



County Court Criminal Division

His Honour Judge Mark Gamble – Head of Criminal Division

Message from His Honour Judge Gamble

In August I took over from Her Honour Judge Hannan as Head of the Criminal Division. Judge Hannan led the Division very capably over four years and has ensured that it is well placed to continue the important work that the Judges of this Court undertake on a daily basis. I sincerely thank Judge Hannan for her fireless efforts and leadership over that period.



His Honour Judge Gamble

In recent months, the Division has been fortunate to see the appointment of a number of new Judges, who are congratulated in this edition of the newsletter. The appointment of such experienced and motivated Judges is of great benefit to the County Court and the community more generally.

I look forward to what will no doubt be a challenging but important role as Head of Division. There is continual pressure to ensure cases are heard as soon as possible, whilst also balancing a number of other factors such as judicial wellbeing. The Criminal Division is currently implementing and managing a number of new legislative reforms such as the *Serious Offenders Act 2018* and the first cases falling under the Standard Sentence Scheme. They, together with the recently enacted changes to the *Bail Act 1977* are contributing to the work of the Judges in the Division.

The Criminal Division is constantly looking to improve its processes, as can be seen through various ongoing initiatives such as the Review of the Criminal Division, the Long Trial List, the Criminal Division Practice Note and the work in relation to law reform. I look forward to working with the profession in order to achieve that objective.

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Criminal Registry

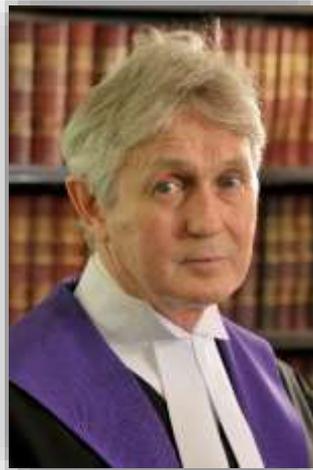
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Retirement of His Honour Judge James Montgomery

On 21 May 2018, His Honour Judge James Montgomery retired as a Judge of the County Court after serving as a Judge of this Court for almost 10 years.

His Honour enjoyed a long career in the law spanning more than 45 years, having been admitted to practice in April 1973. Not long after being admitted, His Honour left Melbourne to work for a short time with the Central Australian Aboriginal Legal Service. Initially employed to work in Darwin, a detour to Alice Springs led to him being the first Aboriginal Legal Service "lawyer in residence" to work in the Alice Springs office.



His Honour Judge Montgomery

After leaving Alice Springs, His Honour then moved to Papua New Guinea, where he worked for just over twelve months in the Public Solicitor's Office as a trial advocate on circuit in the Highlands.

After returning to Melbourne, His Honour signed the Bar Roll in 1976 and read with Michael Black, who was later appointed as the Chief Justice of the Federal Court of Australia. For the greater part of his career at the Bar, His Honour practiced exclusively in criminal defence work. He was known for his careful and thoughtful preparation of cases and for being a master strategist with an unshakeable calm and sharp focus.

By the time of his appointment to the County Court, His Honour had been at the Bar for more than 33 years; the last six of those appearing mainly in murder trials in the Supreme Court. As His Honour has said himself, "it was the only job I ever wanted to do". The Court was indeed fortunate when His Honour accepted the Attorney-General's invitation to be made a Judge of the County Court. Appointed on 17 November 2009, His Honour sat exclusively in the Criminal Division.

His Honour's love of the law, willingness to share his knowledge with others, and his compassion and wisdom will be sorely missed by his colleagues at the Court.

The Criminal Division thanks Judge Montgomery for his tireless work in the Division and wishes him well on his retirement.



Retirement of His Honour Judge Graeme Hicks

On 24 August 2018, His Honour Judge Hicks retired as a Judge of the County Court, having served as a Judge of this Court for 17 years.

His Honour had a long and successful career in the law over 46 years. He was admitted to practice in 1972 and worked as a solicitor for a short time, before signing the Bar Roll in 1973. Although his early practice at the Bar involved commercial law, His Honour developed an interest in criminal law and quickly established an extremely successful practice in that area.

His Honour earned a reputation as an excellent advocate. He was hard-working and very well prepared. Described by his peers as having tactical skills beyond compare, His Honour appeared in many complex cases and became a leader in his field.

