

New South Wales Rural Fire Service & Brigades Donations Fund

During the catastrophic bushfires that occurred across Australia in 2019/20, Celeste Barber began a charitable crowd funding appeal. The NSW Rural Fire Service & Brigades Donations Fund (the RFS Fund) was the proposed recipient of the funds and \$51 million was raised.

The trustees of the RFS Fund sought the advice or direction of the Supreme Court as to how the RFS Fund Trust Deed permitted them to apply the monies raised.

On 25 May 2020, the Supreme Court delivered its decision in relation to questions asked by the Trustees. [In the matter of the New South Wales Rural Fire Service & Brigades Donations Fund; Application of Macdonald & Or \[2020\] NSWSC 604](#) confirms that charitable funds must be applied for the charitable purpose for which they were donated; in this case, that purpose having been stated on the fundraising page utilised by Ms Barber, which named the RFS Fund as the proposed recipient of the donations.

KEY POINTS

Having regard to the terms of the RFS Trust Deed, the Court advised that:

- ▶ The Trustees cannot pay money to other charities or rural fire services, either in NSW or other States and Territories to provide relief to persons and animals affected by bushfires, that purpose not being permitted by the RFS Trust Deed.
- ▶ The Trustees can set up or contribute to a fund to support rural fire firefighters injured while firefighting, or families of rural firefighters killed while firefighting.
- ▶ The Trustees can provide physical health training and resources, mental health training and resources, and/or trauma counselling services to volunteer firefighters who require them in connection with performing the functions of the NSW RFS.
- ▶ The Trustees are justified in setting up or contributing to a fund to meet the costs for volunteer rural firefighters to attend and complete courses that improve skills related to the volunteer based fire and emergency service activities.

BACKGROUND

As a result of the 2019/20 bushfires, millions of hectares of bush in Australia was burnt; millions of animals killed and injured, and 33 were people killed, including 14 firefighters, 6 from NSW.

In that context, Celeste Barber, described by the Court as a public spirited NSW citizen, launched a charitable crowd funding appeal entitled "please help anyway you can, this is terrifying", employing PayPal, an internet payment service, to collect the funds.

In NSW, firefighting is organised under the command of the NSW Rural Fire Service. Ms Barber named the RFS Fund as the proposed recipient of the funds being raised. Donations flooded in from around the world, and \$51 million was raised. PayPal remitted the money to the RFS Fund.

The Trustees of the RFS Fund sought the advice or direction of the Supreme Court under s. 63 of the *Trustee Act 1925* (NSW), as to the proper application of the funds as permitted by the RFS Trust Deed. Section 63 empowers the Court to advise trustees on any question respecting the management or administration of trust property or the interpretation of a trust instrument.

The questions asked by the Trustees arose from several sources, including messages from donors and statements from Ms Barber about the potential use and recipients of the donations. The Trustees submitted to the Court that they wished to honour the intentions of Ms Barber and the donors, but wished to do so consistently with the RFS Trust Deed and in accordance with the applicable law. The questions (detailed within the Key Points above) related to whether they could properly apply the funds to other charities and, by the RFS, for particular purposes.

THE SUPREME COURT'S DECISION

The Court's jurisdiction is protective under s. 63 of the *Trustee Act*. If a trustee acts in accordance with the Court's advice and direction, the trustee is deemed to have discharged its duty in this regard, provided the application is not misleading.

The advice the Court gives is private advice to the trustee but, unless there is some reason for confidentiality, it is usually given in open court.

The Court considered the question of whether the plaintiffs were justified in the proper performance of their powers and duties as trustees in doing any of the four nominated acts (listed in the Key Points) with respect to the monies contained in the RFS Fund, including money donated through the Celeste Barber fundraising appeal.

The Court accepted the wider construction of the RFS Trust Deed, as submitted by the Attorney General, that

the functions of the RFS extend to giving ongoing assistance beyond the immediate aftermath of the fires and of providing care for injured firefighters and the families of fallen firefighters.

The Court did not construe the RFS Trust Deed as permitting the Trustees to provide the funds to other charities or rural fire services, either in NSW or other States and Territories.

The Court noted that some donors may have intended or hoped monies would be used for other purposes than the Court has advised is permissible. Despite the Trustees' wishes to honour those intentions or hopes, his Honour noted that the law provides principles and ensures a degree of certainty in relation to the application of charitable trusts funds, and that the Court has applied these principles.

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