

County Court Criminal Division

Her Honour Judge Lisa Hannan – Head of Criminal Division

Judge Michael O'Connell appointed as a County Court Judge

His Honour Judge Michael O'Connell's appointment to the County Court was announced by the Attorney-General on 25 July 2017.

With a legal career spanning 30 years, His Honour was admitted to practice in 1987, joined the Victorian Bar in 1990 and was appointed as Senior Counsel in 2008.

A well-respected Barrister, His Honour was an experienced trial and appellate advocate, practicing in all jurisdictions throughout Australia, as well as internationally, and appearing in many high-profile cases.

During his career, His Honour has also been an experienced legal educator, lecturing for the Victorian Bar Readers' Course since 2002 and as an accredited advocacy teacher with the Australian Advocacy Institute for 18 years, until 2015.



His Honour Judge O'Connell



Chief Judge Kidd welcomes Judge O'Connell

Having worked for a period in Indonesia and being fluent in the Indonesian language, His Honour also lectured in criminal procedure and intellectual property law at various Indonesian universities and government agencies, as part of

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a project initiated by the Indonesian Department of Justice and Human Rights and AusAid.

His Honour has also held several senior positions within the Victorian Bar and, immediately prior to his appointment to the County Court, was Chairperson of the Criminal Bar Association.

With his well-deserved reputation as a strong criminal law and human rights advocate and his wealth of experience, the Criminal Division is very fortunate and pleased to welcome Judge O'Connell to the Court and wishes His Honour well in his new role. Judge O'Connell's welcome ceremony can be viewed [here](#).

Appointment of Paul Higham as a County Court Judge

On 15 August 2017, the Attorney General announced the appointment of His Honour Judge Paul Higham as a Judge of the County Court.

His Honour brings a wealth of experience to the Court, with a career in the law spanning more than 35 years. Judge Higham was admitted to the Bar of England and Wales in 1982 where he practiced solely in crime, appearing in many criminal trials, including international drug trials, money laundering and corporate fraud matters and murder trials.



His Honour Judge Higham

He also practiced nationally as a defence advocate in numerous sexual offence cases, including those alleging historic abuse, and has lectured in this area.

His Honour relocated to Melbourne in 2005 and was admitted in 2006, practicing as in-house Counsel for a large Melbourne criminal law firm, before signing the Bar Roll in 2007. He practiced exclusively in the field of criminal defence work and ancillary human rights law, and has appeared in numerous trials in both the County and Supreme Courts. His Honour also appeared in the Victorian Court of Appeal.

The Criminal Division is very fortunate and pleased to welcome Judge Higham to the Court and wish His Honour well in his new role. Judge Higham's Welcome Ceremony will be held on Monday 28 August.



Practice and Procedure

New Practice Note in Relation to Expert Reports



On 21 July 2017 Chief Judge Kidd formally authorised the joint Supreme Court / County Court practice note '*Sentencing Hearings: Expert Reports on Mental Functioning of Offenders – PNCR 1-2017*'. The practice note was developed by the Forensic Evidence Working Group, comprising Supreme and County Court judges, forensic psychiatrists and psychologists, barristers and solicitors. The purposes of the practice note are:

- To enhance the quality and reliability of expert evidence relied upon in plea and sentencing hearings in connection with questions of the mental functioning of persons who are to be sentenced; and
- To improve the utility of such evidence by ensuring that opinions expressed are within the scope of the expert's specialised knowledge, and are supported by clearly identified facts and reasoning.

The practice note applies from 1 July 2017, but only to expert evidence which addresses questions of the mental functioning of an offender.

The Criminal Division Practice Note was amended to account for the new filing times in relation to expert reports and practitioners should refer to Chapter 7 of the Criminal Division Practice Note.

The practice note '*Sentencing Hearings: Expert Reports on Mental Functioning of Offenders – PNCR 1-2017*' is available on the County Court website and can be accessed [here](#).

eLodgement Portal Upgrade

The County Court eLodgement Portal will be undergoing an upgrade in September, which will feature an updated interface.

Following the upgrade, eLodgement users will be prompted to reset their passwords only once. Further details will be communicated directly to eLodgement users, including details of any necessary maintenance outages.

Chief Judge on ABC Radio



On 8 August 2017 Chief Judge Kidd spoke on ABC Radio's *Evenings* program with Lindy Burns. Chief Judge Kidd spoke about the efforts that the County Court has been undertaking to promote a better understanding of the work of the Court.



Chief Judge Kidd also discussed the nature of the criminal work at the County Court, such as the high proportion of sexual offences work that the Court deals with each day. Chief Judge Kidd noted that numerous efforts have been made over recent years, and are still being made, to ensure the well-being of both Judges and staff and complainants and witnesses who give evidence in criminal trials.

Chief Judge Kidd also discussed his experience as an International prosecutor prosecuting war crimes at the State Court of Bosnia and Herzegovina at Sarajevo. The audio of the ABC Radio's *Evenings* program can be heard [here](#).

Legislation Update

Sentencing Amendment (Sentencing Standards) Act 2017

The *Sentencing Amendment (Sentencing Standards) Act 2017* received Royal Assent on 15 August 2017. The Act repeals the *Baseline* sentence scheme which was held to be incapable of being given any practical operation by the Court of Appeal in November 2015.

The Act will also implement a new 'Standard Sentence Scheme' for 12 of the most serious offences and will enhance the guideline judgment scheme.

The 12 standard sentence offences and the applicable standard sentences are summarised in the table below.

Standard Sentence Offence	Standard Sentence
Murder	30 years if proven beyond reasonable doubt that the person murdered was a custodial officer or emergency worker on duty at the time of offence and the accused knew or was reckless to this fact; or 25 years in any other case
Rape	10 years
Sexual Penetration of a Child Under 12	10 years
Sexual Penetration of a Child Under 16	6 years

Sexual Assault of a Child Under 16	4 years
Sexual Activity in the Presence of a Child Under 16	4 years
Causing a Child Under 16 to be Present During Sexual Activity	4 years
Persistent Sexual Abuse of a Child Under 16	10 years
Sexual Penetration of a Child or Lineal Descendant	10 years if the victim is under 18 at the time of the offence
Sexual Penetration of a Step-Child	10 years if the victim is under 18 at the time of the offence
Culpable Driving Causing Death	8 years
Trafficking in a Large Commercial Quantity of a Drug of Dependence	16 years

A standard sentence for an offence is the period specified as the standard sentence for that offence. It is intended that standard sentences will provide the courts with a legislative guidepost on objective offence seriousness, to sit alongside the maximum penalty.

A court must have regard to the standard sentence when it is sentencing an offender for a standard sentence offence. A court that sentences an offender to a period that is shorter than the standard sentence must state the reasons for imposing that sentence, having regard to the prescribed standard sentence.

Unless the court considers it in the interests of justice to do so, the court must fix a non-parole period of at least:

- 30 years imprisonment if the *relevant term* (defined in the Act) is life imprisonment;
- 70% of the relevant term if that sentence is 20 years or more; and
- 60% of the relevant term if that sentence is less than 20 years.

The Standard Sentence Scheme does not apply to an offender under the age of 18 at the time of the commission of the offence or to matters heard and determined summarily.

The Standard Sentence Scheme only applies to offences committed on or after the commencement date. The Act will commence on 1 April 2018 if it is not proclaimed earlier.

Next Edition

The next edition of the County Court Criminal Division Update will be published in September 2017.

Any suggestions can be sent to Ryan Mallia or Nancy Molloy:

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