After 20 highly successful years at the Bar, His Honour was appointed to the Magistrates' Court in 1993. He sat there for a period of two years, before returning to the Bar in 1995 as a Senior Crown Prosecutor with the Office of Public Prosecutions. In 2000, His Honour was appointed Senior Counsel. Indeed, he was a member of the first group of counsel to be given this appellation.

In August 2001, His Honour was appointed to the County Court and was the first Senior Counsel in this state to be appointed to a judicial office.

During his time with the Court, His Honour sat in both the Criminal and Civil Divisions. His complete grasp and love of the law, his thorough attention to detail and his exemplary ability to quickly get to the substance of a matter contributed greatly to the Court's ability to meet the demands of its growing workload.

His Honour's sharp wit and great sense of humour will be missed by all at the Court. The Criminal Division thanks His Honour for his years of dedicated and tireless work and wishes him well in his retirement as he spends more time concentrating on the other loves in his life – family, friends and golf.



His Honour Judge Hicks



Appointment of Her Honour Judge Sarah Dawes

Her Honour Judge Sarah Dawes' appointment to the County Court was announced by the Attorney-General on 14 August 2018 and a ceremony was held to welcome Her Honour on 16 August 2018.

With a career in the law spanning 28 years, Her Honour was admitted to practice in 1990, before signing the Bar Roll in May 1993. Her Honour practiced mainly as a criminal trial lawyer. Building a strong criminal practice, both as prosecution and defence counsel, Her Honour earned a reputation for being immaculately prepared, dependable and always calm.



Her Honour Judge Dawes

In 2006, Her Honour was appointed as a Magistrate, a position which Her Honour held for 12 years. While sitting in all jurisdictions of the Court, Her Honour sat predominantly in serious criminal cases, including family violence matters, until the announcement of her appointment to the County Court.

Speaking on behalf of the Victorian Bar at Judge Dawes' welcome, Mr Marks referred to her undoubted abilities as a Magistrate: "fair, firm, efficient and with a sound judgment about humanity". Those same qualities will no doubt equip her well as a Judge of the County Court.

The Court is very fortunate and pleased to have Judge Dawes join its ranks and the Criminal Division wishes Her Honour well in the next phase of her career.

Appointment of His Honour Judge Scott Johns



His Honour Judge Johns

His Honour Judge Scott Johns' appointment to the County Court was announced by the Attorney-General on Tuesday, 14 August 2018 and a ceremony was held to welcome His Honour on 23 August 2018.

His Honour's career in the law extends over a period of 25 years. He was admitted to practice in May 1992. His Honour then worked for several years with the Victorian Office of Public Prosecutions. He then joined the Aboriginal Legal Aid



Service in the Northern Territory, where he worked for the next twelve months.

On his return to Melbourne in 2001, His Honour joined the Criminal Law Division of Victoria Legal Aid as a Senior Public Defender. His Honour signed the Bar Roll in May 2003. His Honour's practice at the Bar was predominantly criminal trial work, however also included appellate and judicial review matters, OH&S, migration review, administrative law and coronial hearings. His Honour was appointed Silk in November 2017.

His Honour went on to earn a well-deserved reputation as a criminal barrister who could, without exception, pick the real issue in a case and conduct the trial or appeal accordingly. His judgement and efficiency were admired by both judges and counsel alike. It was a quality that stood him in good stead over many years. Towards the end of his career at the Bar, His Honour was regularly appearing for the defence in Supreme Court murder trials. It was difficult and demanding work, requiring discipline, a strong work ethic, good judgement and a liberal dose of common sense.

His Honour was revered by his previous readers who described him as being generous with his advice and time, a good listener and a calm presence.

At His Honour's welcome, Ms Belinda Wilson, speaking on behalf of the Law Institute of Victoria, said that His Honour's appointment "brings much that will advance the principles and enhance the standing of Victoria's major trial court."

The County Court is indeed fortunate to have His Honour join the Court and the Criminal Division welcomes Judge Johns and wishes him well in his new role.

Appointment of Her Honour Judge Martine Marich

Her Honour Judge Martine Marich's appointment to the County Court was announced by the Attorney-General on 14 August 2018 and a ceremony to welcome Her Honour to the Court was held on 30 August 2018.

