

His Honour Judge Mark Gamble Head of the Criminal Division

Message from His Honour Judge Gamble

This year, the Criminal Division has farewelled a number of experienced Judges, most recently Judge Condon, and Judge Haribson who retired in early December of this year.

A number of new Judges have also been appointed, the most recent appointments, Judges Carlin, Hassan, Doyle and Cain (State Coroner), are congratulated in this edition.

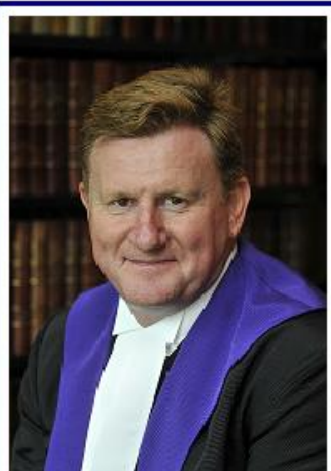
The Division also congratulates Judge Hannan on her appointment as Chief Magistrate of the Magistrates' Court of Victoria.

I take this opportunity to thank and acknowledge Judges of the Division, our staff and our stakeholders who have worked tirelessly this year, to ensure best practice is achieved in the Division and, to operationalise significant legislative reforms and pilot projects which include:

- implementing new procedures for sexual offence cases involving a complainant who is a child or person with a cognitive impairment in light of legislative reforms which abolished committals for special hearing matters;
- legislative reforms which allow the Court to make own motion interim intervention orders in a bail or criminal proceeding;
- the County Court sentence-only appeals pilot; and
- the Criminal Division active case management reform pilot.

The Court will conclude sittings on 20 December 2019 and will resume sitting on 20 January 2020.

As the 2019 legal year comes to an end, I wish everyone a safe and happy holiday period and I look forward to working further with Judges of this Court, court staff, the profession and stakeholders to maximise the performance and efficiency of the Division in 2020.



His Honour Judge Gamble

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Appointment of Judge Lisa Hannan as Chief Magistrate of the Magistrates' Court of Victoria

On 17 September 2019, the Attorney General announced the appointment of Judge Hannan as Chief Magistrate of the Magistrates' Court of Victoria. Judge Hannan commenced in her new role on 17 November 2019.

Her Honour was admitted to practice in 1987 and was called to the Bar in 1988. At the Bar, her Honour developed a strong criminal law practice while also appearing in various other courts, Boards and Tribunals including appearing at Coronial Inquests, the Children's Court, the Victims of Crime Assistance Tribunal and the Mental Health Review Board.



Her Honour Judge Hannan

Her Honour was at the Bar for some ten years before being appointed a Magistrate in 1998. Her Honour served as a Magistrate for eight years during which time she spent four years as State Supervising Magistrate for the Criminal Jurisdiction, and as Supervising Magistrate of the Sexual Offences List when it was established in February 2006.

On 3 October 2006, her Honour was appointed a Judge of this Court, during which time she served as Judge in Charge of the General List for almost ten years, and very capably led the Division from 2014 to 2018 as Head of the Criminal Division.

Her Honour is well known for her commitment and drive for efficiency, effectiveness and excellence, and for her generous involvement in various programs designed to mentor young lawyers; this includes being the founding patron for the Women in Crime network that provides mentoring, education and support to approximately 250 female criminal lawyers.

The Criminal Division congratulates and wishes her Honour well in her new role, for which she is eminently qualified.

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Retirement of Judge Marilyn Harbison

Her Honour Judge Harbison was appointed a Judge of the County Court in 1996, the fourth female to be appointed to the County Court. Her career as a Judge of this Court has spanned just shy of 24 years of service making her Honour the longest serving female judge in Victoria.

Her Honour was admitted to practice in 1976 and began her legal career at the firm Walsh, Spriggs, Nolan & Finney with the Honourable Justice Walsh, a former Family Court Judge who was, at the time, a partner in the firm.



Her Honour Judge Harbison

Her Honour had a passionate interest in the rights of the disadvantaged and was a founder of the Box Hill Duty Solicitors' Service, which was a first of its kind in Australia. Prior to her appointment, her Honour was involved in various committees including serving as Director of the Housing Guarantee Fund and then later as its Chairman in 1988, and Chairman of the Public Interest Law Clearing House now known as Justice Connect.

