

REPORT ON PROCEEDINGS BEFORE

PORTFOLIO COMMITTEE NO. 5 - LEGAL AFFAIRS

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

CORRECTED

Virtual hearing via videoconference on Thursday 16 July 2020

The Committee met at 10:25

PRESENT

The Hon. Robert Borsak (Chair)

The Hon. Mark Buttigieg

The Hon. Trevor Khan

The Hon. Rose Jackson

The Hon. Natasha Maclaren-Jones

The Hon. Taylor Martin

Mr David Shoebridge (Deputy Chair)

The CHAIR: Welcome to the first hearing of the Portfolio Committee No. 5 – Legal Affairs inquiry into the Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020. Before I commence I would like to acknowledge the Gadigal people, who are the traditional custodians of this land. I would also like to pay respect to the Elders past and present of the Eora nation and extend that respect to other Aboriginals present. Today is the only hearing we plan to hold for this inquiry. We will hear today from the Rural Fire Service Association, the Volunteer Fire Fighters Association, a panel of legal experts and the NSW Rural Fire Service.

Before I commence I would like to make some brief comments about the procedures for today's hearing. Like so many other things that we have needed to adapt to in the face of the COVID-19 health measures, the hearings for this inquiry will be conducted via video conferencing. This enables the work of the Committee to continue without compromising the health and safety of members, witnesses and staff. This being new territory for the upper House inquiries, I would ask for everyone's patience and forbearance through any technical difficulties we may encounter today.

If participants lose their internet connection and are disconnected from the virtual hearing they are asked to rejoin the hearing by using the same link as provided by the committee secretariat. Today's hearing is being webcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. Given the short time frames for this inquiry, the Committee has resolved that there will be no questions taken on notice during the hearing. Finally, would everyone please mute their microphones when they are not speaking to minimise background noise.

BRIAN McDONOUGH, President, Rural Fire Service Association, before the Committee via videoconference, affirmed and examined

BRIAN WILLIAMS, Senior Vice President, Volunteer Fire Fighters Association, before the Committee via videoconference, sworn and examined

The CHAIR: Mr McDonough, would you like to start by making a short statement? Please keep it to no more than a couple of minutes.

Mr McDONOUGH: Certainly. I would just like to remind the Committee of the Rural Fire Service and what it is about in a very general sense. It is an organisation with over 6,000 operational vehicles, somewhere in the order of about 3,000 different pieces of real estate around the State and, of course, 70,000 volunteers. With that, we operated last year in the 2018-19 financial year with a budget of \$585 million, with a nominal budget of \$352 million. The deductible gift recipient [DGR] fund was set up in 2012—the fund that this bill is associated with. The original intent of this fund was to allow a vehicle for brigades to accept donations from citizens of New South Wales in a tax deductible manner without the burden required for such a fund from the income tax department. Almost as a secondary thought it was decided to include the Rural Fire Service itself into the fund so the many donations made to the Rural Fire Service by the general public could be added to that fund.

The fund is independent of the NSW Rural Fire Service. It consists of six trustees, two of which are staff members of the Rural Fire Service and four of which are volunteers. One of the four volunteers—the Rural Fire Service Association [RFSA] was asked to nominate one volunteer to sit on that trust, that being Steve Robinson, the Secretary of the Rural Fire Service Association. That is all, other than our submission, which obviously opposes the bill. We believe the bulk of the funds donated by Ms Barber were intended for the Rural Fire Service, as was stated on the forms to donate the funds. And in fact most of those funds, if not all, have already been allocated for projects for the Rural Fire Service. I think I will finish with that and leave the rest with the Committee.

The CHAIR: Thank you. Mr Williams, would you care to make an opening statement?

Mr WILLIAMS: Yes. The Volunteer Fire Fighters Association [VFFA] thanks the Committee for the invitation to present today. The VFFA is an independent volunteer organisation representing the views and the issues that affect volunteer firefighters in New South Wales. We were established after a disastrous fire in the Goobang National Park. Volunteers were angry that their local knowledge and expertise was being disregarded and that they were losing control of fires that directly affect them, their communities and their environment. It was decided that the volunteers needed an independent voice that just represented the volunteer and that we could discuss fire related issues openly. We have a forum to relay these concerns to the media, to politicians and to the general public. Our overriding aim is to bring about sustainable land management by being a fire preventative force rather than a fire reactive force. On today's issue the VFFA supports the amendment to the bill. But we would also like to see a benevolent fund set up for RFS volunteers which would provide immediate relief to volunteers who are either injured, killed or lose a home whilst on duty. Thank you.

The CHAIR: Thank you. Would someone like to lead with questions?

Mr DAVID SHOEBRIDGE: Thanks for your submission and your opening statement. With the Rural Fire Service Association, my understanding is you say that the money has already been allocated. What is your knowledge of the allocation of the funds from the trust and where [inaudible]?

Mr McDONOUGH: In excess of \$100 million I think was donated to the fund over the last season and \$70 million has been allocated to projects within the Rural Fire Service—that is immediate projects and that includes things like mobile data terminals, an availability application which is sorely needed; new helmets, which will put us from having just basic helmets to more technologically advanced helmets; respiratory support; and I think in fact even a number of reconditioned trucks are included in that \$70 million. And then \$20 million has been set aside for brigade grants of up to \$10,000 each. That is for simple things like refrigerators for brigade stations, hand-held radios for fireground communication and such items like that, basically to make the life of the volunteer so much easier. So far that is what has been allocated and my understanding is the fund is considering another bout of grants for districts to provide for their volunteers as well.

Mr DAVID SHOEBRIDGE: There were some mobile data hubs, did you say?

Mr McDONOUGH: Data terminals for the firefighting vehicles, of which there are over 6,000 firefighting vehicles. That is 6,000 data terminals and the associated software which will go with that.

Mr DAVID SHOEBRIDGE: And some functional helmets—is that my understanding?

Mr McDONOUGH: That is right: new helmets for every firefighter.

Mr DAVID SHOEBRIDGE: Some upgrading of trucks?

Mr McDONOUGH: My understanding is, and I am not sure of the number, that there were some additional funds sought from the fund. The RFS has to ask for the money from the fund for some reconditioned vehicles, that is, some older vehicles to improve the fire protection and bring them up to date with all the latest technology.

Mr DAVID SHOEBRIDGE: And then some radios, I assume to ensure that people when they are firefighting can have good radio communication.

Mr McDONOUGH: No, there are no radios. As I understand it there are no more radios. The radios would have been in a separate fund from the \$20 million that has been set aside for brigade grants. Really it is up to each brigade to decide how they want to spend their \$10,000.

Mr DAVID SHOEBRIDGE: So the radios, if they were purchased, would have come out of those \$10,000 per brigade grants—is that right?

Mr McDONOUGH: That is correct. Yes.

Mr DAVID SHOEBRIDGE: You see, what I cannot understand is why all of that is not being provided by the New South Wales Government. That sounds to me to be like essential equipment that instead of coming from donations should just be the backbone of a functioning, safe, comprehensive rural fire service provided by the New South Wales Government. I do not understand why donations are being required to just get that basic firefighting equipment and safety materials.

Mr McDONOUGH: 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.

Mr DAVID SHOEBRIDGE: So these donations have been used effectively to save the State Government spending that money on the Rural Fire Service. That has been the effect of it.

Mr McDONOUGH: I do not think it is a matter of saving the State Government. I would suggest to you that if the funding had not been there we would not have these things—it is as simple as that. It is not a matter of the State Government being able to stick their hand in their pocket, I would suggest to you, and find another couple of hundred million dollars to fund the Rural Fire Service. I think taxpayers of New South Wales would certainly feel the pain with that extra funding and we are just not ready for it at the moment.

Mr DAVID SHOEBRIDGE: So it is your organisation's position that it is a perfectly legitimate use of these donations to defray taxpayer expense. I do not mean to put words in your mouth. That is your position: that it is perfectly legitimate—

Mr McDONOUGH: Well, certainly—

Mr DAVID SHOEBRIDGE: Please let me finish. For the \$51 million that has been raised through community donations, it is quite legitimate for that to defray what would otherwise be State government expenditure for the Rural Fire Service.

Mr McDONOUGH: No. As I said before, it would not have otherwise been State government expenditure. The Rural Fire Service volunteers would have gone without. It is as simple as that.

Mr DAVID SHOEBRIDGE: On what basis do you say that? Has the Government said to you that if these materials—essential materials; we can agree on that—were not provided through donations that they simply would not have been provided to the RFS? Have you heard that from the Government?

Mr McDONOUGH: No, I have not heard that from the Government. What I am saying is, and as I said in my introduction, the Rural Fire Service is the largest firefighting organisation in the world. We probably have one of the largest fleets of vehicles in New South Wales if not in Australia. To keep all of that going requires a significant amount of funding. Some brigades have got 30-year-old trucks and we are trying to bring them up to date. Sure, if we could, in the ideal world we would probably have double or triple the funding that we get at the moment but it is not there. It is as simple as that. And I do not think the taxpayers of New South Wales or of Australia would be prepared to double or triple their contribution in the emergency services.

Mr DAVID SHOEBRIDGE: We are not talking about a doubling or a tripling of the contribution, are we? Because you are talking about adding \$51 million from this particular appeal to a budget that is in the order of \$500 million, I think you said. I am not following your maths there, I am sorry.

Mr McDONOUGH: Well, because even after these funds are injected we are still going to have 30-year-old trucks in the fleet and we still do not have enough money to do what we need to do.

Mr DAVID SHOEBRIDGE: So surely the answer, rather than a one-off injection of donations, is to look to the State Government and by means of the State Government, all of us contributing across the State through taxes and other fees, to provide an ongoing, viable and sufficient funding for the RFS rather than a bandaid through donation.

Mr McDONOUGH: The money has been given. We have been through the courts. It has been allocated to the Rural Fire Service. It was donated to the Rural Fire Service. It is there. That is without any plea from the Rural Fire Service to give the funds. Ms Barber obviously made that decision to donate the funds. So I am having difficulty saying that if that money had not been donated the taxpayer would have had to find it because it just would never have been found.

Mr DAVID SHOEBRIDGE: Have you read Ms Barber's submissions when you make those assertions about—

Mr McDONOUGH: I have not read Ms Barber's submissions. I do understand the way the donation scheme was set up. And I do know when the figures were getting a bit high Ms Barber decided she would see if she could allocate the funds elsewhere. And, ill-advised as that was, that was her ill-informed comment, I guess.

Mr DAVID SHOEBRIDGE: I think it would be fairer to say, would it not, that she has—

The Hon. TREVOR KHAN: Can I take a point of order at this stage, Chair?

The CHAIR: What is the point of order?

The Hon. TREVOR KHAN: I do not think I have any questions but we are getting 10 minutes in. I am wondering, firstly, whether any other members might want to question, but the other point is I am not quite sure how productive this questioning is. I think Mr David Shoebridge clearly has a position with regards to his bill, and good luck to him. And clearly Mr McDonough has a position with regards to it. But I think this arguing backwards and forwards is not advancing the exercise at all. I think if other members have a question they should have the opportunity of asking it.

Mr DAVID SHOEBRIDGE: If that is a point of order I am more than happy to deal with the issue if others wish to ask questions but I think my questioning was [inaudible]—

The CHAIR: In relation to other people asking questions, that is a point of order and I will uphold it. I lost track of time. I apologise. Would someone else like to ask some questions?

The Hon. MARK BUTTIGIEG: Mr McDonough, I just want to grab something that you had put forward in your submission with regards to the time frame of the bill, which is actually encapsulating a broader period of time than the appeal. According to the submission, "the Celeste Barber appeal did not commence until 3 January," yet the bill purports to encapsulate the period 1 November 2019 through to 1 February 2020, as opposed to 3 January when the appeal started. Has the RFS done any calculation of the quantum of money that would align with those periods? In other words, how much money was donated between 1 November and 3 January, which would be, at least intuitively, clearly outside people's intentions regarding that appeal?

Mr McDONOUGH: I cannot answer that question. I believe you have a witness later today, Mr O'Malley, who may be able to answer that. But I cannot answer that question. All I can say is I do know of some brigades who receive donations into the fund directly to the brigade and this bill would certainly affect that fund, potentially.

The Hon. MARK BUTTIGIEG: So certainly from 1 November to 3 January, anyone who donated in that period would not have intended it to go anywhere else other than directly to the RFS.

Mr McDONOUGH: I would have thought not.

The Hon. MARK BUTTIGIEG: No. Okay. And then from that period on the question is that there may have been some people further down in the campaign. Do we have any idea of when Ms Barber started suggesting that people might want to send their money elsewhere? So from 3 January to 1 February, how far into

that period do we know when that sort of social media message started to get out that perhaps we have got too much money now and it should go elsewhere? Do we have an idea of that?

Mr McDONOUGH: No, I do not. Again, Mr O'Malley may but it is not something that we tracked. We were a little bit otherwise occupied during that period.

The Hon. MARK BUTTIGIEG: Yes. The other interesting thing I wanted to explore quickly before I hand it over to perhaps my colleague the Hon. Rose Jackson or someone else is you mentioned in one of your previous statements that we have one of the biggest firefighting associations in the world, I think you said; did you?

Mr McDONOUGH: As an association we have 48,000 members but the Rural Fire Service of 70,000 volunteers is the largest firefighting organisation in the world.

