

Submission
No 2

INQUIRY INTO RURAL FIRES AMENDMENT (NSW RFS AND BRIGADES DONATIONS FUND) BILL 2020

Organisation: NSW Rural Fire Service Association Incorporated

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RFSA

Hon Robert Borsak MLC
Chair
Portfolio Committee No 5 – Legal Affairs
Parliament House
Macquarie Street
SYDNEY NSW 2000

via email: PortfolioCommittee5@parliament.nsw.gov.au

Dear Mr Borsak

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

Thank you for the opportunity to provide a submission in relation to the *Rural Fires Amendment (NSW RFS and Brigades Donations Fund Bill 2020* (the Bill).

The Bill would allow the trustees of the NSW RFS and Brigades Donations Fund (the Fund) to spend money in the Fund for certain purposes other than those specified in the Fund's trust deed.

The RFSA is opposed to the Bill for a number of reasons, which we will address in more detail below, but our concerns surround the following four areas:

1. The Bill would have the effect of taking money away from volunteer firefighters;
2. The Bill could have the effect of undermining public confidence in charities;
3. The Fund has already allocated significantly more money than that raised through the appeal run by Celeste Barber; and
4. The terms of the Bill are significantly broader than the stated intent in the Member's second reading speech.

The Bill would take money away from volunteers

Under the terms of the trust deed, money held by the Fund must (in simplistic terms) be used for the benefit of volunteer firefighters. This is true whether one considers the impact of the Fund applying money to the acquisition of firefighting equipment, or for training purposes. Therefore the result of the Fund applying money to any other purpose is that that money is in effect taken away from volunteer firefighters.

Such an outcome would be concerning to us at any time. It is even more egregious following the most recent bushfire season, where volunteer firefighters were called on in greater numbers, for longer periods, and at greater risk to their own safety than at any other time.

We appreciate that there are other needs arising from the devastation wrought by the summer's bushfires, which affected individuals, whole communities and the natural environment. However, we cannot 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.

The Bill could undermine public confidence in charities and trusts

Any use of donated money other than for the purpose which was specified could have the effect of undermining public confidence in charitable donations. 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. Throughout Celeste Barber's appeal, the fact that the recipient would be the Fund was clearly stated:

The headline title of her appeal, "Please help anyway you can. This is terrifying" was followed by the descriptive subtitle, "Fundraiser for the Trustee for the NSW Rural Fire Service & Brigades Donation Fund". Then under the heading "About" the appeal's title page said:

"Want to join me in supporting a good cause? I'm raising money for The Trustee for NSW Rural Fire Service & Brigades Donations Fund and your contribution will make an impact, whether you donate a lot or a little. Anything helps. Thank you for your support".¹

While it is apparent that some donors to that appeal failed to appreciate the implications of donations being directed to the Fund, there can be no doubt that Fund was identified as the recipient. In these circumstances, directing that money elsewhere is problematic. 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? This precedent is particularly concerning

¹ *In the matter of the New South Wales Rural Fire Service & Brigades Donations Fund; Application of Macdonald & Or* [2020] NSWSC 604 at [15].



given it relates to representations that were made not by the Fund itself, or anyone acting as its agent, but by an unrelated third party.

To give effect to those donors' intentions would ultimately be to hold the Fund responsible for meeting a commitment that was made by an unrelated third party. There is a significant issue of principle here. Charities should only be accountable for commitments they make themselves (or by their agents); they should not be expected to be responsible for commitments made by unrelated third parties.

The money raised by the Celeste Barber campaign has already been allocated

In his second reading speech, the Member made it clear that the intent of this Bill is to “to give effect to the intent of the community across the board when they were making donations to the Celeste Barber appeal.” However, that money has already been allocated by the Fund.

The Celeste Barber appeal raised \$51 million.² The Fund has already allocated \$90 million.³ In late January, the Fund allocated \$20 million for grants of \$10,000 to every volunteer Rural Fire Brigade in NSW for equipment and/or training that is within the scope of the Fund’s trust deed. The Fund subsequently allocated a further \$70 million to other initiatives.

These allocations significantly exceed the money raised by the Celeste Barber appeal. Given the stated intention of allowing the money raised by the Celeste Barber appeal to allocated more broadly than would otherwise be allowed by the trust deed, the Bill is effectively moot – or at least would be but for the fact that in its terms it has application well beyond that stated intent.

The terms of the Bill are significantly broader than its stated intent

As we have noted above, the Member’s second reading speech declared that the Bill “seeks to give effect to the intent of the community across the board when they were making donations to the Celeste Barber appeal.” This is difficult to reconcile with the content of the Bill itself.

² *In the matter of the New South Wales Rural Fire Service & Brigades Donations Fund; Application of Macdonald & Or* [2020] NSWSC 604 at [4].

³ [https://www.rfs.nsw.gov.au/news-and-media/general-news/\\$90-million-of-donations-supporting-volunteers-and-nsw-communities](https://www.rfs.nsw.gov.au/news-and-media/general-news/$90-million-of-donations-supporting-volunteers-and-nsw-communities)



The Bill's application to the Fund is limited to "relevant trust money", which is defined as "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." However, the Celeste Barber appeal did not commence until 3 January 2020.⁴ As such, more than two thirds of the period referred to in the definition of "relevant trust money" was *before* the start of the Celeste Barber appeal. 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.

For the reasons above, we would urge the Committee to recommend that the Bill not be supported.

Yours sincerely

Brian McDonough
President

⁴ *In the matter of the New South Wales Rural Fire Service & Brigades Donations Fund; Application of Macdonald & Or* [2020] NSWSC 604 at [14].