From 1983 up until her appointment, her Honour was a partner at the firm Clancy & Triado, and then at the firm Wisewoulds where she headed the commercial litigation law section.

During her well established career as a County Court Judge, her Honour has managed the Damages List, Business List and Long Cases List and was appointed a Vice President of VCAT in 2008 where she served in that role for 11 years, five of which she spent as Judge in Charge of the Human Rights List. Since 2008, her Honour divided her time between sitting at VCAT and as a Judge of the Criminal Division.

Courtesy and respect for those that appeared before her Honour, were hallmarks of her Honour's demeanour on the Bench. The Division thanks her Honour for her many years of dedicated service to this Court and we wish her Honour a happy and well deserved retirement.

Key Dates

January 2020

- 1: Public holiday (New Year's Day)
- 20: First sitting day of 2020
- 26: Public holiday

March 2020

- 6: Criminal Division non-sitting day
- 9: Public holiday (Labour Day)

April 2020

- 9: Criminal Division non-sitting day
- 10: Public holiday (Good Friday)
- 13: Public holiday (Easter Monday)
- 14: Criminal Division non-sitting day
- 15-17: District and County Court Judges Australia and New Zealand Conference

June 2020

- 8: Public holiday (Queen's Birthday)
- 26: Criminal Division non-sitting day

Farewell to Judge Julie Condon

Her Honour Judge Condon was a Judge of the County Court from 12 December 2017 to 12 July 2019.

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.

While an experienced criminal defence trial advocate, her Honour also had a keen interest in human rights and international criminal law.



Experienced in all facets of international criminal law, her Honour previously 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 was also involved in advocacy workshops for the profession and law students in Papua New Guinea and Vanuatu.

Her Honour capably served the Court during her time as a Judge and the Division farewells Judge Condon as a Judge of this Court.

Appointment of Judge Rosemary Carlin

On 10 September 2019, the Attorney General announced the appointment of Magistrate and Coroner Rosemary Carlin as a Judge of the County Court of Victoria.

Her Honour was admitted to practice in April 1985 and began her legal career as a solicitor practising in general corporate work, property and commercial litigation. Her Honour enjoyed court work and was drawn towards the criminal law. In late 1985, her Honour joined the Commonwealth Director of Public Prosecutions ('CDPP') where she worked for six years.



In 1991, her Honour signed the Bar roll and developed a busy practice prosecuting a wide range of matters. She was appointed as an Associate Crown Prosecutor for the State of Victoria in 1998 and became a Crown Prosecutor in 2000. In 2003, her Honour took up a

Key Dates Continued

November 2020

- 2:** Public holiday (Melbourne Cup)
- 20:** Criminal Division non-sitting day

December 2020

- 18:** Last sitting day for 2020
- 25:** Christmas Day
- 26:** Public holiday (Boxing Day)

role as Senior Crown Prosecutor in the Northern Territory ('NT'), working with Indigenous accused, witnesses and victims in remote areas of the NT.

In 2004, her Honour returned to Melbourne taking up her role as Crown Prosecutor before moving to the CDPP, in 2005, as in-house counsel. At the CDPP her Honour prosecuted the first jury trial to conviction under the then new Commonwealth slavery offences; *R v Tang*.

In 2007, her Honour was appointed as a Magistrate of the Magistrates' Court of Victoria and in 2014, was assigned as a Coroner where she conducted a number of complex medical inquests. As described by Dr Matthew Collins QC, on behalf of the Victorian Bar at her Honour's Welcome Ceremony on 3 October 2019, "[Her] Honour's appointment is the combination of three decades of experience in the administration of justice and the law, as a solicitor, barrister, magistrate and coroner. With each hat, [her] Honour has earned a reputation as tenacious, committed and conscientious, qualities which [her] Honour now bring to [her] role at this court."

The Division congratulates her Honour Judge Carlin on her appointment and we are pleased to welcome her Honour to the Court.

Appointment of Judge Anne Hassan

Her Honour Judge Anne Hassan SC was appointed as a Judge of this Court on 29 October 2019.

