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**P G WILLIS SC**

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As at 30 June 2025

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## Memoranda

### 2025

- |          |                                                                                                                                             |
|----------|---------------------------------------------------------------------------------------------------------------------------------------------|
| 28 April | The Hon Peter Barrington Kidd, a Judge of the Court and Chief Judge of the County Court since May 2016, was appointed a Justice of Appeal.  |
| 13 May   | The Hon Melinda Jane Richards, a Judge of the Court since 2018, was appointed a Justice of Appeal.                                          |
| 27 May   | Her Honour Amanda Jane Chambers was appointed a Judge of the Trial Division concurrently on appointment as Chief Judge of the County Court. |
| 7 June   | The Hon Thomas Harrison Smith AM KC, a Judge of the Supreme Court from 1990 to 2009, died.                                                  |
| 11 June  | Nicholas Roberts was appointed a Judicial Registrar.                                                                                        |
| 13 June  | The Hon Stephen Pendrill Charles AO KC, a Justice of Appeal and Judge of the Supreme Court from 1995 to 2006, died.                         |

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## Corrigenda

In 75 VR, two cases from other volumes were incorrectly included in the index. As a result, there were errors to the tables and index of 75 VR. The corrections are listed in full on the following pages.

## Corrigenda

### 75 VR: Table of Cases Reported

#### Insert:

- *Fei v Hexin Pty Ltd* (2024) 75 VR 581 (CA).
- *Director of Public Prosecutions v HR* (2024) 75 VR 481.
- *HR; Director of Public Prosecutions v* (2024) 75 VR 481.
- *Hexin Pty Ltd; Fei v* (2024) 75 VR 581 (CA).

#### Delete:

- *Doyle v The King* (2024) 75 VR 581 (CA). The case in 75 VR with the citation (2024) 75 VR 581 should be *Fei v Hexin*.
- *King, The; Doyle v* (2024) 75 VR 581 (CA).
- *Osman (a pseudonym); Director of Public Prosecutions v* (2024) 75 VR 481. The case in 75 VR with the citation (2024) 75 VR 481 should be *DPP v HR*.

### 75 VR: Table of Cases Judicially Considered

#### Insert:

- *AB v CD* (2019) 93 ALJR 321 referred to 75.481.
- *Alex Fraser Pty Ltd v Minister for Planning* [2018] VSC 391 considered.
- *Beston Parks Management Pty Ltd v Sexton* [2008] VSC 392 considered 75.581.
- *Dartberg Pty Ltd v Wealthcare Financial Planning Pty Ltd* (2007) 164 FCR 450 referred to 75.581.
- *EBOS Group Pty Ltd v Team Medical Supplies Pty Ltd* [No 3] (2012) 199 FCR 533 referred to 75.581.
- *Herald and Weekly Times Pty Ltd v County Court of Victoria* [2005] VSC 70 referred to 75.481.
- *Mercantile Mutual Insurance (Australia) Ltd v Household Financial Services Ltd* (Unreported, Supreme Court of Victoria, Court of Appeal, Winneke P, Hayne JA and Ashley AJA, 22 May 1997) referred to 75.581.
- *Optiver Australia Pty Ltd v Tibra Trading Pty Ltd* (2008) 169 FCR 435 referred to 75.581.
- *Sandhurst Trustees Ltd v Clarke* (2015) 321 ALR 1 considered 75.581.
- *Schmidt v Won* [1998] 3 VR 435 considered 75.581.
- *United Energy Ltd v Energy Risk Management Pty Ltd* [1998] VSC 133 considered 75.581.
- *WD v Director of Public Prosecutions (No 2)* (2023) 72 VR 589 applied 75.481.

#### Delete:

- *Australian National Railways Commission v Collector of Customs (SA)* (1985) 8 FCR 264 referred to 75.481.
- *Baini v The Queen* (2012) 246 CLR 469 applied 75.581.
- *Cesan v The Queen* (2008) 236 CLR 358 applied 75.58.
- *Collector of Customs v Cliffs Robe River Iron Associates* (1985) 6 FCR 261 referred to 75.481.
- *Collector of Customs v Pozzolanic Enterprises Pty Ltd* (1993) 43 FCR 280 referred to 75.481.

## 75 VR: Statutes, Rules etc Cited

### Insert:

- Open Courts Act 2013 (Vic): ss 1, 3, 17, 18(1)(d), 18(1)(e).
- Supreme Court (General Civil Procedure) Rules 2015 (Vic): r 32.05.