The Hon. MARK BUTTIGIEG: So we have got this situation where, would it be fair to say that we have a hugely disproportionate reliance on the goodwill of volunteers and the funding envelope for that is consequently always constrained due to the size of that force? And while it sounds like a lot of money—and it certainly is in absolute terms; \$51 million is not a small amount of money in anyone's language or certainly in my circles—notwithstanding that, it is going to be helpful but I think you said you have already committed something like \$90 million of—

Mr McDONOUGH: That is correct, \$90 million. Yes.

The Hon. MARK BUTTIGIEG: I guess the point I am trying to tease out is even after that \$51 million is spent can you tell us what sort of areas would still require attention? Let us just assume that the \$51 million goes where you say it is going to go and everything is brought up to speed as much as it can using that envelope, what are the defects in the service will result still after that funding?

Mr McDONOUGH: Well, I would not call them "defects"—deficiencies or improvements that could be made. There are 45 rural fire districts around the State. Typically they consist of two or three local government areas. At this stage they have not had the ability to access the funds. I know that in my own district the district manager is looking at providing facilities for group officers—they are the people that look after groups of brigades. They are not covered in the current allocation of funds other than the general allocation of the \$70 million that the Rural Fire Service has allocated. There are just so many things that can be done. When the money is all spent and I am expecting the money in that fund, not only the Celeste Barber amount but the rest of the money that came in from other donors, to be all allocated probably before the end of this calendar year and we will be still wanting.

The Hon. MARK BUTTIGIEG: In effect, by virtue of this \$51 million donation you have a 10 per cent increase in your annual budget. Without being profligate, in an ideal world where you had a good, well-targeted budget, what would you actually need per annum to make sure that the RFS is adequately funded to do its job?

Mr McDONOUGH: That is a question for the Rural Fire Service but I would expect that it would be at least in the order of another \$100 million a year.

The Hon. MARK BUTTIGIEG: Right. Okay.

Mr McDONOUGH: We are operating with, I think, 900 staff in total to manage a workforce of 70,000. That gives you an idea. The ratios are just challenging for everyone involved.

The Hon. MARK BUTTIGIEG: Thanks, Chair. That is it from me.

The CHAIR: Thank you. Anyone else?

The Hon. ROSE JACKSON: I have a couple of questions.

The CHAIR: Please proceed.

The Hon. ROSE JACKSON: I want to ask either witness—perhaps Mr Williams or Mr McDonough may want to answer—to elaborate for us a little on some of the experiences of the volunteers in the actual fighting of the fires because of some of the inadequacies in the equipment. You mentioned 30-year-old trucks. You mentioned limited respiratory equipment. There were a number of other things that you mentioned that would be addressed through the allocation of this money. What was the experience during the most recent bushfire season where some of those things were not provided? How did that make the job of RFS volunteers more difficult?

Mr WILLIAMS: I would like to answer that if I could.

The Hon. ROSE JACKSON: Yes. Go for it.

Mr WILLIAMS: Money is not the answer to the problem. The problem with this fire—it was the biggest, most dangerous fire that we have ever faced—was the fuel loads. Throwing more money at the problem is not going to solve the problem. If you look back over the last 10 years, the bigger the RFS budget has grown, the bigger the fires have become. So the money we are giving is not being spent wisely. There is a far better path to go down and that is to prevent these big fires. These fires are preventable. We cannot eliminate fire but we can certainly get them down to a level where we can manage them.

The big risk is our volunteers' lives were put at an enormous risk during this fire and we still have an enormous number of people suffering really badly over it. We have had very experienced people leave the organisation simply because they have had enough. When you are in charge of a large group of people in a big fire and you are getting overrun, you do not want that responsibility. The system is broken and we need to fix it. The way to fix it is to reduce the intensity of the fires we have. That money that was given does not pass the pub test in our view. We put a media release out on 7 June and we said we could easily fix the problem by starting a benevolent fund and taking \$51 million out of the \$541 million budget that the RFS gets. We could simply transfer that \$51 million into a new benevolent fund and that money could be put out and spent very quickly and support the people that have suffered badly. Thank you.

Mr McDONOUGH: If I may address that question, there are numerous areas but one of the big areas that is worth mentioning is that the main motivation for any volunteer is the recognition that they have put the effort in. One of the challenges that the Rural Fire Service has suffered for many years is the ability to record the effort that the volunteers put in. To date it has been a very ad hoc system and not really given us the ability to look up a table somewhere and find that "Brian McDonough has done 200 hours in the last month" or, even better still, "has been on the fireground for eight hours and it is time that we got relief for him and stood him down".

One of the things that this funding is being used for is what we call an availability system which will keep track of a volunteer's time and also the hours they spend on the fireground so that the incident management team are able to keep track of fatigue management and issues like that. Obviously the longer you spend over a certain period of time on a fireground, the more likely you are to make mistakes. That is just one of the things that it is bringing the organisation and we will be able to put a value on the volunteer effort that the Rural Fire Service provides to the State of New South Wales.

The Hon. ROSE JACKSON: Is it the case that some of the funding has been or is intended be allocated to support the families of the RFS volunteers who died? We have talked a little about—

The Hon. TREVOR KHAN: Or were injured, one supposes.

The Hon. ROSE JACKSON: Apologies. Yes. I will include that in my question: RFS members who died or were injured. We talked a little about the equipment side. We talked a little about the potential upgrades there and the benefits they could bring but perhaps if you could speak a bit about some of those experiences—the potential for these funds to assist the families of members who died and members who were injured.

Mr McDONOUGH: The only thing I can say about the families of those who were tragically killed during the season is that the message that I have received from within the Rural Fire Service is that they will not ever want for money going forward. I think financially they will be well catered for. Nothing, of course, will make up for the loss of a loved one.

The Hon. TREVOR KHAN: Rose, would you be prepared for me to ask a follow-up question in that regard?

The Hon. ROSE JACKSON: Yes. Go for it.

The Hon. TREVOR KHAN: Thanks. In regards to that, and I accept the assertion, but in that allocation of funds that you referred to when Mr Shoebridge was asking you questions, I did not take down—and it may be my fault—an allocation of funds for the family of the killed and injured. Is there a specific allocation in terms of those families.

Mr McDONOUGH: I am not aware of that. I suspect that they are still trying to get the information. As I said, I heard very early in the piece that the families of the deceased are certainly well catered for. I do not know about the injured but typically the service does look after the injured. We are all covered by the workers compensation scheme from icare.

The Hon. TREVOR KHAN: Yes. I accept that there is a workers compensation scheme but I would have envisaged that some of the donors would have been well motivated in the light of the heartbreaking stories

of the killed and injured. And indeed in the litigation—I will call it the Celeste litigation—in the Supreme Court one of the specific questions that was asked of Justice Slattery related to the establishment of a fund to support the families of firefighters killed in the line of duties and firefighters injured whilst firefighting. With respect, the feeling that I get, putting aside Mr Shoebridge's bill, is that one of the most important things is a clear enunciation for all volunteer firefighters that money has been put aside not just for those killed and injured in the last fires but going forward that there is specific allocation for those people. Is that not a not unreasonable proposition?

Mr McDONOUGH: Absolutely. It is very reasonable. In fact my understanding is that it is still to be set up but certainly there are still some funds left and the trust is working through how to administer that part of the fund. That is certainly what some of the remaining funds are set aside for.

The Hon. TREVOR KHAN: I do not want to be critical and I am perhaps saying this rhetorically, because it is not your direct responsibility, but I have to say my initial reaction is I accept all about helmets and trucks but the primary responsibility of so many that are involved in this—and I think, again, if you are looking at a motivation for people to have contributed to this charity it was to ensure that the killed and injured and particularly their families were looked after. So I say that to you now because I know we are going to have some other witnesses later on and I would like some assurance that there is something more concrete than "we are looking at it". Again, that is not a criticism of you.

Mr McDONOUGH: I am not privy to the detailed discussions of the fund but I have been assured that certainly funds have been set aside for those [inaudible]. I do not know; they may have already allocated. I really have no information on that.

The Hon. TREVOR KHAN: That is alright. Again I am not attacking you in any way.

Mr McDONOUGH: I appreciate that.

The Hon. ROSE JACKSON: In that same vein, if I may just potentially follow up, one of the issues that had some prominence during the bushfire season itself was that of masks and respirators. This was something again that there was various social media and then in fact mainstream media coverage of the fact that some brigades did not feel as though they had adequate equipment. They were asking for donations of either equipment or money for equipment from local communities. Again I ask this because I would like a little more detail if you have any information about whether any of these funds are going to specifically that purpose. Because it is my view that people in the community who were donating to the fund may well have been quite motivated by that issue in particular because it did receive quite a lot of attention. You mentioned respiratory equipment but could we just get a little more information about what is being looked at in terms of that issue? Because I think it is something that would have motivated a number of donors.

Mr McDONOUGH: Absolutely. Basically what is happening at the moment is there is a research project going on to evaluate the available respiratory protection devices. Amongst the considerations, some of these devices provide you with very clean air but you can only wear them for a certain period of time before you have to take a break. So there are all of these considerations that have to go in before a decision is made on what will be purchased and supplied. But absolutely part of that \$70 million has been set aside for whatever that equipment will be and the research project. And that has already started.

The Hon. ROSE JACKSON: Thank you for that. I want to have any feedback that you have in terms of the expectations of RFS volunteers during the period in which donations were being made. I appreciate the answer may be, "Look, they were incredibly busy on the fire front and were not really following the details of this particularly closely." Perhaps that is the answer. A number of the questions and conversations so far have been about the expectations of donors, but were RFS volunteers aware that substantial donations were being made, that a large fund was growing and that many community members were contributing? If you have any information about it, what were their expectations or reflections on that and where that money would be going?

Mr McDONOUGH: It is probably fair to say there was not a huge amount of discussion about it but I think certainly quite a few people were quite excited about the funds that were being raised. Certainly the expectation was that it was all coming to the Rural Fire Service and the volunteers.

The CHAIR: Mr McDonough, you said you had not read Ms Barber's submission. It is on the parliamentary website. In it she says:

As I understand, the RFS have already distributed \$20M to their brigades. This leaves \$30 plus million to help 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. 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.

Yet in your evidence so far I really have not heard any commitment from the Rural Fire Service Association to put any money back into the hands of the people that actually suffered. How do you respond to that?

Mr McDONOUGH: If you read the documentation associated with the payment from Ms Barber's fund it was to the RFS DGR trust fund. There is nothing in there that allows the trust fund to allocate funds outside of the Rural Fire Service. And in fact it has been before the Supreme Court, who supported that motion.

The CHAIR: So now you have clarified what you were equivocating on before. In other words, the people who suffered will not be getting any of this money. It will be used to buy equipment, which was your evidence earlier. And there is not any scope for that money to be allocated to families who suffered or even, indeed, suffering Rural Fire Service volunteers themselves. Is that true?

Mr McDONOUGH: No, that is not true. The Rural Fire Service volunteers—

The CHAIR: Then I do not understand your evidence.

Mr McDONOUGH: If you read the finding of the Supreme Court you will find that the Supreme Court found that the fund could be used to support the Rural Fire Service volunteers, whether they were injured or—

The CHAIR: In what way? When you say support, that is a pretty wide statement.

Mr McDONOUGH: If they were injured or had losses they could apply to the fund for help.

The CHAIR: How much money to date has been allocated to Rural Fire Service volunteers?

Mr McDONOUGH: I do not have that information, I am afraid. I do not know what the detailed workings of the fund are. I am working from the publicly available information on what has already been allocated.

The CHAIR: Are you a trustee of the fund?

Mr McDONOUGH: No, I am not.

The CHAIR: How do we find out where the money has been allocated?

Mr McDONOUGH: Probably you need to call a trustee of the fund.

Mr DAVID SHOEBRIDGE: Chair, could I ask a clarification question?

The CHAIR: Please.

Mr DAVID SHOEBRIDGE: Mr McDonough, you gave very detailed evidence about the money being spent on data hubs, helmets, trucks and a variety of quite specific purposes and your evidence now is you obtained that from publicly available documents. I have had a look and I cannot find this level of detail in any publicly available documents. Can you tell us where you got that information from?

Mr McDONOUGH: Perhaps I should clarify that it is available to RFS volunteers at least. Certainly, they were not put out as being confidential. RFS publications have been put out and announced on social media.

Mr DAVID SHOEBRIDGE: You said there is money set aside. Your initial evidence was some \$70 million to \$100 million had been expended and the fund was fully expended that came from Celeste Barber. You then—

Mr McDONOUGH: I said \$70 million from the fund has been set aside for some initiatives for the RFS to administer the funds and \$20 million has been set aside for brigade grants. Every brigade can apply for a grant of up to \$10,000.

Mr DAVID SHOEBRIDGE: You say you have got that information about the \$70 million plus the \$20 million from social media and from some other communications to the RFS.

Mr McDONOUGH: That is correct, yes, RFS communications.

Mr DAVID SHOEBRIDGE: You then said that it was your understanding that a separate set of money had been set aside for injured firefighters and for the families of firefighters who had been killed. Where did you get that information from?

Mr McDONOUGH: That information came from one of the trustees. As I say, I do not know any more of the details than they had planned on putting some money aside for them.

