



LEGISLATIVE COUNCIL

PORTFOLIO COMMITTEE NO. 5

Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020

Report 54

July 2020

5



Portfolio Committee No. 5 - Legal Affairs

Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020

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Terms of reference

1. That:
 - (a) the provisions of the Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020 be referred to Portfolio Committee No. 5 – Legal Affairs for inquiry and report,
 - (b) the resumption of the second reading debate on the Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020 not proceed until the tabling of the committee report,
 - (c) the committee report by Friday 31 July 2020.

The terms of reference were referred to the committee by the Legislative Council on 16 June 2020.¹

¹ *Minutes*, NSW Legislative Council, 16 June 2020, pp 1035-1036.

Committee details

Committee members

The Hon Robert Borsak MLC	Shooters, Fishers and Farmers Party	<i>Chair</i>
Mr David Shoebridge MLC	The Greens	<i>Deputy Chair</i>
The Hon Mark Buttigieg MLC²	Australian Labor Party	
The Hon Rose Jackson MLC	Australian Labor Party	
The Hon Trevor Khan MLC	The Nationals	
The Hon Natasha Maclaren-Jones MLC	Liberal Party	
The Hon Taylor Martin³	Liberal Party	

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² The Hon Mark Buttigieg MLC replaced the Hon Shaoquett Moselmane MLC as a member of the committee on 24 July 2020.

³ The Hon Taylor Martin MLC substituted for the Hon Natalie Ward MLC from 19 June 2020 for the duration of the inquiry.

Chair's foreword

The Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020 aims to ensure that the \$51 million raised by Ms Celeste Barber can be directed to those impacted by the recent bushfires, including injured firefighters, individuals and communities severely affected, and wildlife organisations caring for injured animals.

Millions of people from around the world generously donated to Ms Barber's fund to help those individuals and communities in need. However, the fund and its donations have been subjected to much public and media debate after the limitations of the NSW Rural Fire Service and Brigades Donations Fund meant money could not be allocated as some would have intended. Indeed, the Supreme Court's decision confirmed that based on the terms of the Trust, the money could not be directed more broadly to communities devastated by fires or injured animals. This bill aims to overcome these restrictions.

I support the intentions of Ms Barber and not the legalistic interpretation of the Trust's Deed. We want to see the majority of the money allocated to what Ms Barber and her supporters intended. It is crucial that this occurs, especially when many people impacted by the bushfires are still living in tents in the middle of winter, with no support.

As the committee heard during this inquiry, the Trustees have the ability to set up or contribute to a fund to support rural firefighters injured while firefighting or the families of rural firefighters killed while firefighting. Even with this ability, based on the Supreme Court's decision, it seems that the Trustees have not yet allocated any funds from Ms Barber's appeal for this cause and it is not clear if they are intending to do so. The funds are not available to accommodate the NSW Rural Fire Service wish list. It should go to the volunteers who have been injured and/or who have lost their homes whilst fighting the fires, and to the families of those firefighters who lost their lives.

With this in mind, the committee has recommended the establishment of a Rural Fire Service Volunteers Benevolent Fund, administered cooperatively by the NSW Rural Fire Service, the Volunteer Fire Fighters Association and the Rural Fire Service Association. Our hope is that this will provide immediate support to volunteer firefighters who have been injured and/or who have lost their homes to fires during the course of their volunteer duties, and to the families of firefighters who have lost their lives. It is imperative that the Trust allocate an initial start-up budget for this Benevolent Fund from any unallocated donated monies originating from the Ms Barber fund in the NSW Rural Fire Service and Brigades Donations Fund as at 31 July 2020.

To ensure some of the funds can also be distributed to the individuals and communities severely impacted by the bushfires and the wildlife organisations caring for the animals injured, the committee has recommended that the Legislative Council proceed to debate the Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020 and that the committee comments and concerns identified by stakeholders as set out in this report be addressed during debate in the House.

On behalf of the committee, I would like to thank all who participated in the inquiry, and who provided submissions, contributed to the online questionnaire and attended the public hearing at short notice. I would also like to thank the secretariat for their assistance, and committee members for their considered contributions to this process.

Finally, I present the report to the House and call on members to consider the generosity of millions of people who donated to Ms Barber's fund by supporting that their donations be provided to the volunteer firefighters, their families and the communities who need it.

A handwritten signature in black ink, appearing to read "Borsak", is centered on a light gray rectangular background.

Hon Robert Borsak MLC
Committee Chair

Recommendations

Recommendation 1

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That the NSW Rural Fire Service establish a Rural Fire Service Volunteers Benevolent Fund, with this Fund administered cooperatively by the NSW Rural Fire Service, the Volunteer Fire Fighters Association and the Rural Fire Service Association, so that immediate support can be provided to volunteer firefighters who have been injured and/or who have lost their homes to fires during the course of their volunteer duties, and to the families of firefighters who have lost their lives.

Recommendation 2

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That the NSW Rural Fire Service and Brigades Donations Trust allocate an initial start-up budget for said Benevolent Fund from any unallocated donated monies originating from the Ms Celeste Barber fund in the NSW Rural Fire Service and Brigades Donations Fund as at 31 July 2020.

Recommendation 3

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That the Legislative Council proceed to debate the Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020, and that the committee comments and concerns identified by stakeholders as set out in this report be addressed during debate in the House.

Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 16 June 2020.

The committee received five submissions from nominated stakeholders and organisations/experts who were invited to make a submission.

The committee received 162 responses from individual participants to an online questionnaire.

The committee held one public hearing by video conference on 16 July 2020.

Inquiry related documents are available on the committee's website, including submissions, the hearing transcript and the report on the online questionnaire.

Chapter 1 Overview

This chapter provides an overview of the provisions of the Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020.

Background of the Bill

- 1.1 During the summer of 2019-20, Australia experienced catastrophic bushfire conditions, the result of which were millions of hectares of burnt bushland and agricultural land, the loss of thousands of homes and properties and many animals killed or injured.⁴ In New South Wales alone, 26 people lost their lives and 2,448 homes were destroyed.⁵
- 1.2 In response to the tragedy that was unfolding, Ms Celeste Barber, an Australian comedian and media personality, launched a charitable crowdfunding appeal in early January 2020. Ms Barber published on a public Facebook page a call for donations that was titled 'Please help anyway you can. This is terrifying' followed by 'Fundraiser for the Trustee for the NSW Rural Fire Service and Brigades Donation Fund'.⁶
- 1.3 Ms Barber established the appeal through the PayPal Giving Fund, which allowed recipients to make electronic payment through PayPal. The PayPal Giving Fund would then provide the donations to a nominated fund within 90 days. Ms Barber nominated the NSW Rural Fire Service and Brigades Donation Fund as the proposed recipient of the appeal donations.⁷
- 1.4 There was an overwhelmingly generous response from all around the world with approximately \$51 million in donations raised by the end of January 2020. Subsequently, the PayPal Giving Fund transferred this money to the NSW Rural Fire Service and Brigades Donation Fund.⁸
- 1.5 However, during the fundraising campaign Ms Barber and some members of the public indicated that the donations raised could also be provided to other charities, such as the Red Cross and WIRES, and to family members of firefighters who had lost their lives and the South Australian and Victorian Rural Fire services.⁹
- 1.6 Subsequently concerns were raised regarding the limitations of the NSW Rural Fire Service and Brigades Donation Fund and the ability to allocate funds for these other reasons.¹⁰

⁴ *New South Wales Rural Fire Service & Brigades Donations Fund; Application of Macdonald & Or [2020] NSWSC 604*, p 3.

⁵ Submission 3, NSW Rural Fire Service, p 1.

⁶ *New South Wales Rural Fire Service & Brigades Donations Fund; Application of Macdonald & Or [2020] NSWSC 604*, pp 3-5.

⁷ *New South Wales Rural Fire Service & Brigades Donations Fund; Application of Macdonald & Or [2020] NSWSC 604*, pp 3-5.

⁸ *New South Wales Rural Fire Service & Brigades Donations Fund; Application of Macdonald & Or [2020] NSWSC 604*, p 7.

⁹ Submission 3, NSW Rural Fire Service, p 2.

¹⁰ *Hansard*, NSW Legislative Council, 3 June 2020, p 12 (David Shoebridge).

- 1.7 The NSW Rural Fire Service and Brigades Donation Fund is a public fund which was established by the NSW Rural Fire Service on 10 April 2012 to assist brigades in managing tax deductible donations. The fund is independent of the NSW Rural Fire Service, and decisions regarding the disbursement of funds is a matter for the Trustees of the fund, in accordance with the Trust Deed and deductible gift recipient status requirements.¹¹ The Trust is managed by six Trustees, of which four are long term volunteers and two are senior staff of the NSW Rural Fire Service.¹²
- 1.8 As described in the Trust Deed, payments to the fund must be applied as follows:
- to or for the brigades in order to enable them or assist them to meet the costs of purchasing and maintaining firefighting equipment and facilities, providing training and resources and/or to otherwise meet the administrative expenses of the brigades which are associated with their volunteer-based fire and emergency service activities
 - for authorised investments which are consistent with carrying out the purpose described in the bullet point above
 - to meet the reasonable costs of the current and continuing operation and management of the Trust.¹³
- 1.9 As concerns regarding the allocation of Ms Barber's fundraising donations were becoming apparent, the NSW Rural Fire Service contacted the PayPal Giving Fund (PPGF) to determine whether it was possible to identify a donor's intent at the time of making their donation and if so, if the funds could be redirected accordingly. The NSW Rural Fire Service told the committee that 'the PPGF advised that this was not in line with the rules of the fund, and that the circumstances in which the PPGF may seek to reassign donations had not arisen in the context of Celeste Barber's fundraising campaign'. Subsequently, the Trustees of the NSW Rural Fire Service and Brigades Donation Fund sought advice from the Supreme Court of NSW as to whether the funds could be applied in that way.¹⁴

Supreme Court decision

- 1.10 The application in the Supreme Court of NSW to consider the proper interpretation of the NSW Rural Fire Service Trust Deed was heard before Justice Michael Slattery on 18 May 2020.¹⁵
- 1.11 In the decision, it was noted that the Trustees wished to honour the intentions of Ms Barber and recipients of the donations in line with the Trust Deed and applicable law. The Trustees therefore sought the Court's advice on whether the monies in the fund could be applied to any of the following four objectives:

¹¹ Submission 3, NSW Rural Fire Service, p 1.

¹² Correspondence from Mr Andrew Macdonald, to Chair, NSW Rural Fire Service and Brigades Donations Fund, to Chair, 23 July 2020.

¹³ Submission 3, NSW Rural Fire Service, p 1.

¹⁴ Submission 3, NSW Rural Fire Service, p 2.

