

The Auditor-General
Audit Report No.52 2010–11
Performance Audit

Administration of Deductible Gift Recipients (Non-profit Sector)

Australian Taxation Office

Australian National Audit Office

© Commonwealth
of Australia 2011

ISSN 1036-7632

ISBN 0 642 81199 7

COPYRIGHT INFORMATION

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth.

Requests and inquiries concerning reproduction and rights should be addressed to:

Executive Director
Corporate Management Branch
Australian National Audit Office
19 National Circuit
BARTON ACT 2600

Or via email:
webmaster@anao.gov.au



Canberra ACT
22 June 2011

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken an independent performance audit in the Australian Taxation Office with the authority contained in the *Auditor-General Act 1997*. I present the report of this audit and the accompanying brochure to the Parliament. The report is titled *Administration of Deductible Gift Recipients (Non-profit Sector)*.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's Homepage—<http://www.anao.gov.au>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian McPhee', is positioned above the printed name and title.

Ian McPhee
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office (ANAO). The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits and financial statement audits of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Australian Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

For further information contact:
The Publications Manager
Australian National Audit Office
GPO Box 707
Canberra ACT 2601

Telephone: (02) 6203 7505
Fax: (02) 6203 7519
Email: webmaster@anao.gov.au

ANAO audit reports and information about the ANAO are available at our internet address:

<http://www.anao.gov.au>

Audit Team

David Crossley
Sue Sheridan
Nicholas Scholar
Andrew Morris
Mark Crawley

Contents

Abbreviations and Glossary	8
Summary and Recommendations	11
Summary	13
Introduction	13
Audit objective and criteria	18
Overall conclusion	19
Key findings by chapter	22
Summary of agency response	29
Recommendations	30
Audit Findings	31
1. Introduction	33
The Australian Taxation Office	33
The non-profit sector	33
Deductible gift recipients (DGRs)	38
Arrangements for administering the ATO's non-profit clients	40
Recent developments relating to the non-profit sector	42
Audit approach	44
Report structure	45
2. Governance Arrangements	46
Introduction	46
Organisational arrangements	46
Staff resourcing and staff skilling	50
Planning and risk management frameworks	58
Performance monitoring and reporting	61
Arrangements with other government agencies	62
Communication and consultation with key stakeholders	64
3. Assessing DGR Endorsement Applications	69
Introduction	70
Allocating applications to case officers	73
Timeliness in determining case outcomes	76
Consistency of assessment decisions	83
Quality assurance arrangements for assessments	90
4. Communicating and Coordinating DGR Application Requirements	96
Introduction	96
Communicating with applicants	97
Coordination of assessments with other Commonwealth agencies	106
Arrangements with state/territory fundraising registrars	109

5. Managing DGR Compliance	112
Introduction	112
Level and nature of compliance risks.....	112
Identifying and assessing the risk of non-compliance	114
Compliance interventions.....	125
Revoking DGR endorsements	131
Appendices	133
Appendix 1: ATO response	135
Appendix 2: Types of non-profit entities	138
Appendix 3: Endorsement requirements and guidance	139
Appendix 4: Role of Commonwealth agencies other than the ATO	147
Appendix 5: State and territory legislation for fundraising charities	148
Index.....	149
Series Titles.....	150
Current Better Practice Guides	156
Tables	
Table 1.1 Key characteristics of the non-profit sector	35
Table 1.2 Tax concessions available to non-profit organisations.....	36
Table 2.1 NPC staff resource and workload demands 2007–08 to 2009–10	51
Table 2.2 Effect of the CWC system on actual times used to process DGR and TCC endorsement applications	54
Table 3.1 Service standards for processing DGR endorsement applications.....	76
Table 3.2 Resourcing required to process DGR and TCC endorsement applications (average minutes)	78
Table 3.3 Elapsed time for DGR cases finalised from July 2009 to October 2010.....	82
Table 3.4 Outcomes of objections to DGR and TCC endorsement decisions, for the period 2007–08 to 2009–10	88
Table 3.5 Cases meeting standard or above for the period Nov 2009 to Oct 2010	92
Table 3.6 Post-finalisation quality assessments in the period Oct 2008 to Sept 2010	94
Table 4.1 DGR endorsement applications distribution and outcomes for the period July 2009 to June 2010	99
Table 5.1 TCC/DGR status integrity program cases, 2007–08 to 2010–11.....	127
Table 5.2 Active compliance activity by outcome for DGRs (including prescribed private funds), 2009–10.....	128
Table 5.3 ATO compliance response to issues potentially impacting on DGR endorsement eligibility	130
Table A 1 Types of non-profit entities as categorised by the ATO	138

Table A 2	Legislative basis, requirements and guidance for DGR entity/fund categories	139
Table A 3	Role of Commonwealth agencies other than the ATO in the DGR endorsement process	147
Table A 4	Key state and territory legislation for fundraising charities	148

Figures

Figure S 1	Relationship between potential DGRs and the classes of non-profit entities	16
Figure 1.1	Relationship between potential DGRs and the classes of non-profit entities	40
Figure 2.1	NPC functional areas.....	47
Figure 2.2	NPC organisational locations	48
Figure 2.3	DGR endorsement cycle time	52
Figure 2.4	DGR endorsement aged cases	52
Figure 3.1	Overview of DGR application and assessment processes	71
Figure 3.2	Internal time standards for allocation of applications to case officer	73
Figure 3.3	DGR applications withdrawn and disallowed, 2004–05 to 2009–10.....	80

Abbreviations and Glossary

ABN	Australian Business Number. Businesses that are registered for the Goods and Services Tax require an ABN, as do organisations applying for endorsement as a gift deductible recipient or an income tax exempt charity or both.
ABR	The Australian Business Register is a database of identity information provided by businesses and organisations when they register for an ABN. The ABR includes information on organisations' deductible gift recipient status and that of any funds that they control.
ANAO	Australian National Audit Office
ARI	Approved research institute, a DGR category.
ATO	Australian Taxation Office
CCC	Charities Consultative Committee, a forum comprising senior representatives of the charities sector, the ATO and Treasury, to allow consultation and communication with the sector.
CS&S	Customer Service and Solutions, which processes DGR applications prior to allocating them to the ATO's Non-Profit Centre.
CWC	The ATO's Client Contact – Work Management – Case Management (CWC) IT system.
DGR	A deductible gift recipient (DGR) is a non-profit entity. Donations made to the entity are income tax deductible.
FTE	Full-time equivalent. FTE is a measure of staffing levels. In particular, an FTE of 1.0 means a staffing level equivalent to a full-time worker.
FBT	Fringe Benefits Tax
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
GST	Goods and Services Tax

IQF	Integrated Quality Framework
ITAA 1997	<i>Income Tax Assessment Act 1997</i> . Division 30 of the ITAA 1997 identifies the requirements for entities to be DGRs and specifies the types of gifts and contributions that are income tax deductible. Division 50 identifies the requirements for non-profit entities for income tax concessions.
NPC	The Non-Profit Centre in the ATO has responsibility for administering DGR and tax concession legislation for non-profit entities.
PAF	Private ancillary fund is a type of DGR category for trust funds established by individuals, families and businesses that donate to other DGRs that are not ancillary funds.
PCU	Production Control Unit is an area of the ATO external to the Non-Profit Centre that receives and initially processes DGR applications.
PM&C	Department of the Prime Minister and Cabinet
PBI	Public benevolent institutions (PBIs) are non-profit organisations that have a predominant purpose of the direct relief of poverty, sickness, destitution, suffering or misfortune.
SEWPaC	Department of Sustainability, Environment, Water, Population and Communities
TCC	A tax concession charity (TCC) requires ATO endorsement to access a range of income and other tax concessions.
TDMS	The Technical Decision Making System (TDMS) was replaced by the ATO's CWC IT system for work undertaken by the Non-Profit Centre in August 2009.

Summary and Recommendations

Summary

Introduction

The non-profit sector

1. The Government recognises that ‘the non-profit sector is a key partner in delivering major social policy reforms and in creating opportunities for Australians to participate in work, engage in lifelong learning and live with dignity and respect. The non-profit sector also enriches communities through sport and recreation, arts and culture, and through protecting the environment and providing emergency services in times of crisis.’¹
2. The non-profit sector (also known as the third sector) is made up of a diverse range of entities. It includes unincorporated bodies operating on a voluntary basis outside the market economy such as baby-sitting clubs, and small incorporated bodies such as school parents and citizens associations. The sector also includes professional and trade union associations, special interest groups and clubs. A number of large organisations, which may or may not be religiously aligned, have taken on national roles across a range of activities such as delivering shelter for the homeless, aged care facilities and assistance for the long-term unemployed as well as international aid programs.
3. The non-profit sector makes a significant contribution to the Australian economy. There are an estimated 600 000 non-profit sector bodies that employ 889 000 employees and engage some 4.6 million volunteers. They contribute approximately \$43 billion to the Australian economy, representing over four per cent of Australia’s Gross Domestic Product.² In recognition of the sector’s contribution to Australian communities, especially in supporting the most vulnerable and disadvantaged members of our society, the Government

¹ Julia Gillard (2010): *Strengthening the Non-profit Sector*, August 2010. <<http://www.alp.org.au/federal-government/news/strengthening-the-non-profit-sector/>> [accessed 24 August 2010].

² Data drawn from: Productivity Commission Research Report (January 2010), *Contribution of the Not-for-Profit Sector*, p. xxvi. <<http://www.pc.gov.au/projects/study/not-for-profit/report>> and Australian Bureau of Statistics (2009), *2006-07 Australian National Accounts: Non-Profit Institutions – Satellite Account*, (Publication 5256.0). <[http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/661F486077ACD72BCA2576340019C6C8/\\$File/52560_2006-07.pdf](http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/661F486077ACD72BCA2576340019C6C8/$File/52560_2006-07.pdf)> [accessed 6 August 2010].

committed to the *National Compact: working together*, which outlines how the Government and the sector will work together under the National Compact.³

ATO responsibilities with respect to the non-profit sector

4. The Australian Taxation Office (ATO) defines a non-profit organisation as one that is not operating for the profit or gain of its individual members, with any profits gained going back into its operation to carry out its purpose. The constitution or governing documents of a non-profit entity must reflect these characteristics.

5. The ATO has administrative responsibility for two areas of legislation, which pertain specifically to the non-profit sector:

- Division 30 of the *Income Tax Assessment Act 1997* (ITAA 1997) that identifies the gifts and contributions that are income tax deductible to the donor, as well as the requirements for entities to be endorsed as a deductible gift recipient (DGR) in order to receive income tax deductible gifts and contributions; and
- Division 50 of ITAA 1997 that specifies the entities that are exempt from income tax and those that are required to be endorsed by the Commissioner to receive tax concessions as tax concession charities (TCCs).⁴

6. In summary, the ATO classifies non-profit entities as follows:

- charities⁵—these include: charitable institutions which are run solely to advance or promote a charitable purpose; public benevolent institutions (PBIs) that have a predominant purpose of the direct relief of poverty, sickness, destitution, suffering or misfortune; health

³ The National Compact sets out: shared principles; shared aspirations on the relationship between the parties, on the achievement of better results and for a more sustainable non-profit sector; and priorities in the development of joint action plans, including for the reduction of red tape and streamlined reporting. Commonwealth of Australia (2010), *National Compact: working together*. http://www.nationalcompact.gov.au/wordpress/wp-content/uploads/Nat_compact.pdf [accessed 12 November 2010].

⁴ There is related legislation pertaining to GST concessions, FBT exemptions and rebates, and refunds of franking credits for non-profit entities, that draws on the requirements in Divisions 30 and 50 of ITAA 1997.

⁵ Charities can apply to be endorsed as TCCs.

promotion charities whose principal activity is promoting the prevention or control of human diseases; and charitable funds, which are trusts established for a charitable purpose;

- income tax exempt funds—trust funds which donate to DGRs that are not other income tax exempt funds⁶; and
- other non-profit organisations—such as sports clubs, community service groups and recreational clubs.

Deductible gift recipients

7. There are two means by which a non-profit entity can become a DGR and accept gifts and contributions that are income tax deductible for the donor:

- listed by name in the ITAA 1997, which requires a legislative amendment for inclusion.⁷ As at 9 June 2010, there were 214 entities named in legislation; or
- endorsed as a DGR by the ATO.

8. As at July 2010, there were 24 290 DGR organisations. The estimated value of tax deductible donations to these entities was \$2.1 billion for 2008–09.⁸

9. Division 30 of the ITAA 1997 identifies 49 different categories of non-profit entities that are eligible for DGR endorsement. These categories broadly include health promotion charities, welfare and rights entities as well as cultural organisations.

10. Entities with the potential to be endorsed as DGRs may also overlap with the classifications that the ATO uses to define the non-profit sector. Figure S 1 illustrates this relationship.

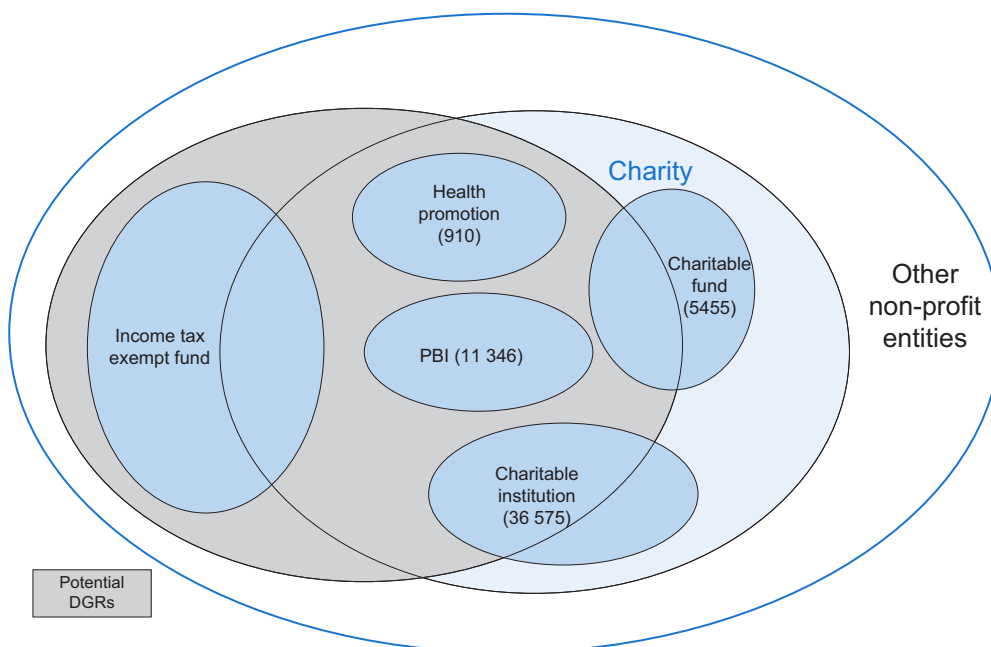
⁶ Income tax exempt funds are also known as ‘ancillary funds’.

⁷ Amendments to this legislation are brought forward to Government by Treasury in consultation with the ATO.

⁸ Australian Taxation Office (2011), *Taxation Statistics 2008–09*. (NAT 1001-03.2011), p. 17. <http://www.ato.gov.au/content/downloads/cor00268761_2009TAXSTATS.pdf> [accessed 7 April 2011]. At the time of preparing this report, 2009–10 figures were not available. However, the value of revenue foregone from donors’ tax deductions in 2009–10 is estimated at \$1.1 billion, a decrease of 12 per cent compared with the previous year. (Department of the Treasury (2011), *Tax Expenditures Statement 2010*. <http://www.treasury.gov.au/documents/1950/PDF/2010_TES_consolidated.pdf> [accessed 31 January 2011].)

Figure S 1

Relationship between potential DGRs and the classes of non-profit entities



Source: Data on the number of entities from the following sources: charitable funds and institutions from Australian Taxation Office, op. cit.; PBIs and health promotion charities from internal ATO document as at 12 July 2010.

Note: Health promotion organisations, public benevolent institutions and charitable institutions may also separately operate charitable and income tax exempt funds.

Arrangements for administering the ATO's non-profit clients

11. The Non-Profit Centre (NPC), within the Small and Medium Enterprises business line in the ATO has responsibility for administering tax legislation specific to the non-profit sector. The principal responsibilities of the NPC include:

- providing advice and education to non-profit entities on compliance with specific legislative requirements;
- assessing eligibility for DGR endorsement status and tax concessions, as well as making determinations on behalf of the Commissioner of Taxation; and

- monitoring the ongoing compliance of entities endorsed as DGR and tax concession charities, and of other non-profit organisations self-assessed as income tax exempt.

12. Since 1 July 2000, non-profit entities have been required to apply for DGR endorsement in order to receive income tax deductible donations. Prior to that time organisations self-assessed, but could apply to the ATO for a gift certificate that demonstrated their compliance with legislative requirements. For most categories, entities apply to the ATO for endorsement. A small number of categories require entities to apply initially to other Commonwealth agencies—these applications need to be approved by the responsible Minister and the Assistant Treasurer.⁹

Other government requirements

13. While endorsement as a DGR allows an entity to raise funds that are deductible against income for the donor, the states and the ACT have separate requirements regulating fundraising events, for example the NSW *Charitable Fundraising Act 1991* and ACT *Charitable Collections Act 2003*.¹⁰ The legislation, primarily focused on accountability and consumer protection, varies across jurisdictions as to the type and purpose of the fundraising activities allowed and the organisations regulated.

14. Non-profit entities may also be required to comply with other legislation depending on their organisational structure. For example, companies are registered under the *Corporations Act 2001*, which is administered by the Australian Securities and Investment Commission, whereas incorporated associations are regulated through state and territory legislation.

Recent developments

15. In 2009, the Productivity Commission undertook a research study into the contributions of the not-for-profit sector. An area for review included the

⁹ These categories include: environmental organisations; cultural organisations; harm prevention charities; and overseas aid funds.

¹⁰ The Northern Territory Government does not have legislation regulating this function.

removal of obstacles to maximise the sector's contributions to society. The Productivity Commission's report was published in January 2010 and recommended a national one-stop-shop for non-profit sector regulation, including administering the endorsements currently undertaken by the ATO.¹¹

16. The Government subsequently announced in the 2011–12 Federal Budget that the Australian Charities and Not-for-profits Commission would be established from 1 July 2012. The Commission is expected to have sole responsibility for determining charitable, PBI and other not-for-profit sector status for all Commonwealth purposes, as well as providing education and support to the sector and implementing a general reporting framework for charities; and the ATO will retain responsibility for administering tax concessions for the not-for-profit sector, and will provide corporate support for the Commission. Effectively, under this approach, applicants for DGR categories requiring entities to be charities will have their charity status determined by the Commission prior to DGR endorsement assessment by the ATO.

17. The Government also announced in the 2011–12 Budget that it would be undertaking negotiations with the states and territories on national regulation and a new national regulator for the sector, with the aim of minimising reporting and other regulatory requirements through coordinated national arrangements. These consultations are expected to be extended more broadly on the development of a definition of 'charity' that could be adopted on a consistent basis across jurisdictions. The Government foreshadowed legislation to introduce a statutory definition of 'charity' for all Commonwealth laws from 1 July 2013.

Audit objective and criteria

18. The objective of the audit was to assess the effectiveness of the ATO's administration of DGR endorsements and associated arrangements. Particular emphasis was given to the:

- governance arrangements supporting the management of DGR processes;

¹¹ Productivity Commission, op. cit.

- DGR endorsement assessment process to achieve consistent outcomes that are timely and in line with legislation;
- communication and coordination of DGR application requirements to assist applicants to achieve DGR endorsement and minimise unnecessary administrative requirements for applicants; and
- compliance approach, which provides assurance that fundraising entities comply with DGR endorsement requirements.

19. The scope of the audit did not include compliance by taxpayers with requirements for claims of gifts and donations as income tax deductions.

Overall conclusion

20. For many taxpayers the focus of their philanthropy is through donations to DGRs, which are subsequently claimed as tax deductions against their gross income. For the 2008–09 financial year some 4.6 million taxpayers claimed deductions for donations to DGRs totalling \$2.1 billion, an average claim of approximately \$450. While the proportion of taxpayers making such claims has remained largely static, the amount claimed as donations has increased dramatically in recent times. In particular, over the seven years to 2008–09, donations increased in value by an average of 20 per cent per annum. During the same period, the average taxable income increased at a rate of approximately five per cent per annum.¹²

21. There are many aspects of the DGR and related tax concession legislation that are administratively challenging for both the ATO and for fundraising bodies. In particular, there are 49 separate DGR categories that have been progressively introduced into legislation since the mid-1930s. Some categories require public funds to be established under trust arrangements, while others endorse the organisation itself. Further, the specific requirements of these categories are such that organisations may be ineligible for DGR endorsement because their work falls across a number of categories but is not predominate in one particular DGR category. Similarly, certain characteristics of the tax concession legislation create anomalies in the type of endorsement

¹² Australian Taxation Office (2011), op. cit., pp. 13, 17, and Australian Taxation Office (2004), *Taxation Statistics 2001–02*. <<http://www.ato.gov.au/content/downloads/2002PER1.pdf>> [accessed 5 April 2011].

that organisations may apply for because some categories allow access to a broader range of tax concessions. As a consequence, organisations apply for status in categories that may not reflect the activities undertaken by them in an attempt to access the broader tax concessions. It is within this context that the ATO carries out its administrative responsibilities to endorse entities as DGRs.

22. The ATO has implemented appropriate arrangements to effectively administer DGR endorsements and the associated tax concessions. The Non-Profit Centre's (NPC's) business planning and internal reporting are well integrated into the ATO's broader business approach. The NPC also undertakes internal monitoring of its operations and, within the constraints of its resourcing and capabilities, takes action to address required improvements. However, scope exists for the ATO to improve the consistency of its decision-making on DGR endorsement applications and to more effectively monitor compliance by organisations that are endorsed as DGRs.

23. To support consistency in decision-making when assessing DGR endorsement applications, the ATO has implemented a two-stage quality assurance process that reviews results prior to, and following, finalisation of cases. In addition, all disallowed applications are checked by supervisors. However, the rate of disallowed decisions subject to objections which are subsequently overturned suggests that approximately five per cent of all decisions (300 decisions) in the three years to June 2010 were inconsistent. These inconsistencies relate to differences: across the locations of assessment teams; in the relevance of documentation on which the assessment was based; and in the level of scrutiny applied to an application, resulting in a decision at odds with the ATO's contemporary view on the legislation. The quality assurance process has not been fully effective in identifying these inconsistencies.

24. The ATO faces a number of challenges in assessing the extent to which organisations, once endorsed, comply with the requirements of their DGR status. Over the past two years to June 2010, there have been some 9600 DGR and tax concession charity endorsement applications decided. The volume of applications has meant that the focus of the NPC's work has been assessing these applications. As a consequence, there were limited resources available to properly assess the compliance risks associated with the sector and to undertake an appropriate level of post-endorsement compliance reviews and audits. The NPC's compliance work is further limited by a lack of quantitative data. The sources of information held on DGRs within the ATO and by other

government agencies are not collated and interrogated to identify organisations at risk of non-compliance that warrant further investigation.

25. The inadvertent non-compliance with legislative requirements by fundraising organisations is recognised by the ATO as being a high risk, particularly given that many of these organisations are managed by volunteer committees that experience regular turnover. The management of this risk is not commensurate with its assessed level of potential non-compliance. There are also ongoing concerns in the ATO that a proportion of DGRs registered at the time of the introduction of DGR endorsement requirements, if subjected to the scrutiny currently given to applications, would not be endorsed. In the 18 months to the end of 2000–01, approximately 21 000 applications were decided, seven times the current submission rate. Of these, only 17 per cent were disallowed or withdrawn, compared with double that rate that are disallowed or withdrawn under a business-as-usual approach.

26. There is no requirement for most DGRs to report regularly to the ATO—an exception is the 800 DGRs in the category ‘private ancillary funds’.¹³ As a result, the ATO is not in a position to determine whether the DGRs continue to offer those services on which their endorsements were based. It is also noted that there are currently at least 3500 fundraising bodies registered with state and ACT governments that are not DGRs. Information expected to be reported to the future Australian Charities and Not-for-profits Commission and outcomes from planned negotiations with the states and territories on coordinated national reporting requirements, may assist in assessing compliance risks in the future.

27. With Government initiatives underway directed at reform in the not-for-profit sector, it is timely for the ATO to review its existing administrative arrangements. To this end, the ANAO has made two recommendations to improve the compliance with the legislative requirements relating to DGR administration.

¹³ Private ancillary funds are trust funds established by individuals, families and businesses that donate to other DGRs that are not ancillary funds.

Key findings by chapter

Governance arrangements (Chapter 2)

28. The NPC's oversight, planning, reporting and monitoring arrangements enable its operations to be well integrated into the ATO's broader business approach. It has formal arrangements with other areas of the ATO that also have non-profit clients, such as those with responsibility for debt, lodgment, excise and superannuation. These arrangements facilitate a whole-of-ATO approach to managing the strategic risks that may arise within the market segment. Consistent with this integration, the NPC's work contributes to the overall external reporting by the ATO in its annual report on its performance against client service standards. However, the performance of NPC operations is aggregated with that of other areas of the ATO. While noting that the NPC's work forms a small part of ATO operations, the lack of performance reporting specifically on non-profit sector activities limits the accountability and transparency of the ATO's performance in this area.

29. The NPC comprises approximately 60 FTE working in five functional teams¹⁴ that cover the key legislative responsibilities particular to the non-profit sector—each contributes to DGR administration. The NPC has a range of strategies in place to coordinate its operations across the six locations of its five teams. While these strategies have been successful in managing the NPC as a whole and integrating the work of the Risk and Intelligence and Active Compliance teams, they have been less successful in ensuring a national practice across one of the teams, the Interpretative Assistance team, which is spread over four locations.

30. With respect to resourcing, staff turnover has meant that there has been a loss of expertise in the small number of non-profit tax legislation specialists working in each location. Further, the introduction of the client contact – work management – client management (CWC) IT system in August 2009 has meant additional resources are now required to assess endorsement applications because more details must be entered into the new system. Both factors have led to a decrease in performance against timeliness standards.

¹⁴ The teams are: Interpretative Assistance, Risk and Intelligence/Communications, Active Compliance, Technical Advice and Government Liaison.

31. Endorsement assessment workloads are demand driven, and the NPC has introduced changes to assist productivity and also increased staff resourcing to address timeliness concerns. However, a lack of management and performance information to monitor the number of complex, high-risk cases, the impact on processing efficiency from high individual case loads, and the ongoing effects from the CWC system, limits the ability of the NPC to assess the effectiveness of the changes and to determine adequate resource levels against demand.

32. The NPC places an emphasis on consultation and communication with the sector. Its primary formal community consultative forum, the Charities Consultative Committee, largely comprises Christian churches or associated community services arms, and key peak bodies whose members have access to relevant tax concessions.¹⁵ Some groups with an interest in charitable fundraising are under-represented in this forum. These include professional advisers that assist organisations with DGR endorsements such as specialist charity lawyers, and those whose community work falls outside the major charity focus. There is no regular, two-way communication between the ATO and such groups to discuss matters relating to DGR endorsement.

Assessing DGR endorsement applications (Chapter 3)

33. The key risks in processing applications relate to timeliness and consistency in applying the ATO's view on the legislation.

Timeliness of decision-making

34. For applications where all the necessary information required for decision-making has been provided, the timeliness standard for processing applications is 28 days elapsed time. On average, the elapsed time to process DGR applications in 2009–10 was 36.7 days. While this result arises in part from the NPC not meeting the timeliness standards, many applications do not initially include all the information needed by the ATO to make a decision. Some are delayed in other areas of the ATO, prior to receipt by the NPC.

¹⁵ Current community membership comprises: Anglicare, Australian Catholic Bishops Conference, Mission Australia, Salvation Army, UnitingCare Australia, Australian Council of Social Services, Community Housing Federation, Independent Schools Association, St John's Ambulance Australia, and Queensland University of Technology—Centre of Philanthropy and Non-Profit Studies.

35. The NPC has implemented initiatives to improve its processing of applications. These include: classifying applications according to risks and the consequential level of scrutiny required¹⁶; writing up assessments against each disallowed criterion to minimise re-submissions that are likely to fail; and encouraging applicants who are likely to be disallowed for DGR endorsement to withdraw their applications, eliminating the requirement for decision write-ups.

36. A recent business case seeking extra resources to undertake assessments has been successful in securing more staff, providing the potential for improved timeliness. In addition, an interactive, online application form could assist the timeliness of processing by eliminating delays in allocating applications to the NPC from other areas of the ATO. A project outline for such a form has been developed, but as yet the ATO has not identified a timeframe for its implementation.

Consistency of assessment decisions

37. There are a number of mechanisms in place for promoting consistency in decision-making in the assessment of DGR endorsement applications. These include: standard training packages; documentation on processing and eligibility criteria; processes to escalate eligibility issues through team leaders; internal communication processes; and quality assurance procedures. Nonetheless, of the eleven law firms involved in assisting DGR applicants that were interviewed by the ANAO, nine raised concerns regarding the consistency of decision-making. The ANAO reviewed 55 selected DGR cases to assess whether decisions were consistent with the guidance material available at the time. This analysis identified inconsistencies in the decision-making on DGR endorsement for the categories relating to: volunteer fire brigades; school building funds; and school library gift funds operated by school foundations or parents and citizens associations. In addition, over 12 per cent of disallowed decisions are subject to an objection with more than 40 per cent of these resulting in the original decision being overturned.

¹⁶ The classifications, 'fast-tracked', 'verified', and 'fully examined', are subject to increasing levels of scrutiny.

38. Inconsistencies were also identified in the processing of similar cases in different locations, suggesting that the current processes for ensuring a national practice in application processing has not been fully effective. A factor contributing to a perception of inconsistency is a delay by the ATO in providing advice to staff on the impact of a recent High Court decision on DGR endorsement decisions. Updated tax rulings have not been finalised, some two years after the decision was handed down.¹⁷

Quality assurance arrangements for assessments

39. Quality assurance processes are undertaken on decisions prior to, and following, finalisation of applications. The pre-finalisation assessor is chosen by the case officer and is typically a team member within the same office as the original decision-maker. In the 12 months to October 2010, no inconsistent or incorrect cases were identified through the pre-finalisation quality assurance process, suggesting, in the light of inconsistencies previously discussed, limited independent review by the quality assessor.

