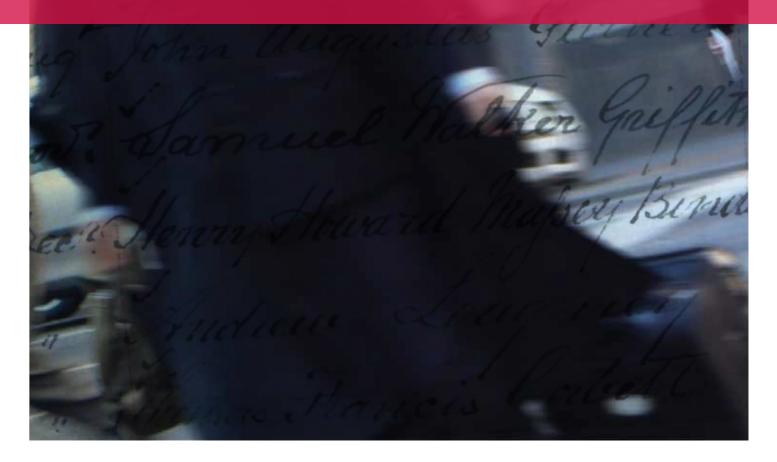


## Supreme Court of Victoria | 2009–10 ANNUAL REPORT



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### LETTER TO THE GOVERNOR

September 2010

To His Excellency Professor David de Kretser AC Governor of the State of Victoria and its Dependencies in the Commonwealth of Australia

### Dear Governor

We, the Judges of the Supreme Court of Victoria, have the honour to present our Annual Report pursuant to the provisions of the *Supreme Court Act 1986* with respect to the financial year of 1 July 2009 to 30 June 2010.

Yours sincerely

Marilyn L Warren AC Chief Justice of Victoria

C Maxwell, P P Buchanan, JA G A A Nettle, JA D J Ashley, JA M A Neave, JA R F Redlich, JA M Weinberg, JA P Mandie, JA B D Bongiorno, JA D L Harper, JA H R Hansen, JA D J Habersberger, J R S Osborn, J K M Williams, J S W Kaye, J S P Whelan, J E J Hollingworth, J K H Bell, J K W S Hargrave, J B J King, J A L Cavanough, J E H Curtain, J G Pagone, J P A Coghlan, J R M Robson, J J H L Forrest, J L Lasry, J J G Judd, J P N Vickery, J E J Kyrou, J D F R Beach, J J Davies, J T Forrest, J K L Emerton, J I J Ross, J C E Croft, J A Ferguson, J

### Chief Justice's remarks



There are three areas I highlight for comment: the Court's performance and achievements, our IT provision and, finally, our vision for the new Supreme Court building.

The Supreme Court aims to deliver to the Victorian community a modern, responsive and independent court. We have progressed a long way with our modernisation but more remains to be done.

Our ambitions are three-fold: first the modernisation of the Court's IT; secondly the achievement of a world benchmarking Court environment and; thirdly, to be firmly recognised as a Court that is a centre for litigation innovation and excellence.

### **1.THE COURT'S PERFORMANCE & ACHIEVEMENTS**

### a) The Trial Division

The Court's performance in the Trial Division in the reporting year has been satisfying. Arising from changed procedures, expanded alternative dispute resolution and intensified case management, the numbers of cases finalised by the Trial Division has increased considerably. The Commercial Court warrants special comment. The Commercial Court offers a pure docket service to litigators. It has been an outstanding success. It is evident that commercial litigators are returning to the Supreme Court because of the quality of litigation management, service and disposition provided. Anecdotally, litigators inform us they are attracted to the dynamic and energetic approach offered. Similarly, the Common Law Division has expanded its work through important personal injuries, bushfires, human rights, judicial review and environmental litigation and through regional circuit sittings.

### b) The Court of Appeal

Demonstrative of our pursuit of innovation and excellence the Court has set about attacking delays in criminal appeals with a strong creative approach. Whilst the criminal appeals finalised have steadily but modestly improved, the overall delays are growing because of the increased numbers of criminal appeals being lodged. The Court of Appeal is unable to control the influx of appeals, most of which come from the County Court. Reforms of sexual offences laws have significantly increased the workload of the County Court with a flow-on of appeals. In response to delays in criminal appeals the Court has initiated reforms that are the most significant since the establishment of the Court of Appeal in 1995. The reforms are the highest reform priority of the Supreme Court. In the last six years the Trial Division has undergone extensive reform. The remaining court-wide reforms to be implemented are those addressing criminal appeals.

The Court of Appeal will implement intensive management of criminal appeals modelled on the English Court of Appeal system. Provided the Court is given sufficient support and resources, it is intended that the numbers of appeals will be doubled to four per sitting day. It is expected that the backlog of criminal appeals will be significantly reduced.

The reforms are the result of an investigative report prepared by the Hon. Justice David Ashley following a study visit to London and the consequential visit to Melbourne of Master Roger Venne QC of the English Court of Appeal. The Court acknowledges the significant assistance and cooperation received from the Rt. Honourable Lord Justice Judge, Lord Chief Justice of England and Wales and Master Venne.

### c) The Associate Judges

The Associate Judges play a pivotal role in the despatch of the work of the Supreme Court. The reporting year has seen the Associate Judges assume responsibility for trial work in addition to their interlocutory and other work. Following the appointment of very experienced litigators as Associate Judges the Court has been able to intensify its management of cases and expand its services to litigators. The Associate Judges have also made a significant contribution in their mediation work.

### d) The Costs Court

The year has seen the establishment of the new Costs Court under an Associate Judge. The Supreme Court is now responsible for the taxation of costs from all Victorian jurisdictions. The Supreme Court has taken on a leadership role that will see it provide a costs taxation model that offers the community economy, expedition and flexibility.

### 2. A MODERN IT SYSTEM

There are two important aspects of our IT system:

### i) Integrated Court Management System (ICMS) - CourtView

On 21 September 2009 the Department of Justice commenced ICMS in the Supreme Court. Essentially ICMS will provide a 'one stop shop' electronic filing for litigators, an entry system of detailed data of presently unrecorded Court activities and, importantly, an appropriate tool to interpret and forecast Court trends and workloads. It is a system that has worked well in the United States. The Supreme Court was the first to adopt the system in Victoria known as 'CourtView'. Ultimately, it is intended that all Victorian Courts and VCAT will adopt the same system. We anticipate that CourtView will press our modernisation a long way.

Initially, despite extensive work by the Department of Justice and Court staff the implementation of ICMS/CourtView was very difficult. There were dramatic time delays for Court staff in the entry of data. The Department has provided additional staff to assist with data entries. At the time of writing, arising from the allocation of more resources and support by the Department and significant work by Court staff there are signs that the system is improving. The system has not yet provided electronic filing or data interpretative tools as anticipated. However, once the system is settled and fully operational, we are assured by the Department of Justice that it will provide facilities that are leading edge and unique.

Ultimately, the Supreme Court remains supportive of the ICMS/ CourtView system. We look forward to the benefits promised by the Department of Justice. It is essential that the highest Court of the state has a modern technical facility that is the best available to enable it to meet the expectations of litigators and, also, respond to future planning needs based on accurate data.

### ii) IT Systems

At the time of writing the Department of Justice has advised of the government's tentative proposal that the Supreme Court IT system will revert to the new *CenITex* whole of government centralised IT system.

We have been at pains to explain to the Departments of Justice and Treasury & Finance the unsuitability and, indeed, serious difficulties the CenITex system poses for the Supreme Court. Essentially, because of the cases we determine, the Court handles sensitive and confidential personal, security and commercial information provided by parties such as the State and Federal Police with organised crime and terrorism cases, the Office of Police Integrity with police corruption cases and commercial law firms acting for national and multi-national corporations involving key business and market cases. We would not expect such documents to be at risk of unauthorised access, that is, by anyone other than Judges and Supreme Court staff. For example, an external 'helpdesk' operated by non-court staff with the capacity to view and control judges' desktops which include confidential documents and connections to draft judgments is not what we would regard as a high quality, independent IT system.

The Court is discussing with government the prospect of special independent arrangements to protect the integrity of our IT system. Such arrangements already exist with other agencies where IT security is critical.

It is essential that the Supreme Court have full confidence in the IT system it works with and, importantly, offers to Court users. The present IT system controlled by the Department of Justice where it is a primary litigator in the Supreme Court, is unsatisfactory for both the government and the Court. More so, control of the Court's IT by an external agency over which it has no control or relationship is extremely undesirable because of the risks it creates. We are confident that the government will appreciate the integrity of our IT system and prevent anyone outside the Court having the capacity to view our documents, including draft judgments.

Ultimately, we see an independent, high quality IT system as fundamental to our goals of modernisation, innovation and excellence.

### 3. THE NEW SUPREME COURT BUILDING

The building and environmental difficulties of the Supreme Court remain: we cope with physical dysfunction, compromised security, inaccessibility, insufficient workplace safety for staff and an inadequate complex for the disabled. The Court will shortly expand to seven sites (main building, Court of Appeal, Old High Court, 436 Lonsdale Street, County Court, William Cooper Justice Centre and, where necessary, the Bushfires Royal Commission hearing rooms). The physical separation of elements of the Court, which are functionally related, is grossly inefficient. Prisoners are held in three sets of cells. The two Court registries are not in the buildings which contain the courts they serve. The Associate Justices are accommodated outside and across the road from the principal Court complex. The Judges chambers are in three separate and poorly interconnected buildings. The seven sites in which the Court will shortly sit are located in four separate city blocks. Our physical dysfunction is significant.

Consistent with our pursuit of modernisation and innovation it is critical that we move to a modern, consolidated and accessible environment. The Supreme Court is anxious to maximise its contribution to the Victorian community. This is best achieved by a new Court building for the benefit of the Victorian community.

The Supreme Court continues to urge the government to match the federal sector with a new Supreme Court building commencing with an international architectural competition to find the best design. The nominated site is the old Mint site at the corner of William and Lonsdale Streets, Melbourne within the Melbourne Legal Precinct. A new building is a unique opportunity for a tangible symbol of accessible justice for the Victorian community.

### **CLOSING REMARKS**

The Supreme Court is dedicated to delivering to the Victorian community an excellent Court that is respected as the dynamic leader of Victoria's judicial system. To recapitulate, there are now two key elements: the IT system and the built environment.

Once these elements are resolved the Supreme Court will cement its function as a centre for litigation innovation and excellence for the benefit of all Victorians.

In closing, the Court acknowledges the ongoing support provided to it by the Department of Justice.

Finally, the Judges and Associate Judges of the Supreme Court express deep appreciation for the support, assistance and loyalty of the general Court staff and judicial staff. Without them, we could not achieve all we do.

Andre

The Hon Marilyn Warren AC Chief Justice of the Supreme Court of Victoria



# 2009-IO AT A GLANCE

The Supreme Court of Victoria is the superior court of the State. Established under s. 75 of the *Constitution Act 1975*, it is divided into the Court of Appeal and the Trial Division. The Court comprises the Chief Justice, President of the Court of Appeal, 40 Judges and nine Associate Judges, supported by some 290 administrative staff.

