

Ms Kris Peach
Chairperson
Australian Accounting Standards Board
PO Box 204
Collins St West VIC 8007

13 April 2018

AASB ED 283 - Amendments to Australian Accounting Standards - Australian Implementation Guidance for Not-for-Profit Public Sector Licensors

Dear Ms Peach

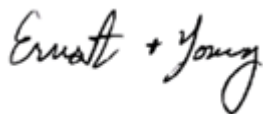
Ernst & Young is pleased to submit its comments on AASB ED 283 *Amendments to Australian Accounting Standards - Australian Implementation Guidance for Not-for-Profit Public Sector Licensors* ('ED 283'). Our detailed responses to the Specific Matters for Comment are contained in Appendix A to this letter. Other comments are provided in Appendix B to this letter.

We are supportive of the project to develop guidance on accounting for licences issued by not-for-profit public sector licensors and using AASB 15 *Revenue from contracts with customers* as the basis for that guidance. We are generally supportive of the AASB's Australian Implementation Guidance for Not-for-Profit Public Sector Licensors as set out in the ED with the exception of:

- ▶ Accounting treatment of 'high value and longer term' non-IP licences;
- ▶ Practical expedients for revenue from short-term or low-value licences; and
- ▶ Features outlined in paragraph G3 to differentiate a tax from a licence.

Should you wish to discuss this letter with us, please contact Frank Palmer on (02) 8295 6264 or Anne-Marie Johnson on (02) 9238 5537.

Yours faithfully



Ernst & Young

Appendix A: Specific Matters for Comment

1. **Do you agree to expanding the scope of AASB 15 to include non-contractual licences (ie arising from statutory arrangements) (paragraphs 4, G7-G9)? If not, please provide your reasons.**

Yes, we agree with expanding the scope of AASB 15 to include non-contractual licences.

2. **Are you aware of any lease arrangements that would arise from statutory arrangements rather than a contract? If so, please provide details of these arrangements and their accounting treatment.**

No, we are not aware of any lease arrangements that would arise from statutory arrangements.

3. **Do you agree with the requirements for not-for-profit public sector entities set out in paragraphs G10-G13 which specify that:**

(a) IP licences shall apply the guidance in paragraphs B52-B63B of AASB 15; and

IP Licences

As noted in our comment letter to ITC 37 *The AASB's Standard-Setting Frameworks for For-Profit Entities and Not-for Profit Entities*, we consider that accounting standard setting should focus on the nature of the activity irrespective of the type of entity that is engaged in that activity. In the same vein, we support the proposal to require entities to follow guidance already provided in AASB 15 for IP licences issued by not-for-profit entities (NFPs) as the nature of IP licenses for for-profit entities and NFP public sector entities is similar. Following discussions with experts within our firm, we did not identify any terms within IP licence of NFP entities that are substantially different from those of for-profit entities that require an alternative recognition model from the model applied to licences elsewhere.

(b) non-IP licences, that are not a lease and are distinct from other goods or services, shall be accounted for as a separate performance obligation under AASB 15?

If not, please provide your reasons.

Non-IP Licences

While we agree that the proposals are aligned with the general principles of AASB 15, it is likely to lead an entity to recognise revenue from non-IP licences at a point in time. This is an accounting treatment that is significantly different from the current practice. Public sector licensors may consider the accounting treatment as non-reflective of the way they view the significance of the revenue stream from these licences to their business model.

As we understand, in many occasions, revenue from non-IP licences are currently recognised over the term of the licence rather than at a point in time. This treatment is more prevalent for longer term high value licences (e.g., licence to operate a casino) issued by public sector entities. The issue under AASB 15 arises from the fact that, other than the initial act of issuing a licence, the licensor may have no further performance obligations. In the absence of such performance obligations, an entity would have to recognise revenue at a point in time (i.e., at the date of issuing of the licence).

While we agree that point in time revenue recognition for these licences could be an outcome that is consistent with the principles of AASB 15, some commentators and observers may

raise concerns that the proposals do not reflect the economic substance of revenue from certain licences.

We think that these concerns may be because they consider the entity's performance obligation as a licensor includes some of the broader obligations or activities the government/regulator undertakes in order to administer and maintain the legal framework for operating such licenses. AASB 15.B62 makes clear that a private sector licensor's obligation to defend a patent from an unauthorised use is not a separate performance obligation however this is in the context of intellectual property. The Basis for Conclusion to AASB 15 also noted that exclusivity (as exists in many of these high value and longer term licences) was not included as a principle in distinguishing performance, but again in the context of the asset transferred.

