



Australian Government

**Department of Infrastructure, Transport,
Regional Development and Communications**
Office for the Arts

Register of Cultural Organisations Guide

July 2020

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At a glance

Organisations on the Register

A full list of organisations entered on the Register of Cultural Organisations (ROCO) is published on our website: www.arts.gov.au/roco.

Apply

You can apply for entry on the ROCO via the application form on our website: www.arts.gov.au/roco.

You can email applications and supporting information to roco.mail@arts.gov.au or post them to the address below.

The assessment of applications can be lengthy and may take six to twelve months to finalise, depending on the completeness and the complexity of the application. Complete applications submitted with all necessary supporting documentation are often processed in a shorter timeframe than this.

Report

An organisation on the ROCO is required to send us information twice a year on the tax deductible donations it receives. Statistics on donations received within the six-month periods from January to June and July to December each year are due within 21 days of the end of each period. A Statistical Return of Donations form can be found on our website: www.arts.gov.au/roco.

Contact

For further information about the ROCO please contact:

Register of Cultural Organisations
Department of Infrastructure, Transport, Regional Development and Communications
GPO Box 2154
Canberra ACT 2601
Phone: 02 6271 7108
Email: roco.mail@arts.gov.au

1. Introduction to the Register of Cultural Organisations

This Guide explains the Australian Government's Register of Cultural Organisations (ROCO). Organisations applying to be entered on the ROCO should read this Guide before preparing and submitting their applications. The Guide also provides information on the ongoing obligations of organisations on the ROCO and on removal processes.

How it works

Established in 1991, the ROCO assists qualifying cultural bodies to attract support by enabling them to offer donors the incentive of a tax deduction. The ROCO aims to strengthen private sector support for the arts and encourages Australians to contribute to the nation's vibrant cultural life.

The types of donations to organisations listed on the ROCO that may be tax deductible include:

- monetary gifts of \$2 or more
- gifts of property valued by the Australian Taxation Office (ATO) at more than \$5000
- gifts of property purchased within the preceding 12 months, and
- in some circumstances, deductible contributions of \$150 or more for an eligible fundraising event.

Please see '[Public donations](#)' on page 14 of this Guide for more information on tax deductible gifts.

Cultural bodies eligible for listing on the ROCO are those whose main purpose is the promotion of one or more of the following specified cultural forms: literature, music, a performing art, a visual art, a craft, design, film, video, television, radio, community arts, arts or languages of Indigenous persons, or movable cultural heritage.

The Minister for the Arts (the Minister) and the Treasury Minister are responsible for decisions relating to the ROCO. The Department of Infrastructure, Transport, Regional Development and Communications (the Department) maintains the ROCO and manages its administration on a day-to-day basis. The Department also assists the Minister with his/her responsibilities, including by conducting the preliminary assessment of ROCO applications and being a point of contact for applicants.

Public libraries, museums and art galleries are generally not included on the ROCO as they are eligible for endorsement by the ATO under different Deductible Gift Recipient (DGR) categories under the tax law. Public collecting institutions endorsed as DGRs under these categories have the added benefit of being able to receive tax deductible donations of property for their collections through the Australian Government's Cultural Gifts Program (see www.arts.gov.au/cgp for more information).

Legislative framework

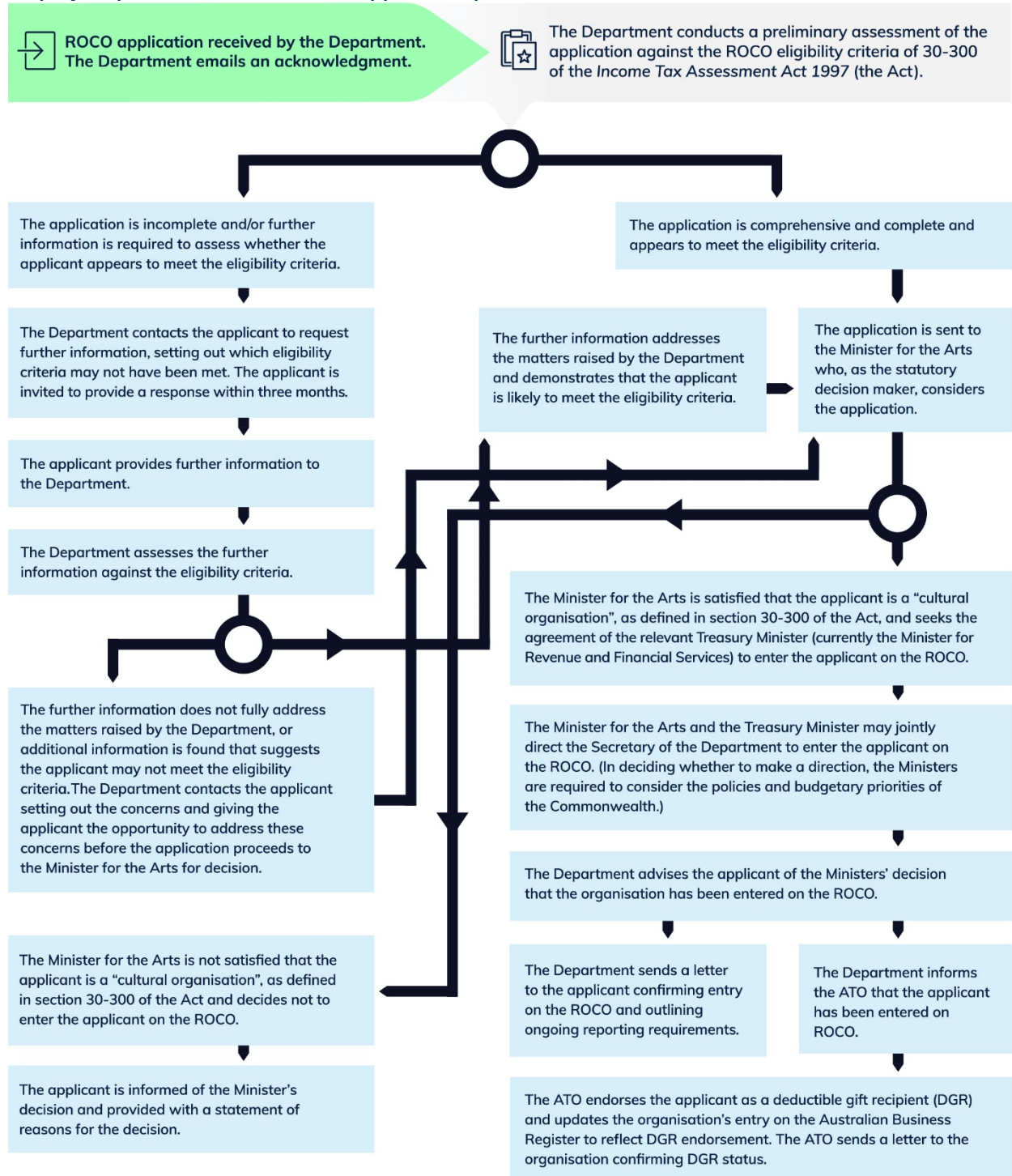
The ROCO is established under subdivision 30-F of the *Income Tax Assessment Act 1997* (the Act). Organisations entered on the ROCO are endorsed by the ATO as a DGR under the Act and are eligible to receive tax deductible donations into their public funds in accordance with the Act. [Appendix 4](#) of this Guide contains an extract of relevant provisions of the Act.

While many organisations on the ROCO are charities registered with the Australian Charities and Not-for-profits Commission (ACNC) under the *Australian Charities and Not-for-profits Commission Act 2012*, this is currently not a requirement for entry on the ROCO.

Overview of the ROCO application process

The following flow chart provides a step by step overview of the process from application to listing on the ROCO and endorsement as a DGR.

Step by step overview of the ROCO application process



2. Eligibility criteria

An organisation and its public fund can only be entered on the ROCO if the Minister is satisfied that the organisation is a 'cultural organisation', as defined in section 30-300 of the Act.

This chapter of the Guide explains each of the eligibility criteria from the Act in more detail, as well as how applicants can show that they meet these criteria using the ROCO application form and additional supporting documentation. Each of the following sections on each criterion includes a summary of the kind of evidence your organisation can provide to show that it meets that criterion. A checklist of supporting documentation is also included at [Appendix 3](#).

If your application form is incomplete or if you do not provide enough supporting documentation to show that you meet each of the eligibility criteria, the Department will need to come back to you to seek further information, delaying the processing of your application. If you are ultimately not able to provide sufficient information to show that your organisation is a 'cultural organisation' as defined in the Act, or if there is information that indicates that your organisation is not a 'cultural organisation', your application may be refused.

Legal structure

Subsection 30-300(1) of the Act:

A cultural organisation is:

- (a) a body corporate; or**
 - (b) a trust; or**
 - (c) an unincorporated body established for a public purpose by the Commonwealth, a state or a territory;**
- that satisfies each requirement in the section.**

To be eligible for entry on the ROCO, your organisation must be legally structured as one of the three following options:

- **Body Corporate**—An artificial entity with a separate legal existence that has the ability to continue in existence indefinitely and to keep its identity regardless of changes to its membership. It also has the power to act, hold property and enter into legal contracts in its own name. Examples include:
 - a company incorporated under the *Corporations Act 2001* and registered with the Australian Security and Investment Commission (ASIC)—most companies on the ROCO are public companies limited by guarantee, though other types of companies are listed
 - an incorporated association incorporated under state/territory legislation and registered with the relevant state/territory government department, and
 - an Aboriginal and Torres Strait Islander Corporation incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* and registered with the Office of the Registrar of Indigenous Corporations (ORIC).
- **Trust**—A legal structure or fiduciary relationship where a person or company (the trustee) holds money and property for the benefit of others (the beneficiaries). The terms and purposes of the trust are usually set out in the trust deed.
- **Unincorporated body established for a public purpose by the Commonwealth, a state or a territory**—A government-created body that would generally be established by a specific piece of Commonwealth, state or territory legislation.

