

County Court

Criminal Division

Her Honour Judge Lisa Hannan – Head of Criminal Division

Judge Trapnell welcomed as a County Court Judge

On Tuesday, 27 June 2017, a ceremony was held to welcome His Honour Judge Douglas Trapnell as a Judge of the County Court.

His Honour was admitted to practice in 1983 and worked in private practice and as a sessional tutor in contracts, torts and administrative law at Monash University. In these early years His Honour's areas of expertise were common law, administrative law, equity, taxation law and commercial law.



His Honour Judge Trapnell

In 1984 a career move led to His Honour becoming Associate to the Honourable Justice George Hampel and, in His Honour's words, this is where he developed "an immense love for the criminal law and criminal trial advocacy. And so the civil lawyer who came to him as an Associate, morphed into the criminal lawyer you see before you today".

Signing the Bar Roll in 1986, and with the assistance of Justice Hampel, His Honour read with former Chief Judge Michael Rozenes of this Court, and specialised in taxation and criminal law.

In 1994, and after more than eight years at the Bar, His Honour was appointed as Director of Research and Executive Officer of the Victorian Parliamentary Law Reform Committee, leading a range of inquiries into the Victorian jury system, medical negligence and technology and the law.

Criminal Division Contacts

Criminal Division

Ryan Mallia

Senior Administrator – 8636 6288

Nancy Molloy

Support Coordinator – 8636 6430

General List Associates

Naomi McLinden – 8636 6422

Hannan Christensen – 8636 6418

Sexual Offences List Associates

Leone Garro – 8636 6459

Tegan McWilliam – 8636 6603

Circuit

Larna Edney

Circuit Co-ordinator – 8636 6504

Amelia Webster

Circuit Administrator – 8636 6404

Criminal Registry

Leigh Derrick, Manager Criminal Listings & Registry – 8636 6540

General Enquiries – 8636 6570

crim.reg@countycourt.vic.gov.au

Returning to active practice at the Victorian Bar in 1999, it was not long before His Honour specialised in prosecuting serious criminal cases in the Supreme and County Courts, with occasional appearances for the Crown in the Court of Appeal, displaying a depth of knowledge, commitment to hard work and attention to detail.



Chief Judge Kidd welcomes Judge Trapnell

No doubt these attributes contributed to His Honour being appointed a Crown Prosecutor in 2003 and Senior Crown Prosecutor in 2010. He was appointed as Senior Counsel in 2008 and Queen's Counsel in 2014.

On appointment to the Major Appeals Unit of the Crown Prosecutors' Chambers in 2007, His Honour practiced almost exclusively in the High Court and the Victorian Court of Appeal, in addition to some trials in the Trial Division of the Supreme Court.

As expressed by Mr Winneke QC, speaking at His Honour's Welcome on behalf of the Victorian Bar, "Your Honour brings to your place on this Court a breadth of experience as Counsel, as a Crown Prosecutor, and in Policy with the Parliamentary Committee. You bring also your scholarly bent and thorough industry in the law and your record of scrupulous fairness".

With His Honour's career in the law spanning more than 30 years, he brings a wealth of experience to his role as a Judge of this Court and his appointment is no doubt a great loss to the Crown Prosecutors' Chambers.

The Criminal Division has great pleasure in welcoming Judge Trapnell to the Court and wishes him well in the next phase of his successful career. Judge Trapnell's welcome ceremony can be viewed [here](#).



Judge Trapnell's welcome ceremony

Law Institute of Victoria's Criminal Law Conference



Judge Hannan and Judge Hampel

On Friday 21 July 2017 their Honours Judge Hannan and Judge Hampel will speak at the Law Institute of Victoria's Criminal Law Conference. Their Honours will discuss plea making in the County Court. Bookings are available through the Law Institute of Victoria.

Practice and Procedure

Updated Criminal Division Practice Note

The Criminal Division republished the Criminal Division Practice Note on 1 July 2017. The new edition contains a number of important amendments especially in relation to the filing of documents prior to a plea hearing.

Consistent with the Supreme Court's Practice Note SC CR 7 *Expert Reports on Mental Functioning of Offenders* the County Court Criminal Division now requires all expert reports to be filed at least 14 days prior to the plea hearing.

To ensure that an expert report can be completed in time, prosecution documents are also required to be served at an earlier point in time. Refer to the table below for details about each of the amendments. The Criminal Division Practice Note can be accessed [here](#).

	
Document Type	Practice Note
Reference No.	PNCR 1-2015
Title	County Court Criminal Division Practice Note
Authorised By	Her Honour Judge Hannan Head of the Criminal Division
Date	Issued 1 July 2017
Supersedes Reference No.	This Practice Note replaces PNCR 2-2010, PNCR 2-2009, PNCR 4-2004, PNCR 3-2004, NCR 2003 Preliminary Hearings issued 10/09/03, PNCR 1-2004, PNCR 1-2001, 2001 Criminal Act & VDA issued 18/12/01, PNCR 1-2000, PNCR 1-99

Topic	Amendment	Relevant Section
Youth remand orders	Additional question at Initial Directions Hearing in relation to whether the accused has been remanded to, or is serving sentence in a youth justice facility.	2.10 and 4.10
Filing of documents prior to Plea Hearing.	Amendments to the timing for the filing of documents prior to plea hearings, namely: 28 days prior to plea. Prosecution to file: <ul style="list-style-type: none"> • Indictment; • Opening; • Criminal Record; and • Chronology. 	7.5 and 7.12