### 2009-10 at a glance: the Judiciary

### JUDGES AND ASSOCIATE JUDGES Presiding from 1 July 2009 – 30 June 2010

### **CHIEF JUSTICE**

The Honourable Justice Marilyn Louise Warren AC: (1998\*) 25 November 2003 - present

### PRESIDENT OF THE COURT OF APPEAL

The Honourable Justice Chris Maxwell: 18 July 2005 - present

### JUDGES OF THE COURT OF APPEAL

The Honourable Justice Peter Buchanan: 28 October 1997 – present The Honourable Justice Frank Hollis Rivers Vincent AO: (1985\*) 12 June 2001 – 20 August 2009 The Honourable Justice Geoffrey Arthur Akeroyd Nettle: (2002\*) 8 June 2004 – present The Honourable Justice David John Ashley: (1990\*) 21 June 2004 – present The Honourable Justice Marcia Ann Neave AO: 27 February 2006 – present The Honourable Justice Robert Frank Redlich (2002\*): 8 May 2006 – present The Honourable Justice Julie Anne Dodds-Streeton: (2002\*) 8 August 2007 – 1 February 2010 The Honourable Justice Mark Weinberg: 28 July 2008 – present The Honourable Justice Philip Mandie: (1994\*) 11 August 2009 – present The Honourable Justice Bernard Daniel Bongiorno AO:(2000\*) 17 August 2009 – present

### THE TRIAL DIVISION

The Honourable Justice Philip Damien Cummins: 17 February 1988 – 8 November 2009 The Honourable Justice Thomas Harrison Smith: 1 May 1990 – 31 July 2009 The Honourable Justice David McCartin Michael Byrne: 20 August 1991 – 28 May 2010 The Honourable Justice Hartley Roland Hansen: 6 April 1994 – present The Honourable Justice David John Habersberger: 3 July 2001 – present The Honourable Justice Robert Stanley Osborn: 9 May 2002 – present The Honourable Justice Katharine Mary Williams: 25 October 2002 – present The Honourable Justice Stephen William Kaye: 16 December 2003 – present The Honourable Justice Elizabeth Jane Hollingworth: 7 June 2004 – present The Honourable Justice Elizabeth Jane Hollingworth: 7 June 2004 – present The Honourable Justice Kim William Spencer Hargrave: 18 March 2005 - present The Honourable Justice Betty June King: 21 June 2005 - present The Honourable Justice Anthony Lewis Cavanough: 8 May 2006 - present The Honourable Justice Elizabeth Helen Curtain: 3 October 2006 - present The Honourable Justice Gaetano Pagone: 24 May 2007 - present The Honourable Justice Paul Anthony Coghlan: 8 August 2007 - present The Honourable Justice Ross McKenzie Robson: 8 August 2007 - present The Honourable Justice John Herbert Lytton Forrest: 8 August 2007 - present The Honourable Justice Lex Lasry: 23 October 2007 - present The Honourable Justice James Gregory Judd: 6 March 2008 - present The Honourable Justice Peter Norman Vickery: 6 May 2008 - present The Honourable Justice Emilios John Kyrou: 15 May 2008 - present The Honourable Justice David Francis Rashleigh Beach: 5 September 2008 - present The Honourable Justice Jennifer Davies: 6 April 2009 - present The Honourable Justice Terence Michael Forrest: 13 October 2009 - present The Honourable Justice Karin Leigh Emerton: 13 October 2009 - present The Honourable Justice Iain James Ross AO: 4 November 2009 - present The Honourable Justice Clyde Elliott Croft: 4 November 2009 - present The Honourable Justice Anne Ferguson: 20 May 2010 - present

### ASSOCIATE JUDGES

The Honourable Associate Justice Kevin John Mahony: 15 April 1983 – present The Honourable Associate Justice Ewan Kenneth Evans: 2 August 1983 – present The Honourable Associate Justice Kathryn Elizabeth Kings: 23 March 1993 – 4 November 2009 The Honourable Associate Justice John Efthim: 18 July 2005 – present The Honourable Associate Justice Alexander Jamie Wood: 23 January 2006 – present The Honourable Associate Justice Robyn Gay Lansdowne: 18 September 2006 – present The Honourable Associate Justice Melissa Lee Daly: 3 October 2006 – present The Honourable Associate Justice Simon Peter Gardiner: 6 November 2008 – present The Honourable Associate Justice Nemeer Mukhtar: 26 August 2009 – present The Honourable Associate Justice Rita Zammit: 16 March 2010 – present

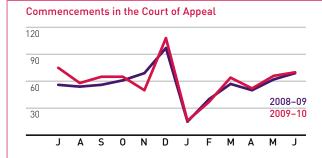
\* Date appointed to the Trial Division

### 2009-10 at a glance: the Court of Appeal

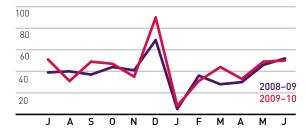
The Court of Appeal was established under the *Constitution (Court of Appeal) Act 1994* and commenced operation on 7 June 1995. The Court of Appeal is a division of the Supreme Court and comprises the Chief Justice, the President, and currently ten Judges of Appeal, plus any additional Judges of Appeal appointed or acting under s. 80B of the *Constitution Act 1975*.

The Court of Appeal hears appeals from Criminal and Civil trials heard by Judges of the Supreme Court and the County Court. It also hears some appeals from proceedings which have come before the Victorian Civil and Administrative Tribunal (VCAT) and other tribunals.

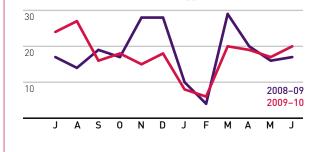
Procedure before the Court is governed by Acts of Parliament, Rules of Court and Practice Statements. Some appeals require leave of a Judge or leave of the Court of Appeal before a Notice of Appeal can be filed.

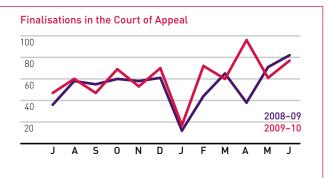


Commencements in the Court of Appeal - Criminal

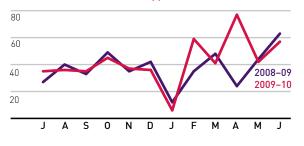




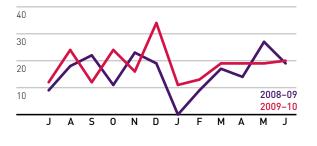




Finalisations in the Court of Appeal – Criminal



Finalisations in the Court of Appeal – Civil



### 2009-10 at a glance: the Trial Division

The Trial Division consists of the Chief Justice and approximately 28 other Judges. Associate Judges assist the Judges in discharging the civil work of the Trial Division. It comprises three further divisions:

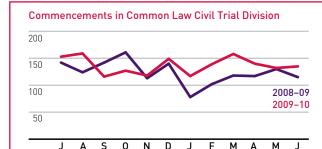
- the Commercial and Equity Division
- · the Common Law Division, and
- the Criminal Division.

Proceedings are entered into one of these divisions. Each division has a Head of Division – a Principal Judge who manages the work of the division in addition to his or her judicial duties.

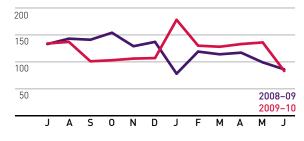
There are a number of 'Specialist Lists' within the civil divisions. These lists are each assigned a Judge who is responsible for the work of that list. The Judge in Charge gives directions to the parties from the early stages of the proceedings and will usually conduct the trial proceedings in the list.

The types of cases heard and determined by the Trial Division include:

- all cases of treason, murder, attempted murder and other major criminal matters
- civil cases involving large claims
- some appeals and reviews of decisions of lower courts and tribunals, and
- various other cases, such as applications for bail, winding up of companies, probate business and urgent applications for injunctions.



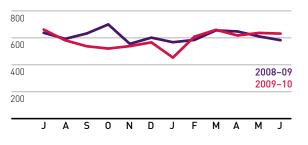
Finalisations in the Common Law Civil Trial Division



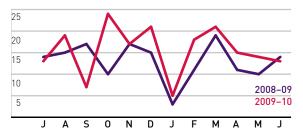


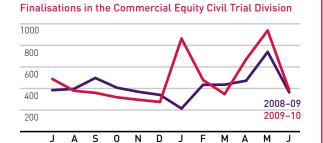
**Commencements in Commercial Equity Civil Trial Division** 

Commencements in the Civil Trial Division





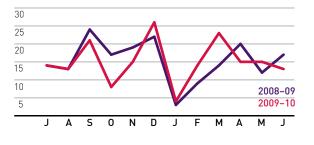




Finalisations in the Civil Trial Division



Finalisations in the Criminal Trial Division





# Our year in review

12



### The Court of Appeal

### JUDICIAL RETIREMENTS AND APPOINTMENTS

The Honourable Justice Bongiorno and the Honourable Justice Mandie commenced as Judges of Appeal in August 2009 and the Honourable Justice Harper commenced in November 2009.

The Honourable Justice Vincent retired in August 2009. The Honourable Justice Dodds-Streeton resigned in February 2010.

### STAFFING AND FUNCTIONING OF THE REGISTRY

Associate Justice Lansdowne continued to act as Registrar of the Court of Appeal. With a team of 14 staff, the Court of Appeal Registry is responsible for providing administrative services to the judiciary, legal profession, court users and the public.

As reported in the 2008-09 Annual Report, the Court resolved in November 2008 that the positions of Registrar of the Court of Appeal and Registrar of Criminal Appeals be filled by judicial registrars appointed by statute. The government has adopted this proposal and implemented it in the *Courts Legislation Miscellaneous Amendments Act* 2010, which received Royal Assent on 15 June 2010 and is required to commence by 1 January 2011.

### **INNOVATION AND CHANGE**

### **CRIMINAL PROCEDURE ACT 2009**

The *Criminal Procedure Act* 2009 *(CPA)*, which commenced operation on I January 2010, introduced a number of fundamental changes to procedures in the Court of Appeal. These changes include a restructure of statutory provisions dealing with each type of appeal, the introduction of interlocutory appeals within the criminal jurisdiction, and substantive changes to the threshold test when appealing against sentence and the test on the basis of which a conviction appeal may be allowed.

In response to the changes effected by the CPA, the Supreme Court (Criminal Procedure) Rules 2008 have been amended, Practice Statement No.1 of 2010 'Interlocutory Appeals in Criminal Proceedings' was implemented, and a six-month review of the introduction of interlocutory appeals is currently being undertaken.

### INTEGRATED COURTS MANAGEMENT SYSTEM (ICMS) PROGRAM

The new electronic case management system foreshadowed in the 2008-09 Annual Report, 'CourtView' commenced within the Court on 21 September 2009. Significant work was undertaken to prepare for commencement. The Registry has faced significant challenges operating a new system while keeping core business running, but efficiencies have begun to be realised. For example, documents can be uploaded electronically in the system which reduces reliance on the hard-copy file.