40. The post-finalisation quality assessment process also has shortcomings as a remedy for inconsistent or incorrect decision-making, particularly when ATO decisions may have been actioned by non-profit bodies. While the post-finalisation assessment is independent of the original decision-maker, it has covered only one per cent of DGR endorsement decisions over the past two years. In the two years to October 2010, these assessments have determined that there is an error rate of five per cent in DGR endorsement decisions. However, given the small sample on which this was based, the estimated error rate across all DGR endorsement decisions is up to 12 per cent at the 95 per cent confidence level. The current quality assurance processes could be more effective in identifying potentially inconsistent decisions.

¹⁷ The judgment on the case, *Commissioner of Taxation vs Word Investments Ltd*, effectively broadened the scope of a charity to include commercial enterprises whose profits are ultimately applied for a charitable purpose, overturning two tax rulings, TR 2005/21 and TR 2005/22, on which the ATO had based its determination. In May 2011, the Commissioner of Taxation withdrew TR 2005/21, and released for public comment the draft tax ruling TR 2011/D2 that seeks to replace TR 2005/21. In the 2011–12 Federal Budget the Government foreshadowed legislative changes to limit access to tax concessions by non-profit entities with unrelated commercial activities, which when implemented may change some areas of the law covered by the draft ruling and TR 2005/22. Australian Government, 2011, *Budget Paper No. 2 Budget Measures 2011–12*, p 36. <<http://cache.treasury.gov.au/budget/2011-12/content/download/bp2.pdf>> [accessed 18 May 2011].

Communicating and coordinating DGR application requirements (Chapter 4)

41. A range of general advice is available to potential DGR applicants through ATO publications and via the telephone. There are, however, limitations on the availability of timely advice and information available to organisations that is specific to their circumstances. Almost one in three DGR endorsement applications was disallowed, mainly because applicants did not: fully understand the requirements of specific DGR categories, nor provide required documentation supporting their application.

42. Initiatives are underway to determine the effectiveness of guidance material and, as a preparatory step to the development of an online, interactive form, to identify the eligibility requirements through a step-by-step guidance map.

43. There is coordination between the ATO and other Commonwealth agencies responsible for assessing applications for DGR endorsement to enable applicants to only submit their application once. Currently, there is no single agency with accountability for the whole assessment process across agencies. Applications requiring assessment by Commonwealth agencies other than the ATO take up to two years to determine. While this length of time potentially discourages applications for these categories, there is no means to measure the impact on clients of processes involving multiple agencies.

Managing DGR compliance (Chapter 5)

44. Compliance activity related to DGR endorsement is focused on determining eligibility through the assessment of applications for DGR endorsement. Two other elements important for compliance activity relate to:

- fundraising activities promoted explicitly or implicitly as income tax deductible are only undertaken by DGR entities; and
- endorsed DGR entities continue to comply with the eligibility requirements that resulted in their original endorsement.

45. In both of these areas, the onus is on the non-profit entities to understand and comply with requirements. The NPC's primary approach to managing the risk of non-compliance is through marketing and communications activities. These activities can include information products, community engagement through the Charities Consultative Committee and mail-outs of compliance information to DGR endorsed non-profit entities. In

addition, with respect to those DGRs already endorsed, entities are encouraged to self-assess their continued eligibility on an annual basis and are required to advise the ATO of any changes that would impact on their eligibility.

46. Complementing these risk management processes, the NPC has a structured approach to risk identification and management that includes follow-up directly with organisations. Risk identification, its assessment, and the development of an overall risk strategy for the non-profit sector is undertaken by a dedicated Risk and Intelligence team. The NPC Active Compliance team works with the Risk and Intelligence team to directly contact organisations to further refine the scope and level of particular risks. The Active Compliance team conducts audits and other campaigns on high-risk entities that have been identified as being non-compliant either by being referred by the Risk and Intelligence team or as part of a project in line with the risk strategy plan for each year.

47. The NPC's work in this area has been limited by resource constraints. The ATO has 1.5 FTEs assigned to the Risk and Intelligence team, and seven FTE staff to the NPC Active Compliance team. Allocation of additional general compliance staff is on an ad hoc basis. The NPC's compliance work is further limited by a lack of quantitative data. The sources of information held on fundraising organisations (including endorsed entities) within the ATO and by other government agencies are not collated and interrogated to identify organisations at risk of non-compliance. The ATO advised that it is planning to develop a risk rating engine for the non-profit sector in 2010–11¹⁸, providing the potential to assist selection of cases for compliance activity.

48. There is no requirement for most DGRs to report regularly to the ATO, nor for taxpayers to identify recipients of their donations in tax returns. As a result the ATO has very limited internal information on which to assess the risk that income tax deductibility is only promoted in respect of fundraising activities associated with DGRs or, more broadly, that taxpayers are claiming for donations that are not made to DGRs. The potential for such risks materialising is illustrated by the ANAO's identification of some 3500

¹⁸ A risk rating engine is generally the primary tool used in other areas of the ATO to identify high-risk non-compliance targets.

organisations that may be undertaking fundraising activities under state/territory legislation but are not DGRs. Currently, the ATO does not seek or analyse this information to determine the extent to which fund-raising bodies are non-compliant with DGR requirements. The information expected to be reported to the new Australian Charities and Not-for-profits Commission and the outcomes from planned negotiations with state and territories on national reporting requirements may provide an indication of the scale of this risk.

49. Limited resources and quantitative tools have resulted in risk and intelligence assessments being broadly based on qualitative information from media reports, individuals and other entities, and analysed on an 'intuitive basis'. It has also limited the number of direct assessments able to be conducted by the Active Compliance teams. In particular, during 2009–10, the ATO completed four audits and 38 other reviews involving 40 DGRs (from the population of some 24 000 DGRs). The outcome of this compliance activity was that 13 DGRs (32 per cent) had their DGR endorsement revoked.

50. The level of resources assigned to risk assessment and active compliance is not commensurate with the ATO's determination that the risk of non-compliance by DGRs is high. The ATO's findings estimate that only a third of DGRs currently undertake regular self-assessment. Further, the length of time that organisations have been endorsed increases the risk of non-compliance. Many DGRs gained endorsement based on limited assessment at the introduction of DGR endorsements in 2000. Since that time, the ATO has evolved its interpretation of tax legislation in this area, without a commensurate review of whether previous DGR endorsements still align with the ATO's current view. The Government has foreshadowed legislation to introduce a statutory definition of 'charity' for all Commonwealth laws from 1 July 2013, with proposed funding to the Commission to re-assess the charitable status of entities on the basis of the new definition.

Summary of agency response

51. The Tax Office's summary response to the report is reproduced below. The full response is at Appendix 1.

The ATO welcomes the ANAO audit report on *Administration of Deductible Gift Recipients (Non-profit Sector)*.

While the report makes two recommendations about how the ATO can improve its administration of deductible gift recipients (DGRs) it also notes that:

"The ATO has implemented appropriate arrangements to effectively administer DGR endorsements and associated tax concessions."

The ATO agrees with both recommendations made in the report and will work to implement them as part of the required structural changes in the ATO in preparation for the commencement of an Australian Charities and Not-for-profit Commissions (ACNC) from July 2012. Where necessary, the ATO will implement the recommendations in consultation with the commissioner-designate of the ACNC to ensure the best outcomes for the community.

Recommendations

Recommendation No. 1

Paragraph 3.75

To improve consistent decision-making in respect of deductible gift recipient endorsement applications, the ANAO recommends that the ATO strengthen its quality assurance processes by:

- (a) reviewing decisions prior to finalisation through robust, independent assessment; and
- (b) selecting cases for quality assurance on the basis of the assessed risk of inconsistencies across category types.

Tax Office Response: Agreed.

Recommendation No. 2

Paragraph 5.50

To improve the effectiveness of the risk assessments of deductible gift recipients (DGRs), the ANAO recommends that the ATO:

- (a) uses relevant information available internally and from other government bodies to identify risks and non-compliant entities;
- (b) identifies DGRs whose applications for endorsement may not meet current endorsement requirements because of changes over time to the DGR endorsement processes and interpretation of legislation; and
- (c) strengthens its education and information activities to encourage DGRs to annually self-assess their continued eligibility for DGR status.

Tax Office Response: Agreed.

Audit Findings

1. Introduction

This chapter provides background for the ATO's administration of deductible gift recipients within the non-profit sector.

The Australian Taxation Office

1.1 The Australian Taxation Office (ATO) is the Australian Government's principal revenue collection agency. In 2009–10, net cash collections from taxpayers by the ATO totalled \$253.2 billion. The operating expenditure of the ATO was \$3.1 billion. As at 30 June 2010, the ATO employed 21 766 employees.

1.2 The Commissioner of Taxation, through the ATO, is responsible for the general administration of taxation and superannuation legislation, which incorporates a wide range of tax concessions. A significant proportion of these, both in number and dollar value, are tax concessions available to non-profit organisations.

The non-profit sector

1.3 The non-profit sector makes a significant contribution to the Australian economy, and to our society more generally. The Government acknowledges that 'the non-profit sector is a key partner in delivering major social policy reforms and in creating opportunities for Australians to participate in work, engage in lifelong learning and live with dignity and respect. The non-profit sector also enriches communities through sport and recreation, arts and culture, and through protecting the environment and providing emergency services in times of crisis.'¹⁹ In recognition of the sector's contribution to Australian communities, especially in supporting the most vulnerable and disadvantaged members of our society, the Government committed to the *National Compact: working together*, which outlines how the Government and the sector will work together under the National Compact.²⁰

¹⁹ Julia Gillard (2010): *Strengthening the Non-profit Sector*, August 2010. <<http://www.alp.org.au/federal-government/news/strengthening-the-non-profit-sector/>> [accessed 24 August 2010].

²⁰ The National Compact sets out: shared principles; shared aspirations on the relationship between the parties, on the achievement of better results, and for a more sustainable non-profit sector; and priorities in the development of joint action plans, including for the reduction of red tape and streamlined reporting. Commonwealth of Australia (2010), *National Compact: working together*. <http://www.nationalcompact.gov.au/wordpress/wp-content/uploads/Nat_compact.pdf> [accessed 12 November 2010].

1.4 The non-profit sector (also known as the third sector) is made up of a diverse range of entities. It includes unincorporated bodies operating on a voluntary basis outside the market economy such as baby-sitting clubs, and small incorporated bodies such as school parents and citizens associations. The sector also includes professional and trade union associations, special interest groups and clubs. A number of large organisations, which may or may not be religiously aligned, have taken on national roles across a range of activities such as delivering shelter for the homeless, aged care facilities, and assistance for the long-term unemployed, as well as international aid programs. One such large organisation, the St Vincent de Paul Society, had income of \$256 million in 2008–09.²¹ Key characteristics of the non-profit sector are identified in Table 1.1.

²¹ St Vincent de Paul Society (2009), *Life on the Edge: A 2009 Overview of the Society in Australia*, p. 31 <http://vinnies.org.au/files/NAT/AnnualReports/SVDP_AR_2009_FINAL_low%20res.pdf> [accessed 5 August 2009].

Table 1.1**Key characteristics of the non-profit sector**

Characteristic	Numbers	Comments
Number of non-profit bodies	600 000 (estimate)	The majority, some 440 000, are small unincorporated organisations. ⁽¹⁾
Number of economically significant non-profit bodies	58 779	Economically significant non-profit bodies have an active tax role (that is, they employ staff or access tax concessions). ⁽²⁾
Staff employed by economically significant bodies	889 000	At the time of measurement (2006–07), this was approximately 8 per cent of Australia's total employment. ⁽¹⁾⁽²⁾
Contribution of economically significant non-profit bodies to Australia's gross domestic product (GDP)	\$43 billion	This contribution represented 4.3 per cent of GDP in 2006–07. ⁽¹⁾
Number of volunteers with non-profit bodies	4.6 million (estimate)	The wage equivalent value of this effort in 2006–07 was \$14.6 billion. ⁽¹⁾
Annual growth in sector between 1999–2000 and 2006–07	7.7 per cent	Based on GDP growth. ⁽¹⁾

Source: (1) Productivity Commission Research Report (January 2010), *Contribution of the Not-for-Profit Sector*, p. xxvi. <<http://www.pc.gov.au/projects/study/not-for-profit/report>> [accessed 6 August 2010].

(2) Australian Bureau of Statistics (2009), *2006-07 Australian National Accounts: Non-Profit Institutions – Satellite Account*, (Publication 5256.0). <[http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/661F486077ACD72BCA2576340019C6C8/\\$File/52560_2006-07.pdf](http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/661F486077ACD72BCA2576340019C6C8/$File/52560_2006-07.pdf)> [accessed 6 August 2010].

Non-profit organisations

1.5 The ATO defines a non-profit organisation as one which is not operating for the direct or indirect profit or gain of its individual members. This applies both while the organisation is operating and when it winds up. Any profit made by the organisation is invested back into the operation of the organisation to carry out its defined purposes and is not distributed to any of its members. The organisation must have a constitution or governing documents that reflect these non-profit characteristics through clauses acceptable to the ATO.²² Non-profit entities are categorised by the ATO as:

²² Australian Taxation Office (2007), *Tax Basics for Non-Profit Organisations*. (NAT 7966-05.2007) pp. 1–2. <<http://www.ato.gov.au/nonprofit/content.asp?doc=/content/33743.htm&mnu=45419&mfp=001/004>> [accessed 6 August 2010].

charities; income tax exemption or ancillary funds; and other non-profit organisations. Charities are further defined as: charitable institutions; public benevolent institutions; health promotion charities; and charitable funds. A description of each of these is outlined at Appendix 2.

Tax Concessions available for non-profit organisations

1.6 A range of tax concessions are available for non-profit organisations within the non-profit sector. Table 1.2 outlines the key tax concessions available for non-profit organisations, including the type of organisations eligible for particular concessions.

Table 1.2

Tax concessions available to non-profit organisations

Concession	Description	Characteristics ²³
Deductible gift recipients (DGRs)	<p>DGRs are entitled to receive income tax deductible gifts and tax deductible contributions. DGRs are:</p> <ul style="list-style-type: none"> • listed by name in the income tax law as amended by Parliament; or • endorsed by the ATO. Some charities (including all PBI and health promotion charities) and some income tax exempt funds are eligible as DGRs following endorsement. 	<p>24 290 organisations are DGRs. The value of the concession is:</p> <ul style="list-style-type: none"> • an estimated \$1110m in 2009–10 revenue foregone; and • \$2093m in income tax deductions claimed by taxpayers in 2008–09.

²³ Revenue foregone estimates for 2009–10 are derived from Department of the Treasury (2011), *Tax Expenditures Statement 2010*.
<http://www.treasury.gov.au/documents/1950/PDF/2010_TES_consolidated.pdf> [accessed 31 January 2011].

At the time of preparing this report, 2009–10 figures for deductions claimed were not available. It is noted that the value of revenue foregone from donors' tax deductions in 2009–10 is estimated as having decreased by 12 per cent compared with the previous year. Deductions claimed are estimated from Australian Taxation Office (2011), *Taxation Statistics 2008–09*. (NAT 1001-03.2011), pp. 98, 107–113.
<http://www.ato.gov.au/content/downloads/cor00268761_2009TAXSTAT.pdf> [accessed 7 April 2011].

The number of organisations is based on internal ATO data as at 12 July 2010. The number of GST concession non-profit organisations is derived from the time of an organisation's application for an ABN.

Concession	Description	Characteristics
Income tax exemption	Certain types of non-profit organisations are exempt from income tax. Charities and income tax exempt funds need to apply for, and receive, income tax exemption status from the ATO. Other non-profit organisations can self assess whether they are exempt from income tax.	There are: <ul style="list-style-type: none"> • 53 778 tax concession charities and income tax exempt funds endorsed by the ATO, and • 116 622 self-assessed organisations.
Fringe benefit tax (FBT) exemption (capped)	Approximately 12 500 PBIs and health promotion charities have an exemption from FBT, capped at \$30 000 per employee. Public and non-profit hospitals and public ambulance services have an exemption from FBT, capped at \$17 000 per employee.	The value of the concession is: <ul style="list-style-type: none"> • \$1935m in revenue foregone; and • \$4967m in fringe benefits below the cap.
FBT rebate	Charitable institutions and other non-profit organisations that have been endorsed by the ATO as rebatable employers are entitled to have their FBT liability reduced by a rebate equal to 48 per cent of the gross FBT payable, subject to a \$30 000 capping threshold.	There are 3616 organisations eligible for this concession. The value of the concession is: <ul style="list-style-type: none"> • \$20m in revenue foregone; and • \$97m in deductions claimed.
Goods and services tax (GST) concessions – non-profit organisations	Non-profit organisations only need to register for GST if they have an annual turnover of \$150 000 (compared with the general registration threshold of \$75 000). The value of gifts to non-profit organisations is not subject to GST.	An estimated 78 825 organisations access this concession.
GST concessions for charities and DGRs	Other GST concessions (for example, ability to make supplies GST free in certain circumstances, and to treat certain fundraising events as input-taxed) are available to: <ul style="list-style-type: none"> • charitable institutions and charitable funds endorsed to access GST charity concessions; • deductible gift recipients; and • government schools. 	(The ATO does not collect information about this concession.)
Refunds for franking credits	Organisations recognised by the ATO as income tax exempt charities, income tax exempt funds, and DGRs which have franking credits attached to income received from shareholdings in Australian companies, are eligible to have these credits refunded.	There are 4355 organisations eligible for this concession. The value of the concession is \$632m in deductions claimed.

Source: Descriptions summarised from Australian Taxation Office (2007), op. cit. pp. 9–35. Data from the ATO and Department of the Treasury (see Footnote 23).

Deductible gift recipients (DGRs)

1.7 There are two ways in which a non-profit organisation or fund can obtain DGR endorsed status and accept gifts and contributions that are income tax deductible for the donor:

- by being listed by name in the *Income Tax Assessment Act (ITAA) 1997* (ITAA 1997), which requires legislative amendment for inclusion.²⁴ As at 9 June 2010, there were 214 entities listed; or
- by being endorsed as a DGR by the ATO.

Non-profit organisations and funds endorsed as a DGR

1.8 Division 30 of the ITAA 1997 specifies 49 different categories²⁵ under which organisations and funds can seek endorsement by the ATO. These categories relate to activity in the areas of: health; education; research; welfare and rights; defence; environment; the family; international affairs; cultural organisations; and fire and emergency services. For most of these categories, the assessment for endorsement is undertaken by the ATO.

1.9 Categories related to overseas aid funds, environmental, harm prevention and cultural organisations require approval by relevant Ministers and the Assistant Treasurer. There is also a role for other Commonwealth agencies in approving the research credentials of organisations applying for the category 'approved research institute'.²⁶ As a result, AusAID, the Department of Sustainability, Environment, Water, Population and Communities (SEWPaC), the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), the Office of the Arts (Department of the Prime Minister and Cabinet, PM&C), Treasury, the Commonwealth Scientific and Industry Research Organisation, the Department of Innovation, Industry, Science & Research, and the National Health & Medical Research

²⁴ Amendments to this legislation are brought forward to Government by Treasury in consultation with the ATO.

²⁵ This is the number of categories as at 7 February 2011. Table A 2, Appendix 3 provides the details of these categories. More details on the non-profit legislative requirements in the ITAA 1997 are outlined at paragraph 1.13.

²⁶ This requirement is specified under the *Income Tax Assessment Act 1936*, Section 73A.

Council have roles in the assessment of applications for particular DGR categories. The roles of the agencies are described in Appendix 4.

1.10 Organisations applying for DGR endorsement for themselves or a fund that they control are required to have an Australian Business Number (ABN), and, once endorsed, entities are identified on the Australian Business Register (ABR). As at July 2010, there were 26 983 DGR entities associated with 24 290 organisations. An organisation can have more than one DGR entity. For example, a school could establish a gift fund for its school library and a school building fund with potential for both to be entitled to DGR endorsement.

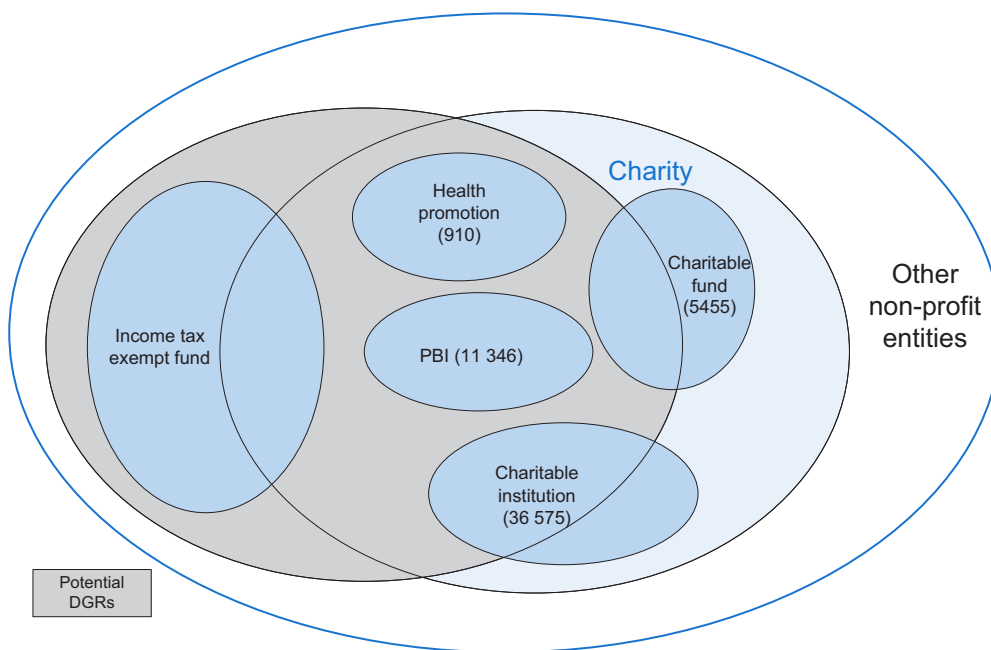
1.11 The ongoing requirements for endorsed DGRs include maintaining records of donations to its gift fund and the use of those funds, consistent with the requirements of its DGR endorsement category. DGRs are also required to issue receipts to donors that identify the organisation's ABN. This practice allows the donor to check the DGR status of the organisation on the ABR prior to claiming an income tax deduction.

Types of non-profit entities eligible for DGR endorsement

1.12 Entities with the potential to be endorsed as DGRs may overlap with the classification that the ATO uses to define the non-profit sector (identified in paragraph 1.5). Figure 1.1 outlines this relationship.

Figure 1.1

Relationship between potential DGRs and the classes of non-profit entities



Source: Data on the number of entities from the following sources: Charitable funds and institutions from Australian Taxation Office (2010) op. cit.; and PBIs and health promotion charities from internal ATO document as at 12 July 2010.

Note: Health promotion organisations, PBIs and charitable institutions may also separately operate charitable and income tax exempt funds.

Arrangements for administering the ATO's non-profit clients

Legislative requirements

1.13 The ATO's business and service lines dealing with income tax, PAYG withholding taxes, FBT and GST may have non-profit organisations among their taxpayer base. There are, however, legislative requirements that specifically relate to the non-profit sector detailed in the ITAA 1997; namely:

- Division 30, which identifies the gifts or contributions that are tax deductions, and the requirements for organisations to be DGRs. Sections 30.120 and 30.125 detail the conditions under which the Commissioner of Taxation is required to endorse an entity as a DGR;

- Division 50, which specifies the entities that are exempt from income tax. It also identifies entities that need to be endorsed by the Tax Commissioner to receive tax concessions—namely, charitable institutions and trust funds for charitable purposes (collectively known as tax concession charities (TCCs)) as well as ancillary funds²⁷; and
- Section 207.115, which identifies that the entities endorsed as DGRs, TCCs or ancillary funds are entitled to refunds of franking credits.

1.14 In addition, *A New Tax System (Goods and Services Tax) Act 1999* and the *Fringe Benefit Tax Assessment Act 1986* contain provisions relating to concessions and exemptions for GST and FBT respectively for non-profit organisations. The *Taxation Administration Act 1953* also includes provisions for endorsing non-profit entities for DGR and other tax concessions and exemptions.

Other government requirements

1.15 While DGR endorsement allows an entity to raise funds that are deductions against income tax, the state and ACT governments have separate requirements regulating fundraising events (for example, the NSW *Charitable Fundraising Act 1991*, and ACT *Charitable Collections Act 2003*).²⁸ These legislative measures, which are primarily focused on accountability and consumer protection, regulate fundraising events that include public collections, raffles, bingo events and art unions. Many of the states focus on regulating fundraising activities undertaken by charitable bodies only, while others regulate fundraising more generally.

1.16 Non-profit entities may also be required to comply with other legislation depending on their organisational structure. For example, companies are registered under the *Corporations Act 2001*, which is administered by the Australian Securities and Investment Commission, whereas incorporated associations are regulated through state and territory legislation.

²⁷ See paragraph 1.5 and Appendix 2 for a description of ancillary funds.

²⁸ Table A 4, Appendix 5 lists the state and ACT legislation regulating fundraising events.

ATO administration

1.17 The Non-Profit Centre (NPC) within the Small and Medium Enterprises business line of the ATO has oversight of the non-profit market segment. Its principal responsibilities are to:

- provide advice and education to non-profit entities on the concessions and requirements specifically related to legislative requirements;
- assess applications for endorsements of DGRs, TCC and ancillary funds and make associated determinations on behalf of the Commissioner for Taxation; and
- monitor the ongoing compliance of endorsed and self-assessed entities in meeting the requirements for DGR and tax concessions.

1.18 Since 1 July 2000, non-profit entities have been required to apply for DGR endorsement in order to receive income tax deductible donations. Prior to that time, organisations self-assessed but could apply to the ATO for a gift certificate that demonstrated their compliance with legislative requirements.

Recent developments relating to the non-profit sector

Productivity Commission's project on the non-profit sector

1.19 In 2009, the Government asked the Productivity Commission to undertake a research study to examine the contributions of the non-profit sector to the economy. The study focused on improving the measurement of contributions and on removing obstacles to maximise contributions to society. The Commission published its report in January 2010.²⁹

1.20 The Productivity Commission made a number of recommendations, consistent with the terms of its study. Two of these recommendations, if implemented, will affect the ATO's administration of the non-profit sector and, in particular, the area which endorses DGR status. The Productivity Commission's key proposals are to:

²⁹ Productivity Commission (2010), *Contribution of the Not-for-Profit Sector*, Research Report, Canberra. <<http://www.pc.gov.au/projects/study/not-for-profit/report>> [accessed 24 August 2010].

- establish a separate, national one-stop-shop for regulation and tax endorsement of non-profit organisations (Recommendation 6.5). The implementation of this recommendation would see the registration and regulation of non-profit entities move from the ATO and the Australian Securities and Investment Commission to a new statutory body, the National Registrar for Community and Charitable Purpose Organisations; and
- widen the scope for gift deductibility to include all endorsed charitable institutions and charitable funds (Recommendation 7.3). This recommendation removes the need for separate endorsement as a DGR for endorsed TCCs.

2011–12 Federal Budget Developments

1.21 The Government subsequently announced in the 2011–12 Federal Budget that the Australian Charities and Not-for-profits Commission would be established from 1 July 2012. The Commission is expected to have sole responsibility for determining charitable, PBI and other not-for-profit sector status for all Commonwealth purposes, as well as providing education and support to the sector and implementing a general reporting framework for charities; and the ATO will retain responsibility for administering tax concessions for the not-for-profit sector, and will provide corporate support for the Commission. Effectively, under this approach, applicants for DGR categories requiring entities to be charities will have their charity status determined by the Commission prior to DGR endorsement assessment by the ATO.

1.22 The Government also announced in the 2011–12 Budget that it would be undertaking negotiations with the states and territories on national regulation and a new national regulator for the sector, with the aim of minimising reporting and other regulatory requirements through coordinated national arrangements.

1.23 The Government has foreshadowed legislation to introduce a statutory definition of ‘charity’ for all Commonwealth laws from 1 July 2013, with proposed funding to the Commission to re-assess the charitable status of entities on the basis of the new definition. Prior to developing the legislation, consultations, including with the states and territories are proposed with the intention that the statutory definition will be adopted by all jurisdictions.

Audit approach

Audit objective and scope

1.24 The objective of the audit was to assess the effectiveness of the ATO's administration of DGR endorsements and associated arrangements. Particular emphasis was given to the:

- governance arrangements supporting the management of DGR processes;
- DGR endorsement assessment process to achieve consistent outcomes that are timely and in line with legislation;
- communication and coordination of DGR application requirements to assist applicants achieve DGR endorsement and minimise unnecessary administrative requirements for applicants; and
- compliance approach, which provides assurance that fundraising entities comply with DGR endorsement requirements.

Audit methodology

1.25 The ANAO conducted fieldwork from September 2010 to February 2011. ATO staff, specialist charity lawyers, key non-profit sector peak organisations, other Commonwealth agencies involved in aspects of DGR administration, and state government agencies responsible for fundraising registration were interviewed. The ANAO also examined documentation and selected DGR endorsement application decisions, as well as state and ACT government fundraising registration data.

1.26 The audit was conducted in accordance with ANAO auditing standards at a cost of \$312 000.

Acknowledgements

1.27 The ANAO appreciates the assistance provided by officers of the ATO, Treasury, PM&C, SEWPaC, FaHCSIA and AusAID, as well as industry contributors, and Axiom Associates who assisted in undertaking the audit.

Report structure

1.28 The structure of the report reflects the audit criteria outlined in paragraph 1.24. In particular, they examine whether the ATO had effective:

- governance arrangements to support the management of DGR processes (Chapter 2);
- processes for assessing DGR endorsement applications (Chapter 3);
- arrangements for communicating and coordinating DGR application requirements (Chapter 4); and
- processes for managing DGR compliance (Chapter 5).

2. Governance Arrangements

This chapter examines the governance arrangements that underpin the ATO's administration of deductible gift recipients.

Introduction

2.1 Governance refers to the processes by which organisations are directed, controlled and held to account. It encompasses the authority, accountability, stewardship, leadership, direction and control exercised in the organisation.³⁰ The ATO describes its governance framework as:

...the means by which the ATO assures itself that it is managed in an efficient, effective and ethical manner, as a whole, in all respects. The framework is designed to ensure that [we] apply and practice the principles of good governance, particularly as they apply to the Public Sector, in [our] administration.³¹

2.2 To assess the extent to which the ATO's governance arrangements support effective management of the DGR processes, the ANAO examined:

- organisational arrangements;
- staff resourcing and staff skilling;
- planning and risk management frameworks;
- performance monitoring and reporting;
- arrangements with other government agencies; and
- communication and consultation with key stakeholders.