Mr DAVID SHOEBRIDGE: So that is not from the social media?

Mr McDONOUGH: No, that has not been published, as far as I know.

Mr DAVID SHOEBRIDGE: Which trustee did you speak to?

Mr McDONOUGH: Mr Robinson, the secretary of the Rural Fire Service Association, gave me that information.

Mr DAVID SHOEBRIDGE: What did he tell you precisely about the allocation to the family members and injured firefighters?

The Hon. NATASHA MACLAREN-JONES: Point of order, Chair: To facilitate the line of questioning, we have the RFS appearing this afternoon. In their submission they do refer to details of how the fund will be spent and working with the trustees. It might be better for some of these questions to be directed to the RFS this afternoon, rather than hypothetical questioning or putting witnesses in a situation where they may not be able to answer questions in detail.

Mr DAVID SHOEBRIDGE: To the point of order: I am trying to understand the basis upon which this witness gave certain evidence. By all means, the Government is perfectly entitled to ask those question of the RFS, as I probably will later. We are entitled to ask about the basis upon which this witness gave this evidence earlier.

The CHAIR: Thank you. Any more questions?

Mr DAVID SHOEBRIDGE: I was hoping for an answer from Mr McDonough about what the trustee told him in terms of allocations of funds to assist injured firefighters and also to provide relief for the families of firefighters whose lives were lost fighting the fires. What were you told and how much money has been set aside?

Mr McDONOUGH: As I said before, I have been told that some money has been set aside. I was not told how much it was—in fact, the message I got while talking to you was that was to finalise the details.

Mr DAVID SHOEBRIDGE: Who gave you that message while talking to me?

Mr McDONOUGH: One of the trustees.

Mr DAVID SHOEBRIDGE: The same trustee you were speaking to earlier or a different trustee?

Mr McDONOUGH: No, a different trustee.

Mr DAVID SHOEBRIDGE: Who was it?

Mr McDONOUGH: I would rather not answer that.

Mr DAVID SHOEBRIDGE: You received a text during your evidence today from an unknown trustee and you will not tell us who.

Mr McDONOUGH: Alright, it was Scott Campbell.

Mr DAVID SHOEBRIDGE: Is it your position that a significant amount of the funds should be set aside to at least assist not only the families of those who were killed in the past fires and those who were injured in the past fires but also to have a fund set aside to assist firefighters and their families in the future?

Mr McDONOUGH: I do not have a position. The only position I have in relation to the fund is that it sticks to the trust deed. How they allocate the funds is up to the fund. It is not my position, it is not the Rural Fire Service position. We are quite happy if they stick to the deed as it is and as it has been agreed in the Supreme Court.

The Hon. TREVOR KHAN: Chair, could I ask a follow-up question to that? I am not trying to run interference. What I am going to, and I partly went to this earlier, is page 3 of the RFS submission, which I am assuming, Mr McDonough, you have read. Is that right?

Mr McDONOUGH: No, I have not had the opportunity to read that.

The Hon. TREVOR KHAN: I am not being critical, but you have certainly had the opportunity of viewing or reviewing some of the material that came out of the Supreme Court. Is that right?

Mr McDONOUGH: I will not say viewed. I have been briefed by a number of the trustees on what the findings were.

The Hon. TREVOR KHAN: I am looking at the RFS submission and I accept that they are faithful to the terms of Justice Slattery's decision, but apart from the provision of funds for the support of families of firefighters killed or injured, his Honour found—and one assumes this must have been as a result of the submission

made on behalf of the RFS or some other body that appeared before the Supreme Court—that funds could be used to provide physical and mental health training and resources and trauma counselling services. Have you heard anything from any of the trustees that indicates that plans at least are in place to make an allocation of funding for trauma counselling and mental health training?

Mr McDONOUGH: I have had discussions with the trustees about that. I might add that the Rural Fire Service Association is currently in the middle of funding some 600 places on mental health first aid courses for volunteers. That is money that has come to the Rural Fire Service Association, nowhere near as much as went into the trust fund. We are doing that as well and the trust fund is looking at how they can include that. Again, I am not privy to the detailed discussions inside the trust fund.

The Hon. TREVOR KHAN: No, of course you are not, Mr McDonough, and I am not suggesting you should. But it seems to me that, as in a sense an association that represents the members, you would be intensely interested in money that goes to the killed and injured firefighters and their families. You would be intensely interested in funding to assist in mental health training and resources and in terms of trauma counselling services. You would also be intensely interested in the use of the funds to meet the costs of volunteer rural firefighters to attend and complete courses that improve skills related to the volunteer-based fire and emergency services activities of the brigades. I am reading from the RFS submission and those three categories I have referred to in a sense fall, I would have thought—and I have seen you and your association give evidence before other inquiries—you were plainly interested in the welfare of your members. What that fund has available is the capacity of improving the welfare of your members and therefore I would have thought at least those three categories would be the top of your mind to say, "When are we going to get the funds?" Am I unreasonable in that assumption?

Mr McDONOUGH: A little. I have to say you are absolutely right. Those issues are at the top of our minds. We as an independent organisation, independently funded, are actually spending a lot of our funds providing for those requirements of our volunteers.

The Hon. TREVOR KHAN: Sure, congratulations, but this has provided you with a source of additional funds to do more.

Mr McDONOUGH: That is right. The challenge we are having is finding the people and working out a means whereby we can give the money to these people appropriately to make sure that it is going to the right people. That is the challenge, I would imagine, that the trust fund is also having. But I do not know. To be honest with you, it has not been a major issue because we have been concentrating on our own efforts in that manner.

The Hon. TREVOR KHAN: Mr McDonough, I am not being critical of you. Partly my questions have been in a sense rhetorical. I hope that later today we might hear some evidence that will flesh out the categories that were identified by Justice Slattery in terms of what has been done to ensure that what was envisaged is being implemented.

Mr McDONOUGH: Knowing the trustees, I have absolute faith that those particular areas will be well and truly covered by the fund.

The Hon. TREVOR KHAN: We will see.

The CHAIR: Can I ask a question of Mr Williams? I note your earlier statement that the Volunteer Fire Fighters Association wants a benevolent fund set up to support families of firefighters killed and injured. Does such a fund actually exist at the moment?

Mr WILLIAMS: No, it does not exist and that fund needs to be place. 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.

The CHAIR: In Justice Michael Slattery's judgement, as quoted in the Rural Fire Service submission, which will we talk to later today, item B relates to affirming where the money is contained in the trust could be expended. It talks about exactly that. "It could be used to establish a fund to support families of firefighters killed in the line 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. Of course, he is talking about the future. Having listened to Mr McDonough's evidence, there is a good emphasis on the supply and renewal of equipment and everything for firefighters, but at the end of the day

if people are not there to man the trucks, wear the uniforms and use the radios, because volunteers are falling away, the whole endeavour fails, do you not believe?

Mr WILLIAMS: Yes, absolutely.

The CHAIR: What is happening with volunteers on the ground? The NSW Rural Fire Service says we have the largest rural fire service in the world, but there was some evidence whilst the fires were raging that there was not significant turnout of volunteers. Have you anything to contribute to that?

Mr WILLIAMS: If you cast your mind back to the bullying inquiry, the RFS came out very, very poorly in that inquiry. That is one of the problems. The big problem that we are finding is that the really experienced people, their views and opinions are not being listened to. The ideal way to run a fire is use the local expertise, and that local expertise is not being used now like it used to in the past. Volunteers are just becoming disenchanted. As I said, these fires were so bad, so dangerous, that senior people do not want the responsibility of having 40, 50 or 100 people working under their command and crews dying on the fireground. The problem is the fires are getting bigger and more dangerous. We are trashing our environment. Things have to change. Volunteers want change.

The service has gone down a path where we believed if you could build a big enough firefighting force, we could put out any fire. That has been a dismal failure. Prevention is the answer. We need to prevent fires. We can only react to them and, as a number of bushfire scientists have said, once fuel loads get over a seven, eight or nine-year range, it is impossible to put them out. It does not matter how many aeroplanes or helicopters or people on the ground we have, we cannot put those fires out.

The Gaspers Mountain fire was a good example of that. It went for 79 days. It was started by nature and it was put out by nature. We could not put it out, no matter what resources we threw at it. We have to change the system. We have to get back to preventative burning and Indigenous land management practices. I practise that on my own ground. I was hit by the catastrophic Gaspers Mountain fire on 21 December. All the properties around me were burned to a crisp. I still have green trees on my property, simply because I was using Indigenous land management principles to manage. When the RFS forecast that Kurrajong Heights would be completely overrun on that catastrophic day, when it came into the Kurrajong Heights area after devastating Bilpin, the suburb to our west, it self-extinguished in a three-year-old hazard reduction.

We need to get back to sensible management. Volunteers are fed up with going to these big fires. Our environment is absolutely trashed. I did about a 40 kilometre drive up the Putty Road when the fire was impacting on it, and the dead and injured animals on the road made me sick. I was so busy with the fire I could not stop to help them, and I am still worried about the fact that I left injured animals in torture on the road and had to drive around them. It is terrible. The system has got to change.

The CHAIR: Is it true to say that there is too much emphasis on technology and not enough on effective organisation?

Mr WILLIAMS: Technology is good and we support technology, but the simple principle is this: If you double the fuel, you quadruple the intensity of the fire. It is really that simple: Reduce the fuel, you reduce the fire. We cannot eliminate fire, but we can certainly keep it in an area where we can manage it and we are not destroying our environment and ruining lives and incomes. My brigade suffered severely with people because we spent so many days at this fire. People lost an enormous amount of income. People can only do that for so long. You can only bang your head against a wall for so long. We need to change what is currently in place. We are going down a path of total destruction.

The CHAIR: Thank you. Any other questions?

Mr DAVID SHOEBRIDGE: I have a couple, if possible.

The CHAIR: Mr Buttigieg put his hand up first.

The Hon. MARK BUTTIGIEG: I want to go back to Mr McDonough for clarification. I think there has been a perception developing—let us be frank—that the association may be taking a parochial view with regard to the funding being directed towards its members. My takeout from the evidence of Mr-McDonough was that there is a legal structural separation between the trust, which is responsible for ultimately allocating the funds and the ambit of that distribution was manifested in the Supreme Court decision, which broadened the categories to which that money could go including injured families and mental health-associated issues. It was a broader ambit than just directly to RFS volunteers.

Mr McDonough, I want to clarify, when it comes down to tints and the trust starts allocating this money, presumably there will be a mechanism for determining how that gets done. The association will be making representations on the data based on how that gets done, the parameters. Can we get an undertaking from the association that there will be due consideration given to that broader ambit of categories that was defined in the Supreme Court ruling and there will not be a disproportionate bias towards simply directly to the RFS volunteers?

Mr McDONOUGH: Absolutely, I am very happy to give that. As I said before, I know all of the trustees personally and I am absolutely confident that mental health and welfare will be at the top of their list. One of the other things I might add is that the COVID-19 situation has made it very difficult to provide the support and get to these volunteers. As an association we set aside funds for volunteers who lost their properties. We had difficulty finding the names of those volunteers and how to contact them. There are a whole heap of logistic issues that come in behind the status quo at the moment, related to COVID-19, that mean that we cannot get to these people.

I know that every rural fire district went around and asked for people who lost property. I think we now just about have it covered, but we have spent over \$400,000 supporting volunteers who suffered during this fire. That is just from the Rural Fire Service Association. I know the fund and the members of the fund and so I know they will be allocating money. But I cannot tell you what or how that will be done.

The Hon. MARK BUTTIGIEG: Thank you.

The CHAIR: Any other questions?

The Hon. NATASHA MACLAREN-JONES: Chair, I have one last question. We are looking at the bill that is before us. In that it states that the funds from the trust should be spent on people, organisations, communities across Australia, which is a significant shift from the intent of the trust, which is for the New South Wales brigades. If this bill were to pass, what impact would that have on how funds are raised for this trust and how funds would be raised and distributed within New South Wales?

Mr McDONOUGH: Again, I am only speculating, but I would imagine that people would be reluctant to give to a fund when they have no commitment as to where those funds were going to be spent. We have seen that now in this season where people have given to other charities and supposedly the money has been held back for administration purposes or something like that. I really think that it will destroy any opportunity for funds to be given to the deductible gift recipients [DGR] fund in the future.

The Hon. NATASHA MACLAREN-JONES: You raised in your opening statement the tax deductibility of these. This might be a question better put to the Law Society, but what impact do you believe it would have on people's ability to fundraise?

Mr McDONOUGH: From that point of view, I cannot answer, I am afraid. I know brigades have money that they have raised—the cheque has been made out to the particular brigade—and that goes into the fund. About 300 brigades have accounts with the fund. Again, this bill has the potential of taking that money away to be spent in areas other than the fire service. The implications across the service are quite frightening.

The Hon. NATASHA MACLAREN-JONES: Are you saying that, in the event that this bill were to pass, it would probably mean that the entire structure and your ability to fundraise for volunteers, injured firefighters and their families or even for equipment could be jeopardised?

Mr McDONOUGH: I believe so, yes.

The Hon. NATASHA MACLAREN-JONES: Thank you.

Mr David SHOEBRIDGE: Chair, I have a couple of quick questions.

The CHAIR: Proceed.