### CHANGES TO THE MANAGEMENT OF CRIMINAL APPEALS: VISIT OF MASTER VENNE

In May 2010, Master Roger Venne QC, Registrar of Criminal Appeals in the United Kingdom, visited the Court of Appeal at the invitation of the Court, to discuss the operation of his office and its management of criminal appeals. Master Venne and Justice Ashley also met with key agencies such as the Office of Public Prosecutions and Victoria Legal Aid.

The Court has resolved in principle to adopt a new form of management similar to the UK system, which emphasises earlier and more precise identification of the grounds of appeal, aid for trial counsel to draw the grounds, determination of leave on the papers and more intense listing of appeals if leave is granted. It is hoped that this system will reduce the waiting periods for the determination of criminal appeals, which are unacceptably long.

The Court is currently undertaking discussions with government, Victoria Legal Aid, the Office of Public Prosecutions and the profession to fine tune the proposals and identify a date for commencement. Commencement will require additional resources for the Court and other key agencies.

### IMPROVED MANAGEMENT OF CRIMINAL APPEALS

The Court has also taken action within existing resources in 2009-10 to reduce waiting periods in criminal matters. These steps include:

- greater utilisation of two-judge sentence appeals;
- delivery of judgment ex tempore (i.e. orally immediately, rather than in delayed written form) where possible;
- fine-tuning of procedures for hearing applications for leave to appeal against sentence, and intensified listing;
- more stringent monitoring of compliance with procedural timetables;

- continuing management of self-represented litigants through case conferences, directions hearings and referrals to the selfrepresented litigants co-ordinator, as well as referrals to Victoria Legal Aid as required;
- regular auditing of the caseload.

In the latter part of 2010, the Court will intensify listing of sentence appeals where leave has been granted (as well as applications for leave to appeal) and will seek to determine applications for leave to appeal sentence on the papers.

### COMPLEXITY OF JURY DIRECTIONS: REPORT OF THE VICTORIAN LAW REFORM COMMISSION

As identified in the 2006-07 Annual Report, the Court played a leading role in identifying concerns about the complexity of the directions a trial judge must give a jury, which led the Attorney General to referring that topic to the Victorian Law Reform Commission in January 2008. The Commission released its final report in July 2009. The government has established a process to consider and implement the recommendations, and the President of the Court of Appeal, Justice Maxwell, and the Principal Judge of the Criminal Division, Justice Coghlan, are participating in that process.

### CONTINUED UTILITY OF MEDIATION IN CIVIL APPEALS

In the period I July 2009 to 30 June 2010, orders for mediation were made in 61 civil appeals, including virtually every appeal against either a grant or refusal of leave to commence common law proceedings for damages for injury at work or in a traffic accident ('serious injury appeals'). In 20 cases the appeals settled or were partially settled (33%), in 26 cases the mediation was not successful', I and in 15 the mediation has not yet been held.

The largest sub-set of appeals in which mediation is ordered are serious injury appeals. Of the 44 serious injury appeals in which mediation was ordered, 14 have settled (32%), 16 have not settled and mediations in a further 14 such appeals are yet to be held.

I This includes appeals where the parties eventually consider that mediation would not be of utility, or the appeal was abandoned.

### CIRCUITS

The Court of Appeal undertook two circuits in 2009-10, at which both criminal and civil appeals were listed. The first was in Warrnambool in November 2009, the second in Geelong in March 2010. Circuits are a very valuable opportunity for regional communities to see the Court of Appeal at work, and for contact between the Court and regional practitioners.

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### CRIMINAL APPEAL CASELOAD

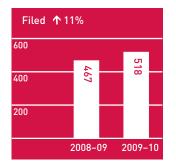
The number of criminal appeal finalisations in 2009-10 increased by 12% (in 2008-09, the number of finalisations increased by 10% compared to 2007-08). The number of initiations also increased by 11%.

The median time taken to finalise sentence appeals marginally improved (IO.6 months compared to IO.7 months last year), and the median time taken to finalise conviction appeals marginally increased (from IO.6 months to IO.7 months). Overall, the time taken to finalise criminal matters has remained virtually constant.

'Finalisation' in this context includes dispositions of appeals that do not result in a reported judgment, such as abandonments and refusal of leave to appeal.

#### CRIMINAL APPLICATIONS FOR LEAVE TO APPEAL AND APPEALS

### MEDIAN TIME FROM INITIATION TO FINALISATION IN MONTHS













### CIVIL APPEAL CASELOAD

The number of civil finalisations (which includes all dispositions as with criminal appeals) in 2009-10 increased by 19% while the number of initiations reduced by 5%. The time taken to finalise matters remained constant.

### PENDING FIGURE: LIMITATIONS OF ICMS

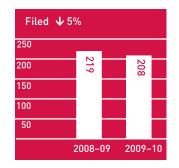
Since the implementation of ICMS and CourtView, the Court has richer data but is still not able to obtain meaningful analysis by way of reports due to a delay in commencement of the statistical arm of ICMS – Courts Data Warehouse (CDW).

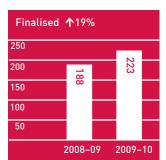
This is of particular relevance to the pending figure. The number of appeal finalisations increased by 14% overall as compared to 2008-09. In this context, it is not possible to explain the increase in the pending figure without a check and review of all pending cases, which must be a manual process given the delayed commencement of CDW<sup>2</sup>. Until a comprehensive reconciliation of the pending caseload is completed, the pending figure is an estimate.

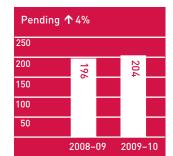
### LOOKING AHEAD

We are looking forward to further enhancements in CourtView, the full commencement of CDW, and implementing changes to the management of criminal appeals based on the UK model.

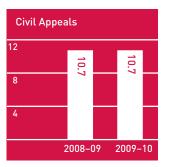
### CIVIL APPLICATIONS FOR LEAVE TO APPEAL AND APPEALS



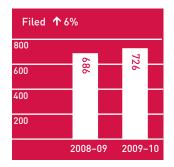


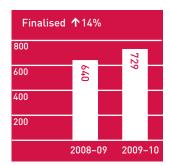


### MEDIAN TIME FROM INITIATION TO FINALISATION IN MONTHS



TOTAL APPLICATIONS FOR LEAVE TO APPEAL AND APPEALS FOR CIVIL AND CRIMINAL







# The Trial Division

### COMMERCIAL AND EQUITY DIVISION

- Admiralty List
- Technology Engineering and Construction List
- Commercial Court
- Corporations List
- Intellectual Property List
- Arbitration List
- Victorian Taxation Appeals List

### **COMMON LAW DIVISION**

**CRIMINAL DIVISION** 

- Judicial Review and
- Appeals List
- Personal Injury List
- Valuation, Compensation and Planning List
- Major Torts List
- Circuit List

### COMMERCIAL AND EQUITY DIVISION

### Principal Judge of the Division:

Justice Byrne (to 31 Jan 2010) Justice Hansen (from 1 Feb 2010)

The following Judges and Associate Judges served in the Commercial and Equity Division during the year: *Justice Byrne (to 30 May 2010)* Justice Harper (to 4 Nov 2009) Fustice Hansen Justice Mandie (to 17 Aug 2009) *Fustice Habersberger* Fustice Whelan *Fustice* Hollingworth *Fustice* Hargrave **Fustice** Pagone **Fustice** Robson **Fustice** Fudd Justice Vickery **Fustice** Davies *Fustice Croft (from 4 Nov 2009) Fustice Ferguson (from 3 May 2010)* Associate *Fustice* Mahony Associate *Fustice* Evans Associate Justice Kings (to 4 Nov 2009) Associate Justice Efthim Associate Justice Wood Associate Justice Daly Associate *Fustice* Gardiner Associate Fustice Mukhtar (from 18 Aug 2009)

During the course of the year the division farewelled three judges. Justice Byrne, who was Principal Judge of the division, retired in May 2010.

His Honour was appointed to the Court in 1991, joined the division upon its establishment in 1999, and was Principal Judge for eight years, during which time he provided outstanding leadership. Justice Mandie and Justice Harper AM were appointed to the Court of Appeal in August and November 2009 respectively. They too had served in the division since its inception and special thanks are due to their Honours for their distinguished service.

Associate Justice Kings left the Court on her appointment as a Judge of the County Court. Over the years her Honour provided significant support to the division, particularly in the management of civil listings, a role which has been taken over by Associate Justice Daly.

The division has thus suffered a significant combined loss of judicial experience. Nevertheless, the division's resources were boosted by the appointment of Justices Croft and Ferguson, and Associate Justice Mukhtar, who each immediately made a significant impact. At the time of writing the division has been further boosted by the appointment of Justices Sifris and Almond.

### FUNCTION AND STRUCTURE

The Commercial and Equity Division of the Court is focused on the disposition of cases arising out of commercial and equity matters. Although a large portion of the division's resources are dedicated to cases involving corporations and commercial litigants, the division also deals with many cases involving individuals.

The Commercial and Equity Division, over many years, has been proactive in providing specialist judicial management for appropriate cases and now incorporates ten specialist lists. Seven of these are managed within the Commercial Court. Since its inception on I January 2009, the Commercial Court has provided a focal point within the division for intensive specialist judicial management of commercial matters.

Each specialist list is managed by a Judge in Charge. The Judge in Charge is generally responsible for managing cases in their list from initiation to final disposition.

Corporations Act, taxation, and arbitration matters are automatically entered into the Corporations, Taxation, or Arbitration Lists within the Commercial Court. Litigants pursuing matters that do not fall into these categories are generally free to choose whether to initiate the matter in the Commercial Court, in a specialist list outside the Commercial Court (Technology Engineering & Construction, Intellectual Property, or Admiralty Lists), or in the division generally, depending on the type of case management required.

While litigants are increasingly choosing to initiate matters in the specialist lists, it remains true that active case management is neither necessary nor required in all cases. In many situations it is appropriate for a matter to be left to the practitioners to conduct according to the Rules of Court. Of course, this is subject to the proviso that all cases outside the Commercial Court or a specialist list receive management by Associate Judges in the Civil Management List, but of a less rigorous nature than in the actively managed judged-controlled lists.

### ACTIVITIES

Monthly meetings of the Judges and Associate Judges have continued throughout the reporting year and these have remained important for sharing ideas and experiences across the division. However, just as importantly, the division has supported the involvement of its Judges in the exchange of ideas outside the Court, including with practitioners and academia. During the year Judges of the division played central roles in two new initiatives – the Supreme Court of Victoria Commercial Law Conference and the Commercial Court Continuing Professional Development (CPD) & Continuing Legal Education (CLE) series.

The inaugural Commercial Law Conference, held in November 2009, was presented by the Court in conjunction with the University of Melbourne, the Victorian Bar, and the Law Institute of Victoria.