An accredited specialist in criminal law and the holder of a Doctoral degree in law, Her Honour was admitted to practice in 1997 and as a practitioner of the High Court in 2001.



Her Honour Judge Marich



Practicing in the law for over 20 years as a solicitor and solicitor advocate, Her Honour has developed highly specialised skills in all Australian jurisdictions and has appeared in all Victorian Courts in appeals, trials, committal proceedings and summary matters. Her Honour has also appeared as counsel in a broad range of Royal Commissions, involving the Anglican and Catholic Church, Anglican Schools, the Victorian Government and other institutions. Her Honour has also taught law at Monash University for more than 17 years.

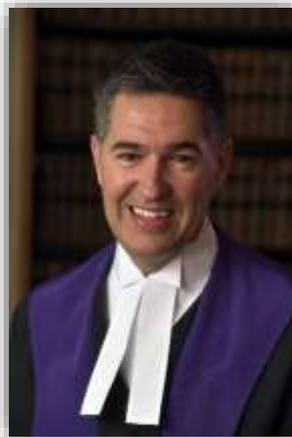


As was acknowledged at Her Honour's Welcome ceremony, Judge Marich has been an outstanding contributor to the legal profession and the community, and she has enjoyed a distinguished career as both a legal educator and one of our finest criminal lawyers.

The Criminal Division warmly welcomes Judge Marich to the Court and wishes Her Honour well in the next phase of her career.

Appointment of His Honour Judge David Sexton

On Tuesday, 14 August 2018, the Attorney General announced the appointment of His Honour Judge David Sexton to the County Court and a ceremony to welcome His Honour to the Court was held on Friday, 7 September.



His Honour Judge Sexton

His Honour was admitted to practice in November 1994 and signed the Bar Roll in November 2004. His career in the law to date spans 24 years. His Honour's defence practice primarily involved cases of alleged sexual offending. His Honour also provided advice and appeared for Worksafe Victoria, the DPP and the Department of Justice and Regulation. He appeared in criminal cases in Courts at all levels, both in Victoria and interstate. As described by Mr Stephen Webb, on behalf of the Law Institute of Victoria at His Honour's welcome "His Honour built a strong reputation for always being calm under pressure, with a steely focus and a great attention to duty, and always found the trust of clients and colleagues".

Utilising his expertise in the criminal law, His Honour has also been a legal educator, including, amongst other roles, as a Senior Advocacy Instructor with the Victorian Bar and as a regular advocacy instructor with the Australian Advocacy Institute, presenting in Victoria, interstate and overseas.

The Criminal Division is very fortunate to have Judge Sexton join the Court and wishes His Honour well in the next phase of his career.

Practice and Procedure

Notices that Solicitors Act

Defence practitioners are reminded to ensure that they file Notices that a Solicitor Acts when their matter commences in this Court. Notification that a solicitor is acting for an accused does not carry over from the Magistrates' Court upon committal, and it is crucial that the County Court is aware of who is acting so that all communication to the parties is received efficiently and reliably.



New Email Address for List Courts

Please note that both the General List and Sexual Offences List now have email addresses that should be utilised for communication with the relevant list. The relevant email addresses are:

9:00am General List: directionscourt@countycourt.vic.gov.au

10:30 Reserve List: listjudge@countycourt.vic.gov.au

Sexual Offences List: sexualoffences.list@countycourt.vic.gov.au

Review of the Criminal Division

The Criminal Division Review Team has been working for the past few months to conduct a comprehensive review of the systems and processes within the Criminal Division, with a view to implementing alternative processes to better manage the work of the Division. Having conducted an analysis of existing systems and consulting widely with the profession and other jurisdictions, the Review Team drafted alternative processes for the management of trials.

Working with the prosecution and defence, the Review Team identified an appropriate case in the Magistrates' Court and began case management immediately upon its commencement in the County Court. The new process case manages trials with a view to ensuring resolution occurs in appropriate cases as soon as possible so that judicial time is properly utilised. The pilot is continuing and the Criminal Division thanks the profession for their ongoing involvement in this important piece of work.

Standard Sentence Scheme

The *Sentencing Amendment (Sentencing Standards) Act 2017* commenced on 1 February 2018. The Act amended the *Sentencing Act 1991* to, inter alia, implement the Standard Sentence Scheme which applies to 12 of the most serious indictable offences.