### Delete:

- Under 'Criminal Procedure Act 2009 (Vic)', delete reference to 's 276(1)'.
- Delete entire entry 'Juries Act 2000 (Vic)'.
- Delete entire entry 'Telecommunications (Interception and Access) Act 1979 (Cth)'.

## 75 VR: Table of Cases Cited

### Insert:

- *AB v CD* (2019) 93 ALJR 321.
- *Australian Securities and Investments Commission v Commonwealth Bank of Australia* (2023) 299 FCR 604.
- *Alex Fraser Pty Ltd v Minister for Planning* [2018] VSC 391.
- *Beston Parks Management Pty Ltd v Sexton* [2008] VSC 392.
- *Bodycorp Repairers Pty Ltd v GDG Legal Pty Ltd* [2018] VSCA 32.
- *Cargill Australia Ltd v Viterro Malt Pty Ltd* [2018] VSCA 260.
- *Darrell Lea (Vic) Pty Ltd v Union Assurance Society of Australia Ltd* [1969] VR 401.
- *Director of Public Prosecutions (Cth) v Brady* (2015) 252 A Crim R 50.
- *Director of Public Prosecutions v EN* [2023] VSC 724.
- *EBOS Group Pty Ltd v Team Medical Supplies Pty Ltd [No 3]* (2012) 199 FCR 533.
- *GDP Group Pty Ltd v Saye* [2022] FCA 688.
- *Herald and Weekly Times Pty Ltd v County Court of Victoria* [2025] VSC 70.
- *Hexin Pty Ltd v Fei* [2023] VSC 476.
- *John Fairfax & Sons Ltd v Police Tribunal of New South Wales* (1987) 5 NSWLR 465.
- *Livingspring Pty Ltd v Kliger Partners* (2008) 20 VR 377.
- *Masson v Parsons* (2019) 266 CLR 554.
- *Mercantile Mutual Insurance (Australia) Ltd v Household Financial Services Ltd* (Unreported, Supreme Court of Victoria, Court of Appeal, Winneke P, Hayne JA and Ashley AJA, 22 May 1997).
- *Molonglo Group (Australia) Pty Ltd v Cahill* [2018] VSCA 147.
- *O'Donnell v Reichard* [1975] VR 916.
- *Optiver Australia Pty Ltd v Tibra Trading Pty Ltd* (2008) 169 FCR 435.
- *Pandolfo v Finadri* [2018] VSC 211.
- *Perry v Smith* (1876) 27 VLR 66.
- *Potts v Brooks; ex parte Potts* [1983] 2 Qd R 48.
- *Registrar of Titles (WA) v Franzon* (1975) 132 CLR 611.
- *Re WD (No 4)* [2024] VSC 144.
- *Schmidt v Won* [1998] 3 VR 435.

- *United Energy Ltd v Energy Risk Management Pty Ltd* [1998] VSC 133.
- *WD v Director of Public Prosecutions (No 2)* (2023) 72 VR 589.

**Delete:**

- *Australian National Railways Commission v Collector of Customs (SA)* (1985) 8 FCR 264.
- *Bateman's Bay Local Aboriginal Land Council v Aboriginal Community Benefit Fund Pty Ltd* (1998) 194 CLR 171.
- *Cesan v The Queen* (2008) 236 CLR 358.
- *Cheatle v The Queen* (1993) 177 CLR 541.
- *Collector of Customs v Cliffs Robe River Iron Associates* (1985) 6 FCR 261.
- *Collector of Customs v Pozzolanic Enterprises Pty Ltd* (1993) 43 FCR 280.
- *Director of Public Prosecutions v Osman (a pseudonym)* (2024) 76 VR 232.
- *Doyle v The King* (2024) 73 VR 202.
- *Dragojlovic v The Queen* (2013) 40 VR 71.
- *Grollo v Palmer* (1995) 184 CLR 348.
- *Gul v The Queen* [2017] VSCA 153.
- *Hofer v The Queen* (2021) 274 CLR 351.
- *Lane v The Queen* (2018) 265 CLR 196.
- *Maric v The Queen* (1978) 52 ALJR 631.
- *Ousley v The Queen* (1997) 192 CLR 69.
- *Papaioannou v The Queen* [2023] VSCA 43.
- *Qadir (a pseudonym) v The Queen* [2023] VSCA 155.
- *R v Sussex Justices; Ex parte McCarthy* [1924] 1 KB 256.
- *Rohen v The Queen* [2024] VSCA 1.
- *Weiss v The Queen* (2005) 224 CLR 300.