	<p>14 days prior to plea. Defence to file:</p> <ul style="list-style-type: none"> Defence expert report (if applicable). <p>10 days prior to plea. Prosecution to file, if applicable:</p> <ul style="list-style-type: none"> Family Violence Checklist; Victim Impact Statements; and Ancillary orders sought. <p>5 days prior to plea. Defence to file:</p> <ul style="list-style-type: none"> Chronology; and Outline of submissions. <p>2 days prior to plea. Prosecution to file:</p> <ul style="list-style-type: none"> Prosecution response to defence submissions (if sought to be relied upon). 	
Mandatory custodial sentences	<p>Requirement to outline in the Prosecution Opening upon Plea whether a Category 1 or 2 offence attracts a mandatory custodial sentence.</p> <p>Where the Prosecution submits that an offence attracts a mandatory custodial sentence, the defence is required to outline whether the submission is accepted and whether any exceptions apply.</p>	<p>7.6 (e) and (f)</p> <p>7.16</p>
Plea Hearing duration	Requirement for the defence to provide an updated estimate as to the expected duration of the plea hearing.	7.13(e)
Contravention Hearings	<p>Changes to the requirement for the Community Corrections Officer to attend Contravention Hearings.</p> <p>Inclusion of s.83AJ Transfer Order in list of documents to be filed.</p> <p>Rewording of documents to be filed post-arraignment and prior to Plea and Contravention Hearing.</p>	<p>34.4, 35.5, 36.5</p> <p>35.4</p> <p>36.3 and 36.4</p>
Confirmation of Media Playback	New paragraph in relation to the OPP not being required to use the Media Test Court provided that the OPP Audio Visual Unit has certified media as being court compatible.	49.16
Standard Directions for CMIA Hearings	Updated contact details for Victoria Legal Aid on Standard Directions form.	Attachment 6

Legislation Update

Crimes Amendment (Sexual Offences) Act 2016

The *Crimes Amendment (Sexual Offences) Act 2016* commenced on 1 July 2017. The Act builds on major reforms to rape and sexual assault laws contained in the *Crimes Amendment (Sexual Offences and Other Matters) Act 2014*.

The Act clarifies and modernises sexual offences in the *Crimes Act 1958* including sexual offences against children, child pornography, incest, sexual offences against persons with a cognitive impairment and other various offences including sexual servitude, loitering and bestiality.

Some of the major changes brought about by the Act include¹:

- renaming and redefining child pornography offences to include child abuse material;
- the introduction of the new offence of 'sexual activity directed at another person';
- creating a clearer hierarchy of offences within the subdivision;
- creating new offences to address areas of concern in the law such as sexually intimidating behaviour;
- clearly setting out the elements, exceptions and defences to each offence rather than leaving them open to common law interpretation;
- updating offences to avoid discrimination on the basis of marital status or gender identity;
- ensuring that offending by means of new technologies such as video chatting is covered by the Act; and
- ensuring that some behaviour is not inappropriately criminalised. For example a child who was subject to sexual abuse by a parent, lineal ancestor or step parent will not be subject to incest laws if the offending continues into adulthood.

The Department of Justice and Regulation has published the *Crimes Amendment (Sexual Offences) Act 2016: An Introduction* which assists in explaining the numerous amendments. The publication also provides illustrative scenarios and ready reckoners, and can be accessed [here](#).



¹ *Crimes Amendment (Sexual Offences) Act 2016: An Introduction*

Bail Amendment (Stage One) Act 2017

The *Bail Amendment (Stage One) Act 2017* received Royal Assent on 27 June 2017. The Act will amend the *Bail Act 1977* and will implement a number of recommendations made by the Honourable Justice Paul Coghlan QC in his review of the bail system in Victoria. The Act will:

- insert a purpose and guiding principles section into the *Bail Act 1977*;
- expand the circumstances in which the presumption in favour of bail is reversed;
- change the 'show cause' test in section 4(4) of the *Bail Act 1977* to a 'show compelling reason' test;
- clarify powers of police, bail justices and the courts to grant bail;
- provide for the deferral of a bail decision if the accused is intoxicated;
- make amendments to the *Bail Act 1977* that were recommended by the Royal Commission into Family Violence; and
- provide for the continuation of conduct conditions until bail is continued, varied, revoked or the matter is finally determined.

The *Bail Amendment (Stage One) Act 2017* will commence on 1 July 2018 unless it is proclaimed earlier.

Sex Offenders Registration Amendment (Miscellaneous) Act 2017

The *Sex Offenders Registration Amendment (Miscellaneous) Act 2017* received Royal Assent on 20 June 2017. The Act will make a number of amendments to the *Sex Offenders Registration Act 2004* (SORA); one of the key amendments being a limited exemption scheme that will apply to young people who would otherwise be required to be registered under the SORA.

A person who has been found guilty of a registrable offence that is a *specified offence* (being a Class 1 or Class 2 offence listed in the new Schedule 5 of the SORA) may apply for a registration exemption order if the person:

- at any time during the commission of the offence was 18 or 19 years of age; and
- at all times during the commission of the offence was not more than 19 years of age.

The Act will commence on 1 March 2018 unless proclaimed earlier.



Next Edition

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

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

ryan.mallia@countycourt.vic.gov.au

nancy.molloy@countycourt.vic.gov.au