Given the differences in the nature of non-IP licences from IP licences we believe further consideration may be required to determine if additional conditions should be taken into account for non-IP licences that were not considered due to the arguably different substance of non-IP licences. At this point we are not aware of private sector non-IP licences that would be in scope of AASB 15 but if an example could be identified it may be useful to discuss with the IASB.

4. In relation to the AASB's proposal in paragraph 4 and the guidance in paragraphs G19-G23 of this Exposure Draft ('Recognition exemptions'), to include practical expedients in the Amending Standard to account for revenue from short-term or low-value licences issued by not-for-profit public sector licensors:

(a) do you agree that this proposal would provide relief to preparers while retaining a faithful representation of a not-for-profit public sector licensor's financial performance? Please provide your reasons.

We are supportive of providing simplified accounting for short-term and low value licences. However, we find the guidance on what is a low value license insufficient. The proposed guidance refers to the absolute value of the underlying asset but does not relate it to any particular guiding threshold value. In relation to this point, it's worthwhile to note that in the Basis for conclusions that accompanies AASB 16 *Leases*, the IASB had noted that it had in mind leases of underlying assets with a value, when new, in the order of magnitude of US\$5,000 or less.

Also the proposed guidance seems to rely on licensor assessing the 'nature of the licence' for the licence to qualify for the low value exemption but the ED doesn't provide detailed guidance on how to make this qualification (e.g., paragraph B5 of AASB 16 provides considerations to make a similar assessment for low value leases).

Due to the points highlighted above, we are uncertain whether the proposed guidance as currently drafted would achieve the intended outcome of prompting entities to reach the same conclusions about whether a particular licence has a low-value transaction price.

In addition, as currently drafted, the proposed amendments to AASB 15 Aus8.2 is not clear on whether these proposals on exempting low value or short-term licences are applicable for both IP and non-IP licences (to the extent not in the scope of AASB 16). If the intention is for this guidance to be applied to both IP and non-IP licences, it would mean that accounting for certain IP licences would be different between for-profit and NFP public sector entities. We are not sure if this is an intended outcome of these proposals.

(b) if not, what alternative practical expedient approach (if any) to income recognition would you recommend for not-for-profit public sector licensors? Please provide your reasons.

We suggest that the Board consider providing more explicit guidance about identifying a low value and short term licence. As noted above, low value licences would normally carry a transaction price within the threshold of roughly \$5,000 and short-term leases would normally have a term less than 1 year.

- 5. In relation to licences issued by not-for-profit public sector licensors that are not intellectual property (IP) licences (ie non-IP licences) that involve sales-based or usage-based commission:**

(a) do you agree with the AASB's proposal to use the general guidance in AASB 15 paragraphs 56-57 ('Constraining estimates of variable consideration') to determine the transaction price for the licensing arrangement, which in turn would determine the timing of revenue recognition? Please provide your reasons.

We support the proposed guidance.

For-profit entities would need to apply guidance in AASB 15 regarding variable consideration to non-IP licences that involve sales-based or usage-based commission. This needs to be extended to the same type of licences issued by NFP public sector entities because the economic substance of the licences issued by the public sector entities is similar to those issued by for-profit entities.

(b) if not, as an alternative, do you believe the general guidance in AASB 15 should be amended to reflect for non-IP licenses, the guidance for sales-based or usage-based royalties set out in paragraph B63 of AASB 15 for IP licences? This guidance may make it easier for licensors to determine the transaction price and timing of revenue recognition of non-IP licensing arrangements involving sales-based or usage-based consideration. However, this would mean that the accounting for non-IP licences by not-for-profit public sector entities would be different from that for other entities (which would not be transactional neutral).

See the above response.

- 6. In relation to non-IP licences issued by not-for-profit public sector licensors, do you have examples of distinct licences issued that involve a non-identified asset or assets of the licensor (ie that are not leases)? Please provide the details of your example. If you do have an example, do you think the specific guidance in paragraphs B52-B63B for IP licences may also be useful to help account for the licence in your example? (Paragraphs G14-G15)**

Following discussions with experts within our firm, we did not identify any licences issued and available as a reference point that involve a non-identified asset or assets of the licensor. However, we are aware of certain licences issued which allow access to data registries that could contain unidentified assets such as customer relationships, trademarks and brand names.

