

**Submission
No 3**

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

Organisation: NSW Rural Fire Service

Date Received: 3 July 2020



NSW RURAL FIRE SERVICE

Submission to Portfolio Committee No. 5 - Inquiry into the Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020

The NSW Rural Fire Service & Brigades Donations Fund

The NSW Rural Fire Service ('**NSW RFS**') & Brigades Donations Fund ('**the Trust**') was established on 10 April, 2012 solely for the purpose of supporting volunteer rural fire brigades across NSW. The Trust is independent of the NSW RFS and decisions regarding the disbursement of Trust funds is a matter for the Trustees, in the accordance with the Trust Deed and deductible gift recipient status requirements.

Clause 2.3 of the Trust Deed states that the purpose of the Trust is to:

...pay or apply the income from the Trust Fund, and such parts of the capital from the Trust Fund as the Trustees...think fit as follows:

- a) to or for Brigades in order to enable or assist them to meet the costs of purchasing and maintaining fire-fighting 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;*
- b) for Authorised Investments which are consistent with carrying out the purpose in paragraph (a) above;*
- c) to meet the reasonable costs of the current and continuing operation and management of the Trust.*

Clause 3.3 of the Trust Deed expressly prohibits funds received into the Trust from being used for purposes other than in accordance with the Trust Deed.

2019-20 bush fire season and Celeste Barber's fundraising campaign

The 2019-20 bush fire season was the worst NSW had ever experienced. A combination of one of the worst droughts on record, unprecedented weather conditions and intense fire behaviour resulted in over 5 million hectares being burnt across the State, the largest area ever recorded from a single fire season in eastern Australia. Twenty-six lives were lost and 2,448 homes destroyed.

Due to the unprecedented nature of the bush fire season, the Trust was the recipient of a large number of donations, including donations received through the Facebook fundraising campaign of comedian Celeste Barber. This campaign identified the Trust as the ultimate recipient of any donations received.


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Under the headline *'Please help anyway you can. This is terrifying'* was a subtitle: *'Fundraiser for the Trustee of the NSW Rural Fire Service & Brigades Donations Fund'*. Under the heading 'About' the fundraising campaign'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'.

Potential donors were then directed to a web page controlled by the PayPal Giving Fund ('PPGF') to make their donation.

The results of this fundraising campaign were extraordinary, with more than one million donations made. Together with her supporters, Celeste Barber successfully raised more than \$51 million for the Trust.

The funds raised by Celeste Barber were the subject of considerable debate. Whilst donations were initially identified as being for the Trust, during the course of the fundraising campaign Celeste Barber, her supporters and some members of the public expressed views that the funds raised could be given to other charities such as the Red Cross and WIRES, the families of fallen fire fighters and South Australian and Victorian rural fire services. At that stage, more than \$30 million had been raised.

However, the terms of the fundraising campaign remained unchanged, with funds continuing to be raised on behalf of the Trust.

The NSW RFS subsequently contacted the PPGF to determine whether it was possible to identify a donor's intent at the time their donation was made and if so, redirect the funds accordingly. The PPGF advised the NSW RFS that this was not in line with the PPGF's rules, 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.

The Trustees of the Trust then sought advice, under section 63 of the *Trustee Act 1925*, from the Supreme Court of New South Wales as to whether the funds received into the Trust could be applied in that way.

Advice from the Supreme Court of New South Wales

In seeking advice from the Supreme Court, the Trustees asked four questions. That is, whether they were justified in the proper performance of their powers and duties as Trustees of the Trust, in doing any of the following:

- a) paying money to other charities or rural fire services, whether in NSW or other Australian States and Territories, to assist in providing relief to persons and animals affected by bush fires;
- b) setting up or contributing to a fund to support rural firefighters injured while firefighting, or the families of rural firefighters killed while firefighting;
- c) providing:
 - i. physical health training and resources;
 - ii. mental health training and resources; or
 - iii. trauma counselling services

to volunteer firefighters as defined under section 8 of the *Rural Fires Act 1997* ('**the RF Act**'), who require them in connection with performing the functions of the NSW RFS, as defined by section 9 of the RF Act; or

- d) setting up or contributing to a fund to meet the costs for volunteer rural firefighters (as defined in section 8 of the RF Act) to attend and complete courses that improve skills related to the volunteer-based fire and emergency service activities of the Brigades.

The matter was heard before His Honour Justice Michael Slattery on 18 May 2020. On 25 May 2020 His Honour handed down his decision, affirming that the monies contained in the Trust:

- a) could not be used for other charities and brigades (other than NSW rural fire brigades).

This is because donations to other charities or brigades would not be payments 'to or for brigades' established under the RF Act, nor would it be an 'authorised investment' pursuant to the Deed or an administrative cost. To make such a donation would fall outside the purpose of the Trust and constitute a breach of trust.

His Honour also held that it would not be permissible for Trust funds to be used to support animals affected by bush fire. This is because Clause 2.3(a) of the Trust Deed only permits payments to be made 'to or for brigades', with those payments limited to 'enable or assist' the brigades in meeting the costs of the Trusts various objectives. None of those objectives includes giving assistance to animals affected by bush fires.

- b) could be used to establish a fund to support the families of firefighters killed in the line of duty and firefighters injured whilst firefighting. His Honour found that a fund to support the families of fallen firefighters, and injured firefighters, would encourage people to volunteer to contribute to preventing and fighting fires.
- c) could be used to provide physical and mental health training and resources, and trauma counselling services.
- d) could be used to set up or contribute 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.

The Trustees accept the Supreme Court's decision and intend to administer the funds in accordance with the Court's advice.

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

The *Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020* ('the Bill') now seeks to overturn the Supreme Court's decision.