¹⁵ Submission 3, NSW Rural Fire Service, p 3; *New South Wales Rural Fire Service & Brigades Donations Fund; Application of Macdonald & Or* [2020] NSWSC 604, p 3.

- paying money to other charities or rural fire services, whether in New South Wales or other Australian states or territories, to assist in providing relief to persons and animals affected by bushfires
- setting up or contributing to a fund to support rural firefighters injured while firefighting, or the families of rural firefighters killed while firefighting
- providing physical health training and resources, mental health training and resources, or trauma counselling services, to volunteer firefighters
- setting up or contributing to a fund to meet the costs for volunteer rural firefighters to attend and complete courses that improve skills related to the volunteer-based fire and emergency services activities of the brigades.¹⁶

1.12 The Supreme Court handed down its decision on 25 May 2020. The Court determined that each of the donors made payment to the PayPal Giving Fund with the intention that the money would be transferred to the NSW Rural Fire Service and Brigades Donation Fund. The Court noted that once the monies were transferred to the fund they were held subject to the RFS Trust Deed, 'despite what the donors may have hoped or intended might be done with the money'. It stated that: 'Any funds received by the Trustees in that capacity must be applied only for the purposes set out in the RFS Trust Deed. Any other application of the funds would be a breach of Trust'.¹⁷

1.13 In terms of the four objectives proposed by the Trustee, the Court determined that the following are permissible under the terms of the RFS Trust Deed:

- setting up or contributing to a fund to support rural firefighters injured while firefighting, or the families of rural firefighters killed while firefighting
- providing physical health training and resources, mental health training and resources, or trauma counselling services to volunteer firefighters
- setting up or contributing to a fund to meet the costs for volunteer rural firefighters to attend and complete courses that improve skills related to the volunteer-based fire and emergency services activities of the brigades.¹⁸

1.14 Importantly, the Court determined that the monies in the fund could not be used 'to give to other charities, or to donate interstate, or to help people or animals affected by bushfires'. It advised that clause 3.3 of the RFS Trust Deed prohibits payments to be made from the fund not in accordance with the Deed. Given the Deed states payment is to be made 'to or for brigades' this precludes payment to other charities for bushfire related purposes and could not be characterised as an 'administrative' cost of the fund. In regards to animals affected by

¹⁶ *New South Wales Rural Fire Service & Brigades Donations Fund; Application of Macdonald & Or* [2020] NSWSC 604, pp 3-4.

¹⁷ *New South Wales Rural Fire Service & Brigades Donations Fund; Application of Macdonald & Or* [2020] NSWSC 604, pp 9 and 14.

¹⁸ *New South Wales Rural Fire Service & Brigades Donations Fund; Application of Macdonald & Or* [2020] NSWSC 604, pp 18-19.

bushfires, the Court determined that 'nothing in the RFS Trust Deed ... would permit such a payment'.¹⁹

- 1.15** On the decision as to whether or not broader members of the public could be provided assistance with the monies in the fund, the Court made the following determination:

As to using the fund to ameliorate the effects of fires upon people who are not members of the brigades, in the Court's opinion that too cannot be justified on the words of clause 2.3(a). Firstly, the payments must be 'to enable or assist' the brigades to meet the specified costs of the various objectives. One would not characterise payments to members of the wider community affected by bushfires as having the necessary association with the brigades.²⁰

- 1.16** In relation to using the monies to assist interstate rural fire services, the Court determined that 'brigades' as referenced in the Deed are established under the *Rural Fires Act*, which applies to brigades established or operating within New South Wales. It stated that 'it would not be a permissible application of Trust funds for payments to be made to rural fire brigades in other States or Territories of Australia'. However, the Court determined there is an exception that arises under the *Rural Fires Act*, where 'interstate fire brigades are integrated into the command structure of the brigades, it would be permissible for their administrative expenses to be met' under the Deed.²¹

- 1.17** The Court in its determination concluded:

Some donors may have intended or hoped that the money they donated would be used for purposes beyond those which the Court has advised are permissible. Despite the Trustees' wish to honour those intentions or hopes the law provides principles that ensure a degree of certainty in the application of Trust funds including charitable Trust funds and the Court has applied these principles in giving its advice in these reasons.²²

Referral of the Bill

- 1.18** Following the decision of the Supreme Court, the Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020 was introduced in the Legislative Council on 3 June 2020 by Mr David Shoebridge MLC, a Greens member. Mr Shoebridge gave his second reading speech in the Legislative Council on 3 June 2020 before debate was adjourned.²³

¹⁹ *New South Wales Rural Fire Service & Brigades Donations Fund; Application of Macdonald & Or* [2020] NSWSC 604, pp 15-16.

²⁰ *New South Wales Rural Fire Service & Brigades Donations Fund; Application of Macdonald & Or* [2020] NSWSC 604, p 16.

²¹ *New South Wales Rural Fire Service & Brigades Donations Fund; Application of Macdonald & Or* [2020] NSWSC 604, pp 15-16.

²² *New South Wales Rural Fire Service & Brigades Donations Fund; Application of Macdonald & Or* [2020] NSWSC 604, pp 15-16.

²³ *Hansard*, NSW Legislative Council, 3 June 2020, pp 12-14 (David Shoebridge).

- 1.19** On 16 June 2020, the Legislative Council Selection of Bills Committee recommended that the provisions of the Bill be referred to Portfolio Committee No. 5 – Legal Affairs for inquiry, and that the committee report by Friday 31 July 2020.²⁴
- 1.20** On 16 June 2020, the Legislative Council referred the Bill to Portfolio Committee No. 5 – Legal Affairs on the motion of the Hon Natasha Maclaren-Jones MLC, Chair of the Selection of Bills Committee.²⁵

Overview of the Bill's provisions

- 1.21** The object of the Bill, as set out in the explanatory note, is to amend the *Rural Fires Act 1997* to:
- a. allow for the application of certain money in the NSW Rural Fire Service and Brigades Donations Fund for purposes relating to bush fire emergency relief, and
 - b. provide protection from breach of trust and civil liability in relation to the application of that money.²⁶

- 1.22** In particular, the Bill amends Section 137A of the *Rural Fires Act 1997* by inserting:

137A Application of NSW Rural Fire Service and Brigades Donations Fund

1. Despite the terms of the Deed, the Trustees may pay or apply relevant Trust money for the purpose of providing support or assistance to any one or more of the following—
 - a. the families of volunteer rural fire fighters killed while providing rural fire services,
 - b. volunteer rural fire fighters injured while providing rural fire services,
 - c. people and organisations providing care to animals injured or displaced by bush fires,
 - d. people and communities that are significantly affected by bush fires.
2. Subsection (1) is limited to people, organisations or communities within Australia.
3. Nothing done by a Trustee in accordance with this section is to be regarded for any purpose as constituting a breach of trust or breach of the Deed by the Trustee.
4. Without limiting subsection (3), a Trustee does not incur any civil liability for any act done or omitted to be done in accordance with this section.
5. In this section—

deed means the NSW Rural Fire Service and Brigades Donations Fund Trust Deed.

relevant trust money means gifts or contributions received by or on behalf of the Trust during the period commencing on 1 November 2019 and ending on 1 February 2020.

trust means the NSW Rural Fire Service and Brigades Donations Fund.

²⁴ Selection of Bills Committee, NSW Legislative Council, *Report no. 33 – 16 June 2020* (2020), p 2.

²⁵ *Minutes*, NSW Legislative Council, 16 June 2020, Item 5, p 1036.

²⁶ Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020, First Print, Explanatory Note, p 1.

trustee means a Trustee of the NSW Rural Fire Service and Brigades Donations Fund.

volunteer rural fire fighter includes a member of a rural fire brigade (however described) of another State or Territory.

1.23 In his second reading speech, Mr Shoebridge explained the purpose of the Bill:

What the Bill does is very simple: It uses the Rural Fire Service Act as the vehicle to, effectively by statute, amend the purposes of the Deed. It does not do so on an ongoing basis; it does so only in respect of moneys received in the relevant period, being the period within which people were donating so generously as a result of the fires. It seeks to give effect to the intent of the community across the board when they were making donations to the Celeste Barber appeal.²⁷

1.24 In addition, Mr Shoebridge explained that \$20 million of the donations to the fund has already been allocated to the NSW Rural Fire Service and this Bill would enable the remaining \$30 million to be allocated to 'the communities that have been savaged by bushfires'. Mr Shoebridge said that this would include people who have lost their homes in the fires and wildlife organisations. Mr Shoebridge also stated that the funds should expand to interstate areas also affected by the bushfires, such as Victoria and Kangaroo Island.²⁸

²⁷ *Hansard*, NSW Legislative Council, 3 June 2020, p 14 (David Shoebridge).

²⁸ *Hansard*, NSW Legislative Council, 3 June 2020, pp 12 and 14 (David Shoebridge).

Chapter 2 Key issues

This chapter considers a range of views in relation to the Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020 (the Bill). It considers the intentions of Ms Celeste Barber in setting up the fundraising appeal and those who donated to it, as well as how the Trustees have since allocated the donated funds. The chapter also examines the discretionary powers of the Trustees, the date range of the Bill, and tax and stamp duty implications. It concludes with a discussion on the impact the Bill may have on the public's confidence in future charitable fundraisers.

Intentions of the fundraiser and donors

- 2.1** A key topic of contention in relation to the Bill were the intentions of the fundraiser and donors. This section outlines the intentions of Ms Barber, an Australian comedian and media personality, when creating the charitable crowdfunding appeal. It then considers arguments as to whether the donated funds should go to the volunteers, communities and wildlife organisations affected by the fires, as Ms Barber intended, or if the donations should be allocated purely in accordance with the Trust Deed of the NSW Rural Fire Service and Brigades Donation Fund.
- 2.2** Ms Barber provided a submission to the inquiry which outlined her intentions of the fundraiser. She told the committee that her initial goal was to raise \$30,000 to provide support to the firefighters during the devastating bushfires. However, within a number of days Ms Barber said that 'the money kept coming in and I kept updating the goal'. She said that overnight this goal was at \$1 million and within days it was at \$10 million.²⁹
- 2.3** Ms Barber advised that 'in the days that followed, it was suggested to me that I open up a number of additional fundraising pages so the money could go to other charities'. She indicated that she was unsure what to do at this stage, commenting 'I feared that if I closed this particular fundraiser down and started another one the momentum might have been lost'.³⁰
- 2.4** In correspondence to the committee, the Chair of the NSW Rural Fire Service and Brigades Donations Fund, Mr Andrew Macdonald, also noted Ms Barber's consideration of whether to create a separate fundraising entity at that time:

When the NSW RFS and the Trust learnt that Ms Barber sought to distribute funds more broadly the Service, on behalf of the Trust, suggested to Ms Barber and her team that the fund raising appeal be closed, and a new one created which could benefit her proposed beneficiaries. This occurred on the 6 January 2020, approximately three days after her fund raising campaign was established. However, as Ms Barber indicated in her submission, concern was expressed that if this occurred, the level of momentum associated with the fundraising campaign could be lost.³¹

²⁹ Submission 4, Ms Celeste Barber, pp 1-2.