Mr DAVID SHOEBRIDGE: Mr McDonough, one of the purposes of the bill is to allow money to go to fire-affected communities. That would include people in Bega shire, people around the State who have lost their homes in the fires and are going through this winter living in tents and caravans and suffering as a result of the fire damage. Are you suggesting that if money was diverted from the RFS to help people currently living in tents and caravans to get permanent accommodation would have a negative impact on people wanting to donate in the future? Is that your evidence?

Mr McDONOUGH: Donate to the Rural Fire Service, absolutely. I might point out that there are other charities that can provide for these people you talk about, such as the Salvation Army or the Red Cross, who received significant donations during this. How many charities do we require to support these people? There are mechanisms to get support. I can quote somebody in my area who lost their house. They were uninsured and they

now have a brand-new house. Yes, it has taken a lot of time, but the facilities are there to support these people. It does not necessarily have to come from this fund.

Mr DAVID SHOEBRIDGE: Mr McDonough, there are thousands of people living in precarious accommodation as a result of the fire damage, hundreds and hundreds of people living in tents and caravans. Surely, given the RFS should be funded primarily by taxpayers, the RFS would be able to continue if a proportion of the funds raised by Celeste Barber was helping those people in winter living in tents and caravans. Surely that would support giving, rather than the opposite.

Mr McDONOUGH: This bill says that anybody who gives to a trust fund for a particular purpose is not guaranteed that it will go for that particular purpose. That is what I maintain.

Mr DAVID SHOEBRIDGE: That is not what this bill does. It operates for an express period time for one particular fund and provides an expanded range of statutory purposes. Have you read the bill, Mr McDonough, because that is not what it does?

Mr McDONOUGH: Yes, I have but it sets a precedent. And the precedent it sets is that—

Mr DAVID SHOEBRIDGE: And you would put that ahead of the needs of people this winter in a tent or a caravan because they have lost their home?

Mr McDONOUGH: No, I am not putting that precedent. What I am saying is that I believe that there are sufficient funds out there to look after the people without having to touch this fund. The other thing is that the majority of the people who donated to this fund knew exactly where the funds were going.

Mr DAVID SHOEBRIDGE: We will have to agree to disagree, Mr McDonough.

The CHAIR: We will call questioning to an end. Thank you very much, Mr McDonough and Mr Williams, for coming today.

(The witnesses withdrew.)

(Short adjournment)

Dr DERWENT COSHOTT, Lecturer, University of Sydney Law School, before the Committee via teleconference, sworn and examined

Dr IAN MURRAY, Member of the Law Council's Charities and Not-for-Profit Committee and Associate Professor and Deputy Head of School, Research, University of Western Australia, before the Committee via teleconference, sworn and examined

DAVID CASTLE, Member of the Law Society Business Law Committee, before the Committee via teleconference, affirmed and examined

The CHAIR: I now welcome our next witnesses. Dr Coshott, would you like to make a brief opening statement? Please limit it to a couple of minutes.

Dr COSHOTT: Certainly. Members of the Committee, my views on the Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020 are as follows. First, the purpose underpinning the bill is flawed, insofar as it seeks to give effect to representations made by Celeste Barber that moneys raised through her Facebook fundraiser could be used for purposes other than supporting the Rural Fire Services [RFS] brigades. This is because, in the context of over \$51 million worth of donations, we do not know what the vast majority of donors knew or thought when they donated to the fundraiser. We only know what donors saw when making their donations on the fundraiser's Facebook page: a picture of a burning house, and statements that this was a fundraiser for "The Trustee for [the] NSW Rural Fire Service & Brigades Donations Fund".

We therefore do not know whether donors were aware of Ms Barber's representations to send the money to other charitable organisations. Indeed, Ms Barber only made such representations after the fundraiser had already received over \$30 million, and after Barber herself posted the terms of the RFS Trust on the fundraiser's Facebook page, circling it under the headline "this is where your millions of dollars are going". In other words, most of the moneys raised were done so prior to any representations that they could be used for purposes beyond supporting the RFS brigades.

Secondly, even if one were to accept the purpose behind the bill as valid, there remains a problem with how the bill seeks to effectuate it. This is because the bill will take in donations that had nothing to do with Celeste Barber's fundraiser due to the fact that: ne, the bill is not limited to donations raised through the fundraiser, but will take in any donations made to the RFS Trust made from 1 November 2019 to 1 February 2020; and, two, by adopting this time frame the bill purports to operate from over two months prior to the fundraiser's commencement, to almost two weeks after it ended. As a result, the bill will appropriate donations made to the RFS Trust by individuals and organisations that did actually intend their funds to only go to the RFS Trust, thereby effectively treating these donors' intentions as irrelevant. Thank you.

The CHAIR: Thank you. Mr Castle, do you want to say something?

MR CASTLE: Chair and members, I will introduce the joint statement by both myself and Dr Murray. The Law Society is a State body representing 30,000 New South Wales lawyers and with objectives of promoting reform and improvements in the law to ensure a just legal system. I and my colleague Dr Ian Murray speak today on behalf of the Law Society. Dr Murray is also a member of the Charities and Not-for-Profits Committee of the Law Council of Australia, a peak national body, to which the Law Society and each State body is affiliated and which has similar objects to the Law Society focussed on the administration of justice and general improvement of the law.

The law favours charities in various ways—through tax and other concessions and public recognition—in order to incentivise the use of charities so as to result in public benefit. The RFS amendment bill raises difficult questions about whether it promotes or detracts from such institutional support for charities by recognising or overriding donor intent and charity autonomy from government. However, given the objects of the Law Society, our comments today do not relate to the merits or public benefit of passing a bill such as the RFS amendment bill, but rather relate to the legal issues that the RFS amendment bill raises. Dr Murray will complete our opening statement. Thank you.

Dr MURRAY: Thank you, Mr Castle. In our view the bill raises three key legal issues. The first one is, is it a variation of the existing trust fund or does it result in the creation of a new trust. The bill can potentially be construed in either of two ways, as a de facto amendment of the trust deed, or potentially as, in effect, creating a new trust. In either case there may be substantial problems with trust, revenue and other laws, as set out in more detail in our submission. The second issue is that the new purposes, at least as they are currently drafted, do not appear to be charitable purposes. Charitable purposes have a technical legal meaning and that meaning is

separately determined at the State and Federal level. The legal meaning is often used as the basis for allocating tax and other concessions again at the State and Federal level.

The RFS Trust's purposes will be determined by looking to the trust deed as varied by the RFS amendment bill 2020, if passed. The amendments made by the RFS amendment bill 2020 as presently written are likely to result in the RFS Trust having purposes that are broader than legal charitable purposes. The trustee for the RFS Trust is currently a registered charity and endorsed as an income tax exempt charity at the Federal level. It may well have State tax endorsements based on its charity status too. Rendering the RFS Trust non-charitable will likely result in the loss of all these tax concessions. It may be that to retain the tax concessions, savings legislation at the State and Federal level will be required or a rewriting of the purposes to narrow them to be charitable purposes.

The third issue is that the new purposes are beyond deductible gift recipient status of the trust fund. The trust's deductible gift recipient endorsement appears to be linked to a subset of charitable purposes—that is, it must be 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 proposed amendments appear to go beyond this purpose, which would cause a loss of deductibility for all future donations to the RFS Trust. Those are the three key legal issues that we saw with the proposed amendments.

The CHAIR: Thank you. Questions?

Mr DAVID SHOEBRIDGE: I have a couple for the Law Society. Thank you very much for your considered submission. I really appreciate it. The issue about whether or not it creates a separate trust or is intended just to expend the purposes of the current, I can tell you as the author of the bill, the intent is very much to expend the purposes of the current and not to create a separate trust. That is a matter that could be addressed, could it, through an express provision to that effect? How would you envisage that best being clarified in law?

Dr MURRAY: You are right. You could address that issue by including extra provisions or by drafting. It is possible to make a choice there. I will not venture to try to set out—

Mr DAVID SHOEBRIDGE: I am not going to ask you to draft it but it could be done through express provisions in the bill. At the moment it is ambiguous and you could make it unambiguous through drafting. Is that right?

Dr MURRAY: Yes, we think that is possible.

Mr DAVID SHOEBRIDGE: In terms of the State tax provisions, that is a matter that I had not heard raised until I read your submission. I have spoken to a number of trusts lawyers and tax lawyers about it. Could you expand on your concerns in terms of State tax implications?

Dr MURRAY: I guess we do not know what State tax endorsements the trust fund has. We would need to find that out to have a better sense of precisely what the risks are. As a general proposition, most of those State tax concessions are provided to charities and others, so if the fund was worried that its charity status was at risk, probably the key risk at the State level is the one that we emphasised a bit in our submission, being the stamp duty risk of inadvertently having a declaration of trust, which gives rise to a stamp liability. Again, it may be possible to address that as a matter of drafting and so that could be taken away and looked at. It should not be impossible to deal with that issue.

Mr DAVID SHOEBRIDGE: In fact, those two issues—the creation of a separate trust and this potential stamp duty issue—are they related, because the creation of a separate trust would arguably create the stamp duty as the money passed from one entity to another? Are they related or am I misunderstanding that?

Dr MURRAY: Not necessarily. The problem with the stamp duty declaration of trust head of duty is that it will pick up reaffirmations of existing trust as well potentially. It is just a very broadly drafted duty and there is quite a bit of care that has been taken to make sure you do not come within what is considered to be a declaration of trust, which is much broader under the duties legislation than you would think in normal parlance.

Mr DAVID SHOEBRIDGE: Is that the State Duties Act?

Dr MURRAY: Yes.

Mr DAVID SHOEBRIDGE: Would a savings provision to the effect that nothing done as a result of or in accordance with these amendments creates any obligation under the State Duties Act—I am not saying that wording is perfect—make a savings provision to that effect one way round this?

Dr MURRAY: Yes. It is State legislation so it is within the State's power to legislate to have an exemption from any duties that would be imposed.

Mr DAVID SHOEBRIDGE: In terms of the Federal issues about the tax deductibility status at a Federal level, it is your position—and I think it is probably uncontroversial—that in order to ensure that was protected, if this bill went through there would need to be some Federal savings provisions passed through the Federal Parliament as well to ensure that the deductible status was protected and was not lost. Is that right?

Dr MURRAY: That is right.

Mr DAVID SHOEBRIDGE: Therefore, if the bill was to be passed, one of the remedies for that would be a deferred commencement provision in the State legislation to allow for Federal changes to happen. If for some reason that could not happen then the deferred commencement provision would never be activated if we could not get that cooperative at a Federal level. That would be one potential solution, would it not?

Dr MURRAY: I must admit the committee and the society have not considered that issue. It sounds reasonable. The problem, as you point out, is the need for Federal action as well to complement State action, and so mechanisms to try to address that make a lot of sense.

Mr DAVID SHOEBRIDGE: I do not mean to put you on the spot, but as I said I have had a number of discussions with trust lawyers and the like and tax lawyers and one of the suggestions that has come forward is a deferred commencement provision on the State bill to allow for the legwork to be done Federally. If that does not come good, we have not done any damage by passing a bill that does not come into effect.

Dr MURRAY: That sounds reasonable, but it probably is something that is worth looking at. In principle, that sounds like a sensible idea.

Mr DAVID SHOEBRIDGE: Thanks and again I really appreciate the level of engagement that your submission gave to the bill.

Dr MURRAY: Thank you.

The Hon. ROSE JACKSON: I have some questions, Chair.

The CHAIR: Please.

The Hon. ROSE JACKSON: I wanted to follow up on a comment Mr Castle made in his opening statement about the importance of autonomy from government in relation to the operation of charities. Please expand on that a bit. Dr Coshott and Dr Murray are welcome to contribute as well. I want you to talk a bit more about why autonomy from government is important in the operation of charitable foundations and trusts.

Mr CASTLE: I might need help from Dr Murray but I think charitable foundations such as this one, which is set up privately by an initial donor or creator and the initial trustees, is normally a totally private arrangement between the parties and goes nowhere near legislature or the Government. I do not think we are saying much more than that, but Dr Murray might like to comment.

Dr MURRAY: Yes, the only other comment I will make is that I think we made the comment to note that the terms upon which the Law Society looked at it had not really gone down that path. As representatives of the Law Society we are probably not endorsed to say too much more than we have. I guess the main point of that is that charities and government both pursue the public good, but they go about it in different ways. The idea is the charity sector should be able to go about it in a different way by having people voluntarily come together to pursue things independent from government. The comment is more going to the institutional point of needing to think about how we support and maintain the charity sector itself as something separate from government, even though they might both have the public good in mind.

Dr COSHOTT: That being said, I think it is important to remember in the context of charities that largely charities step in in a position where government did not. To a very large extent the role charities have historically been in is to perform functions that government was unable or unwilling to do. That is the very history of how we first got charities. To the autonomy point not having any part in the Law Society submissions, I would say that the importance of autonomy would go to the fact that a donation to a charity is a voluntary disposition made by a person with their own moneys. The caution that needs to be exercised here is to disrupt that because there may be a view taken by the legislature that those moneys are better spent elsewhere. That more goes to the cautious point regarding the autonomy of charities from government or from the legislature.

