

# County Court

## Criminal Division

Her Honour Judge Lisa Hannan – Head of Criminal Division

### Message from the Head of the Criminal Division

This will be the final edition of the Criminal Division newsletter for 2017. It has been a pleasure to work with you all. The Court could not operate without the ongoing co-operation and support of practitioners and our other stakeholders. Together we have dealt with an increasing workload and at the same time looked to reform and innovate to ensure best practice. I am very grateful.



Her Honour Judge Hannan

To our staff I convey special thanks. You are the backbone of the Division. Your efforts have as always been above and beyond, as was clear at our recent staff awards.

The Division has seen the retirement of a number of Judges this year, who between them had well over a century of experience in criminal law. A number of new Judges have been appointed to the Division, and the most recent appointments, Judges Trevor Wraight QC, Patricia Riddell and Julie Condon QC are congratulated in this edition.

The Court will conclude sittings on 22 December and will resume on 22 January 2018.

I wish everyone a safe, happy and peaceful holiday period and look forward to a productive 2018.

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## Appointment of His Honour Judge Trevor Wraight QC

His Honour Judge Trevor Wraight's appointment to the County Court was announced by the Attorney-General on 31 October 2017 and a ceremony to welcome His Honour was held on 10 November 2017.

Completing a Bachelor of Laws degree through the University of London's international distance learning program, His Honour was admitted to practice in November 1994. He then signed the Bar Roll in May 1995.

Over the ensuing years, His Honour earned a reputation for hard work, discipline and dedication. He was appointed as Silk in November 2014.

His Honour has extensive experience in trial and appellate advocacy in the County Court, Supreme Court and Court of Appeal and, as said by Ms Batrouney at His Honour's welcome, "His Honour established an impeccable reputation in trial and appellate advocacy in all jurisdictions".

His Honour also regularly appeared in the Coroner's Court and disciplinary tribunals, as well as in the areas of occupational health and safety.

With a career in the law spanning 23 years, His Honour brings a wealth of experience to his new role as a Judge.

The Criminal Division has great pleasure in welcoming Judge Wraight to the Court and wishes him well in the next stage of his career.



His Honour Judge Wraight



Judge Hannan, Judge Wraight and Chief Judge Kidd



### Key Dates:

#### December 2017

**22:** Last day of sittings

#### January 2018

**22:** First day of sittings

**26:** Australia Day Public Holiday

## Appointment of Her Honour Judge Patricia Riddell



Her Honour Judge Patricia Riddell's appointment to the County Court was announced by the Attorney-General on 8 November 2017 and a ceremony was held to welcome Her Honour on 22 November.

Admitted to practice in May 1995, and signing the Bar Roll in November 1996, Her Honour brings more than 20 years of legal experience to the Court. As well as being an experienced trial and appellate advocate, Her Honour specialised in criminal law, occupational health and safety, medical negligence and professional disciplinary matters.

**Her Honour Judge Riddell**

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At Her Honour's welcome ceremony Dr Matthew Collins QC, President of the Victorian Bar Council, commented that in an era of specialisation, Judge Riddell's breadth of experience is unusual and will be a singular asset to the Court. In describing Judge Riddell's practice, Dr Collins described Her Honour as a master strategist, tranquil and wise, sharply focussed and concise.



**Judges Hannan, Carmody, Lawson, Quin, Riddell, Mullaly, Tinney and Chief Judge Kidd**

Mr Michael Lombard spoke on behalf of the Law Institute of Victoria and described Judge Riddell's sensitive and compassionate manner of cross-examination. Her Honour was also described as a tough advocate but one distinguished by empathy, an easy rapport with witnesses and a softness of manner.

The Criminal Division congratulates Judge Riddell on her appointment to the Court and wish Her Honour well in her new role.

## Appointment of Her Honour Judge Julie Condon QC

Her Honour Judge Julie Condon's appointment to the County Court was announced by the Attorney-General on 12 December 2017.

With a career in the law spanning 23 years, Her Honour was admitted to practice in April 1994 and signed the Bar Roll in May 1997. In November 2016 Her Honour was appointed Silk.



**Judges Condon and Hannan**

An experienced trial advocate, appearing for the defence in criminal trials in both the Supreme and County Courts, Her Honour had a particular interest in human rights and international criminal law.

Earlier in her career Her Honour worked for the Aboriginal Legal Service in the Northern Territory, appearing in all courts as defence counsel and in coronial inquests. She was involved in the submission to the United Nations Human Rights Committee, seeking a declaration against Mandatory Sentencing in the Northern Territory and its effect on Aboriginal defendants. Her Honour has also written and presented papers on the Aboriginal Deaths in Custody Report and Aboriginal Customary Law.

Experienced in all facets of international criminal law, Her Honour has worked as Legal Consultant and Defence Co-Counsel at the Hague and was on the list of defence counsel eligible to practice at the Extraordinary Chambers in the International Courts of Cambodia. Her Honour has also been involved in advocacy workshops for the profession and law students in Papua New Guinea and Vanuatu.