Judges, academics and practitioners led discussions on topics including: 'Current issues in shareholder remedies under the Corporations Act', 'Insolvent managed investment schemes – issues arising out of Timbercorp and Great Southern', 'Company director's and officer's conflicts of interest' and 'The role of the modern commercial court'.

Seminars in the Commercial Court CPD & CLE series were held in February, March and May 2010. The series was presented by the Supreme Court in conjunction with Monash University Law School, the Victorian Bar, and the Law Institute of Victoria. The inaugural seminar featured discussion on 'Issues in Case Management'. Subsequent seminars discussed 'Early Neutral Evaluation' and 'Developments in Alternative Dispute Resolution'.

The division will continue to support the involvement of its Judges in the Commercial Law Conference and Commercial Court CPD & CLE series in the 2010-11 year.

Over the course of the year, the division has continued to focus on developing measures for the specialist management of commercial litigation. Litigant demand for active judicial management of cases has continued to increase and the division has sought to meet demand and lead in this area. With the High Court's clear recognition that 'case management is now an accepted aspect of the system of civil justice administered by courts in Australia' (see *Aon Risk Services Australia Ltd v ANU* [2009] HCA 27), the division's focus in this area has proven important. The progress of the Civil Litigation Bill 2010 (Vic), introduced to Parliament late in the reporting year, is also being observed with interest.

Significantly, *Practice Note No 1 of 2010 – Commercial Court* commenced on 1 January 2010. The Practice Note comprehensively describes the objectives, practices and procedures of the Commercial Court and consolidates and supersedes a range of practice notes issued in previous years. The Practice Note provides an important central resource for all Commercial Court users, and familiarity with it is a must for all practitioners involved with Commercial Court cases.

During the year the Commercial Court expanded to incorporate two new specialist lists: List F (Taxation) and List G (Arbitration). List F commenced in September 2009 under the management of Justice Davies. The list deals with cases involving a tax dispute, including tax recovery actions, damages actions against taxation advisors, and disputes with respect to GST, and has taken over cases that were formerly on the Victorian Taxation Appeals List. List G (Arbitration) has been managed by Justice Croft since it commenced in December 2009 and provides specialist management for all arbitration related proceedings.

Over the past year the Technology, Engineering and Construction (TEC) List, managed by Justice Vickery, has instituted some notable innovations in relation to discovery. The list has adopted standard operating procedures in relation to both general discovery and discovery by electronic transfer of documents. The aim is to reduce the burden and cost of large scale discovery. The procedures are described in the TEC List section of this Report.

Although specialist managed lists with the associated active judicial case management are a central feature of the division, it is recognised that such lists require the devotion of significant resources. Dedication of the division's resources to specialist list judicial management reduces resources available to the many cases that remain outside specialist lists. Also, specialist list Judges are inevitably required to invest time attending to administration of their lists. These points were recognised by Justice Pagone in his address to the Commercial Law Conference in November 2009.

Of course, in order for the division to function properly, it must have adequate resources and it must manage its resources effectively. To this end, the division's Principal Judge maintains awareness of the relative resources expended in the general work of the division and each of the specialist lists. As the division's work and specialist lists have grown, so too has this task of overall management. With this is mind, a Legal and Policy Officer was engaged for the Commercial and Equity Division during the year. The officer's primary task is to assist the Principal Judge in the management of the division's resources, and to assist with measures that may allow Judges to perform their role more efficiently and effectively.

### PERFORMANCE

#### **OVERALL INITIATIONS AND FINALISATIONS**

	2008-09	2009-10	Variance
Initiations	5,883	5,435	-8%
Finalisations	5,054	5,796	15%
Pending	4,460	4,099	

It is pleasing to report that overall, the statistics reflect a productive year for the division. Over the course of the reporting year 5,435 matters were initiated and 5,796 matters were finalised. As at 30 June 2010, 4,099 matters were pending. In comparison to the 2008-09 reporting year, there was an 8% decrease in initiations, a 15% increase in finalisations, and an 8% overall reduction in the number of pending cases.

#### CASES IN SPECIALIST LISTS AT 30 JUNE

	2008-09	2009-10	Variance
Matters in the Division	4,460	4,099	-8%
Matters in specialist lists	550	738	34%

In the period between 30 June 2009 and 30 June 2010, notwithstanding that there was a decrease in the overall number of cases pending, there was a 34% increase in the number of cases pending in the specialist lists of the division. The proportion of cases in the specialist lists of the division as at 30 June has expanded from approximately 12% of all cases in 2008-09, to 18% of all cases in 2009-10. This increase reflects the fact that litigants are increasingly choosing to initiate matters in the specialist lists. On the other hand, it should be noted that a significant portion of the division's work still occurs outside the specialist lists.

### INTERVAL BETWEEN LAST DATE OF HEARING AND DATE OF JUDGMENT

	2008-09	2009-10	Variance
Same day	43	33	-23%
1 day to 4 weeks	77	102	32%
4 weeks to 8 weeks	29	17	-41%
8 weeks to 13 weeks	20	29	45%
13 weeks to 6 months	24	17	-29%
6 months to 9 months	8	6	-25%
9 months to 12 months	1	1	0%
Greater than 12 months	0	2	200%
Total	202	207	2%

As has been noted in previous Annual Reports, it is important that judgments are delivered by the Court as soon as is practicable after hearings. In light of this concern, the above table summarises the interval between the last date of hearing and the date of decision for cases that proceeded to judgment. The information in the table is subject to the same substantial qualifications as in previous years. That is, the analysis is based on judgments sent to the Supreme Court Library; it includes interlocutory judgments but it does not reflect the case management work of Associate Judges, does not provide an indication of cases resolved prior to judgment, and does not include many ex tempore judgments.

Pleasingly, the figures reveal that the majority of decisions (approximately 75%) were delivered within eight weeks of hearings being finalised. The vast majority of reserved decisions (approximately 95%) were delivered within six months of hearing. There were six judgments that were delivered within nine months, one within twelve months, and two that took over a year to be finalised. Though these delays are regrettable, it must be borne in mind that certain cases involve extremely complex matters of fact or law such that it is not possible to produce a reasoned decision in a short time frame.

### SPECIALIST LISTS

### Admiralty List

### Judge in Charge:

Justice Byrne (to Dec 2009) Justice Pagone (from Jan 2010)

The Admiralty List continues to be an important, aspect of the Court's jurisdiction to deal with cases brought under the *Admiralty Act 1988* (Cth) or which otherwise concern maritime commercial activities.

#### CASES INITIATED AND FINALISED IN THE ADMIRALTY LIST

	2008-09	2009-10	Variance
Initiations	2	5	3
Finalisations	3	8	5
Pending	6	3	-3

### Technology, Engineering and Construction (TEC) List

### Judge in Charge:

### Justice Vickery

The TEC List has continued to develop since its establishment on 19 June 2009. New and innovative procedures have been introduced to supplement its guiding *Practice Note No 2 of* 2009 – *The Technology, Engineering and Construction List* (which is to be found in the TEC List Handbook and on the TEC List page of the Supreme Court of Victoria website).

The new procedures, which have been developed in consultation with leading specialist members of the legal profession, industry and academic staff, have focused on discovery issues.

Large scale computer use in TEC projects is the norm. The power of the facility is an enormous advantage but it also brings the capacity to generate documents on a vast scale. Even in relation to medium scale TEC projects, the creation of over 10,000 emails is not uncommon. In one case before the TEC List in 2009, it was foreshadowed that 2.7 million documents would be discovered. The case subsequently settled.

This malady has obvious implications for TEC litigation. Discovery in its traditional form can be costly and time-consuming, and may be exploited as a tactical weapon to delay, evade, harass and overwhelm. The outcome of litigation may turn on a party's ability to endure the process, rather than on the merits of its case. This is not in the interests of justice.

In 2009, the TEC Users' Group set about the task of reforming the processes of discovery for proceedings in the TEC List. The outcome has been the development of two TEC List Standard Operating Procedures (SOPs): *TEC List SOP No 3 of 2009 'General Discovery'*, and *TEC List SOP No 4 of 2009 'Production by Electronic Transfer of Documents'*. The SOPs are now in use and are accessible on the TEC List webpage.

A principal object of TEC List SOP No 3 is to provide for 'standard disclosure' of documents which are expected to be actually used at the trial of the proceeding, either to prove the case of one party, or to defend allegations made by another party. Under SOP No 3, these documents are to be discovered 'as of right'.

SOP No 3 identifies a second category of documents as the 'specific disclosure' category. These documents may only be obtained on application to an Associate Judge, who may order discovery on terms, such as discovery limited to classes of documents and the costs of any necessary search.

Another feature of SOP No 3 is the early convening of a Discovery Conference to achieve agreed protocols for discovery and the use of ADR where appropriate for the resolution of discovery issues.

TEC List SOP No 4 provides for a process which closely aligns to the reality of the way in which documents are managed on modern TEC Projects. It mandates the use of search engines in the discovery process. It is believed that SOP No 4 is a world first. The procedure has not been utilised in any other common law jurisdiction to date as far as the Court is aware.

Under the procedure provided in SOP No 4, where all project documents of a party to a TEC Project are maintained in electronic form, they are pooled in a central repository managed by the party. Rather than requiring the party to painstakingly search out all documents which may be relevant to the particular dispute, it simply transfers the whole repository in a searchable form to the other party by email, USB or CD.

The receiving party then undertakes its own electronic searches of the transferred material to seek out the documents it wishes to use in the litigation, for example, by searching by reference to a date or a range of dates surrounding a controversial conversation, or by reference to relevant personnel or subject matter.

Privilege for documents which fall within the recognised protected classes of privileged documents is preserved pursuant to the procedures prescribed.

The principal advantages of discovery by Electronic Transfer of Documents are: (i) saving the costs of the initial search by the providing party; (ii) saving costs of review by the receiving party by utilisation of 'smart' search technology; and (iii) minimisation or elimination of discovery issues on questions of relevance. Potentially massive cost reductions in discovery may be achieved by this process. In large multi document cases, the savings to be achieved for the participating parties could run into the millions.

The process of electronic transfer of documents may only be employed with the mutual consent of the parties.

Further protocols for the implementation of early neutral evaluation of matters, as an aid to achieving settlement, either as a supplement to or in substitution for mediation, is also under consideration for use in the TEC List. The outcome will be reported in the next Annual Report.

#### CASES INITIATED AND FINALISED IN THE TEC LIST

	2008-09	2009-10	Variance
Initiations	9	17	88%
Finalisations	14	15	7%
Pending	24	26	8%

### COMMERCIAL COURT

### Judge in Charge:

### Justice Pagone

The Commercial Court has now had a full year of operation since last year's Annual Report. It was established on 1 January 2009 as the successor of the Commercial List and the Corporations List. Any commercial proceeding or corporations case may be entered into the Commercial Court unless it is a case that is more suitable to be entered into another specialist list.

