

Article Information

Author: Lis Boyce

Service: Corporate & Commercial, Corporate Governance

Sector: Not-for-Profit

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

In March 2020, Sarah Johnson commented on the bushfire fundraising campaign by comedian Celeste Barber and the difficulties arising when a charity's objects are expressed narrowly and the founding document does not permit their amendment.

Recently, the trustees of the NSW Rural Fire Service & Brigades Donation Fund (**RFS Fund**) applied to the New South Wales Supreme Court for judicial advice regarding the application of the monies donated to the RFS Fund. This article discusses the decision of the Court issued on 25 May 2020.

During the summer of 2019/2020, Celeste Barber led a Facebook fundraising campaign to raise money to assist those affected by bushfires, including a post of a picture of her mother's home in Eden, New South Wales. Ms Barber's appeal nominated the RFS Fund as the proposed recipient of the appeal donations. More than \$50 million was raised with Ms Barber and many donors making statements about the purposes to which the funds raised should be put, namely, to assist the communities and animals affected by the bushfires around Australia.

Whilst the trustees of the RFS Fund wished to honour the intentions Ms Barber and the donors concerning the use of the funds, the Trust Deed of the objects of the RFS Fund were very limited in scope. The trustees therefore applied to the Court to consider whether they were justified in applying the monies in the RFS Fund to any of the following four possible objects:

1. paying money to other charities or rural fire services, whether in New South Wales or other Australian states or territories, to assist in providing relief to persons and animals affected by bushfires;
2. setting up or contributing to a fund to support rural firefighters injured while firefighting, or the families of rural firefighters killed while firefighting;
3. providing physical health or mental health training and resources or trauma counselling services to volunteer firefighters; or
4. 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 services activities of the brigades, established under the Rural Fires Act.

The Court considered the purpose of the RFS Fund specified in its Trust Deed and concluded that the donated funds could not be donated to another charity for bushfire related purposes or to help people or animals affected by bushfires on the basis that clause 2.3 of the RFS Trust Deed requires the Trust Fund to be used "to or for the Brigades" established under the *Rural Fires Act 1997* (NSW). Slattery J went on to conclude that payments to interstate rural fire services were not permitted under the Trust Deed on the basis that the term "Brigades" is a reference to brigades established or operating within New South Wales.

The Court then considered whether the funds could be applied to the establishment of, or contribution to, a fund to support rural firefighters injured while firefighting or the families of rural firefighters killed while firefighting. The Court noted that the Trust Deed permits payments to brigades to enable or assist them to meet the costs of "providing resources". The Court interpreted the term "resources" as including human as well as financial resources and concluded that a fund to support the families of fallen firefighters would encourage people to volunteer to contribute to preventing and fighting fires and would therefore be a permissible use of the funds.

On the third proposed object, the provision of physical and mental health training and resources and trauma counselling services to volunteer firefighters, the Court took the view that the proposed funding of these activities would fall within the category of “training” and, to the extent that such training and services are provided after a fire, such as trauma counselling services, the payment of the costs of such services would be expenditure to return a firefighter to active duties and would therefore be permissible as it provides (human) resources to the RFS.

Lastly, in relation to the fourth and last proposed object, the establishment of, or contribution to, a fund to meet the costs for volunteer rural firefighters to attend and complete courses to improve their skills, the Court concluded that payments for these purposes would constitute “training” under the Trust Deed and were therefore permissible.

This case demonstrates the difficulties for trustees where the scope of the objects to which funds raised can be put do not reflect donors’ intentions or the proposed activities of a charity organisation, particularly in circumstances where the trustees’ ability to amend the trust deed is very limited.

If you would like us to review your founding documents to identify the scope of activities permitted or to advise on any proposed new activities, please contact [Sarah Johnson](#) on +61 2 92533880.