The Criminal Division welcomes Judge Condon to the Court and congratulates Her Honour on her appointment as a Judge. A welcome ceremony will be held on Tuesday 19 December.

## Retirement of His Honour Judge Michael McInerney

On Thursday, 7 December 2017, a ceremony was held to farewell His Honour Judge Michael McInerney who retired as a Judge of the County Court after just over 23 years on the bench, having been appointed on 23 June 1994.



**His Honour Judge McInerney**



With a career in the law spanning 40 years, His Honour was admitted to practice in 1973, working briefly as a solicitor in Melbourne, before travelling to work overseas with a London firm of solicitors.

In 1977 His Honour returned to Victoria, signing the Bar Roll in September of that year. His Honour went on to build a successful common law practice, whilst also practicing in licensing law, administrative law and planning.

Since his appointment Judge McInerney has sat as a trial Judge in both the Criminal and Civil Divisions of the Court, while also playing a role in the administration of the Court. His Honour has been a member of numerous Committees and Working Groups to assist with the further development and improvements in the Court's processes and was appointed a member of the Executive Committee Council of Judges for a period totaling 14 years.

The Criminal Division is pleased to be able to welcome His Honour back to the Court as a Reserve Judge.

### Women in Crime

I am so very proud to be the founding Patron of *Women in Crime*. This wonderful organisation was started by a group of young enthusiastic women practicing in crime (Peta Smith, Jess Willard, Kate Ballard and Jessie smith) who wanted to help others in similar circumstances to their own.

The idea was conceived following an informal discussion I hosted in chambers looking at supporting young women working in criminal law. Following that meeting I was approached by the founders to be patron for this group, which has grown to have about 140 members on our list.

The aims are to connect, educate and support. Each year we invite a new patron to join us. Last year Judge Liz Gaynor accepted our

invitation and this year Judge Carolene Gwynn joined us. I thank them both for being so generous with their time and support.



**Attendees at the Women in Crime seminar**

The group holds regular, free education programs and we are grateful for the wonderful support of the profession in this regard. Holmes List also provides invaluable support for our activities.



A few weeks ago we held an education seminar on search warrants. Our speakers were Magistrate Sarah Leighfield and barrister Ruth Shann. I described it at the time as 'a gift' and the feedback confirmed it was really was!



**The handbags donated for the Share the Dignity program**

*Women in Crime* also looks outwards to our wider community and this year we participated in the *Share the dignity – it's in the bag* program and asked our members to fill a handbag with all the things that a woman living on the street or in other dislocated circumstances might need to maintain her dignity. The attached photo says it all.

For those interested in joining *Women in Crime* and attending future seminars, please email [womenincrime.connect@gmail.com](mailto:womenincrime.connect@gmail.com)

## Practice and Procedure

### Conclusion and Commencement of Sittings

The final sitting day for 2017 is Friday 22 December and the first sitting day for 2018 is Monday 22 January.

### Criminal Division Non-Sitting Days in 2018

Over three separate dates in 2018, the Judges of the Criminal Division will be engaged in judicial training programs. As such there will be no matters listed on the following dates:

- 4 May 2018;
- 24 August 2018; and
- 23 November 2018

A trial that commences prior to one of the above dates will sit as normal on that date unless the judge otherwise orders.

## Conviction and Sentence Appeals

Currently when an appellant lodges an appeal and the estimate for the hearing of the appeal is less than one day, an appeal date in the County Court is given. For appeals where the estimated duration is greater than one day, and for all appeals in relation to family violence intervention orders, an Appeal (First Listing) date is given.

The purpose of the Appeal (First Listing) date is to set an appropriate appeal date and identify and manage any issues with the appeal. The Appeal (First Listing) hearing ensures that only those appeals likely to proceed are given dates, which reduces instances of adjournments.

Such has been the success of Appeal (First Listing) dates that the Division will expand its application to **all conviction and sentence appeals, regardless of estimated duration. Practitioners should note that for all conviction and sentence appeals lodged from 2018 onwards, an Appeal (First Listing) date will be given to the appellant when the appeal is lodged.**

Further communication will occur in 2018 and the Criminal Division Practice Note will reflect these changes in due course.

## Long Trial Case Management List

'Long trials' in the County Court are those with estimated durations of 25 days or greater. For a number of years the Court has listed approximately 18 long trials per year and has consistently managed this work load. Next year there are already 27 long trials listed and there are 12 listed into 2019. All Long Trials currently listed for 2018 have been allocated to Trial Judges.

In order to better manage this work the Criminal Division will pilot a **Long Trial Case Management List** one day per month. The Court intends to list four to six matters on each list day. The Long Trial Case Management List Judge will assist by engaging in discussions with the parties in an attempt to resolve the trial, where appropriate, and/or narrow the issues in dispute.