Further information on how to become incorporated as an association can be obtained from the Department of Fair Trading or business affairs office in your state or territory. Information on registering a company is available from ASIC at www.asic.gov.au.

An individual, entity or group that is not constituted as one of the three specific types of legal structure outlined above—including individual artists and unincorporated groups (other than an unincorporated body established for a public purpose by the Commonwealth, a state or a territory) is not able to be entered on the ROCO.

Evidence you can provide to show that you meet the requirement of subsection 30-300(1) includes:

- a Certificate of Registration issued by ASIC or ORIC
- a Certificate of Incorporation as an association issued by a state/territory government body
- an executed Deed of Trust, or
- a copy of or link to the Commonwealth, state or territory legislation establishing your organisation as an unincorporated body for a public purpose.

Principal purpose

Subsection 30-300(2) of the Act:

Its principal purpose must be the promotion of literature, music, a performing art, a visual art, a craft, design, film, video, television, radio, community arts, arts or languages of *Indigenous persons or movable cultural heritage.

To be eligible for entry on the ROCO, your organisation must show that its principal (i.e. first, most important) purpose is the promotion of one or more of the specified cultural forms listed in the Act, which are:

- arts or languages of Indigenous persons
- community arts
- crafts
- design
- film
- literature
- movable cultural heritage
- music
- performing arts
- radio
- television
- video
- visual arts.

These are referred to throughout this Guide as the 'specified cultural forms'.

The Act does not allow organisations with any other principal purpose—including the promotion of other matters that may be considered 'cultural' in other contexts, such as traditions, norms, languages and religions—to be entered on the ROCO.

The term 'promotion' is not defined in the Act. Organisations on the ROCO may promote the specified cultural forms in a wide variety of ways, including (but not limited to):

- directly creating or producing art and culture for a public audience

- presenting or exhibiting art, culture and movable cultural heritage created or produced by others
- educating the public about a specified cultural form, including through research and publishing
- providing training in an art, craft or cultural form, and
- preserving works of art or items of movable cultural heritage.

Taken together, your organisation's ROCO application and supporting material should clearly explain what its principal purpose is, indicate which specified cultural form/s it promotes, and show how the specified cultural form/s are promoted through its objects and activities.

Both the stated objects in your organisation's governing document and your organisation's current or planned activities are relevant to the Minister's decision on whether your organisation meets the principal purpose requirement.

Objects in an organisation's governing document

An organisation's governing document (e.g. its constitution, rules, trust deed or establishing legislation) is a legally-binding document that establishes how the organisation operates and sets out what it can and can't do. The objects or purposes stated in your organisation's governing document are therefore a key consideration in a decision on whether your organisation meets the ROCO principal purpose requirement.

It is possible that your organisation's governing document may not include clauses establishing its objects or purposes (e.g. because it has a separate or associated statement of purposes adopted or ratified by its members). If this is the case, you will need to provide copies of any other document setting out your organisation's purposes and explain what status this document has in your organisation's governance arrangements (e.g. that it was adopted by members at an Annual General Meeting, now forms part of the organisation's decision-making processes, and may only be changed through a further vote by members).

While most organisations pursue their principal purpose directly through their own activities, it is also possible for an organisation to be entered on the ROCO where it pursues its objects indirectly—i.e. through other individuals or organisations—provided its governing document enables it to do so. Such activities include providing financial support to organisations and individuals through grants, awards, scholarships, prizes or direct partnership and the creation of assets that will be transferred to or owned by another entity. The Minister's decision on your organisation's principal purpose will consider whether your organisation's governing document enables it to undertake these activities. For further information on indirect pursuit of an organisation's principal purpose see [chapter 3](#) of this Guide.

Activities

The current or planned activities undertaken by your organisation are strong practical evidence of what it exists to do—that is, its principal purpose. They are therefore another key consideration in a decision on whether your organisation meets the ROCO principal purpose criterion.

Your application and supporting material should clearly explain what your organisation actually does or plans to do. It is important that you cover all of your organisation's activities, not just those related to promotion of the specified cultural forms, and that you provide evidence of these activities.

If you do not provide a supporting statement or other evidence of your activities the Department will need to come back to you to seek further information, delaying the processing of your application.

There are certain kinds of activity that, because of their indirect nature, require specific additional information to inform the Minister's decision on your organisation's principal purpose. These include providing financial support to organisations and individuals through grants, awards, scholarships or prizes and the creation of assets that will be transferred to or owned by another entity. For more information on these types of activities refer to [chapter 3](#) of this Guide.

Organisations with multiple purposes

Some organisations may have multiple purposes, not all of which are the promotion of one or more of the specified cultural forms. An organisation with multiple purposes can still meet the ROCO principal purpose requirement as long as its principal (i.e. first, most important) purpose is the promotion of one or more of the specified cultural forms, and any other purposes are secondary or ancillary to that principal purpose.

If there is any doubt as to which of your organisation's purposes is its principal purpose, the Department may seek further information from you on how your specified cultural form/s and other purposes relate to each other.

An organisation that has multiple purposes will not be able to use donations to its public fund for any purpose other than its principal purpose. For further information see '[Use of the public fund](#)' on page 17 of this Guide.

Public information on your organisation

The way your organisation presents itself to the public, including through its website and social media presence, is also relevant to the assessment of your organisation's principal purpose. There is a question on the application form that asks for links to your organisation's website and social media. The Department may also independently search for this information as part of its assessment.

Evidence you can provide to show that you meet the requirement of subsection 30-300(2) includes:

- a copy of your organisation's governing document setting out objects/purposes
- a copy of any other document setting out your organisation's purposes, along with an explanation of this document's status in your organisation's governance arrangements
- information on your current or planned activities, such as:
- a supporting statement summarising all of your organisation's current or planned activities and explaining how they promote one or more specified cultural forms
- an annual report
- a business or strategic plan newsletters or a calendar of events, and
- links to your organisation's website(s) and social media (Facebook, Instagram, etcetera).

Maintaining a public fund that meets gift fund requirements

Subsection 30-300(3) of the Act:

It must maintain a public fund that meets the requirements of section 30-130, or would meet those requirements if the *cultural organisation were a fund, authority or institution.

The gift fund requirements of 30-130 are included in [Appendix 4](#).

Australian tax law requires organisations endorsed as DGRs through some categories, including the ROCO, to establish and maintain a public fund to receive tax deductible gifts and contributions. While both a cultural organisation and the public fund it operates are entered onto the ROCO, the cultural organisation's DGR endorsement applies only to its public fund, not to the organisation as a whole.

The public fund will satisfy the gift fund requirement referenced above if it only receives gifts or deductible contributions and has appropriate winding up rules (as discussed at page 17 in '[Winding-up and revocation](#)'). The public fund cannot receive other money or property.

As the Australian Government agency responsible for administering taxation, the Australian Taxation Office (ATO) issues authoritative guidance on the interpretation of tax law, and has done so in relation to the requirement to maintain a public fund. Decisions about a ROCO applicant's eligibility against this requirement will be informed by this guidance. The ATO's view on the conditions that need to be satisfied for a fund to be considered a public fund is set out in Taxation Ruling TR 95/27 and on its website—see:

- www.ato.gov.au/non-profit/getting-started/in-detail/types-of-dgrs/public-funds/
- www.ato.gov.au/non-profit/gifts-and-fundraising/receiving-tax-deductible-gifts/.

The rest of this section addresses specific issues that are relevant to a decision on whether your organisation meets the ROCO public fund criterion of the Act. Where ATO guidance indicates that certain clauses about the administration of a public fund must be included in an organisation's governing document in order for a fund to be accepted as a public fund, model clauses are provided at [Appendix 2](#).

Is there a separate fund?

As noted above, a cultural organisation on the ROCO is not endorsed as a DGR in its own right: its DGR endorsement applies only to its public fund. All tax deductible gifts and contributions the organisation receives must be made to the public fund, and the public fund cannot receive any other money or property.

An organisation that receives money or property besides tax deductible donations (e.g. performance or exhibition income, fees, corporate sponsorship) will therefore need to show that it does maintain a public fund that is separate from any other funds or accounts it maintains. The application form asks you to confirm this and provide the details of your public fund, including name of financial institution, branch and BSB number, account name and account number.

In certain circumstances it may not be necessary for your organisation to establish and maintain a separate gift fund as its public fund, including where:

- tax deductible gifts and contributions (including interest and other financial returns on those gifts and contributions) are your organisation's only source of income—this is the case for many trusts
- your organisation already maintains a gift fund for one or more other public funds and intends to use this same gift fund for the public fund it is applying to have entered on the ROCO—in this case, you need to keep records evidencing the receipt and use of money and property belonging to each public fund.

If this is the case for your organisation, please provide details when you submit your application.

Public donations

For a fund your organisation maintains to be accepted as a public fund, your organisation needs to have the intention that the public will contribute to the fund. Your organisation needs to invite public donations to the fund, and the public (or a significant part of the public) must in fact make contributions. Donations can include monetary donations over \$2 and donations of property that meet specific ATO requirements.

