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Dear Kris

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

The Australasian Council of Auditors-General (ACAG) welcomed the opportunity to comment on the Exposure Draft.

Because our member offices hold divergent views in relation to the exposure draft we have determined not to submit an ACAG response. We hope however that the diversity of views held by our members will provide the Board with useful insights into the complexities of the various regulatory regimes operating in each jurisdiction and about the need to take into account specific circumstances on what may appear on the surface, similar license arrangements.

The views expressed in this submission represent the following Australian members of ACAG, hereafter referred to as 'the audit offices':

- Victorian Auditor-General's Office
- Audit Office of New South Wales
- Office of the Auditor General for Western Australia
- Northern Territory Auditor-General's Office
- Queensland Audit Office

The five offices support the AASB's efforts to provide additional guidance to not-for-profit public sector licensors to help preparers consistently and appropriately treat non-intellectual property licences that are not currently addressed in AASB 15 *Revenue from Contracts with Customers*. We encourage further consideration of the AASB's proposal for long-term licence arrangements, especially around determining performance obligations and the resulting timing of revenue. The attachment to this letter addresses the specific matters for comment outlined in the Exposure Draft.

We appreciate the opportunity to respond and trust that you find our comments useful.

Yours sincerely



Andrew Greaves

**Auditor-General, Victoria, and on behalf of
the Auditor-General, New South Wales
the Auditor-General, Western Australia
the Auditor-General, Northern Territory
the Auditor-General, Queensland**

ATTACHMENT 1 — Specific matters for comment

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

Yes, the audit offices agree to expanding the scope of AASB 15 to include non-contractual licences to help not-for-profit (NFP) public sector entities consistently identify and account for these 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, the audit offices are not aware of lease arrangements that arise from statutory arrangements rather than a contract.

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**
 - (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.**

Yes, the audit offices agree that the requirements set out in G10-G13 should apply to NFP public sector entities. The requirements for IP licences should be the same for NFP public sector entities and for FP entities to promote transaction neutrality.

However, the audit offices encourage the AASB to re-evaluate the analysis in the following examples:

- Whether the obligation of the licensor to provide exclusivity to the licensee and also actively have to undertake obligations that maintain the commerciality of the license arrangement, as highlighted in the casino licence example (Example 8), should be considered an active performance obligation. The audit offices consider such arrangements often create ongoing contractual obligations that must be sustained over the contracted licence period in order to maintain the commercial value of the license. These ongoing obligations of the licensor may include maintaining exclusivity (not allowing a new casino licence to be approved within a certain geographical distance from the licensee) and protective licence arrangements (such as agreeing not to introduce future legislation that would prohibit the licensee from operating a casino) and would ordinarily result under contractual terms in damages claims being made by the licensee if these were breached. There are also ongoing obligations on both the licensor and licensee around monitoring activities in respect of the licensee's operating compliance with contracted licence terms. In both cases these ongoing obligations are considered an integral commercial part of the arrangement. If the AASB agreed with this concept, paragraphs G17-G18 would also need to be revised to remove these from being 'features of the arrangement' and confirm they are indeed a substantive ongoing performance obligation.
- Paragraphs G15-G16 conclude that a fishing/abalone licence is highly interrelated with the promise to deliver the fish/abalone so that the licence and the linked goods or services are accounted for together as a single performance obligation. The audit offices question whether there is really a promise by the licensor to deliver the fish/abalone. It can be argued that the licensor only grants a licence to the licensee to do fishing and it is up to the licensee to do (or alternatively decide not to do) the fishing. It would also be helpful if the AASB provide further guidance on what the revenue recognition should be, especially if the licensor must continuously undertake certain activities in order to provide a good fishing experience to the licensee.

The audit offices note that the provided examples of the types of 'intellectual property' (IP) in AASB 15, paragraph B52 are private sector in nature and not generally applicable to the NFP public sector. To ensure consistent application and identification of NFP public sector IP and non-IP licences, the audit offices suggest additional NFP guidance and examples be included. For example, the treatment of licences for the 'use' of certain data or information, where the data or information is not fully identified or valued by the licensor.

Furthermore, the audit offices recommend additional guidance be provided in the standard to clarify the differences between 'rights over the licensor's identified assets', 'right to perform an activity', 'right to use' and 'right to access' as highlighted in ED 283.

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.**
- (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.**

Yes, the audit offices agree with the recognition exemptions proposed to provide relief to preparers in accounting for short-term or low-value licences. The audit offices believe the NFP public sector licensor's financial performance will still be faithfully represented, in all material respects, when applying these relief provisions.

