



County Court Criminal Division

Her Honour Judge Lisa Hannan – Head of Criminal Division

Intermediary Pilot Program

Her Honour Judge Meryl Sexton has been leading the County Court's contribution to the new Intermediary Pilot Program, regularly meeting with representatives from the Supreme Court, Magistrates' Court, Children's Court, the Department of Justice and Regulation and other stakeholders .

The Intermediary Pilot Program was funded in the 2017-18 State Budget and is being managed by the Department of Justice and Regulation.

Intermediaries are trained professionals with specific skills in communication. They are officers of the court who assist with communication so that a vulnerable witness can give their best evidence during the Visual and Audio Recording of their Evidence (VARE) with the police asking questions, and in court where the witness is asked questions by lawyers. There are similar intermediary schemes in England and Wales, Northern Ireland, New Zealand and New South Wales.

The Intermediary Pilot Program will be piloted for a period of twelve months commencing on 1 July 2018 with the appointment of 50 allied health professionals to a panel. An intermediary will have a tertiary degree in either speech pathology, social work, psychology or occupational therapy with relevant experience. An intensive five-day training program will be provided to the intermediaries.



Her Honour Judge Sexton

Criminal Division Contacts

Criminal Division

Ryan Mallia

Senior Administrator – 8636 6288

Nancy Molloy

Support Coordinator – 8636 6430

General List Associates

Naomi McLinden – 8636 6422

Shannyn Delany – 8636 6418

Sexual Offences List Associates

Tegan McWilliam – 8636 6459

Jasmine Musgrave – 8636 6603

Circuit

Amelia Webster

Circuit Co-ordinator – 8636 6504

Etienne Wagener

Circuit Administrator – 8636 6404

Criminal Registry

Leigh Derrick, Manager Criminal Listings & Registry – 8636 6540

General Enquiries – 8636 6570

crim.reg@countycourt.vic.gov.au



The Intermediary Pilot Program will see the phased introduction of these skilled communication specialists to be available during the taking of a VARE and at court to facilitate communication for adults with a cognitive impairment and children under the age 18 (as at the time the charges are laid). The scope of the pilot will initially include:

- victims of sexual offences and witnesses in homicide matters
- all jurisdictions in the Melbourne legal precinct
- four police Sexual Offences and Child Abuse Investigative Team (SOCIT) sites: Frankston, Fawkner, Box Hill and Geelong.

The pilot scheme is supported by legislation. The *Justice Legislation Amendment (Victims) Act 2018* was recently enacted. The Act describes the role of an intermediary and the process of appointment, and introduces Ground Rules Hearings. The relevant sections of the Act relating to intermediaries and Ground Rules Hearings will become operational when the pilot commences and the pilot sites are gazetted.

The role of an intermediary is to assess communication needs and provide practical strategies and recommendations on how to best communicate with the witness. An intermediary conducts an assessment of the witness's communication needs before the VARE is conducted and makes recommendations to police on communication methods that will elicit clear and coherent evidence.

They will also assess the witness before they give evidence at court and write a report for the court with practical strategies and recommendations on how to best communicate with the witness so they can understand the questions and provide their best evidence. This report will be discussed with the parties at the Ground Rules Hearing with the intermediary present to assist, and the court may make or vary any direction for the fair and efficient conduct of the proceeding.

An intermediary will also be available to be in the remote witness room with the witness during the taking of their evidence at court to facilitate communication in accordance with the ground rules established by the judicial officer.

Queries in relation to the operation of the Intermediary Pilot Program can be directed to the Sexual Offence List Associates, in the first instance.

Key Dates:

March 2018

- 26-28:** Judges' Conference
- 29:** Non-sitting day
- 30:** Good Friday

April 2018

- 2:** Easter Monday
- 3:** Non-sitting day
- 25:** ANZAC day

May 2018

- 4:** Criminal Division non-sitting day
- 19:** Court's Open Day

Long Trial Case Management List

Previous editions of this newsletter have detailed the increase in the number and duration of long trials. This increase puts pressure on the criminal list. The Long Trial Case Management List was created to better manage long trials. It commenced sitting at the start of 2018 headed by His Honour Judge Mullaly and supported by Criminal Division Senior Administrator Ryan Mallia.