The Hon. ROSE JACKSON: Thank you. I might follow up on the issue of what motivates someone to make a donation, to voluntarily give money to a charitable cause. It is the case, is it not, that there is often a tension

between the motivation someone might have in making a donation and the way that a charity spends it? The most obvious one that comes to my mind is how much of that money goes to the front line of a charitable cause and how much goes to the administration of the charity. That is often somewhat of a tension because when someone gives money, they intend it entirely to go to the front line of a good cause, but perhaps a charity takes some of that money to fund its administrative costs.

Dr COSHOTT: That was the Red Cross issue from earlier this year, which is—

The Hon. ROSE JACKSON: That is right.

Dr COSHOTT: —I think what you are getting at. That raises an issue as to necessity in a sense. We have to recognise that you are giving money to a charity as an organisation and that organisation needs some money to run. I do not think anyone would get upset about that. The question has always been: How much money does it need to run? That is where we get into the problems. How much money does it need to run and how much money has actually been spent? That is effectively what came to a head earlier this year with respect to the Red Cross and other charities. Quite frankly, it is still coming to a head. It was reported last month that between them the Red Cross, Salvation Army and St Vincent de Paul still have \$135 million of donations that they have not spent, which roughly represents half of the moneys they received.

There is an acceptable limit as to what can go on administration. Everyone understands that because it is an inherent part of it. The broader question as to how much of it should go to administration costs is a different question, often times depending on the day of the week. It is a different answer depending on other circumstances. For example, earlier this year if the Red Cross did not come out and say, "We don't have to spend all this money and we will keep some of our money for future disasters", then people likely would not have started getting as upset about the administrative costs as they did. So it is a linked problem.

The Hon. ROSE JACKSON: I suppose the question in relation to this particular bill is this: How much of a role does the Legislature have in regulating that and in setting limits for charities in how they administer their own funds? It is quite a limited role, is it not, in relation to most charities? The Legislature's role in determining how money received is spent is quite limited, is it not?

Dr COSHOTT: Yes, it is quite limited and that is shown by the fact of the sort of having looked at the previous evidence given by the Rural Fire Service Association [RFSA]. The point that was coming up there, and Mr Shoebridge's question has brought this out—that it was quite opaque as to what money was being spent where and how and that information is not publicly available. We do not know. All that we ever have is basically the financial statements that are provided to the regulator, the Australian Charities and Not-for-profits Commission [ACNC], at the end of the year. We do not know how much is spent. We do not know how much goes to admin.

Occasionally we find out but we usually do not find out through official channels. It is a question as to what we find acceptable as a community. In answer to your question of what role does the Legislature have in that, as a personal opinion my view would be that the Legislature has a greater role in basically removing that opaqueness and providing greater clarity but that is a very different question than the question that is posed by this bill, I think.

The Hon. ROSE JACKSON: Yes. I suppose I am just interested in what are some of the unintended consequences of creating a legislative regime in which the legislator, post facto of donations being made, decides that it thinks it would be better if they were spent in a particular way and therefore effects a change in order to allow that to happen. I suppose am concerned about the unintended consequences of that for the charitable sector more broadly.

Dr COSHOTT: I think the unintended consequences was raised by myself in my submissions and has been raised by the RFS as well that effectively people get that their money—which they have voluntarily chosen to donate—is now being appropriated for something else. We have seen examples with PayPal in the United States. We saw examples with the Red Cross this year. We saw examples with the Red Cross going all the way back to 9/11 of situations where money was donated by people thinking that it was going to one purpose and then it effectively is going to a different purpose. That really was a case of them not reading the fine print. Here I do not believe that is the case but in those cases that is what it was. People were understandably angry and the comments that always came out were, "I am not giving money to X, Y and Z anymore because of this."

Even in the Red Cross example earlier this year there was a restaurant near the local area, which I will not name because they were not doing what they should do, that was raising money that they said would go directly to a particular family, that it would not go to a charity because people had begun to lose faith in the idea that donating to a charity would send it to a particular place. We already have that as an undercurrent these days

where there is a very low faith in charities, and when we start messing with where people have intended that money to go, the answer is that, as many people as you may please through this bill—to take it back to this bill—there is an equal number of people who you will displease—possibly a greater number of people whom you will displease. For those people they might say, "I'm done. That's it." But that is an unintended consequence, I think, of this bill.

The Hon. ROSE JACKSON: I mean, just in terms of the legal status of donor intent, is there any way, in a circumstance like this where there are thousands and thousands and thousands of donors who all potentially have slightly different intentions when they log on and make that electronic transfer of their donation, would it be possible to in any way sort of try and capture in a strict legal sense a picture of that intent? Is there any capacity in which you could ever imagine a way to do that?

Dr COSHOTT: Well, what you are asking is: Is there ever a way to capture their actual subjective intent? Is there a way to know what is going on in here, in their minds?

The Hon. ROSE JACKSON: Yes.

Dr COSHOTT: No, because we are not mind readers. The only thing we have is what we know the person saw, what we objectively say, "What did you see when you made a donation to this?" What do we know? Unequivocally, what do we know the donor saw who donated to Celeste Barber's fundraiser? They saw a picture a burning house. They saw a statement that it was for the New South Wales RFS trust, donations brigade. They saw another statement to that effect. We know that that is what they saw, objectively. That is the only thing that we definitely know.

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. It is the same logic that informs if you sign a contract with another person and you have to go to court over that contract. The court cannot read your mind. The court says, "What did you think?" You objectively thought what was written in the contract and that is the only thing we know.

The Hon. ROSE JACKSON: Just one last question for me and then I will hand over questioning to some of my colleagues. I am obviously not an expert in trust law so this may not be the case, but would the passage of this legislation provide any opportunity for people who definitely did donate for the express purpose of the money going to the RFS, that that was absolutely in their mind to pursue a legal objection to the fact that that money could now be going to another purpose. Is that a possibility?

Dr COSHOTT: No. There is no possibility under the terms of the legislation to allow that. There would be no way of doing it. There is no way of doing that otherwise. There is no way for someone to reach in there, as it is currently drafted, and say, "Well, no, I do want my money going to the RFS." I guess to that point it would also be worthwhile mentioning that the current terms of the bill—and I will bring up the text of the bill for this purpose—are effectively a discretionary power on the RFS trust.

Mr Shoebridge can say whether or not he intended to it to be discretionary or not but it brings in a discretionary power on the RFS trustee, which 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, all it does—and this goes to Dr Murray's point—is, the way I would view this legislation, effectively it is a kind of statutory *cy-près* scheme; it is kind of statutory variation of the trust's purposes. To that extent it provides the RFS trustee with the discretionary power to give money to other purposes or to not give money to other purposes. The point about this is that as the bill is currently drafted, if the RFS trustee does not want to give the money to anyone else, it does not have to.

The CHAIR: Mr Buttigieg?

The Hon. MARK BUTTIGIEG: Thanks, Chair. Look, it is really just a follow-up on one of the points my colleague just made. I think it was the second last point. This is just for my own understanding that I have got this right. As a matter of law, what you are essentially saying with regards to donators' intention, is that it is crystallised at the point at which they log in and they are actually making the transaction online with the explicit intention articulated on that transaction page; in other words, your money is going to the RFS trust. If we were to pass this bill, that would in fact undermine that principle of law because in future people making a similar

transaction would perhaps have in the back of their mind that it could be overturned by subsequent legislation. Is that kind of the main weakness?

Dr COSHOTT: I think so apart from—that is sort of the first plank of my argument with respect to this: That this disrupts the only thing that we can objectively certainly know—that people donated.

The Hon. MARK BUTTIGIEG: Yes. So, in other words, let us call it the proxy of social media in trying to act as a signal for subsequent intention should not in principle override what I guess makes logical sense; that is, at the point of time that you are handing over your money it is a contractual arrangement that is expressly articulated at that point of time and to then subsequently proxy through social media is against the law, so to speak; but the legislation would overturn that principle.

Dr COSHOTT: I would not put it in terms of contractual arrangements that implies it is some kind of bargain. This is people who are voluntarily gifting their money but the logic of how we interpret that intention is the same as how we interpret a contract—based on the sense that we can objectively see what the people have read. The point about proxy of social media is more to the point that at best it shows us what some people thought but it does not show us what everyone thought and it does not show us—we do not know what everyone else thought or knew. We just do not, based on that. We do not what they saw. We do not know whether they agreed with it.

All we know is that there were statements made after \$30 million had already been raised that the money should go to other purposes and people agreed with that. Seemingly that seems to be on the basis of, "Well, you've raised so much more money than you ever intended to raise that there's more money so we can give it to other people too." It is a noble sentiment. As I said, the purposes of the bill are laudable but I guess if you allow—I am putting this in a more pejorative sense—the social media mob to say that because most of us have said we believe this thing, the rest of you who have not said anything do not matter, then you are allowing the loudest voice to override a lot of other people who did not want their money to go to other purposes, or indeed may have actually donated to other purposes.

A good example is the Packer Family Foundation back in November that donated a million dollars to the RFS trust and made a number of donations to other charities as well, totalling \$5 million. So it was an active choice on the part of that foundation to give some money to the RFS trust and some money to other organisations. What the bill effectively does is to say that, "Your choice in this regard as to where you want to voluntarily give your money doesn't matter because the trustee can now spend it on other things, if they so wish."

The Hon. MARK BUTTIGIEG: The other point that occurs to me as problematic—it may be an unfair analogy but I am going to make it because it occurs to me as a fair one—is if you were to make a will out to someone that says, "I want to give \$500,000 to my first son", and subsequently on social media were to say, "I've changed my mind. I don't think that's a good idea.", I mean is there not a point whereby, if we are legislating to override those sorts of things, the public's confidence in those formal arrangements at law gets undermined?

Dr COSHOTT: I can see your analogy. I do not think it is a great one because the disposition in a will is not going to be made until the person has died. I think a better analogy would be to say that "I give you a gift of a hundred dollars" and then two days after the fact say to you, "Give the money back, or give the money to my friend."

The Hon. MARK BUTTIGIEG: Yes.

Dr COSHOTT: That is effectively what this would be.

The Hon. MARK BUTTIGIEG: Just one more question. Do you have a view regarding the period that the bill is purporting to encapsulate this from 1 November to 1 February as opposed to the donation campaign starting date, which I think was 3 January.

Dr COSHOTT: Yes, 3 January.

The Hon. MARK BUTTIGIEG: Yes.

Dr COSHOTT: The problem is that it 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.

Now I guess I understand the logic of that is in the context of most of the moneys having already been allocated and the reason for the expanded date range may be to take into account other moneys effectively to make the total amount of money available. Again it goes back to the point people that expressly donated, outside of the Celeste Barber fundraiser, wanted to donate to the RFS trust and wanted to donate to the RFS trust. That is where they wanted their money to go. The bill effectively says, "We're going to take that away from people." Even if you, I guess, sort of rationalise that in the sense that you need an expanded date range because some of the money has already been spent so effectively we are taking money from here and there because it is the same thing anyway, nevertheless that is still what is happening. Again it comes back to my point made before that—that the RFS trustee may simply not choose to exercise the power anyway.

The Hon. MARK BUTTIGIEG: Thanks, Chair.

The CHAIR: Any further questions?

Mr DAVID SHOEBRIDGE: I have a couple, if there is time.

The CHAIR: Please.

Mr DAVID SHOEBRIDGE: I supposed to both the Law Society and Mr Coshott: One of your propositions is that trusts are created by a private individual and, having been created by a private individual and private law, there should be reticence in the Government seeking to come in and interfere with a trust created by a private founder and the like. Is that a fair characterisation of some of the concerns of the Law Society and you, Mr Coshott?

Dr COSHOTT: That would not be my concern, no.

Mr DAVID SHOEBRIDGE: All right.

Dr COSHOTT: Particularly with respect to this trust, that would not be my concern because this trust has been established in a somewhat different way. My concern is more with respect to the intentions of the donors to this.

Mr DAVID SHOEBRIDGE: Okay. Well then, I will go to the Law Society because I think it was raised in your position that you have reticence in the Government intervening in circumstances where trusts are created by a private disposition by a private founder. That is one of the concerns raised by the Law Society?

Dr MURRAY: I think we were trying to raise that at a broader level of ensuring independence of the charity sector from Government. It was the institutional impacts that the bill could have. I guess we do not really want to make too many comments on the pros and cons because they could be benefits; there could be dis-benefits. But having the Government step in and regulate what the RFS trust is doing to an extent will affect its independence and autonomy to some extent.

Obviously, the situation here is a little different because the trust fund was set up by a Government agency, I suppose, in the first place; yet it still has to be set up as a separate entity from the Government—intentionally so, to carry out things or carry out its activities as a charity. The overarching institutional concern is just more that the benefits and disbenefit of Government intervention are thought of quite carefully. We have expressly, I guess, not expressed a view on whether it is a good or a bad thing in this particular instance.

Mr DAVID SHOEBRIDGE: Well, I am going to suggest to you that that argument—that otherwise quite reasonable note of caution—has little, if any, weight in the current argument because the founder of this trust deed is actually a Government agency here, the Rural Fire Service, and indeed it was established under signature of the Commissioner of the Rural Fire Service. I am going to suggest you quite baldly that that argument has little, if any, weight in the current context.

