



<b>Project:</b>	AASB 1059 <i>Service Concession Arrangements: Grantors</i>	<b>Meeting:</b>	AASB June 2023 (M196)
<b>Topic:</b>	Staff's preliminary suggestions regarding the scope and control criteria of AASB 1059	<b>Agenda Item:</b>	5.3
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		<b>Project Priority:</b>	Medium
		<b>Decision-Making:</b>	Medium
		<b>Project Status:</b>	Analysing ITC feedback

## Objectives of this paper

- Based on the preliminary staff analysis and staff views noted in Agenda Paper 5.2, staff have identified some preliminary suggestions regarding the scope and control criteria of AASB 1059 *Service Concession Arrangement: Grantors*. The objectives of this paper are for the Board to:
  - consider** staff's preliminary suggestions on possible alternative scope and control criteria for determining whether an arrangement is a service concession (SC) arrangement and whether the grantor has control of an SC asset;
  - provide direction to staff** on the work needed to assist the Board's future decision on any modifications to the scope and control criteria of AASB 1059, including:
    - decide** whether to consult further with stakeholders before formulating staff recommendations; and
    - if so, **decide** the matters on which to consult stakeholders; and
  - decide** the next steps for the project.

## Introduction

- In Agenda Paper 5.2, among other staff views, staff formed a view that further input from stakeholders is needed before formulating staff recommendations on how to address stakeholder comments relating to the scope and control criteria of AASB 1059.
- In particular, staff think that it would be important to consult with stakeholders on whether they would prefer to apply alternative scope and control criteria for determining whether an arrangement is an SC arrangement and whether the grantor has control of an SC asset. Accordingly, this paper has been developed to assist Board members:
  - to identify matters relating to the scope and control criteria on which to consult key stakeholders; rather than
  - to form formal views on whether or how the requirements in AASB 1059 should be amended.
- The control criteria in AASB 1059 mirror the scope criteria in Interpretation 12 *Service Concession Arrangements* (which prescribes the accounting treatment for operators of SC

arrangements) and align with the control criteria in IPSAS 32 *Service Concession Arrangements: Grantors*. The following table outlines the scope and control criteria, where relevant, of AASB 1059, IPSAS 32 and Interpretation 12.

AASB 1059	IPSAS 32	Interpretation 12
<p><b>Scope criteria (AASB 1059 paragraph 2)</b></p> <p>This Standard shall be applied to service concession arrangements, which involve an operator:</p> <ul style="list-style-type: none"> <li>(a) providing public services related to a service concession asset on behalf of a grantor; and</li> <li>(b) managing at least some of those services under its own discretion, rather than at the direction of the grantor.</li> </ul> <p><b>Control criteria (AASB 1059 paragraph 5)</b></p> <p>The grantor shall recognise an asset provided by the operator and an upgrade to or a major component replacement for an existing asset of the grantor as a service concession asset if the grantor controls the asset. The grantor controls the asset if, and only if:</p> <ul style="list-style-type: none"> <li>(a) the grantor controls or regulates what services the operator must provide with the asset, to whom it must provide them, and at what price; and</li> <li>(b) the grantor controls – through ownership, beneficial entitlement or otherwise – any significant residual interest in the asset at the end of the term of the arrangement.</li> </ul>	<p><b>Scope criteria (IPSAS 32 paragraph 5)</b></p> <p>Arrangements within the scope of this Standard involve the operator providing public services related to the service concession asset on behalf of the grantor.</p> <p><b>Control criteria (IPSAS 32 paragraph 9)</b></p> <p>The grantor shall recognize an asset provided by the operator and an upgrade to an existing asset of the grantor as a service concession asset if:</p> <ul style="list-style-type: none"> <li>(a) The grantor controls or regulates what services the operator must provide with the asset, to whom it must provide them, and at what price; and</li> <li>(b) The grantor controls— through ownership, beneficial entitlement or otherwise— any significant residual interest in the asset at the end of the term of the arrangement.</li> </ul>	<p><b>Background (Int 12 paragraph 3)</b></p> <p>A feature of these service arrangements is the public service nature of the obligation undertaken by the operator. Public policy is for the services related to the infrastructure to be provided to the public, irrespective of the identity of the party that operates the services. The service arrangement contractually obliges the operator to provide the services to the public on behalf of the public sector entity. ...</p> <p><b>Scope criteria (Int 12 paragraphs 5 and 7)</b></p> <p>This Interpretation applies to public-to-private service concession arrangements if:</p> <ul style="list-style-type: none"> <li>(a) the grantor controls or regulates what services the operator must provide with the infrastructure, to whom it must provide them, and at what price; and</li> <li>(b) the grantor controls— through ownership, beneficial entitlement or otherwise— any significant residual interest in the infrastructure at the end of the term of the arrangement.</li> </ul> <p>This Interpretation applies to both:</p> <ul style="list-style-type: none"> <li>(a) infrastructure that the operator constructs or acquires from a third party for the purpose of the service arrangement; and</li> <li>(b) existing infrastructure to which the grantor gives the operator access for the purpose of the service arrangement.</li> </ul>

5. Adopting an alternative scope and control criteria would have the following main disadvantages:
  - (a) AASB 1059 would no longer be mirroring Interpretation 12 and may increase the number of arrangements with asymmetrical accounting results. However, staff observed that currently symmetrical accounting is not necessarily being achieved because the Board:
    - (i) added the “the operator managing at least some of the public services under its own discretion, rather than at the direction of the grantor” scope criterion in AASB 1059 paragraph 2(b), which is not a criterion needed for an operator to apply Interpretation 12;
    - (ii) included previously unrecognised identifiable intangible assets and land under roads as assets that could be considered SC assets, whereas Interpretation 12 applies only to infrastructure assets (without defining the term); and
    - (iii) scoped in public-to-public SC arrangements whereas Interpretation 12 applies only to public-to-private SC arrangements;
  - (b) moving further away from international alignment with other nations that apply IPSAS 32 – this would also be a significant disadvantage if the AASB was in the future to decide that public sector entities in Australia should follow IPSAS;
  - (c) a significant portion of the Standard would need to be rewritten;
  - (d) some arrangements not currently treated as service concession arrangements might now come within the scope of AASB 1059 instead of other Standards such as AASB 16 *Leases* or, in the case of privatisation or sale, AASB 15 *Revenue from Contracts with Customers*; and
  - (e) stakeholders would need to go through another implementation process to apply the new criteria, which could be onerous and costly.
6. Despite the disadvantages, staff consider there is merit in exploring alternative scope and control criteria because:
  - (a) based on the feedback received from stakeholders, applying the scope criteria in AASB 1059 and Interpretation 12’s ‘control and regulation’ approach has been challenging and is resulting in similar arrangements being accounted for differently due to the scope and control requirements being too prescriptive or rule-based or else problematic to apply in practice. In particular, stakeholders have challenges applying the following concepts:
    - (i) providing public services;
    - (ii) the operator managing at least some of the public services under its own discretion, rather than at the direction of the grantor;
    - (iii) the grantor controls or regulates what services the operator must provide with the asset, to whom it must provide them, and at what price; and
    - (iv) the grantor controls – through ownership, beneficial entitlement or otherwise – any significant residual interest in the asset at the end of the term of the arrangement.
  - (b) stakeholders commented that significant time, effort and judgement are needed to apply the scope and control criteria of AASB 1059. Accordingly, it would be beneficial to explore alternative criteria that would be easier to apply to reduce the costs and effort in applying the Standard;
  - (c) based on the staff analysis in Agenda Paper 5.2, significant work would be required for the Board to clarify the above concepts for stakeholders and staff are of the view that the

- boundaries of those prescriptive concepts would make it difficult to develop adequate clarification or guidance to address stakeholders' concerns;
- (d) the Board adopted the [Conceptual Framework for Financial Reporting](#) (the "Revised Conceptual Framework") for for-profit entities (including for-profit grantors) and is undertaking a project to consider how the Revised Conceptual Framework should be applied to not-for-profit (NFP) entities. This might be a good opportunity to consider whether the changes to the asset definition in the Revised Conceptual Framework might be adopted in AASB 1059 for all grantors; and
  - (e) from a workload perspective, even though adopting an alternative scope and control criteria would require a significant portion of the Standard to be rewritten, staff consider developing further guidance to clarify the current scope and control criteria as far as possible might not be much faster.

### Structure of this paper

7. To facilitate the Board's decision on the matters on which to consult stakeholders relating to the scope and control criteria of AASB 1059, this paper begins with an example of how the scope and control criteria in AASB 1059 might be modified based on the staff's preliminary views. Those staff preliminary modifications act as an anchor point in coming up with questions to ask stakeholders.
8. The agenda paper sets out the "staff suggestions" on the following issues:
  - 1 Simplify the intention of AASB 1059 by limiting the scope of AASB 1059 to arrangements where the operator provides an SC asset and describing the rights and obligations of the grantor and the operator in an SC arrangement
  - 2 Describe the grantor's present abilities in an SC arrangement instead of the current 'control and regulation' approach
  - 3 Omitting the term 'public service' and putting less emphasis (or none) on the operator's management of services
  - 4 Omitting the 'secondary asset' concept
  - 5 Clarify which entity is the grantor.
9. Each of the staff's preliminary suggested modifications to AASB 1059 is discussed in detail in a separate section of the paper. Each section includes:
  - (a) the staff rationale for suggesting the modification;
  - (b) draft questions for stakeholders; and
  - (c) questions for Board members related to (a) and (b).
10. At the June 2023 meeting, before discussing the staff's preliminary suggested modifications to the scope and control criteria in AASB 1059, staff plan to ask Board members Question 1, as follows.