In order for a donor to receive a tax deduction for a donation, the donation must be given voluntarily without the donor receiving any material advantage or benefit in return.

Membership or subscription fees are not considered to be donations where there are benefits associated with membership (e.g. access to studios or equipment, complimentary tickets to events). If a membership fee and donation are submitted together a separate tax deductible receipt should be issued for the donation portion of the payment.

Sponsorship arrangements, whereby businesses receive promotional or advertising services in return for a financial contribution, do not qualify as tax deductible donations. Testamentary gifts and bequests are not tax deductible and should be kept separate to the public fund.

In certain circumstances, attendees of eligible fundraising events can claim a tax deduction for a proportion of their ticket price even though a material benefit will be gained from attending the event.

Further information on gift types and contributions is on the ATO's website—see:

- www.ato.gov.au/Non-profit/Gifts-and-fundraising/
- www.ato.gov.au/non-profit/gifts-and-fundraising/receiving-tax-deductible-gifts/.

There is a question on the application form that allows you to either confirm that the fund your organisation operates is already receiving contributions from the public (not currently tax deductible) or to provide information on how your organisation intends to solicit contributions from the public.

Objects of the public fund

Your organisation's governing document needs to clearly set out the objects of the public fund it maintains, which need to be consistent with your organisation's principal purpose. For organisations where the sole purpose is to promote one or more of the specified cultural forms, the objects of the public fund will likely be the same as the objects of the organisation. For organisations with multiple purposes and/or activities, the public fund's objects may relate only to one or some of the organisation's purposes or activities, namely, only those that relate to the principal purpose of promoting one or more of the specified cultural forms. For example:

- A youth orchestra organisation with the principal purpose of promoting music intends to use its public fund for the sole purpose of raising funds for the purchase of musical instruments—its constitution specifies that this is the object of the public fund
- A Latin American cultural society with the principal purpose of promoting the literature, music, performing arts, visual arts and crafts of South and Central America also has a secondary purpose of promoting the Spanish language—its constitution specifies that the objects of its public fund are to support the society's literature, music, performing arts, visual arts and crafts activities, but not its Spanish language classes.

As the section on '[Use of the public fund](#)' on page 177 explains, the organisation in the second example above would not be able to use donations to its public fund to support its secondary purpose of promoting a language, as this is not part of the principal purpose for which it was entered on the ROCO.

Public fund committee and 'responsible people'

A fund operated by a non-government cultural organisation can only be considered a public fund if it is administered or controlled by people who, because of their tenure of some public office or their position in the community, have a degree of responsibility to the community as a whole. These people are referred to as 'responsible people'.

Examples of 'responsible people' are:

- Justices of the Peace
- church authorities and members of the clergy
- trustees or board members of a non-profit school or college
- judges/magistrates
- solicitors
- accountants (must be CPA, ASA, NIA or ICA registered)
- directors/senior executives of companies that are listed on the Australian Stock Exchange
- medical practitioners registered under a medical registration board
- other professional people who belong to a professional body which has a code of ethics and rules of conduct e.g. real estate agents registered with a state body, social workers registered with the Australian Society of Social Workers, or psychologists registered with the Psychology Board of Australia
- teachers in senior positions including school principals
- senior academics (professors, deans, principal lecturers and appointments made by chancellors)
- people holding public or elected office (mayors, councillors or members of parliament)
- people who hold or have held public positions eg. appointments made by government ministers
- recipients of awards from government for services to the community such as an Order of Australia.

Your organisation will need to show that its public fund is controlled by a committee made up of a majority of 'responsible people'. Your organisation's governing document must contain a clause relating to its public fund management committee. A model clause is at [Appendix 2](#).

The committee must be set up so that it is not possible for public control (i.e. control by a majority of responsible people) to lapse, though daily operations may be delegated to other people. In order to demonstrate that this is the case, the ATO and the Department suggest that your organisation's public fund committee be set up to have a minimum of three people (at least two of whom are responsible people) so that it is less likely that public control of the public fund may lapse if one or more committee members are suddenly unable to serve.

Your organisation's public fund may be administered by your organisation's own management committee (as long as a majority of management committee members are responsible people) or by a sub-committee. It is also possible to appoint a public fund committee that includes people who are not part of the organisation's management structure.

The application form asks you to provide the names of all of the current or proposed members of your public fund's management committee (whether they are 'responsible people' or not) and, where applicable, the reason why each should be considered to be a 'responsible person'. If the reason why the person is a responsible person is not immediately evident, such as a Church Authority or people who hold or have held public positions, please provide details of the reason(s) why they should be taken to have a responsibility to the community as a whole (e.g. their occupation, public office or position in the community). If it is not clear your organisation's public fund committee is administered or controlled by a majority of responsible people, the Department will need to come back to you to seek further information, delaying the processing of your application.

The application form contains space to list the names and relevant details of three people. If your public fund committee has more than three members, please provide information on the additional members as a separate attachment.

For further information see: www.ato.gov.au/non-profit/getting-started/in-detail/types-of-dgrs/public-funds/?page=3#committee_members.

Fund operates on a not-for-profit basis

For the ATO to accept a fund as a public fund, it must operate on a not-for-profit basis. This means that money must not be distributed to members of the managing committee or trustees of the fund except as reimbursement for out-of-pocket expenses incurred on behalf of the fund or proper remuneration for administrative services. This requirement is separate to the requirement that your organisation as a whole to operate on a not-for-profit basis (see page 17 in the section '[Not-for-profit](#)').

Your organisation's governing document must contain a not-for-profit clause for the public fund that is separate to the not-for-profit clause for the organisation. A model clause is at [Appendix 2](#).

Issuing receipts

A donor may request a receipt for their gift or contribution in order to claim a tax deduction on their personal tax return. While DGR organisations are not required to issue receipts for gifts or contributions received into the public fund, if a receipt is issued for a tax deductible gift it must state:

- the name of the public fund that is entered on the RCO (not the organisation's name)
- the organisation's ABN, and
- that the receipt is for a gift.

Other information that may be useful to your donors to have included on a deductible receipt includes:

- the name of the donor
- the amount of money donated
- a description of any gifts of property, and
- the date of the gift.

Your organisation's governing document must contain a clause relating to issuing receipts. A model clause is at [Appendix 2](#).

If your organisation issues a receipt for a deductible contribution in relation to an eligible fundraising event, there are additional requirements. For further information see: www.ato.gov.au/Non-profit/Gifts-and-fundraising/Receiving-tax-deductible-gifts/Receipts/.

Winding-up and revocation

When a public fund entered on the ROCO is wound up, or if its DGR endorsement is revoked, the organisation cannot transfer the remaining funds from its public fund to its business or administrative account. The organisation must transfer any remaining funds from its public fund to another fund, authority or institution that has similar objects and is eligible to receive tax deductible donations under subdivision 30-B, section 30-100 of the Act. This would include other organisations entered on the ROCO which have DGR status and have been accepted as having a similar principal purpose of promoting one or more of the specified cultural forms.

Your organisation's governing document must contain a winding up clause for the public fund, separate to a winding up clause for the organisation as a whole. A model clause is at [Appendix 2](#).

For further information see: www.ato.gov.au/Non-profit/Getting-started/In-detail/Types-of-DGRs/Public-funds/?anchor=Requirements_of_PF#Requirements_of_PF.

Use of the public fund

In order to meet the ROCO eligibility requirement to maintain a public fund that meets the requirements of the Act, your organisation must only use donations to its public fund for its principal purpose. This means that your organisation cannot use its public fund for any secondary or ancillary purposes it may have (see the principal purpose criteria for further discussion of the relationship between your organisation's principal purpose and any secondary/ancillary purposes at page 10 in the section '[Principal purpose](#)').

An organisation on the ROCO can use its public fund to pay wages, rent and administrative expenses that are incurred in direct pursuit of the principal (specified cultural) purpose for which it was entered on the ROCO. However, that organisation could not pay wages, rent and administrative expenses—or any other expenses—that are incurred in relation to a purpose that is secondary or ancillary to its principal purpose.

For example, an organisation has a principal purpose of promoting radio, which it achieves by running a radio station that broadcasts programming of a religious nature, and also has a secondary purpose promoting religious values. This organisation could use donations to its public fund to support the operation of the radio station, as this is consistent with the principal purpose for which it was accepted as being a 'cultural organisation' and entered on the ROCO. However, it could not use donations to its public fund to support activities that advance its secondary purpose but not its principal purpose (e.g. organising public seminars on religious values).

Your organisation's governing document must contain a clause stating the public fund will only be used for the organisation's principal purpose or the public fund's stated purpose. A model clause is at [Appendix 2](#).

The application form asks you to explain how your organisation proposes to use donations to its public fund. It should be clear from your answer to this question that all of the proposed uses of the public fund are consistent with your organisation's principal purpose (or with the specific purpose of the fund, if different to that of the organisation as a whole).

'In Australia'

In order to receive DGR status, a public fund listed on the ROCO must be established and operated in Australia. The purposes and beneficiaries of a DGR on the ROCO do not have to be in Australia.

For further information see: www.ato.gov.au/Non-profit/Getting-started/In-detail/Types-of-DGRs/Rules-and-tests-for-DGR-endorsement/?anchor=InAustraliacondition#InAustraliacondition.

