

His Honour Judge Mark Gamble Head of Criminal Division

Message from His Honour Judge Gamble

In the past six months, the Criminal Division has seen the retirement of three industrious and experienced Judges of the Criminal Division; Judges Allen, Mason and Grant. We are pleased to welcome Judges Allen and Mason back as Reserve Judges.

Judge Chettle who retired last year but was serving as a Reserve Judge of this Court, has now returned to the Victorian Bar. The Criminal Division thanks Judge Chettle for his indefatigable capacity for work during his time as a Judge of this Court.

The Division welcomes the appointment of two new Judges to this Court, Judges Brimer and Georgiou. Both Judges bring fresh experience to this Court and the Division congratulates them on their appointment.

At the end of 2018, Judge Meryl Sexton stepped down as the Judge in Charge of the Sexual Offences List. The Criminal Division thanks Judge Sexton for her many years of hard work in the sexual offences list and for all of her efforts providing education to other judges and the broader profession. The Criminal Division welcomes Judge Higham as the new Judge in Charge of the Sexual Offences List.

The retirement of Judge Grant also saw him step down as the Judge in Charge of the Koori Court. The Criminal Division thanks Judge Grant for his tireless work and efforts during his time both as a Judge of this Court and as the Judge in Charge of the Koori Court. We wish him well in his retirement and the next stage of his career. The Criminal Division welcomes Judge Lawson as the new Judge in Charge of the Koori Court.

This year has seen significant changes to special hearing cases with the enactment of the *Justice Legislation Miscellaneous Amendment Act 2018* (the Amending Act) which made changes to the *Criminal Procedure Act 2009*.

The Criminal Division has worked tirelessly, and in consultation with various external stakeholders including the Office of Public Prosecutions, Commonwealth Director of Public Prosecutions,



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Victoria Legal Aid, the Criminal Bar Association, Law Institute of Victoria and Victoria Police, to implement these significant legislative amendments. Practitioners should refer to the revised version of the Practice Note and the summary provided in this edition of the newsletter, for guidance on the changes to the County Court's processes and procedures for special hearing cases.

Retirement of His Honour Judge Duncan Allen

On 18 January 2019, his Honour Judge Allen retired as a Judge of the County Court. His Honour served as a County Court Judge for over 11 years, having been appointed on 21 August 2007.

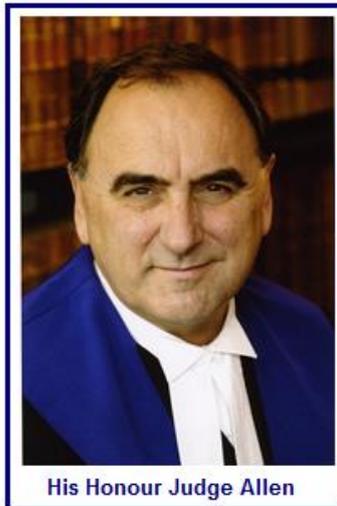
His Honour was admitted to practice in May 1979 and worked as a solicitor for five years, before signing the Bar Roll in 1984 where he read with His Honour Tim Wood, formerly a Judge of the County Court.

At the beginning of his legal career, his Honour served articles with the late Raymond Triado of Triado, Marshall & Co. It was the late Raymond Triado who had an enormous impact on his Honour's life and career. His Honour described the late Raymond Triado as kind, passionate about social justice and committed to his clients. These were all traits his Honour would soon take on during the course of his Honour's successful career as a legal practitioner.

His Honour enjoyed more than 20 years at the Bar practising as a defence barrister and was appointed Silk in 2004. At the Bar, his Honour was well renowned amongst the profession for his impeccable memory and attention to detail while being steadfast on his feet in the courtroom.

During his time at the Bar, his Honour had no less than 11 readers in 10 years and was a major contributor to the Bar having served as a member of the Criminal Law Association of Victoria for many years as well as the Executive Committee for three years. His Honour was a well-regarded colleague, friend and mentor to many of those who worked with him.