- 7. Do you agree that the features outlined in paragraph G3 to determine a tax from a licence provide sufficient guidance in making this distinction? If not, what other factors may be useful to make the distinction?**

We do not agree that the features outlined in paragraph G3 to distinguish a tax from a licence provide sufficient guidance in making the distinction. The ED has referred to the existing

definition of a tax in AASB 1058 (which was carried on from the previous AASB 1004) as a starting point in order to determine the features of a license. We note that this definition of a tax has not been revisited. Hence it does not provide a good starting point towards determining features of a license. In order to achieve a better contrast between a tax and licence, we suggest the board revisit the existing definition of a tax. We think that only the features (c) and (d) seem to be relevant factors that helps, to some extent distinguish a tax from a licence. See below our comments on each feature.

Feature	Comment
(a) Is the arrangement discretionary rather than compulsory?	We think that obtaining a licence might be compulsory for the entity to function as a legitimate business (e.g., gaming licence), similar in nature to the payment of income taxes. So may be this feature should be clarified. In summary, the level of discretion or compulsion in terms of obtaining a licence and paying taxes is quite similar for most commercial entities.
(b) What is the primary purpose?	We question whether this feature is helpful. We consider that ultimately both taxes and licences are established to provide income to the government (although noting this is discussed at BC20). Licences do generate income and are then used by the public sector to perform certain activities that benefit the public (e.g., park levies used to maintain parks). Similarly, taxes are also used to provide the public with goods and services.
(c) Does the arrangement create direct rights to use or access an asset for a payer, or perform an activity, and, depending on the type of arrangement direct obligations of a payee?	We consider this feature to be helpful in most occasions in making the distinction. However, not all licences may have "direct obligations of a payee".
(d) Does the arrangement give the payer specific permission that must be obtained prior to performing an activity or using or accessing an asset of the payee that would otherwise be unlawful?	This is the most relevant feature. See the suggested wording below on how feature (d) could be further improved.
(e) Does the arrangement transfer control of a payee's underlying asset?	The relevance of this factor is not clear.

We think that the criterion for feature (d) could be improved or otherwise a license can be defined as follows.

"Licence is an arrangement that requires a licensee to obtain specific permission from a licensor, prior to performing an activity or using or accessing a resource of the licensor that would otherwise be unlawful."

By replacing the wording 'an asset' with 'a resource' the proposed guidance would also cover licences issued over economic resources which are currently unidentified in the licensors' financial statements (e.g., unrecognised assets).

8. Are you aware of any for-profit public sector licensors issuing non-IP licences? If so, please provide details of these licenses and their accounting treatment, and comment on whether the scope of this Exposure Draft should be extended to for-profit public sector licensors?

No, we are not aware of any for-profit public sector licensors issuing non-IP licences.

9. Whether *The AASB's Not-for-Profit Entity Standard Setting Framework* [draft] has been applied appropriately in developing the proposals in this Exposure Draft?

We consider that it is inappropriate to comment on whether *The AASB's Not-for-Profit Entity Standard Setting Framework* has been applied appropriately in developing the proposals in this ED because the standard setting framework document is still not finalised.

10. Whether there are any regulatory issues or other issues arising in the Australian environment that may affect the implementation of the proposals, including Government Financial Statistics (GFS) implications?

We are not aware of any regulatory issues or other issues arising in the Australian environment that may affect the implementation of the proposals.

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

Except for the concerns raised above regarding 'high value and longer term' licences, we think that the proposals would result in financial statements that would provide useful information to users.

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

Except for the concerns raised above regarding 'high value and longer term' licences, we think that the proposals are in the best interests of the Australian economy.

13. Unless already provided in response to specific matters for comment above, the costs and benefits of the proposals relative to the current requirements, whether quantitative (financial or non-financial) or qualitative? In relation to quantitative financial costs, the AASB is particularly seeking to know the nature(s) and estimated amount(s) of any expected incremental costs, or cost savings, of the proposals relative to the existing requirements.

We have no further comments on this matter.

14. Other comments on the scope of the ED

The Board should give further consideration to the interaction between the proposals for licenses in ED 283 and AASB 1059 *Service Concession Arrangements: Grantors*.

We note that BC36 of ED 283 states:

"Given the approach in AASB 1059, the Board concluded that it would not be necessary to address any licences that meet the definition of service concession arrangements as part of this Exposure Draft as they are adequately dealt with in AASB 1059."

ED 283 however does not include a scope exemption to that effect. In order to avoid confusion as to which standard takes precedence, we recommend that the Board include a specific scope exclusion in AASB 15 to exclude arrangements that fall in the scope of AASB 1059. In addition, we note that this exclusion should be drafted to refer to service concession

arrangements (SCAs) which fall into the scope of AASB 1059 rather than “any licences that meet the definition of service concession arrangements”. This is because there may be licenses which meet the definition of a SCA, but which do not fall within the scope of AASB 1059 because the scope of the operator’s responsibilities in respect of the management of the service concession asset is not significant.