Commercial Court cases are managed by a Judge from commencement of the proceeding and will usually be heard at trial by that Judge. Five Judges are its regular complement with four Associate Justices to assist in interlocutory and other proceedings. Justices Pagone, Judd, Croft, Davies and Ferguson were the Judges in the Commercial Court as at 30 June 2010. Justices Byrne and Hargrave also sat as Judges of the Commercial Court during the last year. Within the Commercial Court there are also specialist lists to deal with corporations cases (Justices Davies and Ferguson), taxation cases (Justices Pagone and Davies) and commercial arbitration (Justice Croft).

The last year has seen a striking increase in the work begun and completed in the Commercial Court. In total there were 1,456 initiations in the year 2009-10 compared with 1,364 the previous year. Finalisations in the 2009-10 year numbered 1,275 compared with 1,240 the previous year. Of all cases in the Commercial Court the single largest group were corporations cases. Non corporations cases in the Commercial Court increased significantly in the 2009-10 year as compared to the previous year. In all there were 243 Commercial Court cases (other than corporations cases) in the 2009-10 year as compared with 136 the previous year. The finalisations during the same period increased from 86 to 131.

#### COMMERCIAL COURT ALL

	2008-09	2009-10	Variance
Initiations	1364	1456	7%
Finalisations	1240	1275	3%
Pending	512	693	35%

#### COMMERCIAL COURT EXCLUDING CORPORATIONS

Initiations	136	243	79%
Finalisations	86	131	52%
Pending	152	264	74%

The activities of the Commercial Court have also increased to reach the profession and the public in many ways. In 2009 the first annual Supreme Court conference was held in the Banco Court. It was presided over by the Chief Justice and included speakers from the Bench, Bar, solicitors and academia. It is a tangible measure adopted by the Court to provide effective leadership in the field of continuing education and the development of commercial law. That conference was organised with the Centre for Corporate Law and Securities Regulation at the Melbourne University Law School with the sponsorship of the Victorian Bar and the Law Institute.

The Court has also begun a series of continuing legal education seminars at the Monash University City Campus with the assistance and support of the Bar and the Law Institute. Conferences have focused on the following topics:

- issues in case management
- · early neutral evaluation; what clients want and what cases need, and
- ADR: developments you need to know about.

The Commercial Court website continues to be a significant means by which the Court provides timely information to practitioners through constant updates and frequent newsletters to subscribers.

### **Corporations List**

Judges in Charge:

*Justice Robson (to November 2009) Justice Davies (from December 2009)* 

#### CASES INITIATED AND FINALISED IN THE CORPORATIONS LIST

	2008-09	2009-10	Variance
Initiations	1228	1214	-1%
Finalisations	1153	1143	-1%
Pending	354	425	20%

List E of the Commercial Court – the Corporations List – remained busy throughout the year. Initiations and finalisations within the list remained relatively steady in comparison with the 2008-09 reporting year, however the number of pending matters as at 30 June increased by 20%.

Notwithstanding the high caseload, changes to the management of the list were successfully implemented. In November 2009, Justice Robson handed responsibility for management of the list to Justices Judd and Davies. Justice Robson's contribution to the list over the period of August 2007 to December 2009 was of great value to the Commercial and Equity Division and litigants involved in corporations matters. In May 2010, Justice Ferguson, on joining the Court, was also given joint responsibility for the list. The allocation of responsibility for the Corporations List amongst Justices Judd, Davies and Ferguson is a significant step for the division and the Court. This allocation of judicial resources reflects the growing emphasis that the Court is placing on specialist management of commercial matters.

Initiatives implemented this year have considerably improved the functioning of the Corporations List. These include:

- · the re-establishment of the Corporations List Users' Group
  - The Group aims to encourage communication between practitioners and Judges.
  - Its focus is on ensuring that the List operates as expeditiously and economically as possible, in the interests of both litigants and the Court.
- the listing of urgent corporations matters before a Judge in the Corporations List or Commercial Court
  - Any urgent applications dealing with corporations matters are now allocated by the Commercial Court Coordinator to the Judges of the Commercial Court.
  - These urgent corporations matters will not be sent to the Practice Court, unless completely unavoidable, and will either go to an Associate Justice or a Judge of the Commercial Court.

### Intellectual Property List

#### Judges in Charge:

### Justice Harper (to December 2009) Justice Hollingworth (from January 2010)

Upon the appointment of Justice Harper to the Court of Appeal, Justice Hollingworth was appointed Judge in Charge of the Intellectual Property List.

Due to federal arrangements, there are few cases in the Intellectual Property List. There are currently two cases in the list; a third case entered the list during the year and was settled at mediation.

#### CASES INITIATED AND FINALISED IN THE INTELLECTUAL PROPERTY LIST

	2008-09	2009-10
Initiations	0	2
Finalisations	3	1
Pending	1	2

### **Arbitration List**

On I January 2010 the new Arbitration List – List G in the Commercial Court – was established.

### Judge in Charge:

### Justice Croft

All arbitration proceedings, any applications in arbitration proceedings and any urgent applications with respect to arbitration matters are directed to the Arbitration List. The services of this list are available at all times – twenty-four hours a day, seven days a week.

The Court's jurisdiction and hence the scope of operation of the Arbitration List extends to both domestic and international arbitrations. Domestic arbitrations are subject to the *Commercial Arbitration Act* 1984 (Vic) and international arbitrations are subject to the *International Arbitration Act* 1974 (Cth). The Court has exclusive jurisdiction with respect to domestic arbitration matters.

The purpose of the Arbitration List is to facilitate and support arbitration in Victoria. The facilitative and supportive role of the Court with respect to arbitration and the nature of Court assistance, supervision and enforcement which is available with respect to both domestic and international arbitration is set out in Practice Note No. 2 of 2010 – *Arbitration Business* (published 17 December 2009). The practice note also sets out the procedural requirements for applications for Court assistance, supervision and enforcement for the assistance of parties and their legal practitioners.

Urgent applications have been heard in Arbitration List matters – including hearings outside normal Court hours and matters which have been significantly expedited both in the scheduling of hearing times on short notice and the provision of reasoned written judgments within a very short time after the conclusion of the hearing of the matter.

Since the Arbitration List was established, three matters of significance in terms of both arbitration law and practice have been heard and judgments published. They are:

- *Arnwell Pty Ltd v Teilaboot Pty Ltd & Ors* [2010] VSC 123, where issues were raised regarding court intervention in procedural decisions made by an arbitral tribunal.
- Thoroughvision Pty Ltd v Sky Channel Pty Limited & Anor [2010]
  VSC 139, which involved an application for leave to appeal an arbitral award under s. 38 of the Commercial Arbitration Act 1984 (Vic) and an application to set aside an award for misconduct under s. 42 on the basis of insufficient reasons provided in the award.
- Oakton Services Pty Ltd v Tenix Solutions IMES Pty Ltd [2010] VSC 176, a successful application to stay court proceedings in favour of arbitration.

Other matters have been commenced and resolved at interlocutory stages.

Another feature or consequence of the establishment of List G is that a focus for enquiries with respect to arbitration matters has been provided. The associates to the judge in charge have received many enquiries from legal practitioners and have been able to provide appropriate assistance.

### **Victorian Taxation Appeals List**

### Judge in Charge:

Justice Mandie (to August 2009) Justice Davies (from August 2009)

Commercial Court List F has existed since September 2009 to provide for the specialist management of cases involving taxation matters. The list took over cases formerly managed by Justice Mandie on the Victorian Taxation Appeals List, after His Honour was appointed to the Court of Appeal. Since its implementation, List F has been managed by Justice Davies. Over the course of the year three cases have been heard and determined and as at 30 June 2010, there are four cases in the list for trial.

### CASES INITIATED AND FINALISED IN THE TAXATION APPEALS LIST

	2008-09	2009-10	Variance
Initiations	6	7	16%
Finalisations	8	3	-63%
Pending	4	4	0%



# The Trial Division | COMMON LAW DIVISION

### COMMERCIAL AND EQUITY DIVISION

- Admiralty List
- Technology Engineering and Construction List
- Commercial Court
- Corporations List
- Intellectual Property List
- Arbitration List
- Victorian Taxation Appeals List

### COMMON LAW DIVISION

- Judicial Review and Appeals List
- Personal Injury List
- Valuation, Compensation and Planning List
- Major Torts List
- Circuit List

### **CRIMINAL DIVISION**

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### **COMMON LAW DIVISION**

### Principal Judge in Charge:

### Justice Osborn

The following Judges and Associate Judges served as members of the Common Law Division during the year:

Justice Bongiorno (to 16 August 2009)

Fustice Osborn

*Fustice Williams* 

Fustice Kaye

Fustice Cavanough

Fustice 7 Forrest

**Fustice** Bell

Justice Kyrou

Fustice Beach

*Fustice T Forrest (from 12 November 2009)* 

Justice Emerton (from 22 November 2009)

Associate Justice Evans

Associate Justice Lansdowne

Associate Justice Daly

Associate Justice Zammit (from 23 March 2009)

The Common Law Division's work covers two principal areas. It exercises the Court's supervisory jurisdiction over other courts, tribunals, public officials and instruments of government. In association with this role it also deals with appeals on questions of law from Magistrates' Courts and VCAT. It also exercises the Court's jurisdiction in tort and contract claims (including claims for damages for personal injury, professional negligence, defamation, nuisance and misleading and deceptive conduct). In addition, contempt matters are usually dealt with by the Common Law Division.

### HIGHLIGHTS

The decision of the High Court in *Kirk* v *Industrial Relations Commission of New South Wales* (2010)239 CLR 531 has reaffirmed the constitutional significance of the Court's supervisory jurisdiction. The division's work in that area continued to grow and has been stimulated by the *Charter of Human Rights and Responsibilities Act* 2006. By way of example, Judges of the division dealt with applications by a prisoner at Tarrengower for injunctive relief giving her access to IVF treatment. This case illustrates the Court's ongoing role in responding to the needs of society and new developments in the law.

The division has also heard a series of significant environmental law cases relating to timber harvesting in East Gippsland, a boat ramp proposal at Mallacoota and a variety of other matters.

In the tort area the division has seen a significantly higher level of personal injury litigation than has been the case for many years, including many civil jury matters.

The division has also heard high profile defamation and wrongful dismissal cases.

It has dealt with individual cases involving extended evidence running into many months, including land valuation cases and a case involving alleged assaults and other misconduct by police.

The division is managing the group action brought by residents affected by an escape of landfill gas at Cranbourne and has put in place initial measures for the management of a number of very substantial group claims which have been issued in respect of the consequences of the 2009 Black Saturday bushfires.

The uptake of work in the specialist lists established at the commencement of 2009 has continually increased.

### **VOLUME OF WORK**

In 2009-10, a total of 1643 actions were initiated in the division. This represents an 11% increase on the workload from the previous year. The finalisation rate remained relatively steady.

The division's work has been undertaken with the significant support of the Associate Judges. Contributions were also made by judges of other divisions including Justices Nettle, Byrne, Habersberger, Hargrave, Pagone, Robson, Vickery and Croft.