Evidence you can provide to show that you meet the requirement of subsection 30-300(3) includes:

- the details of a separate account in an Australian financial institution for the public fund
- a copy of your organisation's governing document including appropriate clauses on the:
 - administration of a public fund
 - clearly-stated objects of the public fund
 - winding up of the public fund
- the names of people on the public fund committee and reasons why the majority of members are 'responsible people'
- information on how your organisation's public fund will be used to promote its principal purpose.

Not-for-profit

Subsection 30-300(5) of the Act:

It must not pay any of its profits or financial surplus, or give any of its property, to its members, beneficiaries, controllers or owners (as appropriate).

To be eligible for entry on the ROCO, your organisation must operate on a not-for-profit basis. This means that it does not operate for the profit or gain of its individual members, either directly or indirectly, both while operating or when it winds up. This requirement is separate to the need for the fund that your organisation operates on a not-for-profit basis in order to be accepted as a public fund (see the section titled '[Fund operates on a not-for-profit basis](#)' on page17).

An organisation does not fail to be a not-for-profit if it simply provides a benefit to a member while genuinely carrying out its purpose. However, if your organisation provides benefits to members other than as incidentally to carrying out its principal (specified cultural) purpose, it may be difficult for you to demonstrate that your organisation genuinely operates on a not-for-profit basis.

The assessment of your organisation's eligibility against this criterion will consider whether your organisation's governing document clearly prevents it from distributing profits or assets for the benefit of particular people. The way in which an organisation's governing document achieves this may differ depending on the way it is constituted.

- Most incorporated associations are not-for-profit by default as Associations Incorporation legislation in most states and territories, except NT, specifies that incorporated associations operate on a not-for-profit basis. Associations can check the legislation in their state/territory prior to submitting an application. Some associations may also have a not-for-profit clause in its governing document and a model clause is at [Appendix 2](#).
- Other entity types, such as companies and trusts, should have a not-for-profit clause in the organisation's governing document. A model clause is at [Appendix 2](#).
- The legislation establishing a statutory body will include provisions governing the basis on which it is to operate and the uses to which any profits or financial surplus may be put.

For ATO guidance on whether your organisation is operating on a not-for-profit-basis, see:

<https://www.ato.gov.au/Non-profit/Getting-started/Starting-an-NFP/>.

Evidence you can provide to show that you meet the requirement of subsection 30-300(5) includes:

- a not-for-profit clause in your organisation's governing document
- having demonstrated that your organisation is an incorporated association that is registered under state or territory legislation that includes a requirement to operate on a not-for-profit basis.

Agreement to comply with Ministerial rules

Subsection 30-300(6) of the Act:

It must have agreed to comply with any rules that the Treasury Minister and the *Arts Minister make to ensure that gifts made to the fund are used only for its principal purpose.

As '[Use of the public fund](#)' on page 17 explains, your organisation needs to show that it will only use donations to the fund it maintains for its principal purpose in order for that fund to be accepted as a public fund.

The Act gives the Treasury Minister and the Minister for the Arts the power to make rules applying to organisations on the ROCO to ensure that this is the case. At the time of publication of this Guide there were no rules in place. Any rules made by the Ministers will be published on the Department's website.

Evidence of your organisation's agreement to comply with the rules of the Treasury Minister and Arts Minister can be demonstrated through a clause in your organisation's governing document. The model clause at [Appendix 2](#) is an effective way for the Minister to be satisfied that the criterion is met. In some circumstances, such as for statutory bodies, a Declaration made on behalf of the organisation by the CEO, Chair or equivalent agreeing to comply with any Rules may be satisfactory evidence of meeting this criterion.

Evidence you can provide to show that you meet the criteria of subsection 30-300(6) includes a:

- model clause in your organisation's governing document
- Declaration made by the head of the organisation agreeing to comply with this criterion.

Statistical information

Subsection 30-300(7) of the Act:

It must have agreed to give the *Arts Secretary, at intervals of 6 months, statistical information about gifts made to the public fund during the last 6 months.

Within 21 days of the end of two six-month periods (January to June and July to December) a ROCO organisation is to provide the Department with information on all the tax deductible donations it has received. Organisations are required to provide the Department with a 'nil return' if no donations are received within the six month period.

Donations are classified into three categories: individual donations are those from a private individual, corporate donations are from a business, and charitable trusts or foundations are those from ancillary funds and philanthropic trusts.

This information is provided on a Statistical Return of Donations form and sent to the Department by email (preferred) or mail. The form is available at www.arts.gov.au/roco.

The model clause is at [Appendix 2](#) is an effective way for the Minister to be satisfied that the criterion is met and that your organisation has agreed to provide the Arts Secretary with statistical information every six months.

The Declaration in the application form asks your organisation to affirm its agreement to provide statistical information at six monthly intervals. However, as staff and directors of cultural organisations may change over time, it is possible that future staff or directors may not be aware of or honour an agreement made by staff or directors at the time. For this reason, the inclusion of a clause on ROCO statistical returns in your organisation's governing document is the most effective way to ensure ongoing compliance. However, the Department recognises that in some circumstances, it may be difficult to amend a governing document (e.g. for statutory bodies), and that the Declaration would be considered satisfactory evidence of meeting this criterion.

Please note that ROCO reporting requirements are separate from, and additional to, the ACNC reporting requirements applying to registered charities.

Evidence you can provide to show that you meet the requirement of subsection 30-300(7) includes:

- model clause in your organisation's governing document
- declaration made by a senior office holder from your organisation agreeing to comply with this criterion.

3. Indirect pursuit of your organisation's principal purpose

Organisations entered on the ROCO use their resources, including gifts and contributions made to their public funds, to pursue their principal purpose through a variety of ways. For many organisations this includes paying staff wages and/or procuring goods and services from businesses, suppliers and contractors.

However, sometimes organisations applying for, or entered on the ROCO want to use their resources—including gifts and contributions made to their public funds—to pursue their respective principal purposes indirectly rather than directly, i.e. by providing financial support to other individuals or organisations to undertake cultural activities, rather than, or as well as, by undertaking cultural activities themselves. This support might take forms such as:

- awards, scholarships and prizes to individual artists or practitioners
- making grants to other organisations
- auspicating philanthropic grants on behalf of an individual artist or other organisation, or
- funding the purchase or creation of an asset that will be owned by or transferred to another entity.

While these or other indirect mechanisms can be effective ways of pursuing an organisation's principal purpose, they pose certain risks. This is because while an organisation on the ROCO has been subjected to considerable scrutiny to ensure that tax deductible donations it receives will be used

consistently with the requirements of tax law, other individuals or organisations to which it may wish to pass on donated moneys (or assets acquired with donated moneys) have not necessarily been subject to the same level of scrutiny.

A high degree of transparency about these arrangements is therefore required to enable the Minister to make a fully informed decision on whether an organisation meets the following legislative eligibility criteria for the ROCO:

- Principal purpose criterion: any provision of financial support to other individuals or organisations must be consistent with a principal purpose of promoting one or more specified cultural forms.
- Public fund criterion: any financial support for another individual or organisation to be provided from the applicant's public fund must be clearly enabled through the objects of the public fund (as expressed in the applicant's governing document) and consistent with ATO's guidance on public funds and result in the promotion of the specified cultural form(s) that it is the principal purpose of the applicant.
- Not-for-profit criterion: any money or assets to be transferred from the applicant to another person or organisation (except as payment for goods or services received) must not constitute the payment of profits/surplus, or the transfer of property, to the applicant's members/beneficiaries/controllers or owners.

If your organisation intends to pursue its principal purpose indirectly, either wholly or in part, your application and supporting material will need to clearly explain how your organisation decides which organisations or individuals it will support and the arrangements in place to ensure that those organisations or individuals will only use any money or property transferred from the public fund in ways that advance your organisation's principal purpose.

Broadly speaking, financial support may be provided to individuals and organisations in one of two ways: via an open application and assessment process, or through direct partnership. The types of evidence required to demonstrate whether your organisation meets the above criteria will depend on the method it uses to distribute funds to others.

Open application and assessment process

An important objective of many organisations entered on the ROCO is to support individuals to develop and grow their arts or cultural practice through programs such as grants, scholarships, awards and prizes (referred to throughout the rest of this section as 'award or grant'). The encouragement and assistance that these programs provide to individuals also promotes the specified cultural forms to the broader public by enabling the production and presentation of art and culture and supporting the vibrancy and sustainability of Australia's arts and cultural community.

Similarly, organisations on the ROCO may choose to run grant programs through which they identify and support other not-for-profit organisations whose activities and purposes are aligned with their own principal purposes.

If your organisation plans to use donations to its public fund to fund payments to individuals and organisations through an open assessment program, you will need to show that the program is designed and administered in a way that ensures the recipients of support use the funding provided only for your principal purpose and consistent with the other requirements for entry on the ROCO and endorsement as a DGR. Generally speaking, the more open and transparent your organisation's program is, the easier it will be to show this.

Clear, public program guidelines are the most effective way to show that your organisation's open assessment award or grant program is consistent with the principal purpose, public fund and not-for-profit ROCO eligibility criteria.