His Honour Judge Mullaly



The aims of the Long Trial Case Management List are to:

- Encourage and explore all options for resolution in appropriate cases;
- Narrow the issues in dispute prior to the commencement of the trial;
- Provide pre-trial hearings and rulings in appropriate cases;
- Set an earlier timetable for the filing of documents and submissions;
- Ensure that long trials commence on their listed date; and
- Ensure that long trials do not run longer than originally anticipated.

Three Long Trial Case Management Lists have already been heard and have proved successful. A number of matters have resolved, issues have been narrowed, and trial estimates revised. It is expected that with continued intensive case management, long trials will resolve earlier in time and where trials are run, they will be more focussed. This will benefit both parties and the Court.

Process for Long Trials

At the 24 hour Initial Directions Hearing (IDH), after confirming with the parties that the estimate for the trial makes it a long trial (being 25 days or greater), the List Judge will adjourn the matter to the next Long Trial Case Management date (typically within four weeks) before Judge Mullaly.

At the IDH no dates will be set for the filing of documents, or for the trial itself. The List Judge will still however conduct the IDH and complete the checklist of IDH questions, so that the knowledge of Committal counsel can be captured immediately following the Committal Hearing.

Ryan Mallia will contact parties whose matters are listed in the Long Trial Case Management List prior to the hearing date and will advise if anything is required of them prior to the hearing. Judge Mullaly or another Judge will hear the Directions Hearing on the assigned date and will set dates for the filing of the Indictment, Prosecution Opening, Notice of Admissions sought, Notices pursuant to the Evidence Act, Defence Response and submissions (if required). The dates set will be much earlier than those required by the Criminal Procedure Act or the Criminal Division Practice Note. This allows for the earlier identification of issues and resolution of trials.

It is important to note that although long trials will be adjourned at IDH to the next Long Trial Case Management Directions Hearing date, they do not lose any priority and trial dates are not pushed out any further because long trial dates are quarantined. The date given for trial by Judge Mullaly will still be the next available date.

Hearings that should remain in the General or Sexual Offences List

Whilst the Long Trial Case Management List will manage the overall progress of the trial, some hearings should still be heard in the General or Sexual Offences List. This affords the Judge sitting in the Long Trial Case Management List maximum opportunity to focus on resolving trials and narrowing issues in dispute. The hearings that should remain in the General and Sexual Offences List include:

- Bail applications;
- s.32C applications;
- General subpoenas; and
- Extensions of Time for the commencement of trials

Any queries in relation to the Long Trial Case Management List can be directed to Ryan Mallia on 8636 6288 or at ryan.mallia@countycourt.vic.gov.au

Practice and Procedure

Compliance with the Criminal Division Practice Note

There has recently been a noticeable decline in compliance with the Criminal Division Practice Note in relation to the timely filing of documents, especially in relation to Plea Hearings.

Practitioners are reminded that in order for a Plea Hearing to proceed efficiently and to avoid unnecessary adjournments and the associated costs, material must be filed in accordance with the timelines in the Criminal Division Practice Note, which can be accessed [here](#).

s.32C Subpoenas for Confidential Communication

Practitioners are reminded about the need to comply with s.32C of the *Evidence (Miscellaneous Provisions) Act 1958*. A General Subpoena cannot be issued when the material being sought contains, or is likely to contain confidential communications as defined in s.32B of the *Evidence (Miscellaneous Provisions) Act 1958*.

The process relating to s.32C subpoenas for confidential communications, as outlined in Chapter 23 of the [Criminal Division Practice Note](#), must be complied with.

Sex Offender Registration Exemption Orders

The *Sex Offenders Registration Amendment (Miscellaneous) Act 2017* commenced on **Thursday 1 March 2018**. The Act made a range of amendments to the *Sex Offenders Registration Act 2004* ('the SORA'), including, importantly, the creation of a new limited exception to automatic registration for a prescribed class of young offenders.