³⁰ Submission 4, Ms Celeste Barber, p 2.

³¹ Correspondence from Mr Andrew Macdonald, Chair, NSW Rural Fire Service and Brigades Donations Fund, to Chair, 23 July 2020.

2.5 Ms Barber told the committee that as the funds continued to increase she felt that the money could be shared to assist people to rebuild their homes and communities who had lost them in the fires:

Now that the money was in the tens of millions I was asked by a number of people, hundreds, possibly thousands, to make sure the money was going to be shared to those that needed it. To help rebuild communities, rebuild homes for those that lost them and help with the devastating loss of our wildlife. Understandably, I started the fundraiser to help my family, with a goal of 30K, then when it surpassed tens of millions of dollars, and the fires kept raging and the devastation was unfathomable I absolutely thought it would be possible for this huge amount of money to be shared.³²

2.6 Further, in her submission, Ms Barber advised that her understanding was that the NSW Rural Fire Service had already distributed \$20 million of the donated funds to their brigades. She advocated for the remaining \$30 million to go 'to people that need it, to honour those donors, some of whom were children from fire ravaged communities themselves, donating anything they could, to help others rebuild their lives'. She stated 'it makes so much sense to me and thousands of people around the world who donated that this money be given to those and others in need'.³³

2.7 Other stakeholders who contributed to the inquiry via an online questionnaire also supported the intentions of Ms Barber and the purpose of the Bill in enabling donated funds to be provided to families, communities and animal welfare organisations significantly affected by the fires.

2.8 For example, one individual stated that the funds should be going to the people who have lost their homes and to wildlife organisations:

Funds from the Celeste Barber appeal should be allocated to support victims of the fires, including people who have lost homes and because of varying restrictions, are unable to rebuild. Wildlife agencies who are caring for injured and displaced animals should also receive support.³⁴

2.9 Another online questionnaire respondent highlighted that 'all of those people who worked so hard and donated so much towards her wonderful appeal have been horrified to find that there is such a blockage stopping those funds from going to the very people who should benefit'. This individual stated that 'even now there are still people living in tents and caravans on their land who have not received any assistance whatsoever to restore their lives and properties', which 'is simply not right'.³⁵

³² Submission 4, Ms Celeste Barber, p 2.

³³ Submission 4, Ms Celeste Barber, p 2.

³⁴ Portfolio Committee No. 5 – Legal Affairs, NSW Legislative Council, *Report on the online questionnaire: Inquiry into the provisions of the Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020*, p 4.

³⁵ Portfolio Committee No. 5 – Legal Affairs, NSW Legislative Council, *Report on the online questionnaire: Inquiry into the provisions of the Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020*, p 4.

2.10 Other respondents to the online questionnaire argued that individuals who donated were unaware of the limitations of the NSW Rural Fire Service and Brigades Donations Fund. For example, one respondent stated the following:

Most if not all of the people who donated money in Celeste Barber's campaign were not fully aware about the limitations on how their donations could be spent. Given the intensities of the recent fire season I think it is more than acceptable [to] release part if not all of the money donated in this campaign to the people that really need it.³⁶

2.11 Another respondent said that 'obviously the people who donated expected it to go to the victims' and although there is 'no question the RFS is deserving' it 'doesn't change the INTENT of the donors'. Likewise, another individual commented that 'the money was donated to go to people directly affected by the fires as well as assist local RFS brigades' and 'their wishes need to be respected'.³⁷

2.12 However, some stakeholders were of the view that the intention of the fundraising campaign was made clear, given it was titled 'Fundraiser for the Trustee for the NSW Rural Fire Service and Brigades Donation Fund'. These stakeholders argued that the title of the fundraiser is the only indication of donor's intentions and the terms of the Trust Deed should be adhered to.

2.13 For example, a number of online questionnaire respondents commented that the purpose and intention of donations made to the fund were clearly stated and known during the fundraising process. One respondent claimed that 'when donations were made, it was clear where the donations were going and how the money would be spent' and 'changing it now is inappropriate'. Another respondent commented that 'the fund was set up for a specific purpose, and the funds should remain with the intent of the Charity the funds were paid into'. A further respondent highlighted that 'there's no way to determine who did or didn't understand the aim of the fund' and if the Bill were to pass it 'sets a dangerous precedent for Trust funds, and undermines those who genuinely gave money with the understanding it would be given to brigades of volunteers'.³⁸

2.14 Dr Derwent Coshott, Lecturer at the University of Sydney Law School, said that 'despite Ms Barber's later public pronouncements as to what else should be done with donations when the fundraiser exceeded her expectations, the objectively stated terms of the fundraiser were clear and unaltered throughout its duration'. He explained that while some donors believe their money should be spent on communities and wildlife impacted by the fires, others intended for their donations to go to supporting the Rural Fire Service brigades. Dr Coshott argued 'it is impossible to know the intentions of the vast majority of donors' and given 'we only have the clearly stated purposes of the fundraiser itself in order to determine what these donors

³⁶ Portfolio Committee No. 5 – Legal Affairs, NSW Legislative Council, *Report on the online questionnaire: Inquiry into the provisions of the Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020*, p 4.

³⁷ Portfolio Committee No. 5 – Legal Affairs, NSW Legislative Council, *Report on the online questionnaire: Inquiry into the provisions of the Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020*, p 5.

³⁸ Portfolio Committee No. 5 – Legal Affairs, NSW Legislative Council, *Report on the online questionnaire: Inquiry into the provisions of the Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020*, p 2.

wanted' it comes down to the question of whether it is acceptable to override this. In Dr Coshott's view it is not appropriate to permit 'money's to be used for purposes not stated in the fundraiser's clear terms'.³⁹

- 2.15** In relation to the statements made by Ms Barber outside of the stated terms of the fundraiser on where the money should go, Dr Coshott expressed the view that he was 'uncomfortable, with, effectively, social media comments forming the basis of an ex post interference with a charitable donation'.⁴⁰ He highlighted that even then we cannot know what donors intentions were:

As for the other stuff—as for other statements made by Ms Barber later on—some people may have seen it; some people may not have seen it; some people may have believed it; we know that others did not. It was reported in *The Australian*, a mere day after statements were made that this would go to other purposes, that people were sending messages to Ms Barber and writing on the Facebook page itself that, 'No, it couldn't, and it would only go to the RFS Trust.' So we had these debates that were going on, on the Facebook page's own posts. We do not know what people thought. We do not know what people thought except for what they saw when they made that donation.⁴¹

- 2.16** The NSW Rural Fire Service held a similar view, commenting that some donors would agree with Ms Barber's intentions and others would have donated their funds to specifically go to the Rural Fire Service brigades:

The Trust is established for the benefit of brigades. Whilst some donors of Celeste Barber's fundraising campaign may have intended their donations to be placed in the hands of other charities, others donated with the express understanding that their contribution would go directly to the Trust and that it was entirely appropriate to do so. As previously advised, the donations page clearly stated that funds raised would go the Trustee of the NSW Rural Fire Service & Brigades Donation Fund.⁴²

- 2.17** Further, Mr Stephen O'Malley, Executive Director, Finance and Executive Services, NSW Rural Fire Service, acknowledged that whilst there is no doubt that some members of the community are dissatisfied with the ruling of the Supreme Court, he brought to the attention of the committee 'that over 1,446 million individual donors supported the Trust through the PayPal Giving Fund'. He advised that 'this platform was the underlying platform for the campaign conducted by Ms Barber and a significant number of other fundraising campaigns' at that time.⁴³

- 2.18** The NSW Rural Fire Service Association highlighted that if the money was applied as per the proposed Bill to a purpose not within the terms of the Trust Deed this would in effect be taking money away from the volunteer firefighters. The Association indicated that 'such an outcome would be concerning to us at any time', however 'is even more egregious following

³⁹ Submission, 1, Dr Derwent Coshott, pp 2-4.

⁴⁰ Evidence, Dr Derwent Coshott, Lecturer, The University of Sydney Law School, 16 July 2020, uncorrected transcript, p 21.

⁴¹ Evidence, Dr Coshott, 16 July 2020, uncorrected transcript, p 18.

⁴² Submission 3, NSW Rural Fire Service, p 4.

⁴³ Correspondence from Mr Stephen O'Malley, Executive Director Finance and Executive Services, NSW Rural Fire Service NSW Rural Fire Service, to secretariat, 23 July 2020.

the most recent bushfire season'. The Association said that it appreciated the needs of affected individuals, whole communities and the natural environment, however it could not 'accept the proposition of money being diverted away from volunteer firefighters, who were the very people putting their own lives at risk to protect the broader community from the threat of those fires'.⁴⁴

2.19 Mr Macdonald acknowledged the contributions of donors in supporting the NSW Rural Fire Service and the work of Ms Barber, and recognised that the allocation of this funding has been complex:

People and organisations who raised money in which the Trust was the recipient did so on their own initiative, and we are grateful for the efforts of all who donated in support of NSW RFS members. In regards to the recent fundraising efforts of Ms Celeste Barber, we wish to recognise the incredible work of Ms Barber and the more than one million donors who contributed to her campaign, making it the most successful online fundraising platform in history. The issue of funds being used for purposes outside the Deed that governs the Trust is a complicated one, and one which we have sought to resolve in a way that is fair and transparent.⁴⁵

Allocation of funds

2.20 The committee heard that the funds donated through Ms Barber's appeal, as well as from other fundraisers to the NSW Rural Fire Service and Brigades Donation Fund, have already been allocated by the Trustees of the Fund.

2.21 More specifically, the NSW Rural Fire Service told the committee that the Trust has already allocated the funds raised by Ms Barber. The NSW Rural Fire Service explained that the Trust has allocated \$20 million to provide immediate support to fire brigades for items in line with the Trust Deed. As part of this allocation process, brigades put forward their funding proposals, and the Trust received 562 applications and paid approximately \$2.7 million (as at the time of writing its submission to the inquiry).⁴⁶ Mr Macdonald later confirmed that 'more than 400 brigades have received funding, and applications and disbursements are continuing'.⁴⁷

2.22 In June 2020, the Trust allocated a further \$70 million to initiatives that 'will assist volunteer brigades respond to incidents safely and provide welfare and support to NSW RFS members', including:

- a member availability and response system that is live and dynamic, giving timely information on the availability and response of members to incidents and is easy to use for rapid response
- mobile data terminals for firefighting vehicles that links information on calls, people, routing and in-field fire reporting

⁴⁴ Submission 2, NSW Rural Fire Service Association, pp 1-2.