Organisational arrangements

2.3 The Non-Profit Centre (NPC) is established under the Non-Profit and Government market segment within the ATO's Small and Medium Enterprises business line. The NPC has a key role in managing compliance in this market segment. It comprises six functional areas that each contributes to DGR

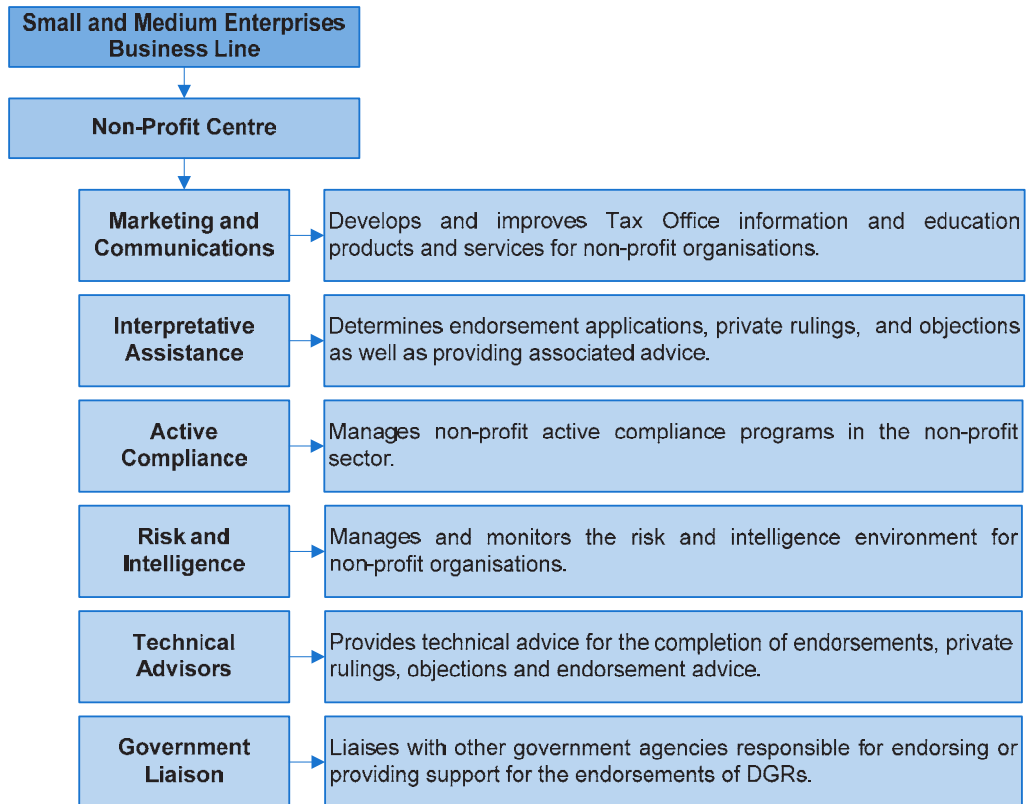
³⁰ ANAO Better Practice Guide – *Public Sector Governance*, Volume 1, July 2003, Canberra, p.6.

³¹ Australian Taxation Office, *Practice Statement PS CM 2003/03*, paragraph 2.

administration (as outlined in Figure 2.1). In the NPC's business plan for 2010–11, these functional areas are directly linked to components of the ATO's program output framework.³²

Figure 2.1

NPC functional areas



Source: ANAO analysis of ATO internal documents.

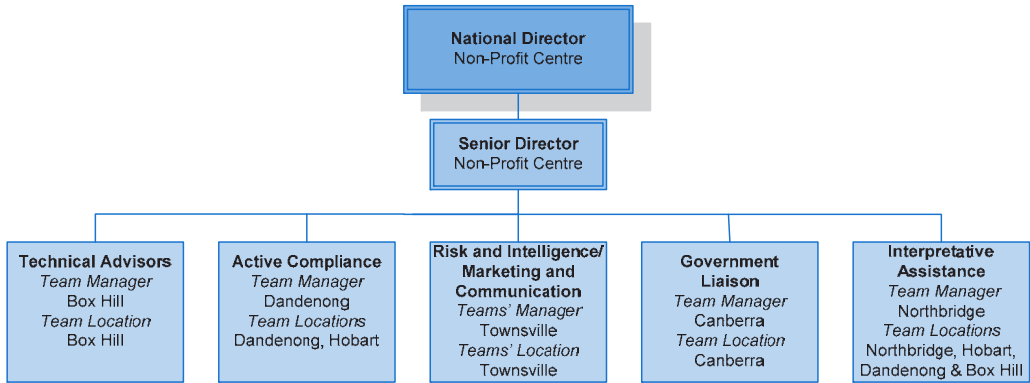
2.4 The NPC functions are undertaken by six teams dispersed across the ATO network.³³ At each location, NPC teams, or parts thereof, are located within a broader Small and Medium Enterprises business line team. Figure 2.2 outlines the locations of the teams and team managers.

³² Australian Taxation Office (2010), *Australian Taxation Office management arrangements*. p.7. <<http://www.ato.gov.au/content/downloads/cor24463orgstruct.pdf>> [accessed 18 January 2011].

³³ The Risk and Intelligence and Marketing and Communications teams report to a single team manager.

Figure 2.2

NPC organisational locations



Source: ANAO analysis of ATO documents.

Note: Northbridge is a suburb of Perth, with Dandenong and Box Hill suburbs of Melbourne. The Senior Director is located in Hobart, ensuring that each location includes an Executive Level 2 manager from the NPC.

2.5 With regard to DGR administration, the NPC's primary focus is on the assessment of applications for endorsement. This emphasis is reflected in the resourcing for the interpretative assistance function, compared to active compliance work. The Interpretative Assistance team assesses endorsement applications whereas the Active Compliance team, among other activities, investigates and assesses organisations' ongoing compliance, following DGR endorsements. In 2010–11, the resources allocated to the Interpretative Assistance team were 29 full-time equivalent (FTE) staff, some four times those allocated to the Active Compliance team (7 FTE).

NPC team communication

2.6 Figure 2.2 indicates that the NPC as a whole, and the Interpretative Assistance team in particular, are widely dispersed across Australia. This dispersion is substantial for an administrative unit that had total resources of 59 FTE for 2010–11, resulting in small teams of NPC staff in each location. The NPC also relies on capabilities in other ATO locations to undertake their responsibilities. These include the Customer Service and Solutions (CS&S)

function, located across the country on a decentralised basis, and the Production Control Unit (PCU) located in Penrith.³⁴

2.7 The geographical distribution of NPC functional areas and of the Interpretative Assistance team, more specifically, emphasises the importance of effective internal communication across the NPC in general, and within NPC functional teams. This communication is important in managing the key risks relating to:

- consistency of decision-making in assessing DGR applications (discussed in Chapter 3); and
- risk assessments informing, and being informed by, compliance activities undertaken by the Interpretative Assistance and Active Compliance teams (discussed in Chapter 5).

2.8 The ATO has a number of NPC internal communication strategies in place to mitigate these risks, including:

- the ATO's combined client contact – work management – case management (CWC) system;
- NPC Executive Committee meetings; and
- internal NPC staff communications.

2.9 These strategies are focused on promoting communications across and within teams, given the limited internal budget for travel within the NPC. Nevertheless, as discussed at paragraph 3.59, the risks of inconsistent decision-making relating to DGR endorsements have not been sufficiently mitigated, leaving the ATO open to criticism by external stakeholders. Team dispersion was found to be a factor in the consistency of decision-making. There would be benefit in the ATO giving consideration to the geographic distribution of its NPC staff, particularly greater co-location of individual teams as opportunities arise.

³⁴ The roles of these capabilities are discussed in paragraph 3.3.

Staff resourcing and staff skilling

2.10 To a large extent, the NPC's work is demand driven. Workloads are mainly determined by the number of DGR and TCC endorsement applications, private rulings and objections from non-profit organisations that are received by the ATO, with relatively limited resources assigned to work initiated internally.

2.11 The NPC deals with a variety of clients that include charities, cultural organisations, sporting and social clubs and community service organisations. ATO staff are required to have specialist skills and knowledge relating to specific parts of the ITAA 1997. For the assessment of DGR eligibility, an understanding is required, for example, of:

- the 49 categories of entities eligible for endorsement as DGRs;
- the principles to determine whether an entity is not-for-profit and/or a charity, including the requirements of organisations seeking DGR endorsement as a public benevolent institution³⁵; and
- the requirements of trusts, trustees and the interpretation of trust deeds.

2.12 Given the challenges that the NPC is required to manage, the ANAO examined the extent to which the resourcing and skilling of staff were commensurate with the demands in administering DGR endorsements.

NPC staff resourcing

2.13 In general, the NPC does not allocate specific staff to administering DGR endorsements, but rather expects each team to undertake the work required to administer all non-profit related functions. Nonetheless, in 2009–10, the Interpretative Assistance and Technical Advisors teams were resourced for 43.9 FTE, of which 17.8 FTE (some 40 per cent) were directly employed in the assessments of DGR endorsement applications.

³⁵ The definition of the 'charitable purpose' is based on case law arising from the preamble to the United Kingdom's *Charitable Uses Act 1601* (the Statute of Elizabeth) and extended through the *Extension of Charitable Purposes Act 2004*. (Tax Ruling 2005/21, paragraph 195.
<<http://law.ato.gov.au/atolaw/view.htm?docid=TXR/TR200521/NAT/ATO/00001>>
[accessed 19 January 2011]).

2.14 Overall, resourcing for the Interpretative Assistance and Technical Advisors teams has increased in comparison with the number of DGR and TCC endorsement applications over the past three years, as illustrated in Table 2.1. In line with the increase in resources per endorsement application, the ATO estimated that the unit cost per (DGR and TCC) endorsement increased by 29 per cent from \$396 to \$510, from 2008–09 to 2009–10.³⁶

Table 2.1

NPC staff resource and workload demands 2007–08 to 2009–10

Year	FTEs (resources)		DGR and TCC applications (demand)	
	Interpretative Assistance & Technical Advisors	Total NPC	Number	Number/interpretative assistance & technical advisor FTE
2007–08	34.4	56.0	4269	124
2008–09	38.7	57.1	4274	110
2009–10	43.9	61.4	3831	87

Source: ANAO analysis of ATO documents.

Monitoring resources

2.15 The ATO uses a range of internal reports for monitoring and reporting on NPC staff allocations. These include NPC team reports, NPC market segment quarterly reports and non-profit segment monitoring reports. The ANAO examined a selection of NPC team reports for 2009 and 2010 to determine whether the increase in resourcing per endorsement application assisted the timeliness of DGR endorsement processing.

2.16 The ATO defines the amount of time taken to process an endorsement application as the scheduled ‘cycle time’. Essentially, the scheduled cycle time is the number of days from when an application is received at the ATO to finalisation, less the waiting time to receive extra information requested of the applicant. The scheduled cycle time benchmark for a DGR endorsement is currently 28 days, for applications that include all necessary information for decision-making.³⁷ Figure 2.3 identifies the actual cycle times against the

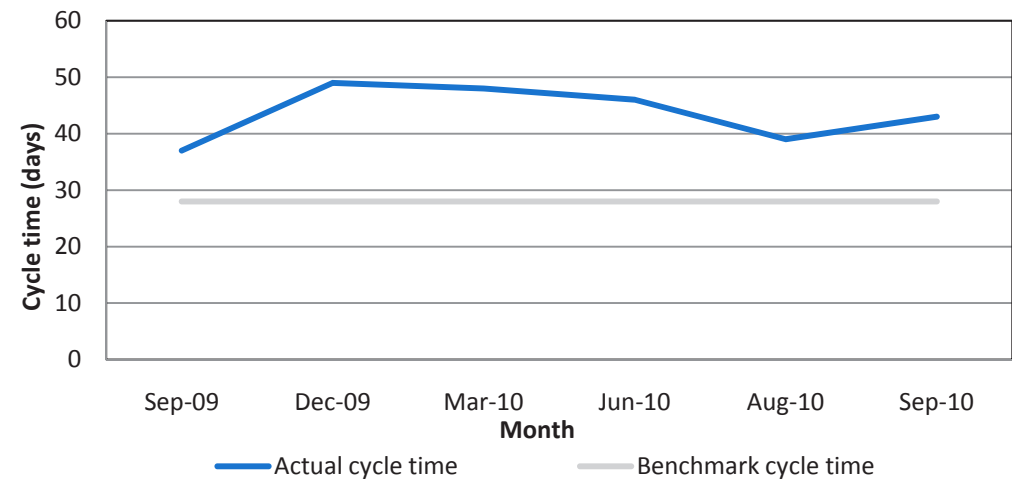
³⁶ These figures relate to year-to-date unit costs as at the end of May in each respective year.

³⁷ Table 3.1 details all the service standards for processing DGR endorsement applications.

benchmark for the period September 2009 to September 2010. Across this 12-month period, the cycle times have changed from an average of 37 days to 43 days, an increase of 16 per cent.

Figure 2.3

DGR endorsement cycle time

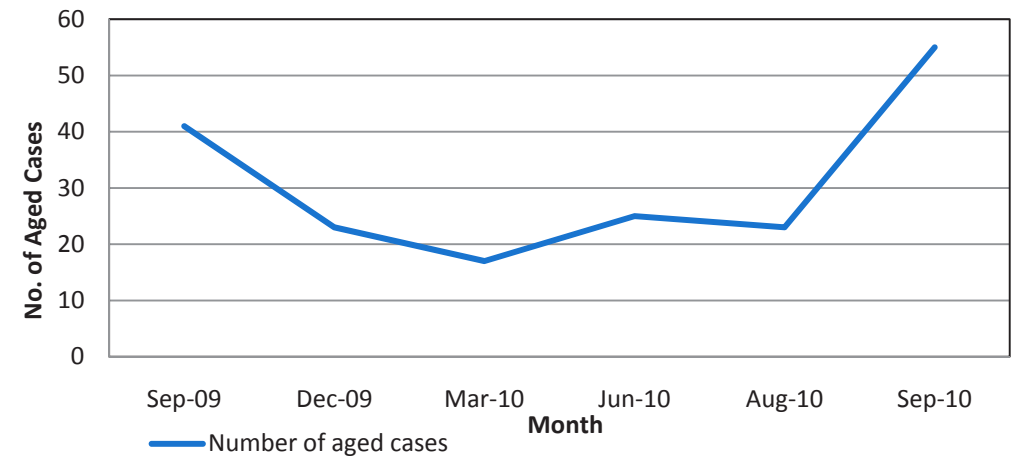


Source: ANAO analysis of ATO documents.

2.17 The ATO defines aged endorsements as those endorsement applications that are still pending 90 days after being received. The number of aged cases in the 12 months to September 2010, has increased by 25 per cent from 41 to 55 DGR applications (as shown in Figure 2.4).

Figure 2.4

DGR endorsement aged cases



Source: ANAO analysis of ATO documents.

2.18 Commensurate with the increases in cycle times and aged cases over the 12 month period, the percentage of cases that met the scheduled cycle time of 28 days fell from 90 per cent in September 2009 to 77 per cent in September 2010, below the ATO benchmark of 85 per cent of cases required to meet the cycle times.

Factors affecting cycle times

2.19 The ATO has identified a range of factors that have an impact on cycle times, namely:

- the introduction of the CWC system to manage client case work;
- turnover of staff;
- inefficiencies in processing once individual workloads reach a critical level; and
- an increase in the number of high risk or complex applications.

NPC's use of the CWC system

2.20 NPC Interpretative Assistance teams have been using the CWC system since August 2009, when it was introduced to replace the previous Technical Decision Making System (TDMS). The use of the CWC system has significantly affected productivity in processing DGR endorsements.

2.21 While NPC case officers undertook extensive training in the use of the new system, the NPC considers the CWC system has increased the time required to process applications because the:

- allocation of DGR endorsement applications to team leaders takes twice as long with associated CWC system processes than previously³⁸;
- allocation from a team leader to a case officer is three times longer using the CWC system than in TDMS;
- case officers are required to create a new activity for each step in the DGR endorsement process. This can take 5 to 10 minutes for each activity and up 30 minutes in total for each application; and

³⁸ Paragraphs 3.6 to 3.10 discuss the impact of the allocation process to timeliness.

- CWC system has often been unavailable, affecting the time available to process endorsement applications within benchmarks.

2.22 The ATO estimated that using the CWC system took between 11.5 and 54.5 per cent of the actual time required to process applications, depending on the risk category applied.³⁹ Table 2.2 shows these estimates.

Table 2.2

Effect of the CWC system on actual times used to process DGR and TCC endorsement applications

Risk category	Use of CWC system (minutes)	Total actual time (minutes)	Use of CWC as percentage of total actual time (%)
Fast tracked	12	22	54.5
Verified	60	160	37.5
Fully examined	70–100	593–623	11.5–15.7

Source: ATO estimation.

2.23 The ATO did not collect commensurate data on the use of TDMS. Nonetheless, the ANAO's experience with interrogating both the TDMS and CWC systems, observations of case officers using the CWC system, and changes in timeliness data around the introduction of the CWC system provide general support for the NPC's contentions.

2.24 The CWC system has offered other benefits in case management, including providing:

- a clear and defined structure for the completion of a DGR endorsement;
- a tool for greater access to similar DGR endorsements with similar circumstances; and
- a clear and transparent means for recording the analysis and conclusions regarding a DGR endorsement.

NPC staff turnover

2.25 There has been a significant level of staff turnover within the NPC over the financial years 2008–09 and 2009–10. The estimated turnover of 46 per cent

³⁹ The risk categories, 'fast tracked', 'verified' and 'fully examined' are explained in paragraphs 3.20 to 3.23.

over this period has the potential to negatively affect the operations of the NPC, given the quite specialised work that requires specific technical knowledge and expertise.

Inefficiencies from high case loads

2.26 As at 15 April 2010, the average number of cases on hand for case officers in NPC Interpretative Assistance was 14.6 cases per FTE. There are no comparable benchmarks to determine whether this is a reasonable case load. For example, while the benchmark for cases on hand is six cases per FTE across the Small and Medium Enterprises business line, this type of work includes private rulings, objections and audits, some of which require, on average, significantly greater resources to process than endorsement applications. The high number of cases per officer requires a greater percentage of time in which to manage the case load compared with time used for assessing the cases. Currently, the ATO does not have information with which to monitor this distribution of time.

High risk and complex applications

2.27 The NPC has argued that the assessment of endorsements has increased in risk and complexity, which in turn has increased work loads, citing greater use of specialist lawyers representing applicants and court cases such as the High Court decision on Word Investments Ltd.⁴⁰

2.28 The extent to which this is the case is not clear. For example, there are two types of categories which the NPC has identified as being particularly high risk and complex to assess: public benevolent institutions (PBIs), and charitable services institutions (CSIs). As at July 2010, 42 per cent of DGRs endorsed over the previous ten years were in these categories. In 2009–10, however, only 29 per cent of DGR applications were for the PBI and CSI categories, indicating a decrease in applications for these categories of DGRs over time.

ATO mitigation approaches

2.29 The NPC has adopted a number of approaches to improve its achievement of service standards. These include:

⁴⁰ This decision is discussed further in paragraph 3.44.

- reassigning staff from the active compliance team to undertake assessments of applications for DGR endorsement of private ancillary funds (PAFs)⁴¹;
- streamlining the processes for assessing applications, such as categorising applications based on risk and using this categorisation as a determinant of the level of scrutiny to be undertaken (and discussed further at paragraphs 3.20 to 3.27);
- introducing a procedure by which applications exceeding 30 pages in length are classified as complex, and completion times negotiated with the applicant and/or their professional advisor;
- seeking feedback from case officers on potential CWC case management system improvements, which have been put forward to the Small and Medium Enterprises business line Executive for prioritisation; and
- developing a business case for consideration within the ATO more broadly, requesting additional NPC Interpretative Assistance FTE resources. A further six resources were assigned to the function.

2.30 These mitigation approaches provide the potential to improve resourcing against workloads to meet service standards. However, the NPC currently has limited means to adequately monitor the factors affecting productivity, such as the number of complex, high-risk cases, the impacts from high individual case loads, and ongoing effects from the use of the CWC system. As a consequence, the NPC is unable to determine what is an adequate resourcing level for this function and to identify the effectiveness of its initiatives to better manage resources against demands. There would be benefits in the NPC identifying a range of performance indicators to better measure the resourcing requirements of its business.

NPC staff skilling

2.31 There is specific training for new staff members joining the NPC teams as well as ongoing staff development and support. The training available is

⁴¹ PAFs replaced the category 'prescribed private funds' on 1 January 2010. See paragraph 3.14 for further information.

presented in a face-to-face environment and through interactive computer based learning.

NPC induction package

2.32 The NPC provides new staff with a comprehensive induction package. This material provides a thorough overview of the NPC, and includes key publications developed by the ATO for the sector as well as the compliance parameters and risks to the NPC drawn from the ATO Compliance Program. Subsequent to this training, mentoring is provided for all new staff.⁴²

Ongoing staff development and support

2.33 The NPC has also developed advanced learning packages aimed at providing more specialist knowledge and expertise in specific areas, such as from the ITAA 1997 and the practical application of these learnings. Two such examples are: *Intensive analysis of income tax returns and financial statements – non-profit sector*, and the more recently developed *Training in charities and non-profit principles*. A further training module on trusts, covering operational and governance issues, is being developed.

Effectiveness of training in developing staff skills

2.34 The current approach to training is sound, potentially providing staff with the skills required to administer DGRs. However, there were two areas where the effectiveness of the current training approach was questioned. These relate to the expertise of staff providing advice to applicants and the consistency in decision-making.

2.35 The variability of the expertise of NPC staff available to answer queries from applicants or their representatives was raised by specialist lawyers. The ANAO recognises that this perception may not be solely the result of the effectiveness, or otherwise, of staff training. It may have arisen from the level of experience of staff due to the recent high rates of staff turnover⁴³, and from the decision by the ATO not to provide specific pre-endorsement advice to applicants unless by private rulings.⁴⁴ To address this perception the ANAO

⁴² For example, those undertaking application assessments are guided through cases and allocated increasingly complex cases as their skills develop.

⁴³ Discussed in paragraph 2.25.

⁴⁴ Discussed in paragraph 4.15.

suggests that, where practicable, the ATO limit the use of less experienced officers to provide general guidance to applicants.

2.36 The ANAO identified inconsistent decision-making in assessing DGR applications and this matter is discussed in detail in Chapter 3.⁴⁵ One of the consequences arising from such inconsistencies is the high rate of objections, which have subsequently resulted in the original decision being overturned.

2.37 The NPC reviewed the reasons for objections to DGR endorsement applications being disallowed. The report outlining the review's findings also included a recommendation on the need to develop staff skills to address specific technical issues relating to the classification of public benevolent and charitable institutions, and to trustees of public funds. The planned and recently developed training packages should assist in addressing these skill shortfalls. The report also recommended establishing forums for staff to discuss disallowed DGR endorsement decisions. The ANAO suggests that such a forum be implemented online, and include opportunities for staff to raise queries in order to learn from the experiences of staff more broadly across the NPC.

Planning and risk management frameworks

2.38 A sound organisational planning framework is an essential element of effective management and governance. The ATO's high-level planning documents, particularly the Strategic Statement⁴⁶ and ATO Plan⁴⁷, set the overall direction for the organisation.

⁴⁵ Discussed further in paragraphs 3.40 to 3.58.

⁴⁶ The Strategic Statement provides direction and a framework for the ATO's activities over the period 2010 to 2015.
<<http://www.ato.gov.au/corporate/content.asp?doc=/content/00243384.htm&pc=001/001/002/008&mnu=39504&mfp=001&st=&cy=1>> [accessed 2 February 2011].

⁴⁷ The ATO Plan comprises the ATO's sub-plans to achieve its corporate priorities on an annual basis, against each of its five program outputs, and three enabling (supporting) programs.
<<http://www.ato.gov.au/corporate/content.asp?doc=/content/00247583.htm&pc=001/001/002/008&mnu=39504&mfp=001&st=&cy=1>> [accessed 2 February 2011].

2.39 To determine whether the NPC planning and risk management activities support its effective management and integration into the wider ATO framework, the ANAO examined the NPC's approach to:

- business planning; and
- risk management.

NPC's business planning

2.40 The NPC's annual business plan is integrated into the ATO Plan through the business line's plan. NPC team plans identify the processes and objectives needed to achieve the NPC plan.

2.41 The planning for the NPC follows a framework of cascading business plans to the team level as well as the identification of key business risks, the means of determining success against the plan, and key responsibilities down to team leaders. This planning process supports the effective management and integration of the NPC within the ATO's governance arrangements.

NPC risk management

2.42 The NPC's risk management framework also takes place within the context of the ATO-wide risk management framework.⁴⁸ The compliance risk model is designed to apply a systematic and disciplined approach to compliance risk management. As part of its management framework, the ATO classifies revenue products, market segments and special focus areas to assist with risk identification and organisational and business planning.

2.43 The NPC area with responsibility for the identification and initial assessment of risks is the Intelligence and Risk Management team. In regards to the compliance risk related to the NPC's endorsements, identified risks are discussed and assessed at the Small and Medium Enterprises Risk Management Committee to ensure a business line approach to compliance activities. In addition, the risks are considered by the Non-Profit Market Segment Executive Committee, which draws together managers from business

⁴⁸ The ANAO has previously determined that the ATO's compliance risk model is consistent with Australian Standard/New Zealand Standard 4360:2004 *Risk Management* and OECD literature. See ANAO Report No.6 2010–11 *The ATO's implementation of the Client Contact – Work Management – Case Management System*, p. 66.

lines across the ATO that have clients from the non-profit sector. These areas include: debt; lodgment; excise; superannuation; FBT; PAYG; and aggressive tax planning, as well as the NPC. This approach ensures that the market segment risk assessment fully covers compliance risks arising from the sector.

2.44 Treatment of risks is primarily the responsibility of the Active Compliance team, which reviews and audits individual entities and, to a lesser extent, the Marketing and Communication and the Interpretative Assistance teams if the treatment identifies relevant activities. In support of the risk management process, the NPC develops or provides input into a variety of tools to identify, analyse and manage its compliance risks, including: risk intelligence scans; Active Compliance treatment strategies; and annual reports on NPC compliance effectiveness.

2.45 The ATO has a sound framework for managing the risks associated with DGR compliance that includes:

- clearly specified risk management and active compliance plans that address activities, responsibilities and performance targets, that are sufficiently disaggregated to DGRs;
- consideration of risks in the context of all taxation products relevant to the non-profit market;
- the means to regularly monitor risks, with treatments linked to specified treatment strategies; and
- annual reporting against effectiveness measures and associated targets.⁴⁹

2.46 As discussed in Chapter 5, there are limited resources available to properly assess the compliance risks associated with the sector and to undertake an appropriate level of post-endorsement compliance reviews. The NPC's compliance work is further limited by a lack of quantitative data that has been collated and interrogated to identify any risk of non-compliance warranting further investigation. Nonetheless, within these limitations, the ATO has effectively used its available resources to address systemic DGR risks.

⁴⁹ In particular, the *2009 Annual Report on Compliance Effectiveness* was informative and balanced, with useful recommendations to improve compliance behaviour.

Performance monitoring and reporting

2.47 Ongoing and regular monitoring and reporting of performance supports management decision-making and an agency's accountability to Government and the Parliament. The ANAO examined the external and internal reporting on DGR administration.

External performance monitoring and reporting

2.48 Key performance measures against which agencies are required to report in their annual reports are set out in the Portfolio Budget Statements (PBS). There are no specific performance measures identified in the ATO PBS relating to the NPC or DGR administration.

2.49 The work of the NPC and DGR administration is not disaggregated in the ATO's annual reporting. The exception is the performance against standards of private rulings undertaken by the NPC. Private rulings on DGR endorsement are included in these, but are not disaggregated.⁵⁰ Other references to non-profit organisations in the 2009–10 Annual Report relate to the tax liabilities and collections from the sector as a whole, rather than the work undertaken by the NPC.

2.50 There is limited reporting currently on the operations of the NPC and its administration of DGRs. Given the significance of the not-for-profit sector and the estimated value to DGRs of donations⁵¹, and to improve the transparency and accountability of the endorsement process, the ANAO suggests that the ATO develop and report against key performance indicators relating to the operation of this function.

Internal performance monitoring and reporting

2.51 The NPC has developed a range of reports to manage its activities internally, report to the ATO's Executive on its achievements, and understand the characteristics of the ATO's non-profit clients. These include reports on:

- team achievements against key output measures;

⁵⁰ Australian Taxation Office (2010), *Commissioner of Taxation Annual Report 2009–10*, p. 74. <<http://www.ato.gov.au/content/downloads/cr00258543AR0910.pdf>> [accessed 28 January 2011].

⁵¹ Over \$2.1 billion was claimed as gifts for tax deduction purposes in 2008–09. See Table 1.2.

- quality assurance results against the Integrated Quality Framework⁵²;
- compliance effectiveness; and
- the non-profit market segment.

2.52 These internal performance monitoring reports provide the NPC with the means to adequately account internally for its performance and to gain a valuable overview of the characteristics of its clients. The reports available to the NPC to internally manage their work, while important in the context of managing against ATO standards, are not sufficiently detailed to effectively manage resources, as discussed at paragraph 2.30.

Arrangements with other government agencies

2.53 Commonwealth agencies and state and territory governments have responsibilities for regulating fundraising entities. In particular, a number of Commonwealth agencies have responsibility for part of the endorsement process for some categories of DGRs. In addition, state and the ACT governments have legislation that particularly focuses on promoting public accountability and consumer protection around fundraising activities. The ANAO assessed the governance arrangements between the ATO and:

- Commonwealth agencies with a role in endorsing DGR applications; and
- state and the ACT government agencies responsible for fundraising legislation.

Arrangements with Commonwealth government agencies

2.54 As outlined in paragraph 1.9, AusAID, SEWPaC, FaHCSIA and the Office of the Arts have responsibilities for receiving and undertaking the assessment of applications for particular categories of DGRs. These are then submitted to their minister for approval, and subsequently to the Assistant Treasurer for approval.⁵³ As previously noted, the ATO records approved

⁵² This framework is further discussed in paragraphs 3.62 to 3.74.