The scope of AASB 1059 states:

2 This Standard shall be applied to service concession arrangements, which involve an operator:

*(a) providing public services related to a service concession asset on behalf of a grantor; and
(b) managing at least some of those services under its own discretion, rather than at the direction of the grantor.*

As a result there may be examples of SCAs where it is considered that a SCA does not meet the criterion on para 2(a) or (b) and hence the SCA is not in scope of AASB 1059. Where this is the case, the arrangement would need to be considered under AASB 15. (The Board has stated that AASB 1059 should not be applied by analogy to licence arrangements that are not SCAs.)

The proposals as currently drafted may potentially give rise to different accounting treatments in respect of similar SCAs depending on whether the arrangements fall into the scope of AASB 1059 or in the scope of ED 283. For example, under AASB 1059, where the operator constructs an asset for the grantor and receives the right to charge users (license to charge users) then the grant of a right to the operator model applies and revenue will be deferred (i.e., a non-financial liability is recognised which is amortised over the term of the arrangement). On the other hand, where the SCA falls out of scope of AASB 1059, but is considered to fall into scope of AASB 15, it may be considered that the promise to transfer to the right to charge users (i.e., the non IP license) is satisfied once the asset is constructed and all revenue would be required to be recognised at that time.

This would result in similar arrangements being accounted for very differently with significantly different outcomes in the financial statements of grantors.

We note that in developing AASB 1059, the Board noted differing views on whether a SCA involves a contract with a customer (i.e., whether the right to charge users is considered a licence, whether the operator is considered a customer, or whether the ordinary activities of government include undertaking service concession arrangements as a grantor), and depending on the specific facts and circumstances some service concession arrangements might be a right-of-use licence and others a right of access. While the Board stated that it preferred the view that the substance of the transaction appears more akin to financing the construction of the service concession asset, rather than a contract with a customer, we believe this view should be reassessed. This is because, if SCAs are not considered contracts with customers, there may be no guidance around accounting for SCAs that fall out of the scope and the Board may need to consider how this interacts with the proposals in ED 283.

Appendix B: Other comments

Reference	Comment
Aus5.2	Currently worded such that AASB 15 will apply to all licences <u>as if</u> the licences are contracts with customers. Therefore, licences which are not contracts with customers will fall in scope if the entity is a NFP. Is this the intention? EY's view is that the proposals should apply to licences only where they are contracts with customers (with contracts defined to include those that arise from statutory or legislative requirements).
G1	The first box "Is it a non-IP licence" is not required. Instead, it should state "Is the transaction a licence or a tax?"
G6	First sentence - add - "where grant of licence is a lease, account for in accordance with AASB 16"
G13(c)	We consider that G13(c) should be split into (i) distinct & (ii) not distinct.
G14	For licences distinct from other goods and services, we suggest the AASB provide examples where distinct goods and services are provided together with licence.
G15	First sentence should read "when determining whether the non-IP licence"
G15	We consider that the example needs to be better set out. There needs to be a real example of a customer paying for a licence and also paying for other goods/services at the same time. And then evaluating whether the licence is distinct. Like the examples in AASB 15.B54(a) and (b), we do not consider that a customer pays for fish when paying for a fishing licence (i.e., there is only one good/service - the licence itself). The payee never promises to deliver fish (payer may never get fish). The licence entitles them to undertake an activity which is restricted to a quota of fish.
G15(b)	This concept is unclear. When providing a licensee with a fishing license the licensor is only promising to permit the licensee to undertake fishing activities - there is no promise to deliver fish.
G16	Should it be clarified here that a take or pay is in the nature of a tax and therefore should be accounted for in accordance with AASB 1058?
G18	This section simplifies the obligations that a not-for-profit public sector licensor may have in respect of such licenses. We understand that such obligations in some cases can be quite onerous for not-for-profit public sector entities.
IE6	First sentence should say "satisfies its performance obligations related to the licence" rather than referring to the "transferring of the licence". As noted above, there may be other performance obligations.
IE7	<ul style="list-style-type: none"> • Please provide an example of license with revenue over time • Is the arrangement a licence or a tax? All licenses have a low cost to issue, that does not make them a tax? • Can transfer goods and services to other beneficiaries and still be a performance obligation.
IE8	Is the arrangement a licence or a tax? - Refer to G3(c). Low cost in relation to consideration received is not a factor listed at G3
BC25	(b) not always existing (c) not different (d) this is different