Dr MURRAY: Well, I guess again we do not want to go too far down the—but I suppose the point that Mr Coshott has raised is that there is an entity collecting funds from individual members of the public and doing so as a charity, as a non-Government entity. It is set up as an entity separate from Government. The fact that the Government was involved in setting it up is a relevant factor that I think it does not remove—

Mr DAVID SHOEBRIDGE: The Government agency was not involved; the Government agency set it up. It was set up by a Government agency to provide funds to that Government agency.

Dr MURRAY: Yes. The fact that a Government agency established the trust is relevant but I think still does not detract from the fact that rather than setting up a Government department or another Government body, the choice was made to set up something that was non-governmental, the trust fund, the charity at the time. So I think that there still needs to be some concern about independence and autonomy from Government. Of course,

that is not to say that Government does not already regulate many charity activities in many ways as it is. It is a matter then of really trying to work out—to make that public benefit call. Is this actually going to be good for the public benefit, or bad for it in this particular setting?—and just sort of taking note of the fact that while the trust fund was set up as an entity that was non-governmental. So I think that autonomy is a relevant factor but, as you have said, obviously the context will help you make that public benefit decision on whether it is good or not to intervene.

Mr DAVID SHOEBRIDGE: I think we can all agree—well, we know that there are thousands of donors. We can limit our concerns to the period within which Celeste Barber's call was live. There were thousands of donors who subscribed through Celeste Barber's appeal. I think we can all agree that we cannot sit here now and work out if a majority of those donors wanted the funds to go to a broader purpose, or if a majority of those donors wanted the funds to go to a narrower purpose because we just do not simply have a credible way of working out where the majority opinion is. Would you agree with that?

Dr COSHOTT: In fairness, given the fact that the comments with respect to the funds being utilised for other purposes were only made after \$30 million had been raised, what we know is that more than \$30 million was raised prior to any representation about where the money should go, which would be after the fact. So in that sense I am hesitant to say majorities or not because I do not think this is a majority situation. I think that if one person gives money to a charitable purpose, it should go to that purpose. But, really, what we are looking at are the intentions of people after those statements were made, which would equate to a little bit less than \$20 million of the fund.

Mr DAVID SHOEBRIDGE: But—I mean, I accept that is a question of law, and the Supreme Court made this very clear—the purposes were laid out. If you read the trust deed you could find out what the purposes were. They were very clear and they were significantly narrower than what the bill proposes. I mean that is not controversial, is it?

Dr COSHOTT: No, it is not, but at the same time with respect to the fundraiser, when people donated to this fundraiser, there was a picture of a burning house, a statement that it was for the New South Wales RFS Brigades and Donations Fund. There was another statement to that effect. Then three days later there was a statement that because the money had exceeded expectations now the money should be used for other purposes. At best if we attribute that to donations that were made before the statement, if we say that, okay, there were some donors before that statement was made that would have wanted the money to go to other purposes, it becomes a situation of, well, did they intend that at the time that they donated it? Did they intend it afterwards? Is it a situation of, "I've given you a hundred dollars" and then after the fact say, "Oh, no. I never really meant to give it to you."? Are we getting into quite odd complex issues of resulting trusts? The point is that there is actually a lack of evidence in this regard.

Mr DAVID SHOEBRIDGE: I think you and I risk [inaudible].

Dr COSHOTT: I am uncomfortable with that respect legally but I am uncomfortable with, effectively, social media comments forming the basis of an ex post interference with a charitable donation.

Mr DAVID SHOEBRIDGE: I think one thing we can agree on, I assume, is that a tiny, tiny fraction of those people making a donation would have gone to the trouble of finding the trust deed on that Federal registered charities site—

Dr COSHOTT: But the—

Mr DAVID SHOEBRIDGE: Let me finish—and actually reading it—

Dr COSHOTT: But why would they have needed to?

Mr DAVID SHOEBRIDGE: Let me finish—and actually reading and identifying the very narrow purposes of the trust. I think we can agree that that would be a tiny fraction of the people who donated to a call that had on it a burning house.

Dr COSHOTT: The burning house and the statement that it would go to the RFS brigade. I guess my response, though, would be saying that if there was a fundraiser for the NSW Ambulance service and that is all it said and you donated money to that, do you think that money would be going to the patients they treat or to the ambulance service itself? It is a question, I believe, of common sense in this regard.

Mr DAVID SHOEBRIDGE: Well, I suppose if we go back to the point that Celeste Barber raised—that it is, having wildly exceeded her expectations and there being such a dramatic need for assistance over and above the original purposes—it is really just a question of public policy at this point whether or not the Parliament

might intervene to allow it to go to that broader set of purposes. It is a public policy point, is it not? It is not really a question of going down and trying to tease out the intricate details of a donor's intent. It is a public policy matter.

Dr COSHOTT: But on that basis or legislation and all law is public policy.

Mr DAVID SHOEBRIDGE: Correct.

Dr COSHOTT: In the sense that because effectively, if you say it is public policy, then—correct me if I am wrong on this—your suggestion is that because the money has exceeded expectations, it is now effectively a moral I will not say authority but moral permission for the Government to say, or the Legislature, more correctly, to say that this money can be used for purposes that were not originally intended by the donors—or we know that. Is that a fair representation? I do not want to misrepresent what you are saying.

Mr DAVID SHOEBRIDGE: I will put this proposition to you, Mr Coshott: If the Parliament is aware that there are hundreds if not thousands of people living in tents and caravans because their houses have burned down during the fires and it is aware that a fundraiser that was designed to provide funds to a State Government agency raised many millions more than what was originally intended, that it is a public policy decision of Parliament whether or not it wishes to direct some of those funds to those people who are surviving this winter in a tent. That is the proposition I put.

Dr COSHOTT: Any legislation can be a public policy decision. I am glad you actually raise that poise because it brings up something else. I mentioned earlier that we have between them—our three largest charities, Red Cross, the Salvation Army and St Vincent De Paul—having \$135 million of funds which they have not spent. That is just sitting there and we do not know what they are doing with it at the moment. We have this massive pool of money that is currently sitting in the charities that they are not giving to those people in need.

This was a point that I have made, that others have made, going back to January this year. If we sort of ignore what people have donated because that is really what this public policy argument comes down to—that this is unprecedented so therefore we can ignore the intentions of people because we know by this we will be interfering with some intentions and we can allocate money to these other purposes, yes—first my ultimate question, and maybe this is a question you could ask the RFS itself but it would be a better question to the RFS trustee, is: How does the RFS trust deed allocate that money?

The RFS trust deed itself does not have any expertise in allocating money to these purposes so what is the most likely avenue? The most likely avenue is that they effectively give this money to those charities who have that expertise—Red Cross, Salvation Army, St Vincent De Paul and others. What happens at the end of this is a \$135 million that is currently sitting there unspent will grow to \$150 million that is currently sitting there unspent, and the help that people desperately need they do not necessarily get. This legislation does not address that at all. And further, as I also said earlier, it confirms a discretionary power on the RFS trust so, even if the legislation passes, the RFS trustee may not allocate this money at all. So in that sense the bill as it is currently drafted may not even achieve those noble purposes because of the simple mechanics of how it has to go about doing it.

Mr DAVID SHOEBRIDGE: Well, Mr Coshott, you are quite right: It is a discretion that would expand the purposes for which the funds could be allocated and I would imagine there would be a substantial public pressure on the trustees to provide the money directly rather than through a charity. We may well also agree on the need for a broader inquiry into the way that the \$130-odd million has not been allocated and the need to rapidly allocate it, but we have a pool of money in front of us now and a bill in front of us now which I think we should focus on.

Dr COSHOTT: I agree. I think we should, too. At the same time when I think when charities themselves confessed earlier this year did not have the expertise to allocate these moneys, there is a genuine question in terms of the bill as to whether or not the bill actually—again, this is putting aside my concerns with respect to disrupting the intentions of donors in the scope of the bill but looking purely at the public good of this bill as it is currently drafted—I do not think that it 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. In terms of use, in terms of public pressure, there is public pressure on the Red Cross and associated charities going back to January. There has been consistent public pressure since then. A hundred and thirty-five million dollars still remains. The public pressure is still there.

Mr DAVID SHOEBRIDGE: Mr Coshott, I make this final proposition to—and again we may not agree on this—that given the failure of those other private charities to provide for the desperate need—and we can agree, the desperate need that is in the field at the moment—that is another reason, surely, to open up this money to allow

it to be directly funded because as other private charities and a number of witnesses have said, they are there to provide for the need and clearly are not.

Dr COSHOTT: It would. No, it would—

Mr DAVID SHOEBRIDGE: That argument works both ways in terms of—

Dr COSHOTT: No, it would if there is an appropriate mechanism to distribute this money. Simply conferring a discretionary power on the trustee is not necessarily going to provide that mechanism. And, again, we go to the point of people suffering this winter. If we are looking at the issues that relate to the deductible gift recipients [DGR] status and the insertion of some kind of Federal action, then how long? In reality we are looking at legislation which would not have effect until when, this year?

Mr DAVID SHOEBRIDGE: Are you—

Dr COSHOTT: My point is that the example of people suffering in winter—

Mr DAVID SHOEBRIDGE: Are you giving—

Dr COSHOTT: My point is that the example of people suffering this winter, this bill unfortunately is not going to—if we take into account those Federal issues and the suggestions that have been made regarding the Federal issues and its DGR status—then by the time action is taken in this bill, if it is taken, people will have still suffered throughout this winter.

Mr DAVID SHOEBRIDGE: We are going to have to agree to disagree about whether or not providing another avenue to provide direct access to people in desperate need of homing is virtue signalling. I reject that but [inaudible].

The CHAIR: Mr Shoebridge has been caught with his mouth open again. We lost you, David.

The Hon. TAYLOR MARTIN: We have no audio, David.

The CHAIR: No audio. Anymore questions?

The Hon. ROSE JACKSON: I just have a quick question—I think probably for Dr Murray. I appreciate my colleague Mr Shoebridge asked earlier about how you might clarify in the legislation that it was in fact the intention to amend the trust deed and not create a new trust. As the bill is currently drafted, that is unclear. If that clarification were not inserted, what could be the potential consequences of that lack of clarity if it were to pass and there were some legal argument about the effect of that provision?

Dr MURRAY: I guess the risk there would be that if there is a new trust created then it certainly will not have any of the Tax 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.

It might throw up other trust issues as well. We have now then got the same trustee of both of those trusts. Is that going to 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? It would potentially raise some trust law as well as the tax issues.

Dr COSHOTT: I think if I just jump in here very quickly with this, the way I have read the legislation as it is currently drafted it would, as I have said before, give rise to a sort of statutory cy-près scheme, which effectively would be a variation of the existing trust. The other possibility—and this is contained in the trust's terms itself—is that effectively what it does is excuse liability for a breach of trust—so that in some way the trustees would actually be acting contrary to the terms of the current trust and therefore be in breach of this legislation—and this effectively excuses those breaches.

I think as the legislation is currently drafted it would be viewed as one or the other. My suspicion is, given the intent, it would be viewed more as a statutory variation so it would not necessarily create a new trust, so much as it would vary the terms of an existing one for a brief period of time. The real key here is 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.

Dr MURRAY: And we agree. That was the Law Council's view that probably the better view is that this is an amendment to an existing trust, not the creation of a new trust. But as Dr Coshott said, as it is still a bit unclear, it would be better to remove that lack of clarity, if possible.

Mr DAVID SHOEBRIDGE: Well, as the author of the bill, I can be quite clear: It was intended to be a variation and not a creation, but I agree with both or all three witnesses that if it is to proceed, then being express about that would provide assistance. And to answer Dr Coshott's concerns the protection for the trustees was intended to be a kind of notwithstanding provision to ensure that there was protection for the trustees. I do not think it was essential but it was an over abundance of caution.

The CHAIR: All right. We might call questioning to an end of there. Thank you very much gentleman for coming in and answering some questions for us. We are not taking a break. We will proceed straight through to take evidence from Mr O'Malley. Committee members should stay online.

Dr COSHOTT: Thank you.

(The witnesses withdrew.)

STEPHEN O'MALLEY, Executive Director—Finance and Executive Services, NSW Rural Fire Service, affirmed and examined

The CHAIR: Welcome, Mr O'Malley. You are our final witness for today.

Mr O'MALLEY: Thank you, Chair.

The CHAIR: Would you like to make a short opening statement that may be limited to, at the most, two minutes?

Mr O'MALLEY: No, thank you, Chair. I am happy to answer questions of the Committee.

The CHAIR: Okay. Thank you. Who would like to commence questioning?

Mr DAVID SHOEBRIDGE: I might.

The CHAIR: You are not being killed in the rush.

Mr DAVID SHOEBRIDGE: Thanks, Mr O'Malley, for your attendance today and for your submission. As a result of the Supreme Court decision it is now clear that moneys in the trust can be allocated to injured firefighters and also to the families of firefighters who lost their lives fighting the fires, on behalf of all of us. How much money has the trust allocated, first of all, to injured firefighters? Secondly, how much has it allocated to the families of firefighters who have tragically lost their lives?

Mr O'MALLEY: Thank you, Mr Shoebridge. I perhaps need to give a little bit of context to the operation of the trust to answer that question. The trust is independent of the Rural Fire Service. It is not a controlled entity of the Rural Fire Service. It has trustees who make decisions as to the allocation of funds within the trust in accordance with the trust deed. So I can answer that to the best of my understanding, given some correspondence sent to me by the trustees that they have allocated \$15 million in support of volunteer welfare programs, which includes benevolent funds, scholarship programs and support for firefighters.