#### **Question for Board members**

Q1: Do Board members agree with the staff view to consult with stakeholders before formulating staff recommendations regarding whether and, if so, how the scope and control criteria of AASB 1059 should be modified?

**Staff’s preliminary suggested modifications to the scope and control criteria**

- 11. The following table presents staff’s preliminary suggested modifications to the scope and control criteria of AASB 1059, as follows:
  - (a) Objective section – change the font of ‘service concession arrangement’ to indicate the removal of the definition in Appendix A of AASB 1059.
  - (b) Scope section – replace paragraphs 2 and 3 with new paragraphs 2–3A to describe the terms ‘service concession arrangement’ and ‘service concession asset’ and outline the rights and obligations of the grantor and the operator in an SC arrangement.
  - (c) Control section (under the ‘Recognition and measurement of service concession assets’ heading) – replace paragraphs 5 and 6 with new paragraphs 5–6B to set out the conditions that can be considered to determine whether the grantor has control over an SC asset.
- 12. Amended paragraphs are shown with deleted text struck through and new text underlined.

<b>Objective</b>	
1	The objective of this Standard is to prescribe the accounting for a <del>service concession arrangement</del> <u>service concession arrangement</u> by a grantor that is a public sector entity.
<b>Scope (paragraphs Bx–Bx)</b>	
<del>2</del>	<del>This Standard shall be applied to service concession arrangements, which involve an operator:</del>
	<del>(a) providing public services related to a service concession asset on behalf of a grantor; and</del>
	<del>(b) managing at least some of those services under its own discretion, rather than at the direction of the grantor.</del>
<del>3</del>	<del>Arrangements outside the scope of this Standard include those that do not involve the delivery of a public service, those where the operator manages the public services merely as an agent of the grantor, and those that involve service and management components where the asset is not controlled by the grantor as described in paragraph 5, or paragraph 6 for a whole of life asset.</del>
<u>2</u>	<u>For the purposes of this Standard, a service concession arrangement is a contract between a grantor and an operator, in which, among other rights and obligations:</u>
	<u>(a) the grantor has the right to determine the nature and key features of the service concession asset that the operator is obligated to provide (construction services);</u>
	<u>(b) the grantor is obligated to grant a right to access the service concession asset to the operator for a specified period of time (concession period);</u>
	<u>(c) throughout the concession period, the operator is obligated to maintain and operate the service concession asset (operation services) to provide services on behalf of the grantor to parties other than the grantor in accordance with the operating conditions determined by the grantor;</u>
	<u>(d) the operator is obligated to relinquish its right to access the service concession asset to the grantor at the end of the period of the arrangement and to ensure the asset is in the specified condition at that time; and</u>
	<u>(e) the grantor is obligated to compensate the operator for the construction services and the operation services.</u>
<u>3</u>	<u>For the purposes of paragraph 2, a service concession asset is one or more assets (other than goodwill) that are used or operated together by the operator to provide services on behalf of the grantor to parties other than the grantor. A service concession asset is one of the following types:</u>
	<u>(a) a new asset that the operator constructs or develops or acquires from a third party;</u>
	<u>(b) an existing asset of the operator; and</u>

- (c) an upgrade or replacement of major components of an existing asset of the grantor, and the existing asset of the grantor, which may include a previously unrecognised identifiable intangible asset and land under roads.

3A Arrangements outside the scope of this Standard include those where the operator is not obligated to provide a service concession asset or to provide services on behalf of the grantor to parties other than the grantor, and those where the grantor does not control the service concession asset in accordance with paragraphs 5 and 6.

## **Recognition and measurement of service concession assets (paragraphs Bx–Bx)**

~~5 The grantor shall recognise an asset provided by the operator and an upgrade to or a major component replacement for an existing asset of the grantor as a service concession asset if the grantor controls the asset. The grantor controls the asset if, and only if:~~

- ~~(a) the grantor controls or regulates what services the operator must provide with the asset, to whom it must provide them, and at what price; and~~
- ~~(b) the grantor controls through ownership, beneficial entitlement or otherwise any significant residual interest in the asset at the end of the term of the arrangement.~~

~~6 The grantor shall recognise an asset that will be used in a service concession arrangement for its entire economic life (a ‘whole of life’ asset) if the conditions in paragraph 5(a) are met. In this case, the condition in paragraph 5(b) is not relevant and therefore the grantor controls the whole of life asset if the conditions in paragraph 5(a) are met.~~

5 The grantor shall apply judgement in determining whether it controls a service concession asset. The grantor controls a service concession asset if it has the present ability to:

- (a) sell or pledge the service concession asset; and
- (b) direct the usage of the service concession asset either directly or indirectly through its agent.

6 The grantor’s control of the service concession asset includes its present ability to restrict another entity’s practical ability (i.e. without consent of the grantor) to sell, pledge or direct the usage of the service concession asset throughout the arrangement. For the purpose of this Standard, usage of a service concession asset includes, but is not limited to:

- (a) determining the nature and the key features of the asset;
- (b) determining the services to provide using the asset;
- (c) determining the operating conditions of the asset throughout the arrangement;
- (d) using the asset for a purpose not set out in the contract;
- (e) modifying or replacing the asset;
- (f) setting or changing the prices to charge for the services provided using the asset; and
- (g) transferring the right to direct the usage of the asset to another party.

6A In accordance with paragraph 2(c), in a service concession arrangement the operator is responsible for using the service concession asset to provide services to parties other than the grantor. For the purposes of paragraphs 5 and 6, the operator’s responsibility to provide services does not indicate the operator has the present ability to direct the usage of the service concession asset.

6B If an arrangement involves the operator providing more than one service concession asset that is physically separable and capable of being operated independently, the grantor shall assess each asset separately to determine whether it controls the asset in accordance with paragraphs 5 and 6.

## **Appendix A Defined terms**

<b>Service concession arrangement</b>	<p><del>A contract effective during the reporting period between a grantor and an operator in which:</del></p> <p><del>(a) the operator has the right of access to the service concession asset (or assets) to provide public services on behalf of the grantor for a specified period of time;</del></p>
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	<p>(b) <del>the operator is responsible for at least some of the management of the public services provided through the asset and does not act merely as an agent on behalf of the grantor; and</del></p> <p>(c) <del>the operator is compensated for its services over the period of the service concession arrangement.</del></p>
<p><b>[Note to Board members:</b> The timing of recognising an SC asset and the measurement requirements for an SC asset will be discussed at a future meeting.]</p>	

13. Staff's rationale for suggesting each of the draft paragraphs above is discussed in turn in a separate section of this paper.

**Staff suggestion 1: Simplify the intention of AASB 1059 by limiting the scope of AASB 1059 to arrangements where the operator provides an SC asset and describing the rights and obligations of the grantor and the operator in an SC arrangement (draft paragraph 2)**

15. As discussed in Issue 1 of Agenda Paper 5.2, staff consider there is merit in limiting the scope of AASB 1059 to arrangements where the operator is required to provide an SC asset, for example due to cost-benefit reasons.
16. However, cost-benefit is not the only reason why staff propose that scope limitation – it is also because the stakeholder feedback received on [ITC 49 Post-implementation Review of AASB 1059 Service Concession Arrangements](#): Grantors suggests that it is unclear what types of arrangements AASB 1059 is intended to capture. Staff observed that the intention is unclear for stakeholders due probably to a combination of the following:
  - (a) as noted in the Appendix to the Cover Memo (Agenda Paper 5.1), the genesis of AASB 1059 was to prescribe uniform accounting treatment for public-private partnerships (PPP), where the private sector designs the underlying asset based on the needs of the public sector entity, finances the construction of the asset, and maintains and operates the asset for an agreed period of time (AASB 1059 paragraph BC2). In this respect, staff observed that New Zealand seems to apply NZ PBE IPSAS 32 *Service Concession Arrangements: Grantors* only to PPP arrangements;
  - (b) AASB 1059 seems to attempt to distinguish SC arrangements and construction contracts with a service outsourcing arrangement. However:
    - (i) there does not appear to be a conceptual reason why the accounting for that type of arrangement and SC arrangements should differ since under both types of arrangements the reporting entity controls the underlying asset and is required to compensate the counterparty for the construction of the asset and the services it provides using the asset; and
    - (ii) the recognition and measurement requirements in AASB 1059 appear to imply that AASB 1059 is designed to capture an arrangement where both the construction of the SC asset and the subsequent service delivery using the SC asset are outsourced to the operator;
  - (c) the introduction of the condition in AASB 1059 paragraph 2(b) that the operator must “manage at least some of those services under its own discretion”, which is not a scope condition in Interpretation 12 or IPSAS 32; and
  - (d) it is unclear which services are to be considered ‘public services’.
17. Staff consider that since the main problem that the Board wanted to solve in developing AASB 1059 was to mitigate the risk that assets provided by a counterparty entity but controlled by the reporting entity and related liabilities were not being recognised (AASB 1059 paragraph BC5), staff consider that the scope of AASB 1059 should be limited to arrangements where (as outlined in the draft paragraph 2 in the box in paragraph 12 of this paper):
  - (a) the grantor has the right to determine the nature and key features of the service concession asset that the operator is obligated to provide (construction services);
  - (b) the grantor is obligated to grant a right to access the service concession asset to the operator for a specified period of time (concession period);
  - (c) throughout the concession period, the operator is obligated to maintain and operate the service concession asset (operation services) to provide services on behalf of the grantor to parties other than the grantor in accordance with the operating conditions determined by the grantor;