⁴⁵ Correspondence from Mr Macdonald to Chair, 23 July 2020.

⁴⁶ Submission 3, NSW Rural Fire Service, p 5.

⁴⁷ Correspondence from Mr Macdonald to Chair, 23 July 2020.

- personal protective equipment – head protection and respiratory protection – to ensure the most fit for purpose face masks, goggles and flash hoods are provided to volunteers
- retrofit of fire appliances – with modern safety systems to enhance firefighter safety.⁴⁸

2.23 Mr Macdonald advised that 'some of these projects will require a significant investment, and further work is required to understand the full cost implications'.⁴⁹ In a media release relating to the initiatives, Mr Macdonald said that 'these donations will be put to good use to ensure our volunteers can do their roles safely and effectively, and some of these programs will revolutionise the way our brigades deliver their services to the community'.⁵⁰

2.24 At a hearing, Mr O'Malley from the NSW Rural Fire Service was questioned further on the allocation of the funds. Mr O'Malley reiterated the actions of the Trustees in distributing the funds:

I would just like to make it clear that the Trustees have allocated so far \$90 million to very laudable programs of work that specifically support volunteers. So the Trustees initially made an allocation of \$20 million into a grants program that volunteers have been able to access, so brigades have been putting submissions to the Trust in terms of the sorts of things that they may wish to have funded by the Trust. Those have been being considered and funds have been being distributed out to brigades so that they are getting the things that they want.⁵¹

2.25 Mr O'Malley advised that the Trustees, in cooperation with the NSW Rural Fire Service, also conducted a survey of its members, in which it received 1,600 responses, asking members their views on how the money should be distributed.⁵² The general results of the survey showed that:

- it is important the NSW Rural Fire Service engages with its members to develop ideas which deliver improved programs or services and be transparent about how funds are used
- there is strong support for the themes identified in the Trust Fund, with a big focus on equipment, while less than 50 per cent strongly agreed with member support initiatives
- the top priority areas include additional firefighting equipment used by local brigades such as hoses, trucks, pumps, chainsaws and tools, additional firefighting equipment used across a large area, such as communications vehicles and aircrafts, and improving brigade stations and amenities, as well as connectivity, such as internet and radio networks
- the lowest priority are brigade recruitment materials, brigade management tools and firefighting memorials

⁴⁸ Submission 3, NSW Rural Fire Service, p 5.

⁴⁹ Correspondence from Mr Macdonald to Chair, 23 July 2020.

⁵⁰ Media release, NSW Rural Fire Service, '\$90 million of donations supporting volunteers and NSW communities', 3 June 2020.

⁵¹ Evidence, Mr Stephen O'Malley, Executive Director Finance and Executive Services, NSW Rural Fire Service, 16 July 2020, uncorrected transcript, p 27.

⁵² Evidence, Mr O'Malley, 16 July 2020, uncorrected transcript, p 27.

- most submissions focused on equipment and infrastructure, including improvements to existing trucks and stations, and ensuring funding is targeted at brigades who need it most.⁵³

2.26 Mr O'Malley told the committee that since the survey and since having the guidance of the Supreme Court, 'the Trustees have allocated a further \$70 million across a variety of programs', and '\$15 million of that is intended to be support for volunteer welfare in a variety of different ways'.⁵⁴

2.27 In terms of this latter amount, Mr O'Malley clarified that the Trust is still discussing how to distribute the \$15 million assigned to supporting volunteer welfare programs:

I am certainly aware that the Trust has been discussing how to use that money in terms of: Is it a benevolent program? Is it a mental health program? How can it be best distributed and made best use of? While they have allocated, at the moment, a pool of funds, there is an ongoing discussion in terms of how to actually make that work. They have been talking to other agencies; for example, Legacy, that is in relation to the military, but also the police association and the sorts of programs that they run. So they have been looking at a variety of different models of how they can support volunteers most effectively.⁵⁵

2.28 Mr Macdonald, Chair of the Trust, later confirmed that the governance and operation of a NSW Rural Fire Service benevolent or legacy fund as part of the \$15 million allocation 'is still being investigated' and the Trustees are currently working with the NSW Rural Fire Service to establish such a fund. He advised that the intent of the Trust is to provide benefits and services that could include, but are not limited to:

- the funding of grief and trauma counselling
- welfare-related services, which could include some additional funding from the NSW Government
- provision of education grants
- awarding of a range of scholarships
- referrals for professional advice
- management of trust funds for NSW Rural Fire Service legatee children
- organising social functions to help family members stay in touch with the NSW Rural Fire Service fraternity and family.⁵⁶

⁵³ Correspondence from Mr Stephen O'Malley, Executive Director Finance and Executive Services, NSW Rural Fire Service NSW Rural Fire Service, to secretariat, 23 July 2020 – Attachment 1, *NSW RFS Public Donations Volunteer Feedback*, pp 4-11.

⁵⁴ Evidence, Mr O'Malley, 16 July 2020, uncorrected transcript, p 27.

⁵⁵ Evidence, Mr O'Malley, 16 July 2020, uncorrected transcript, p 28.

⁵⁶ Correspondence from Mr Macdonald to Chair, 23 July 2020.

- 2.29** However, at the hearing the committee attempted to clarify whether the funds from Ms Barber's appeal would be spent on supporting the families of volunteer firefighters who lost their lives during the fires or volunteers who were injured as part of their duties. Mr O'Malley advised that 'at the time that our firefighters were tragically killed on duty, the RFS created specific funds to support the families of those firefighters'. He explained that 'they were separate and different to the brigades donations fund and the Trust', as 'they were their own entities and members of the public were able to donate directly to support those families and they certainly did so'.⁵⁷
- 2.30** In correspondence to the committee, Mr Macdonald later confirmed that initially when it was not clear that the Trust could establish a benevolent fund to support the families of the deceased firefighters, the NSW Rural Fire Service established separate bank accounts to collect donations for those families. He outlined that 'the community responded by donating significant amounts to these accounts' and the NSW Rural Fire Service has kept the Trustees 'briefed on the arrangements established for the families of the deceased firefighters, and the support being provided to them in what is a very difficult time'.⁵⁸
- 2.31** Mr O'Malley also later confirmed that when the three firefighters had lost their lives during the 2019-20 bush fire season an official channel was established for the community to make those donations, with facilities established with the support of each of the families, the NSW Treasury and the Westpac Banking Corporation to accept donations. He advised that these fundraisers were separate from the Trust and controlled by the NSW Rural Fire Service with details of the fundraising provided to the public via the Service website and social media channels. Mr O'Malley explained that a Disaster Relief Fund was established to facilitate the tax deductibility of donations made and at conclusion of the fundraiser 100 per cent of funds received were distributed to the beneficiaries as a gift and as such tax free. Mr O'Malley also advised that the families have, or will, also receive other support, including counselling and family support and statutory payments under workers compensation, and also offers of numerous financial and educational assistance have been made directly to the families.⁵⁹
- 2.32** In relation to volunteers injured during their duties, Mr O'Malley pointed to the workers compensation scheme, commenting that the Act 'extends the vast majority of the coverage of the normal Workers Compensation Scheme in New South Wales to volunteers in the circumstances of their volunteering so they essentially receive the same benefits' as if they are injured in a workplace.⁶⁰
- 2.33** Regarding the firefighters who lost their homes, Mr Macdonald advised that the NSW Rural Fire Service independently of the Trust 'has provided financial support, through the provision of ex-gratia payments of \$10,000, to meet the immediate needs of volunteers whose homes were lost whilst they were engaged in active duty'.⁶¹ In this regard, Mr O'Malley advised that ex gratia payments 'have been made to 89 firefighters to assist them in rebuilding their lives' and

⁵⁷ Evidence, Mr O'Malley, 16 July 2020, uncorrected transcript, p 25.

⁵⁸ Correspondence from Mr Macdonald to Chair, 23 July 2020.

⁵⁹ Correspondence from Mr O'Malley to secretariat, 23 July 2020.

⁶⁰ Evidence, Mr O'Malley, 16 July 2020, uncorrected transcript, p 25.

⁶¹ Correspondence from Mr Macdonald to Chair, 23 July 2020.

'a small number of potential recipients are continuing to be contacted and details sought to allow payments to be made'.⁶²

2.34 In terms of some of the donated funds being used for equipment and infrastructure upgrades, the committee explored whether these items should have been covered through existing funding arrangements by the state government.

2.35 Mr O'Malley was asked why it seems the Trust is allocating donated funds to items that the state government should fund. Mr O'Malley replied:

The things the Trust is seeking to support, if anything, are being able to do something immediately that would otherwise take the Rural Fire Service a considerable amount of time to roll out. An example may be breathing apparatus. If we are to scientifically change our breathing apparatus, we would roll that out over time. If the Trust is supportive of doing a distribution to volunteers, there is an ability to potentially do that as a single rollout, at which point the Government continues to support the provision of that over time in the way that it has always done. So it is an ability to bring forward and make a stepwise transition in what the RFS might otherwise provide.⁶³

2.36 In addition, Mr O'Malley commented that the Trustees have 'been in an extremely difficult position' where 'they have a substantial amount of funds which they need to disperse in accordance with the Trust Deed'. He explained that the Trust has 'proven somewhat difficult to interpret' which meant seeking guidance from the Supreme Court. Mr O'Malley highlighted that this has taken considerable time and given there wasn't 'any doubt that the Trustees were able to distribute funds to things like infrastructure' and in 'keeping faith with the community who had provided these donations so generously' they started to distribute funds in that way.⁶⁴

2.37 There was also a discussion as to whether the money donated through Ms Barber's appeal would impact on the NSW Rural Fire Service's usual bid for funding. Mr O'Malley explained that 'there is an expectation that the Government will continue to fund what it has funded in the past and will continue to make [that] available for volunteers'. Mr O'Malley clarified that they are seeking to ensure that these funds would not be used to replace government funding and that he holds the view that 'the government will consider the submissions of the Rural Fire Service in the same way it always does'.⁶⁵

2.38 On this point, Mr Brian McDonough, President, NSW Rural Fire Service Association, indicated that even with the \$51 million donated from Ms Barber's appeal the Rural Fire Service still does 'not have enough money to do what we need to do', commenting that it would need 'at least in the order of another \$100 million a year' on top of its annual funding.⁶⁶

⁶² Correspondence from Mr O'Malley to secretariat, 23 July 2020.