**75 VR: Index, p 619**

**Insert:**

**COURTS AND JUDGES**

**Open courts** — Criminal law — Application for proceeding suppression order — Whether an alleged child victim of offence who made no complaint and would not be called as a witness at trial was a 'complainant' or 'witness' — Open Courts Act 2013 (Vic), ss 1, 3, 17, 18(1)(d), 18(1)(e). 75.481.

**PRACTICE AND PROCEDURE**

**Discovery** — Preliminary discovery — Requirement that there be reasonable cause to believe applicant for preliminary discovery has or may have right to obtain relief — Whether necessary for applicant to identify cause of action said to give rise to right to relief — Supreme Court (General Civil Procedure) Rules 2015 (Vic), r 32.05.

**Delete:**

**CRIMINAL LAW**

**Appeal** — Conviction — Substantial miscarriage of justice — Jury — Juror appearing to fall asleep during evidence — Whether error or irregularity in trial — Whether substantial miscarriage of justice. 75.581.

**Interlocutory appeal** — Evidence — Disclosure of location information — Whether authorised by law — Whether evidence improperly or illegally obtained. 75.481.

**75 VR: Index, p 620**

**Insert:**

**WORDS AND PHRASES**

**“complainant”**: 75.481

**“witness”**: 75.481.

**Delete:**

**WORDS AND PHRASES**

**“in connection with its business”**: 75.481.

## Obituary

### The Honourable Thomas (Tim) Harrison Smith AM KC

**Trial Division 1 May 1990 – 4 August 2009**

A judge remembered for his commitment to integrity, justice and public service, the Hon Thomas (Tim) Harrison Smith AM KC died on 7 June 2025, aged 85. His Honour was born on 5 August 1939. He was educated at Scotch College and at The University of Melbourne, graduating with a Bachelor of Arts and a Bachelor of Laws with Honours.

His Honour completed his articles at Home Wilkinson & Lowry and was admitted to practise in 1964. He signed the Bar Roll in 1965, reading with Ninian Stephen, later a judge of the Court and of the High Court. After a period of leave to join the Australian Law Reform Commission from 1980 to 1985, his Honour returned to the Bar and took silk in 1985.

In July 1988, his Honour was appointed as a Judge of the County Court and two years later was appointed as a Judge of the Supreme Court, picking up the mantle of his father the Hon Thomas Weetman Smith AC — a prodigious law reformer and an eminent jurist who had served on the Court for over 23 years.

As a member of the Court until his retirement in 2009, Justice Smith was known for his gentle and good-humoured manner, unerring fairness and dedication. No retrial was ordered in any criminal case he presided over, nor was any sentence successfully appealed. His Honour presided over cases from all divisions. Armed with a firm understanding of legal principle, he was undaunted by the need to develop the common law in areas without precedent.

His Honour's contribution extended well beyond the hearing and determination of cases. As Principal Judge of the Common Law Division, he made a significant contribution to the leadership of the Court. He was a champion for the establishment of the Judicial Review and Appeals List — conscious of the constitutional importance of that jurisdiction — with the Hon Justice Cavanough and the Hon Justice Kyrrou as the Judges in Charge.

The governance of Courts was a special passion and topic of scholarship for his Honour, providing strong support to the Chief Justice. He urged consideration of models of governance that best supported the independence of the Courts. He worked with all Victorian courts on developing a Courts' Strategic Directions Statement which sought a review of governance arrangements. It was this work that progressed a debate that eventually saw the development of independent court administration in the form of Court Services Victoria.

Driven by issues of principle, his Honour retained a life-long interest in law reform and continued to make contributions through his time on the Court and beyond. The Uniform Evidence Act was a notable and enduring achievement, many years in the making. Derived from the seminal work he led at the Australian Law Reform Commission; it was enacted into law federally and in New South Wales in 1995. His Honour joined the Victorian Law Reform Commission in 2004 to lead the work that would see the introduction of the legislation in Victoria in 2008 and contributed to revisions to the Act as part of a joint endeavour by the Australian, New South Wales and Victorian Commissions. Bringing to bear his passion for judicial education with his considerable knowledge of the Act, his Honour volunteered his time and unflagging energy to prepare the Victorian judiciary for its commencement. Working with the Judicial College of Victoria, he was instrumental in developing the Uniform Evidence Manual and presented at numerous programs. His contributions and infectious enthusiasm ensured that one of the most significant legislative changes affecting courts progressed smoothly.

