

The 'Magic Pudding' estate

Funeral and estate administration expenses

with Christine Smyth



Did you stick to your budget over Christmas? I recall the days of receiving a pay packet with notes and coins in it, and I would thumb through the \$20 notes and peel off portions for my expenses.

Somehow, receiving physical money made it easier to stick to my budget.

Now we live in a digital age filled with digital transactions and easily available credit at the click of a button, or the tap of a thumb. It makes it far more difficult to maintain or track one's own expenses and requires great discipline.

Financial discipline is essential for those administering estates, not just for members of parliament seeking to claim travel expenses.

So it is no surprise that I encounter executors and administrators who are confronted when I tell them that they are the ones who are responsible for the expenses they incur and that they must justify those expenses in order to claim an indemnity from the estate. They are even more confronted when informed that this includes legal and accounting fees. The estate is not a financial 'magic pudding'.

These issues were recently canvassed in *Foster v Takai*.¹

The matter addressed a claim for wrongful distribution of trust property. The administrator's defence involved her claiming parts of the estate distribution were properly incurred as she was entitled to claim them. Some of those expenses included airfares, accommodation and transport for relatives to attend the funeral; contributions to the deceased's sibling, nieces and nephews; costs of well-being (health issues due to stress); costs of gravesite maintenance; hardship costs, etc. These expenses totalled \$223,750 and formed the basis of the dispute.

"The Magic Pudding is a pie, except when it's something else, like a steak, or a jam donut, or an apple dumpling, or whatever its owner wants it to be. And it never runs out. No matter how many slices you cut, there's always something left over. It's magic."

– Lindsay, Norman, *The Magic Pudding*, Australia: HarperCollins Publishers (Australia) Pty Ltd, 1918.

After various concessions and mathematical recalculations, that amount was reduced by \$38,886.04, which included funeral expenses allowed at \$20,500.00. In respect of funeral expenses Morzone J affirmed at [19]-[24] the principles applied to claims for funeral expenses in Queensland. Ultimately the court found the administrator had made wrongful distributions and made orders as to the amount of that wrongful distribution plus interest.

In respect of estate administration costs, those administering the estates have a responsibility to the beneficiaries of the estate to properly manage the expenses if they seek to have them reimbursed from the estate.

It is trite law that a personal representative and trustee of a deceased estate is entitled to be reimbursed from the estate for the expenses they reasonably incur in the administration of the estate. In Queensland, this right is enshrined through the combination of s49(1) of the *Succession Act 1981* and Part 6, of the *Trusts Act 1973* – in particular s72.

In the decision of the *Public Trustee of Queensland v Macpherson* [2011] QSC 169, McMeekn J stated at [25] that "a trustee or executor is entitled as of right to be indemnified for expenses incurred before paying out the trust funds to anyone else".

Nevertheless, it is important to appreciate the extent and limitations of this indemnity. A person administering an estate may be at risk if they are unable to demonstrate a measurable benefit to the estate in incurring the expense.² The demonstrable benefit does not need to be a pecuniary benefit. It must, however, be in furtherance of the administration of the estate.³

That is not to say that all improper expenses may not be recovered. In this respect, in the matter of *Beath v Kousal* [2010] VSC 24 (12 February 2010), the court said:

"[20] ...A trustee is, however, entitled to be indemnified in respect of a liability improperly incurred to the extent to which, acting in good faith, he has benefited the trust estate.⁴

"[21] the unauthorised expenditure by the trustee must demonstrate 'a measurable benefit to the trust estate'.⁵

"[24] ...a trustee may only recover an 'improper' or unauthorised payment or expense, if the payment or expense has resulted in a corresponding benefit to the estate of at least equivalent value."

Finally, when it comes to an administrator recovering their legal costs from the estate, they ought to be cautioned that their right to indemnity "...only exists in respect of expenditure reasonably incurred in identifying, recovering, realising and protecting trust assets (or attempting to do so)".⁶

What this tells us is that claiming estate administration expenses requires a legal analysis and applying the 'pub test' is not enough.

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