Such guidelines will allow you to provide the following information to support your organisation's ROCO application:

- The Award or Grant
 - What is being awarded? E.g. cash; professional development; performance or exhibition opportunities paid for from the public fund?
 - Who is eligible to receive the award or grant? E.g. practitioners of a specified cultural form; a certain demographic; locality/area; qualifications or experience.
 - Who is not eligible to receive the award or grant? e.g. for-profit organisations; employees or board members of the organisation.
- Advertising and Promotion
 - How the award or grant will be advertised and promoted, and to whom?
- Decision-making process
 - How will individuals or organisations apply for the award or grant? E.g. required to complete a form asking specific questions; required to submit a project proposal?
 - Who will make the decisions on who receives the award or grant? E.g. the number and composition of the judging panel.
 - On the basis of what criteria will decisions on recipients of the award or grant be made? E.g. artistic excellence; audience impact.
- Conditions on recipient
 - What requirements will be placed on the recipient as a condition of the award or grant? E.g. reporting requirements, limitations on use of provided funds.
 - How will you ensure that any funds provided are used for their intended purpose? E.g. executed grant agreement; acquittal requirements.

If you do not provide this information with your organisation's ROCO application, the Department will need to come back to you to seek further information, delaying the processing of your application.

Evidence you can provide to show that an indirect pursuit of your principal purpose through an award or grant program with an open application and assessment process is consistent with the criteria of subsection 30-300(2), 30-300(3) and 30-300(5) includes:

- a copy of your organisation's governing document that shows that the objects of the public fund enable your organisation to carry out this activity
- comprehensive program guidelines that show how your award or grant program(s) will operate
- where program guidelines have not yet been developed, a written statement addressing how your organisation intends to operate its award or grant program(s).

Direct partnership

As an alternative to an open application and assessment process, some organisations entered on the ROCO may wish to provide financial support to individuals or organisations through direct partnership. Under direct partnership arrangements, an organisation identifies certain individuals or organisations that it wishes to support on a one-off or recurrent basis and negotiates the terms of that support outside of the framework of a formal award or grant program.

If this is the case for your organisation, you must be able to clearly explain how the individuals and organisations you partner with are selected and show that the support will be provided to recipients in a way that is consistent with your organisation's principal purpose and not-for-profit status, as well as the rules applying to the use of your organisation's public fund.

Information you can provide to show that an existing or proposed direct partnership arrangement is consistent with the relevant ROCO criteria includes clear documentation, such as a funding agreement, contract or letter, that establishes:

- how funding will be provided to (e.g. another DGR or not-for-profit entity; a practising artist)
- what the recipient will be legally required to use the provided funding for (i.e. for particular activities or projects that promote specified cultural purposes), and
- how your organisation will satisfy itself that the recipient has used funding for the purpose for which it was provided (e.g. for smaller grants, a brief project acquittal; for larger grants or multi-year agreements, milestone reporting, project plan and budgets provided by the recipient).

If your organisation does not provide sufficient information about how it provides (or will provide) funding to individuals and/or other organisations through direct partnership arrangements, the Minister may not be able to be satisfied that your organisation meets the principal purpose, public fund and not-for-profit ROCO eligibility criteria.

To individuals

Arrangements whereby an organisation on the ROCO passes funds on to individuals through direct partnership may be reasonable and effective ways to pursue a cultural principal purpose that are also consistent with other relevant ROCO eligibility criteria. However, given the lack of public transparency of these arrangements and the private benefits that they may provide to the individual partners, they may also raise concerns about the organisation's principal purpose, the use of its public fund, and whether it is operating on a not-for-profit basis.

If your organisation intends to enter into direct partnerships with individuals, the onus is on you to clearly show:

- how individual partners are to be identified (e.g. who makes the decisions? What provisions are in place to deal with actual or potential conflicts of interest?)
- how provision of financial support to the individual(s) will promote the specific cultural form(s) that is your organisation's principal purpose
- that arrangements are in place to ensure that recipients use the money only for the purpose for which it is awarded, and
- that none of the individuals receiving financial support are members, beneficiaries, controllers or owners of the organisation.

It is important to note that not all provision of funds to an individual artist or cultural practitioner will necessarily be considered to be promoting the art or cultural form in which that individual is engaged. Consider, for example, an amateur community orchestra that provides financial support to a promising young violinist:

- if the financial support is provided to assist the violinist to attend a masterclass with a national orchestra, developing the violinist's musicianship, enabling her to share knowledge gained from the class with the rest of the orchestra, and improving the quality of the orchestra's

- performances, this would be a reasonable way for the orchestra to pursue its principal purpose of promoting classical music to the residents of its local area
- however, if the financial support is provided to assist the violinist to pay her rent and living expenses, it is highly unlikely that this would be considered a reasonable way for the orchestra to pursue its principal purpose.

To organisations

An organisation on the ROCO may provide financial support directly to other organisations with a similar cultural purpose provided the funding is consistent with relevant ROCO eligibility criteria. However, given the lack of public transparency of direct partnership arrangements, this may raise concerns about the organisation's principal purpose, the use of its public fund, and whether it is operating on a not-for-profit basis.

In circumstances where the ROCO organisation and the organisation(s) it intends to support are legally related, it should be clear exactly what the relationship is between the organisations, including whether there are any office holders or 'responsible people' on the public fund committee in common.

If your organisation intends to enter into direct partnerships with organisations, the onus is on you to clearly show:

- how organisations are to be identified (e.g. who makes the decisions? What provisions are in place to deal with actual or potential conflicts of interest?)
- how provision of financial support to the organisations will promote the specific cultural form(s) that is your organisation's principal purpose, and
- that arrangements are in place to ensure that recipients use the money only for the purpose for which it is awarded and not for any other purpose, including for profit or financial gain.

If one of your organisation's proposed activities is to use gifts and contributions to its public fund to buy or build an asset of property that will be transferred to another entity, you will need to provide further evidence to show that the arrangements are consistent with the ROCO eligibility criteria (see the section '[Raising funds to create assets that will be owned by another entity](#)' on page 24 for more information).

Evidence you can provide to show that funding individuals and organisations through direct partnership meets the criteria of subsection 30-300(2), 30-300(3) and 30-300(5) includes:

- a copy of your organisation's governing document which shows the objects of the public fund enable your organisation to carry out this activity
- clear program guidelines that show how the individuals and organisations selected for funding promote the specified cultural forms of your principal purpose
- program documentation, such as a funding agreement with reporting obligations, to ensure that recipients use the money only for the purpose which it is awarded.

Raising funds to create assets that will be owned by another entity

In some circumstances, it may be reasonable for a ROCO applicant to pursue its principal purpose by using gifts and contributions to its public fund to purchase or create an asset or property that will ultimately be owned by another entity. However, as noted in the introduction to [chapter 3](#) and the section on financial support to other organisations, such arrangements require a high level of

transparency to demonstrate that the proposed transfer is consistent with the principal purpose, public fund and not-for-profit ROCO eligibility criteria.

Given the risks involved, your organisation needs to show that:

- the objects or purpose in your organisation's governing document allow it to use its public fund for the creation of the asset(s) to be owned by another entity
- doing so is a reasonable way to pursue the principal purpose for which your organisation is seeking entry on the ROCO, and
- conditions are in place to ensure, and the other entity has provided appropriate assurances, that the asset will only be used to advance the principal purpose of the organisation seeking entry on the ROCO and not for any other purpose (including material gain or benefit inconsistent with the not-for-profit requirement).

The evidence required to satisfy Minister that the transfer of the asset meets the eligibility criteria will depend on the asset being transferred. For items of property that are inherently cultural in nature, such as a public artwork, the evidence you need to provide may be minimal. However, if the property being purchased or created is a building that may be used for multiple purposes, such as a community cultural centre, the burden of proof will be higher. In such circumstances you would need to provide formal legal assurances from the building's eventual owner (e.g. by deed or contract) that it will be used solely or predominantly for the specified cultural purposes for a reasonable period of time.

You will need to provide information on the other entity's purposes and whether it operates on a not-for-profit or for-profit basis. While the transfer of an asset to a not-for-profit entity with cultural purposes that are similar to your organisation's principal purpose may be consistent with the ROCO public fund and not-for-profit requirements, it may be difficult to demonstrate that your organisation meets these requirement if it intends to transfer an asset to a profit-making entity. Two examples of property transfer arrangements are outlined below, along with the types of evidence that can be provided to show that the arrangements in place are consistent with ROCO eligibility criteria and promote the ROCO applicant's principal purpose.

- For an applicant that intends to commission public art works to be placed in public parks owned by its local council, it may be sufficient to provide a letter from the council saying that it is willing to accept the art works for permanent display in the parks. Other evidence to demonstrate the long-term cultural use of the asset could include council policies on public artwork, street scaping or future planning that shows council support for public art, or minutes of council meetings pledging support for your organisation or project.
- For an applicant that intends to raise funds to buy or build a property (e.g. a theatre or art gallery), ownership of which will be transferred to a council or other entity, a much higher standard of evidence will be required. In addition to the information outlined at [Appendix 1](#), the applicant would likely need to provide a formal agreement in place between the two entities setting out the terms of transfer of ownership and providing assurances that the asset will be used to promote specified cultural forms for a reasonable length of time. Generally speaking, the longer and more binding the agreement, the stronger the case will be that the proposed arrangement will be consistent with the relevant ROCO eligibility criteria. Other evidence to demonstrate the long-term cultural use of the asset could include policy documents on arts or cultural activities or city planning (if the eventual owner is a local government body), detailed information on the recipient of the asset (including any public information such as websites and media articles showing support for your organisation or project), and information on any

financial contributions towards the creation or purchase of the property to be made by the other entity.

You will need to provide information on the other entity's purposes and whether it operates on a not-for-profit or for-profit basis. While the transfer of an asset to a not-for-profit entity with cultural purposes that are similar to your organisation's principal purpose may be consistent with the ROCO public fund and not-for-profit requirements, it may be difficult to demonstrate that your organisation meets these requirement if it intends to transfer an asset to a profit-making entity.