⁵³ The ATO assesses the public fund requirements of overseas aid funds prior to consideration by the Assistant Treasurer.

entities as having DGR endorsement on the ABR. It also has responsibility for ongoing compliance for these DGRs, once endorsed. Other Commonwealth agencies have responsibility for the assessment of scientific research claims by approved research institute (ARI) DGR category applicants⁵⁴, with this assessment being undertaken after the ATO has considered whether the entity meets the general requirements of a DGR.

2.55 There are no memoranda of understanding governing the relationship between the ATO and these other agencies that specifically cover DGR endorsement. There are, however, memoranda governing the broader relationship of the ATO with Treasury and SEWPaC.

2.56 As part of the 2009 Budget, the Government announced the first of a triennial review of the four DGR registers, with effect from 2009–10.⁵⁵ The review aimed at bringing the governance of the registers in line with those DGRs categories assessed for endorsement by the ATO. The review has progressed and its outcome is expected to be considered by Government later in 2011.

2.57 The lack of key indicators to monitor the timeliness of processes across agencies is discussed in Chapter 4 (paragraphs 4.38 to 4.39). Chapter 5 (paragraphs 5.33 to 5.34) also highlights the potential value to the ATO of the reported information received by other agencies from organisations in assessing ongoing compliance. This information is currently not exchanged. Both these matters could be addressed through memoranda of understanding specifically relating to DGR endorsement. Once the Government has considered the outcome from the triennial review, the ANAO suggests that any ongoing arrangements across agencies, including the proposed Australian Charities and Not-for-profits Commission, would benefit from such memoranda setting out the responsibilities and required consultation and exchange of information.

⁵⁴ These agencies are the Commonwealth Scientific and Industry Research Organisation, the Department of Industry, Science & Research and the National Health and Medical Research Council.

⁵⁵ Commonwealth of Australia (2009), *Budget Paper No. 2 (2009–10)*, p. 29.
<http://www.budget.gov.au/2009-10/content/bp2/download/bp2_Consolidated.pdf> [accessed 27 January 2011]

Arrangements with state and territory governments

2.58 As outlined at paragraph 1.15, each of the state and the ACT governments has legislation requiring the licensing of organisations undertaking fundraising for charitable purposes. For some organisations there are requirements to seek endorsement from the ATO to ensure that the funds raised are tax deductible, and from state and ACT governments to register for fundraising and as an incorporated association. As these requirements are mutually supportive, the ANAO determined the extent to which there are arrangements between the ATO and the states and the ACT relating to DGRs.

2.59 Currently, there are no such arrangements between the ATO and the state and ACT governments. As a result, there is a lack of coordination of guidance to fundraising entities on government requirements across jurisdictions (paragraphs 4.43 to 4.46). In addition, the ATO has not used data held by state and ACT agencies to inform compliance activities (paragraphs 5.35 to 5.38).

2.60 The Government announced in the 2011–12 Federal Budget that negotiations would be conducted with the state and territories on national regulation, including the appointment of a new national regulator for the sector.⁵⁶ The ANAO suggests that if the states and territories retain this legislation, the ATO and subsequently the Australian Charities and Not-for-profits Commission develop more formal arrangements with state and territory regulatory offices to mutually support their interactions with fundraising organisations.

Communication and consultation with key stakeholders

2.61 The nature of the ATO's work with the non-profit sector is important and of interest to external clients and their professional advisors. Given the prominence of the non-profit sector to the functioning of our society and the role of taxpayers as donors in fundraising, the ATO's operations in this area, including those associated with DGR endorsement and compliance, are of broader community interest.

⁵⁶ See paragraph 1.22.

2.62 To determine the extent to which the ATO ensures sufficient and effective two-way communication with the sector, their professional advisors and donors regarding DGR endorsement and associated emerging issues, the ANAO examined the ATO's approach to participating in formal community consultation forums and other approaches to community consultation.

Formal community consultation forums

2.63 The key formal consultation forum that the ATO uses in relation to DGR issues is the Charities Consultative Committee (CCC). The ANAO also examined the extent to which DGR issues were raised in other formal consultation forums.

Community Consultation Committee

2.64 The NPC provides the secretariat for the CCC. It consists of senior representatives from the charities community and the ATO, as well as a representative from Treasury. The CCC was established initially as a consultative forum between the ATO and the charities community in August 1999 as a means of addressing issues initially associated with the introduction of the GST. It has since continued to raise issues affecting the charity sector's engagement with the ATO more broadly.

2.65 The committee operates under the ATO Corporate Management Practice Statement – Committee Management⁵⁷, convening approximately every four months on an ongoing basis. The minutes of the CCC meetings are published on the ATO website. Forthcoming meeting dates are also published, with links to email the secretariat on issues. In consulting three of the eleven community members on the CCC, the ANAO was informed that it provided an important forum to raise, and assist in resolving, issues currently affecting the sector or expected to impact on the sector. The inclusion of Treasury was particularly valued given that issues related to government policy and legislation could be raised.

2.66 The CCC has some limitations relating to its representation. Its community membership, with the exception of the Queensland University of

⁵⁷ The Practice Statement provides the governance framework for the operations of liaison and consultative committees across the ATO.

Technology, largely comprises Christian churches or associated community service arms, and key peak bodies whose members have access to relevant tax concessions.⁵⁸ These representatives provide an important forum for those entities that are already established as key bodies with DGR or TCC endorsement. Groups underrepresented in this forum include professional advisors and those whose community work falls outside the major charity focus.

Consultation with professional advisors

2.67 The ATO engages with professional advisors through the National Tax Liaison Group, the peak consultative forum for tax agents and tax professionals. The National Tax Liaison Group has a number of sub-committees, but none of these relate to the non-profit sector. Tax lawyers are engaged by the ATO through the Legal Practitioners Working Party. Issues of direct concern relating to DGR or TCC endorsement status for non-profit entities have not been raised as an agenda item for either of these groups since the beginning of 2008.

2.68 The ATO does not record whether DGR applications are lodged by professional advisors on behalf of their clients. Based on a small sample of 184 public benevolent institution (PBI) applications lodged between October 2009 and April 2010, 20 per cent engaged professional advisors. Furthermore, the ANAO was informed that most applications for private ancillary funds (PAFs) use such advisors, given that these are primarily established by high wealth individuals and families.

2.69 The ANAO was informed that the professional advice for DGR endorsement was concentrated around 15 law firms that have teams of specialist charity lawyers. The ANAO consulted with eleven of these teams. While some stated that they had been approached by the ATO to give their views on individual issues, since 2009 there has been no regular, ongoing forum in which to engage openly with the ATO on issues of concern. A number cited the value of a forum previously organised by the Centre for Philanthropy and Non-Profit Studies at the Queensland University of

⁵⁸ Current community membership comprises: Anglicare, Australian Catholic Bishops Conference, Mission Australia, Salvation Army, UnitingCare Australia, Australian Council of Social Services, Community Housing Federation, Independent Schools Association, St John's Ambulance Australia, and Queensland University of Technology – Centre of Philanthropy and Non-Profit Studies.

Technology. This forum was held biannually⁵⁹, and allowed a frank exchange of information and views. As specialist lawyers have a unique perspective on the ATO guidance and procedures relating to DGR application processes, there would be benefit in the ATO (and the proposed Australian Charities and Not-for-profits Commission) engaging with this group on a more regular basis.

Consultation and communication outside the CCC

2.70 The consultation and communication outside the CCC to other not-for-profit groups eligible for (or potentially eligible for) endorsement as DGRs or TCCs is more ad hoc. They include:

- seminars based on scripts developed by the NPC and delivered by the ATO's Education Services. Forty-four such seminars were delivered to community organisations in the 18 months to the end of December 2010. A guaranteed 15 participants are required for Education Services to run these seminars. The NPC is examining opportunities to expand delivery through the use of webinars (seminars delivered online); and
- participation in and presentation at relevant conferences attended by a range of non-profit organisations. These are undertaken by the NPC on an ad hoc basis.

2.71 Neither of the above activities provide regular, two-way communication between the ATO and community organisations on matters such as DGR endorsement requirements. The ANAO suggests that the ATO (and the proposed Australian Charities and Not-for-profits Commission) explore other avenues for canvassing and discussing a wider range of views than those through the CCC. One option could be to use the online forums.⁶⁰

Other approaches to community consultation

2.72 The ATO provides a wide range of information on its website that pertains to the non-profit sector. This includes information on: the DGR endorsement process and how to apply for DGR endorsement; the tax concessions available and how to apply as a non-profit entity; applying for Australian Business Numbers; and links to non-profit sector news articles.

⁵⁹ The ATO and the Queensland University of Technology hosted this forum on an alternating basis.

⁶⁰ An example of the forums available through the ATO website includes the Small and Medium Enterprises Tax Forum.

2.73 The ATO undertook a research initiative in 2006–07 into the effectiveness of its communication strategies and the products that were available to the general public for the non-profit market segment. The primary objective of this initiative was to inform the ATO staff who develop information products for the non-profit sector of the information needs of the sector. The research concluded that:

- there was a significant lack of awareness of the non-profit sector products and services available on the ATO website. It was acknowledged that, while these products were assessed as user-friendly, attention needed to be given to improving awareness of these products;
- there was a trend among non-profit entities that the preferred information channel was electronic services such as the internet and email subscriptions; and
- the high turnover of administrative roles within non-profit entities continued to be significant issue. This led to new administrative staff enduring a steep learning curve for all information provided for non-profit entities.

2.74 In response, the ATO undertook projects aimed at improving the availability and community awareness of non-profit sector information. These included the development of a publication for those new to non-profit organisations⁶¹, conducting information seminars and participating in the conferences and forums previously discussed.

2.75 The research project provided the NPC with vital information to inform their approach to the sector. It is now over four years since this research was conducted. In the lead up to the establishment of the proposed Australian Charities and Not-for-profits Commission, there would be benefits in the ATO evaluating the success of its communication strategies since the research was conducted to identify any remaining gaps that the Commission may need to address.

⁶¹ Australian Taxation Office (2007), *Tax basics for Non-profit organisations*. (NAT 7966-05.2007), <http://www.ato.gov.au/content/downloads/NAT7966_05_2007.pdf> [accessed 27 January 2011]

Conclusion

2.76 The NPC's oversight, planning, reporting and monitoring arrangements enable its operations to be well integrated into the ATO's broader business approach. Consistent with this integration, the NPC's work contributes to the overall external reporting by the ATO in its annual report on its performance against client service standards. However, the performance of NPC operations is aggregated with that of other areas of the ATO. While noting that the NPC's work forms a small part of ATO operations, the lack of performance reporting specifically on non-profit sector activities limits the accountability and transparency of the ATO's performance in this area.

2.77 With respect to resourcing, staff turnover has meant that there has been a loss of expertise in the small number of non-profit tax legislation specialists working in each of the NPC's six locations. Further, the introduction of the CWC system in August 2009 has required additional resources to assess endorsement applications. Both factors have led to a decrease in performance against timeliness standards and a perception by clients of variability in expertise among staff, despite appropriate training and mentoring arrangements.

2.78 The NPC has introduced changes to assist productivity and increased staff resourcing to address timeliness concerns. However, a lack of management and performance information to monitor the number of complex, high-risk cases, the impact on processing efficiency from high individual case loads, and the ongoing effects from the CWC system, limits the ability for the NPC to assess the effectiveness of its changes and to determine adequate resource levels against demand.

2.79 The NPC has regular, formal consultations through the CCC with the large Christian churches and their associated community service arms, as well as key peak bodies whose members have access to relevant tax concessions. Professional advisors and those whose community work falls outside the major charity focus are not represented on this forum, and currently there is no regular two-way communication between the ATO and such groups in which to raise and discuss matters relating to DGR endorsement.

3. Assessing DGR Endorsement Applications

This chapter examines the ATO's processes for assessing applications for DGR endorsement.

Introduction

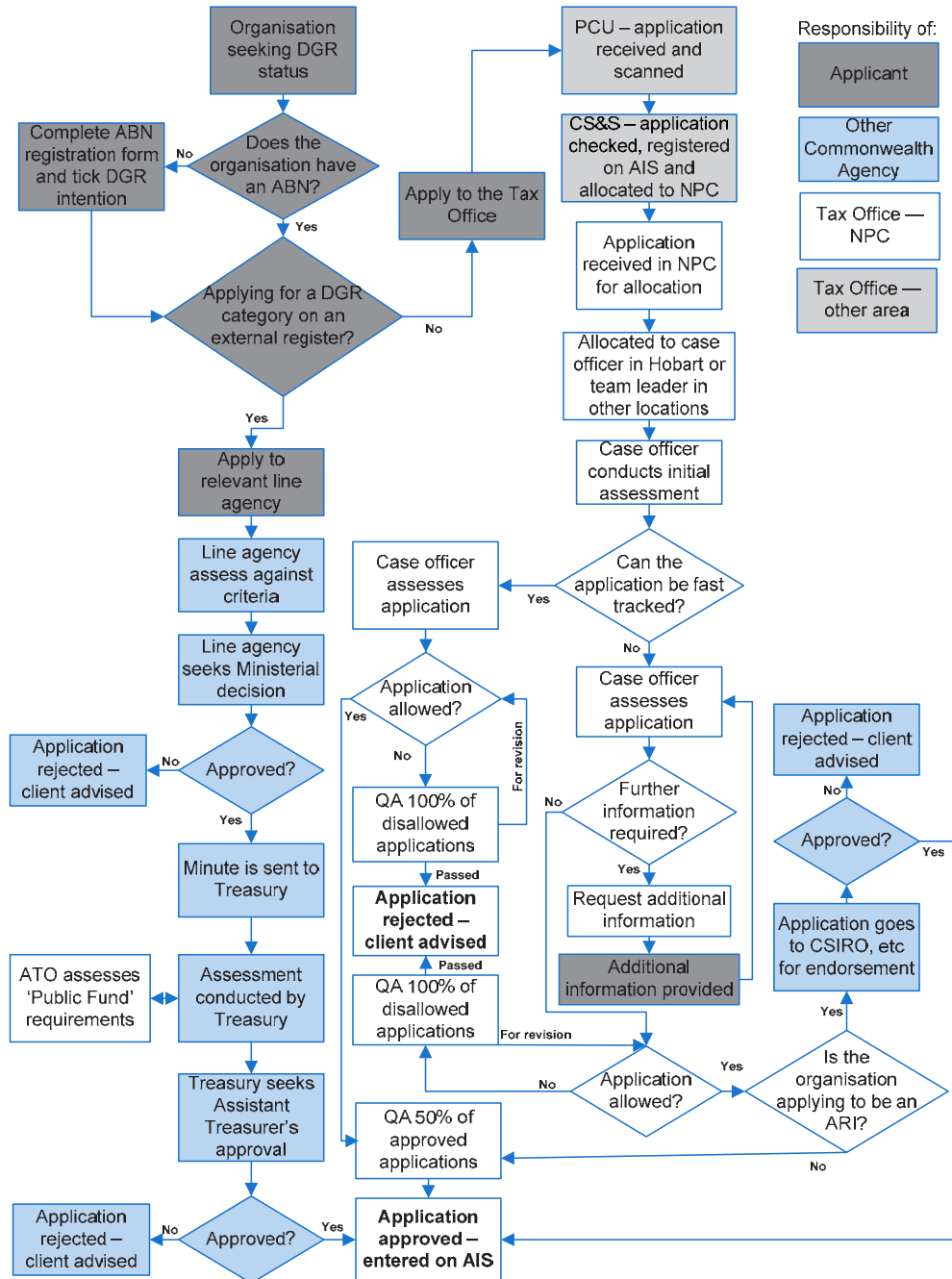
3.1 To receive donations that are income tax deductible for the donor, organisations and/or their funds are required to be endorsed by the ATO as DGRs. Applications for DGR endorsement are assessed by the ATO, based on information provided by the applicant.⁶² It is important that DGR endorsements are supported by processes that assist in achieving consistent outcomes that align with legislative requirements, and are in line with the ATO's service standards, part of the Taxpayers' Charter.⁶³

DGR application and assessment processes

3.2 The process for assessing eligibility for DGR endorsement requires a number of steps, with responsibilities divided between the applicant, the NPC, other areas of the ATO and for particular DGR categories, other Commonwealth agencies. Figure 3.1 provides an overview of the steps in the process and the party responsible for each.

⁶² Assessments for DGR endorsement of organisations under a small number of categories are undertaken principally by other Commonwealth agencies (outlined at paragraph 1.9).

⁶³ Australian Taxation Office (2010), *Overview of the Taxpayers' Charter*.
<<http://www.ato.gov.au/corporate/content.aspx?doc=/content/25824.htm&pc=001/001/002/017&mnu=0&mfp=&st=&cy>> [accessed 28 April, 2010].

Figure 3.1**Overview of DGR application and assessment processes**

Source: ANAO analysis of information from ATO and other Commonwealth agencies

3.3 Broadly, responsibility for the DGR application and assessment processes is shared across the following:

- the applicant who must have an ABN and meet the pre-conditions of particular categories, submits the application to the Commonwealth agency responsible for assessment and provides additional information as required;
- other Commonwealth agencies that are responsible for the assessment of applications by harm prevention, cultural, environmental and overseas aid fund organisations prior to ministerial approval, and of the scientific research credentials for organisations applying for the approved research institute (ARI) DGR categories⁶⁴;
- other areas of the ATO, with the Production Control Unit (PCU) receiving applications and scanning them into the CWC system, and the Client Services & Solutions (CS&S) checking the application for completeness and contacting the client as required, and allocating the application to the NPC; and
- the NPC that manually allocates applications to case officers based on existing workloads, seeks extra information from the client as required, assesses and makes a determination with the level of scrutiny based on risk, undertakes quality assurance on the determination, and advises client of the outcome if the application is rejected.⁶⁵

3.4 To assess the effectiveness of the DGR endorsement processes, the ANAO examined:

- the allocation of cases to case officers to determine the extent to which the practice supported timely, consistent decision-making;
- timeliness in determining case outcomes;
- consistency in assessment decisions; and
- the quality assurance arrangements for assessments.

⁶⁴ This is discussed in paragraphs 1.9.

⁶⁵ The system generated letter advises the client if the application is allowed.

Allocating applications to case officers

3.5 Case officers have responsibility for deciding whether an application meets DGR endorsement criteria, or is disallowed. The case officer can also advise the applicant that their application is likely to be disallowed and suggest that the applicant withdraws their application. Applications are channelled through the PCU, the CS&S, an allocations officer in the Hobart NPC Interpretative Assistance team and, for cases assessed in other NPC Interpretative Assistance locations, team leaders. This process was introduced in August 2009 to manage cases using the CWC system.

Effect on timeliness

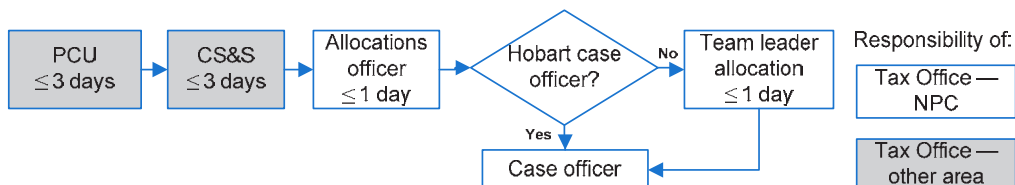
3.6 Case officers are required under the ATO service standards to assess completed applications within 28 days of receipt by the ATO. The NPC uses the allocation process to assist in meeting these service standards. Broadly each of the teams in Hobart, Box Hill and Northbridge are expected to be allocated 30 per cent of applications, and Dandenong to receive 10 per cent. This approach is adjusted based on team workloads.

3.7 ATO internal allocation guidelines requires the allocations officer to check the CWC system to determine whether the organisation has submitted previous applications. If so, the new application is allocated to the previous case officer.

3.8 While the current allocation policy within the NPC contributes to managing assessment timeliness, the number of steps in the process reduces the efficiency of the process. If each step in the process meets the required timeline, case officers may not receive an application until the eighth day of the 28 day assessment timeframe, as outlined in Figure 3.2.

Figure 3.2

Internal time standards for allocation of applications to case officer



Source: ANAO analysis based on ATO information

3.9 If further information is required to determine eligibility, the ATO service standards specify that the case officer must contact the client within 14 days of receipt of the application. In such a case, this potentially leaves the case

officer with only a six day window (including weekends) in which to determine the need for further information and contact the client. While the PCU and the CS&S together have six days in which to allocate cases to NPC, there are examples of when this standard has not been met, further limiting the time available for technical assessment within the service standards.

3.10 As discussed in Chapter 2, the NPC has not been meeting timeliness service standards for DGR endorsements. One of the contributing factors identified by the NPC is the case management process required to support the CWC system has doubled the elapsed time required to allocate applications to team leaders. This means that the time that can be allocated to technical assessments within the timeframe of the standards is reduced.

3.11 To manage the application process more generally, the NPC has proposed an online, interactive application form. Applications submitted online will bypass the PCU and the CS&S and be allocated directly to the NPC. When implemented, this application process will provide the opportunity for faster allocation to case officers and longer technical assessment timeframes within the standards. While the project outline has been developed, the ATO has not as yet identified a timeframe for the implementation of this initiative. Given the implementation of an interactive application form also has wider benefits in providing guidance to applicants⁶⁶, determining an implementation timeframe for this project would be useful.

3.12 While the current allocation policy within the NPC contributes to the management of timeliness, albeit limited by the allocation steps outside the NPC, the development of expertise in specific types of DGR categories within teams provides further scope for efficiencies.

Effect on consistency

3.13 One way of managing risks to consistency in decision-making is to allocate similar types of applications to particular teams. Specialised expertise in particular application types is developed and case officers can take a collegiate approach to decision-making. Generally, specific categories of DGR endorsement applications are not allocated to particular teams. The exceptions

⁶⁶ This is discussed at paragraphs 4.14 and 4.29.

are DGR applications for PAFs, allocated to the Dandenong office, and ‘fast-tracked’ cases allocated to the Hobart Interpretative Assistance team.⁶⁷

3.14 Specialist lawyers who regularly represent clients making applications for PAFs and DGRs in some ‘fast-tracked’ categories described the process as ‘streamlined’, and did not raise any issues regarding the consistency of decision-making, which was in contrast with their views on some other application types. The allocation of PAF applications to a single team is only one factor contributing to the streamlining of applications. On 1 January 2010, PAFs replaced prescribed private funds. All previously endorsed prescribed private funds were allowed as PAFs provided there was agreement to comply with the PAF guidelines. Further, the PAF DGR category has specific guidelines⁶⁸, model trust deeds, and a specific schedule (application form) for applying for DGR status. This guidance to applicants along with straightforward criteria for determining DGR status has assisted the effective processing of these applications.

Conclusion

3.15 The process of allocating applications to case officers has impacts on timeliness and consistency in decision-making. The number of steps in the allocation process prior to receipt by the case officer limits the time available for technical assessments. A planned online interactive form will minimise the steps and time required to allocate applications.

3.16 There is limited specialisation of DGR categories by teams in particular locations. Where specialisation occurs, there is a perception by applicants of greater consistency in decision-making. While noting that there are a range of approaches that may assist to enhance consistency in decision-making⁶⁹, there would be benefit in the ATO giving consideration to allocating specific types of DGR applications to particular teams, to the extent practicable, as one means of supporting consistency of decision-making.

⁶⁷ Cases are fast tracked, verified or fully examined based on risk (see paragraphs 3.21 to 3.23).

⁶⁸ The *Private ancillary fund guidelines 2009* (PAF guidelines) is a legislative instrument formulated by the Minister, under the *Taxation Administration Act 1953*.

⁶⁹ Paragraph 3.60 outlines a range of processes and system support to strengthen decision-making consistency.

Timeliness in determining case outcomes

3.17 Case officers are responsible for assessing applications and determining case outcomes. In undertaking this responsibility, case officers are expected to draw on information provided within the application, determined through their own research⁷⁰, or requested from the applicant. Case officers are also expected to escalate issues when they are unable to reach a resolution.⁷¹ Once a decision is made, the result is entered into the AIS system and the client informed.⁷²

3.18 In undertaking assessments and making decisions, case officers work to standards specified for ‘private written advice’ under the ATO’s Client Service Charter. The standards and associated benchmarks, including an internal standard on elapsed time, are outlined in Table 3.1 below.

Table 3.1

Service standards for processing DGR endorsement applications

Standard	Description	Benchmark (% of cases)
Service Standard 1	Finalise an application with complete information in 28 days.	85
Service Standard 2	Request further information in 14 days.	85
Service Standard 3	Client forward requested information in 28 days.	85
Service Standard 4	Finalise an application on receipt of complete information in 28 days.	85
Internal Standard	Finalise an application within 90 days of receipt.	99

Source: ATO documentation

3.19 The case officers in NPC have adopted a number of practices in processing endorsement applications, both official and on an individual basis,

⁷⁰ Such research draws on applicant information such as that held by the Australian Securities and Investments Commission and from the organisation’s own website.

⁷¹ The escalation process is further discussed at paragraph 3.41.

⁷² The AIS system is the information system from which the ABR draws information for public availability. CS&S registers the application in the AIS system, which in turn is updated to reflect the application decision and generate letters to applicants for allowed cases.

to assist in managing the timeliness of assessments against the standards.⁷³ These include:

- determining the level of scrutiny required of an assessment based on risk categorisation;
- writing up assessments against each disallowed criterion;
- encouraging applicants to withdraw rather than be disallowed;
- seeking information already provided; and
- ‘rushing’ applications prior to the Christmas period.

The impact on timeliness and any consequential effects on client service are outlined below.

Categorising applications

3.20 Once case officers receive applications for DGR endorsement, they are required to categorise the cases as ‘fast-tracked’, ‘verified’ or ‘fully assessed’, based on risk. These categories reflect the level of resources used to assess an application.

3.21 Applications are fast-tracked if they fall within one of the DGR fast-track disallow/allow categories, or have already been endorsed as a TCC in the PBI category.⁷⁴ Fast-tracking criteria are detailed in documentation available to NPC staff. The DGR fast-track categories are those that had previously experienced high rates of disallowed/allowed outcomes when fast-tracking was introduced in 2007. Case officers are expected to assess each application that falls into a fast-track category to determine if there are risks which would make it unsuitable for fast-tracking.

3.22 Cases that do not qualify for fast-tracking and/or have a small number of contentious issues which need to be followed up or assessed are categorised as ‘verified’. Any further information required for decision-making is sourced from information available on the internet or through phoning the applicant.

⁷³ These practices are one of a number of approaches adopted by the NPC to improve the achievement of service standards against resourcing, as outlined at paragraph 2.29.

⁷⁴ The key difference between TCC PBI criteria and DGR PBI criteria is that the DGRs must meet ‘in Australia’ requirements.

Broad guidance is documented for staff to consider in determining if a case is suitable for ‘verification’ compared with ‘fully examined’.

3.23 Cases categorised as ‘fully examined’ require an assessment of all the issues. Generally, such cases require further information to be provided by the applicant.

3.24 As outlined in Table 3.2, there is significant difference in the resources required to process each of the categories, commensurate with the level of assessment required.

Table 3.2

Resourcing required to process DGR and TCC endorsement applications (average minutes)

Steps	Fast tracked	Verified	Fully examined	
			Straightforward	More difficult
CWC	12	60	68	98
Research/technical analysis	3	25	210	210
AIS ⁷⁵	2	20	20	20
Client contact	-	-	45	45
Draft report	-	45	240	240
IQF	5	10	10	10
Total	22	160	593	623

Note: Disallowed ‘verified’ cases take an additional 150 minutes, and disallowed ‘fully examined’ cases an extra 45 minutes.

Source: ATO internal documentation based on information collected manually on a sample basis.

3.25 For 255 DGR endorsement applications registered in 2009–10 with the characteristics of fast-tracked cases, the ANAO determined that the average elapsed time from receipt to finalisation was 26.8 days. This compares with an average elapsed time of 36.7 days across all DGR applications received in this period. These averages are commensurate with the ATO’s own analysis of resourcing requirements.

⁷⁵ The function of AIS is outlined in footnote 72.

3.26 While the ATO has manually collected information such as that shown in Table 3.2, there is no management information currently available from the CWC system that identifies the percentage of cases in each of these risk categories and therefore the overall effect on resourcing. Furthermore, the ATO does not have management information to assess the impact on resourcing of fast-tracking particular types of DGR applications. In particular, many of those currently in fast-tracked categories are straightforward assessments and therefore should have required only limited processing resources prior to the introduction of fast-tracking.

3.27 The NPC Interpretative Assistance team advised that it intends to update the criteria for fast-tracking based on a risk assessment, including expanding the number of categories suitable for fast-tracking. The ANAO suggests that the ATO record and monitor the resources required for particular categories of proposed 'fast-tracked' application before and after implementing any change to determine the effectiveness of this practice in managing timeliness.

Writing up assessments against each disallowed criterion

3.28 Clients are advised on every criterion they did not meet in respect of disallowed applications. Prior to this practice, case officers were only required to identify a single issue on which to disallow an application. The procedure was introduced in early 2009–10 to minimise the risk that applicants would resubmit an application addressing only the single issue and subsequently be rejected on a further issue, which also had not been met in the original application. Although this new practice should limit the number of unsuccessful applications resubmitted, it is more resource intensive to address each issue.⁷⁶ As this practice has not been evaluated by the ATO, there is no information on which to assess the impact on timeliness following its introduction.

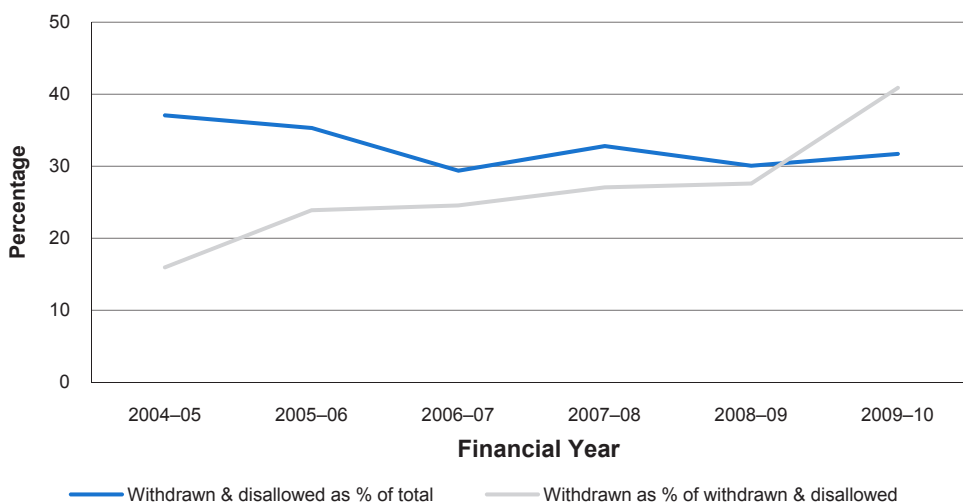
⁷⁶ Paragraph 3.30 identifies the elapsed time in 2009–10 is 13 days greater for disallowed cases compared with those that are withdrawn.