His Honour's compassion and commitment to fairness and justice were clearly on display during his time as a Judge of this Court. The Criminal Division thanks Judge Allen for his hard work in the Division and we are very fortunate to welcome his Honour back to the Court as a Reserve Judge.



His Honour Judge Allen

Criminal Division Contacts Continued

Criminal Registry

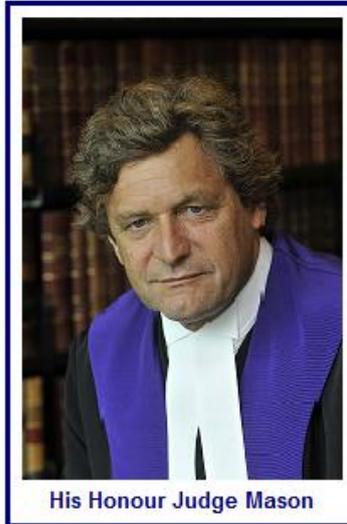
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Retirement of His Honour Judge Howard Mason

On 26 April 2019, his Honour Howard Mason retired as a Judge of the County Court. His Honour served 10 years on the bench having been appointed on 3 February 2009.

Prior to his appointment as a Judge, his Honour practised at the Bar in the area of criminal law for more than 30 years. His Honour read with John Walker QC and began practising in summary crime and general law before specialising in crime. From time to time his Honour retained some civil matters in the Supreme Court.



His Honour Judge Mason

In his Honour's early years as a barrister, his Honour both prosecuted and defended. As a defence barrister his Honour appeared in a broad range of criminal cases including murder, major drug trials and major commercial fraud which highlights his Honour's breadth and depth of experience and skill.

At his time at the Bar, his Honour was known for his thorough preparation, understanding and skill together with his even-temperament and courteousness. His Honour was also highly regarded for his significant contribution to the training of the next generation of advocates. His Honour spent more than ten years instructing in criminal procedure at the Leo Cussen Institute and on advocacy and workshops in the Bar Readers Course.

As a Judge of this Court, his Honour sat as a Trial Judge as well as a Judge in the County Koori Court. His Honour is well-known as an astute and considered Judge who treats everyone with courtesy, fairness and respect. The Criminal Division thanks his Honour for his diligent work in the Division and we are very fortunate to welcome his Honour back as a Reserve Judge.

Retirement of His Honour Judge Paul Grant

On 14 May 2019, his Honour Judge Paul Grant retired as a Judge of the County Court after 13 years on the bench, having been appointed on 18 April 2006.

Prior to his appointment, his Honour's broad experience and achievements as a judicial officer, legal practitioner and volunteer spanned more than 25 years. His Honour practiced as a solicitor

Key Dates

August 2019

30: Criminal Division
non-sitting day

September 2019

27: AFL Grand Final
public holiday

November 2019

5: Melbourne Cup
public holiday

22: Criminal Division
non-sitting day

December 2019

20: Last sitting day for
2019

January 2020

20: First sitting day for
2020

before signing the Bar Roll where he established the foundations for a strong criminal practice and also began volunteering at the Western Suburbs Legal Service.

In 1985 his Honour left the Bar to help establish the Footscray branch of Slater & Gordon with two of his friends. It was here that his Honour worked until his appointment as a Magistrate in 1988.

His Honour served over 17 years as a Magistrate during which time his Honour was appointed to various roles which included State Co-ordinating Magistrate, Deputy Chief Magistrate and Supervising Magistrate for Koori Courts. In 2002, his Honour received an Indigenous Community Justice Award for his “outstanding efforts in working to improve social justice outcomes for the Koori community in the Melbourne metropolitan region.”

Having already accomplished many feats prior to his appointment as a Judge of this Court, it was only fitting that his Honour would go on to achieve further accomplishments during his time as a Judge. From 2006 to 2011 his Honour was appointed as President of the Children’s Court and in 2015 he was appointed as a Vice President of VCAT.