In 2001, her Honour was admitted to practice and commenced her legal career as an Associate to the Honourable Justice, later Chief Justice Warren, of the Supreme Court, then head of the Supreme Court Commercial List.

In 2003, her Honour signed the Bar roll and read with Jane Dixon QC, now Justice Dixon of the Supreme Court.



Her Honour began life at the Bar practising in commercial litigation before embarking on a 15 year career at the Criminal Bar. From 2009 to 2014, her Honour joined the Crown Prosecutor's office where she prosecuted criminal cases including murders and sexual offence cases, as well as appearing in the Court of Appeal.

Since returning to the Bar in 2014, her Honour took on two readers who described her Honour as a generous leader, always available as



a sounding board. Her Honour has also been a member of various associations and organisations including the Barristers' Animal Welfare Association, Bar's Equality and Diversity and Pro Bono Committees, an advocacy coach at the Bar Readers' Course, a mentor for Diverse Women's Mentoring Association and a volunteer at community legal centres.

Her Honour took up Silk shortly before being appointed a Judge of this Court. The Division congratulates her Honour Judge Hassan on her appointment and extends, to her Honour, a warm welcome to the Court.

Appointment of Judge Kevin Doyle

On 29 October 2019, the Attorney General announced the appointment of Judge Doyle as a Judge of the County Court.

His Honour's legal career spans more than 30 years during which time he developed a vast knowledge of criminal law appearing for both the prosecution and the defence.

His Honour was admitted to practice in 1987 and began his first role at Victoria Legal Aid ('VLA'), then called the Legal Aid Commission. In this role, his Honour was exposed to advocacy in the role of duty solicitor. He later moved to Victorian Aboriginal Legal Service and also spent a year abroad working in London, before returning to VLA.

His Honour was called to the Bar in 1995 and began his trial practice. In 2002, his Honour took a leave of absence and worked at the North Australian Aboriginal Legal Service in Darwin. He later returned to the Bar, in Victoria, where he continued to develop a strong criminal practice. In 2018, his Honour was appointed a Crown Prosecutor where he earned a reputation as a formidable and faultlessly fair prosecutor, and where his Honour remained until he was appointed to this Court.

His Honour was well recognised for his thorough preparation, sound knowledge of the law, ongoing generosity with time for advice, and for his collaborative approach working with juniors.

His colleagues describe his Honour as pragmatic and able to see both sides and resolve issues, qualities of which will hold his Honour in good stead in his new role as a Judge of this Court. The Criminal Division is very fortunate to have his Honour Judge Doyle join the Court and we wish his Honour well in the next phase of his career.

Appointment of Judge John Cain

On 29 October 2019, the Attorney General announced the appointment of Judge Cain as a County Court Judge and new State Coroner. His Honour commenced in his new role on 4 December 2019.

His Honour's legal career has spanned more than 30 years as a solicitor. He began his legal career at Maurice Blackburn where he spent the next 20 years, 10 of those years as Managing Partner.



His Honour Judge Cain

His Honour spent five years as Chief Executive of the Law Institute of Victoria and from 2006 to 2011 he was Victoria's Government Solicitor ('VGS'). During his time as VGS, his Honour led a team representing the Victorian Government, its departments and agencies at the 2009 Bushfire Royal Commission. He also played an important part in implementing the Victorian Charter of Human Rights and Responsibilities. From 2011 to 2015, his Honour was Managing Partner of the firm Herbert Geer, now known as Thomson Geer.

In 2015, his Honour was appointed Solicitor for Public Prosecutions of Victoria where he remained until his appointment as a judicial officer. As Solicitor for Public Prosecutions, his Honour led reforms to, and was a strong advocate for, improving support for victims and witnesses in the criminal justice system. Some of his accomplishments include establishing a dedicated witness support website and the introduction of a Victim Support Dog program. He also paved the way for digitisation and technology initiatives at the OPP, some of which include the implementation of electronic trials and briefs.

Wendy Harris, on behalf of the Victorian Bar Council, at his Honour's Welcome Ceremony on 5 December 2019, described his Honour as an "extremely skilled administrator, a skilled problem-solver and strategist, and instrumental in major innovation, in the roles that [his] Honour has undertaken." His Honour has earned a reputation as being "dynamic, innovative, and empathetic; qualities which will no doubt assist [his Honour] greatly in [his] new role at this Court and at the Coroner's Court..." The Division congratulates his Honour Judge Cain on his appointment and wishes him well in his new roles.



