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| Project: | Post-Implementation Reviews | Meeting: | M212 |
| Topic: | The definition of a structured entity for NFP entities | Agenda Item: | 7.1 |
| | | Date: | 15 April 2025 |
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| | | Decision-Making: | High |
| | | Project Status: | Decide on next steps |

Objective of this paper

- 1 The objective of this Staff Paper is for the Board to consider:
 - (a) the feedback received on Topic 2: The definition of a structured entity for NFP entities in [ITC 51 Post-implementation Review of Not-for-Profit Topics – Control, Structured Entities, Related Party Disclosures and Basis of Preparation of Special Purpose Financial Statements](#); and
 - (b) staff analysis and recommendations on possible next steps.

Structure of this paper

- 2 This paper is structured as follows:
 - (a) Background (paragraphs 3 to 10);
 - (b) Summary of feedback received and analysis (paragraphs 11 to 13);
 - (c) Overall staff analysis and recommendations (paragraph 14 to 16); and
 - (d) Appendix A: Feedback received, staff analysis and recommendations.

Background

- 3 AASB 12 *Disclosure of Interests in Other Entities* was issued in August 2011, to be effective for annual reporting periods beginning on or after 1 January 2013. However, as part of the Board's considerations of the development of Aus paragraphs or other Australian material to assist NFP entities in applying AASB 10 *Consolidated Financial Statements*, the Board deferred the application of AASB 12 (and also AASB 10). The Board deferred the application of AASB 12 by NFP entities until 1 January 2014. NFP entities were not permitted to early adopt the requirements for periods beginning before the 1 January 2013 application date. However, NFP entities may apply AASB 12 early to reporting periods beginning on or after 1 January 2013.

- 4 AASB 12 contains specific disclosure requirements for both consolidated and unconsolidated structured entities. A structured entity is defined in AASB 12 Appendix A as “An entity that has been designed so that voting or similar rights are not the dominant factor in deciding who controls the entity, such as when any voting rights relate to administrative tasks only and the relevant activities are directed by means of contractual arrangements.”
- 5 As noted in BC33 of AASB 10, the definition of ‘structured entity’ in AASB 12, however, does not readily translate to an NFP perspective as it focuses on voting or similar rights, which have less significance in general for many NFP entities. For many NFP entities, voting rights may not be the dominant factor in deciding who controls an entity. Accordingly, applying the structured entity definition would result in many NFP entities being classified as structured entities due to the absence of voting or similar rights.
- 6 As such, in March 2013, the AASB issued [ED 238 Consolidated Financial Statements – Australian Implementation Guidance for Not-for-Profit Entities](#) to propose adding implementation guidance to assist NFP entities in applying the definition of ‘structured entity’. The ED proposed implementation guidance that explains that the principle underlying the definition of a structured entity is intended to capture entities where less conventional means – in the context of NFP entities – are the dominant factors in determining who controls the entity. Structured entities are intended to be a limited class of entities. The proposed guidance stipulates that the reference in the definition of a structured entity to similar rights includes administrative arrangements and statutory provisions, as these are often the dominant factors in determining control of NFP entities. Therefore, NFP entities designed so that voting or similar rights, including administrative arrangements or statutory provisions, are not the dominant factor in determining control of an entity would be captured by the definition of a structured entity in AASB 12.
- 7 11 out of 13 submissions provided specific comments on the Specific Matters for Comment (SMC) regarding the proposed implementation guidance on the definition of ‘structured entity’. The majority of respondents (9 out of 11 submissions) considered that the definition of ‘structured entity’ is appropriately explained by the proposed implementation guidance. One submission noted that they did not have any comment. Another respondent did not agree and commented that there is no discussion of “less conventional means”. However, the Board considered there was sufficient discussion. For example, the proposed paragraph IG6 (now in paragraph IG7) indicates that less conventional means are the dominant factors in determining control of an entity, excluding voting and similar rights, such as administrative arrangements and statutory provisions. Further, as indicated in paragraphs IG8 and IG9, less conventional means would include contractual arrangements.
- 8 In October 2013, after considering feedback received on ED 238, the AASB added the implementation guidance with minor amendments in Appendix E to AASB 12 (via AASB 2013-8 *Amendments to Australian Accounting Standards—Australian Implementation Guidance for Not-for-Profit Entities—Control and Structured Entities*).
- 9 It is important to note that entities preparing general purpose financial statements that apply AASB 1060 *General Purpose Financial Statements – Simplified Disclosures for For-Profit and Not-for-Profit Tier 2 Entities* are not required to comply with AASB 12.
- 10 As part of the post-implementation review, ITC 51 specifically sought feedback on the implementation guidance in Appendix E of AASB 12 that was prepared to explain and illustrate the definition of a structured entity for NFP entities.