The Bill proposes amending the RF Act by inserting a new section, 137A, to enable donations received into the Trust during the period of 1 November 2019 to 1 February 2020 to be applied to '*purposes relating to bush fire emergency relief*'. These include providing support or assistance to:

- 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 significantly affected by bush fires.

The amendment would apply to people, organisations and communities in Australia. Protections from breach of Trust and civil liability in relation to the application of Trust money are provided in the Bill for the Trustees.

The Supreme Court has already confirmed that the Trustees can apply the money received into the Trust to establish a fund that supports and assists the families of firefighters killed in the line of duty, and firefighters injured whilst firefighting. The Court has also ruled that applying funds to people and organisations outside of NSW, including organisations that provide care to animals affected by bushfire, is outside the scope of the Trust and would be a breach of Trust.

Potential implications of the Bill have been identified.

Charitable Trusts Act 1993

Section 22C(1) of the *Charitable Trusts Act 1993* gives Trustees the power to apply money, property or benefits to 'eligible recipients' in circumstances where a Trust instrument does not contain an express power to do so. Section 22C(1) is limited by Section 22C(2)(b), which states that Section 22C(1) has no application in cases where a Trust instrument contains an express prohibition against the provision of money, property or benefits to eligible recipients.

Clause 3.3 of the Trust contains such a prohibition. No payments or distributions from the Trust can be made by the Trustees at any time otherwise than in accordance with the Trust Deed. It is generally held that to the extent of any inconsistency, a law which 'covers the field' or has the closest connection to the subject matter concerned would prevail over any general law.

Commonwealth Income Tax Assessment Act 1997

The Trust's deductible gift recipient status is taken from section 30-102, Item 12A.1.2 of the Commonwealth *Income Tax Assessment Act 1997* ('**the ITAA 1997**').

Item 12A.1.2 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 principal activities of the government agency must be the provision of volunteer based emergency services regulated by State or Territory law.

The Bill proposes to enable Trustees to apply trust money to support and assist the activities of people and entities other than emergency services. This has implications for the Trust's deductible gift recipient status as it brings the Trust outside the scope of Item 12A.1.2.

It would not be possible to provide funds to other entities such as wildlife charities or the broader community without the Trust breaching its DGR status. The NSW RFS understands that it could also result in donors being unable to claim tax deductions of donations made.

Impact of the Bill on volunteer rural fire 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.

In his statement following the Supreme Court decision, the Australian Charities and Not for Profits Commissioner, Dr Gary Johns noted the importance of people checking whether any charity or appeal they wish to donate to was set up to carry out the specific activities a person wanted to support:

"This is a reminder to donors, and to the public, that you have to have a look at the trust document of a charity before you give to a charity before you donate or pledge to an online appeal. And those fundraising on behalf of a charity need to be clear about where those funds are going and for what purposes they can be used."

A judicial decision on how the funds can be allocated has been made. The NSW RFS believes that decision should be respected. To do anything else would undermine the spirit of the Trust and any efforts to raise money for brigades in the future.

The Trust has implemented a \$20 million fund to provide immediate support to NSW RFS brigades for items in line with the Trust Deed. To date, 562 applications for funding have been received, with approximately \$2.7 million paid. The Trust is continuing to receive proposals from brigades.

A survey has also been conducted of NSW RFS members to identify items which would be suitable for funding. This survey identified priority areas including training, improved equipment and resources, and volunteer support.

The Trustees of the Trust have been working with the NSW RFS to identify a number of projects in which the donations could be used for the benefit volunteer rural firefighters.

On 3 June 2020 the Trustees announced the allocation of a further \$70 million to initiatives that will assist volunteer brigades respond to incidents safely and provide welfare and support to NSW RFS members. Key initiatives include:

- **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 fire-fighting vehicles** that links information on calls, people, routing and in-field fire reporting.
- **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.

Importantly the NSW RFS and the Trust will work to stimulate the local economy by ensuring, as much as possible, that the funds are directed to local businesses and industries that employ and support the Service's members.

Donations made to other charities and NSW Government support

The NSW RFS understands that significant donations were made to organisations such as the Red Cross (over \$200 million¹), the WIRES Emergency Fund (more than \$60 million²) and the Salvation Army Disaster Appeal (\$41 million³) to assist in the recovery of bush fire affected communities across the country.

Additionally, in the times since the bush fires the NSW Government has committed more than \$2.5 billion to support fire affected communities across NSW. This includes:

¹ <https://www.redcross.org.au/news-and-media/news/bushfire-report-1>

² <https://www.wires.org.au/media-releases/wires-emergency-wildlife-relief-and-recovery-plans>

³ <https://www.salvationarmy.org.au/about-us/news-and-stories/publications-and-resources/bushfire-disaster-appeal-report-released/>

- a \$1.2 billion share of the Disaster Recovery Funding Arrangements for clean-up, small business and primary producer grants;
- \$1 billion in infrastructure funding;
- a \$140 million Industry Package;
- \$49 million Forestry Industry Package; and
- \$209 million Crown Land Fencing Package.

Housing assistance has been provided to more than 8,000 displaced persons, including temporary accommodation, no-interest private rental bonds and advance rent costs.

The NSW RFS also understands that \$15.3 million has been provided for mental health programs for fire-affected communities and emergency services staff, jointly funded with the Commonwealth.

To support the rescue and care of injured wildlife, the NSW Government has committed \$6.5 million, including \$1 million in emergency funding in response to the bushfires.

Other significant environmental investments include the \$2.25 million Feral Animal and Weed Control Project and the \$2.31 million Threatened Species Project, which the Department of Planning, Industry and the Environment is administering on behalf of the Commonwealth Government.

For the reasons outlined in this submission, the NSW RFS does not support the Bill.