Encouraging applicants to withdraw

3.29 There is an increasing trend for the ATO to approach clients and to explain why an application will be disallowed, thus encouraging applicants to withdraw their application rather than have it disallowed. The ATO's data indicates that the rate of DGR applications that are either withdrawn or disallowed has decreased slightly over the period since 1 July 2004 (from 37 per cent in 2004–05 to 32 per cent in 2009–10). In comparison to those that were either withdrawn or disallowed, the percentage of withdrawn has increased significantly from 16 per cent in 2004–05 to 41 per cent in 2009–10, as shown in Figure 3.3.

Figure 3.3

DGR applications withdrawn and disallowed, 2004–05 to 2009–10



Source: ANAO analysis based on ATO data.

3.30 There is a benefit for the ATO, in terms of resources (and subsequently on the achievement of service standards), in having a higher rate of withdrawn applications compared with disallowed. In particular, based on DGR applications registered in 2009–10, the elapsed time for withdrawn applications was 40.1 days compared with that for disallowed applications of 53.4 days. Fewer resources are needed for withdrawn cases as they do not require: an assessment and write-up against each of the issues on which the application was disallowed; quality assurance processes; and decisions to be reviewed by team leaders. Further, there is no risk of an objection to a decision

should the applicant agree to withdraw. Over 13 per cent of disallowed DGR and TCC applications were subject to objections over the past three years.

3.31 From an applicant's perspective, a withdrawal may not provide sufficient information as to the reasons why the application would have been disallowed to assist them resubmit an amended application. For disallowed DGR endorsement applications over the past two years, 19 per cent subsequently had a DGR endorsement in the same category. This provides an indication of the value to applicants of documented explanations on why their applications were disallowed. The ANAO suggests that the ATO record and monitor reapplication rates of those applicants encouraged to withdraw on a technicality⁷⁷ to determine whether further information for, or education of, such applicants is required.

Seeking information already provided

3.32 If all information is provided by the client when submitting a DGR application, the ATO's Service Standard 1 requires applications to be determined within 28 days of registration. However, if extra information is required, the case officer has an extra 14 days to determine the case with up to 28 extra days of elapsed time to meet the service standard.⁷⁸

3.33 Several specialist lawyers interviewed by the ANAO suggested that case officers requested information unnecessarily. They interpreted this practice as a means for case officers to gain greater time to finalise assessments. Client confidentiality meant that these professionals were reluctant to share the identity of the cases in which this had occurred. While unable to determine the extent of this practice, the ANAO in its review of 55 selected cases (discussed in paragraph 3.50) identified one case consistent with this view. Such practice is not one that is supported by ATO policy or procedures, and may have resulted from inexperienced case officers not recognising the content of information provided. In order to address the professional advisors' concerns, there would be benefit in the ATO assessing the practice's occurrence through quality assurance processes.

⁷⁷ An example is a requirement to include an appropriate dissolution clause in a constitution.

⁷⁸ Service standards are set under the ATO's Client Service Charter (see paragraph 3.18).

‘Rushing’ assessments prior to the Christmas period

3.34 Client service standards are based on calendar days rather than work days. They therefore do not take into account public holidays, including those around the Christmas/New Year period.

3.35 Specialist lawyers expressed concern that assessments were rushed through in the period leading up to Christmas to limit the impact of public holidays on service standards. Supporting this perception, in the week prior to Christmas in 2009 an average of 12.8 DGR applications were finalised per day, with these achieving an average elapsed time of 26.9 days. This compares with an average number of finalised applications per working day in 2009–10 of 7.2 finalisations per day, with an average elapsed time of 36.7 days.

3.36 Despite these findings there is no evidence to indicate any impact on the quality of decision-making that resulted from the quicker turn around over this period.

Overall external stakeholder concerns

3.37 External stakeholders generally considered that the current service standards were ‘unrealistic’. Of particular concern were cases that had not been finalised for considerable periods of time, even when the applicants’ representatives had met requests for any further information within the specified time periods. Table 3.3 shows the elapsed times for cases in the 16 month period to October 2010.

Table 3.3

Elapsed time for DGR cases finalised from July 2009 to October 2010

Elapsed time	No. of applications	Percentage of total (%)
Less than 30 days	1227	52.6
30 to less than 60 days	557	23.9
60 to less than 90 days	341	14.6
90 to less than 180 days	161	6.9
180 to less than 365 days	17	0.7
1 year to less than 2 years	21	0.9
More than 2 years	7	0.3
Total	2331	100.0

Source: ANAO analysis of ATO data.

3.38 While most applications are finalised in less than 90 days, a small number were delayed for extensive periods, with 28 cases taking over 12 months to be finalised. Twenty-five of these cases related to volunteer bushfire brigades. These cases were placed on hold pending consideration of these organisations as PBIs.⁷⁹ Once all the volunteer bushfire brigades are taken into account, the percentage of cases finalised in less than 90 days increased from 91.1 to 92.5 per cent. This is still less than the ATO's internal benchmark of 99 per cent of cases being completed within 90 days.

Conclusion

3.39 Currently, the NPC does not meet the service standards for timeliness, with a small number of cases taking more than two years to finalise. Practices such as categorising applications based on risk to identify the consequential level of scrutiny required in their assessment, writing up assessments against each disallowed criterion, and encouraging applicants to withdraw applications likely to be disallowed, have the potential to contribute to meeting timeliness standards for application processing. However, the extent of their contribution is not fully understood given a lack of management information available to measure their effect. Further, as client service is a key intention of timeliness standards, the effectiveness of these measures needs to be balanced against any decrease in overall client service. Recognition by the NPC that achievement of timeliness standards might only be addressed through improved resourcing for the Interpretative Assistance team led to its business case in May 2010 for additional resources. The subsequent allocation of these resources⁸⁰ provides the potential to improve timeliness of application processing.

Consistency of assessment decisions

3.40 The ATO has a range of resources and processes to support consistent decision-making on DGR applications. These include:

- standard training packages (discussed in Chapter 2);
- documentation on processing and eligibility criteria;

⁷⁹ The reason for holding these cases is discussed in paragraph 3.51.

⁸⁰ Staff resourcing is discussed in Chapter 2 (paragraphs 2.13 to 2.30).

- processes to escalate eligibility issues through team leaders;
- quality assurance procedures; and
- internal communications approaches, including staff bulletins identifying key officers (including technical advisors) to whom particular types of applications should be referred or from whom advice can be sought.

3.41 If case officers identify a DGR endorsement eligibility issue with which they are unfamiliar, they are required to initially bring it to the attention of their team leader, who in turn may raise it through the team leaders' technical issues forums and/or through reference to the technical advisors.

3.42 Of the eleven legal firms consulted with specialised practices in the not-for-profit sector, nine raised concerns about the consistency of decision-making relating to DGR endorsements. Of particular note were matters related to a legal case involving Word Investments Ltd, and inconsistent decisions on similar cases.

3.43 In order to assess the extent to which these concerns were valid, the ANAO assessed the consistency of decision-making:

- relating to the Word Investment Ltd decision;
- by examining a selection of applications and related decisions; and
- by examining the levels of successful objections to disallowed cases.

Consistency of decision-making relating to the Word legal decision

3.44 The ATO views on the meaning of 'charitable institution' and 'fund established for public charitable purposes' in determining eligibility for endorsement under the DGR categories, health promotion charity and harm prevention charity, as well as various tax concessions, are set out in the tax ruling, TR 2005/21.⁸¹ The ATO drew on this and another ruling, TR 2005/22⁸², to

⁸¹ Australian Taxation Office, 2005, *TR 2005/21 Income tax and fringe benefit tax: charities*, paragraph 20, states that 'a purpose of carrying on a business or commercial enterprise as such is not charitable. This is the case even if the entity carrying on the enterprise is controlled by a charitable institution or its profits are ultimately applied for charitable purposes'.
<<http://law.ato.gov.au/atolaw/print.htm?DocID=TXR%2FTR200521%2FNAT%2FATO%2F00001&PiT=99991231235958&Life=20051221000001-99991231235959>> [accessed on 2 December 2010].

disallow a TCC endorsement application from Word Investments Ltd, a company engaged in commercial enterprises whose profits were ultimately applied for a charitable purpose. In December 2008, the High Court judgement of the case, *Commissioner of Taxation v Word Investments Ltd* (Word) overturned the ATO's determination, effectively broadening the scope of a charity to include such activities and invalidating parts of the two tax rulings on which the ATO had based its decision.

3.45 The specialist lawyers interviewed by the ANAO were critical of the fact that the relevant tax rulings had not been updated almost two years after to the High Court judgement. Further, they advised of instances where the Word decision had not been taken into account in endorsement decision-making.

3.46 In May 2011, the Tax Commissioner withdrew TR 2005/21⁸³, and released a draft ruling (TR 2011/D2) for public comment that set out the Commissioner's preliminary views on the meaning of 'charitable' taking account of the Word decision.⁸⁴ The ATO has yet to issue revisions to TR 2005/22. In the 2011–12 Federal Budget the Government foreshadowed legislative changes to limit access to tax concessions by non-profit entities with unrelated commercial activities, which when implemented may change some areas of the law covered by the draft ruling and TR 2005/22.⁸⁵ In the interim, the ATO undertook a range of activities to promote the understanding of the Word case in DGR and TCC decision-making. In particular:

- in May 2009, the ATO publically issued a decision impact statement on the court case. This statement identified that the case outcome would

⁸² Australian Taxation Office, 2005, *TR 2005/22 Income: companies controlled by exempt entities*, paragraph 8, states that 'in working out whether a particular company is exempt from income tax, in circumstances where that company has a relationship or a connection with another entity, it is that company that must meet the requirements for exemption'. <<http://law.ato.gov.au/atolaw/view.htm?docid=TXR/TR200522/NAT/ATO/00001>> [accessed on 2 December 2010].

⁸³ Australian Taxation Office, 2011, *TR 2011/21W Income tax and fringe benefit tax: charities – Notice of withdrawal*. <<http://law.ato.gov.au/atolaw/view.htm?Docid=TXR/TR200521/NAT/ATO/00001>> [accessed 18 May 2011].

⁸⁴ Australian Taxation Office, 2011, *TR 2011/D2 Income tax and fringe benefit tax: charities – Draft Taxation Ruling*. <<http://law.ato.gov.au/pdf/pbr/tr2011-d002.pdf>> [accessed 18 May 2011].

⁸⁵ Australian Government, 2011, *Budget Paper No. 2 Budget Measures 2011–12*, p 36. <<http://cache.treasury.gov.au/budget/2011-12/content/download/bp2.pdf>> [accessed 18 May 2011].

be taken into account in determining any exemptions that charitable, religious, scientific or public education institutions were claiming. However, no further specifics on administrative treatments were included⁸⁶;

- in July 2009, guidance was issued to NPC staff to provide practical assistance in applying the Word decision;
- news alerts were provided to NPC staff drawing their attention to the High Court decision and the decision impact statement at the time;
- information and reminders of related activities⁸⁷ associated with the Word decision were disseminated through the NPC executive meetings, and NPC and NPC Interpretative Assistance team leaders meetings in the period December 2008 up to September 2010.

3.47 While there has been information to alert case officers on the High Court decision, there was significant delay (seven months) in issuing practical guidance to staff. As a consequence the risk of decisions being inconsistent with the High Court decision was increased.

3.48 The audit did not assess the extent to which the High Court decision was recognised as relevant to the determination of particular cases, given the difficulty in identifying cases with these specifics. However, while the High Court determined in the Word case the importance of examining the overarching purpose of activities rather than the activities themselves, the ATO continues to make decisions examining both the purpose of an organisation and the activities supporting the purpose. The ANAO suggests in the future that the ATO provide case officers with more specific and timely guidance once a High Court decision overturns parts of a tax ruling.

Consistency of decisions based on cases examined by the ANAO

3.49 As previously discussed, the ATO has measures in place to support consistency of decision-making. It also has a policy of allocating applications

⁸⁶ Australian Taxation Office, 2009, *Decision Impact Statement — Commissioner of Taxation v Word Investments Ltd.*
<<http://law.ato.gov.au/atolaw/view.htm?Docid=LIT/ICD/M41/3008/00001&PiT=99991231235958>>
[accessed 3 December 2010].

⁸⁷ Activities related to the collection of information on relevant cases, including those with risks of litigation.

for private ancillary funds to the Dandenong team and ‘fast-tracked’ cases to the Hobart Interpretative Assistance team, providing the potential to enhance consistent decision-making.

3.50 To gain an understanding of the extent of inconsistent decision-making, the ANAO reviewed a selection of 55 endorsement applications to assess whether decisions were consistent with the guidance material available at the time. Of these, 32 applications were selected from applications decided in 2009–10 and 2010–11 with the remainder selected from earlier decisions. The selection mainly focused on cases in the following category types⁸⁸:

- public benevolent institutions (volunteer bushfire brigades)—eight applications selected;
- school building funds—13 applications selected; and
- school libraries—10 applications selected.

3.51 As at the 18 August 2010, 1777 volunteer bushfire brigades had DGR status under the category PBI. A 2007 review of volunteer fire brigades with DGR endorsement under the PBI category found that their main activity was the protection of property rather than the rescue of victims and therefore their purpose was inconsistent with the requirements of PBIs.⁸⁹ Most applications from this time were held until the ATO affirmed its decision on this matter in late 2009 and were subsequently disallowed. However, three applications determined in a location different from where the majority of applications were being held were ‘fast-tracked’ and allowed in 2007–08.

3.52 Key risks in assessing school building funds include: that the buildings will predominately be used for another purpose (for example, church) rather than school purposes; and that the fund itself is not properly constituted. Of the 13 cases selected, two clearly demonstrated a difference in approach to assessing these risks in determining decisions on DGR eligibility. In the first case assessed in 2002, the decision included consideration of the percentage of usage of the proposed building and the constitution of both the governing body and the fund. In contrast, a 2008 application was assessed on the basis of

⁸⁸ The remaining cases were selected from the categories: PBIs (general); ancillary funds; and those applications which did not nominate a specific category.

⁸⁹ PBIs’ dominant purpose must be the direct relief of poverty, sickness, suffering, distress, misfortune, disability or helplessness.

the usage of an existing building rather than that for which the fund was intended. In addition, the constitution of the fund was not included with the application nor sought by the case officer subsequently.

3.53 As at 18 August 2010, 123 school libraries with gift funds managed by schools' parents and citizens associations or foundations had DGR status under the category 'public library'. From early 2008, the ATO was disallowing applications from such bodies on the basis that it was the schools themselves rather than the associations or foundations that had the libraries as part of their organisation. Three of the applications selected were from parents and citizens associations and school foundations assessed in the period late 2009 to early 2010. One of these was disallowed, one withdrew on the basis of advice from the ATO, and the third was incorrectly classified for fast-tracking and subsequently allowed.

Objections to disallowed cases

3.54 Of the DGR and TCC endorsement assessments which are disallowed and subject to objections, a high proportion have been allowed. There were 2202 disallowed DGR and TCC decisions over the period 2007–08 to 2009–10. Table 3.4 draws on the ATO's assessment of DGR and TCC objections.

Table 3.4

Outcomes of objections to DGR and TCC endorsement decisions, for the period 2007–08 to 2009–10

Outcome	Objections		Percentage of total DGR & TCC disallowed applications
	Number	Per cent of total	
Allowed	110	41	5.0
Allowed in part	4	1	0.2
Disallowed	115	43	5.2
Withdrawn by client	27	10	1.2
Invalid	11	4	0.5
Total	268	100	12.2

Source: ATO and ANAO analysis based on ATO data.

3.55 The table above shows that over the past three years, over 40 per cent of objections were allowed or allowed in part, and that over five per cent of all disallowed decisions were overturned. This rate has decreased marginally over the period, from 5.2 per cent in 2007–08 to 4.9 per cent in 2009–10. Of those that were subsequently allowed, the ATO determined that, over the past two years,

27 per cent were caused directly by errors in the original decision-making. In a further 57 per cent of cases, extra information was submitted by the applicant to overturn the original decision; in such cases it is not clear as to whether case officers sought this information at the time of processing the applications.

3.56 The ATO has identified that, until recently, there was a potential risk that the assessment of objections may not be sufficiently independent of the original decision-maker and their team leader.⁹⁰ In September 2010, the NPC implemented procedures to ensure that objections went to a different office to that of the original decision-maker. While such an initiative provides a more robust quality control framework, it provides the potential for even higher rates of overturned decisions unless there are changes in the original decision-making processes.

Limitations of the IT systems to support consistent decision-making

3.57 A useful means to support consistency is for case officers to research decisions on previous cases similar to those being assessed. Neither the CWC system nor the previous TDMS system facilitates searches of 'like' cases. In particular, the TDMS system did not store copies of applications or the accompanying documentation and correspondence with the applicant. The level of detail included on the facts of each case, the issues considered and the reasons for decisions varies considerably across case records. Therefore, if a case officer identified a potentially 'like' case, there was not always sufficient records to assist current decision-making.

3.58 In contrast to the TDMS system, CWC case records include scans of correspondence to and from the ATO relating to applications. Where an application is disallowed, reasons against each criterion that was not met are included in the letter to the applicant. While this is a significant improvement in the information available for case officers to share information on decision-making, the CWC system does not provide any easy means to search for similar types of cases. Unless a case officer knows the case reference for previous decisions, access to those decisions is limited.

⁹⁰ As part of the quality assurance process, 100 per cent of disallowed applications are reviewed by the decision-makers' team leaders. (See discussion on quality assurance below.)

Conclusion

3.59 There are concerns by specialist lawyers relating to inconsistent decision-making. This perception has been increased by delays in developing or amending tax rulings based on a High Court decision brought down over two years ago. In its small selection of 55 cases, the ANAO noted a number of inconsistencies related to variation in decisions depending on the team location, allowing applications after incorrectly classifying cases for ‘fast-tracking’, and using differing considerations to determine decisions on similar types of applications. The relatively high proportion of disallowed decisions, subject to objections, that result in the original decision being overturned indicates inconsistent decision-making more generally. These issues, considered together, indicate that the processes currently used by the ATO may not be sufficiently robust to ensure consistent decision-making.

3.60 Processes and system support could be improved to strengthen decision-making consistency. In particular, through:

- allocating cases by type to particular teams;
- improving quality assurance procedures in application processing;
- implementing an online forum on which staff could raise issues about endorsement decisions; and
- improving search facilities for ‘like’ cases through the CWC system.

Quality assurance arrangements for assessments

3.61 While timeliness of decision-making can be tracked by CWC reports, quality assurance of endorsement assessments is particularly important for determining consistency of decision-making in interpreting legislation, and with policies and practices. The ATO undertakes quality assessments of DGR endorsement decisions within an integrated quality framework (IQF) involving quality reviews prior to and following the determination of decisions (known as pre- and post-finalisation assessments).

3.62 Pre- and post-finalisation assessments rate nine elements (as identified at Table 3.5) against a five point scale of ‘very high’, ‘high’, ‘achieves’, ‘aligned’ or ‘not aligned’. Where a case does not meet (or exceeds) the standard, there is the opportunity for assessors to make comments regarding the case officer’s performance against each of these elements.

Pre-finalisation assessments

3.63 Pre-finalisation assessments are undertaken on 50 per cent of endorsement assessments and selected on a random basis. The case officer nominates a peer from the Interpretative Assistance team in their location to undertake the review. In addition, team leaders review 100 per cent of disallowed cases. This assessment is based on the write-up of each criterion against which the application does not meet requirements.⁹¹

3.64 The NPC management is advised of assessment results on a monthly basis with a more detailed report issued four-monthly.⁹² The results of IQF assessments of the category 'other interpretive advice', which are mainly TCC and DGR endorsements, for the 12 months to the end of October 2010 are outlined in Table 3.5.

⁹¹ These write-ups form the basis of letters to the applicant.

⁹² Australian Taxation Office, *IQF Monthly IA Quality Report: SM&E*, (internal publication).

Table 3.5**Cases meeting standard or above for the period Nov 2009 to Oct 2010**

Element	4 months to Feb 10	4 months to June 10	4 months to Oct 10
	(Per cent of cases meeting standard or above)		
Administrative soundness—compliance with administrative law practices and policies and associated work practices	100	97	97 ⁹³
Integrity—meeting security, secrecy and privacy requirements	100	100	100
Correctness—ensuring decisions comply with the ATO view	100	100	100
Appropriateness—understanding and responding appropriately to address client needs	100	100	100
Effectiveness—ensuring that decision-making is in line with risks	100	100	100
Transparency—ensuring that decisions are explained, reasons are accurate and clear, and clients are informed of their review right	100	100	100
Consistency—ensuring that client and client groups are treated in an equivalent fashion when presented with similar circumstances	100	100	100
Timeliness—meeting the required service standards or negotiated due date if the case is complex	81	86	78
Efficiency—ensuring that positive outcomes are reached in the most expeditious and cost effective manner	91	95	89

Source: Taxation Office, *IQF Monthly IA Quality Report: SM&E*, June and October 2010.

3.65 Across the year, the timeliness target of 90 per cent was not achieved. In the four months to October 2010, the key reasons for delays in timeliness were: excessive workloads (51 per cent); late allocation (23 per cent); and poor case management (16 per cent).

3.66 In the 12 months to October 2010, no incorrect decisions relating to DGR and TCC endorsements were identified through pre-finalisation assessments. The ability of case officers to choose the team member who reviews their work, increases the risk of bias in the assessment. Furthermore,

⁹³ The small number of cases that achieved 'aligned' rather than 'meets standard' rating was reported as either 'minor procedural issues' or had resulted from a recognised problem in the CWC system that prevented the correct recording of 'due dates'.

allocating reviews within an officer's own team, while supporting consistency of decisions within such teams, increases the risk of developing inconsistencies across teams. The failure to identify inconsistent decisions through this process comes at a time when the results from objections would suggest that these risks materialised.⁹⁴

3.67 Following its planned reassessment of risks⁹⁵, the ATO intends to change the frequency of its quality assurance process to reflect an application's risk rating. In particular, while all disallowed applications will continue to be reviewed by team leaders, applications will be peer reviewed at the following rates: fast-tracked — 0 per cent; verified — 50 per cent; and fully examined — 100 per cent.

3.68 Objections and litigation are able to partly identify incorrect decisions on applications originally determined as 'disallowed'.⁹⁶ The planned changed not to peer review fast-tracked applications will limit the ability of the ATO to identify fast-tracking cases incorrectly allowed, such as the volunteer fire brigade cases discussed in paragraph 3.51.

Post-finalisation assessments

3.69 Post-finalisation assessments are selected on a sample basis, on a model developed by the Australian Bureau of Statistics to determine a valid statistical sample across all relevant decisions made by the Small and Medium Enterprises business line, of which the NPC is a part.⁹⁷ Post-finalisation assessments are undertaken by a panel of two NPC Interpretative Assistance staff, including a team leader, both of whom were not involved with the case (that is, as the case officer or pre-finalisation assessor). A small number in the sample is held back for community involvement workshops. Community involvement workshops include two panel members as well as an external

⁹⁴ Approximately five per cent of all disallowed decisions are overturned (at least in part) through the objection process (see paragraph 3.55).

⁹⁵ See paragraph 3.27.

⁹⁶ Specialist lawyers advised that if a client approaches them to assist with their endorsement application at the time it has been disallowed, the lawyer will do an assessment as to whether the case meets the legislative requirements. If so, the lawyer may submit a new application rather than go to appeal.

⁹⁷ The decisions relevant to the IQF are those related to class rulings, private rulings, objections and other interpretative assistance. DGR and TCC endorsements are part of this last category.

expert, for example, an academic specialising in taxation law. Table 3.6 outlines the numbers and results for the post-finalisation assessments on DGR endorsements in the two year period since IQF was introduced.

Table 3.6

Post-finalisation quality assessments in the period Oct 2008 to Sept 2010

Overall Outcome	Community involvement workshops		Other post-finalisation assessments		Total post-finalisation assessments	
	Number	Percentage	Number	Percentage	Number	Percentage
High/met standard	5	63	22	73	27	71
Aligned	3	37	6	20	9	24
Not aligned	0		2	7	2	5
Total assessments	8	100	30	100	38	100
Percentage of total DGR assessments	0.2		0.8		1.0	

Source: ANAO analysis of ATO data

3.70 The two cases found to be ‘not aligned’ were determined in late 2008. One case had been disallowed when it should have been allowed, and the other was allowed but found to be non-compliant with the legislative requirements. This case had been incorrectly classified to be fast-tracked. Both of these cases had been subject to pre-finalisation assessment, and the case of the originally disallowed decision was also subject to a team leader review.

3.71 The nine cases found to be ‘aligned’ identified areas in which good practice was not adhered to. Reasons included: lack of documentation on the process and decision; not meeting required timelines because, for example, there was a delay in correctly allocating the case to the NPC; and incorrect headings in correspondence to the client. Seven of these nine cases had been selected for pre-finalisation assessments.

3.72 The management report includes an overview of the post-finalisation assessments on a six-monthly basis. The report for June 2010 notes key issues identified in the assessments relating to timeliness and efficiency, similar to the pre-finalisation assessments.

3.73 The post-finalisation assessments provide a valuable means of determining the quality of pre-finalisation checks, but are limited in their ability to provide quality assurance on assessment determinations. In particular, while the number of cases selected over the total Interpretative

Assistance work undertaken by the Small and Medium Enterprises business line may give a sufficiently robust statistical sample, it is insufficient to give reliable results for DGR endorsements. For example, based on the post-finalisation assessment results over the past two years, the estimated rate of incorrect decisions across all DGR endorsement decisions is up to 12 per cent at the 95 per cent confidence level.⁹⁸

Conclusion

3.74 Both the pre- and post-finalisation assessments have limitations in identifying critical issues, particularly relating to consistency of decision-making with the ATO view. In particular, the pre-finalisation assessment process is not sufficiently robust to identify incorrect decisions. Planned changes to the pre-assessment review rates will further limit the ability of the quality assurance process to identify 'fast-track' cases that have been incorrectly 'allowed'. Post-finalisation sampling is not designed to identify key issues with decision-making.

Recommendation No.1

3.75 To improve consistent decision-making in respect of deductible gift recipient endorsement applications, the ANAO recommends that the ATO strengthen its quality assurance processes by:

- (a) reviewing decisions prior to finalisation through robust, independent assessment; and
- (b) selecting cases for quality assurance on the basis of the assessed risk of inconsistencies across category types.

ATO response

3.76 *Agreed.*

⁹⁸ An estimate of 5 per cent based on a sample of 38 from a population of approximately 3750 gives a 95 per cent confidence interval of '0 to 12 per cent'.

4. Communicating and Coordinating DGR Application Requirements

This chapter examines the ATO arrangements for communicating and coordinating DGR application requirements.

Introduction

4.1 Non-profit organisations have access to varying levels of specialised skills to understand DGR entitlements and the requirements for DGR endorsement. Typically, these include law and accountancy professionals undertaking paid or unpaid work either within or on behalf of the organisation, as well as other representatives who work for the organisation in paid and voluntary positions. The ATO recognises that, of these, lawyers specialising in the application of taxation law to the not-for-profit sector have the greatest understanding of the law as it applies to DGR endorsement.

4.2 Good communication with clients, particularly those that are not specialised lawyers, can assist non-profit entities to understand their eligibility for DGR endorsement, improve the accuracy of applications and provide documentation sufficient for the ATO to make an assessment. Following the lodgment of an application, the efficient and effective exchange of information can assist the ATO's decision-making and provide transparency for the applicant on the progress and outcome of their application.

4.3 As well as applying for DGR endorsement by the ATO, fund-raising entities may need to register with state and territory agencies, and/or direct their DGR endorsement applications through other Commonwealth agencies. Coordination by the ATO with these other agencies is important to fully inform entities of government requirements and to minimise any unnecessary administrative requirements for applicants. This is in line with the Government's compact with the non-profit sector, which emphasises good

client service for the sector in its dealings with the Government through strong communication and minimising red-tape.⁹⁹

4.4 The ANAO examined the extent to which the ATO's arrangements assisted applicants to achieve DGR endorsement with minimal red-tape through:

- communicating with applicants;
- coordinating assessment with other Commonwealth agencies; and
- arrangements with state/territory fundraising registers.

Communicating with applicants

4.5 The audit assessed the means by which the ATO provides sufficient, understandable guidance to applicants, particularly those that are not specialised lawyers. This assessment examined: both the generalised advice and the advice tailored to prospective applicants on an individualised basis; communication during application processing; and communicating DGR endorsement decisions.

General guidance on DGR applications

4.6 A range of general guidance for DGR applicants is developed and updated on a scheduled basis by a small, dedicated marketing and communication team.¹⁰⁰ This includes:

- publications issued under the ATO's non-profit branding¹⁰¹, such as the *Giftpack*¹⁰², the main publication that provides guidance for DGRs and donors. These publications are developed in consultation with the non-

⁹⁹ Commonwealth of Australia (2010), op cit. This document sets out a range of joint goals including to: communicate openly with each other; reduce red tape and streamline reporting; and achieve more transparent, accountable decision-making and program delivery.

¹⁰⁰ For 2010–11, 5.2 FTE were allocated to this function.

¹⁰¹ All ATO non-profit publications are identified by predominately orange covers.

¹⁰² As well as general information relating to DGR categories, the *Giftpack* includes sample clauses relating to the winding up of organisations and gift funds.

profit technical advisors and other relevant areas across the ATO and user tested prior to release¹⁰³;

- the non-profit web pages on the ATO website.¹⁰⁴ These are accessed through a tag on the ATO's home page, and include substantial material to guide organisations intending to apply for DGR status. For some applicants, access to the website provides more up-to-date information than is available in hard copy¹⁰⁵;
- the Non-Profit News Service, a subscriber service providing free updates on key tax issues affecting the non-profit sector;
- call centre scripts in consultation with Client Services and Advice, the ATO area responsible for the non-profit enquiry line. Staff answering calls on this line are trained for a NPC skill set; and
- seminar packages for delivery by the ATO's Education Services, with one package specifically related to the content of the *Giftpack*.