I should go on to answer, though, that in respect of the families of deceased firefighters in the current season, at the time that our firefighters were tragically killed on duty, the RFS created specific funds to support the families of those firefighters. They were separate and different to the brigades donations fund and the trust. They were their own entities and members of the public were able to donate directly to support those families and they certainly did so.

Mr DAVID SHOEBRIDGE: Mr O'Malley, breaking this into two sections, do I take it from your answer that you are not aware of any funds having been directly allocated to injured firefighters?

Mr O'MALLEY: I can only indicate that the \$15 million is intended to cover across the various volunteer welfare aspects. What I can say to you, though, Mr Shoebridge, is that Parliament has created support for injured firefighters so there is a piece of legislation, which I believe is the Workers Compensation (Bush Fire, Emergency and Rescue Services) Act, if I quoted correctly and I might have got that slightly wrong.

Mr DAVID SHOEBRIDGE: I am well aware of that Act and the very limited assistance it provides. Rest assured I am well aware of that.

Mr O'MALLEY: Mr Shoebridge, as I understand that Act it 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 that I would receive, for example, were I injured in a workplace. That includes, obviously, rehabilitation of injured firefighters. It includes payment to injured firefighters and it includes death benefits for people who lose their life in the course of their volunteering.

Mr DAVID SHOEBRIDGE: Mr O'Malley, we do not have time to go through the extreme limitations of that particular legislative measure, which provides no income support for somebody who is not in an occupation at the time they get injured. I just want to be clear: You are not aware of any money actually being provided, other than in a generic allocation of \$15 million, to a single injured firefighter?

Mr O'MALLEY: I am not aware, Mr Shoebridge, no.

Mr DAVID SHOEBRIDGE: Could I put you on the spot again: Are you aware of any money being provided from the trust to the families of firefighters who have lost their lives? Are you aware of any money at all being provided to any specific family?

Mr O'MALLEY: I am certainly aware of substantial funds being provided to the families of deceased firefighters but not specifically from the trust, no.

Mr DAVID SHOEBRIDGE: Well, you say "not specifically from the trust", but I am not asking about other options. Are you aware of any money being provided from the trust to the families of firefighters who have lost their lives?

Mr O'MALLEY: Not directly from the trust, Mr Shoebridge, but I would indicate that there have been substantial funds that have gone to those families through the other fundraising that was specific to those families.

Mr DAVID SHOEBRIDGE: So do I take it from that that the trust, having reviewed that, has determined not to make any provision to those families?

Mr O'MALLEY: I am not aware of that, Mr Shoebridge. That is a matter for the trustees. Certainly, as I understand it, the trustees are continuing to decide how they will allocate funds. So while they have allocated a pool of funds of \$15 million to a variety of those volunteer welfare and benevolent type of items, I am not at the moment aware as to how they intend to allocate that.

Mr DAVID SHOEBRIDGE: Does the RFS provide secretarial assistance to the trust and administrative assistance to the trust? Is that how it works?

Mr O'MALLEY: Yes, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: So you would be aware, through that, of the dispositions having been made from the trust, would you not, Mr O'Malley?

Mr O'MALLEY: I am certainly aware of some of them. It is my staff who provide that secretarial service, yes.

Mr DAVID SHOEBRIDGE: I will hold off my questioning for the moment, Chair, to allow others to ask questions.

The CHAIR: Are there any other questions?

The Hon. TREVOR KHAN: Chair, do I have an opportunity?

The CHAIR: Please do.

The Hon. TREVOR KHAN: Mr O'Malley, have you watched it today's proceedings? I am sorry I have been flicking around a bit but have you been able to watch today's proceedings?

Mr O'MALLEY: Not the entirety, Mr Khan. I have also been—

The Hon. TREVOR KHAN: Flicking around a bit?

Mr O'MALLEY: —doing a variety of other things, yes.

The Hon. TREVOR KHAN: Understandable. Look, I am not having a shot at you because I actually do understand you are not a trustee. That is correct, is it not?

Mr O'MALLEY: That is correct.

The Hon. TREVOR KHAN: So to that extent we seem to be asking the wrong person the questions, but I will express a concern, which hopefully the trustees might take on board. It concerns me that, having looked at even your own submission, which identifies at least three grounds that explicitly go to issues relating to the welfare of firefighters—that being from Justice Slattery's judgement—and one assumes it is either through the RFS or the trustees that he addressed the issues of what the trust fund could be used for, which included support for the families of firefighters killed or injured. It also included "to provide physical and mental health training and resources, and trauma counselling services"—I am reading from page three of your submission—"and could be used to ... contribute to a fund to meet the costs for volunteer ... firefighters to attend and complete courses". I will not go on.

To be frank, it concerns me that we find that the funds that are clearly and explicitly allocated in your submission refer to "a \$20 million fund to provide immediate support to ... brigades for items in line with the trust deed," which, from what I heard earlier, was things like communication equipment, refurbishment of trucks, helmets and the like, all of which are quite worthy. But it seems to me that, in a sense, the infrastructure needs of the RFS have been addressed earlier than the social needs of the volunteer firefighters. Is that an unreasonable conclusion to have drawn?

Mr O'MALLEY: Mr Khan, I would suggest that it is slightly unreasonable.

The Hon. TREVOR KHAN: People often accuse me of being unreasonable.

Mr O'MALLEY: Allow me to explain why. The trustees have, obviously, been in an extremely difficult position and while in some ways it is a very nice position for them in that they have a substantial amount of funds which they need to disburse in accordance with the trust deed, it is also something that they probably did not expect. And the trust deed has proven somewhat difficult to interpret, hence the actual need to go to the Supreme Court and seek the guidance of the Supreme Court so that that guidance could be provided to the trustees in how they can distribute the funds. That has taken some considerable time, so I do not think there was any doubt that the trustees were able to distribute funds to things like infrastructure—so, equipment, infrastructure et cetera—because that is fairly clear from the trust deed. So the trustees were able to ensure that they were keeping faith with the community who had provided these donations so generously by making sure that they started to distribute funds in that way.

However, they then needed to await the guidance from the Supreme Court before they could actually start to determine how they could more broadly distribute the funds. So it is something that I am acutely aware they are discussing at every meeting. They meet very regularly at the moment. They are all volunteers in their own right. Certainly, the independent trustees are all volunteers in their own right. They have the best interests of volunteers at heart and, certainly, part of that is the mental health, the support for volunteers, particularly given the fire season that we experienced. So there is no doubt that they are considering how they will allocate funds in that way.

The Hon. TREVOR KHAN: Mr O'Malley, I am not going to put you through a grilling but let me say this: I think, inevitably, it is not going to be my decision as to whether we support or do not support Mr Shoebridge's bill. I accept that Mr Shoebridge's bill has laudable intent. Let me make that quite clear. But the position that will be taken, in my view, will be influenced by a demonstration that the current trustees are actually using the money appropriately for the benefit of firefighters. I think that would ameliorate some of the concern in the community because, from some of the evidence today, I would be concerned that some in the community would be concerned at the direction of events so far. I make that observation as a backbench government member only but I certainly encourage the trustees to put their thinking caps on and put their work boots on as quickly as possible. I will leave it there. If you comment, that is fine.

Mr O'MALLEY: Mr Khan, if I could, 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.

The trustees, in cooperation with the Rural Fire Service, actually polled members, so we did a survey of members. We had over 1,600 responses to that survey where we were asking members how they actually wanted the money to be distributed—so what was it that were the types of things that volunteers thought were most important that could be addressed by the generous donations that came from not only Australia but around the world. Since then and since having the guidance of the Supreme Court, the trustees have allocated a further \$70 million across a variety of programs. As I have already mentioned, \$15 million of that is intended to be support for volunteer welfare in a variety of different ways.

They have also supported the creation of a member availability application so that members who are volunteering can make it clear when they are available, can be tracked and understood how they are working with the service. They have supported the allocation of mobile data terminals to firefighting vehicles across the RFS, which is a very substantial program that will provide an absolute stepwise change in how we respond to incidents. It will take some time to implement the program but it is a very fundamental change in the way that volunteers will be responded.

As I think someone mentioned earlier, personal protective equipment and clothing has been supported. The Rural Fire Service is going through a process of scientifically examining its personal protective clothing to make sure that it is, indeed, fit for purpose, to scientifically test how it works together as an ensemble. Should that result in recommendations for change, the trust has indicated that they would be supportive of the initial rollout of a change in personal protective clothing for volunteers. So that includes things like helmets, respiratory protection, which obviously then the Government can continue to maintain funding for.

Similarly, they have supported an electronic membership application system to make it much more effective for volunteers to be able to come forward and join the Rural Fire Service and give of their time to their community. In my mind these are extraordinarily important things for the Rural Fire Service and for our volunteers. They are, in my view, laudable uses of the funds. I genuinely think the trustees are discharging their duties effectively and utilising the money as it was intended.

The Hon. TREVOR KHAN: Alright. Thank you for your time, Mr O'Malley. They are my questions.

The Hon. MARK BUTTIGIEG: My question follows up on Mr Khan's questioning about what seems to be an emerging theme here and that is a perceived, if not real, incongruence between what the Supreme Court decision has subsequently allowed by broadening out the scope of the funds and what, in your submission and your evidence, you say the funds are going to. I think it is important that we zero in on this because my take-out from today is that as a result of the social media proxying during the Barber campaign, there is a view that a certain quantum of people did have a desire for the funds to be distributed more broadly and that there is a concern that if the Supreme Court broadening of the scope is not manifested in reality then that would be an injustice. The Supreme Court judgement is somewhat of a halfway house between what the original trust deed prescribes and what the Shoebridge bill would be like.

So let us go to what Justice Slattery says, which is that the funds could be used to establish a fund to support the families of firefighters killed in the line of duty and firefighters injured whilst firefighting; to provide physical and mental health training and resources, and trauma counselling services; and, finally, 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 volunteer-based fire and emergency service activities of the brigades. In your submission and your evidence you said that the initial \$20 million was allocated prior to the Supreme Court decision largely for infrastructure—trucks, protective equipment and all the rest of it. Your submission then states:

... a further \$70 million [is to go] 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 ...
- Mobile data terminals for fire-fighting vehicles ...
- Personal protective equipment—head protection and respiratory protection ...
- Retrofit of fire appliances ...

So when you look at that at face value, you can understand people coming to the conclusion that that broadened scope of the Supreme Court decision is not being manifested by that \$70 million allocation. Can you see how that perception would manifest in people's minds?

Mr O'MALLEY: Thank you. Yes, I can understand what you are drawing to my attention. I would suggest that I have already answered that of the \$70 million, \$15 million has been specifically assigned to support volunteer welfare programs. So that is the advice that has been provided by the trust to the Rural Fire Service—that that \$70 million that is quoted includes a \$15 million allocation to 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.

The Hon. MARK BUTTIGIEG: Which includes support for the families of firefighters killed?

Mr O'MALLEY: I can only presume so. I am not in a position to answer that definitively.

The Hon. MARK BUTTIGIEG: Okay. In a nutshell, of the \$51 million that was donated, \$15 million of it could in theory satisfy points (b), (c) and (d) of the Supreme Court ruling, which, as I said, is the support of the families of firefighters, the physical and mental health training resources—because these are all important issues for the public—and contribute to the fund to meet the costs of volunteer firefighters to attend and complete courses. That micro-distribution is an important thing for us to tease out because I think that would go a long way to allaying people's concerns about how and where this money is going.

Mr O'MALLEY: I am sure from today's discussion that this will be taken back to the trust and we can seek to have the trust provide public comment in terms of how it is actually going to use these funds. With respect, I would suggest that the Supreme Court ruling only provided really one area where it expanded the use of the funds, which is around the support of deceased and injured firefighters. I think the other areas were relatively clear

from the trust deed already and were items that the trust held a view that it could certainly support volunteers in respect of.

The Hon. TREVOR KHAN: That does not make it any better, Mr O'Malley. That probably makes it worse because it means you have had more time, or the trustees have.

Mr O'MALLEY: I think, though, Mr Khan, that until you had clarity on how you could actually use the funds, it is rather difficult for the trustees to sit down and make decisions across the entirety of the funds that are available to them to distribute. There was a reason to go to the Supreme Court and seek the guidance of the court.

Mr DAVID SHOEBRIDGE: Let us be clear: The RFS went and sought a narrow interpretation of the deed. That was your case, was it not? That the RFS was seeking a narrower interpretation of the deed than the Supreme Court actually delivered?

Mr O'MALLEY: No, Mr Shoebridge. It was the trust who went to the Supreme Court because it is only the trust who could go to the Supreme Court to seek guidance. So the guidance is provided under section 63 of the Trustee Act to the trustees as to how they undertake their duties in respect of the trust deed.

Mr DAVID SHOEBRIDGE: The decision speaks for itself, Mr O'Malley, about what the position of the RFS was in the court, whether or not you actively went there. But the position in court was for a narrower interpretation of the trust deed than was actually granted.

Mr O'MALLEY: I do not agree with that, Mr Shoebridge. In my view the RFS would like as broad an interpretation of how those funds could be distributed to volunteers as possible within the terms of the trust deed. The trust deed is clear as to the boundaries that the funds can be distributed within. We were hoping that there was an ability to use those funds effectively across our volunteer cohort.