The class of offenders who can apply for a registration exemption order can be found in the new s.11A of the [Sex Offenders Registration Act 2004](#).

The new legislation results in two types of registration exemption applications: applications for **offenders already registered** under the SORA and applications for **offenders facing plea hearings** from 1 March onwards.

Information sheets regarding the process to be followed for each application type have been uploaded to the County Court website. Practitioners should follow the links below for information about each application type.

- Registration Exemption Applications for [offenders already registered](#) under the SORA; and
- Registration Exemption Applications for [offenders facing plea hearings](#) from 1 March onwards.

A template [Application For a Registration Exemption Order \(Form 10A\)](#) has been created and is available at the attached link.

The Criminal Division Practice Note will be updated in due course to provide for applications for Registration Exemption Orders.

General enquiries about the process of applying for a registration exemption order should be directed to the Criminal Registry on (03) 8636 6570.



Legislation Update

Justice Legislation Amendment (Victims) Act 2018

The *Justice Legislation Amendment (Victims) Act 2018* made amendments to a number of Acts, including amendments to:

- The *Criminal Procedure Act 2009* in relation to sexual offences, to provide for ground rules hearings, and to provide for the use of intermediaries for certain witnesses;
- The *Sentencing Act 1991* in relation to the presence of certain mitigating factors in the sentencing of an offender in respect of a child sexual offence; and
- The *Crimes Act 1958* in relation to sexual offences, and the destruction of fingerprints, DNA samples and other information.

The amendments to the *Criminal Procedure Act 2009* and the *Crimes Act 1958* commenced on **28 February 2018**, while the amendment to the *Sentencing Act* commences on a day to be proclaimed or 1 July 2018, if it is not proclaimed earlier.

The amendments in relation to intermediaries and ground rules hearings apply to a criminal proceeding that is commenced, or in which the accused is committed for trial, on or after 28 February 2018, irrespective of when the offence is alleged to have been committed.

Youth Justice Reforms

A number of provisions in the *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017* commenced on 26 February 2018. These provisions relate to:

- Limiting the availability of the dual track system for young offenders charged with a 'Category A serious youth offence', or a Category B serious youth offence' with a relevant prior conviction;
- The creation of a new offence of recruiting a child to engage in criminal activity;
- The insertion of definitions of 'Category A serious youth offence', and Category B serious youth offence' into both the *Children, Youth and Families Act 2005* and the *Sentencing Act 1991*; and
- Amendments to the *Criminal Procedure Act 2009* and the *Bail Act 1977* with respect to factors that a court must consider



before remanding an accused, who is over the age of 18 years, to a youth remand centre.

The amendment that limits the availability of the dual track system only applies to the sentencing of an offender for an offence alleged to have been committed on or after 26 February 2018, irrespective of when the prior offending (for a Category B serious youth offence) was committed.



Bail Amendment (Stage Two) Act 2018

The *Bail Amendment (Stage Two) Act 2018* will implement the remainder of the government's response to the legislative recommendations contained in the Honourable Paul Coghlan QC's review of the Victorian bail system. The Act will make a range of amendments to the *Bail Act 1977* including to:

- Reformulate and clarify how the tests for bail are to be applied;
- Require an accused, other than a child, Aboriginal person or vulnerable adult, who is already on two undertakings of bail for indictable offences, to be brought before a court regarding any bail decision in relation to particular serious offences;
- Provide an express power for a court to bail or remand a person appearing on summons.

The *Bail Amendment (Stage Two) Act 2018* received Royal Assent on 27 February 2018.

Courts Open Day

As part of Law Week 2018 hosted by the Victoria Law Foundation, Courts Open Day will be held on Saturday 19 May 2018. The Court will soon be seeking volunteers from the prosecution and defence to assist with mock plea hearings as part of the 'Day in the Life of an Accused' hearings.



Courts Open Day is a good opportunity for members of the profession and community alike to talk to members of the judiciary and to get a better idea of how the Court operates.