

Article Information

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Supreme Court of South Australia fires a warning shot to executors

The recent Full Court decision in *Brooks & Anor v Young & Ors* [2018] SASCFC 81 provides an insight into the court's view upon executor's duties in respect to estate distributions generally, but especially when confronted with claims under IFP legislation.

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Of interest are the concerns raised by Bampton J in relation to the "practice of premature distributions" by executors set out in paragraphs 18-21 of the judgment, in particular para 18 where she says, "*Time and time again Judges have warned executors to be circumspect by refraining from distributing any part of an estate during the 6-month period*".

It is a warning to estate practitioners in how they advise clients, and of course independent trustee, in what actions they take as executor when confronted with actual claims or potential claims and the usual requests for prompt distributions from beneficiaries.

Justice Doyle provides a very useful but lengthy judgment. It is difficult to provide a summary that does justice to his overall judgment hence we've provided references to the various headings of his judgment for your assistance which is linked [here](#).

Relevant provisions of the IFP Act - paras 56-62

Operation of the IFP scheme - paras 63-77

Duties of an executor in administering an estate - paras 86-110

A survey of the authorities, State by State:

SA - 112-118

Victoria - 120-130

NSW - 131-135

WA - 136-142

Qld - 143- 157 and

New Zealand 158-179

Are fiduciary duties owed to Plaintiffs as potential beneficiaries - paras 214-218

There is no doubt a difference between what private executors may do in administering an estate, especially if they are also beneficiaries, and the independent executor who has nothing to gain from administering an estate in a particular manner.

We suggest that the “premature distributions” referred to generally relate to private executors trying to gain some advantage by distributing an estate early as compared to a independent trustees adopting a very cautious approach to distributions if there was a hint of an IFP claim.

The case may provide independent trustees with some useful ammunition against beneficiaries who are pressing for payment of their legacy or distribution.

From an executor liability perspective, attention is drawn to paras 73-76 of Doyle J’s judgment which is a must read – para 75 provides a summary of when an executor would be exposed to personal liability.

His Honour also warns about the consequences of premature distributions at paras 102-105.

Summary

This should be a topic front of mind for all executors. Piper Alderman is able to provide in-house training on this subject for executors, trustees and client advisors. If you consider this useful please contact our experienced Private Clients team.