If your organisation does not provide sufficient information and evidence on its proposed use of donations to its public fund to purchase or create an asset or property that will ultimately be owned by another organisation, the Minister may not be able to be satisfied that your organisation meets the principal purpose, public fund and not-for-profit ROCO eligibility criteria.

Evidence you can provide to show that the use of your public fund to transfer an asset to another entity meets the criteria of subsection 30-300(2), 30-300(3) and 30-300(5) includes:

- a copy of your organisation's governing document which shows the objects of the public fund enable your organisation to carry out this activity
- a formal agreement between both parties showing the eventual owner operates on a not-for-profit basis and has provided assurances on the long term cultural use of the asset
- supporting information such as policy documentation, public information including media articles and websites, grants or matched funding, or minutes of meetings showing support for your organisation or project from the eventual owner.

4. Other matters related to DGR endorsement

The ROCO application form requests some information from applicants that is not directly related to the decision on whether the applicant should be entered on the ROCO but is connected to the broader process of being endorsed as a DGR. This chapter outlines the reasons the Department collects this information through the application process and explains what will happen to it, including where it will be passed onto other government agencies.

While failure to provide the requested information or follow the guidance below will not have any bearing on the Minister's decision on whether your organisation is a 'cultural organisation' that should be entered on the ROCO, it could result in delays to your organisation being endorsed as a DGR by the ATO.

ABN

Under the Act, an organisation may only be endorsed as a DGR by the ATO if it has an Australian Business Number (ABN). The ROCO application form asks you to provide your organisation's ABN number so that the Department can pass this information on to the ATO at the same time that it notifies the ATO that your organisation has been entered on the ROCO. Taken together, this information allows the ATO to endorse your organisation as a DGR immediately following its entry on the ROCO.

If you do not provide an ABN for your organisation through the ROCO application process, the ATO will be unable to endorse your organisation as a DGR until you have provided it with this information by some other means.

Name of the public fund

As noted in the section 'Legislative Framework' in this Guide, while both the name of an organisation and the name of the public fund it maintains are entered on the ROCO, it is the public fund, rather than the organisation itself, which is endorsed by the ATO as a DGR under the Act. The ATO has advised that in order to maintain a clear distinction between an organisation and the DGR-endorsed public fund it maintains, the ATO cannot endorse a public fund that has the same name as the organisation that maintains it.

As noted in '[Is there a separate fund?](#)' on page 13, however, in certain circumstances it may not be necessary for your organisation to establish and maintain a separate gift fund as its public fund, including where your organisation is a trust, established solely for a cultural purpose, that has no other source of income besides tax deductible gifts and contributions (including interest and other financial returns on those gifts and contributions). If this is the case, it is unnecessary for there to be a separate public fund name, as the ATO is able to endorse the entire organisation as a public fund.

The Department will pass the information you provide on the name of your organisation's public fund to the ATO for the purposes of DGR endorsement. If your public fund name is the same as your organisation's name and the above exception does not apply, the ATO may be unable to endorse your public fund as a DGR until you have changed the name of your public fund, which would require an amendment to your entry on the ROCO (see '[Amending the names of organisations and public funds](#)' on page 29) and may delay DGR endorsement even further.

For further information on these requirements see: www.ato.gov.au/non-profit/getting-started/getting-endorsed/is-my-organisation-eligible-for-dgr-endorsement/.

Five year estimate of proposed donations

The ROCO application form asks you to provide an estimate of the proposed donations your organisation expects to receive into its public fund in the current financial year and each of the following four years, should the organisation obtain DGR status for its public fund through the ROCO. This information is provided to the Treasury and is not taken into account in the Ministers' decision on whether to enter your organisation on the ROCO.

The table in the application form asks you to record anticipated donations broken down into the donor categories of individuals, companies and ancillary funds in either dollar figures or percentages. An ancillary fund is a foundation or trust that is endorsed under Item DGR2 and has been specifically set up to receive donations that can be passed on to other DGR organisations.

The Department realises that it may be difficult to provide estimates so far into the future but appreciates your closest approximations. There is no need to provide any evidence to support your estimates.

5. The application process

ACNC Referrals

The Australian Charities and Not for Profit Commission (ACNC) application form for registration as a charity allows applicants to indicate their organisation's interest in applying for DGR status through the ROCO. The ACNC forwards details of all organisations that check this box, and are subsequently registered as charities, to the Department. The Department will then use the organisation name and

email address supplied by the ACNC to contact you to provide information on how to apply for entry on the ROCO.

Application Form

To be assessed for eligibility for entry on the ROCO, an organisation must submit a completed application form to the Department. To avoid delays in the assessment process it is important that organisations complete the application form in full. The application form can be downloaded at www.arts.gov.au/roco.

Declaration

The last section of the application form is a 'Declaration' that states the information provided in the application is accurate and complete.

The declaration must be signed by someone with the legal authority to act on behalf of your organisation. This will generally be a senior office holder within your organisation, such as the chief executive officer, president or chair. If it is unclear that the person who has signed the declaration has the authority to do so—including where the declaration has been signed by a lawyer, accountant or agent who is representing your organisation on a professional basis—the Department may seek further information from you, delaying the processing of your application.

Assessment process

Once you have submitted an application for entry on the ROCO to the Department, we will conduct a preliminary assessment of the application against the ROCO eligibility criteria and requirements.

If your application form is incomplete, or if the supporting material you have provided has not clearly shown that your organisation meets all of the ROCO eligibility criteria, the Department will email you to request further information. The Department generally asks for a response within three months, though the quicker you are able to provide the requested information, the quicker assessment of your application will recommence.

It is possible that the Department may come to the view, after its preliminary assessment of your application, that there is information that may lead the Minister to conclude that your organisation does not meet one or more of the ROCO eligibility criteria and is therefore not a 'cultural organisation'. This information may have been provided by you in the course of your application, or may have been drawn from other sources such as your organisation's website or social media presence. If this is the case, the Department will provide procedural fairness by emailing you, drawing to your attention the potentially adverse information and giving your organisation the opportunity to respond. As with requests for further information, the Department generally asks for any response to be provided within three months.

Once its assessment is complete, the Department provides all applications (except for those withdrawn by the applicant) to the Minister for the Arts for a decision on whether the applicant is a cultural organisation. If the Minister is satisfied that your organisation is a cultural organisation, he or she may notify the Treasury Minister and seek her or his agreement to direct the Secretary of the Department to enter your organisation on the ROCO.

If your organisation is entered on the ROCO, you will receive a formal letter from the Department confirming your entry and providing information on the ongoing reporting and compliance responsibilities outlined in [chapter 2](#) of this Guide.

If the Minister determines that your organisation is not a 'cultural organisation' that should be entered on the ROCO, or if the Ministers decide for any other reason not to enter your organisation on the ROCO, you will receive a Statement of Reasons for the decision.

As previously noted in this Guide, the assessment process can be lengthy and may take six to twelve months to be finalised.

Endorsement as a DGR by the ATO

If your organisation is approved for entry on the ROCO, the Department will inform the ATO, which will process the endorsement of your organisation's public fund as a DGR. The ATO will send you a written notification of endorsement. Evidence of an organisation's DGR status will appear on your organisation's listing on the Australian Business Register at www.abr.business.gov.au.

6. Additional information for organisations on the ROCO

Statistical return of donations

As noted in '[Statistical information](#)' on page 199, an organisation entered on the ROCO is required to provide the Department with information on all the tax deductible donations it has received within 21 days of the end of two six-month periods (January to June and July to December). Organisations are required to provide the Department with a 'nil return' if no donations are received within the six month periods.

Donations are classified into three categories: individual donations are those from a private individual, corporate donations are from a business, and charitable trusts or foundations are those from ancillary funds and philanthropic trusts. This information is provided on a Statistical Return of Donations form and sent to the Department by email (preferred) or mail. The form is available at www.arts.gov.au/roco.

Amending names of organisations and public funds entered on the ROCO

If your organisation has changed its name or that of its public fund, you are asked to notify the Department in writing within 28 days of the change. Your notification must clearly state the new legal name of the organisation and/or the new name of its public fund and be accompanied by evidence of the name change, such as a Change of Name Certificate for incorporated associations, Certificate of Registration or amended Deed of Trust.

Amendments may take some time and your organisation may continue to operate its public fund under its previous name until the amendment takes effect.

Evidence you can provide to show that your organisation wishes to amend its name or the name of its public fund on the ROCO includes a copy of the:

- new Certificate of Incorporation, Certificate of Registration or Deed of Trust, and
- meeting minutes in which the decision to change the name was approved.

Changes to organisations' contact details and staff

Organisations entered on the ROCO are asked to notify the Department of any changes to their contact details or contact people within 28 days to ensure the Department can contact you about your ongoing registration. It is also important that your organisation's details are up to date so that we can contact you with information regarding the ROCO or request information from you.

The Department may conduct an online search of publically available information to find your organisation's current contact details if the details supplied by your organisation are no longer correct.

Changes to your governing document

As the section, above, titled '[Eligibility criteria](#)' makes clear, your organisation's governing document is a key piece of evidence in the Minister's original decision on whether your organisation is a 'cultural organisation' under the Act that may be entered on the ROCO. Any changes to the Objects or Purposes, public fund clauses or not-for-profit-clause in your organisation's governing document are therefore relevant to the question of whether your organisation continues to be a cultural organisation that should remain on the ROCO.

