

Article Information

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What happens when a charity's purpose can't be amended? Lessons from Bushfire Fundraising

As recent news articles in relation to the fundraising campaign by comedian Celeste Barber demonstrate, it can be critical that a charity's objects are sufficiently broad and that the founding document permits amendment to the objects to accommodate the charity's future needs.

In the wake of the New South Wales South Coast bushfires, Ms Barber led an online Facebook fundraising campaign to raise money to assist those affected by the fires. More than \$50 million was raised, the majority of which was donated to the NSW Rural Fire Service & Brigades Donation Fund (Fund).

However, Ms Barber soon found that the money raised was not able to be used to benefit the victims of the bushfires as she and other donors had intended.

The Trust Deed for the Fund is available for download on the Australian Charities and Not-for-profits Commission [website](#).

A review of the Trust Deed makes it clear that it is not possible for monies donated to the Fund to be used the way Ms Barber had intended. Clause 2.3(a) of the Trust Deed provides that the Fund is to be applied to or for the brigades established under the *Rural Fires Act 1997* (NSW) in order to:

“enable or assist them to meet the costs of purchasing and maintaining fire-fighting equipment and facilities, providing training and resources and/or to otherwise meet the administrative expenses of the brigades which are associated with their volunteer-based fire and emergency service activities”

Whilst these narrow objects could usually be added to, provided that the Fund retained its charity and deductible gift recipient (DGR) status, the Trust Deed provisions make this course of action virtually impossible. Clause 11.1(b) of the Trust Deed provides that “no amendment may be made that would, or would be likely to change the Purpose of the Trust”. Furthermore, clause 11.1(c) provides that “no amendment may be made that would be contrary to the terms of this Trust”.

It appears that the only option available to the trustees would be to wind-up up the Fund and distribute the surplus assets to one or more charities with sufficiently broad objects to allow the funds raised to be used for the purpose intended. This option, which would require advice regarding the tax consequences of such winding up and distributions, whilst radical, may be the only practical way forward to overcome the limitations in the current Trust Deed.

When the Trust Deed was executed in 2012, the Founder and Trustees most likely intended that the objects were drawn very narrowly. However, as recent events demonstrate, to future proof a charity and ensure that it can meet the changing needs of the persons for whom it was established, it is imperative that the charity's objects can be amended.

If you would like us to review your founding documents to identify whether you may encounter similar problems please contact [Sarah Johnson](#).