⁶³ Evidence, Mr O'Malley, 16 July 2020, uncorrected transcript, p 31.

⁶⁴ Evidence, Mr O'Malley, 16 July 2020, uncorrected transcript, p 27.

⁶⁵ Evidence, Mr O'Malley, 16 July 2020, uncorrected transcript, pp 30 and 33.

⁶⁶ Evidence, Mr Brian McDonough, President, NSW Rural Fire Service Association, 16 July 2020, uncorrected transcript, pp 4-5.

- 2.39** When questioned as to why what seems to be essential equipment is being purchased from the donations and not funded by the state government, Mr McDonough replied:

In an ideal world that certainly would be the case. I have no argument with that. But as you will probably find if you talk to any government department, we do not get enough funds to do everything we need to do. It is basically that nobody wants to pay more tax. It is a bit of a catch 22 for government to find the funding to fund all these things.⁶⁷

- 2.40** Mr McDonough added that he did not take the view that the use of these funds on equipment was a matter of saving the state government, however he suggested that 'if the funding had not been there we would not have these things – it is as simple as that'. He reported that to fund the Rural Fire Service, one of the largest firefighting organisations in the world, would require a 'significant amount of funding', stating that 'in the ideal world we would probably have double or triple the funding that we get at the moment but it is not there'.⁶⁸

Establishment of a Benevolent Fund

- 2.41** The Volunteer Fire Fighters Association put forward a suggestion as to how to allocate Ms Barber's appeal funds, calling for the establishment of a new Rural Fire Service Volunteers Benevolent Fund.

- 2.42** The Volunteer Fire Fighters Association argued that the \$51 million raised by Ms Barber 'should be directed to the Volunteers and Brigades who many people believed they were donating to'. However, in a media release, the Association noted that it appears this money will be 'spent on items that are already included in the RFS annual \$541 million annual budget'. Therefore, the Association called for the NSW Rural Fire Service 'to create a new RFS Volunteers Benevolent Fund from its own budget and this new \$51 million fund can start to be applied immediately to those volunteers who need help'.⁶⁹

- 2.43** The Volunteer Fire Fighters Association stated that the Benevolent Fund should be administered cooperatively by the NSW Rural Fire Service, the Volunteer Fire Fighters Association and the Rural Fire Service Association. It said that it could then be used to assist volunteers and their families in their time of need:

Over 70 volunteers lost their homes while fighting fires and protecting their communities. They still have to pay their mortgages while also paying for rental accommodation while their homes are being rebuilt. Some families have lost their breadwinner in the fires and others have lost income through incapacity and injury. A cooperatively administered RFS Volunteers Benevolent Fund, with independent oversight (VFFA and RFSA), could respond immediately to provide financial assistance and help our volunteers get back on their feet.⁷⁰

⁶⁷ Evidence, Mr McDonough, 16 July 2020, uncorrected transcript, p 3.

⁶⁸ Evidence, Mr McDonough, 16 July 2020, uncorrected transcript, pp 3-5.

⁶⁹ Media release, Volunteer Fire Fighters Association, 'RFS Volunteers need a Benevolent Fund', 7 June 2020.

⁷⁰ Media release, Volunteer Fire Fighters Association, 'RFS Volunteers need a Benevolent Fund', 7 June 2020.

- 2.44** Mr Brian Williams, Senior Vice President of the Volunteer Fire Fighters Association, had a concern with the timeliness of the allocation of funds. He stated:

These people are hurting and they need immediate help, not nine or 10 months down the track. If that fund was set up, it would help as soon as someone was killed or injured. The other thing we included was if a volunteer loses his home on duty, they should get an immediate payment. They should not have to jump through hoops. That is why we want to see that fund set up now and some of that money from the benevolent fund, so there can be an automatic response. It is going to be too late for a lot of these people by the time they receive help.⁷¹

Provisions of the Bill

- 2.45** Inquiry participants raised a number of concerns in relation to specific provisions of the Bill, including the discretionary powers of the Trustees, the date range in which the Bill applies to, and state and federal tax and stamp duty implications.

Discretion of the Trustees

- 2.46** One inquiry participant raised a concern that even though the intention of the Bill is to provide support and assistance to volunteer firefighters, their families and communities and wildlife affected by the fires, it would still be at the discretion of the Trustees to allocate those funds.
- 2.47** Dr Coshott, a Lecturer from the University of Sydney Law School, explained to the committee that the Bill as it is currently drafted provides discretionary power to the Trustees of the Fund. He advised that this 'effectively means that despite whatever power might be given to the RFS Trustee by the New South Wales Parliament, the RFS Trustee might simply decide to not exercise that power'. In other words, Dr Coshott said 'if the RFS Trustee does not want to give the money to anyone else, it does not have to'.⁷²
- 2.48** Further, Dr Coshott argued that Trustees do 'not have any expertise in allocating money to its purposes'. He commented that if the Bill is passed 'the most likely avenue is that they effectively give this money to those charities who have that expertise', such as the 'Red Cross, Salvation Army, St Vincent De Paul and others'. Dr Coshott pointed out that there is already \$135 million sitting within these charities currently unspent. He stated 'I do not think that it [the Bill] will achieve what it necessarily sets out to, and I think at best it ends up being a virtue signal that may in the end have no effect'.⁷³

⁷¹ Evidence, Mr Brian Williams, Senior Vice President, Volunteer Fire Fighters Association, 16 July 2020, p 10.

⁷² Evidence, Dr Coshott, 16 July 2020, uncorrected transcript, p 18.

⁷³ Evidence, Dr Coshott, 16 July 2020, uncorrected transcript, p 22.

2.49 In this regard, Mr O'Malley from the NSW Rural Fire Service confirmed that the Bill does not remove the discretionary power of the Trustees and it is up to the Trustees to decide on how to allocate the Trusts funds:

... I do not think I can speak on behalf of the Trustees but all I would say is that I do not think this legislation, as proposed, takes away the discretion of Trustees. It remains the responsibility of Trustees to exercise their discretion ... I cannot tell you what the Trustees may or may not do with that discretion that belongs to them.⁷⁴

Date range of the Bill

2.50 As outlined in the proposed section 137A of the Bill, 'relevant Trust money' is defined as applying to any gifts or contributions received by or on behalf of the Trust during the period commencing on 1 November 2019 and ending on 1 February 2020. Inquiry participants raised concerns that this broadens the scope of the Bill to capture donations from not only Ms Barber's fundraiser which commenced in early January but also other donations received during this time period.

2.51 The NSW Rural Fire Service Association stated that 'the terms of the Bill are significantly broader than its stated intent'. The Association highlighted that Ms Barber's appeal did not commence until January 2020, resulting in 'two thirds of the period referred to in the definition of "relevant Trust money" was before the start of the Celeste Barber appeal'. The Association remarked that 'there does not seem to be any justification for the drafting of the Bill in terms so much broader than would be necessary to achieve the stated intent'.⁷⁵

2.52 Along similar lines, Dr Coshott told the committee that 'the date range that the proposed s 137A adopts is problematic' as it includes the preceding two months prior to Ms Barber's fundraiser. Dr Coshott highlighted that 'this means that donations that had nothing to do with the fundraiser would be subject to having the intentions of their respective donors completely thwarted'. Dr Coshott was also of the view that 'there is no discernable reason for this' and 'would only serve to further erode the public's confidence in making charitable donations'.⁷⁶

2.53 Further, Dr Coshott provided an example of a donation that was clearly intended to be made to the Trust Fund in the time period before Ms Barber's fundraiser and under this Bill could then be re-directed for other purposes:

The problem is that that ends up being a larger example of the problem that I already outlined with this, and that is that it then takes into account funds which we definitely know have nothing to do with the Celeste Barber fundraiser. I use the example of the Packer Family Foundation. Those moneys were donated in November. They had nothing to do with the Celeste Barber fundraiser. Those moneys were definitely intended to go to the NSW RFS Trustee. Under the terms of this Bill those moneys are now available to be used for other purposes.⁷⁷

⁷⁴ Evidence, Mr O'Malley, 16 July 2020, uncorrected transcript, p 30.

⁷⁵ Submission 2, NSW Rural Fire Service Association, pp 304.

⁷⁶ Submission 1, Dr Derwent Coshott, p 4.

⁷⁷ Evidence, Dr Coshott, 16 July 2020, uncorrected transcript, p 19.

Tax and stamp duty implications

- 2.54** Inquiry participants also raised concerns regarding a number of unintended impacts on tax and stamp duty provisions at the commonwealth and state level if the Bill was passed.
- 2.55** By way of background, Mr O'Malley advised that the main reason for the establishment of the Trust 'was to allow individual brigades to join the Trust and ensure that they did not have to go through a very difficult administrative process to be able to become a charity and accept tax-deductible donations from the community'. He noted that 'there was always a segment within the Trust, which was a generic NSW Rural Fire Service segment, and that is available for the Trustees to distribute across all brigades within the Rural Fire Service'.⁷⁸
- 2.56** In general, Dr Ian Murray, Member of the Law Council's Charities and Not-For-Profit Committee and Associate Professor & Deputy Head of School, Research, University of Western Australia, advised that 'charitable purposes have a technical legal meaning and that meaning is separately determined at the State and Federal level'. He explained that 'the legal meaning is often used as the basis for allocating tax and other concessions again at the State and Federal level'. Dr Murray went on to say that the new purposes as drafted in the proposed Bill 'do not appear to be charitable purposes' and would result in 'having purposes that are broader than legal charitable purpose'.⁷⁹
- 2.57** Dr Murray also highlighted that the Trust 'is currently a registered charity and endorsed as an income tax exempt charity at the Federal level' and 'may well have State tax endorsements based on its charity status too'. Dr Murray stated 'rendering the RFS Trust non-charitable will likely result in the loss of all these tax concessions'. He indicated that to retain the tax concessions it would require savings legislation at the state and federal level or rewriting the purposes to narrow them to be charitable purposes.⁸⁰
- 2.58** At the commonwealth level, the NSW Rural Fire Service raised concerns regarding the Trust's deductible gift recipient status under the *Income Tax Assessment Act 1997* (Cth). The NSW Rural Fire Service noted that the Act provides for the establishment by an Australian government agency of a fund 'solely for the purpose of supporting the volunteer based emergency service activities'. The NSW Rural Fire Service explained that 'the Bill proposes to enable Trustees to apply Trust money to support and assist the activities of people and entities other than emergency services' and that 'this has implications for the Trust's deductible gift recipient status as it brings the Trust outside the scope' of the Act. The NSW Rural Fire Service highlighted that it would not be possible to provide funds to other entities, such as wildlife charities or the broader community, without the Trust breaching its deductible gift recipient status. The NSW Rural Fire Service stated that 'it could also result in donors being unable to claim tax deductions of donations made'.⁸¹

⁷⁸ Evidence, Mr O'Malley, 16 July 2020, uncorrected transcript, p 31.