- (d) the operator is obligated to relinquish its right to access the service concession asset to the grantor at the end of the period of the arrangement and to ensure the asset is in the specified condition at that time; and
  - (e) the grantor is obligated to compensate the operator for the construction services and the operation services.
18. In respect of the condition noted in paragraph 17(a), staff observed that in an SC arrangement the grantor typically would have the right to determine the nature and key features of an SC asset. The grantor's present ability to determine those aspects of the SC asset would, in many cases, mean that the grantor has control of the services that the SC asset could be used to provide. This is because many SC assets only have a single use (e.g. a toll road).

**Questions for Board members**

Q2: Subject to the Board's decision in Issue 1 of Agenda Paper 5.2, do Board members have any comments on the drafting of paragraphs draft paragraphs 2–3A to limit the scope of AASB 1059 to arrangements where the operator is obligated to provide SC assets to the grantor in one or more of the forms specified?

Q3: For the purposes of identifying matters on which to consult stakeholders, do Board members have any comments on the rights and obligations of the grantor and the operator outlined in draft paragraph 2? Do Board members consider that the draft paragraph would clarify the type of arrangements that AASB 1059 is intended to capture?

**Staff suggestion 2: Describe the grantor’s present abilities in an SC arrangement instead of the current ‘control and regulation’ approach (draft paragraphs 2, 5 and 6)**

19. Staff suggest describing the grantor’s present abilities in an SC arrangement instead of the following terminology in the control criteria:
- (a) the grantor controls or regulates what services the operator must provide with the asset, to whom it must provide them, and at what price (AASB 1059 paragraph 5(a)); and
  - (b) the grantor controls – through ownership, beneficial entitlement or otherwise – any significant residual interest in the asset at the end of the term of the arrangement (AASB 1059 paragraph 5(b)).

***Staff’s rationale for making the suggestion***

20. Staff make the suggestion noted in paragraph 19 because staff observed:
- (a) as discussed in Agenda Paper 5.2, stakeholders commented that applying the conditions outlined in paragraph 19 required significant time, effort and judgement, and similar arrangements have been accounted for differently by jurisdictions;
  - (b) the Board long ago disagreed with the ‘control and regulation’ approach (in AASB 1059 paragraph 5(a)) for determining whether a grantor controls an SC asset in its responses to:
    - (i) the IASB throughout its development of IFRIC 12 *Service Concession Arrangements*;<sup>1</sup> and
    - (ii) the IPSASB throughout its development of IPSAS 32;<sup>2</sup>
  - (c) the Board adopted the ‘control and regulation’ approach in AASB 1059 not because the Board was completely satisfied with the conceptual merits of that approach, but because the other alternative approaches considered also had flaws and, on balance, the ‘control or regulation’ approach (adopted in Interpretation 12 for operators) was considered the most appropriate approach;<sup>3</sup> and
  - (d) the IASB (and AASB) introduced the concept of ‘an entity’s rights are assets’ in the Revised Conceptual Framework which may be useful in AASB 1059 for determining whether an asset is an SC asset.
21. In respect of the point noted in paragraph 20(a), in its submissions to the IASB and the IPSASB the Board expressed disagreement with the concept of a third party regulating the prices of the

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1 [Submission letter](#) (June 2005) on IFRIC D12 *Service Concession Arrangements – Determining the Accounting Model*, IFRIC D13 *Service Concession Arrangements – The Financial Asset Model* and IFRIC D14 *Service Concession Arrangements – The Intangible Asset Model*, and [submission letter](#) (November 2006) on IFRIC (Near Final) *Service Concession Arrangements – Determining the Accounting Model*.

2 [Submission letter](#) (October 2008) on IPSASB Consultation Paper *Accounting and Financial Reporting for Service Concession Arrangements*, and [submission letter](#) (July 2010) on IPSASB ED 43 *Service Concession Arrangements: Grantors*.

3 AASB 1059 paragraph BC26 states that adopting Interpretation 12’s ‘control and regulation’ approach would:

- (a) lead to greater consistency in the accounting requirements for the operator and the grantor because this approach would require both the operator and the grantor under an SC arrangement to apply the same principles in determining which party should recognise the asset in the arrangement; and therefore,
- (b) would reduce the possibility of an asset being recognised by both parties, or by neither party to the arrangement.

services being provided by an SC asset would indicate that the grantor has control of the prices. [Appendix A](#) to this paper includes a high-level overview of:

- (a) the Board's views on the 'control and regulation' approach when responding to the IASB on the development of IFRIC 12; and
  - (b) the views of the Board's Interpretation Advisory Panel (the Panel), established in 2007, to consider the accounting requirements for public sector grantors of SC arrangements and develop recommendations for the Board's consideration.
22. The Board noted in its [submission](#) to the IPSASB on its ED 43 *Service Concession Arrangements: Grantors* that adopting the 'control and regulation' approach could lead to significant SC assets not being recognised by either the operator or the grantor. The Board noted in that submission that public sector entities in Australia "are likely to conclude that independent regulators should not be factored into assessing the control or regulation specified in the grantor control criteria. This potentially will result in inconsistent accounting between the grantor and the operator since from the operator's perspective the nature of the source of regulation is irrelevant. This may result in significant service concession assets not being recognised by either the operator or the grantor."
23. Stakeholders' comments received on ITC 49 confirm that certain SC assets are not being recognised by the grantor or the operator. This seems to be due to the scope and control requirements in AASB 1059 being too prescriptive. Therefore, staff consider merit in exploring an alternative less-prescriptive approach to the 'control and regulation' approach for determining whether a grantor controls an SC asset.
24. Staff observed that the Panel considered another approach that was not specifically discussed in the Basis for Conclusions for AASB 1059. That approach was the 'pure' control approach – consider whether the grantor controls the SC asset based on the definition of an asset in the [Framework for the Preparation and Presentation of Financial Statements](#), which refers to a resource controlled by the entity as a result of past events and from which future economic benefits are expected to flow to the entity (paragraph 49).
25. Staff consider that the changes made in the Revised Conceptual Framework, which include the concept that assets are rights that have the potential to produce economic benefits for an entity may be adopted instead of the 'control and regulation' approach.
26. It is important to note that the staff's suggested approach is different from the 'rights and obligations' approach rejected by the Board. Staff's suggested 'pure' control approach would focus on a grantor's present ability, rather than requiring the grantor to also assess the operator's rights and obligations.

### ***Rights as assets under the Revised Conceptual Framework***

27. The Revised Conceptual Framework states the following:
- (a) an asset is a present economic resource controlled by the entity as a result of past events. An economic resource is a **right** that has the potential to produce economic benefits (paragraphs 4.3 and 4.4, emphasis added);
  - (b) not all of an entity's rights are assets – the rights must have both the potential to produce for the entity economic benefits greater than those available to other entities and be controlled by the entity (paragraph 4.9);
  - (c) in principle, each of an entity's rights is a separate asset. However, for accounting purposes, related rights are often treated as a single unit of account that is a single asset. For example, legal ownership of a physical object may give rise to several rights, including:

- (i) the right to use the object;
  - (ii) the right to sell rights over the object; and
  - (iii) the right to pledge rights over the object (paragraph 4.11);
- (d) an entity controls an economic resource if it has the present ability to direct the use of the economic resource and obtain the economic benefits that may flow from it (paragraph 4.20). An entity has the **present ability** to direct the use of an economic resource if it has the right to deploy that economic resource in its activities, or **to allow another party to deploy the economic resource in that other party's activities** (paragraph 4.21);
- (e) control includes **the present ability to prevent other parties from directing the use of the economic resource and from obtaining the economic benefits that may flow from it** (paragraph 4.20, emphasis added);
- (f) if one party controls an economic resource, no other party controls that resource (paragraph 4.20); and
- (g) a liability is a **present obligation** of the entity to transfer an economic resource as a result of past events (paragraph 4.26).