### CASES INITIATED AND FINALISED IN THE COMMON LAW DIVISION

	2008-09	2009-10	Variance
Initiations	1,478	1,643	11%
Finalisations	1,455	1,476	1%
Pending	1,553	1,782	15%

### Judicial Review and Appeals List

### Judges in Charge:

Justice Cavanough Justice Kyrou

### Associate Judges in Charge:

Associate Justice Lansdowne Associate Justice Daly

The Judicial Review and Appeals List was established by Practice Note No. 4 of 2008 with effect from I January 2009, as part of the Court's general commitment to managing proceedings as efficiently and effectively as possible. Modified procedures developed over the first nine months of operation of the list. These were consolidated in a substitute Practice Note No. 4 of 2009 which took effect from 2 November 2009.

The practice note contains a number of measures to avoid delays and fragmentation in the management of judicial review and appeals cases. In particular, the standard directions and the court book requirements have proven very successful.

Proceedings in the list include:

- judicial review applications made pursuant to the *Administrative Law Act* 1978 or Order 56 of the *Supreme Court (General Civil Procedure) Rules* 2005
- appeals from a final order of the Magistrates' Court on a question of law pursuant to s. 109 of the *Magistrates' Court Act 1989* (civil proceedings) or pursuant to s. 272 of the *Criminal Procedure Act* 2009 (criminal proceedings)
- application for leave to appeal, and appeals, from an order of VCAT on a question of law pursuant to s. 148 of the *Victorian Civil and Administrative Tribunal Act 1998*, and
- references of questions of law under s. 33 of the *Charter of Human Rights and Responsibilities Act* 2006.

### Judicial Review and Appeals List continued

List matters are managed in the first instance by the Associate Judges in Charge, who are responsible for:

- the hearing and determination of applications for leave, applications for orders nisi for review, applications for summary dismissal and stays, and settling questions of law and grounds of appeal, and
- fixing timetables and otherwise controlling the progress of the proceeding to ensure that the matter proceeds quickly and efficiently.

Depending upon the circumstances of the case and the availability of counsel, the objective is to list the majority of matters for hearing within three to four months of the first directions day.

The list is busy and growing. Between 1 July 2009 and 30 June 2010, 173 matters were entered in the list.

Cases in which issues of public importance were decided included *WBM v Chief Commissioner of Police* [2010] VSC 219 concerning the interpretation of Victorian Acts of Parliament in light of the *Charter of Human Rights and Responsibilities Act* 2006, *Pumpa v Goulburn-Murray Rural Water Corporation* [2010] VSC 169 concerning the circumstances in which compensation can be obtained under the *Water Act* 1989 for salinisation or other damage arising from flows of water, and *BVB v Victims of Crime Assistance Tribunal* [2010] VSC 57 concerning compensation from the Victims of Crime Assistance Tribunal (VOCAT) for injuries inflicted by young children.

### CASES INITIATED AND FINALISED IN THE JUDICIAL REVIEW AND APPEALS LIST

	2008-09	2009-10	Variance
Initiations	108	173	60%
Finalisations	17	99	482%
Pending	91	127	40%

### **Personal Injuries List**

### Judges in Charge:

Justice Williams Justice Kaye Justice J Forrest Justice Beach

### Associate Judges in Charge:

Associate Justice Kings (to 4 November 2009) Associate Justice Daly (from 5 November 2009)

The Personal Injuries List was established with effect from 1 January 2009. Proceedings in the list include:

- personal injury claims in which a serious injury certificate has been granted under the *Transport Accident Act 1986* (TAA) by the Transport Accident Commission (TAC)
- personal injury claims in which a serious injury certificate has been granted under the *Accident Compensation Act 1985* (ACA) by the Victorian WorkCover Authority (VWA)
- personal injury claims in which a court has given leave to commence proceedings under the TAA or the ACA
- proceedings brought by the TAC under s. 104 of the TAA
- proceedings brought by VWA under s. 138 of the ACA, and
- proceedings in which plaintiffs allege that they are suffering from a terminal disease.

The list is largely managed by the Associate Judge in Charge. Trial dates are allocated at the first directions hearing. Experience shows that the provision of trial dates at the first directions hearing encourages early appropriate dispute resolution.

Since its commencement, the list has continued to grow. It is strongly supported by the profession. At one stage during the year four civil juries in the list were running at the same time.

Whilst significant numbers of cases continue to be resolved by appropriate dispute resolution processes other than trial, it is anticipated that the work of the list will continue to grow in the coming year. The limiting feature may be the Court's ability to provide sufficient civil jury courts to deal with all cases as expeditiously and efficiently as the parties are entitled to expect.

#### CASES INITIATED AND FINALISED IN THE PERSONAL INJURIES LIST

	2008-09	2009-10	Variance
Initiations	221	320	45%
Finalisations	22	141	541%
Pending	199	337	69%

### Valuation Compensation and Planning List

### Judges in Charge:

Justice Cavanough (to 10 May 2010) Justice Emerton (from 11 May 2010)

### Associate Judge in Charge:

### Associate Justice Daly

The Valuation Compensation and Planning List manages matters involving the valuation of land, compensation for resumption of land, planning appeals and disputes involving land use or environment protection. Compared with the previous year, initiations fell from 28 to 22 and finalisations declined slightly from 21 to 20. As in the previous two years, time needed to be devoted to various substantial cases relating to the compulsory acquisition of land for the purposes of the Craigieburn bypass and other roadwidening works in its vicinity.

Cases in which issues of public importance were decided included *Roads Corporation v Love* [2010] VSC 154 concerning the effect of offers of compromise in relation to the costs of land compensation claims and *Friends of Mallacoota Inc v Minister of Planning & Minister for Environment and Climate Change* [2010] VSC 222 concerning the ability of the Planning Minister to take into account social and economic considerations in making an assessment under the *Environmental Effects Act* 1978.

### CASES INITIATED AND FINALISED IN THE VALUATION COMPENSATION AND PLANNING LIST

	2008-09	2009-10	Variance
Initiations	28	22	-21%
Finalisations	21	20	-5%
Pending	33	37	12%

#### **Major Torts List**

Judge in Charge: *Justice Kaye* 

Associate Judge in Charge:

#### Associate Justice Evans

The Major Torts List conducts directions hearings at 9.30 am every second Friday. Justice Kaye is the judge in charge of it, and when his Honour is absent, either Justices Beach or J Forrest sit in his absence.

The Major Torts List deals with a large variety of claims. The main personal injury cases in the list are medical negligence actions. However, there are also a number of common law claims for damages arising out of motor vehicle accidents and industrial accidents. In addition, the list has a number of cases brought by plaintiffs claiming damages for sexual or other abuse suffered by them when they were children.

During the last twelve months there has been a marked increase in the number of defamation proceedings commenced in the list. By their nature, those proceedings commonly involve interlocutory disputes, particularly about pleadings.

The list is used by both metropolitan and country solicitors. In particular, it manages a number of cases which are to be heard in Mildura.

The list is designed to facilitate and expedite the passage of tortious claims to trial. Accordingly, the Court has attempted to be responsive to legitimate requirements of the profession. As a result, procedures have, from time to time, been modified, to meet the particular exigencies of different classes of cases. From time to time, meetings are held with members of the profession about particular issues which might arise in relation to certain types of cases.

#### CASES INITIATED AND FINALISED IN THE MAJOR TORTS LIST

	2008-09	2009-10	Variance
Initiations	44	60	36%
Finalisations	47	76	62%
Pending	125	131	5%

### **Circuit Sittings**

Judge in Charge: Justice J Forrest

Associate Judge in Charge: Associate Justice Daly

The Supreme Court of Victoria sits at twelve regional centres: Geelong, Bendigo, Ballarat, Sale, Latrobe Valley (Morwell), Wangaratta, Shepparton, Warrnambool, Wodonga, Mildura, Hamilton and Horsham.

In 2009-10 civil sittings were held at Mildura, Hamilton, Warrnambool, Wangaratta, Wodonga, Bendigo, Sale and Shepparton.

### Proceedings

There were 173 civil proceedings initiated out of the regional courts in 2009-2010 (slightly less than in the previous year). The majority of the civil business involves claims arising from personal injuries or death.

### **Civil Circuit list**

The Chief Justice approved the introduction of a circuit management list from I February 2010 after consultation with the profession and the Principal Judge of the Common Law Division. All cases issued out of regional courts are now managed by the Associate Judge responsible for circuits (Associate Justice Daly) and, where necessary, the circuit Judge (Justice J Forrest). This innovation provides regional practitioners with ready access to an officer of the court familiar with circuit business and ensures that, where practicable, cases can be included within the next available circuit sitting.

Given that the Supreme Court generally conducts civil sittings only once a year in each regional centre (with the exception of Bendigo and Warrnambool) it is imperative for litigants that their cases be closely managed so that they can, where possible, be listed in the next available sitting. This initiative has been particularly well received by regional practitioners.

### Associates' manual

With the assistance and input of a number of associates, the circuit chapter within the Associates' Manual was extensively revised and updated and now provides a valuable resource for judges, associates and tipstaves.

#### Administrative support

Judges and their staff involved in civil sittings in regional courts have, without fail, spoken highly of the assistance and support received from deputy prothonotaries and their staff. This has ensured the smooth running of the circuits, particularly with complex and lengthy trials.

#### Claims arising out of the 2009 bushfires

Civil proceedings have been issued (both as class actions and individual claims) in respect of the Beechworth, Coleraine, Horsham, Pomborneit and Kilmore East bushfires. Whilst these cases are being managed out of Melbourne, the trials will, where practicable, take place at the regional courthouse closest to the scene of the respective fires. It is anticipated that the first of these cases may be heard in mid 2011. It is inevitable that these cases will place great pressure (both administratively and logistically) upon the Court, particularly those involving group proceedings and multiple party litigation. There will necessarily be a considerable call upon the resources of the Court in respect of the trials of these claims.

#### ICMS

Regional court staff now have access to ICMS. The court's policy is to ensure that all documents filed after the introduction of ICMS are scanned and uploaded, and form part of the electronic court file. This is intended to enable court staff to have ready access to circuit files, even though the physical file is kept in Melbourne. Although there have been problems with this system it should, once those issues are resolved, provide regional courts with far greater access to and familiarity with the cases issued out of their courts. This will enable the Court staff to deal with inquiries from the parties with far greater confidence and expertise.

#### Challenges

Challenges were experienced in several areas. The taking of evidence by video link is now common in civil trials and it is essential that such links be fully operative in circuit courts. Problems have been experienced at Mildura on a number of occasions in the course of trials. Not only does this cause inconvenience to the court and the jury but inevitably involves additional cost and expense. It is imperative that the audio visual link facilities in regional courts be optimal.

At Sale, there are problems with the positioning of the dock and the use of the upstairs balconies for the public. These issues are being addressed.

#### Summary

As has been observed by the Chief Justice and other judges, the Supreme Court is a court for all Victorians, wherever they live, not just the citizens of Melbourne. The Court is committed to ensuring that it provides access to justice for those residing in regional Victoria.