4.7 Applicants with an ABN can obtain application forms and associated guidance from the ATO website or by hardcopy through the non-profit call centre. ABN applicants indicating an intention to apply for DGR endorsement are sent a system-generated DGR application and associated guidance.

4.8 The level of guidance provided to applicants varies considerably across the DGR categories. For 15 of these categories there is specific guidance, including separate application forms or schedules to supplement the DGR standard application form. For a further eight DGR categories, the guidance in the *Giftpack* is supplemented by a checklist to assist applicants to assess their eligibility and/or reference to a specific tax ruling. The balance of categories

¹⁰³ Coordination with other ATO areas with a stake in the non-profit sector such as business lines with responsibility for FBT and GST, is formalised through the Non-Profit and Government Communication Network.

¹⁰⁴ See <<http://www.ato.gov.au/nonprofit/>>.

¹⁰⁵ For example, since the last publication of the *Giftpack* in 2007, prescribed private funds have been replaced by private ancillary funds, the ATO has determined that volunteer bushfire brigades (listed as an example of a PBI) are not eligible for endorsement as PBIs, and specific schedules or checklists required for inclusion with applications for DGR endorsement as a PBI and an approved research institutes have been developed. The ATO has advised that it is in the process of updating this publication to reflect these developments.

has limited information outlined in the *Giftpack*.¹⁰⁶ None of the application forms or schedules requires the applicant to provide documentation to support their claims. The details of the information provided by category are provided at Table A 2 (Appendix 3).

4.9 The ANAO assessed the extent to which the level of guidance provided for different DGR categories affects the success rate of applications. The outcome of this analysis is at Table 4.1.

Table 4.1

DGR endorsement applications distribution and outcomes for the period July 2009 to June 2010

Level of guidance (decreasing order of detail)	Applications (per cent of total)	Disallowed/withdrawn (per cent of total finalised)
Separate schedule or application with specific guidance	57	35
Checklist and/or tax ruling	38	25
Information outlined in <i>Giftpack</i>	5	40
Total applications	100	32
Total applications with valid category type (number)	1655	498

Source: ANAO analysis ATO data on applications received 2009–10 as at 16 November 2010.

4.10 Table 4.1 indicates that almost one in three applications fail and, on average, as the level of guidance increases, the rate of success in applying for DGR endorsement increases. This data hides significant variations. For example, both the DGR scholarship fund and charitable services institution categories have specific application schedules that include guidance. However, the success rate for applicants applying for DGR endorsement for a scholarship fund is 89 per cent, while that for a charitable services institution is 22 per cent. The ATO's own analysis outlined below indicates the reasons for this variation

¹⁰⁶ This assessment does not include the three categories related to volunteer-based emergency services that were included in legislation on 7 December 2010.

may be associated with the lack of clarity in some of the categories, for example, in the definition of a charity.¹⁰⁷

ATO's assessment of applicant understanding and guidance

4.11 The ATO has identified that there is a lack of access to detailed guidance and, hence, limited understanding of DGR requirements among applicants. An assessment by the ATO of disallowed DGR applications, undertaken in May 2010, identified that common reasons for failing to meet criteria were a lack of understanding:

- of the concept of institutions verses funds. Some categories require the institution to be endorsed while others require endorsement for an entity's fund. The ANAO noted that a lack of clarity in guidance between requirements of a fund and a gift fund in the *Giftpack*¹⁰⁸ may have contributed to misunderstanding by applicants;
- that particular categories require an application to another Commonwealth government agency for approval of the entity's fund, authority or institution;
- of the 'in Australia' requirement, with applicants focused on the location of the entity rather than the purpose and activities of the entity or its fund; and
- in the eligibility criteria for endorsement as a charitable services institution and school building fund.

4.12 The review also found that the need for case officers to seek further information often resulted in clients withdrawing their application. It noted that requiring supporting documentation up-front may result in less applications overall, but did still not address the better education of applicants. The study recommended improved guidance and greater clarity for particular

¹⁰⁷ Paragraph 2.11 outlines the basis for the definition of charitable purposes, and recent High Court decisions, Word (see paragraph 3.44) and Aid/Watch (which determined that an organisation generating debate on the issue of foreign aid directed at relieving poverty was undertaking a purpose beneficial to the community and therefore charitable) has further broadened this definition.

¹⁰⁸ Page 57 of the *Giftpack* discusses the need for DGRs to maintain gift funds. There is no discussion in this section as to the distinction between the need to maintain a gift fund and the entity requiring DGR endorsement; some DGR categories require that the organisation be endorsed, while for others it is the fund that is endorsed.

categories, and requiring more information from applicants to support their applications.

4.13 In May 2010, the ATO also undertook a post-implementation review of the PBI schedule, introduced in October 2009. In the period to April 2010, 184 PBI applications had been received. For the PBI cases finalised, the success rate for those that had completed the schedule was 75 per cent compared with 50 per cent of applications without schedules. However, only 39 per cent of applications included a completed schedule. While the reasons for such a low rate of completion were unknown, case officers considered that one factor may be that the form was only available online, and was not sent to potential applicants in hard copy following contact with a call centre or lodgment of an online ABN application.

Planned initiatives in guidance to applicants

4.14 As part of the planned online, interactive application form¹⁰⁹, applicants will be asked to provide supporting documentation. As preparation for developing the interactive form the ATO has mapped the guidance required for organisations to determine whether their entity meets the characteristics of a charitable institution or fund, a key point of difficulty for applicants.

Tailored advice to prospective applicants

4.15 There are a limited number of means by which prospective applicants can get advice on whether their entity is likely to be successful in applying for DGR status and the particular requirements to meet conditions. These include private rulings and pre-endorsement advice to applicants and specialist lawyers.

4.16 There were 121 requests for private rulings¹¹⁰ to the NPC in 2009–10. Of these, the ATO advised that only a small number related to DGR endorsements, but is unable to identify the actual number. A possible

¹⁰⁹ See paragraph 3.11.

¹¹⁰ A private ruling sets out the Commissioner of Taxation's opinion about the way a tax law applies, or would apply, in relation to a specific scheme or circumstance. If the entity then relies on the private ruling, the Commissioner must administer the law in the way set out in the ruling, unless the ruling is found to be incorrect and applying the law correctly would lead to a better outcome for the entity. <<http://www.ato.gov.au/print.asp?doc=/34047.htm>> [accessed 16 December 2010].

explanation of this limited use was provided by two specialist law firms that advised they had not sought private rulings for DGR endorsements as the process 'took too long' and preferred to determine eligibility through submitting applications. The private ruling benchmark cycle time of 63 days supports this view.

4.17 Prior to December 2009, the two types of advice available to applicants, or their professional representatives, were general advice and specific advice relating to particular circumstances. This advice was provided through the call centre or by NPC case officers. Specialist lawyers cited the value of being able to informally discuss the particular points with experienced case officers prior to submitting applications. In December 2009 the ATO determined that staff had no authority to provide specific advice, with subsequent instructions to cease this practice. In December 2010, there was a further decision to stop the provision of general advice to lawyers and accountants acting on behalf of applicants. The ATO advised that this decision was based on resource considerations.

4.18 Specialist lawyers advised that they were approached by clients to undertake both paid and pro-bono work to gain DGR and TCC endorsement. The demand for pro-bono assistance greatly outweighed their capacity to assist. Lawyers were approached at both the application stage and after applications had been initially rejected. The value of using a professional in gaining endorsement is demonstrated in an assessment by the ATO of PBI applications over the six months to April 2010. Of those that were finalised, the success rate of applications submitted by solicitors or accountants was 75 per cent, while the success rate of those submitted directly by applicants was 50 per cent. This study also identified that one in five applicants engaged a professional advisor, a lawyer or accountant.

4.19 Many entities applying for DGR endorsement do not have the resources to engage specialist assistance. The disparity in success rates with and without professional assistance (as identified by the ATO) suggests that such organisations require better access to knowledge and guidance to self-assess eligibility prior to application in order to submit successful applications. Better knowledge and guidance may also have a positive impact on assessment

workloads from fewer applications. Currently, the ATO handles a number of cases from entities with previously withdrawn or disallowed applications.¹¹¹

4.20 While the ATO has withdrawn specific and pre-endorsement advice and limited the type of applicants able to access general advice, there has been recognition that some entities require greater assistance than others. In response, an educational initiative was trialled over three months from February 2010, with the ATO telephoning non-profit organisations newly registered for ABNs and that had not used a tax agent. The campaign was intended to assist clients to understand the endorsement processes, tax concessions and obligations. Tax officers drew attention to the DGR endorsement requirements on the ATO website rather than discussing with organisations their potential eligibility for particular categories. In a follow-up survey to determine the success of the trial, participants generally found that there was strong support for this assistance. The information available to the non-profit sector from the ATO, however, was considered to be difficult to understand and to find on the website. The ATO advised that it is continuing this initiative for approximately 12 per cent of organisations newly registered for ABNs and that had not used a tax agent.

Communication during application processing

4.21 In general, there is no communication with applicants prior to cases being allocated to case officers. The external stakeholders consulted by the ANAO raised concerns about this practice because it affects their ability to track the progress of applications prior to assignment to case officers.

4.22 Once allocated, the case officer only contacts the applicant if further information or clarification is required beyond that which can be gathered from third-party sources, or their application is going to be disallowed. This contrasts with NPC work practices and procedure guidelines to staff, which specifies that applicants are to be sent an acknowledgement letter within 14 days of the applications being received by the ATO. The ATO advised that this variation is because of resourcing constraints.

¹¹¹ Over the past two years, 19 per cent of disallowed applications were successfully resubmitted.

4.23 In seeking further information, case officers may write to the applicant or, for simpler requests such as clarification of information provided, telephone the applicant. Applicants are given telephone contact details of the case officer to allow clarification and discussion on the request. Applicants are required to write back to the ATO using a central address and a cover sheet; this allows PCU to scan the information into CWC and to link it to the case in CWC. The lack of a cover sheet can result in the information being misallocated to an area other than NPC, with a subsequent delay in processing.

4.24 Specialist lawyers identified two initiatives with potential to improve the efficiency of communication with the ATO. These are through email and direct contact with them rather than with their clients. Currently, the ATO does not use email communication because of their concerns regarding its security. For many DGR endorsement applicants, the information being sought is not highly sensitive, and the ATO (and the proposed Australian Charities and Not-for-profits Commission) could consider giving applicants the option of communicating to them via email. Such a practice will allow more timely provision of information, provide greater assurance on the accuracy of clarified information currently sought by telephone, allow efficient acknowledgment of application receipt in line with work procedure guidelines, and limit the misallocation of information to other areas of the ATO.

4.25 The ATO is not consistent in directing its communication with professional advisors (such as lawyers) in contrast to applicants. Officially, case officers should only communicate details of a case with an applicant's authorised contact nominated on the ABR.¹¹² For practical purposes, some case officers communicate directly with the professional advisors, irrespective of their status on the ABR. Given that professional advisors are engaged by the applicant in achieving DGR status, the ANAO suggests that the ATO explore the means to allow organisations to nominate professional advisors as the primary contact for the application.

¹¹² Australian Taxation Office, 2003, *Application for ABN registration for companies, partnerships, trusts and other organisations*, p 3. <<http://www.ato.gov.au/content/downloads/nat2939e.pdf>> [accessed 17 December 2010].

Communicating DGR endorsement decisions

4.26 Successful applicants receive a computer generated letter, along with a 'notice of endorsement as a deductible gift recipient (DGR)'. Unsuccessful applicants received a letter identifying the basis for the decision against each of the criteria that the application did not meet. In general, the specialist lawyers consulted considered that this document was comprehensive. The rate of successful applications in the same category following a disallowed application (19 per cent) indicates that the details provide sufficient information to resubmit an application. As previously discussed, applicants who withdraw their application are not given this level of detail. The ATO advised that, in suggesting to applicants that they withdraw, case officers provided advice to applicants that would assist them with a successful application, if possible. Examples may include applying for a different category of DGR and making changes to the entity's constitution or deed of trust.

4.27 External stakeholders advised that they were generally supportive of the level of ATO's advice provided on the application decision. A number of specialist lawyers commented, however, on an area in which they considered the ATO's communication had declined—conditional endorsements. Up until June 2010, case officers had the discretion to conditionally endorse an entity if the applicant made a commitment to, for example, provide extra information or make a change to their constitution. This practice was subsequently withdrawn progressively as the ATO considered that it did not have a legal basis on which to make such decisions.

Conclusion

4.28 A range of general advice is available to potential DGR applicants through ATO publications and via the telephone. Nonetheless, almost one in three DGR endorsement applications was disallowed, mainly because applicants did not: fully understand the requirements of specific DGR categories; or provide the required documentation to support their application.

4.29 Initiatives are underway to determine the effectiveness of guidance material and, as a preparatory step to the development of an online, interactive form, to identify the eligibility requirements through a step-by-step guidance map. Together these initiatives have the potential to assist the ATO to update its approach to educating potential applicants and to assist applicants to self-assess their eligibility for particular DGR categories and submit application forms with complete information.

4.30 Given that the online, interactive application form does not as yet have an implementation date, the ANAO suggests that the DGR application form and any associated guidance maps be redesigned in hard copy as an interim measure to provide guidance on requirements to DGR applicants.

4.31 There are also limitations on the availability of timely advice and information available to organisations that is specific to their circumstances. There would be benefits in the ATO engaging with organisations with an interest in developing good governance arrangements in non-profit bodies¹¹³ to develop educational programs and specific information to increase the understanding by non-professional applicants of DGR requirements and to improve application success rates. This engagement should be continued by the ATO and the Australian Charities and Not-for-profits Commission following the establishment of the Commission.

4.32 External stakeholders noted the value of conditional endorsements that had been provided in the past. The ATO has determined that the law does not provide for this approach. The planned changes to introduce an interactive application form may assist in providing more structured guidance to applicants.

Coordination of assessments with other Commonwealth agencies

4.33 As outlined at paragraph 1.9, other Commonwealth agencies are involved in the assessment process for applications for five DGR categories relating to overseas aid funds, the registers for environmental, harm prevention and cultural organisations and ARIs. In addition, the Department of the Treasury has a role, as the Assistant Treasurer approves the organisations applying for entry onto the registers or as overseas aid funds. In 2009–10, there were 249 applications for these five categories, approximately 14 per cent of all DGR applications. The ANAO examined the extent to which the ATO coordinates its assessments with other government agencies for these

¹¹³ Examples include the Australian Centre for Philanthropy and Non-Profit Studies at the Queensland University of Technology and Philanthropy Australia which has a range of publications to assist governance by trustees.

categories to promote consistent, timely assessments that limit red-tape for applicants.

4.34 The ATO's involvement in the assessment of organisations varies across the categories:

- for ARIs, the ATO receives the DGR applications and assesses the organisation against the generic DGR criteria¹¹⁴ prior to forwarding the application to the relevant agency for determining scientific research claims;
- the ATO assesses the public fund component of overseas aid funds, prior to consideration by the Assistant Treasurer; and
- applicants must have endorsement by the ATO as tax concession charities to apply for registration as a harm prevention charity.

4.35 The ATO has a limited role in DGR assessments for applicants for the three registers. Other than endorsing harm prevention charities as tax concession charities, the ATO's role is limited to registering the funds on the ABR as DGRs once the relevant Minister and the Assistant Treasurer has approved the organisation on the register. As a result, other government agencies assess applications for generic DGR requirements, including those associated with public funds. This is in line with the varying legislative requirements.

4.36 The ATO advised that they recognise the risk of inconsistencies in the assessments of public funds and of other generic DGR requirements. The ATO further advised that the key means by which they manage this risk is through providing assistance to the other agencies as required. Based on discussion with the other agencies, in practice contact with the ATO is on a limited, ad hoc basis.

4.37 In order to minimise red-tape for applicants, the ATO has worked with other agencies to develop an application process that covers the requirements of the ATO and those of the other agencies. For ARIs, this has resulted in

¹¹⁴ These include: operating in Australia; having an ABN; and having acceptable rules dealing with the transfer of surplus gifts and deductible contributions on winding up or revocation of endorsement; and maintaining a gift fund.

separate guidelines and a checklist of the details required to be submitted along with the standard DGR application form.¹¹⁵ For the other categories, there is a single application form that incorporates the DGR generic requirements. As outlined in Figure 3.1, information is passed between agencies without the need for applicants to resubmit applications.

4.38 There are no standards or measures for the timeliness of applications processed across agencies. For applications submitted through other agencies, external stakeholders and the agencies themselves recognise that the application assessment and approval process is lengthy. For example, the specialist lawyers indicated that such applications typically take 18 months or more to decide, with some advising clients not pursue endorsement under such categories if possible, for these reasons. From the other agencies' perspective, timeliness is affected by the process of approvals through two ministers. Applications are sent to the agencies' ministers in batches, on a three to four monthly basis and are dependent on the priorities in the minister's office for consideration.

4.39 For ARI applications, the ATO does not include the time taken by other agencies for assessment, in determining its achievement against timeliness benchmarks. The ATO advised that these external processes can take up to two years.

4.40 In its assessment of DGR applications¹¹⁶, the ANAO noted two applications for endorsement as PBIs (subsequently disallowed) that appeared more suited to the DGR categories for cultural organisations and harm prevention charities, administered by the Department of PM&C and FaHCSIA respectively. While the PBI category may have provided other incentives for applying under this category¹¹⁷, the length of time for endorsement as a cultural organisation or a harm prevention charity could have influenced the decision to apply for PBI status.

¹¹⁵ See <<http://www.ato.gov.au/print/asp?doc=?content/00236763.htm>> [accessed 17 January 2011].

¹¹⁶ Paragraph 3.50 outlines the ANAO assessment of 55 endorsement applications.

¹¹⁷ PBIs are eligible for FBT exemptions up to \$30 000 per employee (see Table 1.2).

Conclusion

4.41 Currently, applications requiring assessment by Commonwealth agencies other than the ATO can take up to two years to determine, potentially discouraging applications for these categories. There is no means to measure the impact on clients from DGR assessment processes that are undertaken across agencies, with no single agency with accountability for the whole process. The ANAO suggests that, subject to Government considerations on the outcomes from the triennial review¹¹⁸, the ATO (and the Australian Charities and Not-for-profits Commission when established) work with the Department of the Treasury, FaHCSIA, AusAID, PM&C and SEWPaC to develop indicators and performance measurement to monitor timeliness of these processes.

Arrangements with state/territory fundraising registrars

4.42 The ANAO examined the extent to which the ATO consulted and coordinated with the state and ACT registrars¹¹⁹ on providing guidance to fundraising bodies and the potential for minimising red-tape in the application processes across jurisdictions.

4.43 The ATO promotes the requirements of the state and territory legislation through one of its non-profit publications, *Fundraising*¹²⁰, and through its website.¹²¹ The ATO advised that it consulted with the relevant state and ACT agencies for the *Fundraising* publication at its initial release in 2004, and subsequent updating in 2008. Nonetheless, the level of regular interaction between the ATO and state and ACT administrations is minimal. Of the three state governments consulted (Victoria, Western Australia (WA) and Tasmania), the ATO had only met with the WA Consumer Protection Office (Department of Commerce), which administers that state's fundraising

¹¹⁸ This is discussed in paragraph 2.56.

¹¹⁹ The Northern Territory Government does not have legislation regulating this function.

¹²⁰ Australian Taxation Office (2008), *Fundraising*.
<<http://www.ato.gov.au/content/downloads/NPO56536.pdf>> [accessed 14 January 2011].

¹²¹ See <<http://www.ato.gov.au/nonprofit/content.asp?doc=/content/56555.htm>> [accessed 14 January 2011]

legislation, within the past 12 months. The ATO also participated in an education seminar for non-profit organisations run by the WA Office.

4.44 With limited exceptions, state and the ACT governments do not provide information on the ATO requirements. The exceptions include:

- a reference to potential tax exemptions through the ATO, on the NSW website¹²²;
- inclusion of ATO model clauses required for winding up or the dissolution of an incorporated associations in model rules developed by the WA Department of Commerce.¹²³ The ATO developed these clauses to assist organisations wishing to be endorsed as an DGR or a PBI for tax concession purposes; and
- from discussions with the relevant Victorian government officials, the ANAO was advised that in letters to organisations approving registration for fundraising, DGR requirements and the associated ATO website are referenced.

4.45 The ATO does not seek to draw on information provided by organisations to state and ACT fundraising registrars for DGR application processing. Across jurisdictions, the specific requirements and exemptions currently vary considerably. This variation means that the potential for minimising red-tape from the ATO accessing state and ACT information for DGR application processing differs across jurisdictions. Consultations planned by the Government with states and territories aimed at developing a definition of ‘charity’ able to be adopted by all jurisdictions will further the potential for the proposed Australian Charities and Not-for-profits Commission and state and territory agencies to share relevant information in the future.¹²⁴

4.46 The extent of opportunities to channel guidance to potential applicants on DGR requirements through coordination with state and ACT bodies has not as yet been identified by the ATO. The ANAO therefore suggests that the ATO

¹²² See <http://www.olgr.nsw.gov.au/charitable_info_income_tax.asp> [accessed 14 January 2011].

¹²³ See <http://www.commerce.wa.gov.au/ConsumerProtection/PDF/Associations/Inc_Assoc_Model_Rules.pdf> [accessed 14 January 2011].

¹²⁴ This is discussed in paragraph 1.23.

(and also the Australian Charities and Not-for-profits Commission subsequently) actively engage with the state and territory bodies with responsibility for charitable fundraising as well as those regulating incorporated associations with respect to coordinating guidance to relevant non-profit organisations. The ANAO notes that the realisation of the full benefit in red-tape reduction for non-profit fund-raisers in this area is dependent on the outcomes of negotiations with states and territories on national regulation and the responsibilities of a potential national regulator.¹²⁵

¹²⁵ See paragraph 1.22.

5. Managing DGR Compliance

This chapter examines how the ATO gains assurance that entities are complying with requirements to maintain DGR status and that only DGRs promote fundraising activities as income tax deductions for individuals.

Introduction

5.1 Compliance activity related to DGR endorsement is focused on determining eligibility through the DGR endorsement application assessment process. It is also important that:

- endorsed DGRs continue to comply with eligibility requirements; and
- fundraising activities promoted explicitly or implicitly as income tax deductions for individuals are only undertaken by DGRs.

5.2 To gain assurance about the level of compliance relating to DGRs, it is important that the ATO's compliance planning framework is based on sound risk management principles and practices. Operationally, ATO staff must have a good understanding of entities with DGR status and developments in the non-profit sector. Effective compliance also requires interventions that are appropriately targeted and commensurate with identified risk profiles.

5.3 The ANAO examined the ATO's compliance strategies for DGR administration, giving particular attention to:

- the level and nature of compliance risks associated with DGR administration;
- identifying and assessing the risk of non-compliance;
- compliance interventions; and
- revoking DGR endorsements.

Level and nature of compliance risks

5.4 The onus is on fundraising organisations to understand the requirements for DGR endorsement and to seek an assessment of their eligibility in the first instance. Further, once endorsed, DGRs must ensure that they continue to maintain eligibility against these requirements through self-assessment and should advise the ATO if variations in their activities affect their DGR eligibility entitlement. However, there is no obligation for fundraising organisations to seek an assessment of their eligibility for DGR

endorsement, nor for DGRs to report to the ATO on their compliance with the DGR requirements.¹²⁶

5.5 Since May 2007, the NPC has rated the risk of charities and DGRs not meeting their endorsement obligations as high. This high-risk rating is based on entities in the sector not sufficiently understanding their tax obligations or making inadvertent errors, rather than deliberate abuse or intentional disregard of the law. The basis for this rating is the heavy reliance each organisation places on volunteers with little tax expertise and limited access to professional representatives to manage their tax affairs. A factor adding to this risk is the turnover in volunteer office bearers often with no understanding or hand-over of information on compliance requirements.

5.6 Major operational issues recognised by the NPC as contributing to this high-risk rating are that entities may:

- engage in commercial activities to an extent that affects their exempt status entitlements;
- promote fundraising events as tax deductible where the arrangements do not meet legal requirements; and/or
- fail to undertake an annual self-review of endorsement entitlements to confirm continued eligibility.

5.7 It is not possible to accurately quantify the impact of incorrectly maintaining DGR status for entities where eligibility has changed. This would require an estimate of deductions claimed for entities that currently do not meet DGR endorsement requirements. The ATO does not collect detailed information from taxpayers or DGRs on donations from individuals for all category types.¹²⁷ In addition, there is no reliable compliance data on which to base an estimate of the ongoing appropriateness of DGR status for those organisations that have DGR endorsement.¹²⁸

¹²⁶ There is limited reporting to the ATO by PAFs (see paragraph 5.31) and to other relevant Commonwealth agencies by DGRs on the Registers for Harm Prevention Charities, and for Cultural and Environmental Organisations (see Appendix 4 and paragraph 5.33).

¹²⁷ However, PAFs are required to report on the amount donated and tax file number or ABN of each donor.

¹²⁸ The limited self-assessment and reporting that is undertaken by DGRs is discussed in paragraphs 5.42 to 5.47.

5.8 Nonetheless, the consequences if this risk eventuated are potentially significant in terms of revenue foregone and confidence in ATO administration. The ATO noted in its assessment of non-profit sector risk that ‘failure to provide proper guidance on issues or to follow up on identified or potential risks will result in a very high risk of damage to the ATO’s reputation, including adverse media coverage and external scrutiny’.

5.9 Currently, ensuring that fundraising organisations understand their DGR requirements and that DGRs remain compliant is addressed mainly through information material and community consultation.¹²⁹ The NPC also conducts a number of risk and intelligence and active compliance activities relating to DGR and TCC endorsed entities and the clubs, societies and associations that self-assess for tax exempt status. As discussed in the following sections, there are currently limitations in the approaches and data used to identify and analyse risks and the risk profiles of individual entities, as well as resource restraints affecting the on-going compliance activities able to be undertaken.

Identifying and assessing the risk of non-compliance

5.10 To determine whether the ATO has strategies to manage the risks of DGR non-compliance and to identify organisations at higher risk of non-compliance, the ANAO assessed the arrangements and processes for identifying and managing these risks.

5.11 The Risk and Intelligence team in Townsville is responsible for identifying and initially assessing non-profit sector (including DGR endorsement) risks, developing the overall risk strategy for the sector, monitoring risks, and identifying cases for further investigation by the Active Compliance team. It also has a number of corporate responsibilities, including the administration of the Non-Profit Market Segment Executive Committee, which draws together managers from business lines across the ATO that have non-profit clients, to coordinate risk management across the sector.

5.12 As the Risk and Intelligence team is funded for only 1.5 full-time equivalent staff, the NPC Active Compliance team contributes to risk

¹²⁹ Discussed in paragraphs 2.63 to 2.75.

management, as well as conducting interventions. In particular, the seven officers in the NPC Active Compliance team in Dandenong and Hobart, and other general compliance staff in other locations on an ad hoc basis¹³⁰, gather further information about individual organisations to input into the identification and analysis of risk factors for the Risk and Intelligence team. This information is also used to select organisations for audit action.

5.13 These arrangements have considerable advantages and provide coordinated end-to-end processes for managing risks. There is a dedicated risk manager, and all capabilities report to the National Director of the NPC. This provides the potential for the effective identification of risks and non-compliant organisations within the limitations of the resourcing available to this function.

Identifying and assessing risks

5.14 The 24 290 organisations with DGR status undertake a wide range of activities, such as in the fields of health, education and research. There are 49 different DGR categories, with 82 per cent of entities being endorsed under six categories.¹³¹ The ATO recognises that the type of DGR, its operating characteristics and endorsement requirements, can influence an entity's compliance with DGR requirements.

5.15 The NPC focuses its risk identification and assessment, and subsequent mitigation and monitoring, on entities with specific characteristics. For DGR administration, this work is concentrated on entities endorsed under particular categories and undertaking specific activities within those categories (for example, PBIs assisting the unemployed).

5.16 The NPC identifies risks and non-compliant organisations:

- through the use of intelligence scans and assessments; and

¹³⁰ These include primarily the Small and Medium Enterprises General Compliance and Campaign Teams, as well as other NPC teams, such as the Marketing and Communication team responsible for risk treatments involving education for the sector.

¹³¹ DGRs are concentrated in the categories: PBIs, school or college building fund, cultural organisations, private ancillary funds, public ancillary funds and health promotion charity.

- the assessment of information recorded on ATOi.¹³²

Intelligence scans and assessments

5.17 The Risk and Intelligence team undertakes intelligence scans of issues associated with particular legislative requirements. These are used to understand emerging and existing compliance risks, make recommendations to the Risk Management Committee on the level of risk and to identify mitigation strategies. The team typically conducts around four intelligence scans per year on priority topics. More detailed risk assessments, sometimes as scoping reviews, are then undertaken by the Active Compliance team in Dandenong (or by general compliance staff) to further refine the selection of cases for compliance intervention.

5.18 The ANAO examined 11 intelligence scans and assessments completed since 2009 and noted that they mostly addressed major DGR eligibility risks across a wide range of topics within the non-profit sector. Five of the scans had clear referrals to the Active Compliance team for further attention. The other assessments focused on recommendations for implementation by the Interpretative Assistance and Government Relations teams, addressing, for example, compliance against legislation in the assessment of DGR endorsement eligibility.

5.19 Overall, the intelligence scans and subsequent assessments provide a useful contribution to identifying risks and selecting cases for compliance intervention, within a structured risk management framework. The ANAO, however, identified three important areas that could be addressed by future intelligence scans or similar exercises to enhance information about DGR risks.¹³³ These are:

- the assessment of information on DGRs and other fundraising bodies held by state/territory and other Commonwealth government agencies;
- an assessment of the annual information submitted by PAFs and previously by prescribed private funds; and

¹³² As discussed in paragraph 5.20, ATOi is a database for information on entities and individuals of potential interest in risk identification.

¹³³ These areas are discussed in the sub-section below 'Limitations to current approach to risk identification and assessment' (see paragraphs 5.30 to 5.41).

- consideration of the robustness of prior DGR endorsement processes.