If your organisation makes changes to its governing document you should provide the Department with a copy of the revised governing document within 28 days of any changes being approved by the organisation. This is to ensure that any changes to your organisation's governing document are reviewed against the ROCO eligibility criteria in a timely manner so that your ongoing registration is not jeopardised by non-compliance. In particular, we will review the Objects or Purposes in the governing document to determine whether your organisation continues to meet the principal purpose criteria.

If, in the Department's view, there is a possibility that your organisation's revised governing document might lead the Minister to conclude that your organisation is no longer a 'cultural organisation', the Department will email you to draw your attention to the possible concern(s) and give you an opportunity to provide further information on how your organisation continues to meet ROCO eligibility criteria.

Evidence that the changes to your organisation's governing document were approved by the board or members can be demonstrated by providing a copy of the section of the minutes where the changes were approved. A receipt of lodgement, or letter from the relevant regulatory body, such as the Department of Fair Trading in your state/territory or ASIC, is evidence that the changes to your governing document have followed the appropriate statutory processes for approval.

If your organisation makes changes to its governing document, evidence you can provide to show that the changes have followed appropriate statutory processes for approval includes:

- a copy of your organisation's amended governing document
- a copy of the meeting minutes where the changes were approved
- a copy of a receipt of lodgement from the relevant regulatory body.

Changes that may affect your organisation's ongoing eligibility on the ROCO

You should also inform the Department within 28 days of changes to any other aspect of your organisation's governance arrangements that are relevant to the question of whether your organisation

- public fund committee, including the identity and qualifications of the 'responsible people' administering the fund (relevant to public fund criteria)
- public fund bank account (relevant to public fund criteria)
- the introduction of or changes to guidelines for grants, awards, scholarships and prizes for individuals and organisations (relevant to principal purpose criteria and public fund criteria)
- the introduction of or changes to guidelines for financially supporting other individuals and organisations through direct partnership (relevant to principal purpose criteria of 30-300(2) and public fund criteria)
- the introduction of or changes to guidelines for raising funds to create assets for other organisation (relevant to principal purpose criteria and public fund criteria)
- agreement and the arrangements with another entity that owns or manages an asset to which donations to your public fund are to be applied (relevant to principal purpose criteria and public fund criteria).

Evidence of these changes, including supporting documentation, is required so the Department can review any changes against the ROCO eligibility criteria.

Evidence you can provide to show that your organisation continues to meet ongoing eligibility criteria includes:

- a copy of your organisation's amended governing document and supporting documents to show appropriate statutory processes have been followed (see page 30 '[Changes to your governing document](#)' for more detail)
- the names of people on the public fund committee and reasons why the majority of members are 'responsible people'
- the details of a separate account in an Australian financial institution for the public fund
- comprehensive program guidelines that show how your award, grant, scholarship or prize program will operate
- clear program guidelines and documentation for your direct partnership funding arrangement to individuals and organisations
- if your public fund will be used to create an asset that will be owned by another entity, a formal agreement between both parties showing the eventual owner of the asset has provided assurances on the long term cultural use of the asset.

Review of eligibility

From time to time, an organisation entered on the ROCO may be asked to participate in a review of their eligibility for inclusion on the ROCO to determine whether it continues to meet the criteria of 30-300(1)-(7) of the Act. The Department will notify organisations in writing and outline the formal processes if a review is undertaken.

Removal from the ROCO

Subsection 30-310 of the Act:

- (1) **The Minister and the *Arts Minister may direct the *Arts Secretary to remove a *cultural organisation, and the public fund it maintains, from the register.**
- (2) **The direction must be in writing and must specify the day on which the organisation and public fund are to be removed from the register. The day must be the day on which the direction is given or a later day.**

The Minister for the Arts and the Treasury Minister are responsible for decisions relating to the ROCO, including removing organisations and public funds.

In order to ensure accountability, transparency and fairness, there is a formal process for removal of a cultural organisation from the ROCO. Removal may be initiated either by an organisation entered on the ROCO or the Ministers.

Reasons for removal

As outlined in this Guide, an organisation may only be entered on the ROCO if it is a 'cultural organisation' under the Act. If an organisation on the ROCO ceases to be a 'cultural organisation' the Ministers may decide to remove that organisation and its public fund from the ROCO. Circumstances that could lead to your organisation being removed from the ROCO include if:

- the objects in your organisation's governing document and/or activities indicate that the principal purpose of the organisation no longer appears to be the promotion of the specified cultural forms (relevant to principal purpose criteria)
- an organisation fails to have a public fund committee that has a majority of 'responsible people' administering the fund (relevant to public fund criteria)
- an organisation fails to obtain any gifts or contributions to its public fund for a period of two years (relevant to public fund criteria)
- an organisation fails to submit six monthly statistical returns of donations to the Department (relevant to public fund criteria).

A cultural organisation may also be removed from the ROCO if:

- it asks to be removed
- the Ministers consider its continued presence on the ROCO to be inconsistent with policies and budgetary priorities of the Government, or
- the Ministers are satisfied that its continued presence on the ROCO would have a detrimental effect on the utility and integrity of the ROCO for any other reason, including:
 - it has been, or is in the process of being, wound up or deregistered
 - its DGR status has been revoked by the ATO, including because it no longer has an active ABN
 - it engages in illegal activity.

Removal process

Request initiated by organisation

If your organisation wishes for it and its public fund to be removed from the ROCO, you must notify the Department in writing. The letter or email should outline the reasons for requesting removal and include sufficient evidence (such as meeting minutes) to show that the decision to request removal from the ROCO was made or approved in accordance with the organisation's governance arrangements (e.g. by the Board, members or trustees). The Department will contact you by email to confirm your organisation's request to be removed and may request further information or supporting documentation if it is not clear that the request is being made under appropriate authority.

The Department will then seek the approval of the Ministers to remove your organisation from the ROCO. Once the Ministers have directed the removal of the organisation from the ROCO, we will

notify you in writing. We will also notify the ATO, which will revoke the organisation's DGR endorsement.

The process of removal can be lengthy and may take up to six to twelve months. It is important to note that on the matter of removals the Department can only liaise with people who are registered as contacts for the organisation.

Removal initiated by Ministers

If the Department becomes aware of information that may lead to the Minister to conclude that your organisation no longer meets one or more of the ROCO eligibility criteria, or if we are aware of any other matter that may lead the Ministers to conclude that the organisation should be removed from the ROCO, the Department will notify your organisation of the adverse information and give you the opportunity to respond. We will notify you by email and will generally provide 3 months to respond.

If your organisation no longer requires DGR endorsement and wishes to be removed from the ROCO, we ask that you notify the Department in writing following the process outlined in the paragraph 'Request initiated by organisation'.

If your organisation wishes to remain on the ROCO and retain its DGR status, its response should address the information raised by the Department and provide evidence of any steps it has taken or will take in the near future to address that issue.

If, after having been given the opportunity to respond, your organisation has not shown that it is still a 'cultural organisation' that should remain on the ROCO, the Department will send you a second letter notifying you of the reasons why the Ministers may decide to remove your organisation from the ROCO and giving you a further opportunity to respond.

If the Department is unable to contact your organisation at an email address we have on record, we will make reasonable attempts to contact you by other means. However, as organisations on the ROCO are responsible for ensuring that they advise the Department of any changes to their contact details (see '[Changes to organisation' contact details and staff](#)' on page 30), the Ministers may decide to proceed with the removal of organisations from the ROCO that have not been able to be contacted using the last contact details provided.

Ultimately, if the Ministers agree that your organisation is not eligible to remain on the ROCO, or that its continued presence is detrimental for some other reason, and that procedural fairness has been provided, they may direct the Secretary of the Department to remove your organisation and its public fund from the ROCO. The Department will attempt to notify you in writing in this event.

Appendix 1—Using public funds to construct or restore a building

The purposes and activities of some organisations may relate wholly or partly to the construction or restoration of a building. As built cultural heritage is not one of the ROCO's specified cultural forms, an organisation with the principal purpose of promoting a building in and of itself will not be eligible for entry on the ROCO. However, an organisation with purposes and/or activities relating to the construction or restoration of a building may still meet the ROCO principal purpose requirement if it is able to show that in constructing or restoring that building, it is pursuing a principal purpose of promoting one or more specified cultural forms.

If this is the case for your organisation, you will need to provide evidence of how the building will be used and how this relates to the promotion of the specified cultural forms. As the section on '[Use of the public fund](#)' on page 17 explains, an organisation can only use its public fund to promote its principal purpose. If your organisation intends to use its public fund to construct or restore a building that will be used in part for purposes other than its principal purpose, it may not meet this eligibility criterion.

If your organisation intends to construct or restore a building as a way of pursuing its principal purpose, your application should provide detailed information on the building itself, the use(s) to which it will be put, and the financial arrangements for its construction or restoration in order to satisfy the Minister that the creation of the building meets the principal purpose and public fund ROCO eligibility criteria. In particular, please provide information on:

- the spaces in the building or proposed building (e.g. a theatre, a gallery, a multi-purpose hall, meeting rooms, a café or retail space)
- all the uses to which these spaces will be put, whether cultural activities or not, and an explanation of how the uses of the building will promote the specified cultural forms you have indicated that it is your organisation's principal purpose to promote, and
- any plans to hire the building or its spaces to individuals and organisations outside your organisation, including the purposes and activities to which the hirers will put the building (whether as an estimate of future activity or supported by records of previous hirers) and the uses to which your organisation will put the income raised through hiring activity—if your organisation is pursuing its principal purpose indirectly through the individuals and organisations that hire the building, a greater level of transparency is required to satisfy the Minister that the hirers and the activities undertaken by external parties in the building promote your principal purpose.