The Standard Sentence Scheme only applies to offences that are wholly committed on or after 1 February 2018.

Given the passage of time between the commencement of the Standard Sentence provisions and today, the Court is now beginning to see the first cases present themselves.

Practitioners are advised that they must be familiar with the provisions of the Standard Sentence Scheme and be in a position to make submissions as to its application. As noted below, an update to the Criminal Division Practice Note requires the identification of any offences that fall to be sentenced as Standard Sentence Offences in the Summary of Prosecution Opening. The Standard Sentence Offences are:

- Murder;
- Rape;
- Sexual Penetration of a Child Under 12;
- Sexual Penetration of a Child Under 16;
- Sexual Assault of a Child Under 16;
- Sexual Activity in the Presence of a Child Under 16;
- Causing a Child Under 16 to be Present During Sexual Activity;
- Persistent Sexual Abuse of a Child Under 16;
- Sexual Penetration of a Child or Lineal Descendant;
- Sexual Penetration of a Step-Child;
- Culpable Driving Causing Death; and
- Trafficking in a Large Commercial Quantity of a Drug of Dependence.

Practice Note Updates

The Criminal Division Practice Note recently underwent revision to ensure that it reflects current practice, legislative changes and expectations of the Court. The new edition includes new chapters including a re-written chapter on Supervision Orders, with the commencement of the *Serious Offenders Act 2018* on 3 September 2018.

The amendments to the Practice Note are summarised in the table below, and the Practice Note can be accessed on the County Court website [here](#). The amendments to the Practice Note are effective 13 November 2018.

Topic	Amendment	Relevant Section
Circuit Directions Hearings	Clarification that all circuit sexual offence matters have an IDH in the Sexual Offences List first, before having any circuit directions hearings.	3.1
Notices of Incriminating Conduct	New requirement to file notices of incriminating conduct at the same time as other evidentiary notices, 21 days prior to the Final Directions Hearing.	6.3(f)



Standard Sentence offences	New requirement for the prosecution to outline whether any offences on the Indictment are Standard Sentence Offences in the Summary of Prosecution Opening.	7.6(i)
Sex Offender Registration Exemption Orders	<p>New chapter in relation to the procedure to be followed in relation to applications for exemption from the Sex Offender's Register for those offenders previously registered.</p> <p>Requirement for the Prosecution to outline in the Prosecution Opening whether an accused is eligible to apply for exemption from the Sex Offender's Register 28 days prior to an upcoming plea hearing.</p> <p>Requirement for the Prosecution to outline whether an Exemption Application will be opposed or not.</p> <p>Requirement for defence to file an application for a Registration Exemption Order 14 days prior to a plea hearing, if such an application is to be made.</p>	<p>22</p> <p>7.6(h)</p> <p>7.5(c)(ii)</p> <p>7.12(a)(ii)</p>
County Court Appeals	<p>Amendment to require that all conviction and sentence appeals, regardless of anticipated duration of appeal, are listed for First Listing in the 9:00am General List.</p> <p>Previously, just conviction and sentence appeals with an anticipated duration of one day or greater were listed for First Listings.</p>	38.1
Diversion Orders	New chapter in relation to applications for a Diversion Order under s.59 of the <i>Criminal Procedure Act 2009</i> or s.356D of the <i>Children, Youth and Families Act 2005</i> .	43
Serious Offender Act Supervision Orders	<p>Chapter redrafted in line with the new <i>Serious Offenders Act 2018</i>.</p> <p>Chapter 44: Application, Renewal and Review of Supervision Orders</p> <p>Chapter 45: Interim Supervision Order Applications</p> <p>Chapter 46: Review of Conditions of Supervision Order</p> <p>Chapter 47: Extension or Review of Intensive Treatment and Supervision Order Condition</p> <p>Chapter 48: Non-publication Order</p> <p>Chapter 49: Victim Submissions</p> <p>Chapter 50: Contravention of Supervision Order</p>	44 - 50
Media Test Court	The Media Test Court is now available from 4:30pm to 4:45pm, instead of 4:15pm to 4:45pm	51.14
Updated details on Attachment 6	New email address for the Manager, Health Team, Department of Health and Human Services: CMIAmentalhealth@dhhs.vic.gov.au	Attachment 6