#### ***Applying the Revised Conceptual Framework's asset and liability definitions to SC arrangements***

28. In paragraph 4.11 of the [Interpretation Advisory Panel's report](#) to the Board (December 2007), the Panel outlined for the Board's consideration some indicators of whether the asset underlying an SC arrangement is controlled by the operator or by the grantor under the 'pure' control approach based on the [Framework for the Preparation and Presentation of Financial Statements](#) (which is expected to be replaced in due course for NFP entities). Those indicators are:
- (a) whether the arrangement enables the grantor to specify significant operating policies and procedures with respect to the SC asset;
  - (b) whether the arrangement precludes or significantly restricts the operator from using the SC asset for other purposes;
  - (c) whether the arrangement precludes the operator from using other assets to fulfil its public service obligations in the arrangement;
  - (d) whether the arrangement precludes or significantly restricts the operator from providing services to other parties;
  - (e) whether the arrangement specifies the maintenance program with respect to the SC asset;
  - (f) whether the arrangement precludes the operator from modifying or replacing the SC asset without the consent of the grantor; and
  - (g) whether the arrangement precludes the operator from selling or transferring the SC asset (and the service obligation) without the consent of the grantor.
29. Staff wrote the draft paragraphs 2, 5 and 6 (in the box in paragraph 12 of this paper) taking into account the above indicators, but re-expressing them as 'rights' (and 'present ability') and 'obligations' of the grantor and the operator – to use the language in the Revised Conceptual Framework.

### **Testing staff's preliminary suggested scope and control criteria**

30. [Appendix B](#) to this paper includes staff's preliminary assessment of the draft scope and control criteria against some of the examples included in AASB 1059. Based on that preliminary assessment, staff are of the view that:
- (a) the draft criteria appear to be easier to apply and more effective in distinguishing SC arrangements from leases or privatisation arrangements; but
  - (b) outsourcing arrangements where the service provider also provides the underlying asset would likely be scoped into AASB 1059. However, the accounting effect of scoping in such arrangements would be minimal because the public sector entity controls (and therefore already recognises) the asset being used in an outsourcing arrangement. In such outsourcing arrangements, the reporting entity would be obligated to pay an agreed amount to the counterparty for the construction work, which would have a similar accounting result as the financial liability approach in AASB 1059.

#### **Question for Board members**

Q4: For the purpose of exploring possible alternative control criteria, do Board members agree with the staff's suggestion to reconsider the 'pure' control approach to set out the rights and present ability of the grantor using the control concept in the Revised Conceptual Framework? If not, what alternative approach would Board members recommend?

### **Questions for stakeholders**

31. In respect of Staff Suggestions 1 and 2, regarding the draft paragraphs 2–3A and 5–6A, staff plan to ask stakeholders the following questions.
- (a) Do you agree with the staff's view that the scope of AASB 1059 should be limited to arrangements where the operator is required to provide an SC asset (draft paragraphs 2 and 3)?
  - (b) Do you have significant concerns with replacing the current scope requirements with the draft paragraph 2? Do you consider the draft paragraph 2 would make it clearer than the current requirements which arrangements are within the scope of AASB 1059?
  - (c) Do you agree with the staff's view that, in an SC arrangement, the grantor has the right to determine the nature and key features of the SC asset (draft paragraph 2(a))?
  - (d) In respect of the draft paragraphs 5–6A, which would require the grantor to consider whether it has the present ability to direct the usage of the SC asset and to restrict the operator's usage of the SC asset:
    - (i) Do you agree with replacing the current control criteria in AASB 1059 paragraphs 5 and 6 with the staff's draft paragraphs 6–6A? Do you have any significant concerns with replacing the current control requirements?
    - (ii) AASB 1059 paragraph 5 is prescriptive in setting out the conditions that need to be met for the grantor to conclude (with judgement) whether it controls an SC asset. In contrast, the staff draft paragraphs 5 and 6 requires the grantor to apply judgement based on a list of factors that would indicate control. Do you agree with the less-prescriptive approach?
    - (iii) Irrespective of whether you prefer a prescriptive approach, do you consider that all of the conditions outlined in subparagraphs (a)–(g) of the staff's draft paragraph 6 need to be met for the grantor to conclude that it has control of an SC asset? If you think that only a few of the conditions are needed to be met to draw a conclusion, which conditions are they, and why?

- (iv) Are there any other factors not included in the draft paragraphs 2, 5 and 6 that you think would be helpful in determining which arrangements are SC arrangements or for determining whether the grantor controls an SC asset?
- (e) The staff's draft scope and control criteria would likely lead to certain outsourcing arrangements being scoped into AASB 1059, where the service provider also provides the underlying asset. Staff are of the view that, in most outsourcing arrangements, the public sector entity already recognises the asset on its statement of financial position, and therefore scoping in such outsourcing arrangements in AASB 1059 would be unlikely to have a significant effect on the reporting entity (other than the requirement to remeasure such SC asset at its current replacement cost on the transition to AASB 1059, which issue the Board is expecting to consider at a future meeting). Some stakeholders indicated that scoping out arrangements where the operator is not required to provide an SC asset would be a favourable change.

Roughly how many arrangements in your jurisdiction would be affected if the draft paragraphs 2–3A and 5–6A are adopted? In your response, please explain:

- (i) the number or extent of arrangements currently outside the scope of AASB 1059 that would be scoped into the Standard, and the key terms and conditions of those arrangements that lead to the change. Please explain whether scoping in those arrangements would be considered a favourable outcome; and
- (ii) the number or extent of arrangements currently within the scope of AASB 1059 that would be scoped out of the Standard, and the key terms and conditions of those arrangements that lead to the change. Please explain whether scoping out those arrangements would be considered a favourable outcome.
- (f) In your opinion, would applying alternative scope and control criteria to the requirements in AASB 1059 paragraphs 2 and 5 be onerous and costly? How would you describe the time, cost and effort needed to apply the staff's draft modified paragraphs compared with the current scope and control requirements?
- (g) In your opinion, would the staff's draft modified paragraphs assist in distinguishing SC arrangements from other arrangements (e.g. privatisation and leases)?
- (h) What is your preference:
  - (i) retaining the scope and control criteria in AASB 1059 paragraphs 2 and 5 without significant changes to the concepts underlying those paragraphs, and for the AASB to develop further guidance related to those concepts;
  - (ii) adopting the staff's preliminary suggested scope and control criteria in the draft modified paragraphs; or
  - (iii) adopting other alternative scope and control criteria (please include detailed explanation of that alternative)?

#### **Question for Board members**

Q5: For the purposes of identifying matters on which to consult stakeholders, in respect of the staff's draft paragraphs 5–6A, do Board members have comments on:

- (a) the staff's suggestion to explore a less-prescriptive approach for the grantor to apply judgement in determining whether it controls an SC asset?
- (b) the list of conditions associated with the usage of an SC asset? Are there any other conditions needed to be added for the purpose of consulting with stakeholders?
- (c) the proposed questions for stakeholders? Are there any other questions Board members would ask stakeholders?

**Staff suggestion 3: Omitting the term ‘public service’ and putting less emphasis (or none) on the operator’s management of services (draft paragraphs 2, 3 and 6A)**

- 32. As discussed in Issue 3 of Agenda Paper 5.2, stakeholders commented that the consideration of whether an arrangement provides public services has resulted in significant costs.
- 33. S2–ACAG and S5–HoTARAC commented that they have considered the following possible solution in addressing concerns around the ‘public service’ criterion.

Possible solution	Stakeholder and staff comment
(a) Removing the ‘public service’ criterion from the scoping requirement.	Both S2–ACAG and S5–HoTARAC commented that, at this stage, they would not support removing ‘public service’ from the scoping criteria because the effect of such a change would need to be evaluated as it may result in arrangements that are not currently in scope being considered in scope.
(b) Developing a definition for ‘public service’	S2–ACAG, S3–PwC and S5–HoTARAC support not defining ‘public service’ in AASB 1059.  Consistent with the Board’s conclusion following the Exposure Draft process, staff continue to think that any definition of public service would result in different interpretation issues.
(c) Specify in AASB 1059 a use of an asset by a public sector entity is presumed to be ‘public service’ and outline the circumstances of when that presumption can be rebutted	S5–HoTARAC commented that “applying such a presumption would result in more prescriptive outcomes based on form rather than the substance of the arrangement ... Such a presumption would also not be appropriate to apply to arrangements that exist between two entities within the same jurisdiction.”  Staff agree with HoTARAC’s comments. Staff consider that circumstances indicating the rebuttal of the presumption that an asset is being used to provide a public service would be subject to similar interpretations as the current guidance. Adopting such a rebuttable presumption might make the distinction between SC arrangements and privatised arrangements more difficult.
(d) Providing and ranking indicators that would suggest an SC asset is being used to provide a public service	Five of the six ITC respondents <sup>4</sup> and most roundtable participants requested the Board to consider providing further guidance on public service.  Some of those stakeholders, including S3–PwC and S5–HoTARAC, suggested the Board consider outlining pre-requisites, indicators and other considerations that need to be judged collectively to identify whether an arrangement involves the provision of public service, which would provide some ranking to the guidance. <sup>5</sup>