Upon his retirement, his Honour applied his passion for principle to new areas through scholarship and advocacy in the field of integrity and accountability. He wrote about public office as a public trust and led the non-partisan Accountability Roundtable to advocate for higher standards of accountability and integrity in public office. His Honour was a devoted husband to his wife, Angela. Their children and grandchildren fondly remember his love of family, music, gardening and surfing during the many family holidays spent by the ocean.

**RMN**

## Obituary

### **The Honourable Stephen Pendrill Charles AO KC.**

**Justice of Appeal 7 June 1995 – 21 April 2006**

The Honourable Stephen Pendrill Charles AO KC — a founding judge of the Court of Appeal of the Supreme Court of Victoria — died on 13 June 2025. His Honour was a distinguished and celebrated barrister and judge, whose decency, wisdom and legal brilliance were widely acknowledged. His Honour's career and post-judicial life were marked by his leadership and fierce advocacy for public integrity and accountable government.

His Honour signed the Bar Roll on 26 October 1961, reading with William Harris, later a judge of the Court. His Honour's practice at the bar was diverse; ranging across corporate matters, commercial arbitration, government inquiries, investigations and constitutional work. He had a renowned national practice. His Honour acted regularly in high-profile matters, often involving government action, including in the Royal Commission into the Failure of Kings Bridge, the Royal Commission into the Failure of the West Gate Bridge, in proceedings relating to the deregistration of the Builders Labourers' Federation, as leading counsel assisting the Parliamentary Commission of Inquiry into the conduct of the Honourable Justice Lionel Murphy, and as one of three Arbitrators in a series of commercial arbitrations between Mobil Oil New Zealand and the New Zealand Government. He was a lauded mentor to Ross Macaw KC, Bernard Davis, H McM (Michael) Wright AM KC, the Hon David Habersberger KC, Peter Murdoch KC, Robert Miller, Roland Price and Dr Michael Pryles AO.

His Honour took silk in November 1975. During this time, he made substantial contributions to the Australian legal community, serving on numerous councils, including as President of the Australian Bar Association, Chair of the Victorian Bar Association, Chair of the Bar Ethics Committee, Member of the Commonwealth Administrative Review Council, and Member of the Barristers' Disciplinary Tribunal. His Honour was appointed to the bench in 1995 and served as an inaugural member of the Court of Appeal of the Supreme Court of Victoria. Justice Charles provided substantial assistance to the first President of the Court of Appeal, the Honourable Justice John Winneke, in the development of the practices and procedures for the new Court Division.

Justice Charles was a strong leader of support for women barristers, exemplified by his chairing (as a Judge of Appeal) the Bar's review of equality of opportunity for women at the Bar, which has led to significant changes.

Following his retirement from the bench in 2006, his Honour made important contributions in the field of Australian legal education. His Honour held a range of academic positions at Monash University, including Lecturer, Senior Teaching Fellow, Adjunct Professor, Distinguished Affiliate and Moot Court judge, and lectured the subject 'Law of Public Inquiries and Royal Commissions'. He devoted considerable effort and energy for many years in his retirement chairing the Bar's advisory committee to the Chief Justice for the appointment of Senior Counsel.

His Honour was a tireless advocate for accountability and transparency in government. In 2010, he acted as an Advisory Committee Member for the Australian Law Reform Commission's Review of the Royal Commissions Act 1902 and Related Issues. In 2011, he advised the Victorian Government on the establishment of the Independent Broad-based Anti-Corruption Commission. In 2019, he co-founded the Centre for Public Integrity. In 2020, he published a proposal for a National Integrity Commission, and subsequently co-authored the book 'Keeping them Honest: The Case for Genuine National Integrity Commission and Other Vital Democratic Reforms'. The Australian Government legislated to establish the National Anti-Corruption Commission in late 2022.

In 2017, his Honour was appointed an Officer of the Order of Australia for distinguished service to the law and the judiciary, particularly in the areas of commercial arbitration and mediation, to judicial administration and to legal professional organisations. His Honour was a devoted husband to his wife, Jenny, father to his children Lucy, Julia, Patrick, Thanh and Ha, a grandfather and a great-grandfather. He is fondly remembered by his children for his love for his family and friends, art, literature, history and travel.

**RMN**