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## Daily Banking A Daily Bulletin listing Decisions of Superior Courts of Australia

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### Executive Summary (1 minute read)

**Olson v Keefe** (FCA) - service - confirmation of service of amended originating application on two citizens of USA and one USA company granted

**Cushman & Wakefield (NSW) Pty Ltd v Farrell** (NSWCA) - contract - corporations - calculation of payment due to employee following termination of employment - proper construction of employment contract - employer's appeal allowed in part

**CSR Limited v Morrison** (NSWSC) - cross-vesting - proceedings commenced in Dust Diseases Tribunal of New South Wales transferred to Supreme Court of Queensland

**The Commissioner of the Australian Federal Police v Fung** (NSWSC) - proceeds of crime - Commissioner granted forfeiture orders

**Re Will and Estate of Macleod** (VSC) - wills and estates - application by executor for commission for pain and trouble of administration of will and trust - commission granted

**Mills v Piller** (WASC) - succession - family provision - adult daughter's application for provision from deceased mother's estate refused

### Summaries With Link (Five Minute Read)

**[Olson v Keefe \[2017\] FCA 101](#)**

Federal Court of Australia

Bromwich J

Service - applicant sought order under r10.43(6) *Federal Court Rules 2011* (Cth) confirming service of amended originating application on two citizens of USA and one USA company (first, second and third respondents) - fourth respondent was Australian company - whether proper to join foreign respondents - whether 'service of the kind carried out' was permitted - explanation for failing to seek leave - held: order confirming service granted.

[Olson](#)

## **Cushman & Wakefield (NSW) Pty Ltd v Farrell [2017] NSWCA 24**

Court of Appeal of New South Wales

Macfarlan & Ward JJA; Emmett AJA

Contract - corporations - respondent's employment with appellant terminated - dispute concerned quantification of payment due to respondent - no dispute appellant entitled to terminate respondent's employment without cause - appellant paid redundancy payment to respondent - respondent successfully contended he was underpaid and entitled to further amount calculated by reference to service with a 'related company' - appellant unsuccessfully contended it overpaid respondent and sought amount by way of restitution - construction of contract - ambiguity - 'following the Initial Period' - s50 *Corporations Act 2001* (Cth) - held: primary judge erred in construction of contract - respondent entitled to termination payment he received by reference to service with appellant - appellant had no claim to restitution - appeal allowed in part.

[Cushman](#)

## **CSR Limited v Morrison [2017] NSWSC 123**

Supreme Court of New South Wales

McCallum J

Cross-vesting - first defendant sued second defendant in the Dust Diseases Tribunal of New South Wales in relation to alleged asbestos exposure causing mesothelioma - cross-defendant sought transfer of proceedings to Supreme Court of Queensland pursuant to ss8 & 5(2) *Jurisdiction of Courts (Cross-Vesting) Act 1987* (NSW) - parties consented to application - interests of justice - held: 'all of the relevant activity' was situated in Queensland - Court satisfied proceedings should be determined by Supreme Court of Queensland - order granted.

[CSR Limited](#)

## **The Commissioner of the Australian Federal Police v Fung [2017] NSWSC 122**

Supreme Court of New South Wales

McCallum J

Proceeds of crime - forfeiture orders - defendant pleaded guilty to offences contrary to ss400.4(1) & 400.4(2) *Criminal Code* (Cth) - Commissioner sought forfeiture orders - ss19, 49, & 69 *Proceeds of Crimes Act 2002* (Cth) - held: responsible authority had applied for order - relevant restraining order had been in force for at least six months - no application had been

# Benchmark

made for exclusion of property from restraining order - authority had 'taken reasonable steps to identify and notify persons with an interest in the property' - forfeiture orders granted.

[The Commissioner](#)

## **Re Will and Estate of Macleod [2017] VSC 67**

Supreme Court of Victoria

Ierodiaconou AsJ

Wills and estates - applicant was executor and trustee of deceased's Will - applicant pursuant to s65 *Administration and Probate Act 1958* (Vic) and s77 *Trustee Act 1958* (Vic) sought commission or percentage of estate for pain and trouble of its administration - applicant also sought commission for pain and trouble of administering charitable trust established by will - held: Court concluded applicant should be given commission for his pains and troubles based on 'significant amount of work', stress of litigation and 'serious threats' against him - appropriate quantum was total commission of \$130,000.

[Re Will and Estate of Macleod](#)

## **Mills v Piller [2017] WASC 45**

Supreme Court of Western Australia

Acting Master Strk

Succession - family provision - adult daughter of the deceased sought provision from deceased mother's Will pursuant to s6 *Family Provision Act 1972* (WA) - *Non-Contentious Probate Rules 1967* (WA) - held: deceased's Will had made provision for plaintiff - plaintiff did not satisfy jurisdictional threshold - proper and adequate provision had been made for plaintiff - even if jurisdictional threshold met, variation of Will on adequacy grounds not justified - application dismissed.

[Mills](#)

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