The Hon. MARK BUTTIGIEG: To follow up on Mr Khan's point: You are saying that the only real clarification or expansion that the Supreme Court ruling gave light to was the fact that the money could go to the families of firefighters killed. The other two points, in other words the physical and mental health training resources and the courses for volunteers, were already manifest in the trust deed. The question then is: Why was that money not distributed in that way prior to the ruling?

Mr O'MALLEY: I think, Mr Buttigieg, what I said was the expansion related to one area. I think clarification was provided by the court across all areas. That was the reason to go to the court—you are seeking clarification of how the trustees can distribute funds in accordance with the trust deed. It is a provision that allows the Supreme Court to provide guidance to trustees in performing their duties.

The Hon. MARK BUTTIGIEG: So from your perspective, there is a clear intention now to give effect to those areas that the Supreme Court has deemed are available for the monies to be distributed to?

Mr O'MALLEY: That is certainly my view, yes. Obviously, I am not a decision-maker, but I cannot imagine that the trust would not be seeking to distribute funds in accordance with the guidance provided by the court.

The CHAIR: Any further questions?

The Hon. ROSE JACKSON: Thank you, Chair. Mr O'Malley, I appreciate that you have clarified that you are not a trustee. However, based on your experience of working with them—as you mentioned before, the administrative support that you provide to them, your knowledge of their decisions—how do you think, if this legislation were to pass and the terms of the trust deed were to change or be broadened and discretion given to the trustees to allocate funds in this way, in a broader way, how do you feel the trustees would respond to that? Do you think it would affect their decision-making? Do you think they would make any different decisions to the ones that they are ready making?

Mr O'MALLEY: I am sorry, Ms Jackson, but I do not think I am in a position to answer that.

Mr DAVID SHOEBRIDGE: I do not think the witness can be asked to make a hypothetical judgement about the decisions of trustees when he is not a trustee. I do not think it is fair on the witness.

The Hon. ROSE JACKSON: I think he made that point on his own behalf. Do you have any sense, from your communication with the trustees, that they are at all frustrated with the terms of the trust? Have they communicated to you that the trustees are seeking any broader ambit as a basis of their decision? Is that something that has been communicated with you at all, or have frustrations been expressed to you in those terms at all?

Mr O'MALLEY: In my view, the trustees were awaiting the outcome of the Supreme Court guidance because that is what they needed to do. Once that guidance has been provided, in my view, they are in a position to move forwards and they have been doing so at pace.

The Hon. ROSE JACKSON: This is our only hearing on this piece of legislation so we are not going to be able to get the trustees, seemingly, to provide evidence. But one of the frustrating things is it seems to me there is a possibility that even if all parties in the Parliament were to get together and support this legislation with the intent of providing the opportunity for a broader range of things to be funded through the trust, that, in fact, would not happen anyway; that there would be almost no difference in the way that the funds were allocated or the decisions were made by the trust.

Mr O'MALLEY: Ms Jackson, 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 presume that was the view of your legal panel earlier today and I cannot tell you what the trustees may or may not do with that discretion that belongs to them.

The Hon. ROSE JACKSON: In relation to the RFS budgeting process, internally within the Rural Fire Service, separate to any allocations made through the trust, are you responsive to decisions made by the trust in terms of how it allocates its funds? So, for example, it now has quite a large amount of money at its disposal, it chooses to spend that money on certain items internally within the RFS and the budget that you are allocated by the State Government. Are you responsive to that affecting your budget up and down on the basis of its decisions?

Mr O'MALLEY: If I interpret your question correctly, it is: Am I changing the internal budget, or is the RFS changing its internal budget, on the basis of what is being provided to brigades by the trust? The answer is no. I mean, the Government provides a budget to run the Rural Fire Service. That budget provides a set of equipment to volunteers and support volunteers. There is an expectation that the Government will continue to fund what it has funded in the past and will continue to make available for volunteers. The allocation of funds by the trust needs to be above and beyond anything that is provided by government.

The Hon. ROSE JACKSON: That is useful because I suppose, in a way, there is that challenge where the RFS is obviously a worthy recipient of charitable donations but, on the other hand, as legislators, I think we would be pretty unenthusiastic about, over time, evolving to a position where it was in any way reliant on donations in order to ensure core capabilities were met. That is a responsibility of the State Government. So I suppose when such a large amount of money has been placed in the trust—I think, if I recall from earlier evidence, something in the order of an additional amount of over 10 per cent of the RFS's annual budget in charitable donations—it is very important that that does not absolve State Government of its core responsibility to ensure that the RFS is properly funded. I am simply interested in that relationship between decisions of the trust and budgeting decisions of the RFS.

Mr O'MALLEY: I am not sure there was a question there. I think I have answered that I do not believe there is any relationship between the two and that the funds of the trust are not intended to replace funds that are legitimately provided by Government.

The Hon. ROSE JACKSON: For example, when you took the poll of members, asking them how they think the money should be allocated—I do not know if you have seen those poll results so perhaps you do not know, but if you have seen those poll results, was the trust able to meet all of those needs identified by members who participated in that survey?

Mr O'MALLEY: The outcome of the survey is certainly known to me. One of the things that was abundantly clear from the survey is that members did have an expectation that these funds would not be used to replace Government funding. That is something that we are acutely aware of, as the Rural Fire Service. Certainly in our discussions we are seeking to ensure that that is not the case. Whether the trust is able to meet all of the things that have been raised by members—look, it is a fairly broad church in the Rural Fire Service, as you can probably imagine but I doubt that everyone is going to get everything that they want and, to be truthful, there is not enough money in the trust to provide everyone with everything that they want. But are we ensuring that the key themes that came out of the survey have been provided to trustees and trustees are considering them? Yes, absolutely.

The Hon. ROSE JACKSON: Are those survey results something that could be provided to the committee? Perhaps you might take that on notice, but is that something that we might be able to have access to?

Mr O'MALLEY: I have been advised by the secretariat that I am not allowed to take anything on notice.

The Hon. ROSE JACKSON: Apologies, Mr O'Malley.

Mr O'MALLEY: I am not quite sure how to do that, Ms Jackson, but I genuinely do not know the answer to that question.

Mr DAVID SHOEBRIDGE: Well, Mr O'Malley, could you provide the Committee with a copy of the survey results at your earliest convenience?

Mr O'MALLEY: I can certainly seek advice as to whether I can do so, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: Thank you. Mr Chair, I have one or two questions if that is possible?

The CHAIR: Please proceed.

Mr DAVID SHOEBRIDGE: Mr O'Malley, I understand your position is that the trust should not be there to provide funding for matters that the State Government should be providing for anyhow. It is there is a charitable exercise. It is not there to defray the usual expenses of the State Government. Is that your position?

Mr O'MALLEY: The true reason for the trust being, Mr Shoebridge, 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. That was the original intent of the trust, so that is why it was established; to ensure that brigades were able to accept tax-deductible donations. 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.

Mr DAVID SHOEBRIDGE: But you are not suggesting that donations to the trust should be used to pay for the basic running of the Rural Fire Service, are you?

Mr O'MALLEY: No, I am not, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: Mr O'Malley, is that not exactly what it is being used for, when the trust is being used to retrofit fire vehicles, to provide breathing equipment, to provide helmets? This is like the bread-and-butter stuff that should not come from donations. This is the bread-and-butter stuff that should be coming from the State Government, is it not?

Mr O'MALLEY: Certainly not in my view, Mr Shoebridge. 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.

Mr DAVID SHOEBRIDGE: Mr O'Malley, if volunteer firefighters require improved personal protective equipment for the upcoming fire season, that should be provided by the State Government, not from this donation source. I do not understand your distinction, I am sorry. If it is needed to keep them safe this fire season, that should not be coming from donations. That should be coming from the State Government, should it not?

Mr O'MALLEY: Mr Shoebridge, the view of the Rural Fire Service would clearly be that what we provide to volunteers is fit for purpose. Otherwise, it would not be what we provide to volunteer firefighters.

Mr DAVID SHOEBRIDGE: Well, I am reading from your own submission, Mr O'Malley, and you say that part of the \$70 million that is coming from the donations to the Rural Fire Service is to be used for:

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.

That should not be coming from donations. Surely that should be coming from the State Government?

Mr O'MALLEY: I think I have answered, Mr Shoebridge. We provide what is fit for purpose. If there is a scientific review of what we provide that suggests that there is something that we could provide that continues to meet the standards that we need to provide for our volunteers that is somewhat different to what we provide now, we will certainly consider that. If it requires a wholesale rollout and that is something that the trust could support, in my view that would be an appropriate use of money and it would entirely comply with what the expectation of the community was in terms of providing volunteer firefighters with what they think they need to do their volunteer activity.

The Hon. TREVOR KHAN: Can I break in there for one second? Mr O'Malley, your submission states:

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

amongst other things—

- (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 ...

That is the case. The actual trust deed anticipates that funds from the trust would be used for some actual firefighting equipment. That is the case, is it not?

Mr O'MALLEY: Absolutely, Mr Khan.

The Hon. TREVOR KHAN: Whether we think that is good or bad—I have issues with regards to priorities—clearly the trustees are acting in accordance with the terms of the deed.

Mr O'MALLEY: That is my view, yes.

Mr DAVID SHOEBRIDGE: Mr O'Malley, I want to be clear. None of my questioning is suggesting that the trustees are in breach of the trust deed. Like Mr Khan, I am aware of the terms of the trust deed, but what I am suggesting to you is that donations should not be required or be used to—again, I will quote from your submission—"retrofit ... fire appliances with modern safety systems". I cannot believe that the RFS is having to rely upon donations to retrofit fire appliances with modern safety systems. Surely that should be a fundamental provision from the State Government, not from donation?

Mr O'MALLEY: Mr Shoebridge, we refit and retrofit fire appliances all the time from Government funds. If we can make that happen more quickly, surely that is something that would be an appropriate use of funds?

The Hon. ROSE JACKSON: As you say, you are retrofitting your trucks, new equipment is coming online all the time as technology advances. It so happens that there has been a massive injection of funds into the trust because of the advocacy of someone with the profile of Celeste Barber. In future, that may not be the case. In future fire seasons it may not be the case that the trust is able to provide funding for that purpose because \$50 million is not raised in the course of a matter of weeks. So, if the Rural Fire Service has become reliant on the trust to ensure that that retrofitting happens quickly, as quickly as the volunteers needed to be, when someone with the stature of Celeste Barber is not raising money on behalf of the trust, does that mean they simply have to wait?

Mr O'MALLEY: No, Ms Jackson. The Government, for example, in the current year has allocated additional money towards retrofitting of trucks, so it is something that the Government clearly considers to be its responsibility as well. It is something that they have supported in the current year and there has been a substantial allocation of funds towards exactly that. So it is not that we are in any way trying to replace government funding or replace approaching government for consideration of doing the sorts of things that government will always do over time. It is solely that if we can do something that benefits volunteers more quickly than we may otherwise have been able to do, surely that is something that is appropriate for the trustees to consider allocating funds towards.

The Hon. MARK BUTTIGIEG: My question follows up on that point, Mr O'Malley. I assume that a submission is made to the Government in your annual budgetary process. On what basis is the budget submitted? On its consumer price index increase? In evidence today it was somewhere in the order of—how many million was the annual budget? I cannot recall now.

Mr O'MALLEY: The annual budget last year was in the order of \$525 million.

The Hon. MARK BUTTIGIEG: That is right because the \$51 million roughly equated to a 10 per cent increase. So would it be the intention that this year's budget be similar or more in the submission to Government, or is there a view that because of the \$51 million you do not have to go in as hard?

Mr O'MALLEY: I think, Mr Buttigieg, the answer would be that we will always advocate for volunteers. I cannot imagine any time that we will not advocate for our volunteers and what they need. As you would be aware, there is not a budget process as yet this year. The budget has been deferred until later in the year due to the pandemic, so I am certainly unable to pre-empt what may or may not happen in the budget.

The Hon. MARK BUTTIGIEG: Can you see how a perception may develop that if the money was used disproportionately towards let us call it RFS infrastructure—trucks and whatnot—that would undermine your ability to ask for an increased funding envelope for that area?

Mr O'MALLEY: I can certainly understand the proposition you are putting to me. I would suggest to you that that is not something that is the reality.

The Hon. MARK BUTTIGIEG: Okay, so you are confident that the annual budget would not be undermined by the allocation for expenditure of those extra monies?

Mr O'MALLEY: I certainly hold a view that the Government will consider the submissions of the Rural Fire Service in the same way it always does. You will have seen over time, whether that be either side of politics in power at the time, that the Rural Fire Service is sometimes successful in receiving additional funding and sometimes not. We advocate routinely for the needs of volunteers and we will continue to do so.

The Hon. MARK BUTTIGIEG: I guess the point here is that this is a highly unusual and extenuating circumstance and that that needs to be taken into account when those budgets are being put. But I take you at your word that that will be the advocacy.

Mr O'MALLEY: Thank you.

The CHAIR: Do members have any further questions? There are no questions on notice. Thank you for attending, Mr O'Malley. That concludes the hearing.

(The witness withdrew.)

The Committee adjourned at 13:37.