4 S1–GCHHS, S2–ACAG, S3–PwC, S5–HoTARAC and S6–Deloitte

5 In AASB 2022-9 *Amendments to Australian Accounting Standards – Insurance Contracts in the Public Sector*, the Board added pre-requisites, indicators and other considerations to AASB 17 *Insurance Contracts* that

34. Of the four possible solutions considered by stakeholders, staff prefer omitting the term ‘public service’ in AASB 1059, and instead use the phrase ‘provide services on behalf of the grantor to parties other than the grantor’ (in the draft paragraphs 2, 3 and 6A). Staff consider that whether the nature of the arrangement is to provide public services should not affect the assessment of whether an arrangement is an SC arrangement, if all of the following conditions are satisfied:
- (a) the operator is obligated to provide the SC asset, to maintain and operate the asset and to relinquish its right to access the SC asset at the end of the arrangement; and
  - (b) the grantor controls the SC asset and is obligated to compensate the operator for the construction and operation services.
35. However, in light of the comments from ACAG and HoTARAC that, at this stage, they would not support removing ‘public service’ from the scope criteria because the effect of such a change would need to be evaluated, staff consider that it would be beneficial to get further input from them on the following possible options:
- (a) omitting the term ‘public service’;
  - (b) introducing a general description of ‘public service’ in the Standard; and
  - (c) specifying factors in AASB 1059 that can be judged together to determine whether a grantor controls an SC asset.
36. Additionally, in writing the draft paragraphs 2 and 5–6A – to describe the rights and obligations of the grantor and the operator in an SC arrangement – staff omitted the concept of “the operator managing at least some of those services under its own discretion” referred to in AASB 1059 paragraph 2(b). This is because staff observed that:
- (a) stakeholders commented that this is a difficult concept to apply;
  - (b) the operator ‘managing at least some of those services under its own discretion rather than at the direction of the grantor’ is only one aspect of an SC arrangement, and it does not appear to be a strong indicator in distinguishing SC arrangements from other arrangements; and
  - (c) the extent of the operator’s management of the services should not be a key factor in determining whether an arrangement is an SC arrangement. Rather, the key factors should be that the operator is obligated to do all of the following:
    - (i) provide an SC asset;
    - (ii) use the SC asset for an agreed period of time in accordance with the operating conditions determined by the grantor; and
    - (iii) relinquish the right to access the SC asset to the grantor at the end of the period of the arrangement and to ensure the asset is in the specified condition at that time.

### ***Questions for stakeholders***

37. Staff plan to ask stakeholders the following questions regarding ‘public service’:
- (a) Do you consider ‘public service’ an effective criterion to apply in distinguishing SC arrangements from other arrangements (e.g. privatisation and leases)?
  - (b) Do you have significant concerns with the staff’s preliminary suggestion to omit the concept of ‘public service’ from AASB 1059, including omitting it from the scope criteria?

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need to be judged collectively to identify which arrangements fall within the scope of the Standard in a public sector context.

- (c) If the term 'public service' is retained in the scope requirements of AASB 1059, do you prefer the Standard to:
- (i) include a general description of public service (see Question (d)); or
  - (ii) include pre-requisites, indicators and other considerations that need to be judged collectively to identify whether an arrangement involves the provision of public service (see Question (e))?

- (d) If the term 'public service' is retained in the scope requirements of AASB 1059, do you agree with the following suggested description for the term? If not, what alternative description would you suggest?

"For the purpose of this Standard, a public service is a service provided to parties other than the grantor in accordance with the objectives and responsibilities set out in enabling legislation or other government policies governing the grantor or the grantor's agent. An asset that provides multiple services is deemed to be providing public services if one or more of the services it provides is in line with the objectives and responsibilities set out in the legislation and policies to provide services to the community (or a subset thereof)."

**[Note to Board members:**

The above suggested description for the term 'public service' is derived from the HoTARAC comment that "whether something is a 'public service' should follow from the government policy that is specific to the relevant jurisdiction and considers changes in this policy over time."

The latter part of the staff's suggested description is designed to address stakeholders' comments that:

- (i) some assets provide multiple services and not all services are considered public services; and
- (ii) some assets are partly used for internal purposes.]

- (e) If the term 'public service' is retained in the scope requirements of AASB 1059, would you support an approach of ranking various factors to be judged collectively to identify whether an arrangement involves the provision of public services? For example, the current guidance in paragraphs B6–B8 of AASB 1059 could be ranked according to the importance of the factors in the assessment of whether an asset provides public service. This includes:

- (i) Are the services provided by the asset necessary or essential to the general public? (AASB 1059 paragraph B6)
- (ii) Are the services generally expected to be provided by a public sector entity? (AASB 1059 paragraph B6)
- (iii) If the asset provides ancillary services, how significant are those services to the arrangement? (AASB 1059 paragraph B6)
- (iv) In the case of a secondary asset, is the asset constructed at the same time? (AASB 1059 paragraph B7)
- (v) Are the services used wholly internally by a public sector entity for the purpose of assisting the grantor in delivering public services to domestic residents? (AASB 1059 paragraph B8)

Other factors that could be considered include:

- (vi) To what extent is the asset used for commercial purposes (for example, would it be uneconomic for a private sector to provide those services at the prices that can be charged to the public)?
- (vii) Does the grantor subsidise the running cost of the asset in any form (for example, via the provision of land or other assets at no charge)?
- (viii) Would the government be required to step in if the services were not provided by private sector entities?
- (ix) Are the profits of the secondary asset being used to subsidise the cost of the public service provided by the primary asset?
- (x) Does the operator receive subsidies from the grantor (or the government to which the grantor belongs) in relation to the provision of services using the SC asset?

Which of the above factors would you classify as pre-requisites, indicators or other considerations? In your opinion, are any of the above factors inappropriate for determining whether an asset is being used to provide public service? Are there any other factors that you think would be useful for determining whether an asset is being used to provide public services? If so, please explain those factors and how you would classify them.

**[Note to Board members: S3–PwC suggested the factors in (i)–(ix).]**

- (f) Some stakeholders requested the Board to clarify whether maintenance of an SC asset is considered to be ‘public service’. Irrespective of your preference about retaining the concept of public service in AASB 1059 (see questions below), do you have any comments on the below draft guidance relating to the maintenance of SC assets?

**Provide services to parties other than the grantor**

B1 For the purposes of paragraphs 2 and 6A, if an arrangement requires the operator to undertake an activity (or activities) that would not have a direct, significant effect on the services being delivered to the service recipients, that activity may be considered a service provided to the grantor rather than a service provided to other parties. For example, cleaning and minor maintenance activities are unlikely to have a significant effect on the delivery of or the quality of the services being provided by the asset and thus would not significantly affect the recipient of the services. However, maintenance that is necessary to ensure an asset continues to meet the grantor’s required operating conditions that have a significant effect on the delivery of services to the recipient is considered a service provided to parties other than the grantor.

- (g) As noted in the draft paragraph 6A, staff are of the view that the operator’s responsibility to provide services using the SC asset does not indicate the operator has the present ability to direct the usage of the service concession asset. Do you agree with this view? Do you have significant concerns if the concept of “the operator managing at least some of those services under its own discretion” referred to in AASB 1059 paragraph 2(b) is omitted from the scope criteria?

**Questions for Board members**

Q6: Do Board members agree with asking stakeholders for input on the following possible options:

- (a) omitting the term ‘public service’;

- (b) introducing a general description of 'public service' in the Standard; and
- (c) specifying factors in AASB 1059 that can be judged together to determine whether a grantor controls an SC asset?

Q7: For the purposes of identifying matters on which to consult stakeholders, do Board members have any comments on:

- (a) the staff's preliminary description for the term 'public service' noted in paragraph 37(d)?
- (b) the staff's view regarding maintenance and the concept of "the operator providing services to parties other than the grantor" in the draft paragraph B1?
- (c) the staff's preliminary suggestion to omit the concept of "the operator managing at least some of those services under its own discretion" from AASB 1059?
- (d) the proposed questions for stakeholders? Are there any other questions Board members would ask stakeholders?

