

Annual Report

The Council of Judges is pleased to present its report for the 2012-2013 year.

Progressing Cases

It has been a period of continuing reform and innovation. A particular highlight has been the dramatic reduction in criminal appeal delays. The reduction is possibly unmatched in comparable courts. It has been achieved by the drive and application of the judges led by the President of the Court of Appeal and the Hon. Justice Ashley. The judges in turn were superbly supported by Judicial Registrar Pedley, the Court of Appeal Registry and Court Administration.

I also mention the high level of activity in the Commercial Court and the Common Law Division. The Victorian Supreme Court strives to be an excellent superior court. This goal is particularly pursued through the volume and nature of cases, especially class actions. Civil litigation is facilitated by a strong commitment to alternative dispute resolution, especially mediation. The associate judges play an invaluable role in acting as court mediators in appropriate cases at no cost.

The criminal jurisdiction also warrants special comment. The trial judges have dealt with a high volume of matters made up of criminal trials, mental impairment hearings, bails and surveillance applications.

The performance of the Court in these areas is elaborated upon in the divisional reports that follow. I strongly urge their reading.

Adult Parole Board

A significant demand on judge time and availability arises from the requirements of the Adult Parole Board. The Supreme Court has a 60 year history of providing the Chair of the Board: Justices Barry, Starke, Vincent, Teague, Kellam and Whelan and presently Justice Curtain. Mostly, this commitment has been unrecognised. The service provided by judges has been selfless and significant for decades. On behalf of the Court the Council of Judges thanks all past chairs and acknowledges the recent service of Justices Whelan and Curtain.

We note the burdens of the role. The Chair is on call 24 hours per day, everyday and carries the burden of Board business on top of a full judicial load. No time, leave or salary provision is made for this service. The functions are administrative rather than judicial. Further, the decisions of the Board – whether directly involving the Chair or not – sometimes raise

controversy. Given the introduction of the *Corrections Amendment (Parole Reform) Bill 2013* the opportunity arises for the Court to discontinue its involvement in the Board. The legislation has been altered to enable the appointment of a retired judge as Chair of the Board. The Court welcomes the change in the appointment of a non-serving judge as Chair of the Board.

Legal Aid

On a different note, the Supreme Court, along with other courts, has been vexed by the limitations on the provision of adequate legal aid in criminal trials. It was regrettable that in late 2012 Victoria Legal Aid (VLA) changed funding guidelines unilaterally without consultation. VLA announced it would not fund the attendance at court of instructing lawyers to support barristers in criminal trials for more than two half days of trials. Justice Lasry adjourned the *Chaouk* trial until an instructing lawyer was provided on a day to day basis. An application for leave to appeal (out of time) was dismissed. The Court of Appeal said:

The power of the court to stay a criminal trial is the ineluctable concomitant of the court's duty to ensure that a criminal trial is as fair as we can reasonably make it. There is of course a significant public interest in the independent performance of that duty by the court. When it comes to legal representation, a decision to stay a trial reflects the court's assessment of what is necessary to ensure that justice is done.

While matters settled down after the Court of Appeal decision many court days were lost.

Aside from these problems, the Court observes a trend in legal aid representation in Supreme Court trials. There was a time when senior counsel almost always appeared for the defence. These days, with Victorian Legal Aid, it being the dominant provider, the appearance of senior counsel for the defence is less frequent than it ought to be. Mostly, senior counsel appear for the prosecution. The net effect is that sometimes the quality and standard of defence representation is not suitable for the Supreme Court. Judges are left to manage the trial to avoid injustice to an accused person. Sometimes appeal points arise and retrials are ordered. Thus the cost saved in not retaining senior counsel is shifted to a cost elsewhere through judge-time, court costs, appeal and retrial costs. It is a false economy. Doubtlessly, VLA does the best it can. However, the level of experience and competence of barristers briefed for the defence in Supreme Court trials should be assessed very carefully to ensure appropriate standards are consistently met.

Law Library of Victoria

The year also saw the launch of the Law Library of Victoria. It will be a consolidation of the libraries of all Victorian Courts and, eventually, a collaboration with the Victorian Bar and the Law Institute of Victoria. The ultimate goal is the provision of desk top access for every Victorian judicial officer and lawyer to a full, state of the art, legal library and resource. On completion the Law Library of Victoria will be a magnificent asset of the State. To launch the project the Victorian Attorney-General provided almost \$800,000 in funding. An Advisory Board has been established involving all interest groups. The project is progressing. With appropriate ongoing funding the Law Library of Victoria should be operating by 2015-2016.

Supreme Court Building Needs

Once again I mention the Supreme Court building needs. The State Government provided important funding for the mega trial courtroom in the William Cooper Justice Centre. It is excellent and has given rise to much efficiency through the application of technology. However, previous problems continue in other Supreme Court buildings: lack of secure facilities, inadequate arrangements for the public especially safety, out-moded courtroom layout and insufficient courtrooms. The mega trial courtroom has eased the pressure in one case but resources remain stretched.

The Court anticipates that over time the roles of the Independent Based Anti-Corruption body and the Public Interest Monitor will impact on court hearings. These applications may be contested and require secure and private court facilities to protect the integrity of the processes. At present the Court has no suitable facilities but has alerted the Department of Justice to the need. The Court will monitor the development of these cases.

Administrative Staff

Finally on behalf of the judges I thank the CEO David Ware and all court and judicial staff for their devotion and commitment to serving the Supreme Court of Victoria. Without their support the court would not have achieved the things described in this report.

The Hon. Marilyn L Warren AC
Chief Justice of Victoria