To help apply these recognition exemptions, the audit offices recommend additional guidance be included as to what constitutes 'short-term' and 'low value', as these terms are not defined in AASB 15 or ED 283. The audit offices note in the Basis for Conclusions (paragraph BC74) that the AASB has proposed the practical expedient concepts of 'short term' and 'low value' from AASB 16 *Leases*. Although the 'short term' expedient may be appropriate, the audit offices suggest the guidance for 'low value' include 'types of licences' instead of a monetary threshold as more appropriate.

Further to this, the audit offices suggest the exemptions contained in paragraph 4, Aus. 8.1(a) be amended to state 'short-term licences; or' instead of 'short-term licences; and'.

5. In relation to licences issued by not-for-profit public sector licensors that are not intellectual property (IP) licences (i.e. 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.**
- (b) if not, as an alternative, do you believe the general guidance in AASB 15 should be amended to reflect for non-IP licences, 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 transaction neutral).**

The audit offices believe NFP public sector licensors will encounter practical implementation challenges in being able to reliably measure all variable consideration(s) in long-term licence arrangements; particularly if the only performance obligation is assessed as at the point of issuing the licence.

The audit offices therefore believe that the alternative of applying the guidance for sales-based or usage-based consideration royalties for IP licences should also be used for non-IP licences for NFP public sector entities.

If the AASB proceeds with the current proposals as is, with reference to provided Example 9, which recognises variable consideration upfront, the audit offices suggest additional guidance is needed to understand how the licensor accounts for the cost of its obligations under the licence arrangement.

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 (i.e. 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)

No, apart from licences for the 'use' of certain data or information, where the data or information is not fully identified or valued by the licensor, the audit offices are not aware of any non-IP licences issued by NFP public sector licensors that involve a non-identified asset or assets of the licensor.

The specific guidance in paragraphs B52-B63 of AASB 15 is useful to help account for these licences. However, the audit offices suggest further guidance to help apply these requirements, specifically around:

- the definition of the licence term, especially where there are options to extend licence terms
- the inter-relationship between, and potential differential outcome, of accounting for licences under AASB 15 from arrangements under AASB 1059 (e.g. licence for the use of data/information where the data/information is not valued by the licensor). This may occur where a licence type arrangement also includes the provision of services to the public.

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?

Yes, the audit offices agree the features outlined in paragraph G3 are useful to help determine a tax from a licence.

However, the audit offices suggest the AASB further explain the difference between "discretionary" and "compulsory" arrangements, including information on the nature of compulsion. For example, if the decision to enter into a licensing arrangement is considered discretionary in nature, it could be argued that the decision to enter into an arrangement that generates revenue that is subsequently taxed is also discretionary in nature. Therefore, to avoid paying a tax, an entity could use discretion to avoid the activity altogether. Also, greater clarity about the nature, context and applicability of the financial aspects of "primary purpose" would be valuable.

The audit offices also suggest consistent terminology be used for the terms 'payer' and 'payee' throughout this section and the remainder of ED 283. These terms are not used within AASB 15.

The audit offices further suggest consideration be given to permit type arrangements, where there are features of both 'licence' and 'tax' type arrangements and span across multiple financial years. For these arrangements, the audit offices consider it will be useful to include worked examples to explain these distinctions.

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?

Yes, the audit offices are aware of for-profit public sector licensors issuing non-IP licences. Some examples include:

- forest permits issued by state forestry corporations – for conducting research, hunting, filming, firewood collection, grazing and apiary. Revenue recognised over the contract term
- water access licence issued by state water corporations – to extract water from rivers or aquifers for irrigation, industrial or commercial purposes. Revenue is recognised on receipt
- licences required to perform work on or near electrical distribution networks – obtained from electricity generators to undertake contestable work. Revenue is recognised on receipt.

The audit offices believe the scope of ED 283 should be extended to for-profit public sector licensors in order to achieve consistency in the application of the requirements and promote comparability within and across sectors.

General Matters for comment

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?

Yes, the audit offices believes, overall, the framework was applied appropriately when developing the proposals in ED 283.

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?

The audit offices are not aware of any regulatory issues that may affect the implementation of the proposals in ED 283.

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

Yes, the audit offices believe the additional guidance will help NFP public sector entities treat non-IP licences consistently within and across jurisdictions.

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

The audit offices are not in a position to comment on whether these proposals are in the best interests of the Australian economy. Subject to the concerns raised above around ongoing performance obligations, the audit offices consider the proposals will help consistent treatment of IP and non-IP licences for the private and public sectors.

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.

The audit offices do not have any additional matters that have not already been provided above.