



New South Wales
T R E A S U R Y

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Dear Professor Boymal

**ED 156 Proposals arising from the Short term Review of the Requirements
in AAS 27, AAS 29 and AAS 31**

New South Wales Treasury welcomes the opportunity to make a submission on the above Exposure Draft.

We broadly agree with the comments of the Heads of Treasuries Accounting and Reporting Advisory Committee (HoTARAC) in response to the Exposure Draft. However, NSW Treasury disagrees with the proposed treatment of 'restructures of administrative arrangements' (paras 50-55) and the views of the majority of HoTARAC on this issue, for the following reasons:

- The paragraphs are contrary to Interpretation 1038 *Contributions by Owners made to Wholly-Owned Public Sector Entities* – which provides that classification as a contribution by owners does not depend on the composition and extent of the transfer, for example, whether it involves a restructuring (Interpretation 1038, para 7 and 31).
- The definition of a 'restructure of administrative arrangements' is ambiguous – as it may be interpreted differently by different entities / jurisdictions and because there is no sharp distinction between a 'restructuring' and other transfers.
- The scope has been changed from AAS 29 but is not consistent with Interpretation 1038 – as Interpretation 1038 applies to *all* transfers involving wholly-owned public sector entities, while the proposed requirements only apply to government not-for-profit entities and for-profit departments.
- It is potentially a substantive change for which due process had not been followed – which is contrary to the objectives of ED 156, which is a short term review project only.

Accordingly, NSW Treasury recommends that the proposed paragraphs on 'restructures of administrative arrangements' (paras 50-55) are omitted and instead a cross reference is made to Interpretation 1038, pending the longer term project on 'contributions'.

Our detailed views in relation to the above matters and other comments regarding contributions by owners follow.

Yours sincerely

Robert Williams
for Secretary

ED 156 – NSW TREASURY COMMENTS ON RESTRUCTURES OF ADMINISTRATIVE ARRANGEMENTS

NSW Treasury provides the following views on specific questions asked by the AASB:

(e) AASB 1004 Contributions:

.....

- (iv) *the proposal to retain paragraphs 63 and 70 of AAS 27, paragraphs 11.1- 11.2.4 of AAS 29 and 14.1.12 and 14.1.13 of AAS 31, relating to contributions by owners, and relocate them into a separate new section of AASB 1004 under 'Contributions by Owners and Distributions to Owners of Local Governments, Government Departments and Governments' (see paragraphs 43 to 49 of the proposed revised AASB 1004).*

NSW Treasury does not believe that the following should be retained in ED 156, as they potentially carry forward a potential conflict with both Interpretation 1038 and the definition of 'contribution by owners':

- Last sentence in para 46;
- Para 47;
- Para 49.

These paragraphs may be seen to potentially conflict with these other Accounting Standard requirements, as they do not clearly acknowledge or contemplate the second leg of the definition of 'contributions by owners' i.e. where a financial interest in the net assets can be sold, transferred or redeemed. Some may argue that these paragraphs:

- Incorrectly imply that for an equity transfer to occur, there must be a financial interest in the net assets of the entity that conveys entitlements both to dividend type distributions and to distributions of any excess of assets over liabilities in the event of the entity being wound up (last sentence para 46, and para 47).
- Incorrectly imply that equity transfers do not normally occur except where an owner / purchaser model is established i.e. where there is a formal equity base (para 49). This also conflicts with the proposed paras 50-55, which treat all restructures of administrative arrangements as equity transfers.

These paragraphs in AAS 29 were originally viewed by some commentators as preventing restructures from being treated as equity transfers, except where there was a formal equity base. It was, in part, because of differing views regarding these requirements that Interpretation 1038 was issued. Given this, the opportunity should be taken to remove the potential inconsistencies which first contributed to confusion in this area.

(v) *in relation to a restructure of administrative arrangements (see paragraphs 50- 55 of the proposed revised AASB 1004), the proposals to:*

A. *define restructures of administrative arrangements and to specify that they are in the nature of transactions with owners to be recognised on a net basis. The AASB notes that the definition affects a broader range of entities than government departments, and includes all government controlled not-for-profit entities. The AASB is particularly interested in comments on whether the proposals are suitable for all government controlled not-for-profit entities. The AASB is also interested in whether it is necessary to explicitly refer to for-profit government departments in the context of restructures of administrative arrangements (and therefore also refer to them in paragraph Aus14.2 of AASB 101).*

NSW Treasury strongly disagrees with the insertion of paras 50-55 regarding ‘restructures of administrative arrangements’ for four reasons:

- the paragraphs are contrary to Interpretation 1038;
- the definition of a ‘restructure of administrative arrangements’ is ambiguous;
- the scope has been changed from AAS29 but is not consistent with Interpretation 1038;
- it is potentially a substantive change for which due process has not been followed.

