



Australian Government
Australian Accounting Standards Board

Memorandum

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| To: | AASB members | Date: | 13 May 2014 |
| From: | Clark Anstis | Agenda Item: | 5.1 |
| Subject: | Commencement Provision in AASB Standards | File: | |

Action

To consider whether a commencement provision should be included in the body of each Standard made by the AASB under its Corporations Act powers.

Overview

AASB staff recommend that a commencement provision be included in the body of each Standard made by the AASB under its Corporations Act powers. AASB staff recommend that the paragraph state the following:

This Standard commences on the day this Standard is made by the Australian Accounting Standards Board.

AASB staff consider that, ideally, the paragraph should follow a heading “Commencement”, although that is not essential. The paragraph is best placed after the regular Application paragraphs, including any RDR paragraphs, as the Application paragraphs (and date) are more important for the users of the Standards than the commencement paragraph (and date). In IFRS-equivalent Standards, the commencement paragraph would have an Aus paragraph number, normally following on from the application paragraphs.

Background

With no formal commencement provision in existing Standards, the view of Office of Parliamentary Counsel (OPC) staff is that AASB Standards legally “commence” (take legal effect) on the day after they are registered on the Federal Register of Legislative Instruments (FRLI): paragraph 12(1)(d) of the *Legislative Instruments Act 2003* (LIA) (see the Appendix to this memo for relevant legislation extracts).

Subsection 334(4) of the *Corporations Act 2001* states that an accounting standard applies to periods ending after the commencement of the standard or else periods ending or starting on or after a later date specified in the standard (see the Appendix). Therefore, the commencement date is important as it may limit the mandatory application date that the AASB specifies for a Standard. For example, in the absence of the proposed commencement provision in a Standard, immediate application of the Standard normally would be possible only if arrangements were made with OPC staff for same-day registration on FRLI. This would incur an express service surcharge in addition to the regular FRLI registration cost.

Specifying in each Standard that it commences on the day that it is made by the AASB would mean that commencement is no longer tied to FRLI registration, which is subject to OPC processes. Thus, a Standard could have an application date the same as (or the day after) the making date without requiring special registration services.

LIA subsection 12(2) states that a legislative instrument would have no effect if it would otherwise take effect before the date it is registered (and would adversely affect the rights and obligations of a person). However, OPC staff advised that this doesn't apply to AASB Standards because subsection 12(3) states that subsections 12(1) and (2) are subject to any contrary provision for commencement in the enabling legislation for the instrument – and that subsection 334(4) of the Corporations Act is such a contrary provision in relation to subsection 12(2). Thus, a Standard can commence prior to the date of FRLI registration.

Including a commencement provision in each Standard that states that the Standard commences on the day it is made by the AASB would mean that paragraph 12(1)(a) is relevant, rather than paragraph 12(1)(d).

Specifying a commencement date does not make registration unimportant. A Standard is not enforceable until it has been registered on FRLI: subsection 31(1) of the LIA. The specification of a commencement date does not appear to affect this.

Non-Corporations Act Standards

The AASB is empowered to make Standards for purposes other than financial reporting under the Corporations Act: see paragraph 227(1)(c) of the *Australian Securities and Investments Commission Act 2001*. The AASB has made a number of public-sector Standards under this function, such as AASB 1049 *Whole of Government and General Government Sector Financial Reporting*.

Note 2 to section 227 states that these Standards do not have legal effect under the Corporations Act. These Standards are not legislative instruments and are not registered on FRLI. There is no need for these Standards to include a commencement provision.

Question for the Board

Does the Board agree with the staff proposal to include a commencement provision in the body of each Standard made by the AASB under its Corporations Act powers?

Appendix: Extracts from Legislation

Corporations Act 2001

334 AASB's power to make accounting standards

- (1) The AASB may, by legislative instrument, make accounting standards for the purposes of this Act. The standards must not be inconsistent with this Act or the regulations.
- (4) An accounting standard applies to:
 - (a) periods ending after the commencement of the standard; or
 - (b) periods ending, or starting, on or after a later date specified in the standard.
- (5) A company, registered scheme or disclosing entity may elect to apply the accounting standard to an earlier period unless the standard says otherwise. The election must be made in writing by the directors.

[note – subsections (2) and (3) no longer exist]

Legislative Instruments Act 2003

12 When do provisions of legislative instruments take effect?

- (1) Subject to subsection (2), a legislative instrument that is made on or after the commencing day, or a particular provision of such an instrument, takes effect from:
 - (a) the day specified in the instrument for the purposes of the commencement of the instrument or provision; or
 - (b) the day and time specified in the instrument for the purposes of the commencement of the instrument or provision; or
 - (c) the day, or day and time, of the commencement of an Act, or of a provision of an Act, or of the occurrence of an event, that is specified in the instrument for the purposes of the commencement of the instrument or provision; or
 - (d) in any other case—the first moment of the day next following the day when it is registered.
- (2) A legislative instrument, or a provision of a legislative instrument, has no effect if, apart from this subsection, it would take effect before the date it is registered and as a result:
 - (a) the rights of a person (other than the Commonwealth or an authority of the Commonwealth) as at the date of registration would be affected so as to disadvantage that person; or
 - (b) liabilities would be imposed on a person (other than the Commonwealth or an authority of the Commonwealth) in respect of anything done or omitted to be done before the date of registration.

- (3) The effect of subsections (1) and (2) on a legislative instrument is subject to any contrary provision for commencement of the instrument in the enabling legislation for the instrument if the enabling legislation is an Act or a provision of an Act.

31 Effect of failure to register a legislative instrument required to be registered under Division 2

- (1) A legislative instrument that is required to be registered under Division 2 is not enforceable by or against the Commonwealth, or by or against any other person or body, unless the instrument is registered.

[note – Division 2 applies to legislative instruments made on or after 1 January 2005. Subsections 31(2) and (3) address the effect of technical difficulties in registering instruments.]

Australian Securities and Investments Commission Act 2001

227 AASB's functions and powers

- (1) The functions of the AASB are:
- (a) to develop a conceptual framework, not having the force of an accounting standard, for the purpose of evaluating proposed accounting standards and international standards; and
 - (b) to make accounting standards under section 334 of the Corporations Act for the purposes of the corporations legislation (other than the excluded provisions); and
 - (c) to formulate accounting standards for other purposes; and
 - (d) to participate in and contribute to the development of a single set of accounting standards for world-wide use; and
 - (e) to advance and promote the main objects of this Part.

Note 1: The AASB was established by subsection 226(1) of the *Australian Securities and Investments Commission Act 1989* and is continued in existence by section 261 of this Act.

Note 2: The standards made under paragraph (b) are given legal effect by the Corporations Act. The standards formulated under paragraph (c) do not have legal effect under the Corporations Act itself but may be applied or adopted by some other authority.

Note 3: See section 224 and sections 228 to 233 for the framework within which the AASB is to formulate and make accounting standards.