Assessment of information recorded on ATOi

5.20 ATOi is the primary database used to store and analyse intelligence obtained from a range of internal and external sources. Any ATO staff member can record information, identifying it as pertaining to the non-profit sector. This information can be based on intelligence regarding a particular organisation or segment identified by another area of the ATO (for example, areas with responsibility for FBT and GST), public disclosure, or the media.

5.21 NPC staff analyse this database to assess emerging trends that may warrant further assessment through an intelligence scan to determine whether there is a risk that justifies treatment through, for example, an education or direct intervention project. The analysis by the Risk and Intelligence team also identifies individual cases for referral to the Active Compliance team for consideration and potential follow-up. As an example, the ATOi summary report of intelligence logged for the 11 months from November 2009 to September 2010¹³⁴ found that:

- three-quarters of the NPC intelligence was about charities and DGRs (191 of the 250 cases);
- three-quarters of the intelligence was sourced from the media (183 cases); and
- a quarter of cases (69 cases) were referred to active compliance, with around half for information only. Of those referred to the Active Compliance team:
 - ten cases related to fundraisers inappropriately claiming that donations would be tax deductible, with a further case referred to the Aggressive Tax Planning area; and
 - 18 cases related to DGRs that may not be meeting their compliance obligations.

¹³⁴ The results outlined are based on two non-contiguous reports. These reports do not cover the 13-day period 19 to 31 May 2010.

5.22 The analysis undertaken by the Risk and Intelligence team to determine whether a risk factor or individual organisation requires further assessment or referral to the Active Compliance team is largely on a qualitative basis. In particular, it focuses on factors such as changes to endorsement status, private benefits, and technical issues that may reflect on non-profit entities' corporate structures. In some cases, however, individual business activity statements, where available, are assessed to determine, for example, significant changes in turnover that may indicate changes in purpose or activity of an entity.

5.23 More detailed case selection for compliance interventions is undertaken via ongoing analysis by the Active Compliance team, often in conjunction with NPC staff from Townsville and Hobart, which links to compliance strategies and priorities. The compliance case pool is examined on a weekly basis to determine which cases have priority and those that require no further action. Often three to five cases are prioritised weekly, with two to three cases per week referred for compliance intervention.

5.24 The assessment of information from ATOi provides a useful basis to determine emerging trends and at-risk organisations. However, there are a range of other data sources that, if systematically analysed on a quantitative basis, could enhance the identification and assessment of DGR non-compliance risks. These are discussed in the following section.

Limitations to current approach to risk identification and assessment

5.25 The effectiveness of the current approach to identifying and assessing risks associated with non-compliance of DGRs is limited by a number of factors, including:

- access to tools to undertake quantitative assessments;
- analysis of key information sources;
- the rigor of previous endorsement processes; and
- reporting by DGRs on compliance with eligibility requirements.

Tools to undertake quantitative assessments

5.26 Across most market segments and tax types the ATO risk profiles taxpayers and other entities based on quantitative indicators that compare an individual's circumstances with that of their peers. Typically, the data for these profiles are drawn from individuals' own reporting to the ATO and information held by outside bodies such as the Australian Securities and

Investment Commission. The tool that draws this information together and provides a quantitative risk profile for individual taxpayers and entities is known as a risk engine. The results from the risk engine are considered in conjunction with qualitative information from sources such as ATOi to determine and refine those cases selected for compliance intervention.

5.27 Currently, there is no risk engine for the non-profit market segment as a whole nor for any of the concessions, such as DGR endorsement, available to non-profit entities. There have also not been any large-scale quantitative risk assessments based on taxpayer returns such as the business activity statement, and income tax and FBT returns. To address these limitations, a key priority for the NPC in 2010–11 is the development of a risk engine to assist with risk identification and case selection.

5.28 It should be noted that any risk engine for non-profit organisations will itself have limitations. There is currently no requirement for DGRs other than PAFs to report to the ATO in relation to their DGR endorsement. Nonetheless, three-quarters of all current DGRs have had at least some reporting to the ATO since the beginning of 2006–07, with almost two-thirds of DGRs in 2008–09 reporting turnover.¹³⁵

5.29 There is also a range of internal and external information that is specifically related to DGRs and fundraising entities, that is currently not fully analysed or accessed to support the identification of risks and non-compliant entities. These are:

- annual returns submitted by PAFs and their predecessors, prescribed private funds;
- data held on DGRs by other Commonwealth agencies; and
- information held on fundraising entities by state and the ACT governments.

¹³⁵ Many DGRs have exemption from GST if their turnover is less than \$150,000, and are income tax exempt. However, there is a number of such DGRs that submit business activity statements to receive GST credits.

Annual information submitted by PAFs

5.30 The ATO advised that there were approximately 800 PAFs. The value of the monies donated by high-wealth individuals and families to these funds is such that the Treasury estimated their value in tax revenue foregone in 2009–10 to be \$410 million¹³⁶, an average of \$0.5 million per fund.

5.31 PAFs and the DGR category that they replaced, prescribed private funds, are required to submit annual statements of donations that include the ABN and/or tax file number of the donors, as well as the organisations' ABN and amounts donated to the funds' recipients. The ATO retains this information in a database. While the Active Compliance team draws on this data on an ad hoc basis, there is no broader checking against other information held by the ATO on donors and recipient organisations.

5.32 The NPC advised that they have requested this information be integrated into the mainstream data. However, this project has only been recently progressed. The ATO is currently considering options to integrate information stored from PAF returns with core revenue management systems in order to improve its risk analysis.

Data held by other Commonwealth agencies

5.33 Other Commonwealth agencies have relevant information available to assist in determining the level of risk to DGR status. Foremost, the organisations on the registers managed by the Office of the Arts, SEWPac and FaHCSIA¹³⁷, are all required to report statistical information about the operations of their funds on a regular basis. The departments advise the ATO of organisations which no longer meet requirements (typically through failure to submit statistical returns). The ATO, however, does not receive any details

¹³⁶ Department of the Treasury (2011), *Tax Expenditures Statement 2010*. p.62.
<http://www.treasury.gov.au/documents/1950/PDF/2010_TES_consolidated.pdf>
[accessed 31 January 2011].

¹³⁷ Organisations on the Register of Cultural Organisations are required to report bi-annually to the Office of the Arts on their donations by type and by type of donor.
<http://www.arts.gov.au/_data/assets/pdf_file/0005/69791/statistical-return-tax-deductible-donations-7dec2007.pdf> [accessed 3 February 2011]. Organisations on the Register of Harm Prevention Charities and the Register of Environmental Organisations are required to report annually to FaHCSIA and SEWPAC respectively on donations and activities on which donations were expended.
<http://www.fahcsia.gov.au/sa/communities/progserv/Register_Harm/Documents/statistical_return_form_09_10.pdf> and <<http://www.environment.gov.au/about/tax/reo/guidelines/pubs/statistical-return10.pdf>>
[accessed 3 February 2011].

from the agencies on the content of the returns. Currently, there are approximately 1900 organisations on these registers, potentially providing a valuable source of information on approximately eight per cent of DGR organisations.

5.34 Further, other agencies contract DGRs to provide services on the behalf of government. This service delivery may at times change the purpose of an organisation, a key factor in maintaining DGR requirements. The 2011–12 Federal Budget announced that the ATO will collect and assess information on grants and payments from all government agencies. The assessment of contract information from other Commonwealth agencies would provide the ATO with a source of information to assist in responding to specific risks related to changes in organisational purposes.

Information held on fundraising entities by state and the ACT government agencies.

5.35 As previously discussed in Chapter 1, state and territory governments have legislation covering the operation of fundraising activities and incorporated associations. A number of these require annual reporting by organisations subject to such legislation. However, there are no arrangements for the ATO to receive the details of any annual reporting to state or territory governments by DGR entities that are either registered for fundraising or an incorporated association. Furthermore, no formal arrangements currently exist for the ATO to be advised if a charity or fundraiser has breached the terms and conditions of the state or territory legislation. Nevertheless, there have been ad hoc instances where such breaches have been referred from state agencies and investigated by the ATO with flow-on effects to DGR endorsement eligibility.

5.36 The issue of fundraisers inappropriately claiming that donations would be tax deductible has not been subject to an analysis to evaluate the extent such a risk may present. Rather, the ATO deals with these occurrences on an ad hoc basis, usually when instances are recorded in ATOi. Although the state and ACT governments have details on their registers of entities approved to raise funds through charitable activities, the ATO does not source information on these registers to identify and assess the DGR risks.

5.37 The ANAO compared entities on the six state and ACT fundraising registers with those DGRs recorded on the Australian Business Register. This analysis identified 3 464 separate organisations that were approved by the state and ACT governments to raise charitable funds but did not have DGR status.

This estimate was determined using a conservative approach—the significant number of fundraisers registered with states and the ACT without ABNs were excluded, as were organisations that would not, on face value, be eligible for DGR endorsement.¹³⁸ Accordingly, this analysis would suggest that the risk that income tax deductibility is only promoted in respect of fundraising activities associated with DGRs should be further assessed.

5.38 The results of the ANAO's analysis demonstrates the potential benefit for the ATO in using data from fundraising registers, together with information sourced through formal arrangements with state and territory governments, when developing the DGR compliance program.

Consideration of previous endorsement processes

5.39 As discussed in Chapter 3, endorsement processes vary between different (sub-)categories of DGRs based on an assessment of risk, and have changed over time as the ATO has developed its views on the interpretation of legislation. Examples include changes to the eligibility of volunteer bushfire brigades as PBIs and to parents and citizens associations with gift funds for school libraries as public libraries.

5.40 Further, over 60 per cent of entities and funds were endorsed in the period 1 July 2000 to 30 June 2002. The level of scrutiny for the DGRs endorsed in this initial period is reflected in the number assessed and the approval rate. In particular, during the 18 months to June 2001 approximately 21 000 applications were decided, seven times the current submission rate. Of these, only 17 per cent were disallowed or withdrawn. In comparison, 34 per cent of applications were disallowed or withdrawn in 2009–10.

5.41 Despite these variations over time, there has been no systematic consideration of the rigour of endorsement processes by type of entity, the year of endorsement, or changes over time in the ATO's view on legislation, when determining the post-endorsement compliance program. The risk that previously endorsed DGRs may not meet current requirements is unlikely to

¹³⁸ The ANAO data matched the names of the organisations on the state/ACT registers with the ABR to determine the ABN unless the state agency could provide the ABNs. Those organisations with ABNs were checked for their DGR status of themselves or an entity under their ABN, and those without DGR endorsement were identified. Duplicates were eliminated, as were service clubs, as these cannot normally gain DGR endorsement.

be adequately treated through the current active compliance program, given the limited cases examined each year. In particular, in the four years to 30 June 2011, some 800 DGR and TCC endorsed entities will have been subject to active compliance audit or review. This represents only 1.4 per cent of all DGR and TCC endorsed entities or an average coverage of 0.3 per cent per annum.¹³⁹ A specific risk assessment is required to determine the extent of this risk and those DGRs that need to be included in the active compliance program. In the longer-term, the proposed Australian Charities and Not-for-profits Commission is expected to partially address this risk through Budget funding to re-assess the charitable status of entities once a new statutory definition of 'charity' is adopted.¹⁴⁰

DGRs annual self-assessment of eligibility

5.42 The ATO encourages DGRs to conduct an annual self-assessment of their ongoing DGR status, and provides worksheets on its website to assist them.¹⁴¹ However, most DGRs are not required by law to submit an annual report to the ATO advising of their ongoing eligibility.

5.43 Requiring non-profit entities to periodically review and then report their entitlement to DGR status is a strong compliance mechanism as it would typically focus the attention of those who are trying to comply with tax obligations.

5.44 With regard to reporting by non-profit entities, the Treasury Department notes that:

Current reporting requirements do not reflect the level of funding provided to the NFP sector by the public and by governments. Improving reporting

¹³⁹ Table 5.1 identifies the completed or planned active compliance cases in the period 2007–08 to 2010–11. The 1200 letters sent or planned through letter campaigns over this period have not been included in the number of reviews and audits, as these were primarily for education purposes or to further refine risks. There are approximately 58 000 DGR and TCC entities currently endorsed.

¹⁴⁰ This is discussed in paragraph 1.23.

¹⁴¹ See <<http://www.ato.gov.au/nonprofit/content.asp?doc=/content/34516.htm&page=9&H9>> [accessed 23 August 2010].

arrangements would not necessarily impose an increased regulatory burden on the sector.¹⁴²

5.45 To help strengthen the post-endorsement compliance framework for DGRs, the ATO could advise Treasury on options to require DGRs to periodically provide a report to the ATO regarding their ongoing entitlement to DGR status. These options could include an approach similar to that applied to PAFs (and the former prescribed private funds), which are required to lodge annual returns, or the returns required by DGRs managed through other agencies.

5.46 In June 2007, the ATO sent letters to 50 000 organisations endorsed as a Tax Concession Charity (TCC), partly to remind them that they must notify the ATO if they cease to be entitled to TCC endorsement and that they should carry out regular self-reviews of their status. Within three months of this exercise, 274 entities requested revocation of their TCC status. The post-implementation review of this exercise noted that the mail-out was successful in achieving its objectives and recommended conducting similar mail-outs in future—including explicitly targeting DGRs. To date this mail-out has not been conducted.

5.47 Following on from the TCC mail-out, in 2008 the ATO conducted a review of a representative sample of 350 PBIs with both TCC and DGR status to gauge the level of regular self-reviews of their ongoing entitlement to these benefits. The project outcome was that only 30 per cent of the entities that replied could be accepted as having in place an annual self-review process that tested the requirements of endorsement as a PBI, including DGR status. These results suggest that there remains a high risk of non-compliance, particularly among PBIs that have been endorsed for a considerable period of time.

Conclusion

5.48 The risk and intelligence assessments to identify key risks, the associated treatments and organisations at high risk of non-compliance are focused primarily on qualitative analysis. Improvement to such assessments

¹⁴² Department of the Treasury (2011), *Scoping study for a national not-for-profit regulation: Consultation paper January 2011*, <<http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=1934>> [accessed 27 January 2011]

through the intended development of a risk engine for the sector, while a useful tool, will not in itself provide the means to assess potential risks and identify high-risk cases unless populated with appropriate data. The ATO has variable data holdings on DGR entities. There is significant value, therefore, in ensuring that all possible ATO data holdings are available within the risk engine database, including those from PAF returns. In addition, supplementing the database with information held on DGRs by other Commonwealth agencies, and on fundraising organisations held by the state and ACT governments, could further enhance the risk engine's effectiveness.

5.49 Further work needs to be undertaken in reviewing whether there is a linkage between DGR risk profiles and the length of time since endorsement. Changes in ATO views on legislation and in the level of scrutiny applied to applications suggest that the time since endorsement should be assessed as a potential risk factor. Associated with this factor is the need for organisations to understand the requirement for and to conduct regular self-assessments to determine for themselves ongoing compliance.

Recommendation No.2

5.50 To improve the effectiveness of the risk assessments of deductible gift recipients (DGRs), the ANAO recommends that the ATO:

- (a) uses relevant information available internally and from other government bodies to identify risks and non-compliant entities;
- (b) identifies DGRs whose applications for endorsement may not meet current endorsement requirements because of changes over time to the DGR endorsement processes and interpretation of legislation; and
- (c) strengthens its education and information activities to encourage DGRs to annually self-assess their continued eligibility for DGR status.

ATO response

5.51 *Agreed.*

Compliance interventions

5.52 The ATO aims to provide a balanced program of active compliance activities to address areas of compliance risk across various client populations within the non-profit sector. The overall intent of the Active Compliance program is to improve voluntary compliance and ensure organisations

correctly access the tax concessions available to them, including DGR status, resulting in correct revenue outcomes and building community confidence.

5.53 As discussed earlier, the NPC Active Compliance team works with the risk and intelligence capability to support a range of risk identification, assessment and monitoring activities. The outcomes of these activities guide case selections so that compliance interventions can address the areas of highest risk.

Quantity and impact of compliance interventions

5.54 Over the past two years to June 2010, there have been some 9600 DGR and TCC endorsement applications decided. The volume of applications has meant that the focus of the NPC's work has been on assessing these applications. As a consequence, relatively few resources are allocated to active compliance. In 2011, the core capability is seven NPC Active Compliance staff, as well as 12 FTEs currently sub-contracted from the Small and Medium Enterprises Active Compliance area. In addition, staff are assigned from the Small and Medium Enterprises Campaign Team to do particular non-profit compliance projects on a priority basis. Resourcing for active compliance work has been reallocated to the interpretative assistance function to reduce the backlog of endorsements.

5.55 Despite rating the risk of DGRs not meeting their endorsement obligations as high, there have been relatively few DGR compliance interventions in recent years. As shown in Table 4.1, in total 2000 of the 58 000 TCCs and DGRs have been contacted (or are planned for contact) in active compliance activity over the four years to June 2011. Two-thirds of these contacts have been through letter campaigns. In 2007–08, PBIs were sampled to determine self-assessment¹⁴³; in 2009–10, PBIs assisting the unemployed were asked to provide information to determine whether contracts with the Department of Education, Employment and Workplace Relations had changed their primary purpose¹⁴⁴; and in 2010–11, PAFs were contacted to remind them of their reporting requirements in the lead-up to the first reports due in

¹⁴³ Discussed in paragraph 5.47.

¹⁴⁴ Discussed in paragraph 5.34.

January 2011 under the revised legislation.¹⁴⁵ The balance of activities related to reviews and audits of TCCs and DGRs. As previously discussed (in paragraph 5.41), reviews and audits covered only 0.3 per cent of TCCs and DGRs per annum over this period.

Table 5.1

TCC/DGR status integrity program cases, 2007–08 to 2010–11

Activity ⁽¹⁾	2007–08	2008–09	2009–10	2010–11
Total cases by type (number)				
TCC and DGR reviews and audits ⁽²⁾	133	182	78 (40) ⁽⁴⁾	140 (55)
Prescribed private funds/PAF reviews	46	159	2	30
Letter campaigns – letters sent	350	-	119	740
Impact of DGR/TCC reviews and audits				
Lodgment of prescribed private fund returns	-	114	2	NA
Revocation after audit contact	29	32	22 (13)	NA
Revocation – other ⁽³⁾	-	24	-	NA
Escalated for further compliance action	16	90	92 (10)	NA
Education or warning letters issued	34	30	41 (10)	NA
No further action	450	51	42 (7)	NA

Note 1: Years 2007–08 to 2009–10 refer to completed compliance cases while 2010–11 refers to scheduled compliance activities.

Note 2: These reviews and audits do not include those of prescribed private funds and PAFs.

Note 3: Primarily advised by the Office of the Arts responsible for the Register of Cultural Organisations.

Note 4: The figures in brackets refer to DGR specific reviews and audits.

Source: ANAO analysis of ATO data.

5.56 Despite the relatively limited coverage of the population by reviews and audits, those that are undertaken have been appropriately targeted. Table 5.2 shows the outcomes of the 42 reviews and audits undertaken on 40 DGRs during 2009–10.¹⁴⁶

¹⁴⁵ Paragraph 3.14 identified that that PAFs replaced prescribed private funds from 1 January 2010.

¹⁴⁶ The 42 reviews and audits listed at Table 5.1 comprise: the 40 DGR reviews and audits listed under 'TCC and DGR reviews and audits'; and the two activities listed under 'Prescribed private funds/PAF reviews'. The types of active compliance activity undertaken are, in increasing order of timeliness standard completion targets: internal review; specific review (client contact), comprehensive review; specific audit and comprehensive audit. These types are defined by the level of interaction with the client and the scope of the activity.

Table 5.2**Active compliance activity by outcome for DGRs (including prescribed private funds), 2009–10**

Activity type	Outcome (numbers)					
	Revoked	Escalated	Lodgment ⁽¹⁾	Education	No further action	Total
Review						
Internal	-	5	-	1	-	6
Specific (client contact)	2	4	-	2	5	13
Comprehensive	8	-	2	7	2	19
Sub-total (percentage)	10 (26)	9 (24)	2 (5)	10 (26)	7 (18)	38 (100)
Audit						
Specific	1	1	-	-	-	2
Comprehensive	1	-	-	-	-	1
Not further specified	1	-	-	-	-	1
Sub-total (percentage)	3 (75)	1 (25)	- (-)	- (-)	- (-)	4 (100)
Total (percentage)	13 (31)	10 (24)	2 (5)	10 (24)	7 (17)	42 (100)

Note 1: Lodgment refers to the lodgment of returns by prescribed private funds.

Source: ANAO analysis of ATO data. (Percentages may not add to 100 due to rounding)

5.57 Table 5.2 shows that most of the 38 internal reviews resulted in escalated compliance action. Furthermore, of the remainder nearly all resulted in an outcome, primarily from revocation of DGR endorsement or education to ensure ongoing compliance with requirements.

5.58 In addition, the ATO has undertaken appropriate reviews of the lodgment of returns by prescribed private funds. Prior to the implementation of legislation replacing prescribed private funds with PAFs, there was an administrative requirement for these DGRs to lodge annual returns. The only action available to the ATO under legislation was to apply to the Assistant Treasurer for a declaration that the entity was no longer a prescribed private fund. Under the revised legislation, PAFs have an obligation to submit annual returns—the ATO is able to apply penalties on failure to lodge these returns. Through following up non-lodgers, the ATO managed to increase the rate of

lodgment from 69 per cent in 2006–07 to 86 per cent in 2008–09, the final full year prior to the new legislation.

5.59 The ATO has also drawn on the information in these returns to check compliance of the prescribed private funds. For instance, in 2008–09, the ATO undertook reviews of 45 funds, representing over five per cent of this DGR category. As a result, 17 cases were escalated for further review and audit. Education was provided in another two cases, with the balance requiring no further action.

5.60 Consistent with the ANAO analysis of compliance actions overall, an internal Compliance Effectiveness evaluation completed in November 2009 found that targeted interventions had found an average error rate of 81 per cent over the previous three years. The ATO has recognised that it has had limited success in ensuring non-profit organisations met their taxation obligations and appropriately accessed concessions and entitlements. It noted that pockets in the sector remained non-compliant and commented on the difficulty in ascertaining whether there had been a sustained change of compliance behaviour by non-profit entities, including DGRs.

Systemic risks addressed by DGR compliance interventions

5.61 The ATO considers, however, that compliance treatments have resolved systemic risks by some types of DGRs. Table 5.3 lists the main systemic risks which have been identified concerning ongoing eligibility for DGR endorsement, and provides a brief summary of the ATO's compliance response.

Table 5.3**ATO compliance response to issues potentially impacting on DGR endorsement eligibility**

Issue	Compliance response
Public Benevolent Institutions (PBIs): Training organisations	The ATO sent letters to 119 PBIs in 2009–10 requesting they review their entitlement to FBT exemption and DGR status as they were providing training and job placement for the general public and may no longer meet the PBI requirement for predominantly meeting benevolent need. Subsequently, eight organisations self-identified as no longer being PBIs, and a further 62 cases were determined to be at high risk of not meeting the criteria for a PBI. The ATO is liaising with DEEWR to discuss the funding contracts with these PBIs.
Health Promotion Charities (HPCs)	Analysis indicated that some HPCs undertake activities too broad or nebulous to warrant maintaining DGR status. Following on from an intelligence scan conducted in November 2008, the ATO is reviewing BAS data to identify entities with DGR endorsement that may be inconsistent with a HPC.
Private Ancillary Funds (PAFs) — education	PAFs are closely held funds that are not open to public scrutiny like other charities and DGRs. There are concerns that PAFs do not meet ongoing requirements, or inappropriately obtain tax benefits for individuals/entities. 740 targeted education letters noting changed regulatory requirements will be sent in 2010–11. Compliance activities are also planned to commence in 2011–12.
PAFs — compliance reviews	30 compliance reviews of closely held private funds in 2010–11 will examine whether they are being operated for private benefit, for example to obtain tax benefits through falsely claiming distributions to DGRs.
Higher education institutions	An intelligence scan of organisations endorsed under the DGR category 'higher education institutions' identified that four entities may not be operational. In particular, ASIC registers indicated cancellation, business name removed, or under external administration/winding up orders. Active compliance initiated a follow-up of such organisations.
Ad hoc compliance activity	These activities include high-risk referrals and a project to review entities that may be incorrectly accessing non-profit concessions. The latter project involves 'cleansing' the Australian Business Register dataset to remove entities that had failed to update endorsements in line with legislative changes, and were no longer registered on ASIC registers as operating.

Source: ANAO analysis of ATO information.

Conclusion

5.62 Within the limitations of its resourcing and risk identification processes, the ATO has effectively used available resources to address the systemic DGR risks identified in recent years. This compliance response has been through a combination of compliance interventions, tailored help and education and leveraged activities.

5.63 However, pockets of non-compliance remain in the non-profit sector, including DGRs. If the ATO enhances its DGR intelligence and risk management capability as proposed by the ANAO, it may be prudent to also increase the active compliance capability accordingly to address a potentially higher magnitude of identified risks and at-risk entities.

Revoking DGR endorsements

5.64 Guidance to staff on revoking DGR endorsements is documented in the NPC's *Revocation of Endorsement Policy*. This document outlines the: legislative powers to revoke endorsement; basis for an entity having its endorsement revoked; date of effect considerations; possible consequences of revocation; process, and requirements for inclusion in advice to the client. The guidance also includes a range of examples to assist staff to interpret the requirements.

5.65 While a small number of DGRs each year have their status revoked by the Active Compliance area as a result of compliance interventions, most are voluntarily revoked. In particular, there were 48 revocations of DGR endorsed entities in 2009–10. There is no collated management data providing a detailed breakdown of the basis of revocation. In the six months to 12 July 2010, the NPC identified that 84 per cent of revocations were based on 'advice from clients' (but no indication as to the split between client initiated, and advice after audit contact), with further reasons in the broad categories of 'ATO initiated' (3 per cent) and 'revocation due to unmet criteria' (12 per cent). The ANAO suggests that the NPC collate revocation data into categories to quantify its understanding of client behaviour once the entity does not meet the DGR endorsement requirements.

5.66 The NPC recognises that the relatively low incidence of revoking DGR endorsement as a result of compliance activities reflects the lack of deliberate misleading behaviour by DGRs. Most status mistakes result from a lack of knowledge rather than deliberate non-compliance. The NPC's guidance identifies that the ATO will generally provide advice and support about how to maintain DGR status rather than move quickly to revoke endorsement. Further, unless individuals are involved or associated with a DGR (such as through a PAF), it is unlikely that a tax deduction by a donor will be disallowed. This means that DGRs effectively have their endorsement status revoked prospectively rather than retrospectively.

5.67 If a DGR disagrees with the decision to revoke its status, the ATO is willing to discuss the matter. In complex and contentious cases, the NPC will usually involve technical advisors.

5.68 The ATO also revokes the endorsement status of organisations on the basis of advice from the agencies that manage the Overseas Aid Gift Deduction Scheme, and the Registers of Cultural Organisations, Environmental Organisations and Harm Prevention Charities. It is, however, reluctant to revoke the DGR endorsement of such organisations otherwise, without reference to the originating agency for advice and investigation, particularly given that the agency's Minister was involved in the initial decision of endorsement.

Conclusion

5.69 The ATO's revocation policy and procedures are reasonable, given the characteristics of the DGR population. There are, however, relatively few DGR endorsement revocations that are not based on advice from clients.



Ian McPhee
Auditor-General

Canberra ACT
22 June 2011

Appendices

Appendix 1: ATO response



Ms Barbara Cass
A/g Group Executive Director
Performance Audit Services Group
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601

Your Ref: PAR 10218

Dear Ms Cass

AUDIT OF THE ADMINISTRATION OF DEDUCTIBLE GIFT RECIPIENTS (NON-PROFIT SECTOR)

Thank you for your letter of 10 May 2011 submitting the proposed audit report on *Administration of Deductible Gift Recipients (Non-profit Sector)*, and the subsequent revised report delivered to us on 19 May 2011 that takes into account announcements made in the Federal Budget.

The ATO welcomes the Australian National Audit Office's (ANAO's) recommendations in relation to improving the administration of deductible gift recipients (DGRs).

We are pleased that the ANAO was able to state:

"The ATO has implemented appropriate arrangements to effectively administer DGR endorsements and associated tax concessions."

We also note several observations in the revised report delivered on 19 May 2011, that may be as relevant for consideration by the proposed Australian Charities and Not-for-profit Commission (ACNC) as for the ATO and that the existence and arrangements in relation to the ACNC may facilitate the ATO being able to fully implement some parts of the recommendations.

We expect to implement the recommendations in the process by which the ATO makes preparations for the ACNC during 2011-12, including structural changes and resultant changed work practices, and then in our expected future working arrangements with the ACNC thereafter.

PO BOX 900 CIVIC SQUARE ACT 2608 AUSTRALIA
ADDRESS

+61 (0)2 6216 1111
TELEPHONE

+61 (0)2 6216 2743
FACSIMILE

We agree with both recommendations in the report:

Recommendation 1

Paragraph 3.75

To improve consistent decision-making in respect of deductible gift recipient endorsement applications, the ANAO recommends that the ATO strengthen its quality assurance processes by:

(a) reviewing decisions prior to finalisation through robust, independent assessment; and

(b) selecting cases for quality assurance on the basis of assessed risk of inconsistencies across category types.

Recommendation 2

Paragraph 5.50

To improve the effectiveness of risk assessments of deductible gift recipients (DGRs), the ANAO recommends that the ATO:

(a) use relevant information available internally and from other government bodies to identify risks and non-compliant entities;

(b) identify DGRs whose applications may not meet current endorsement requirements because of changes over time to DGR endorsement processes and interpretation of legislation; and

(c) strengthen education and information activities to encourage DGRs to annually self-assess their continued eligibility for DGR status.

In relation to an ATO statement for your report brochure our statement is:

The ATO welcomes the ANAO audit report on *Administration of Deductible Gift Recipients (Non-profit Sector)*.

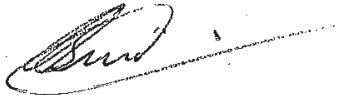
While the report makes two recommendations about how the ATO can improve its administration of deductible gift recipients (DGRs) it also notes that:

"The ATO has implemented appropriate arrangements to effectively administer DGR endorsements and associated tax concessions."

The ATO agrees with both recommendations made in the report and will work to implement them as part of the required structural changes in the ATO in preparation for the commencement of an Australian Charities and Not-for-profit Commission (ACNC) from 1 July 2012. Where necessary, the ATO will implement the recommendations in consultation with the commissioner-designate of the ACNC to ensure the best outcomes for the community.

