>While we support the inclusion of comprehensive examples we would recommend the inclusion of several more examples relevant to a broader constituency of not-for-profit entities. More ‘structured entity’ examples should be included to explain how the control of these entities in the NFP sector operates through ‘less conventional means’ (IG6 of Appendix E in AASB 12).</p> <p>Therefore, we recommend the inclusion of at least one example specifically addressing Foundations. Foundations are very common in both the public and</p>

Appendix B: Examples Suggested by Respondents

Respondent	Suggested examples
	<p>private sectors. They are usually established for a variety of reasons, in many cases to raise funds generally directed towards the purpose of the NFP body that has created them. However, generally the governing body of such foundations is independent from the creating NFP body. The NFP body would often appoint the 'initial board' of the Foundation but has no removal powers. The board may contain high profile business or sporting persons. In the absence of voting rights or other contractual arrangements that give the NFP power over the Foundation, the example needs to indicate the factors that may give rise to control versus no control in such situations. Organisations that establish foundations could be varied, but often include schools, sporting organisations, arts and cultural organisations.</p> <p><i>[Staff have recommended in Appendix A, Section 1: General Comments, that these examples (and those from respondent #3 (Crowe Horwath), and respondent #7 (PwC)) could form the basis of a further NFP private sector comprehensive example. We propose including an example based on a charity and will review these examples to develop a credible scenario.]</i></p>
7 – PwC	<p><i>Other possible examples</i></p> <p>It may be helpful to include one or more examples of a not-for profit entity such as a hospital or a university that establishes a separate entity to conduct specific activities, such as research and development activities. These entities may be structured to operate relatively autonomously and it can require careful analysis to establish whether or not control exists.</p> <p><i>[Staff have recommended in Appendix A, Section 1: General Comments, that these examples (and those from respondent #3 (Crowe Horwath), and respondent #4 (CPA/ICAA)) could form the basis of a further NFP private sector comprehensive example. We propose including an example based on a charity and will review these examples to develop a credible scenario.]</i></p> <p><i>We also consider that the examples given here may illustrate potential de facto agency relationships (see paragraphs B73 – B75 of AASB 10.)</i></p>