Activities that are, or will be, undertaken in a building your organisation plans to construct or restore are relevant to both the question of your organisation's principal purpose and the question of whether use of the public fund to pay for that construction or restoration is consistent with that principal purpose. In some circumstances, activities that are not themselves related to specified cultural forms may nevertheless be a reasonable way of promoting a specified cultural form: for example, a theatre company that wants to build a theatre to house its performances could rent out that theatre on off-days for non-cultural activities in order to generate revenue that will support its purpose of promoting the performing arts. In general, however, the higher the proportion of a building's space and usage that relates to activities that do not directly or primarily promote a specified cultural form (e.g. religious services, language classes), the more difficult it may be to show that the construction or restoration of the building supports a finding that your organisation meets the ROCO principal purpose requirement.

Appendix 2—Model clauses

Where relevant, you may choose to use the following model clauses in your governing document.

Model clauses 30-300(3)

- The association will establish and maintain a public fund.
- Donations will be deposited into the public fund listed on the Register of Cultural Organisations. These monies will be kept separate from other funds of the association and will only be used to further the principal purpose of the Association. Investment of monies in this fund will be made in accordance with guidelines for public funds as specified by the ATO.
- The public will be invited to contribute to the fund.
- The fund will be administered by a management committee or a subcommittee of the management committee, the majority of whom, because of their tenure of some public office or their professional standing, have an underlying community responsibility, as distinct from obligations solely in regard to the cultural objectives of [name of organisation].
- No monies/assets in this fund will be distributed to members or office bearers of the Association, except as reimbursement of out-of-pocket expenses incurred on behalf of the fund or proper remuneration for administrative services.
- The Department responsible for the administration of the Register of Cultural Organisations will be notified of any proposed amendments or alterations to provisions for the public fund, to assess the effect of any amendments on the public fund's continuing Deductible Gift Recipient status.
- Receipts for gifts to the public fund must state:
 - the name of the public fund and that the receipt is for a gift made to the public fund
 - the Australian Business Number of the company
 - the fact that the receipt is for a gift, and
 - any other matter required to be included on the receipt pursuant to the requirements of the *Income Tax Assessment Act 1997*.

Winding-up clause

If upon the winding-up or dissolution of the public fund listed on the Register of Cultural Organisations, or its endorsement as a deductible gift recipient is revoked, there remains after satisfaction of all its debts and liabilities, any property or funds, the property or funds shall not be paid to or distributed among its members, but shall be given or transferred to some other fund, authority or institution having objects similar to the objects of this public fund, and whose rules shall prohibit the distribution of its or their income among its or their members, such fund, authority or institution to be eligible for tax deductibility of donations under Subdivision 30-B, section 30-100, of the *Income Tax Assessment Act 1997*.

Model clause 30-300(5)

It must not pay any of its profits or financial surplus, or give any of its property, to its members, beneficiaries, controllers or owners (as appropriate).

Model clause 30-300(6)

The company must comply with any rules that the Treasury Minister or the Minister for the Arts make to ensure that gifts made to the public fund will only be used for the company's principal purpose.

Model clause 30-300(7)

The company must provide to the Department responsible for the administration of the Register of Cultural Organisations statistical information on the gifts made to the public fund every 6 months.

Appendix 3—Checklist for ROCO applicants

To minimise delays with the processing of your ROCO application, please provide the following documentation to the Department for assessment.

Application form

Ensure all fields have been completed and the following details are provided:

- ABN
- names and qualifications of the responsible people on your public fund committee
- name of the public fund
- bank account details for the public fund
- estimation of proposed donations
- signed Declaration.

Evidence of legal structure

Evidence you can provide to show that you meet this criterion:

- Certificate of Registration issued by ASIC or ORIC
- Certificate of Incorporation as an association issued by a state/territory government body an executed Deed of Trust, or
- copy of or link to the Commonwealth, state or territory legislation establishing your organisation as an unincorporated body for a public purpose.

Governing document

Please provide a copy of your organisation's governing document such as:

- constitution
- rules
- an executed Deed of Trust, or
- copy of or link to the Commonwealth, state or territory legislation establishing your organisation as an unincorporated body for a public purpose.

Information on activities

Evidence of your organisation's current or planned activities, including:

- a supporting statement explaining how the activities promote your principal purpose
- annual report, business plan, prospectus
- marketing materials
- publically available information—website or social media accounts.

Additional information on indirect pursuits of your principal purpose

Grants, awards, scholarships or prizes

- a copy of your organisation's governing document that shows that the objects of the public fund enable your organisation to carry out this activity
- comprehensive program guidelines that show how your award or grant program(s) will operate

- where program guidelines have not yet been developed, a written statement addressing how your organisation intends to operate its award or grant program(s).

Direct Partnership

- a copy of your organisation's governing document which shows the objects of the public fund enables your organisation to carry out this activity
- clear program guidelines that shows how the individuals and organisations selected for funding promote the specified cultural forms of your principal purpose, and
- program documentation, such as a funding agreement with reporting obligations, to ensure that recipients use the money only for the purpose which it is awarded.

Use of your public fund to transfer an asset to another entity

- a copy of your organisation's governing document which shows the objects of the public fund enables your organisation to carry out this activity
- a formal agreement between both parties showing the eventual owner operates on a not-for-profit basis and has provided assurances on the long term cultural use of the asset, and
- supporting information such as policy documentation, public information including media articles and websites, grants or matched funding, minutes of meetings showing support for your organisation or project from the eventual owner.

Appendix 4—Subdivision 30-F of the Income Tax Assessment Act 1997

30-290 What this Subdivision is about

This Subdivision requires the establishment of a register of cultural organisations. Section 30-15 allows you to deduct a gift that you make to a fund that is on the register.

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30-295 Establishing the register

The *Arts Secretary must keep a register of cultural organisations.

Note: Section 30-305 sets out what details must be entered on the register.

30-300 Meaning of cultural organisation

- (1) A cultural organisation is:
 - (a) a body corporate; or
 - (b) a trust; or
 - (c) an unincorporated body established for a public purpose by the Commonwealth, a State or a Territory;that satisfies each requirement in this section.
- (2) Its principal purpose must be the promotion of literature, music, a performing art, a visual art, a craft, design, film, video, television, radio, community arts, arts or languages of *Indigenous persons or movable cultural heritage.
- (3) It must maintain a public fund that meets the requirements of section 30-130, or would meet those requirements if the *cultural organisation were a fund, authority or institution.
- (4) Repealed.
- (5) It must not pay any of its profits or financial surplus, or give any of its property, to its members, beneficiaries, controllers or owners (as appropriate).
- (6) It must have agreed to comply with any rules that the Treasury Minister and the *Arts Minister make to ensure that gifts made to the fund are used only for its principal purpose.

- (7) It must have agreed to give the *Arts Secretary, at intervals of 6 months, statistical information about gifts made to the public fund during the last 6 months.

30-305 What must be on the register

- (1) The *Arts Secretary must enter on the register each *cultural organisation, and the public fund it maintains, that he or she has been directed to enter by the Treasury Minister and the *Arts Minister.
- (2) The Treasury Minister and the *Arts Minister may so direct the Secretary only if the Arts Minister has notified the Treasury Minister that he or she is satisfied that an organisation is a *cultural organisation. The notification must be in writing.
- (3) The direction must be in writing and must specify the day on which the organisation and public fund are to be entered on the register. The day must be the day on which the direction is given or a later day.
- (4) The Treasury Minister and the *Arts Minister must have regard to the policies and budgetary priorities of the Commonwealth Government in deciding whether to give a direction.

30-310 Removal from the register

- (1) The Treasury Minister and the *Arts Minister may direct the *Arts Secretary to remove a *cultural organisation, and the public fund it maintains, from the register.
- (2) The direction must be in writing and must specify the day on which the organisation and public fund are to be removed from the register. The day must be the day on which the direction is given or a later day.

30-130 Maintaining a gift fund

- (1) The entity must maintain for the principal purpose of the fund, authority or institution a fund (the gift fund):
 - (a) to which gifts of money or property for that purpose are to be made; and
 - (b) to which contributions described in item 7 or 8 of the table in section 30-15 in relation to a fund-raising event held for that purpose are to be made; and
 - (c) to which any money received by the entity because of such gifts or contributions is to be credited; and
 - (d) that does not receive any other money or property.
- (2) The entity must use the gift fund only for the principal purpose of the fund, authority or institution.

Exception--only one gift fund required per entity.
- (3) An entity that operates 2 or more funds, authorities or institutions also meets the requirements of this section for 2 or more of those funds, authorities or institutions by maintaining a single gift fund if:

- (a) the gift fund meets the requirements in paragraphs (1)(a), (b) and (c) in respect of each of the funds, authorities or institutions for which the gift fund is maintained; and
 - (b) the gift fund does not receive any other money or property.
- (4) The entity must use a gift or contribution made to the fund and any money credited to the fund only for the principal purpose of the fund, authority or institution to which the gift, contribution or money relates.

Note: The entity is also required to keep appropriate records for each of the funds, authorities or institutions: see section 382-15 of the *Taxation Administration Act 1953*.