#### **Staff suggestion 4: Omitting the 'secondary asset' concept (draft paragraph 6B)**

##### ***Stakeholder comments relating to secondary assets***

38. A secondary asset is an asset used or mainly used to complement the primary asset through which public services are principally provided (AASB 1059, paragraph B7).
39. Further to the stakeholder comments related to 'public service' discussed in Issue 3 of Agenda Paper 5.2, S2-ACAG and S5-HoTARAC commented that entities have spent considerable time and effort in considering whether a secondary asset is within the scope of AASB 1059. The issues are mainly related to student accommodation and hospital car parks, which are the examples included in paragraph B7. They noted the following problem areas:
- (a) the secondary asset being built at a different time to that of the primary asset. Paragraph B7 introduces guidance that if the secondary asset is constructed at a different time to the primary asset, then the secondary asset may not be an SC asset. The guidance does not explain how a different construction time affects the characteristics of an SC asset and the underlying control criteria of AASB 1059. S2-ACAG commented that jurisdictions have encountered various time periods involving car parks being constructed after the initial SC asset, varying from a few months to decades. ACAG requests the Board to provide an explanation of how the time period from original construction would affect the control criteria of AASB 1059 and explain how long a period it had in mind for the secondary asset to be an SC asset;
  - (b) it is unclear whether the primary asset needs to be an SC asset for a secondary asset to be within the scope of AASB 1059. ACAG jurisdictions have encountered student accommodation and hospital car parks where the primary asset (the university facilities or hospital facilities) is not subject to an SC arrangement (not meeting the scoping criteria in AASB 1059) or a public-private partnership;
  - (c) where the primary asset is an SC asset, it is unclear whether the primary asset needs to be:
    - (i) part of the same arrangement as the secondary asset; or
    - (ii) owned or controlled by the same entity that is the grantor of the secondary asset;
  - (d) there is ambiguity in determining the term 'largely' (in the phrases 'largely provides public services' and 'largely of a commercial nature' in paragraph B7) to assess whether an arrangement is of a commercial nature. Jurisdictions considered various factors to determine whether the arrangement is of a largely commercial nature, such as:
    - (i) the university's / grantor's control in setting prices for student accommodation;
    - (ii) the ability of the operator to let out apartments to the general public when the demand for student accommodation from students is low; and
    - (iii) the length of time for which the operator could let out the apartments (for example, where the apartments were required to be vacated before the start of the academic year, thus limiting the ability of the operator to let out apartments).
40. S5-HoTARAC suggested the Board either clarify or remove the concept of 'secondary assets' from AASB 1059 because they find the guidance on this concept limited and confusing. HoTARAC's preferred option is to remove the concept of secondary asset. Most of the assets held by jurisdictions to which this concept could possibly apply, e.g. car parks, have been determined to be providing a public service in their own right. Therefore, in many instances, entities would achieve the same accounting outcome with and without applying the secondary asset concept in the Standard.

41. S5–HoTARAC also commented that in an arrangement between a grantor and an operator for a hospital car park that is largely for staff use, or where there is a physically distinct section of the car park reserved for staff use, it is unclear whether the car park or the staff section should be considered a secondary asset according to AASB 1059 paragraph B7 or an outsourcing arrangement according to AASB 1059 paragraph B8. Their view is that staff car parking assists the public sector entity to deliver public services and should be treated under paragraph B8.

**Staff analysis**

- 42. As noted in paragraph 34, staff consider that whether the nature of the asset is to provide public services should not affect the conclusion of whether an arrangement is an SC arrangement.
- 43. Additionally, with respect to the comments by stakeholders on secondary assets, staff are of the preliminary view that:
  - (a) when the secondary asset is built at a different time to the primary asset – the timing of the construction is irrelevant to the determination of whether the contract for an operator to construct a secondary asset is an SC arrangement;
  - (b) whether the primary asset needs to be part of the arrangement as the secondary asset or controlled by the grantor of the secondary asset – each contract and each asset should be assessed separately based on the scope and control criteria of the Standard;
  - (c) whether a secondary asset is largely commercial in nature – staff observed that permitting the operator to generate a commercial return on the delivery of services is one way that public sector entities attract an operator to take on an SC arrangement (to support a government’s service delivery objectives). Staff consider that this alone does not necessarily indicate that such assets are not being used to provide public services or to provide services on behalf of the grantor for the purposes of serving the community.

**Questions for respondents**

- 44. Accordingly, staff is of the preliminary view that the secondary asset concept should be omitted. Staff plan to ask stakeholders the following questions:
  - (a) Draft paragraph 6B is designed to omit the ‘secondary asset’ concept in AASB 1059. That paragraph states:

If an arrangement involves the operator providing more than one service concession asset that is physically separable and capable of being operated independently, the grantor shall assess each asset separately to determine whether it controls the asset in accordance with paragraphs 5 and 6.

Do you agree with the staff's view to omit the ‘secondary asset’ concept in AASB 1059?  
Please explain any significant concerns regarding this approach.
  - (b) Do you have any comments on the draft paragraph 6B?

**Question for Board members**

Q8: For the purposes of identifying matters on which to consult stakeholders, do Board members:

- (a) agree with the staff view to explore the possibility of omitting the ‘secondary asset’ concept in AASB 1059? If so, do Board members have any comments on the draft paragraph 6B?
- (b) have any comments on the proposed questions for stakeholders? Are there any other questions Board members would ask stakeholders?

**Staff suggestion 5: Clarify which entity is the grantor (draft paragraph 5(b))**

- 45. In respect of arrangements where multiple entities are involved, as discussed in Issue 2 of Agenda Paper 5.2, staff formed a preliminary view that:
  - (a) the grantor of the arrangement is the entity that has the present ability to restrict another party’s practical ability to sell or pledge the SC asset throughout the SC arrangement;
  - (b) if the grantor does not have the legislative power to control the services to be provided by the SC asset because that power lies with another entity controlled by the same government, the entity (or entities) controlling the services is acting as an agent of the grantor, despite the grantor not having the legislative responsibilities or power to control or deliver the relevant services;
  - (c) the grantor may satisfy the control criteria if the grantor’s agent has the present ability to direct the usage of the SC asset throughout the SC arrangement; and
  - (d) it would be beneficial to set out in AASB 1059 the accounting and disclosure requirements for the grantor and its agent.
- 46. Accordingly, staff suggest adding application guidance and requirements in AASB 1059 (included in the questions for stakeholders below) to clarify this issue and specifying in the draft paragraph 5(b) that “... The grantor controls a service concession asset if it has the present ability to ... (b) direct the usage of the service concession asset **either directly or indirectly through its agent ...**” [emphasis added]

**Questions for stakeholders**

- 47. Subject to the Board’s decision in Issue 2 of Agenda Paper 5.2, staff plan to ask stakeholders the following questions:
  - (a) Some respondents to ITC 49 commented that sometimes the holder of an SC asset may not have the legislative power to use or operate the asset and requested the Board to provide guidance on how to identify the grantor of the arrangement in this situation. AASB staff considered the issue and suggest including the following application guidance in AASB 1059. Do you have any comments or concerns regarding the draft application guidance (paragraphs B2 and B3)?

**Identifying the grantor and the grantor’s agent (paragraph 5(b))**

B2 An entity may have the legislative power to hold an asset without any legal right to use or operate the asset, with the legal right to use the asset vested in another entity controlled by the same government that controls the grantor. In this case:

- (a) the grantor of the arrangement is the entity that has the present ability to sell or pledge the service concession asset, including the present ability to restrict another party’s practical ability to sell or pledge the asset throughout the term of the SC arrangement; and
- (b) the entity that has the legal right to use the service concession asset is acting as an agent of the grantor.

B3 In the circumstances described in paragraph B2, for the purposes of paragraphs 5 and 6, the grantor is deemed to control the service concession asset if the agent, through its legislative power, has the present ability to direct the usage of the asset throughout the service concession arrangement, including having the present ability to restrict the operator’s practical ability to direct the usage of the asset without its consent.

- (b) Staff consider that it would be beneficial to specify the accounting and disclosure requirements for both the grantor and the agent. Staff consider that in the situation described in paragraph B2, the agent's role in an SC arrangement is similar to a government department's role in administering a function or asset on behalf of the government, as described in AASB 1050 *Administered Items*. Therefore, staff are of the preliminary view that the agent should be required:
- (i) to not recognise assets, liabilities, income and expenses associated with the SC arrangement attributable to the grantor in its own financial statements; and
  - (ii) to disclose the assets, liabilities, income and expenses associated with the SC arrangement that it manages on behalf of the grantor in the notes to its financial statements.

Accordingly, staff suggest the following draft requirements set out below as paragraph B4.

Do you have any comments or concerns with the suggested requirements? If you disagree with the suggestion to apply the administered items concept for the agent, do you consider it appropriate for the agent to apply the accounting requirements in AASB 15 *Revenue from Contracts with Customers*, which may require the agent to recognise assets, liabilities, income and expenses, at least temporarily, related to an SC arrangement? Do you have any alternative suggestions?

**Additional disclosure requirements for the grantor and its agent**

B4 In the circumstances described in paragraph B2:

- (a) the grantor shall recognise the service concession asset, other assets, liabilities, income and expenses associated with the SC arrangement, including assets and liabilities being managed by its agent, in accordance with this Standard, and disclose in the notes to its financial statements:
  - (i) the fact that the legislative power to use the service concession asset is vested with another entity in the same jurisdiction that is acting as its agent in the service concession arrangement;
  - (ii) the name of the agent; and
  - (iii) the agent's key responsibilities and obligations associated with the service concession arrangement.
- (b) the agent shall not recognise in its financial statements any assets, liabilities, income or expenses associated with the SC arrangement that are attributable to the grantor. The agent shall disclose the following in the notes to its financial statements:
  - (i) the fact that it is acting as an agent of the grantor;
  - (ii) the name of the grantor;
  - (iii) its key responsibilities and obligations associated with the service concession arrangement;
  - (iv) income for the reporting period arising from the service concession arrangement, showing separately the amounts attributable to the grantor and the agent;
  - (v) expenses for the reporting period arising from the service concession arrangement, showing separately the amounts attributable to the grantor and the agent; and

- (vi) assets (other than the service concession asset) and liabilities arising from the service concession arrangement it manages on behalf of the grantor, showing separately each major class of asset and liability.