#### CIRCUIT COURT CASES COMMENCED

	2008-09	2009-10	Variance	Variance
Ballarat	13	13	0	0%
Bendigo	18	23	5	28%
Geelong	5	19	14	280%
Horsham	3	0	-3	-100%
La Trobe	0	8	8	100%
Mildura	34	40	6	18%
Morwell	3	0	-3	-100%
Sale	1	0	-1	-100%
Shepparton	6	8	2	33%
Wangaratta	35	35	0	0%
Warrnambool	40	13	-27	-68%
Wodonga	24	14	-10	-42%
Total	182	173	-9	-5%

#### LOOKING FORWARD

The principal challenges confronted by the division in the immediate future relate to the management and conduct of the bushfires litigation and other long cases.

It will be necessary to continue to ensure that litigation which presents novel facts and unusual challenges is dealt with in a just, timely and user-friendly manner.

This is a time of continuous growth and change in the work of the Common Law Division.



# The Trial Division | CRIMINAL DIVISION

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#### COMMERCIAL AND EQUITY DIVISION

- Admiralty List
- Technology Engineering and Construction List
- Commercial Court
- Corporations List
- Intellectual Property List
- Arbitration List
- Victorian Taxation Appeals List

#### **COMMON LAW DIVISION**

- Judicial Review and Appeals List
- Personal Injury List
- Valuation, Compensation and Planning List
- Major Torts List
- Circuit List

#### **CRIMINAL DIVISION**

#### **CRIMINAL DIVISION**

#### **Principal Judges**

Justice Cummins (Until 12 July 2009) Justice Bongiorno (From 13 July 2009) Justice Coghlan(From 27 August 2009)

The following Judges served in the Criminal Division during the year: *Fustice Weinberg* Justice Bongiorno Justice Harper **Fustice Cummins Fustice** Byrne Fustice Osborn **Fustice Williams** Fustice Kaye Fustice Whelan *Fustice* Hollingworth Justice King **Fustice** Curtain **Fustice** Coghlan Justice J. Forrest **Fustice** Lasry **Fustice Beach Fustice T. Forrest** 

#### **OVERVIEW**

The 2009-IO reporting period has been one of change for the Criminal Division. On I January 2010 both the *Evidence Act* 2008 and *Criminal Procedure Act* 2009 came into effect. The Court issued Practice Note No. 4 of 2010 to address the changes in terminology wrought by the *Criminal Procedure Act* and to provide for the evidentiary notice requirements introduced by the *Evidence Act*.

Post Committal Directions Hearings (formerly Section 5 Hearings) are held within 14 days of a person being committed to trial in the Supreme Court and continue to play an important part in the judicial management of cases. These hearings are vital to the early identification of issues and whether or not the matter is resolvable. The increase in the number of pleas as part of the overall workload of the division could, as stated in last year's annual report, be attributable in part to such case management.

The Court, as the superior criminal trial court of the State, continues to hear matters beyond its exclusive homicide jurisdiction including fraud, sexual offences and complex drug trafficking matters. The Court's rulings on matters of evidence and procedure are binding on other Victorian Courts and the Court considers it of utmost importance that it continues to hear such cases.

The Criminal Division's workload is not confined to trials. Increasingly, the division is being required to hear new types of applications arising out of new and various kinds of legislation. One such example that has had a considerable impact on the workload of the division are applications under the *Serious Sex Offenders* (*Detention and Supervision*) Act 2009. Commencing on I January 2010, this legislation authorises a regime where the Director of Public Prosecutions can make an application for a detention order against a specific type of offender, which, if granted by the Court, detains the offender in custody after their sentence has been served.

### The Trial Division continued

The Supreme Court has sole jurisdiction in determining detention order applications. Since I January 2010, three applications and one interim detention order application have been made. If the number of applications continue to be made in this quantity, it will become necessary for the Court to have more resources to enable the applications to be heard in a timely manner.

The Criminal Division wishes to acknowledge the service of Justice Cummins as Principal Judge of the division from January 2007 until July 2009 and that of Justice Bongiorno prior to his appointment to the Court of Appeal.

#### **REGIONAL SITTINGS**

The division recognises the importance of matters being heard in the regional courts of origin and for matters not to be transferred to Melbourne expert in cases of legal necessity. This affords regional communities an important opportunity to witness the criminal justice system in process.

During this reporting period the division sat in Wodonga, Shepparton, Bendigo, Geelong and Ballarat.

#### SIGNIFICANT TRIALS

A number of significant trials of a complex and lengthy nature were concluded during this reporting period. This included two trials which involved persons charged with culpable driving, a number of murder trials which ran well over 20 days in length, as well as some lengthy drug trafficking trials. Most required extensive judicial management and involved a number of published rulings.

#### NUMERICAL STATE OF THE LIST

During this reporting year the division heard to completion 38 trials involving 43 persons, and 43 plea hearings involving 63 persons. Overall this equates to 81 matters involving 106 persons being dealt with by the division.

This represents a decrease in matters dealt with by the division as compared to the last reporting period in which a total of 104 matters involving 154 persons were dealt with. Interestingly, this reporting period, like the previous reporting period, has maintained an increased number of pleas at just over 50 per cent of the division's overall trial workload. This compares with the 2007-08 reporting period during which the number of pleas was 43 per cent of the total trial workload, made up of 33 plea hearings involving 39 persons from a total of 89 matters involving 111 persons being heard.

As at I June 2010 there were 74 matters in the criminal list (this list includes cases that are both part heard and pending). This is an increase of 10 cases compared with I June 2009 where there were 64 cases, but is less than the 82 cases in the criminal list as at 1 June 2008.

Reasons for delay in the criminal justice system are attributable to many complex factors. It may be that the reductions in cases in the criminal list since June 2008 are in part a consequence of the case management reforms undertaken in the division. However, increases in resources to investigators at the front end of the criminal justice system, will impact on the division in time. During the period a number of cases were delayed because of the difficulties encountered by the Victoria Police Forensic Services Department in the interpretation of DNA results. A number of cases had to be adjourned and the evidence, when received, was challenged. One case involved evidence in chief of four days and in another a *voir dire* which lasted 12 days.

It should be observed that since the *Evidence Act* came into operation on I January 2010 there have been many more applications, both before and during trial, for the provisions to be applied.

### OTHER APPLICATIONS HEARD BY JUDGES OF THE CRIMINAL DIVISION

Judges of the division continue to hear applications made under the *Bail Act* 1977, which for this reporting period amounted to 90 applications. Whilst the procedure for applications under the *Bail Act* is provided for in Practice Note No. 4 of 2004, the division always endeavours to fast track the hearing of bails where appropriate, although whether this can be achieved is always subject to Judge availability in the Criminal Division.

Judges of the division also regularly hear applications pursuant to Practice Note No. 4 of 2007. This includes applications under the *Surveillance Devices Act 1999, Major Crime (Investigative Powers) Act* 2004 and *Witness Protection Act 1991*. During this reporting period 78 applications were made under the *Surveillance Devices Act 1999*. Applications made under the *Major Crime (Investigative Powers) Act* 2004 and *Witness Protection Act 1991* are incorporated in the category of 'other applications' which totalled 284 applications. Although, as noted in the table below, the implementation of ICMS has given rise to concerns about the accuracy of some of these figures, and it is likely that these figures underestimate the number of applications heard.

In addition to assuming responsibility for applications made under the *Serious Sex Offenders (Detention and Supervision) Act* 2009, the Criminal Division is now also responsible for the listing and hearing of applications made pursuant to the *Crimes (Mental Impairment and Unfitness to be Tried) Act* 1997, despite the fact that such applications are received by the Court in its Common Law Division capacity.

#### **FUTURE CHALLENGES**

Each reporting period brings challenges to the division and this will be no different for the 2010-11 reporting period.

The era of the internet and its ability to provide almost instantaneous communication to many sectors of the community presents, in some respects, an enormous challenge to the Court. The Court appreciates the pressure on media organisations to provide their stories quickly. However, time pressure provides no excuse for the media's responsibility to report matters accurately.

Judges continue to make available to the media their reasons for decisions and sentences as soon as they are able to, and are continually exploring other means by which the public can be accurately informed of their decisions. Recent initiatives have included live-stream delivery of sentences on the Court's website and, as of May 2010, the Court publishes monthly sentence summaries which provide hyperlinks to the AustLII database.

The Supreme Court building continues to pose many problems. On 6 March 2010 Victoria experienced a huge storm. The Supreme Court building was affected, with storm damage to courtrooms and flooding to Judges' Chambers. Whilst such ferocious storms are infrequent in Victoria, flood damage within the courtrooms and Judges' Chambers is not. The damage posed risks for jurors, court staff and the public. The regular damage and lack of criminal courtrooms in the Supreme Court building is unsatisfactory. Whilst this can be overcome to some extent by Judges of the division sitting in the County Court building, the situation is far from ideal. It is inefficient for Judges not to be able to access their own chambers readily. During this reporting period, Judges of the division sat regularly in the County Court building, amounting to 12 matters being heard there. This figure included a number of lengthy trials of 20 days or more.

#### TRIAL STATISTICS

Trial division	200	7-08	200	8-09	200	9-10
	Cases	Persons	Cases	Persons	Cases	Persons
Trials (finalised)	56	72	47	65	38	43
Pleas (finalised)	33	39	57	89	43	63
Total matters finalised*	89	111	104	154	81	106

\* Finalised means trials where a verdict was reached and when a plea was heard.

#### MATTERS HEARD PURSUANT TO THE CRIMES (MENTAL IMPAIRMENT AND UNFITNESS TO BE TRIED) ACT 1997

Categories	2009-10
Crimes (Mental Impairment and Unfitness to be Tried) Act 2007 – s.35 - Major Reviews	2
Crimes (Mental Impairment and Unfitness to be Tried) Act 2007 – Other types of applications and hearings	12

#### CRIMINAL APPLICATION STATISTICS

Criminal applications	2007-08	2008-09	2009-10
Applications heard under the Bail Act 1977	93	85	90
Applications heard under the Surveillance Devices Act 1999	100	82	78
Applications under the Confiscation Act 1997 and Proceeds of Crime Act 2002 (Cth)	99	89	55*
Other criminal applications filed**	49	53	66*
Total applications heard	341	309	284*

\* Due to the implementation of ICMS these figures may be inaccurate.

\*\* Figure includes applications under the Major Crime (Investigative Powers) Act 2004, Witness Protection Act 1991, applications for compensation under the Sentencing Act 1991.

### Report of the Associate Judges

#### **OVERVIEW**

Associate Judges are judicial officers within the civil jurisdiction of the Court. Associate Judges hear and determine disputes which arise before and after trial in civil cases, for example with respect to pleadings, discovery and inspection of documents and subpoenas, assessments of damages, costs, and enforcement of judgments. Further, a substantial part of the *Court's Corporations Act* business is managed and determined by Associate Judges. Associate Judges are also responsible for case management of all civil cases not in specialist lists. Associate Judges also conduct trials.