If there are any questions concerning our response, please contact Mr Michael Hardy on (02) 6216 1798.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bruce Quigley', with a long horizontal flourish extending to the right.

Bruce Quigley
Second Commissioner Compliance
3 June 2011

Appendix 2: Types of non-profit entities

Table A 1

Types of non-profit entities as categorised by the ATO

Entity type	Description
Charity	Charities are non-profit entities that exist for the public benefit, and whose sole purpose is charitable. Charitable purposes are defined as: the relief of poverty, sickness or the needs of the aged; advancement of education and religion; as well as a range of other activities beneficial to the community.
<ul style="list-style-type: none"> charitable institution 	A charitable institution is established and run solely to advance or promote a charitable purpose. A charitable institution may be an organisation established by will or an instrument of trust, and may have the legal structure of an unincorporated association or a corporation.
<ul style="list-style-type: none"> public benevolent institution 	A public benevolent institution (PBI) is a non-profit institution organised for, and whose dominant purpose is, the direct relief of poverty, sickness, suffering, distress, misfortune, disability or helplessness. Examples of such direct relief include provision of hostel accommodation for the homeless, and rescue of people who are lost or stranded.
<ul style="list-style-type: none"> health promotion charity 	A health promotion charity is a non-profit charitable institution whose principal activity is promoting the prevention or control of diseases in human beings. Examples of activities include providing relevant information to suffers of a disease, health professionals and carers; and research related to diseases.
<ul style="list-style-type: none"> charitable fund 	A charitable fund is established under an instrument of trust or a will for a charitable purpose. Charitable funds mainly manage trust property, and/or hold trust property to make distributions to other entities or people.
Income tax exempt or ancillary funds	These are non-charitable funds that are endorsed by the ATO to access income tax exemptions. The category applies to non-charitable funds established under a will or instrument of trust. The purpose of these funds is to establish, or provide money, property or benefits to, deductible gift recipients (DGRs).
Other non-profit organisations	These are organisations other than charities or income tax exempt funds. Other non-profit organisations include sports clubs, community service groups and recreational clubs. A non-profit organisation is one which is not operating for the direct or indirect profit or gain of its individual members.

Source: Australian Taxation Office (2007), op. cit. p. 4–5.

Appendix 3: Endorsement requirements and guidance

Table A 2

Legislative basis, requirements and guidance for DGR entity/fund categories

Type of entity or fund	Legislative base	Broad requirements	Guidance/Application forms
HEALTH	Section 30-20, IIAA (1997)		
Public hospital	Item: 1.1.1		Definitions in the publication, Australian Taxation Office (2007), <i>GiftPack</i> (NAT 3132-12.2007) (the <i>GiftPack</i>).
Non-profit hospital	Item: 1.1.2	A hospital run by a society or association on a non-profit basis	
Public institution for research	Item: 1.1.5	A non-profit organisation with responsibility to the public, researching diseases.	
Public ambulance service	Item: 1.1.7		
Public fund for:		A 'public fund' (see below under GENERAL) that provides money for these organisations.	
• public and non-profit hospitals	Item: 1.1.3		
• ambulance services	Item: 1.1.8		
Public authority for research	Item 1.1.4	A 'public authority' (see below under GENERAL) researching diseases.	
Health promotion charity	Item 1.1.6	A 'charitable institute' (see below under GENERAL) for the prevention and control of disease	Specific definitions and a checklist provided in the <i>GiftPack</i> . The definition is supported by TR 2004/8. Standard form for DGR endorsement.
EDUCATION	Section 30-25, IIAA (1997)		
Public university	Item: 2.1.1		Definitions in the <i>GiftPack</i> .
Higher education institution	Item: 2.1.3	An organisation meeting the definition in the <i>Higher Education Funding Act 1988</i> .	
Residential education institution	Item: 2.1.4	A residential education institution affiliated under statute with a public university.	

Type of entity or fund	Legislative base	Broad requirements	Guidance/Application forms
C'wealth residential education institution	Item: 2.1.5	A residential education institution established by the Commonwealth.	Definitions in the <i>GiftPack</i> .
Affiliated residential education institution	Item: 2.1.6	A residential education institution affiliated with a higher education institution.	
Government special school	Item: 2.1.12	A government school providing education to disabled students.	
Life education company	Item: 2.2.9	A company providing programs under the auspices of the Life Education Centre.	
TAFE	Item: 2.1.7 and sub-section 30-35	An institution that the Minister for Education, Employment and Workplace Relations has declared to be a technical and further education institution within the meaning of the <i>Higher Education Funding Act 1998</i> .	Definitions in the <i>GiftPack</i> .
Public fund for:		A 'public fund' (see below under GENERAL) that provides money for:	
<ul style="list-style-type: none"> the establishment of a public university 	Item: 2.1.2	<ul style="list-style-type: none"> the establishment of public university 	
<ul style="list-style-type: none"> religious instruction in government schools 	Item: 2.1.8	<ul style="list-style-type: none"> religious instruction in Australian government schools 	
<ul style="list-style-type: none"> Roman Catholic religious instruction in government schools 	Item: 2.1.9	<ul style="list-style-type: none"> religious instruction in Australian government schools—the fund must be established by the Roman Catholic (arch-) diocese. 	
<ul style="list-style-type: none"> rural school hostel building 	Item: 2.1.11 and section 30-35	<ul style="list-style-type: none"> residential accommodation (provided by government, a 'public authority' (see below under GENERAL) or a non-profit company) for students of a government school. 	

Type of entity or fund	Legislative base	Broad requirements	Guidance/Application forms
School building fund	Item: 2.1.10	A 'public fund' (see below under GENERAL) that provides money for the acquisition, construction or maintenance of a building for a school run by government, a 'public authority' (see below under GENERAL), or a non-profit society or association.	Specific definitions in the <i>GiftPack</i> . This is supported by TR 96/8 and web-based guidance, <i>School Building Funds</i> , which includes a checklist.
Scholarship fund	Item: 2.1.13 and section 30-37	A fund which is both a 'public fund' and a 'charitable fund' (see below under GENERAL), that provides money for scholarships, bursaries or prizes to Australian citizens or permanent residents, based on merit or equity, for promoting the recipients' education associated with an approved Australian course.	Specific application form additional to that for general DGR endorsement. Definitions in the <i>GiftPack</i> including a checklist. Web-based guidance, <i>Scholarship funds – eligible scholarships, bursaries and prizes</i> includes examples. Approved courses identified through GSTR 2000/30 and 2001/1.
RESEARCH	Section 30-40, IIAA (1997)		
Approved research institute	3.1.1	An approved research institute is the Commonwealth Scientific and Industry Research Organisation or has been approved by this body, the Department of Innovation, Industry, Science and Research, or the National Health and Medical Research Council as meeting the requirements under section 73A of the <i>Income Tax Assessment Act 1936</i> for undertaking scientific research of (potential) value to Australia.	Definitions in the <i>GiftPack</i> . Guidelines for approved research institutions and associated application checklist available online.
The Commonwealth	3.2.3	Donations must be for research in the Australian Antarctic Territory.	Guidance on gift type in the <i>GiftPack</i> .
WELFARE & RIGHTS	Section 30-45, IIAA (1997)		
Public benevolent institution (PBI)	4.1.1	A non-profit institution for the direct relief of poverty, sickness, destitution, suffering or misfortune, and for the benefit of the community, or part thereof.	Specific application form additional to that for general DGR endorsement. Definitions and checklist in the <i>GiftPack</i> , supported by TR 2003/5.
Public fund for PBIs	4.1.2	A 'public fund' (see below under GENERAL), established before 23/10/1963, that provides money for PBIs (see above).	Definitions as for PBI and public fund, as outlined in <i>GiftPack</i> .
Public fund for persons in necessitous circumstances	4.1.3	A 'public fund' (see below under GENERAL) that provides money for people in Australia who are in necessitous circumstances, i.e. financial necessity.	Definitions and checklist in the <i>GiftPack</i> , supported by TR 2000/9.

Type of entity or fund	Legislative base	Broad requirements	Guidance/Application forms
Public fund for institutions on the harm prevention register	4.1.4 and sub-division 30-EA	<p>A 'public fund' established by a 'charitable institution' (see below under GENERAL) whose principal activity is the promotion of the prevention or control of harmful or abusive behaviour towards humans.</p> <p>Such an income tax exempt charitable institution can apply to FaHCSIA for inclusion on the harm prevention register.</p>	The ATO website provides general guidance on what constitutes a harm prevention charitable institution, directing applicants to the FaHCSIA website. Guidelines and application form for inclusion on the Register of Harm Prevention Charitable Institutions is provided by FaHCSIA.
Australian disaster relief fund	4.1.5 and sections 30-45A & 30-46	A 'public fund' that is a 'charitable fund' or established by a 'charitable institution' (see below under GENERAL) that provides money for people in Australia in distress as a result of a declared disaster. Gifts must be made within two years of the disaster declaration.	Specific application form additional to that for general DGR endorsement. Definitions, examples and checklist in the <i>GiftPack</i> . Web-page lists the disasters already accepted by the ATO, and the state/territory government contacts for the declaration of disasters.
Animal welfare charity	4.1.6	A 'charitable institution' (see below under GENERAL) that cares for lost, mistreated animals without owners including those that are sick or injured.	Specific application form additional to that for general DGR endorsement. Definitions, examples and checklist in the <i>GiftPack</i> .
Charitable services institution	4.1.7	A 'charitable institution' (see below under GENERAL) that meets most of the requirements of a PBI. It also promotes the control or prevention of human diseases and/or harmful behaviour, but not as principal activities.	Specific application form additional to that for general DGR endorsement. Definitions, examples and checklist in the <i>GiftPack</i> .
DEFENCE	Section 30-50, IIAA (1997)		
The Commonwealth or a state	5.1.1	The <i>GiftPack</i> outlines that donations must be made for defence purposes.	Guidance on gift type in the <i>GiftPack</i> .
Public institution or fund for members of the armed forces	5.1.2	A 'public fund' (see below under GENERAL) that provides money for the comfort, recreation or welfare for defence personnel from Commonwealth countries or their armed associates.	Specific definitions in the <i>GiftPack</i> .
War memorial repair fund	5.1.3	<p>A 'public fund' (see below under GENERAL) that provides money for the repair or reconstruction of a war memorial in Australia.</p> <p>Gifts must be made within two years of the fund endorsement.</p>	Specific application form additional to that for general DGR endorsement. Definitions, examples and checklist in the <i>GiftPack</i> .

Type of entity or fund	Legislative base	Broad requirements	Guidance/Application forms
ENVIRONMENT	Section 30-55, IIAA (1997)		
Public fund on the Register of Environmental Organisations	6.1.1 and sub-division 30-E	A 'public fund' (see below under GENERAL) established by an organisation whose principal purpose is to protect and enhance (a significant aspect of) the natural environment, provide information, education or research about (a significant aspect of) the natural environment. Such an organisation must apply to SEWPaC for inclusion on the Register of Environmental Organisations.	Definitions and checklist in the <i>GiftPack</i> . Tax office website provides general guidance on what constitutes an environmental organisation, directing applicants to the SEWPaC website. This website provides guidelines and application form for inclusion on the Register of Environmental Organisations and for DGR endorsement.
THE FAMILY	Section 30-70, IIAA (1997)		
Public fund for an approved marriage guidance organisation	8.1.1	A 'public fund' (see below under GENERAL), established by a non-profit company that provides money for marriage education. The company must be approved by the Minister for FaHCSIA as under section 9C of the <i>Marriage Act 1961</i> .	Specific definitions in the <i>GiftPack</i> , with reference to the contact in FaHCSIA for approval as a marriage guidance organisation—the FaHCSIA website outlines the required conditions for approval.
Public fund for the provision of family counselling or family dispute resolution	8.1.2	A 'public fund' (see below under GENERAL), established by a non-profit company that provides money for counselling and dispute resolution services within the meaning of the <i>Family Law Act 1975</i> (sections 10B, 10C, 10F and 10G). The company must receive funding from FaHCSIA through the Family Relationships Services under the Family Support Program.	Specific definitions in the <i>GiftPack</i> , with reference to the FaHCSIA website for funding. The FaHCSIA website includes the conditions and guidelines for funding, the organisations funded, and the list of approved family counselling organisations. The means to apply for inclusion in the register of family dispute resolution practitioners, and a search facility for such practitioners by area is provided on the Attorney-General's Department website.

Type of entity or fund	Legislative base	Broad requirements	Guidance/Application forms
INTERNATIONAL AFFAIRS	Section 30-80, IIAA (1997)		
Overseas aid fund	9.1.1 and section 30-85	A 'public fund' (see below under GENERAL), established by an organisation solely for providing relief of people in a country declared by the Minister for Foreign Affairs and Trade to be a developing country. Such an organisation must apply to AusAID for approval under the Overseas Aid Gift Deduction Scheme (OAGDS). Following an assessment, this application is referred to their Minister and subsequently to the Assistant Treasurer for approval.	Specific definitions in the <i>GiftPack</i> , with further guidance, checklists and sample clauses on the website relating to relief funds. Reference is provided to the AusAID website for admission to the OAGDS, which includes the conditions and guidelines for what needs to be in an application. In addition, TR 95/2 provides details.
Developed country disaster relief fund	9.1.2 and section 30-86	A 'public fund' (see below under GENERAL), established by a PBI (see above under WELFARE & RIGHTS), to provide relief for victims of a disaster in a country other than Australia or a developing country. The disaster needs to be recognised by the (Assistant) Treasurer.	Specific application form additional to that for general DGR endorsement. Definitions, examples and checklist in the <i>GiftPack</i> . The list of disasters recognised are identified on the website.
CULTURAL ORGANISATIONS	Section 30-100, IIAA (1997)		
Public fund on the Register of Cultural Organisations	12.1.1 and sub-division 30-F	A 'public fund' (see below under GENERAL) established by a non-profit organisation whose principal purpose is to promote literature, music, performing art, a visual art, a craft, design, film, video, television, radio, community arts, Aboriginal arts or movable cultural heritage. Such an organisation must apply to the Office for the Arts (PM&C) for inclusion on the Register of Cultural Organisations, with approval provided by their Minister and the Assistant Treasurer.	Definitions in the <i>GiftPack</i> . The ATO website provides general guidance on what constitutes a cultural organisation, directing applicants to the Office for the Arts website. This website has guidelines and application form for inclusion on the Register of Cultural Organisations.
Public library	12.1.2	Institutions owned or controlled by government or quasi-government authority, or by persons/institutions with public responsibilities, that makes its collection available to the public, and is generally recognised as having the characteristics of the purported function.	Definitions, examples and checklist in the <i>GiftPack</i> . In addition, TR 2000/10 provides details.
Public museum	12.1.3		
Public art gallery	12.1.4		
Institution consisting of one or more of the above	12.1.5		

Type of entity or fund	Legislative base	Broad requirements	Guidance/Application forms
FIRE AND EMERGENCY SERVICES	Section 30-102, IIAA (1997)		
Government entity	12A.1.1	A government entity that has statutory responsibility for the coordination of volunteer fire brigades or State Emergency Services.	<i>No guidance provided as at 16 March 2011.</i>
Public fund for emergency services, run by:		A 'public fund' (see below under GENERAL), to provide support for volunteer-based emergency services, established by:	
• a coordinating government entity	12A.1.2	• a government entity as per item 12A.1.1	
• a government or non-profit entity	12A.1.3	• a government or non-profit entity	
ANCILLARY FUND	Section 30-15, IIA (1997)		
Ancillary fund	(as above)	A 'public fund' (see below under GENERAL), established to provide money, property or benefits to DGRs or to establish DGRs.	Definitions, examples and checklist in the <i>GiftPack</i> . In addition, TR 95/27 provides details.
PRIVATE ANCILLARY FUND	Subdivision 426-D, TAA (1953)		
Private ancillary fund	(as above)	A fund established and maintained under a will or instrument of trust solely to provide money, property or benefits to DGRs or to establish DGRs. In particular, it needs to meet the specific requirements identified in Ministerial guidelines issued under Section 426-110, Sch1, TAA (1953).	Guidelines, including a 'model trust deed' and specific application form additional to that for general DGR endorsement.
GENERAL			
Public authority	None identified	A public authority is an agency or instrument of government exercising power or command for the public advantage. It has government authority for doing so.	Definition and examples in the <i>GiftPack</i> .
Charity	Section 50-5 with associated clauses.	A charity has the following characteristics: <ul style="list-style-type: none"> • an entity that is also a trust fund or institution • exists for the public benefit or the relief of poverty 	Definitions and examples in the <i>GiftPack</i> . As all charities can access tax concessions, the publication <i>Income tax guide for non-profit organisations</i> includes more details, examples, and flow-chart for determining if a charitable fund. There is a specific application form
• charitable institution			
• charitable fund			

Type of entity or fund	Legislative base	Broad requirements	Guidance/Application forms
			and instructions for endorsement as a tax concession charity.
Public fund	None identified – TR 95/27 draws on case law.	The purpose of the fund must be set out in its constitution or equivalent, and reflect the relevant DGR category purpose. The fund's founders or promoters must intend for the public to contribute to the fund and invite the public to do so. It must also operate on a non-profit basis.	Definitions, examples and checklist in the <i>GiftPack</i> . In addition, TR 95/27 provides details.

Source: ANAO analysis based on information from ATO publications (e.g. *GiftPack*), tax rulings (e.g. TR 2000/10) and websites, and line agencies' websites.

Appendix 4: Role of Commonwealth agencies other than the ATO

Table A 3

Role of Commonwealth agencies other than the ATO in the DGR endorsement process

Commonwealth agency	Role in DGR endorsement process
AusAID	AusAID is responsible for assessing applications and making recommendations to the Minister for Foreign Affairs on the inclusion of overseas aid funds in the Overseas Aid Gift Deduction Scheme.
Department of Sustainability, Environment, Water, Population and Communities (SEWPaC)	SEWPaC is responsible for the Register of Environmental Organisations. An application for endorsement as an environmental organisation is submitted directly to the Department, which assesses all aspects of the DGR requirements prior to making a recommendation to its Minister.
Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA)	FaHCSIA is responsible for the Harm Prevention Register. Applications are submitted directly to the Department, which assesses all aspects of the DGR requirements prior to making a recommendation to its Minister.
Office of the Arts (Department of the Prime Minister and Cabinet)	The Office for the Arts is responsible for the Register of Cultural Organisations. Applications are submitted directly to the Office, which assesses all aspects of the DGR requirements prior to making a recommendation to its Minister.
Treasury	The Treasury assesses and makes recommendations to the Assistant Treasurer on the approval of DGRs in the following categories, following line ministerial consideration: <ul style="list-style-type: none"> • overseas aid funds; • public funds on the Register of Environmental Organisations; • public funds on the Harm Prevention Register; and • public funds on the Register of Cultural Organisations.
Commonwealth Scientific and Industry Research Organisation; Dept of Innovation, Industry, Science & Research; National Health & Medical Research Council.	The ATO assesses applications from organisations seeking DGR endorsement as approved research institutes (ARIs). Once the ATO determines that the entity seeking DGR endorsement meets all the general requirements of a DGR, it forwards the application to another Commonwealth agency for consideration of the entity's scientific research claims. The agency to which the application is forwarded is determined on the basis of the type of research being conducted.

Source: ANAO analysis of ATO and other agencies documents.

Appendix 5: State and territory legislation for fundraising charities

Table A 4

Key state and territory legislation for fundraising charities

State/Territory	Legislation
NSW	Charitable Funding Act 1991
VIC	Fundraising Appeals Act (Vic) 1998
QLD	Collections Act 1966
WA	Charitable Collections Act 1946
SA	Collections for Charitable Purposes Act 1939
TAS	Collections for Charities Act 2001
ACT	Charitable Collections Act 2003

Source: State and territory legislative websites.

Index

A

AusAID, 38, 44, 62, 109, 144, 147, 154
Australian Charities and Not-for-profits
Commission, 18, 21, 28, 43, 63–64, 67–68,
104, 106, 109–111, 123

C

Charities Consultative Committee (CCC), 8, 23,
26, 65, 67, 69
*Commissioner of Taxation v Word Investments
Ltd* (Word decision), 25, 55, 84–86, 100

D

Department of Sustainability, Environment,
Water, Population and Communities
(SEWPaC), 9, 38, 44, 62–63, 109, 120, 143,
147
Department of the Treasury (Treasury), 8, 15,
36–38, 44, 63, 65, 106, 109, 120, 123–124,
147

L

Lawyers, specialist charity, 93, 102

O

Objections to endorsement decisions, 20, 50,
55, 58, 81, 84, 88–90, 93
Office of the Arts (Department of the Prime
Minister and Cabinet, PM&C), 9, 38, 44, 62,
108–109, 120, 127, 144, 147

P

Private ancillary fund (PAF), 9, 21, 66, 75, 87,
98, 115, 120, 125, 127, 131
Public benevolent institution (PBI), 9, 14, 16,
18, 36, 43, 50, 55, 66, 77, 87, 98, 101–102,
108, 110, 124, 130, 138, 141–142, 144

Q

Quality assurance, 25, 90
use of Integrated Quality Framework (IQF),
9, 78, 90–91, 92–94

R

Risk management, 27, 46, 58–59, 60, 74, 112,
114–116, 131

S

School building funds, 24, 39, 87, 100, 115
School library funds, 24, 39, 87–88, 122
State and territory governments, 7, 17, 18, 21,
41, 43–44, 62, 64, 96, 109, 110, 121, 122,
125, 148

T

Tax concession charity (TCC), 9, 20, 42, 50–51,
54, 66, 77–78, 81, 85, 88, 91–93, 102, 114,
123–124, 126–127, 145

V

Volunteer bushfire brigades, 24, 83, 87, 93, 98,
122, 145

Series Titles

ANAO Audit Report No.1 2010–11

Implementation of the Family Relationship Centres Initiative

Attorney-General's Department

Department of Families, Housing, Community Services and Indigenous Affairs

ANAO Audit Report No.2 2010–11

Conduct by Infrastructure Australia of the First National Infrastructure Audit and Development of the Infrastructure Priority List

Infrastructure Australia

ANAO Audit Report No.3 2010–11

The Establishment, Implementation and Administration of the Strategic Projects Component of the Regional and Local Community Infrastructure Program

Department of Infrastructure, Transport, Regional Development and Local Government

ANAO Audit Report No.4 2010–11

National Security Hotline

Australian Security Intelligence Organisation

Attorney-General's Department

Australian Federal Police

ANAO Audit Report No.5 2010–11

Practice Incentives Program

Department of Health and Ageing

Medicare Australia

ANAO Audit Report No.6 2010–11

The Tax Office's implementation of the Client Contact - Work Management - Case Management System

Australian Taxation Office

ANAO Audit Report No.7 2010–11

Confidentiality in Government Contracts: Senate Order for Departmental and Agency Contracts (Calendar Year 2009 Compliance)

ANAO Audit Report No.8 2010–11

Multifunctional Aboriginal Children's Services (MACS) and Crèches

Department of Education, Employment and Workplace Relations

ANAO Audit Report No.52 2010–11

Administration of Deductible Gift Recipients (Non-profit Sector)

ANAO Audit Report No.9 2010–11

Green Loans Program

Department of the Environment, Water, Heritage and the Arts

Department of Climate Change and Energy Efficiency

ANAO Audit Report No.10 2010–11

Centrelink Fraud Investigations

ANAO Audit Report No.11 2010–11

Direct Source Procurement

ANAO Audit Report No.12 2010–11

Home Insulation Program

Department of the Environment, Water, Heritage and the Arts

Department of Climate Change and Energy Efficiency

Medicare Australia

ANAO Audit Report No.13 2010–11

*Implementation and Administration of the Civil Aviation Safety Authority's
Safety Management System Approach for Aircraft Operators*

ANAO Audit Report No.14 2010–11

Capitalisation of Software

Australian Bureau of Statistics

Civil Aviation Safety Authority

IP Australia

ANAO Audit Report No.15 2010–11

Food Standards Australia New Zealand

ANAO Audit Report No.16 2010–11

*Centrelink's Role in the Process of Appeal to the Social Security Appeals Tribunal and to the
Administrative Appeals Tribunal*

Centrelink

Department of Education, Employment and Workplace Relations

Department of Families, Housing, Community Services and Indigenous Affairs

ANAO Audit Report No.17 2010–11

2009–10 Major Projects Report

Defence Materiel Organisation

ANAO Audit Report No.18 2010–11

*Government Business Managers in Aboriginal Communities under the Northern Territory
Emergency Response*

Department of Families, Housing, Community Services and Indigenous Affairs

ANAO Audit Report No.19 2010–11

Army Aboriginal Community Assistance Program

Department of Families, Housing, Community Services and Indigenous Affairs

ANAO Audit Report No.20 2010–11

Administration of the Wine Equalisation Tax

Australian Taxation Office

ANAO Audit Report No.21 2010–11

Indigenous Housing Initiatives: the Fixing Houses for Better Health program

Department of Families, Housing, Community Services and Indigenous Affairs

ANAO Audit Report No.22 2010–11

*Audits of the Financial Statements of Australian Government Entities for the Period Ended
30 June 2010*

ANAO Audit Report No.23 2010–11

Home Ownership of Indigenous Land Program

Department of Families, Housing, Community Services and Indigenous Affairs

Indigenous Business Australia

ANAO Audit Report No.24 2010–11

The Design and Administration of the Better Regions Program

Department of Regional Australia, Regional Development and Local Government

ANAO Audit Report No.25 2010–11

Administration of the Trade Training Centres in Schools Program

Department of Education, Employment and Workplace Relations

ANAO Audit Report No.26 2010–11

Management of the Tender Process for a Replacement BasicsCard

Department of Human Services

ANAO Audit Report No.27 2010–11

Restoring the Balance in the Murray-Darling Basin

Department of Sustainability, Environment, Water, Population and Communities

ANAO Audit Report No.28 2010–11

Management of the Australian Broadband Guarantee Program

Department of Broadband, Communications and the Digital Economy

ANAO Audit Report No.29 2010–11

Management of the Implementation of New Policy Initiatives

Australian Federal Police

ANAO Audit Report No.30 2010–11

Digital Education Revolution Program—National Secondary Schools Computer Fund

Department of Education, Employment and Workplace Relations

ANAO Audit Report No.31 2010–11

Administration of the Superannuation Lost Members Register

Australian Taxation Office

ANAO Audit Report No.32 2010–11

Northern Territory Night Patrols

Attorney-General's Department

ANAO Audit Report No.33 2010–11

The Protection and Security of Electronic Information Held by Australian Government Agencies

ANAO Audit Report No.34 2010–11

General Practice Education and Training

General Practice Education and Training Limited

ANAO Audit Report No.35 2010–11

Management of the Overseas Leased Estate

Department of Foreign Affairs and Trade

ANAO Audit Report No.36 2010–11

Service Delivery in CRS Australia

Department of Human Services

ANAO Audit Report No.37 2010–11

Management of Explosive Ordnance Held by the Air Force, Army and Navy

Department of Defence

ANAO Audit Report No.38 2010–11

Management of the Certificate of Compliance Process in FMA Act Agencies

ANAO Audit Report No.39 2010–11

Management of the Aviation and Maritime Security Identification Card Schemes

Attorney-General's Department

Department of Infrastructure and Transport

ANAO Audit Report No.40 2010–11

Management of the Explosive Ordnance Services Contract

Department of Defence

ANAO Audit Report No.41 2010–11

Maintenance of the Defence Estate

Department of Defence

ANAO Audit Report No.42 2010–11

The Establishment, Implementation and Administration of the Council Allocation Component of the Regional and Local Community Infrastructure Program

Department of Regional Australia, Regional Development and Local Government

ANAO Audit Report No.43 2010–11

Australian Federal Police Protective Services

Australian Federal Police

ANAO Audit Report No.44 2010–11

AusAID's Management of Tertiary Training Assistance

Australian Agency for International Development

ANAO Audit Report No.45 2010–11

Administration of the Luxury Car Tax

Australian Taxation Office

ANAO Audit Report No.46 2010–11

Management of Student Visas

Department of Immigration and Citizenship

ANAO Audit Report No.47 2010–11

The Development and Administration of National Research Flagships

Commonwealth Scientific and Industrial Research Organisation

ANAO Audit Report No.48 2010–11

Monitoring and Compliance Arrangements Supporting Quality of Care in Residential Aged Care Homes

Department of Health and Ageing

Aged Care Standards and Accreditation Agency Ltd

ANAO Audit Report No.52 2010–11

Administration of Deductible Gift Recipients (Non-profit Sector)

ANAO Audit Report No.49 2010–11

Fuel Tax Credit Scheme

Australian Taxation Office

ANAO Audit Report No.50 2010–11

Administration of Shop Fronts

Australian Taxation Office

ANAO Audit Report No.51 2010–11

Administration of the Access to Allied Psychological Services Program

Department of Health and Ageing

Current Better Practice Guides

The following Better Practice Guides are available on the Australian National Audit Office website.

Human Resource Information Systems	
Risks and Controls	Mar 2011
Fraud Control in Australian Government Entities	Mar 2011
Strategic and Operational Management of Assets by Public Sector Entities – Delivering agreed outcomes through an efficient and optimal asset base	Sep 2010
Implementing Better Practice Grants Administration	June 2010
Planning and Approving Projects an Executive Perspective	June 2010
Innovation in the Public Sector Enabling Better Performance, Driving New Directions	Dec 2009
SAP ECC 6.0 Security and Control	June 2009
Preparation of Financial Statements by Public Sector Entities	June 2009
Business Continuity Management Building resilience in public sector entities	June 2009
Developing and Managing Internal Budgets	June 2008
Agency Management of Parliamentary Workflow	May 2008
Public Sector Internal Audit An Investment in Assurance and Business Improvement	Sep 2007
Fairness and Transparency in Purchasing Decisions Probity in Australian Government Procurement	Aug 2007
Administering Regulation	Mar 2007
Developing and Managing Contracts Getting the Right Outcome, Paying the Right Price	Feb 2007
Implementation of Programme and Policy Initiatives: Making implementation matter	Oct 2006

Legal Services Arrangements in Australian Government Agencies	Aug 2006
Administration of Fringe Benefits Tax	Feb 2006
User-Friendly Forms	
Key Principles and Practices to Effectively Design and Communicate Australian Government Forms	Jan 2006