⁷⁹ Evidence, Dr Ian Murray, Member of the Law Council's Charities and Not-For-Profit Committee and Associate Professor & Deputy Head of School, Research, University of Western Australia, 16 July 2020, uncorrected transcript, pp 14-15.

⁸⁰ Evidence, Dr Murray, July 2020, uncorrected transcript, pp 14-15.

⁸¹ Submission 3, NSW Rural Fire Service, p 4.

- 2.59** The Law Society of NSW also advised that it is important that the Trust Deed maintains its charitable status by complying with the original charitable terms for registration with the Australian Charities and Not-for-profits Commission and the Australian Taxation Office. The Society cautioned that failure to comply would mean the potential loss of tax concessions. The Society also noted that the Trust appears to be an *Income Tax Assessment Act 1997* (Cth) deductible gift recipient and to remain entitled to donation concessions it would also need to remain 'established and maintained solely for the purpose of supporting the volunteer based emergency service activities of non-profit entities or of Australian government agencies'. The Society highlighted that the proposed Bill would go beyond this and 'resolving these tax concession issues may require amendment to a range of pieces of federal legislation', including 'the *Charities Act 2013* (Cth), the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and the *Income Tax Assessment Act 1997* (Cth)'.⁸²
- 2.60** In terms of resolving the tax concession issues with federal legislation, Dr Coshott questioned how long this would take, reflecting on the needs of people now. He stated 'by the time action is taken in this Bill, if it is taken, people will have still suffered throughout this winter'.⁸³
- 2.61** At the state level, the Law Society of NSW also explained that maintaining the charitable status is also relevant for New South Wales tax purposes. The Society suggested consideration be given to 'phrasing the deeming in proposed section 137A(1) to be a deeming that the Trustee is applying the Trust funds for the charitable purposes of the Trust'. The Society also suggested that 'if any such deeming amendment is made it would be a good opportunity to clarify the nature of the changes in section 137A(1)' as it questioned whether this section is 'merely providing extra permissive powers to the Trustees, or is it imposing a new and distinct set of obligations on the Trustees in respect of particular Trust funds, raising the risk of the creation of a separate Trust?'.⁸⁴
- 2.62** When questioned on how to ensure the Bill would expand the purposes of the current Trust and not create a separate Trust, Dr Murray advised that 'you could address that issue by including extra provisions or by drafting'.⁸⁵ When questioned on what could be the potential consequences of a lack of clarity on this point, Dr Murray replied:

I guess the risk there would be that if there is a new Trust created then it certainly will not have any of the Act's endorsements or registrations because the Trustees will not have applied for them. Any money seen to be part of that—seen to be Trust funds of that new Trust—would then potentially, you know, the income earned on that is going to be at risk of being subject to tax. There will be no new donations that are tax deductible to that pool of money is. That may be less of a concern but it will basically be a separate Trust which does not have any of the tax benefits because you will have to start freshly applying for all the tax benefits over time.⁸⁶

⁸² Submission 5, The Law Society of NSW, p 2.

⁸³ Evidence, Dr Coshott, 16 July 2020, uncorrected transcript, p 23.

⁸⁴ Submission 5, The Law Society of NSW, pp 2-3.

⁸⁵ Evidence, Dr Murray, 16 July 2020, uncorrected transcript, p 15.

⁸⁶ Evidence, Dr Murray, 16 July 2020, uncorrected transcript, p 23.

- 2.63** Further, Dr Murray also indicated that 'it might throw up other Trust issues as well', where 'we have now then got the same Trustee of both of those Trusts'. He questioned if this would 'give rise to any conflicts of interest for the Trustee given the purpose being at somewhat cross purposes of those two Trusts and the ability to pick under one Trust beneficiaries who can also be benefited under the other Trust'. Dr Murray stated that 'it would potentially raise some Trust law as well as the tax issues'.⁸⁷
- 2.64** However, Dr Coshott suspected that given the intent of the Bill 'it would be viewed more as a statutory variation so it would not necessarily create a new Trust, and that is it would vary the terms of an existing one for a brief period of time'. He raised concerns 'that not having ever seen anything like this before and not really having anything to base it on except the first principles of law, it is difficult to construe how exactly the legislation would be interpreted'.⁸⁸
- 2.65** Dr Murray agreed with Dr Coshott, informing the committee that 'the better view is that this is an amendment to an existing Trust, not the creation of a new Trust'. He recommended that 'as it is still a bit unclear, it would be better to remove that lack of clarity, if possible'.⁸⁹
- 2.66** In addition, the Law Society of NSW raised a further issue at the state level as to 'whether the legislation might result in any stamp duty liability for the Trustees to the extent that the relevant Trust money is dutiable property'.⁹⁰ At the hearing, Dr Murray expanded on this stating that the key risk at the state level is 'the stamp duty risk of inadvertently having a declaration of Trust, which gives rise to a stamp liability'. He suggested that 'it may be possible to address that as a matter of drafting and so that could be taken away and looked at', adding 'it should not be impossible to deal with that issue'.⁹¹

Public confidence in charities

- 2.67** More broadly the committee received evidence on the views of inquiry participants regarding the impact this Bill may have on the public's confidence in donating to charities. On one side of the argument stakeholders highlighted that if the funds are not donated as per the intention of the fundraiser and its donors it could impact on people wanting to make donations in the future. On the other side, stakeholders said that if the Parliament overrides the purpose of the NSW Rural Fire Service and Brigades Donations Fund, it could undermine the public confidence in future charitable fundraisers.
- 2.68** In terms of the funds not being used as intended by the fundraiser, Ms Barber pointed out that we are dealing with 'an unprecedented amount of money donated by an unprecedented number of generous people who did what they could, to feel less helpless in a crisis and to use their collective power as humans'. Ms Barber hoped that this was a new way for people to come together and help those in need, however she cautioned that by not using the funds donated as intended it could be the last time we see such generosity:

⁸⁷ Evidence, Dr Murray, 16 July 2020, uncorrected transcript, p 23.

⁸⁸ Evidence, Dr Coshott, 16 July 2020, uncorrected transcript, p 23.

⁸⁹ Evidence, Dr Murray, 16 July 2020, uncorrected transcript, p 24.

⁹⁰ Submission 5, The Law Society of NSW, p 3.

⁹¹ Evidence, Dr Murray, 16 July 2020, uncorrected transcript, p 15.

My hope is that this is the start of a new way of the world coming together to help in a crisis and that this sense of generosity and giving will only motivate people to continue to be kind, continue to give and band together when disaster next strikes. My concern is that if it is not possible to help these people have their money allocated to where they want it to go in this unprecedented instance that this may be the last we see of such generosity on such an international scale.⁹²

- 2.69** Along similar lines, a respondent to the online questionnaire said that 'people have lost faith in the donation system after this'. They indicated that 'next time an area or town or the farmers [that] feeds us all need a donation people are not going to put their hand as deep in their pocket as they will be skeptical as to where their money is going will it ever get to the people intended'.⁹³
- 2.70** However, other stakeholders highlighted that if the purpose of the Trust fund is overridden it will set a precedent that undermines the public confidence in future charitable fundraisers.
- 2.71** According to the NSW Rural Fire Service, 'a judicial decision on how the funds can be allocated has been made' and 'that decision should be respected'. The NSW Rural Fire Service stated 'to do anything else would undermine the spirit of the Trust and any efforts to raise money for brigades in the future'.⁹⁴
- 2.72** The NSW Rural Fire Service Association noted that 'while some commentators have suggested confidence in charities could be undermined as a result of donations being used differently than intended by donors, we are concerned about the broader implications of donations being applied for a purpose different to that specified'. The Association explained that 'there can be no doubt that Fund was identified as the recipient' and 'directing that money elsewhere is problematic'. The Association questioned 'how can the public have confidence that charitable donations will be used for the purpose specified if in the present case a precedent is established that those donations could be directed elsewhere?'.⁹⁵
- 2.73** Likewise, Dr Coshott told the committee that Parliament re-directing the funds to other purposes, as proposed in the Bill, may undermine the public's trust in giving to charities:

In a time when public charity is needed more than ever in recent memory, and when public trust in charities is not high, it is important that people know that who and what they donate to will be the recipient of their moneys. They can only know this through the clearly stated terms of fundraisers and charities. If parliaments go messing with this, then while they may pacify a vocal minority, they will further undermine the trust that is an inherent part of public giving.⁹⁶

⁹² Submission 4, Ms Celeste Barber, p 2.

⁹³ Portfolio Committee No. 5 – Legal Affairs, NSW Legislative Council, *Report on the online questionnaire: Inquiry into the provisions of the Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020*, p 6.

⁹⁴ Submission 3, NSW Rural Fire Service, p 5.

⁹⁵ Submission 2, NSW Rural Fire Service Association, pp 2-3.

⁹⁶ Submission 1, Dr Derwent Coshott, p 3.

- 2.74** Further, Dr Coshott told the committee that we already have a 'very low faith in charities' and the unintended consequence of this Bill is that 'as many people as you may please ... there is an equal number of people who you will displease – possibly a greater number of people who you will displease'. He added 'for those people they might say, "I'm done. That's it" and not donate again.'⁹⁷ Dr Coshott stated that 'it would be a dangerous precedent to override the objectively ascertainable intentions of most donors in favour of the subjective intentions of a vocal minority'. He therefore recommended against the Bill.⁹⁸
- 2.75** Some respondents to the online questionnaire had similar views. For example, one respondent said that the Bill 'has the potential to set a bad precedent and definitely would deter people from donating to causes in the future'.⁹⁹
- 2.76** A different respondent stated that 'if you change where funds can go after they are raised you will cause no end of heartache for organisers for years to come as people will challenge where funds can be spent', insisting 'PLEASE do not open this floodgate'.¹⁰⁰
- 2.77** Another individual expressed the view that 'the money was donated to a specific Trust, in good faith' and 'it is not the role of government to retrospectively make adjustments to a charity Trust Deed'. They added: '...[D]oing so creates a precedent that Governments of the future can override the Trust Deeds of any charity, thus undermining public confidence that monies donated will be used for the purposes for which they were donated'.¹⁰¹

Committee comments

- 2.78** Before turning to our views on the Bill, the committee would like to first acknowledge the devastating bushfires that ravaged Australia in the summer of 2019-20. We acknowledge those who lost their homes, the communities who have been severely impacted, the wildlife killed or injured and the lives that were lost. We thank the NSW Rural Fire Service and all of the volunteer firefighters who put their own lives at risk to fight the catastrophic fire conditions that were experienced in many areas across the state.
- 2.79** It is these devastating circumstances that led to the significant generosity of people from all around the world to donate to Ms Barber's charitable crowdfunding appeal. As the committee heard, many donated with the intention that their money be provided to the NSW Rural Fire Service and its brigades. Others also donated with the intention that their money be provided for broader assistance and support to individuals and communities significantly impacted by the bushfires.

