



Case explainer: Celeste Barber's Fundraiser

This Case Explainer has been prepared for CLAAZ due to the generous assistance of Prolegis Lawyers.

- 1 On 3 January 2020, as the Australian summer bushfire season worsened significantly, Celeste Barber created her [Facebook fundraiser](#). The title and key post on the fundraiser page is set out in **Attachment 1A** and the donation page is set out in **Attachment 1B**. In both, are statements that the fundraiser is for The Trustee for NSW Rural Fire Service & Brigades Donations Fund.
- 2 On the Facebook fundraiser page was published a link to [Charity Register page](#) on the website of the Australian Charities and Not-for-profits Commission (**ACNC**) for The Trustee for NSW Rural Fire Service & Brigades Donations Fund.

On this page on the ACNC's website the following is published about the Fund:

Who the charity helps: *People in rural/regional/remote communities*
Victims of disaster
General community in Australia

Where the charity operates: *NSW*

The Trust Deed of the Fund is also accessible from that page. Clause 2.3 of the Trust Deed provides, in part, as follows:

"The purpose of the Trust is to pay or apply the income from the Trust Fund, and such parts of the capital from the Trust Fund as the Trustees at any time and from time to time think fit as follows:

- (a) *to or for the Brigades in order to enable or assist them to meet the costs of purchasing and maintaining fire-fighting equipment and facilities, providing training and resources and/or to otherwise meet the administrative expenses of the Brigades which are associated with their volunteer-based fire and emergency services activities ..."*

- 3 Facebook's information for those who set up a fundraiser on Facebook can be found [here](#). Also on the Facebook fundraiser page was a link to information about how funds received in response to the fundraiser will be transacted from the donor through the PayPal Giving Fund (with whom Facebook has partnered) to the relevant charity [here](#).

Facebook also published a link to the PayPal Giving Fund Donation Delivery Policy. This Policy, as it was in January 2020, is attached as **Attachment 2A**. As between a donor and the PayPal Giving Fund is also the Donor Terms of Service. These Terms, as they were in January 2020, is attached as **Attachment 2B**. In both, it is stated that:

- the PayPal Giving Fund is a public ancillary fund registered with the ACNC and endorsed by the Australian Taxation Office as a deductible gift recipient; and
- the donor will, on making their donation, be recommending a beneficiary (eligible charity) to which the donor wishes their donated funds to be granted.

Information about the PayPal Giving Fund can be found on this [Charity Register page](#) on the website of the ACNC. Its trust deed is also published there. As a public ancillary fund, the PayPal Giving Fund is subject to laws, a key law being the [Public Ancillary Fund Guidelines](#) made under the *Taxation Administration Act 1953* (Cth).

- 4 Within a day, Ms Barber’s fundraiser which had an initial goal of raising \$30,000 had attracted close to \$2 million in donations. On 4 January 2020 a new goal of \$30 million was set and then on 7 January 2020 a higher goal of \$50 million was announced. On 11 January 2020, that target was reached. On 17 January 2020, Ms Barber closed the fundraiser.
- 5 The first questions about who would benefit from the donations appeared on 4 January 2020 in comments responding to an update Ms Barber posted on her Facebook fundraiser page. On 5 January 2020, on her Instagram account, Ms Barber posted that she would “*make sure that funds get spread around the country to help people and wildlife affected by the fires*”.
- 6 On 24 January 2020, the NSW Rural Fire Service & Brigades Donations Fund issued a Media Statement. It included this:
- “We know that people want to know how the money will be spent. We take the responsibility of community donations very seriously and we want to make sure the money is put to good use. The NSW RFS Brigades and Donations Trust has a specific purpose and people have donated for this intent – to support volunteer brigades with equipment, training and resources relating to their emergency service role. Funds must and will be used for this purpose.”*
- 7 In mid-February 2020, several media articles focussed on the need for donors to check before donating to fundraisers fronted by celebrities were published¹. These were followed by articles about “intervention” by the courts being necessary². On 20 February 2020, it was reported that both Ms Barber and the NSW RFS Brigades and Donations Trust were planning to seek direction from the New South Wales Supreme Court³. At this time, Ms Barber was reported to say, “*I’m going to make sure that Victoria gets some, that South Australia gets some, also families of people who have died in these fires, the wildlife*”.
- 8 In early March 2020, the Trustees of the NSW RFS Brigades and Donations Trust filed their application seeking judicial advice on four questions in the NSW Supreme Court. The Attorney General of New South Wales intervened in the proceedings on behalf of the Crown. The matter was heard on 18 March 2020. On 25 May 2020, Slattery J delivered the [advice](#); his honour’s responses to the four questions are set out in **Attachment 3**:
- 9 There have been numerous commentaries since the judicial advice was delivered⁴. Ms Barber posted her response on Twitter - see **Attachment 4**. The costs of all parties to the application were paid out of the the NSW Rural Fire Service & Brigades Donations Fund on the indemnity basis.
- 10 Separately, on 26 February 2020, it was reported that a bill to amend the *Rural Fires Act 1997* (NSW) would be introduced by David Shoebridge MLC (Greens) into NSW Parliament⁵. The *Rural Fires Amendments (NSW RFS and Brigades Donations Fund) Bill 2020* has been introduced and is currently being examined by a NSW Legislative Council Parliamentary Committee. The Terms of Reference of and submissions to the Committee are [available here](#). In particular the submission of the Law Society of NSW, with contributions from the Charities & Not for Profits Committee of the Legal Practice Section of the Law Council of Australia, has also been [published there](#). Dr Derwent Coshott also