Criminal Division Active Case Management Pilot

In mid-2018, the Court commenced exploring reform of the Criminal Division's judicial work system to address greater demand in the Criminal Division. A pilot of the active case management system commenced in September 2018. Through the design and testing of an active case management system, the Court has sought to improve efficiency in the pre-trial process and enhance productivity through more delegation by judges of less complex functions. The active case management system is intended to enable judges to focus on the value work of hearing and determining matters, ensure cases resolve at the earliest opportunity where appropriate, and to identify and narrow issues in dispute for those cases that do not resolve.

In May 2019, the Court received government funding to expand the pilot of the active case management system for a further 12 months. The Court has worked together with the relevant stakeholders, judges and court staff to expand the pilot. The expansion of the pilot will commence with not guilty, VLA funded in house, State prosecuted matters (not including sexual offence matters). The Division has also recruited five Division Lawyers to assist with the active case management of matters in the pilot.

The Court will evaluate the reforms at the conclusion of the pilot to ensure that they are appropriate and measured.

County Court Sentence-only Appeals Pilot

In February of this year, the Criminal Division commenced a six month pilot program in relation to the grouping of sentence-only appeals that are listed for hearing each day.

The pilot has sought to place appropriate appeals into groups of two or three, one week out from the appeal hearing date. The purpose of the pilot is to facilitate earlier briefing of counsel by the prosecution and thereby enable them to provide a greater level of assistance to the Court.

In August of this year, the pilot was extended for a further six months. The Division will continue to monitor the effectiveness of the pilot with a view to evaluating the pilot at its conclusion.

Warrnambool Koori Court Opening

On Wednesday 23 October 2019, Victoria's newest County Koori Court was unveiled in Warrnambool. The day began with a Welcome to Country by Uncle Locky Eccles and Uncle Rob Lowe and a smoking ceremony by Uncle Rob Lowe. Crowds enjoyed a traditional dance performance by the KoKo Blokes.



Judge in Charge of the County Koori Court, Judge Lawson, said the Koori Court provides an opportunity for Elders to speak directly with offenders. "It's about discussing the importance of offenders changing their behaviour," Judge Lawson said.

"Offenders can only come into the Court if they plead guilty and consent to participate in a process that involves engaging with Elders and Respected Persons from the Aboriginal community."

The County Koori Court began sitting in the Latrobe Valley in 2008. Since then it has expanded to Melbourne in 2013, Mildura in 2016 and Shepparton in 2018.

The new Warrnambool County Koori Court began hearing matters from 25 November 2019.

Law Reform

Own Motion Interim Intervention Orders

The *Justice Legislation Amendment (Family Violence Protection and Other Matters) Act 2018* inserts new provisions into the *Family Violence Protection Act 2008*.

The amendments enable higher courts to make interim intervention orders on their own motion during bail proceedings or criminal proceedings.

A court can make such an order if it is satisfied on the balance of probabilities, that the interim order is necessary to ensure the safety of the family member pending a decision about a final order.

An order must not be made if there is an existing intervention order that already protects the family member, or an application has been made but not finalised.

The new own motion interim intervention order provisions commenced on 10 December 2019.



Second and Subsequent Appeals

The *Justice Legislation Amendment (Criminal Appeals) Act 2019* received Royal Assent on 19 November 2019 and makes amendments to the *Criminal Procedure Act 2009* to create:

- second and subsequent appeals which provide for additional rights of appeals against conviction (a person convicted of an indictable offence by an originating court who has exhausted his or her right to appeal under Division 1 of Part 6.3 or has previously appealed under new Part 6.4 but leave to appeal was not granted or the appeal was dismissed, in whole or in part may appeal to the Court of Appeal against the conviction if the Court of Appeal gives the person leave to appeal); and
- reference determinations which allow the Court of Appeal to refer a matter to a trial court for adjudication.

Second and subsequent appeals apply to all convictions for indictable offences, regardless of when the convictions occurred.

These particular amendments commenced on 4 December 2019.