Summary of feedback received

- 11 The PIR of AASB 12 Appendix E (via AASB 2013-8) focuses on both **NFP public sector entities** and **private sector entities**. There was limited feedback received on this topic as follows:

- (a) three out of eight submissions received on ITC 51 responded to this topic (HoTARAC, CAANZ & CPA, KPMG);
 - (b) no survey respondent provided feedback on this topic;
 - (c) some feedback received from AASB Project Advisory Panels (PAPs)
 - (d) other feedback; and
 - (e) no feedback was received regarding the structured entities in other outreach sessions.
- 12 Appendix A to this paper provides further discussion on the feedback received, along with staff analysis and recommendations. Overall, the limited feedback received did not highlight any significant concerns with the implementation guidance that was prepared to explain and illustrate the definition of a structured entity for NFP entities. Staff note that HoTARAC suggested additional application examples would be helpful. However, CAANZ & CPA and KPMG considered that most of the technical challenges arising from the application have been overcome and that there is no need for any further standard-setting activity. In addition, staff sought further clarification from public sector stakeholders, one of whom confirmed they were not aware of any significant issues and agreed that additional examples were not necessary.
- 13 However, it is acknowledged that many NFP entities continue to prepare special purpose financial statements. As such, the application of the guidance may not have been well-tested.

Overall staff analysis and recommendations

- 14 Overall, the feedback received does not indicate significant issues with applying the guidance. Staff concur with stakeholders that any challenges encountered during the implementation phase have likely been resolved or overcome. Consequently, there is no need for any further standard-setting activity.
- 15 Staff acknowledged the feedback suggesting the development of examples to illustrate how the guidance can be applied in typical scenarios. Staff concur that illustrative examples can enhance entities' understanding and application of the Standard, particularly when principles are unclear and require clarification. However, the feedback received does not indicate significant issues with applying this guidance. Further, examples cannot cover every possible scenario or account for all factors. Entities are expected to apply the Standard based on their specific facts and circumstances, which often require significant judgement. Therefore, developing additional examples would offer limited benefits. As such, while recognising that illustrative examples could help public sector entities, staff are of the view that developing such examples is not warranted at this time.
- 16 After considering all feedback and analysis, staff **recommend** that the Board **take no action to address the concern.**

Question for Board members:

Question 1: Do Board members have any questions or comments on the feedback received and staff analysis on Topic 2 regarding the structured entities?

Question 2: Do Board members agree with staff recommendation in paragraph 16 on Topic 2 regarding the structured entities?

Appendix A: Feedback received, staff analysis and recommendations

Questions for respondents

Regarding the definition of a structured entity in the NFP sector and the guidance in Appendix E, do you have any comments about:

14. the application of the requirements in practice?
 15. any other matters of which the AASB should be aware as it undertakes this PIR?
- If so, please provide your views on those requirements, relevant circumstances and their significance. Examples to illustrate your responses are also most helpful.

- 1 Sections below provide the overall feedback received, staff analysis and recommendations.

Illustrative examples

- 2 The feedback from HoTARAC highlighted that the scope of structured entities in the NFP public sector is often unclear in practice, and it was suggested that additional application examples would be helpful to illustrate typical scenarios where NFP public sector entities meet or do not meet the AASB 12 criteria as structured entities. Specifically, HoTARAC suggested that the reference in AASB 12 IG5 to “limits the scope of structured entities to entities that are controlled through less conventional means” could be contextualised or explained in the public sector context.

- 3 HoTARAC also provided an example of a scenario that is not clear whether an entity is a structured entity under AASB 12. That is, whether the government controls the entity because it is set up by the government to fulfil an objective (policy) for the government, even though the government does not have substantive power to direct its activities.¹

A government establishes an entity responsible for helping to find loans at reasonable costs for companies in financial distress. The entity only receives initial startup funding for its operation in year one and is responsible for its own operational outcomes going forward; besides, it has full discretion over the eligibility of its customers (i.e. companies in distress) and suppliers (financial institutions providing loans).

- 4 Conversely, two respondents (CAANZ & CPA; KPMG) observed that most of the technical challenges arising from the application of the structured entities definition have been overcome and that there is no need for any further standard-setting activity. However, CA ANZ & CPA also acknowledged in their joint submission that the issues discussed in the ITC concerning structured entities may not have been well-tested because NFP entities continue to have the option to prepare special purpose financial statements (i.e. they are not required to comply with AASB 12).

1 Staff note the HoTARAC submission refers to the question of “Is the entity controlled by the government ...”. Staff also note that the term ‘control’ is used in both AASB 10 and AASB 12 and the references are closely linked. Staff have considered HoTARAC’s feedback in this Agenda Paper rather than Agenda Paper 7.2 which considers the topic of control and consolidation for NFP entities. This is because staff consider that the reference to ‘control’ in this case is about determining whether the entity meets the definition of a structured entity and not whether the entity is a subsidiary.