¹ For example: “Check before donating to charities fronted by celebrities, experts warn” (Michael Evans, The Age and the Sydney Morning Herald, 16 February 2020).

² For example: “Radical solution” needed to unlock Celeste Barber’s \$51 million bushfire donations” (SBS 17 February 2020) and “Celeste Barber was warned about choice of firefighter fund” (Deborah Cornwall, The Australian 24 February 2020).

³ “RFS to join Celeste Barber in court to release bushfire donations” (Lachlan Moffet Gray, The Australian 20 February 2020)

⁴ For example: “Celeste Barber’s story shows us the power of celebrity fundraising ... and the importance of reading the fine print” (Krystian Seibert, The Conversation 26 May 2020) and “A legal firestorm” (Stephanie Gardiner, Law Society of NSW Journal 7 July 2020)

⁵ “New bill will seek to change how RFS can spend \$51 million raised by Celeste Barber” (Pallavi Singhal, the Sydney Morning Herald 26 February 2020)

made a submission focussing on donor intent [available here](#). The Committee is due to report on 31 July 2020.



Charity Law Association of Australia and New Zealand

Attachment 1A



 **Please help anyway you can. This is terrifying.**
Fundraiser for The Trustee for NSW Rural Fire Service & Brigades Donations Fund by Celeste Barber • Public

Want to join me in supporting a good cause? I'm raising money for The Trustee for NSW Rural Fire Service & Brigades Donations Fund and your contribution will make an impact, whether you donate a lot or a little. Anything helps. Thank you for your support.

 Celeste Barber • 3 January 2020

Benefiting



The Trustee for NSW Rural Fire Service & Brigades Donations Fund

Registered charitable organisation

- 📍 Based in Sydney Olympic Park, NSW
- 🏠 Community and economic development
- 💰 Donations will be granted to the charity by PayPal Giving Fund within 15-90 days. [Learn more](#)

Created by



Celeste Barber





Charity Law Association of Australia and New Zealand

Attachment 1B

Cancel **Facebook Pay**

Make secure payments with Facebook Pay. [Learn More](#)

Donate to The Trustee for NSW Rural Fire Service & Brigades Donations Fund
Registered Charitable Organization
Donations are made to PayPal Giving Fund Australia (ABN 65-106 950 945) and granted to charity within 90 days, subject to PayPal Giving Fund's policies. [Learn More](#)

Donation Amount (Australian Dollar)
\$ 150

Connect PayPal

Add Credit or Debit

Card number:

MM/YY _____ Security code _____

Country
Australia

Payment methods are securely saved for next time. [Learn More](#)

Who can see that you donated?
Only The Trustee for NSW Rural Fire Service & Brigades Donations Fund and the PayPal Giving Fund can see your donation.

Donate \$0.00



Attachment 2A

PayPal Giving Fund Donation Delivery Policy

Donations made to PayPal Giving Fund

All donations made through PayPal Giving Fund Services are made to PayPal Giving Fund Australia, a Public Ancillary Fund (ABN 65 106 950 945) ("PayPal Giving Fund", "we" or "us") registered with the Australian Charities and Not-for profits Commission and endorsed by the Australian Taxation Office as a deductible gift recipient, with each donor recommending a beneficiary to which the donor wishes the funds to be granted.

PayPal Giving Fund reviews all such recommendations under the terms set forth in the Donor Terms of Service. By using the PayPal Giving Fund, Donors acknowledge that their donations will be granted to recommended beneficiaries pursuant to the Donor Terms of Service.

Donors will receive a receipt of donation from PayPal Giving Fund marking the date that the donation was made to PayPal Giving Fund.

All grants made by PayPal Giving Fund are effected in a manner that is consistent with our policies and applicable laws and regulations.

Charities with PayPal accounts

PayPal Giving Fund grants donated funds to Eligible Charities with active PayPal accounts on a monthly basis via PayPal, typically 15 to 45 days after PayPal Giving Fund's receipt of funds.