⁹⁷ Evidence, Dr Coshott, 16 July 2020, uncorrected transcript, p 18.

⁹⁸ Submission 1, Dr Derwent Coshott, p 4.

⁹⁹ Portfolio Committee No. 5 – Legal Affairs, NSW Legislative Council, *Report on the online questionnaire: Inquiry into the provisions of the Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020*, p 3.

¹⁰⁰ Portfolio Committee No. 5 – Legal Affairs, NSW Legislative Council, *Report on the online questionnaire: Inquiry into the provisions of the Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020*, p 3.

¹⁰¹ Portfolio Committee No. 5 – Legal Affairs, NSW Legislative Council, *Report on the online questionnaire: Inquiry into the provisions of the Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020*, p 3.

- 2.80** The committee notes the decision of the Supreme Court and its interpretation of the Trust Deed that the funds can be used for supporting rural firefighters injured while on duty, or directed to the families of rural firefighters killed while firefighting. We also note that the Court found that the money can be directed to physical and mental health training and resources, or trauma counselling, and that it can meet the costs for volunteer firefighters to complete courses that improve skills related to volunteer activities. The committee acknowledges that some of these purposes would meet the intentions of Ms Barber's appeal, although not all.
- 2.81** It is clear from the Court's decision that the money cannot be used to support individuals and communities impacted by the bushfires, whether in New South Wales or not, nor for supporting injured wildlife. This is of concern, given the devastation many have experienced as a result of the bushfires, particularly when the amount of money raised was so significant, and could undoubtedly help so many.
- 2.82** Putting these issues to one side, the committee is also concerned as to whether the Trustees are in fact allocating the funds in line with the Supreme Court's determination. We also question whether state government funding should have been used to cover some of the items that the donated money is being used for, for example, equipment upgrades, masks and infrastructure.
- 2.83** There has been no clear commitment that some of the funds from Ms Barber's appeal will be directed to firefighters injured during the course of their duties or to the families of firefighters killed. There has also been a lack of detail in relation to how the \$15 million set aside for welfare support will be used for physical health and mental health training and resources, and trauma counselling for volunteer firefighters.
- 2.84** We note the Supreme Court's determination that it is permissible under the terms of the Deed for the Trustees to set up or contribute to a fund to specifically support rural firefighters injured while firefighting or the families of rural firefighters killed while firefighting. We also note that the Trustees and the NSW Rural Fire Service are considering the establishment of such a fund more specifically for welfare benefits and services. The committee acknowledges that separate fundraisers were established for the families of the three firefighters who lost their lives in the 2019-20 bush fire season, but we believe the establishment of a new Benevolent Fund would be able to provide more immediate assistance to volunteers and their families in the future.
- 2.85** We agree with the proposal put forward by the Volunteer Fire Fighters Association. The committee therefore recommends that a Benevolent Fund be established, administered by the Rural Fire Service in cooperation with the Volunteer Fire Fighters Association and the Rural Fire Service Association. This would ensure that some of the funds raised by Ms Barber and any future funds could provide immediate support to volunteer firefighters who have been injured and/or who have lost their homes to fires during the course of their volunteer duties, and to the families of firefighters who have lost their lives.
- 2.86** The committee further recommends that the Trust allocate an initial start-up budget for said Benevolent Fund from any unallocated donated monies originating from the Ms Barber fund in the NSW Rural Fire Service and Brigades Donations Fund as at 31 July 2020.

Recommendation 1

That the NSW Rural Fire Service establish a Rural Fire Service Volunteers Benevolent Fund, with this Fund administered cooperatively by the NSW Rural Fire Service, the Volunteer Fire Fighters Association and the Rural Fire Service Association, so that immediate support can be provided to volunteer firefighters who have been injured and/or who have lost their homes to fires during the course of their volunteer duties, and to the families of firefighters who have lost their lives.

Recommendation 2

That the NSW Rural Fire Service and Brigades Donations Trust allocate an initial start-up budget for said Benevolent Fund from any unallocated donated monies originating from the Ms Celeste Barber fund in the NSW Rural Fire Service and Brigades Donations Fund as at 31 July 2020.

- 2.87** The committee acknowledges that \$20 million has already been set aside for various Rural Fire Service infrastructure needs. We also note that the intention of the Bill is to address the remaining \$30 million raised by Ms Barber, with the aim of ensuring that this money is directed more broadly to those impacted by the fires, for example, by providing assistance to injured volunteer firefighters, as well as impacted communities and wildlife. We support these broader intentions and acknowledge the unprecedented situation we are in, where a significant amount of money has been raised but its use is restricted by limitations in a Trust Deed.
- 2.88** The committee acknowledges concerns from stakeholders that enacting this Bill may set a precedent which will undermine the public's confidence in future charitable fundraisers. However, like Ms Barber said, this is unprecedented times and we are dealing with an unprecedented and significant amount of money. To lose the opportunity of using this money to help rebuild communities, rebuild homes for those that lost them and help with the devastating loss of our wildlife would be extremely disappointing.
- 2.89** That being said, we acknowledge that there may be some issues with the Bill as it is currently drafted, particularly in terms of the discretionary powers of the Trustees, the date range the Bill applies to and state and commonwealth tax and stamp duty implications. The committee therefore recommends that debate on the the Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020 proceed, taking into account the issues documented in this report and concerns raised by stakeholders.
-

Recommendation 3

That the Legislative Council proceed to debate the Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020, and that the committee comments and concerns identified by stakeholders as set out in this report be addressed during debate in the House.

Appendix 1 Submissions

No.	Author
1	Dr Derwent Coshott
2	NSW Rural Fire Service Association Incorporated
3	NSW Rural Fire Service
4	Ms Celeste Barber
5	The Law Society of New South Wales

Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
16 July 2020 Video conference	Mr Brian McDonough	President, NSW Rural Fire Service Association
	Mr Brian Williams	Senior Vice President, Volunteer Fire Fighters Association
	Dr Derwent Coshott	Lecturer, The University of Sydney Law School
	Dr Ian Murray	Member of the Law Council's Charities and Not-For-Profit Committee and Associate Professor & Deputy Head of School, Research, University of Western Australia
	Mr David Castle	Member of the Law Society Business Law Committee
	Mr Stephen O'Malley	Executive Director Finance and Executive Services, NSW Rural Fire Service

Appendix 3 Minutes

Minutes no. 25

Thursday 18 June 2020

Portfolio Committee No. 5 – Legal Affairs

Macquarie Room, Parliament House, Sydney at 4.59 pm

1. Members present

Mr Borsak, *Chair*

Mr Shoebridge, *Deputy Chair*

Ms Jackson

Mr Khan

Mrs Maclaren-Jones

Mr Martin (*substituting for Mrs Ward for the duration of the inquiry*)

Mr Moselmane

2. Inquiry into the Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020

2.1 Terms of reference

The committee noted the referral on 16 June 2020 of the following terms of reference:

That:

- (a) the provisions of the Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020 be referred to Portfolio Committee No. 5 – Legal Affairs for inquiry and report,
- (b) the resumption of the second reading debate on the Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020 not proceed until the tabling of the committee report,
- (c) the committee report by Friday 31 July 2020.

2.2 Proposed timeline

Resolved, on the motion of Mr Shoebridge: That the committee adopt the following timeline for the administration of the inquiry:

- Sunday 5 July 2020 – closing date for submissions and online questionnaire (2 weeks)
- Thursday 16 July 2020 – 1 full day hearing
- Tuesday 28 July 2020 – circulation of Chair's draft report
- Thursday 30 July 2020 – 9.00am report deliberative
- Friday 31 July 2020 – report tabled.

2.3 Virtual hearing

Resolved, on the motion of Mr Shoebridge: That the committee hold a virtual hearing via webex, with all members and witnesses participating remotely, except for the Chair and secretariat in the hearing room.

2.4 Submissions, online questionnaire and proformas

Resolved, on the motion of Mr Shoebridge:

- That the committee accept submissions from nominated stakeholders and organisations/experts in the field who apply to make a submission and are approved by the Chair.
- That the committee not issue an open call for submissions through the website.
- That the committee not accept any proformas.
- That the committee conduct an online questionnaire to close on the same date as submissions.
- That the wording for the website be as follows:
Submissions

- Individuals are invited to submit their comments on the bill here [hyperlink to online questionnaire]. This is a new way for individuals to participate in inquiries and it means we will no longer accept proformas.
- If you are an organisation or have specialist knowledge in the field and you would like to make a more detailed submission, please contact the secretariat before [submission closing date].

2.5 Online questionnaire and report

Resolved, on the motion of Mr Shoebridge: That the questions for the online questionnaire be as follows:

- What is your position on the Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020? Select one of these options: support, oppose, neutral/undecided
- In relation to the previous question, please explain your position on the bill (500 word text box)
- Do you have any other comments on the bill? (250 word text box).

Resolved, on the motion of Mr Shoebridge: That the secretariat prepare a summary report of responses to the online questionnaire for publication on the website and use in the report, and that:

- the committee agree to publication of the report via email, unless a member raises any concerns
- individual responses be kept confidential on tabling.

2.6 Submission list

Resolved, on the motion of Mr Shoebridge: That the following stakeholders be invited to make a submission, and that members be provided with 24 hours to make additional suggestions:

- Celeste Barber
- Rural Fire Service NSW
- Australian Charities and Not for profits Commissions
- Charity Law Association of Australian and New Zealand
- Australian Council of Social Service
- Law Society of NSW
- NSW Bar Association
- Prolegis Lawyers (a specialist law firm in the charity and not for profit sector)
- Gilbert and Tobin
- University of Sydney Business School (Dr Derwent Coshott).

2.7 Witnesses

Resolved, on the motion of Mr Shoebridge: That witnesses only be selected from among submission authors, and that the witness list be circulated to members for comment.

2.8 Questions on notice and supplementary questions

Resolved, on the motion of Mr Shoebridge: That there be no questions taken on notice at the public hearing or supplementary questions from members.

2.9 Advertising

The committee noted that the inquiry will be advertised via social media, stakeholder emails and a media release distributed to all media outlets in New South Wales.

3. ***

4. Next meeting

The committee adjourned at 5.06 pm, *sine die*.