Judge Mullaly has agreed to head the Long Trial Case Management List for the pilot period. The list will be supported by the Senior Administrator to the Criminal Division, Ryan Mallia, who will liaise with parties in relation to matters such as directions compliance and filing requirements.

The list will commence in mid-February 2018. Parties with cases required for mention will be contacted in due course. The Court will then list the remaining trials in blocks throughout the year.



## Senior Associate to the Reserve List

On 11 December Christopher Chapman commenced in the new position of Senior Associate to the Reserve List. This role will prepare, run and make all orders arising from Reserve List matters. It will assist the List Judge in facilitating the flow of work to available Judges.



The role will also involve contacting parties with unallocated trials for the following week and confirming issues, witnesses and duration. This will allow the Criminal Division to better manage those matters that are placed in the Reserve List.

## Time to Trial Data

The Criminal Division recently published updated data in relation to time to trial. The indicative time to trial appears below and is available on the County Court's website [here](#). Figures have remained steady over recent months despite an increase in initiations and in the post-sentence supervision workload.

### INDICATIVE TIME TO TRIAL

Type	Current as at Sept 17	Change from Sept 16
Custody Trials (all durations)	7 months	1 month decrease
5 day Trials	11 months	2 month increase
10 day Trials	11 months	1 month increase
15 day Trials	11 months	1 month increase
Long Trials	Up to 16 months	Not available

## Related Summary Offences

Practitioners are reminded that related summary offences must be dealt with at the end of a plea or trial. Any related summary offences that have been transferred to the County Court must either be prosecuted, withdrawn or remitted to the Magistrates' Court for determination.

Practitioners are asked to be attentive to this issue, as any outstanding related summary offences may have implications on the custody status of an accused.

## Legislation Update

### *Drugs, Poisons and Controlled Substances Miscellaneous Amendment Act 2017*



The *Drugs, Poisons and Controlled Substances Miscellaneous Amendment Act 2017* commenced on 1 November 2017. The Act amends the *Drugs, Poisons and Controlled Substances Act 1981* and creates new laws to ban the sale and production of all synthetic drugs, which are designed to mimic the effects of proscribed drugs such as cannabis and MDMA. Prior to this, each new synthetic drug created had to be separately scheduled in the Act.

New sections 56D, 56E and 56F of the *Drugs, Poisons and Controlled Substances Act 1981* create offences in relation to the production, sale or advertisement of psychoactive substances respectively. Psychoactive substances are defined by their effect, or purported effect, rather than their chemical structure.

Each of the new offences has a maximum penalty of two years' imprisonment or a 240 penalty unit fine (or both) for a natural person, or a 1,200 penalty unit fine for a body corporate.

The Act also amends Schedule Eleven of the *Drugs, Poisons and Controlled Substances Act 1981* to reduce the large commercial and commercial quantities for the drug methylamphetamine.

The amendments are in response to the Victorian Court of Appeal decision of *Ziad Haddara v The Queen* [2016] VSCA 168, in which the Court of Appeal recommended that the commercial and large commercial quantities for trafficking of methylamphetamine should be lowered to enable sentencing judges to take greater account of the well-known dangerous qualities of the drug.

The new threshold quantities are as follows:

<b>Category</b>	<b>Quantity</b>
Large Commercial	reduced from 750g to 500g
Large Commercial (mixed)	reduced from 1kg to 750g
Commercial	reduced from 100g to 50g
Commercial (mixed)	reduced from 500g to 250g

## Amendments to the Juries Act 2000

Practitioners should be aware that significant amendments to the *Juries Act 2000* will come into operation over the holiday period and will apply to all trials that commence in the new year.

The *Justice Legislation (Court Security, Juries and Other Matters) Act 2017* will commence on 2 January 2018.

Amongst other amendments, the Act amends the *Juries Act 2000* to:

- require that potential jurors be identified by number and not by name unless it is in the interests of justice to identify them by name. A new s.30A was inserted into the *Juries Act 2000*;
- reduce the number of defence peremptory challenges and prosecution stand asides in criminal trials to the following:
  - where one accused person is arraigned, the number of prosecution stand asides and defence peremptory challenges is reduced to **three**;
  - where two or more accused persons are arraigned the number of prosecution stand asides and defence peremptory challenges is reduced to **two** for each person arraigned; and
  - sections 38(1)(c) and 39(1)(c) are repealed. These sections currently provide that where there are three or more accused persons arraigned the number of prosecution stand asides and defence peremptory challenges is four.
- clarify that an accused person may exercise their right to a peremptory challenge personally or it may be exercised by their legal practitioner or a clerk of their legal practitioner. Section 39(3) was amended to reflect this; and
- provide direction in relation to the circumstances in which additional jurors may be empanelled. A new s.23(2) will be inserted into the *Juries Act 2000* which provides that in making an order under subsection (1) the court may consider:
  - the length of the trial;
  - the nature of the trial; and
  - any other factor that may result in a juror being discharged during the trial.



## Next Edition

The next edition of the County Court Criminal Division Update will be published in 2018.

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

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