Staff analysis and recommendations

- 5 Staff acknowledge HoTARAC's comments regarding the complexity of determining whether an [NFP public sector] entity is a structured entity. The example provided in HoTARAC's submission demonstrates that entities are required to consider the facts and circumstances of each specific scenario to determine 'how' an entity is controlled and, therefore, whether an entity is a structured entity. This will also often involve exercising significant professional judgement.
- 6 Staff understand that specific disclosures of investments in structured entities were included in IFRS 12 (AASB 12) because it is believed that involvement with these types of entities posed more risk than involvement with traditional operating entities, and therefore, their identification is important.
- 7 However, as noted by some stakeholders, staff are of the view that the implementation guidance is sufficient and that most of the technical challenges arising from the application of the structured entities definition have been overcome. For example, AASB 12:
 - (a) paragraph IG5 notes that voting or similar rights are a common feature in many for-profit entities, and those voting or similar rights often have a dominant role in determining who controls an entity. As such, IG5 notes that the principle underlying the definition of a structured entity limits the scope to those entities that are controlled through less conventional means.
 - (b) paragraph IG6 notes that it is common for not-for-profit entities to be established by administrative arrangements or legislation, especially in the public sector. Therefore, if the administrative arrangements or legislation ARE dominant factors in determining control of such an entity, the entity is NOT a structured entity. Paragraph IG7 further confirms this, noting that in the context of NFP entities, where voting or similar rights, including administrative arrangements or statutory provisions, ARE the dominant factors in determining control, an entity is NOT a structured entity.
 - (c) paragraph IG8 illustrates a scenario where an entity is a structured entity, and there are contractual arrangements that are significant to determining control – for example, a partnership between a government and a private sector entity, being a partnership established and directed by contractual arrangements. The partnership is a structured entity, regardless of the rights (if any) that the government and the entity have in relation to the partnership. Paragraph IG8 also highlights, however, that the government merely providing funding to another entity does not make the entity a structured entity.
 - (d) paragraph IG9 illustrates another scenario where a structured entity is directed by means of a contractual arrangement – that is, a community service organisation that is established or sponsored by the NFP private sector entity. Paragraph IG9 notes that the community service organisation is a structured entity.
- 8 The example provided by HoTARAC demonstrates that the determination, in some cases, can be complex, particularly when indicators of whether NFP entities are controlled through less conventional means are unclear. To conclude this example, many factors, such as those listed in AASB 12 paragraphs B22 and B23, need to be considered. The key ones for NFP entities are likely to be:
 - (a) whether the entity's activities are restricted and considered narrow and well-defined – for example, the entity is to help find loans at reasonable costs for companies in financial distress, but the eligibility of clients and suppliers is said to be at the discretion of the entity. However, whether this affects whether the entity's activities are considered restricted or narrow and well-defined is a matter of professional judgement.

- (b) whether the entity was established by administrative arrangements or legislation – staff understand that typically, an administrative arrangement is an arrangement that formally allocates executive responsibility among ministers and sets out which matters and legislation are administered by which department or portfolio. IG7 provides some guidance about administrative arrangements.
 - (c) whether there are contractual arrangements between the parties that relate to the entity's relevant activities, and if so, what are the terms and conditions of the contractual arrangements? IG8 provides some guidance about assessing whether contractual arrangements are considered significant.
- 9 Noting the only feedback on this topic suggesting action was required was received from HoTARAC, staff sought further feedback from public sector stakeholders to understand the prevalence and magnitude of the issue. One stakeholder responded and confirmed that they were not aware of any problems in practice on this topic, so additional illustrative examples are not necessary.
 - 10 Staff also considered the guidance in IPSAS 38 *Disclosure of Interests in Other Entities*, a standard developed specifically for application by public sector entities. Staff note that the IPSAS 38 definition of a structured entity is based on the IFRS 12 (AASB 12) definition. However, it has been modified to acknowledge the differing ways in which control may be obtained in the public sector. Staff consider that the IPSAS 38 definition and the AASB 12 definition and implementation guidance are principally consistent, with only some minor differences. For example, AASB 12 uses contractual arrangements when referring to a means of directing relevant activities, whereas IPSAS 38 uses the term binding arrangement. However, the context of the discussion is similar.
 - 11 Further, staff consider it reasonable to expect that most of the technical challenges arising from applying the definition have been overcome as practice has evolved, particularly given the implementation guidance has been in effect since 2014. This is also supported by the overall limited feedback received on this topic, indicating that there are no significant concerns.
 - 12 Staff acknowledges that illustrative examples can enhance entities' understanding and application of the Standard, particularly when the underlying principles are unclear and or require clarification.
 - 13 The limited feedback received suggests there are no significant issues with applying the definition of a structured entity in practice and that additional guidance is unlikely to be needed. However, staff do acknowledge that the limited feedback may be partly attributed to the fact that many NFP entities are currently able to prepare special purpose financial statements and can, therefore, elect not to assess whether they have structured entity 'relationships'.
 - 14 Staff are of the view that based on the information available at this time, the implementation guidance adequately explains how to apply the definition of a structured entity to NFP entities. Staff also note that implementation guidance cannot cover every possible scenario, account for all factors or replace professional judgement. Therefore, staff consider that developing additional implementation guidance would offer limited benefits.
 - 15 However, in recognition of the Board's current NFP financial reporting framework project, which proposes to limit the ability of certain NFP private and public sector entities to prepare special purpose financial statements, staff are of the view that if NFP entities encounter issues in the future when they are required to apply the structured entity definition for the first time in their general purpose financial statements, there will be opportunities for them to raise any concerns with staff and the Board at that time. As such, staff **recommend no action is required** at this time.