His Honour contributed significantly to the establishment of the County Koori Court and presided in the first ever County Koori Court hearing in Latrobe Valley. From 2016 to 2019 his Honour was the Judge in Charge of the County Koori Court. It was here that his Honour’s dedication and commitment for justice continued to shine through. His Honour was involved in introducing Aboriginal Cultural Awareness training for Judges, led the launch of the County Koori Court in Shepparton and the development of resources for the County Koori Court.

His Honour has earned a reputation as an extremely hard working, even-handed and fair Judge deeply committed to social justice. The Criminal Division thanks his Honour for his hard work in the Division and we wish his Honour well in his retirement.



Appointment of Her Honour Judge Elizabeth Brimer

Her Honour Judge Elizabeth Brimer's appointment to the County Court was announced by the Attorney-General on 16 April 2019 and a ceremony was held to welcome her Honour on 2 May 2019.

With a career in the law of more than 25 years, her Honour was admitted to practice in 1994 and signed the Bar Roll in 1999. In November 2018, her Honour was appointed Senior Counsel.



Her Honour Judge Brimer

As a solicitor, her Honour practiced mainly in the area of commercial law, before taking up a position at the Supreme Court as Associate to the Honourable George Hampel. During this time, her Honour developed a keen interest in advocacy, which, as mentioned by Simon Marks QC in his speech at her Honour's welcome ceremony, the Honourable George Hampel "was taken by that passion for advocacy that was going to develop [her Honour's] career and the foundations for it".

Initially developing a practice at the Bar in commercial law, her Honour eventually built a wide and varied practice. Her Honour has extensive experience in civil, criminal and OH&S law, as well as being an expert in sports law. Her Honour has appeared in the Court of Appeal and the Supreme Courts of Victoria, Western Australia and the ACT, as well as appearing in Coronial Inquiries, Royal Commissions and WorkSafe prosecutions.

The Criminal Division is very pleased to welcome Judge Brimer to the Court and we wish her Honour well in her new role.

Appointment of His Honour Judge George Georgiou

His Honour Judge George Georgiou's appointment to the County Court was announced by the Attorney-General on 16 April 2019. A welcome ceremony was held for his Honour on 9 May 2019.

With a career in the law of almost 33 years, his Honour was admitted to practice in 1986 and signed the Bar Roll in May 1990. In November 2012, his Honour was appointed Silk. Since signing the Bar Roll, his Honour has practised almost exclusively in criminal law and has had extensive experience in all criminal and quasi criminal jurisdictions in Victoria and the Northern Territory. For seven years, his Honour was based in the Northern Territory, appearing as counsel in numerous

trials in both Alice Springs and Darwin. Returning to Melbourne in 2001, he was a Senior Public Defender with Victoria Legal Aid before returning to the Bar in 2007.



At the Bar, his Honour was well known for taking on lengthy and complex trials and has appeared in high-profile cases throughout Australia including: *R v Neal*, Victoria's first case involving a charge deliberately infecting another with HIV; acting for three survivors in the Royal Commission into Institutional Responses to Child Sexual Abuse, when the Commission conducted hearings into the Retta Dixon Home in Darwin; acting for the accused in the 2015 Anzac Day terror plot; and representing David Eastman in his lengthy murder trial in the ACT Supreme Court. The Eastman trial

consumed the final two years of his Honour's time at the Bar.

The Criminal Division congratulates Judge Georgiou on his appointment and we are very pleased to welcome his Honour to the Court.

Court's Open Day

On Saturday 18 May 2019, the County Court held its annual Courts Open Day. This year the County Court achieved record attendance numbers with approximately 1400 attendees walking through the Court's doors on the day.

This year's program was the Court's biggest offering to date and included the inaugural sell out event, *Talk to the Judge*, which allowed members of the community to speak directly to judges outside of a courtroom.