Charities without PayPal accounts

Donors can recommend that we grant the funds they donate to Eligible Charities that do not have active PayPal accounts ("Unenrolled Charities"). We receive information about Unenrolled Charities from the Australian Charities and Not-for-profits Commission ("ACNC") database and the Australian Business Register.

We will grant funds to an Unenrolled Charity if we have:

1. Confirmed the charity complies with the requirements of our [Charity Certification Policy](#); and
2. Verified the charity's identity and conducted an appropriate level of due diligence into the charity, its officers and directors to confirm that it does not promote hate, violence, racial intolerance, and does not engage in money laundering or other illegal activities.

We will first notify an Unenrolled Charity about PayPal Giving Fund's intent to grant it funds approximately one month after donors have recommended a charity to support, and we will invite the charity to open a PayPal account, enabling it to receive funds via PayPal and access details of its donors. We will make multiple subsequent attempts to contact the Unenrolled Charity, via email, letter and, in some cases, phone.

If a charity does not open a PayPal account or have an active PayPal account, we endeavour to deliver the grant funds by other appropriate means, including via cheque, typically within 90 days from the date of the donation. If we are unable to pay the charity by cheque, we may, at our discretion, reassign funds in the manner described below.

Reassignment of certain donations

While we take all reasonable steps to grant donated funds according to the donor's recommendation, PayPal Giving Fund retains exclusive control over all donations. In the rare cases when a charity fails to meet the terms of our [Charity Certification Policy](#) and/or fails to meet PayPal Giving Fund's due diligence standards as described above for receipt of a donation at any time, we reserve the right to reassign funds to another charitable organisation of our choice. We may also reassign donations in the event we are unable to distribute the funds successfully (e.g., the charity fails to cash the cheque(s) we send).

In the rare cases when PayPal Giving Fund reassigns funds, we will (whenever possible) ask the donor to recommend another charity from the PayPal Giving Fund Directory to benefit from the donation. If PayPal Giving Fund is unable to reach the donor, or the donor does not respond, PayPal Giving Fund will try to grant the funds to a charity that operates in a similar cause area to the charity originally recommended by the donor. Where the cause area is unlikely to reflect the donor's original intent, we will instead grant the funds to a charity with a broad humanitarian mission.

In selecting charities to benefit from such grants, we generally choose Eligible Charities with active PayPal accounts to enable efficient, secure and cost-effective delivery. For example, if we are unable to make a grant to an unenrolled local organisation providing education services, we would typically reassign the funds to a PayPal Giving Fund Eligible Charity with an active PayPal account providing education services.