**Questions for Board members**

Q9: Subject to the Board's decision in Issue 2 of Agenda Paper 5.2, do Board members have any comments on the draft application guidance in the draft paragraphs B2 and B3?

Q10: For the purposes of identifying matters on which to consult stakeholders, do Board members:

- (a) agree with exploring the accounting and disclosure requirements of the grantor and its agent? If so, do Board members have any comments on the staff's proposed requirements in the draft paragraph B4?
- (b) have any comments on the proposed questions for stakeholders? Are there any other questions Board members would ask stakeholders?

### **Staff's proposed next steps**

48. Subject to the Board's agreement for staff to consult with stakeholders to obtain further input relating to the scope of AASB 1059, staff propose the following next steps for the project:
- (a) Circulate a staff paper to the ITC respondents who provided significant comments on the scope and control criteria of AASB 1059: S2-ACAG, S3-PwC and S5-HoTARAC, to request input on the staff preliminary views and suggestions discussed in this paper.
  - (b) Staff to:
    - (i) analyse stakeholder feedback obtained through (a) regarding the scope and control criteria of AASB 1059;
    - (ii) analyse the remaining feedback received on ITC 49 regarding the recognition and measurement requirements of AASB 1059; and
    - (iii) formulate staff recommendations.
  - (c) The Board to consider stakeholder feedback and staff recommendations and decide on any modifications to AASB 1059.
  - (d) Based on the Board's decisions in (c), staff to prepare a draft Exposure Draft and draft Feedback Statement for the Board's consideration and approval.
  - (e) Issue Exposure Draft for consultation with a 90-day comment period and continue with the regular due process for setting or amending Standards.

#### **Question to Board members**

Q11: Do Board members have any comments on the proposed next steps?

[Staff are expecting to discuss the timing of the next steps with the Board at the June 2023 meeting.]

## Appendix A: The Board's views on the 'control and regulation' approach prior to AASB 1059

- A1. The Board responded to the IASB throughout the development of IFRIC 12 *Service Concession Arrangements* (which prescribes the accounting treatment for operators of SC arrangements) via two submission letters.<sup>6</sup> In the [Board's submission](#) on the Near-Final Draft IFRIC Interpretation, the Board stated the following:
- (a) "... We are particularly concerned with the reference here to regulation as a factor in determining control, and request the IASB to delete the reference to regulates in paragraph 5(a) ...".
  - (b) "The interpretation of control should depend on the substance of the arrangement without referring to the form of regulation under which the service concession operations ..."
  - (c) "... The inclusion of rights or responsibilities of related parties of a grantor [third-party regulators] in assessing control or regulation inappropriately blurs the line between entities." [clarification added]
  - (d) "... regulators acting in the public interest ... by definition do not act in the interest of a government that might have established the regulator or provide on-going funding etc. It is inappropriate therefore to assess the issue of control over infrastructure assets by the operator or a public sector grantor by reference to whether a regulator established in the same jurisdiction has any regulatory role in relation to the service concession arrangement. Such regulatory arrangements do not affect the assessment of control of assets in respect of contracts between private sector entities."
  - (e) "We do have significant concerns over the emphasis upon control with little reference to the locus of risks and benefits ..."
- A2. In 2007, after the Board issued Interpretation 12 *Service Concession Arrangements*, the Board formed an Interpretation Advisory Panel to consider the accounting requirements of public sector grantors of SC arrangements and develop recommendations for the Board's consideration.
- A3. In the [report from the Panel](#) to the Board (December 2007), it was noted that the Panel considered four different approaches to determining how to account for an asset underlying an SC arrangement from the grantor's perspective. The four approaches were:
- (a) Substantially all/majority of risks and rewards approach – to determine whether the operator or the grantor should recognise the SC asset underlying the SC arrangement based on assessing which entity has substantially all/majority of the risks and rewards arising from the SC asset;
  - (b) Rights and obligations approach – this approach does not assume that either party to an arrangement should recognise the underlying asset in its entirety. Instead, it views the property as a bundle of future economic benefits, some of which may be controlled by one party and some by the other party. Under this approach, both parties could recognise assets that arise from their association with the underlying asset. Assessment of the rights and obligations under an arrangement would identify the assets controlled (and the

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6 [Submission letter](#) on IFRIC D12 *Service Concession Arrangements – Determining the Accounting Model*, IFRIC D13 *Service Concession Arrangements – The Financial Asset Model* and IFRIC D14 *Service Concession Arrangements – The Intangible Asset Model*, and [submission letter](#) on IFRIC (Near Final) *Service Concession Arrangements – Determining the Accounting Model*

- liabilities incurred) by each party and address the likelihood of the entity obtaining (sacrificing) the relevant future economic benefits;
- (a) 'Pure' control approach – consider whether the grantor controls the SC asset based on the definition of an asset in [Framework for the Preparation and Presentation of Financial Statements](#), which refers to a resource controlled by the entity as a result of past events and from which future economic benefits are expected to flow to the entity (paragraph 49); and
  - (b) Control or regulation approach in Interpretation 12.
- A4. Paragraph 2.6 of the [Panel report](#) states “The majority [of Panel members] has not concluded whether one of these four approaches should be preferred, but has **concluded that the “control or regulation” approach of Interpretation 12 is the only approach that should not be permitted to be applied by grantors**, due to potential problems with the way it addresses control and regulation issues in the public sector.” [emphasis and clarification added]
- A5. In addition to the Board’s rationale noted in its submission to the IASB summarised in paragraph A1, the Panel provided the following rationale for concluding that the ‘control or regulation’ approach should not be applied by grantors:
- (a) Some Panel members hold the view that SC arrangements in Australia typically do not specify to whom the services are to be provided. In their view, for example, a general expectation that ‘the public’ is the target recipient group is too broad to contend that the grantor controls to whom the services are to be provided. External regulations such as anti-discrimination legislation can affect the boundaries of the recipient group. Under this view, many arrangements would be brought within the scope of Interpretation 12 only because of its reference to ‘regulates’ and the inclusion of regulation by regulators (paragraph 5.15).
  - (b) The inclusion of the reference to regulation in the scoping criteria is inconsistent with the discussion of the factors affecting whether a government controls another entity in *AAS 31 Financial Reporting by Governments*. The conclusion drawn in paragraph 9.1.7(d) of AAS 31 is that a government does not control another entity where it merely has the power to regulate the behaviour of the entity by use of its legislative powers: the power to establish the regulatory environment within which entities operate and to impose conditions or sanctions on their operations does not constitute control of the assets of those entities (paragraph 5.16).
- A6. In the Board’s [submission letter](#) (October 2008) on IPSASB Consultation Paper *Accounting and Financial Reporting for Service Concession Arrangements*, and [submission letter](#) (July 2010) on IPSASB ED 43 *Service Concession Arrangements: Grantors*, the Board expressed concerns with adopting IFRIC 12’s ‘control and regulation’ approach for application by grantors.
- A7. The Board noted in its [submission](#) to the IPSASB on ED 43 that adopting the ‘control and regulation’ approach could lead to significant SC assets not being recognised by either the operator or the grantor. The Board noted in that submission that public sector entities in Australia “are likely to conclude that independent regulators should not be factored into assessing the control or regulation specified in the grantor control criteria. This potentially will result in inconsistent accounting between the grantor and the operator since from the operator’s perspective the nature of the source of regulation is irrelevant. This may result in significant service concession assets not being recognised by either the operator or the grantor.”

**Appendix B: Testing the staff’s preliminary suggested scope and control criteria**

- B1 AASB 1059 includes several examples illustrating how the scope and control criteria in AASB 1059 paragraphs 2 and 5 are to be applied. This Appendix includes staff’s assessment of some of those examples to determine whether the scope and control conclusions would change if the staff’s draft scope and control paragraph were to be applied.
- B2 The tables below include the staff analysis of Example 1, Example 2(a) and Example 2(b) of AASB 1059. The below analysis indicates that the scope conclusions remain the same based on the staff’s preliminary assessment.