Stephen Frappell / Tina Higgins
Clerks to the Committee

Minutes no. 26

Thursday 16 July 2020

Portfolio Committee No. 5 – Legal Affairs

WebEx video conference at 10.10 am

1. Members presentMr Borsak, *Chair*Mr Shoebridge, *Deputy Chair (from 10.25 am)*Mr Buttigieg (*substituting for Mr Moselmane for the duration of the inquiry*) (*from 10.14 am*)

Ms Jackson

Mr Khan

Mrs Maclaren-Jones

Mr Martin (*substituting for Mrs Ward for the duration of the inquiry*)**2. Draft minutes**

Resolved, on the motion of Mr Khan: That draft minutes nos. 23, 24 and 25 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- ***
- 19 June 2020 – Letter from Hon Natasha Maclaren-Jones MLC, to secretariat, advising that the Hon Taylor Martin MLC will be substituting for the Hon Natalie Ward MLC for the duration of the inquiry into the Rural Fires Amendment Bill 2020
- 2 July 2020 – Email from Ms Liza Booth, Principal Policy Lawyer, The Law Society of NSW, to secretariat, requesting an extension to provide a submission
- 6 July 2020 – Email and attachment from Mr Michael Holton, President, Volunteer Firefighters, to Chair, advising they have not had time to provide a submission to the inquiry and attaching a copy of a media release on the topic
- 13 July 2020 – Email from Ms Michelle Kerr, Assistant to Ms Celeste Barber, advising that Ms Barber has agreed to have her submission made public and that she is unable to attend the virtual public hearing
- 13 July 2020 – Email from Ms Michelle Kerr, Assistant to Ms Celeste Barber, providing the reasons for declining the invitation to appear at the virtual public hearing
- 14 July 2020 – Email from Hon Mark Buttigieg MLC, to secretariat, advising that he will be substituting for Hon Shaoquett Moselmane MLC for the duration of the inquiry into the Rural Fires Amendment Bill 2020.

Sent:

- 9 July 2020 – Letter from Chair, to Ms Celeste Barber, asking that she re-consider her request for her submission to be kept confidential and inviting her to the public virtual hearing.

4. *****5. Inquiry into the Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020****5.1 Public submissions**

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1, 2, 3 and 5.

5.2 Confidential submission

The committee noted the request from Ms Celeste Barber, author of submission no. 4, that her submission be kept confidential. As agreed via email the Chair wrote to Ms Barber seeking agreement that her submission be published and Ms Barber agreed. The submission was published by the committee clerk under the authorisation of the resolution appointing the committee.

5.3 Report deliberative

The committee previously resolved to hold the report deliberative at 9.00 am, Thursday 30 July 2020. The committee decided that this meeting will be held virtually.

5.4 Virtual hearing proceedings

The Chair briefed members on the proceedings of the day.

5.5 Allocation of questioning

The committee confirmed that the allocation of questions at today's hearing be determined by the Chair.

5.6 Public virtual hearing

The committee proceeded to take evidence in public via videoconferencing.

The witnesses were admitted.

The Chair made an opening statement regarding the virtual proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Brian McDonough, President, NSW Rural Fire Service Association Incorporated
- Mr Brian Williams, Senior Vice President, Volunteer Fire Fighters Association.

The evidence concluded and the witnesses withdrew.

The following witnesses were admitted, sworn and examined:

- Dr Derwent Coshott, The University of Sydney Law School
- Dr Ian Murray, Member of the Law Council's Charities and Not-For-Profit Committee and Associate Professor & Deputy Head of School, Research, University of Western Australia
- Mr David Castle, Member of the Law Society Business Law Committee.

The evidence concluded and the witnesses withdrew.

The following witness was admitted, sworn and examined:

- Mr Stephen O'Malley, Executive Director, Finance and Executive Services, NSW Rural Fire Service.

The evidence concluded and the witness withdrew.

The virtual hearing concluded at 1.40 pm.

6. Questions to the Trustees of the RFS Donations Trust

Resolved, on the motion of Mr Buttigieg: That the committee write to the Trustees of the NSW Rural Fire Service and Brigades Donation Fund with a list of questions requesting a response by Wednesday 22 July 2020, and that the Chair's proposed questions be circulated to members with additional questions due by 3.00 pm Friday 17 July 2020.

7. Next meeting

The meeting adjourned at 1.45 pm, until Thursday 30 July 2020, 9.00 am, via WebEx videoconference (report deliberative).

Sarah Dunn
Clerk to the Committee

Draft minutes no. 27

Thursday 30 July 2020

Portfolio Committee No. 5 - Legal Affairs

WebEx videoconference at 9.02 am

1. Members presentMr Borsak, *Chair*Mr Shoebridge, *Deputy Chair*Mr Amato (*substituting for Mr Martin*)

Mr Buttigieg

Ms Jackson

Mr Khan

Mrs Maclaren-Jones

2. Committee membership

The committee noted that the Hon Mark Buttigieg MLC replaced the Hon Shaoquett Moselmane MLC as a member of Portfolio Committee No. 5 – Legal Affairs from 24 July 2020.

3. Draft minutes

Resolved, on the motion of Mr Khan: That draft minutes no. 26 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 23 July 2020 – Letter from Mr Andrew Macdonald, Chair, NSW Rural Fire Service and Brigades Donations Fund, to Chair, responding to the questions relating to the allocation of funding raised by Ms Celeste Barber
- 23 July 2020 – Letter and attachment from Mr Stephen O'Malley, Executive Director, Finance and Executive Services, NSW Rural Fire Service, to secretariat, providing clarification of evidence and attaching the requested copy of the NSW RFS Public Donations Volunteer Feedback
- 27 July 2020 – Email from Ms Debbie Andreatta, Director, Executive Services, NSW Rural Fire Service, to secretariat, confirming that the letter from the Trustees of the NSW Rural Fire Service and Brigades Donations Fund can be made public.

Sent:

- 17 July 2020 – Letter from Chair, to the Trustees for the NSW Rural Fire Service and Brigades Donations Fund, seeking a response to a number of questions relating to the allocation of funds raised by Ms Celeste Barber.

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of the following items of correspondence:

- letter from Mr Andrew Macdonald, Chair, NSW Rural Fire Service and Brigades Donations Fund, to Chair, responding to the questions relating to the allocation of funding raised by Ms Celeste Barber, dated 23 July 2020
- letter and attachment from Mr Stephen O'Malley, Executive Director, Finance and Executive Services, NSW Rural Fire Service, to secretariat, providing clarification of evidence and attaching the requested copy of the NSW RFS Public Donations Volunteer Feedback, dated 23 July 2020.

5. Inquiry into the Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020**5.1 Consideration of Chair's draft report**

The Chair submitted his draft report entitled '*Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020*', which, having been previously circulated, was taken as being read.

Chapter 2

Mr Khan moved: That paragraph 2.82 be omitted: 'Putting these issues to one side, the committee is also concerned as to whether the Trustees are in fact allocating the funds in line with the Supreme Court's determination. We also question whether state government funding should have been used to cover some of the items that the donated money is being used for, for example, equipment upgrades, masks and infrastructure'.

Question put.

The committee divided.

Ayes: Mr Amato, Mr Khan, Mrs Maclaren-Jones.

Noes: Mr Borsak, Mr Buttigieg, Ms Jackson, Mr Shoebridge.

Question resolved in the negative.

Mr Khan moved: That paragraphs 2.84 and 2.85 and Recommendation 1 be omitted:

'We note the Supreme Court's determination that it is permissible under the terms of the Deed for the Trustees to set up or contribute to a fund to specifically support rural firefighters injured while firefighting or the families of rural firefighters killed while firefighting. We also note that the Trustees and the NSW Rural Fire Service are considering the establishment of such a fund more specifically for welfare benefits and services. The committee acknowledges that separate fundraisers were established for the families of the three firefighters who lost their lives in the 2019-20 bush fire season, but we believe the establishment of a new Benevolent Fund would be able to provide more immediate assistance to volunteers and their families in the future.

We agree with the proposal put forward by the Volunteer Fire Fighters Association. The committee therefore recommends that a Benevolent Fund be established, administered by the Rural Fire Service in cooperation with the Volunteer Fire Fighters Association and the Rural Fire Service Association. This would ensure that some of the funds raised by Ms Barber and any future funds could provide immediate support to volunteer firefighters who have been injured or who have lost their homes to fires during the course of their volunteer duties, and to the families of firefighters who have lost their lives.

Recommendation 1

That the NSW Rural Fire Service establish a Rural Fire Service Volunteers Benevolent Fund, with this Fund administered cooperatively by the NSW Rural Fire Service, the Volunteer Fire Fighters Association and the Rural Fire Service Association, so that immediate support can be provided to volunteer firefighters who have been injured or who have lost their homes to fires during the course of their volunteer duties, and to the families of firefighters who have lost their lives.'

Question put.

The committee divided.

Ayes: Mr Amato, Mr Khan, Mrs Maclaren-Jones.

Noes: Mr Borsak, Mr Buttigieg, Ms Jackson, Mr Shoebridge.

Question resolved in the negative.

Mr Buttigieg moved: That:

- a) Recommendation 1 be amended by omitting 'who have been injured or who' and inserting instead 'who have been injured and/or who'
- b) the following new recommendation be inserted after Recommendation 1:
'Recommendation X

That the NSW Rural Fire Service and Brigades Donations Trust allocates an initial start-up budget for said Benevolent Fund from any unallocated donated monies originating from the Ms Celeste Barber fund, in the NSW Rural Fire Service and Brigades Donations Fund as at 31 July 2020.'

Question put.

The committee divided.

Ayes: Mr Borsak, Mr Buttigieg, Ms Jackson, Mr Shoebridge.

Noes: Mr Amato, Mr Khan, Mrs Maclaren-Jones.

Question resolved in the affirmative.

Resolved, on the motion of Mr Shoebridge: That:

The draft report as amended be the report of the committee and that the committee present the report to the House;

The transcripts of evidence, submissions, responses to the online questionnaire and summary report of these response, and correspondence relating to the inquiry be tabled in the House with the report;

Upon tabling, all unpublished attachments to submissions and responses to the online questionnaire be kept confidential by the committee;

Upon tabling, all unpublished transcripts of evidence, submissions, summary report to the online questionnaire, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

Dissenting statements be provided to the secretariat by 9.00 am, Friday 31 July 2020;

The secretariat table the report at 1.30 pm, Friday 31 July 2020;

6. Next meeting

The meeting adjourned at 9.34 am, until Tuesday 18 August 2020, 9.00 am, via WebEx videoconference (*in camera* hearing for the Anti-Discrimination Amendment Bill inquiry).

Sarah Dunn
Clerk to the Committee