This year's events were very popular and included, cells tours including *The Day in the Life of an Accused* tour which combined the cells tour with a mock plea hearing; interactive Women in Crime panel



Judge Hannan engages the audience at the interactive Women in Crime panel session

session where some of Victoria's most experienced female judges and lawyers detailed their experiences and how they see the future for women in the law; Victorian Bar's mock bail application; a presentation by

Judge Chambers, President of the Children's Court, on sentencing of children and young people; and *Parole: You Decide!* an interactive mock parole hearing presented by former County Court Judge Peter Couzens (Chairperson of the Adult Parole Board) together with an expert panel, which included her Honour Judge Pullen, overseeing the mock hearing.

The popular Judges' BBQ fundraiser raised over \$1 200 for Berry Street, an organisation helping vulnerable children, young people and their families recover from the effects of violence, abuse and neglect.



Judge Chambers and Judge Kings assisting in the Courts Open Day charity BBQ fundraiser

The Court has again received overwhelmingly positive feedback from the community about this year's Open Day. *"I've attended multiple Open Court Days and found this*

year's offering to be the most well organised, thought provoking and engaging." "Great for us - all came in from Geelong just for it. kids loved it and they loved the judge talk q&a, said it really made them think differently." "Can't believe I got to meet the [C]hief [J]udge and the other judges - that was a very informative event, hope it happens next year too".

The Division is grateful for everyone who assisted in making this year's Open Day a success. The Division thanks volunteers from the Office of Public Prosecutions, the Criminal Bar Association, Corrections Victoria, Juries Victoria, Court Network, Women in Crime, Koori Elders, Parole Board, Post Sentence Authority, Melbourne Law School and County Court Judges and staff.

Electronic Indictments

The filing of electronic indictments was implemented on 29 April 2019 in the County Court.

Practitioners are reminded that they must file signed indictments electronically via e-Lodgement. When a signed indictment is filed electronically, there will not be a need to file a paper indictment in open court unless otherwise specified by legislation or directed by the Judge.

The option to file a signed paper indictment in court remains for certain circumstances only. These circumstances include when a proceeding is commenced by way of direct indictment, in circumstances where filing the indictment electronically would cause unnecessary delay or inefficiencies to the hearing, or if there is a disruption to e-Lodgement.

Practitioners are also reminded that each indictment must have its own case number. If an indictment is to be severed, the prosecution must contact the Criminal Registry, before the indictment is filed where possible, to obtain a new case number. The new case number should be included on the severed indictment before it is filed. If filed electronically via eLodgement, the severed indictment must be filed under the new corresponding case number.

The revised Practice Note has been amended to allow for the filing of electronic indictments.

Legislative Reforms

Special Hearing Matters

On 3 March 2019, reforms commenced that repealed committals in proceedings that relate (wholly or partly) to a charge for a sexual offence if the complainant was a child or a person with a cognitive impairment when the criminal proceeding commenced (special hearing matters). These reforms apply to special hearing matters that commenced on or after 3 March 2019.

An accused person must now apply to the trial court for leave to cross examine a witness, other than the complainant, for special hearing matters.

All special hearing matters committed to the County Court on or after Friday 12 July 2019 will be subject to the Court's new process and procedure irrespective of the date of commencement of the proceeding.

Melbourne

Initial directions hearings (IDH) for special hearing matters will be listed not before 28 days after the date an accused is committed for trial to this Court (date of committal). The special hearing IDHs will take place in the sexual offences list at 10:30am and will occur on a fortnightly basis on a day specified by the Court. This will be known as the special hearing IDH rolling list.

The prosecution must file and serve the indictment, prosecution opening, depositions, family violence checklist, witness information sheet, *Jury Directions Act* notices and *Evidence Act* notices (including tendency and coincidence evidence notices) no later than 14 days after the date of committal.

If the defence seek to make an application for pre-trial cross-examination of a witness, the defence and prosecution must file a joint form 198A application for pre-trial cross-examination 7 days before the special hearing IDH. Any s 32C applications must also be filed 7 days before the special hearing IDH.

