



Newsletter - Bulow & Bulow - [2019] FamCAFC

The nature, form, and characteristics of Defined Benefit superannuation interests.

This case can be found under Cases.

If a matter proceeds to trial, it is now essential for the specific implications of any proposed split for a defined benefit fund.

Bulow & Bulow - [2019] FamCAFC, now requires the following factors for a defined benefit interest in the growth phase to be addressed:

- The method by which the ultimate benefit is calculated
- The risks to the member inherent in each
- And, very importantly, the effect of a s 90XT(1)(a) order

Further, at paragraph 25:

“The nature, form and characteristics of the interests held by each of the parties consequent upon the proposed splitting order; the future benefits for each party upon vesting; when the respective interests might vest and the form in which any benefits might (or must) be taken at that time, are all likely to be relevant in assessing the s 75(2) factors.”

And at paragraph 28:

“Neither expert provided an opinion on the nature, form and characteristics of the husband’s superannuation interest nor how any splitting order sought by the wife (or any other splitting order) might impact upon that interest.”

And at paragraph 37:

“His Honour made no mention of the nature, form and characteristics of the parties’ respective interests in superannuation. There is no reference in the reasons to the wife having superannuation interests of one type and the husband having a superannuation interest of a very different type. His Honour did not refer to the husband’s interest being a defined benefit interest governed by scheme-specific rules. His Honour also made no mention of the potential effect/s of any proposed splitting order upon the husband’s interest or, indeed, upon the interest that would be created for the wife by reason of the splitting order to be made.”





Each Defined Benefit Scheme is Different!

It is not possible to give a generic report addressing the implications of Bulow & Bulow.

Each scheme has its own set of rules and the implications of splitting orders will vary schemes. The implications will also be different depending on the class of member within the scheme.

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