<p><b>Example 1: Limited operator services</b></p> <p>In this example, the relevant terms of the arrangement for assessing whether it is within the scope of AASB 1059 are:</p> <ul style="list-style-type: none"> <li>(a) a grantor enters into an arrangement that involves the operator constructing a school;</li> <li>(b) the school provides public services as the basic purpose of the school is to provide education services that are necessary or essential to the general public. The education services provided by the school are accessible to the public, even if it is a subset of the community that uses the services. The assessment of the public service nature of the school is consistent with paragraph B6;</li> <li>(c) the grantor is responsible for the services relating to the delivery of education and operational services such as the recruitment of teachers and administration staff, and the maintenance of the school facilities; and</li> <li>(d) the operator is responsible for cleaning and security services for the school.</li> </ul>															
<p>Assessment in AASB 1059</p> <p>[AASB 1059 paragraph IG5]</p>	<p>Outside the scope of AASB 1059.</p> <p>The operator does not access the school to provide public services as its provision of cleaning and security services does not constitute management of at least some of the public services provided by the school.</p> <p>The cleaning and security services represent an outsourced service to the grantor to enable it to provide public services through the school.</p>														
<p>Assessment using staff’s draft paragraphs 2, 5 and 6</p>	<table border="1" style="width: 100%;"> <tr> <td colspan="2">Outside the scope of AASB 1059.</td> </tr> <tr> <td style="width: 70%;">Does the grantor have the right to determine the nature and key features of the SC asset?</td> <td>Not specified, but assume yes</td> </tr> <tr> <td>Is the grantor obligated to grant a right to access the SC asset to the operator?</td> <td>Yes</td> </tr> <tr> <td colspan="2"><i>Is the operator obligated to:</i></td> </tr> <tr> <td>Provide the SC asset</td> <td>Yes</td> </tr> <tr> <td>Maintain and operate the SC asset to provide services to parties other than the grantor</td> <td>No, the grantor is responsible for providing the services</td> </tr> <tr> <td>Relinquish the right to access the SC asset at the end of the arrangement?</td> <td>Yes</td> </tr> </table>	Outside the scope of AASB 1059.		Does the grantor have the right to determine the nature and key features of the SC asset?	Not specified, but assume yes	Is the grantor obligated to grant a right to access the SC asset to the operator?	Yes	<i>Is the operator obligated to:</i>		Provide the SC asset	Yes	Maintain and operate the SC asset to provide services to parties other than the grantor	No, the grantor is responsible for providing the services	Relinquish the right to access the SC asset at the end of the arrangement?	Yes
Outside the scope of AASB 1059.															
Does the grantor have the right to determine the nature and key features of the SC asset?	Not specified, but assume yes														
Is the grantor obligated to grant a right to access the SC asset to the operator?	Yes														
<i>Is the operator obligated to:</i>															
Provide the SC asset	Yes														
Maintain and operate the SC asset to provide services to parties other than the grantor	No, the grantor is responsible for providing the services														
Relinquish the right to access the SC asset at the end of the arrangement?	Yes														

**Example 2(a): Facility maintenance at discretion of operator**

In this example, the facts in Example 1 apply, except that the operator is also responsible for maintenance of the school facilities by maintaining the school to a specified condition. The operator has discretion as to when and how it conducts maintenance of the school facilities.

<p>Assessment in AASB 1059  [AASB 1059 paragraph IG7]</p>	<p>Outside the scope of AASB 1059.  Whilst the operator provides maintenance of the school facilities, facility maintenance does not represent a significant component of the public services provided by the school. Therefore, the operator’s responsibility for maintenance does not involve the operator in managing the school services (refer paragraph B10). Accordingly, the arrangement is not a service concession arrangement and is outside the scope of AASB 1059 (paragraph 2). The maintenance services represent an outsourced service to the grantor to enable it to provide public services through the school.</p>
<p>Assessment using staff’s draft paragraphs 2, 5 and 6</p>	<p>Outside the scope of AASB 1059 for the same assessment as Example 1 – the grantor, not the operator, is responsible for providing the education services. Based on the staff’s preliminary view in paragraph B1, maintenance of a school building is not considered to be a service provided to entities other than the grantor.</p>

**Example 2(b): Operator has management responsibilities**

In this example, the facts in Example 1 apply, except that the operator is also responsible for certain operational services, in determining how many staff are required and organising classes, teachers and administrative staff, and for maintenance of the school facilities by providing upgrades and maintaining the school to a specified condition. The operator has discretion as to when and how it carries out these responsibilities.

<p>Assessment in AASB 1059  [AASB 1059 paragraph IG9]</p>	<p>Within the scope of AASB 1059  The grantor concludes the operator accesses the school to provide public services and is responsible for at least some of the management of the school services. The operator fulfils this management responsibility through its significant operational and maintenance responsibilities, even though the staff are provided by the grantor (refer paragraph B10). Accordingly, the arrangement is a service concession arrangement within the scope of AASB 1059.</p>														
<p>Assessment using staff’s draft paragraphs 2, 5 and 6</p>	<table border="1"> <tr> <td colspan="2" data-bbox="467 1608 1098 1637"> <p>Within the scope of AASB 1059.</p> </td> </tr> <tr> <td data-bbox="467 1675 1098 1742"> <p>Does the grantor have the right to determine the nature and key features of the SC asset?</p> </td> <td data-bbox="1106 1675 1402 1742"> <p>Not specified, but assume yes</p> </td> </tr> <tr> <td data-bbox="467 1749 1098 1816"> <p>Is the grantor obligated to grant a right to access the SC asset to the operator?</p> </td> <td data-bbox="1106 1749 1402 1816"> <p>Yes</p> </td> </tr> <tr> <td colspan="2" data-bbox="467 1823 1402 1852"> <p><i>Is the operator obligated to:</i></p> </td> </tr> <tr> <td data-bbox="467 1859 1098 1888"> <p>Provide the SC asset</p> </td> <td data-bbox="1106 1859 1402 1888"> <p>Yes</p> </td> </tr> <tr> <td data-bbox="467 1895 1098 1962"> <p>Maintain and operate the SC asset to provide services to parties other than the grantor</p> </td> <td data-bbox="1106 1895 1402 1962"> <p>Yes</p> </td> </tr> <tr> <td data-bbox="467 1968 1098 2033"> <p>Relinquish the right to access the SC asset at the end of the arrangement?</p> </td> <td data-bbox="1106 1968 1402 2033"> <p>Yes</p> </td> </tr> </table>	<p>Within the scope of AASB 1059.</p>		<p>Does the grantor have the right to determine the nature and key features of the SC asset?</p>	<p>Not specified, but assume yes</p>	<p>Is the grantor obligated to grant a right to access the SC asset to the operator?</p>	<p>Yes</p>	<p><i>Is the operator obligated to:</i></p>		<p>Provide the SC asset</p>	<p>Yes</p>	<p>Maintain and operate the SC asset to provide services to parties other than the grantor</p>	<p>Yes</p>	<p>Relinquish the right to access the SC asset at the end of the arrangement?</p>	<p>Yes</p>
<p>Within the scope of AASB 1059.</p>															
<p>Does the grantor have the right to determine the nature and key features of the SC asset?</p>	<p>Not specified, but assume yes</p>														
<p>Is the grantor obligated to grant a right to access the SC asset to the operator?</p>	<p>Yes</p>														
<p><i>Is the operator obligated to:</i></p>															
<p>Provide the SC asset</p>	<p>Yes</p>														
<p>Maintain and operate the SC asset to provide services to parties other than the grantor</p>	<p>Yes</p>														
<p>Relinquish the right to access the SC asset at the end of the arrangement?</p>	<p>Yes</p>														

B3 Paragraph IG 13 includes a table comparing the key features of various common types of arrangements for private sector participation in the provision of public services. The table below includes the staff assessment of whether the scope/control conclusion would change if the staff's preliminary suggestions are adopted. Staff note that a 'construction contract with service outsourcing contract' would be likely to be within the scope of AASB 1059.

	<b>Construction contract with service outsourcing contract</b>	<b>Leases</b> (where the lessee provided the underlying asset prior to the commencement of the lease)	<b>Sale/privatisation</b> (privatisation may include the grantor retaining protective rights to take over the asset/business if needed)
	Reporting entity = public sector entity requesting the services Counterparty = entity providing services	Reporting entity = lessor Counterparty = lessee	Reporting entity = Seller Counterparty = Purchaser
<b>Determining whether the arrangement is within the scope of AASB 1059, assuming the staff's draft paragraphs 2, 5 and 6 are adopted</b>	Possibly within the scope of AASB 1059	Outside the scope of AASB 1059	Outside the scope of AASB 1059
Does the reporting entity have the right to determine the nature and key features of the asset underlying the arrangement?	Yes	Yes	Yes, prior to the asset being sold
Is the reporting entity obligated to grant a right to access the asset to the counterparty?	Yes	Yes	Yes
Is the counterparty obligated to:			
– construct or otherwise provide the asset	Yes	Yes, prior to the commencement of the lease	No
– maintain and operate the asset to provide services to parties other than the reporting entity in accordance with the operating conditions determined by the reporting entity	Yes	No, the lessee is not obligated to use the asset to provide services (e.g. for the lessee's own use)	No
– relinquish the right to access the asset to the reporting entity at the end of the arrangement?	Yes	Yes	No, the seller's protective rights do not indicate that the purchaser has a present obligation to relinquish the right to access the asset
In relation to the usage of the asset underlying the arrangement, does the reporting entity have the present ability (and the ability to restrict the counterparty) to:			
– determine the services to provide using the asset	Yes	No	No
– determine the operating conditions of the asset	Yes	No	No
– use the asset for a purpose not set out in the contract	Yes	Not during the lease period	No
– modify or replace the asset	Yes	Yes, depending on T&C	No
– set or change the prices to charge for the services	Yes	No	No
– transfer the right to direct the usage of the asset to another party	Yes	Not during the lease period	No, depending on the seller's protective rights
– sell or pledge the asset?	Yes	Yes	No