These four concerns are discussed below:

The paragraphs are contrary to Interpretation 1038

The proposal is based on whether the restructure meets the newly inserted definition of a “restructure of administrative arrangements”. Treatment as an equity transfer is contrary to, and overrides the principles of Interpretation 1038 without adequate explanation. The conclusion in Interpretation 1038 is that in the absence of equity instruments or a formal agreement, formal designation by the transferor or parent of the transferor is necessary evidence of a contribution by owners (Interpretation 1038, para 7 and 31).

Specifically, Interpretation 1038 clarifies that classification does NOT depend on the composition and extent of the transfer, for example, whether it involves a restructuring (Interpretation 1038, para 21).

Therefore, the insertion of paras 50-55 conflicts with Interpretation 1038. We agree with the approach in Interpretation 1038, until due process for change is followed.

The definition of a ‘restructure of administrative arrangements’ is ambiguous

The definition of a ‘restructure of administrative arrangements’ is not supported because it is ambiguous and may be interpreted differently by different entities / jurisdictions:

- The proposed definition is very broad and could be interpreted to include transfers of individual assets or liabilities or groups of assets or liabilities, as these too involve a reallocation of responsibilities or activities. We do not necessarily disagree with that because there are many different types of ‘restructures’ within government. But, it is unclear what ED 156 is referring to, and what should, or should not, be treated as an equity transfer.

In other words, there is no sharp distinction between ‘restructuring’ and other transfers. Yet, contrary to this and the broad definition, the Basis for Conclusions seems to contemplate a clear distinction between a business and individual assets (para BC 56).

But, it was partly because of this lack of a clear definition and because *any* non-reciprocal transfer between wholly owned public sector entities has the potential to satisfy the definition of a ‘contribution by owners’, that Interpretation 1038 came to the view that it is necessary to refer to the form of the transfer and designate transfers as equity contributions (Interpretation 1038, para 31).

- Traditionally, the term ‘restructure of administrative arrangements’ was used as it applied only to government departments, which were generally created pursuant to administrative arrangements of government (i.e. not separate legal entities). However, extension of this term to not-for-profit entities also includes statutory bodies, which are more than just administrative arrangements of government (i.e. they are separate legal entities). Therefore, there is a potential ambiguity / conflict in scope (i.e. not-for-profit entities which include some statutory bodies) and terminology (i.e. ‘administrative arrangements’ which implies non-legal entities only).

The scope has been changed from AAS29 but is not consistent with Interpretation 1038

Contrary to para BC 52, the scope of the entities subject to the proposed requirements is NOT consistent with the scope of Interpretation 1038. Interpretation 1038 applies to *all* transfers involving wholly owned public sector entities, while the proposed requirements only apply to government controlled not-for-profit entities and for-profit departments. In NSW, equity transfers potentially occur between not-for-profit and for-profit public sector entities (or vice versa). This difference in scope could lead to confusion and inconsistency in treatment.

It is potentially a substantive change for which due process has not been followed

This is a substantive change from AAS 29, which is contrary to the objectives of ED 156, which is a short term review project only. No justification for making this substantive change has been given. As a substantive change, it is more appropriately considered as part of a longer term project. It should be considered in conjunction with the ‘contributions’ project and a fundamental review of Interpretation 1038.

Conclusion

Given these substantive concerns, NSW Treasury recommends that the proposed paragraphs regarding ‘restructures of administrative arrangements’ (paras 50-55) are omitted and the revised Standard simply cross-refers to Interpretation 1038 which relies on designation. Later, this issue can be considered as a longer-term project in conjunction with the ‘contributions’ project.

- B. Require a transferee to disclose, where practicable, the expenses and income attributable to transferred activities for the reporting period, showing separately those expenses and income recognised by the transferor during the reporting period.*

NSW Treasury agrees with this proposal.

- C. *Not specify a measurement basis for assets and liabilities transferred as a consequence of a restructure of administrative arrangements. The AASB is particularly interested in whether there are any anticipated adverse implications of the proposed non-specification of a measurement basis.*

NSW Treasury does not agree with *not* specifying a measurement basis for restructures of administrative arrangements. In Treasury's view, if the measurement basis is not specified, then all assets should be transferred at fair value. This is because AASB 116 *Property, Plant and Equipment* (para Aus15.1), AASB 138 *Intangible Assets* (para Aus24.1) and AASB 140 *Investment Property* (para Aus20.1) require not-for-profit entities to initially recognise assets received at nil or nominal consideration, at fair value.

While NSW Treasury agrees with this outcome, pending longer-term considerations, Treasury believes that the existing requirements in AAS 29, para 7.4, should be carried forward (i.e. allowing transfer at fair value *or* book value). This provides certainty in the interim period and avoids differing interpretations.