Attachment 2B

Donor Terms of Service

- 1). These Terms of Service (“**Terms**”) constitute a binding agreement between you and PayPal Giving Fund Australia (ABN 65 106 950 945) (“**PayPal Giving Fund**”, “**we**,” “**our**,” or “**us**”) and govern your use of our websites, subdomains and any other websites or mobile applications referencing, embedding or linking to these Terms, including the website located at <https://www.paypal.com/au/fundraiser/hub>.
 - 2). By using PayPal Giving Fund, you agree that you have read and understand, and agree to be bound by, these Terms.
 - 3). By donating to PayPal Giving Fund, you understand and agree that your donation is made to PayPal Giving Fund Australia, a Public Ancillary Fund (ABN 65 106 950 946). PayPal Giving Fund receives contributions and disburses those contributions to charities in the form of grants. PayPal Giving Fund will only grant donations to organisations that are an Eligible Charity. “**Eligible Charities**” includes the funds, authorities or institutions that:
 - i. are charitable or would be a ‘charity’ within the meaning of the *Charities Act 2013* (Cth) if it were not a ‘government entity’ as defined in that Act (with the exception of public and private ancillary funds); and
 - ii. gifts to which are deductible under item 1 of the table in section 30-15 of *Income Tax Assessment Act 1997* (Cth); and
 - iii. have been verified as to their identity; and
 - iv. do not promote hate, violence, racial intolerance, or engage in money laundering or other illegal activities.
 - 4). When you donate to PayPal Giving Fund you will recommend that PayPal Giving Fund make a corresponding grant to an Eligible Charity in the amount of your donation.
 - 5). PayPal Giving Fund will make every effort to grant the funds you donate to your recommended Eligible Charity. You acknowledge that delivery is subject to PayPal Giving Fund’s [Donation Delivery Policy](#). You understand that PayPal Giving Fund, as required by law, retains exclusive legal control over all donations and may redirect funds to a similar Eligible Charity if it is unable to follow your recommendation.
 - 6). As required by law, in order for your donation to PayPal Giving Fund to be considered tax-deductible, it must, among other requirements, be a genuine gift to PayPal Giving Fund. Refunds may only be granted in exceptional circumstances in accordance with our [Refund Policy](#), and only when the funds have not already been re-granted by PayPal Giving Fund to an Eligible Charity.
 - 7). PayPal Giving Fund will provide you with a donation receipt, and you must disregard any additional tax receipt you receive from a benefiting charity as a result of PayPal Giving Fund’s grant.
 - 8). We will not be liable for any unpaid tax, interest, fines, penalties or any other claims against you in relation to the tax deductibility of your donation. You also agree to indemnify us against any claim made against us in relation to the tax deductibility of your donation.
 - 9). Your personal information, including your name, email address, and physical address will be treated in accordance with our [Privacy Policy](#) and, unless you have elected to donate anonymously, will be shared with Eligible Charities that have an active PayPal account and benefit from your donations to PayPal Giving Fund.
 - 10). PayPal Giving Fund does not charge any fees for contributions made to it. However, certain partners may deduct from your contribution processing or platform fees pursuant to those partners’ policies. You acknowledge that partners may deduct such fees, which they will disclose to you at the time that you complete a donation to PayPal Giving Fund using their site(s) or services.
 - 11). You agree to indemnify, defend and hold harmless PayPal Giving Fund and its affiliates and each of its and their officers, directors, employees, agents and assigns (“**PayPal Giving Fund Indemnitees**”) from and against any and all claims, liabilities, damages, losses, costs, expenses or fees (including reasonable legal fees) arising from or relating to:
 - your use of, or activities in connection with, PayPal Giving Fund; or
 - your violation of these Terms.
- PayPal Giving Fund reserves the right to assume the exclusive defence and control of any matter otherwise subject to indemnification by you and, in such case, you agree to cooperate with PayPal Giving Fund’s defence of such claim.
- 12). Furthermore, you irrevocably waive and release the PayPal Giving Fund Indemnitees from all claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with any dispute you may have with any other user of PayPal Giving Fund.
 - 13). Any controversy or claim at law or equity may be adjudicated by a court of competent jurisdiction located in New South Wales, Australia. You agree to submit to the jurisdiction of the courts located within New South Wales.
 - 14). We may consider use of other alternative forms of dispute resolution, such as binding arbitration or non-binding mediation to be held in New South Wales, Australia or another location mutually agreed upon by the parties.



Attachment 3

“83 The questions asked of the Court are set out below. These are followed by the Court’s answers:

(1) The Court gives the following advice to the questions asked. Are the Plaintiffs justified in the proper performance of their powers and duties as trustees of the RFS Fund, in doing any of the following acts with respect to the monies contained in the RFS Fund (including the money donated to the fundraising appeal commenced by Ms Barber in January 2020 since paid to the RFS Fund)? The following are the acts in question:

(a) paying money to other charities or rural fire services, whether in NSW or the other Australian States and Territories, to assist in providing relief to persons and animals affected by bushfires.

Answer: No.

(b) setting up or contributing to a fund to support rural firefighters injured while firefighting, or the families of rural firefighters killed while firefighting.

Answer: Yes.

(c) providing;

(i) physical health training and resources;

(ii) mental health training and resources; or

(iii) trauma counselling services,

to volunteer firefighters as defined in s 8 of the *Rural Fires Act*, who require them in connection with performing the functions of the NSW Rural Fire Service, as defined by s 9 of the *Rural Fires Act*.

Answer: Yes.

(d) setting up or contributing to a fund to meet the costs for volunteer rural firefighters (as defined in s 8 of the *Rural Fires Act*) to attend and complete courses that improve skills related to the volunteer-based fire and emergency service activities of the Brigades, as defined in clause 1.1 of the RFS Trust Deed.

Answer: Yes.”

Attachment 4

5.00pm Monday May 25, 2020.

Celeste Barber Statement.



It was decided today in the Supreme Court that the money we raised will stay with the NSW RFS. I had hoped, because it was such a big and 'unprecedented' amount, that it could have been distributed to other states and charities, turns out that studying acting at university does not make me a lawmaker.

So the money will be in the very capable, very grateful hands of the NSW RFS. It will be used for equipment and training, to support rural firefighters injured while fighting, the families of rural firefighters killed while fighting, along with mental health training and trauma counselling, to train up more volunteers and help communities be better prepared for the ongoing threat of bushfires here in our beautiful Australia.

To our volunteer firefighters you are rockstars like no others. You will never know the depth and breadth of our gratitude.

I want to thank everyone around the world who donated. From the kids who smashed their piggy banks open, to the single mums that gave what they could. To everyone from all walks of life that heard us and helped us, whether it was a hand full of gold coins or a big fat cheque. This is all because of you guys.

My family say thank you. They felt abandoned and were terrified in the face of all this and you guys made them feel less alone, this is the power of people.

Stay safe friends.

Celeste.