Section 198A and s 32C applications will be heard together with the special hearing IDHs. At the special hearing IDHs, the Court will set dates for any pre-trial examination hearings (should a s 198A application be granted), the return of s 32C subpoena material if applicable, filing dates for the defence response and any other relevant notices.

Practitioners are advised to refer to the Practice Note for further information on the Court's new process and procedure for special hearing matters.

Circuit

Initial directions hearings for all sexual offence cases, irrespective of whether the matter involves a complainant who is a child or person with a cognitive impairment, will be listed in the circuit directions hearing list at first instance.

For sexual offence cases involving a complainant who is a child or person with a cognitive impairment, the prosecution must file and serve the indictment, prosecution opening, depositions, family violence checklist, witness information sheet, *Jury Directions Act* notices and *Evidence Act* notices (including tendency and coincidence evidence notices) no later than 14 days after the date of committal.

At the circuit directions hearing, the Court will set dates for the filing of any s 198A or s 32C notices and set any pre-trial listings or a trial date as the case may require. Section 198A and s 32C applications and pre-trial hearings will be listed in the sexual offences list at Melbourne.

Criminal Procedure Act 2009 (CPA)

Section 198B *CPA* codifies the *Basha* hearing test while s 198C *CPA* abolishes the *Basha* inquiry under the common law. Practitioners are advised to refer to chapter 12 of the revised Practice Note for instructions on making an application for preparatory cross-examination pursuant to s 198B *CPA*.

Section 381 *CPA* has been amended to make clear that the default position is that the recorded evidence of a complainant is ordinarily admitted in a re-trial unless it is in the interests of justice not to admit the recording.

Practitioners are advised that they must be familiar with the amended and new provisions of the *CPA*.

Bail Application

The bail application form has been amended to ask the question of whether an accused identifies as an Aboriginal and/or Torres Strait Islander and if so, whether s 3A *Bail Act 1977 (Bail Act)* will be relied upon. The revised Practice Note has also been amended to reflect these amendments.

The amendment to the bail application form assists the profession and the Court in flagging s 3A *Bail Act* as a factor for the Court to consider irrespective of whether the matter is proceeding in the County Koori Court or mainstream court. The information will help the Court to plan for improved court services for Aboriginal and Torres Strait Islander peoples.

Practitioners are reminded that they should be adequately prepared to address the Court on any relevant s 3A *Bail Act* matters if applicable and ‘unacceptable risk’ in any bail application. Section 3A *Bail Act* applies not only when considering whether or not to grant bail but also in considering setting appropriate conditions for bail.

The [Judicial College of Victoria](#) website provides a summary of [Key Bail Act Cases](#).

Allocation of Particular Matters to the Common Law Division

The following “quasi-criminal” matters will transition to the Common Law Division to help alleviate some of the demands faced by the Criminal Division:

- Post-Sentence Supervision Order matters;
- Protection order appeals, including:
 - DHHS Child Protection Order appeals;

- Family Violence Intervention Order appeals;
- Personal Safety Intervention Order appeals; and
- Compensation Order (s 85B and s 86 *Sentencing Act 1991*) matters.

The transition will occur in stages from 1 August 2019.

Any queries can be addressed via email to the relevant inbox at the County Court Civil Registry:

ivoappeals@countycourt.vic.gov.au

dhhsappeals@countycourt.vic.gov.au

supervisionorders@countycourt.vic.gov.au

sentencingcompensation@countycourt.vic.gov.au

The Criminal Division thanks the Common Law Division for assisting in reducing some of the pressures faced by the Criminal Division.

Practice Note Updates

The Criminal Division Practice Note (PNCR 1-2015) recently underwent revision to ensure it reflects current practice, legislative changes and expectations of the Court. Practitioners should familiarise themselves with the amendments and process and procedure changes as outlined in the Summary of Amendments and detailed in the PNCR 1-2015.

The revised PNCR 1-2015 will take effect on Friday 12 July 2019.