Applications in the Commercial Court or in specialist lists, such as the Judicial Review and Appeals List or Personal Injury List, are heard by the Associate Judges assigned to those lists. All applications in civil proceedings which are not managed in specialist lists, or are required to be made to the Associate Judge in Charge of listings or the Judge in the Practice Court, are returnable in the Associate Judges' Practice Court (Court 2).

Most Associate Judges have designated responsibilities and/or areas of expertise.

#### EXPANSION OF THE ROLE OF ASSOCIATE JUDGES

During 2009, further amendments were made to the Supreme Court Rules and Supreme Court Practice Notes were issued which provided for an increase in the jurisdiction of Associate Judges. In particular, amendments were made which allow Associate Judges to hear the following matters:

- proceedings under section 84 (restrictive covenants)
- Part 3.2 and Part 3.3 of Chapter 3 of the *Relationships Act* 2008 (de facto property claims)
- matters arising under ss 6, 7 or 13(1) of the *Instruments Act 1958* (summary proceedings on bills of exchange)
- proceedings for the recovery of land under Order 53 of the Rules, and
- the trial of an undefended civil proceeding.

Further, the Principal Judges of the Common Law Division and Commercial and Equity Division regularly refer short trials in the general civil list for hearing by Associate Judges, for example, in probate and family provision matters.

#### DEPARTURES AND NEW APPOINTMENTS

In November 2009, Associate Justice Kathryn Kings was appointed as a Judge of the County Court of Victoria after 16 years of service to the Supreme Court as Listing Master, Master and Associate Judge.

In August 2009, Associate Justice Nemeer Mukhtar was appointed.

In March 2010, Associate Justice Rita Zammit was appointed.

On I January 2010, Costs Registrars Conidi and Deviny were appointed as Costs Registrars with the Costs Court.

#### AREAS OF EXPERTISE AND RESPONSIBILITY

Associate Justice Mahony has responsibility for the administration of Funds in Court, as well as sitting from time to time in Court 2.

Associate Justice Evans conducts directions hearings and applications for approval of compromises in family provision proceedings and hears applications in proceedings brought in the Major Torts List, as well as hearing general applications in Court 2.

Associate Justices Efthim and Gardiner primarily hear *Corporations Act* proceedings, including winding up applications, other applications under the *Corporations Act* (for example, applications to set aside statutory demands and voidable transaction claims and oppression proceedings), and other trials referred to them by the Judge in Charge of the Corporations List. Both are also members of the Commercial Court, and regularly conduct mediations.

Associate Justice Wood is the Costs Judge in Charge of the Costs Court. He also regularly conducts mediations.

Associate Justice Lansdowne is the Acting Registrar of the Court of Appeal and as such is responsible for the management and listing of all civil and criminal appeals, and conducts directions hearings with respect to civil appeals. She also occasionally hears general applications in Court 2.

Associate Justice Daly is responsible for all listings for civil proceedings apart from those in Judge-managed lists, as well as the hearing and determination of any applications in proceedings which have been listed for trial. She is a member of the Commercial Court. She also assists the Judge in Charge of the Technology, Engineering and Construction List, and regularly conducts civil trials and mediations.

Associate Justice Mukhtar hears general applications in Court 2, and regularly conducts civil trials and mediations.

Associate Justice Zammit also hears general applications in Court 2, and is responsible for managing the Personal Injuries List. In addition, Associate Justice Zammit regularly conducts mediations.

#### **MEDIATIONS**

Since 2005, Associate Judges (Masters until December 2008) have conducted mediations of a number of proceedings, either on their own motion, or upon referral of Judges, practitioners and other Associate Judges.

Mediations are conducted by Associate Judges Efthim, Wood, Daly, Gardiner, Mukhtar and Zammit utilising the mediation facilities at 436 Lonsdale Street.

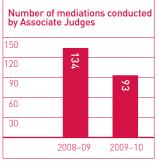
In 2009-10, 93 mediations were ordered to be conducted by Associate Justices (down from 134 in 2008-09). In these matters:

- three were either not held, or the proceeding settled prior to mediation, and
- six were adjourned for further mediation. Of the remainder, 56 proceedings (67%) were settled at or shortly after the conduct of the mediation.

The number of mediations able to be conducted by Associate Judges in 2009-10 was limited by reason of unfilled vacancies on the Court, absences through ill-health, and the increasing numbers of trials being conducted by Associate Judges.

Proceedings referred to mediation by an Associate Judge often have one or more of the following features: they have previously had an unsuccessful mediation with a private mediator; the parties involved are not financially well off; or the proceeding has been listed for trial and there is a view that the costs and time involved in a trial to the proceeding are disproportionately high considering the subject matter of the dispute.

Associate Judges do not mediate proceedings where a litigant is self-represented. However, an arrangement has been made with the Victorian Bar Duty Barristers' Scheme to obtain pro bono assistance for litigants for the purpose of mediation, and the Associate Judges wish to express their appreciation to the Victorian Bar for the assistance it provides the Court in that regard.



#### **CORPORATIONS MATTERS**

Orders made in corporations matters (including winding up applications) for 2009-10: 1,824

The powers of the Associate Judges who hear Corporations List matters are detailed under Schedule 2, Chapter V of the Supreme Court Rules. These powers allow an Associate Judge to determine applications to set aside statutory demands, winding up applications, applications for reinstatement of registration, voidable transaction claims, public examinations and leave to proceed. Associate Judges also hear appeals from the decisions of liquidators, such as rejections of proofs of debt and applications involving the remuneration of administrators and liquidators.

In addition, the Judge in Charge of the Corporations List routinely refers matters that are in the jurisdiction of the Corporations Judge for hearing by Associate Judges. These applications include oppression cases, damages for breach of director's duties and statutory derivative actions as well as trials involving insolvent trading.

As the figures reveal, there has been a very significant increase in all types of applications heard by Associate Judges under the *Corporations Act* 2001 (Cth). In addition, the Associate Judges hearing corporations matters endeavour to provide their specialist insight when conducting mediations of matters involving disputes under the *Corporations Act*, especially oppression and voidable transaction matters.

#### LISTING OF CASES AND CASE MANAGEMENT

Orders made in Civil Management List for 2009-10: 4,084 Orders made in Listings for 2009-10: 355

The majority of civil proceedings are not in Specialist Lists but within the Civil Management List. Any civil proceeding that is not in the Specialist List, which has been commenced by writ and has had a defence filed, is entered into the Civil Management List for case management by Associate Justices Kings, Efthim and Daly.

When a proceeding is ready for trial directions, it will be referred to Associate Justice Daly for a pre-trial directions hearing, where, pending determination, a trial date may be fixed, a Judge allocated, or further interlocutory directions undertaken.

Associate Justice Daly (and previously Associate Justice Kings) is responsible for the fixing of dates of civil matters for trial before Judges and the drawing up, maintenance and co-ordination of lists of such cases. Any pre-trial determinations to manage the future conduct of proceedings, including applications to vacate trial dates and speedy trial applications, are also heard by Associate Justice Daly.

#### GENERAL APPLICATIONS TO ASSOCIATE JUDGES

Orders made in general applications for 2009-10: 4,475

General applications in civil proceedings are usually made returnable before, and are determined by, an Associate Judge sitting each day in Associate Judges' Court 2.

General applications are interlocutory applications made within the judicial authority of an Associate Judge in proceedings not otherwise issued in any of the Court's specialist lists and not otherwise especially dealt with by Associate Judges designated for particular applications (e.g. taxation of costs, listing of cases, corporations matters).

These include matters such as service of process, pleadings disputes, summary judgment applications, security for costs applications, discovery of facts and documents, and amendments to pleadings. Applications also extend to proceedings originating from other courts and tribunals, such as leave to appeal from VCAT or other Magistrates' Court of Victoria, which since I January 2009 have been managed by Associate Justices Lansdowne and Daly in the Judicial Review and Appeals List.

#### PART IV (FAMILY MAINTENANCE) DIRECTIONS

Orders made in Part IV Directions for 2009-10: 850

The Associate Judges also hear Part IV Directions hearings. These are testator's family maintenance proceedings under the *Administration and Probate Act* 1958.

The case flow management was resulting in substantial unnecessary costs to litigants in the list. In recognition of this, during the reporting period the Court adopted the practice of adjourning the further hearing of the application for directions to a date to be fixed after initial directions are given.

Practitioners dissatisfied with non-compliance by the other party with directions may, and do, re-list the proceeding promptly for further directions. However, all cases are monitored for unnecessary delays to disposition.

This has led to a substantial reduction in the orders made without affecting the progress of the litigation towards resolution and a substantial saving in costs, both for the litigants and the Court.

### **Costs Court**

From I July to 31 December 2009, the majority of taxations were undertaken by Associate Justice Wood. The majority of these were party and party taxations arising from orders of the Supreme Court. A small proportion were reviews of costs arising from disputes between clients and their legal representatives pursuant to the *Legal Practice Act* 1996 and *Legal Profession Act* 2004.

On 31 December 2009 the *Courts Legislation (Costs Court and Other Matters) Act* 2008 came into operation. Section 17C of the *Supreme Court Act* 1986 established the Costs Court within the Trial Division of the Supreme Court.

On I January 2010 the Costs Court commenced as a division of the Supreme Court. The purpose of the Costs Court is to hear and determine costs disputes arising out of litigation in all Victorian jurisdictions, as well as costs disputes between lawyers and their clients.

The Supreme Court Rules, in particular Order 63 of the Supreme Court (General Civil Procedure) Rules 2005, have been amended from 31 December 2009 to facilitate taxation of costs in the Costs Court (see Supreme Court (Costs Court Amendments) Rules 2009). Two noteworthy amendments are the inclusion of a rule to enable an assessment of costs in appropriate matters without appearance (and the provision of an objection to the assessment if required by a party) (New Part 8 of Order 63) and mediation of appropriate costs matters by costs registrars (Rule 50.07.2).

On 26 May 2010 the Attorney-General opened the new premises of the Costs Court, which is located on Level 4, 436 Lonsdale Street, Melbourne.

It is envisaged that the Costs Court will ensure a greater consistency in taxation of costs across the various jurisdictions and reduce the burden on the lower courts.

The Costs Court is headed by Associate Justice Wood and supported by Registrar Conidi and Registrar Deviny. Pursuant to section 17E of the *Supreme Court Act 1986* the Chief Justice also appointed Associate Justices Evans, Efthim, Daly and Mukhtar to be Costs Judges to the Costs Court.

From January to April 2010 Costs Registrar taxations were confined to County, Magistrates and VCAT party party taxations pending the establishment of premises. After April on a graduated basis they commenced taxing party party Supreme Court matters - initially for bills claiming up to around \$100,000 until familiarisation with the Supreme Court scale. In 2010/11 this will expand to unlimited Supreme Court party party taxations Reviews of costs under the Legal Profession Act 2004 continue to be exclusively handled by a Costs Judge (both in reporting year 2009/I0 and anticipated into the future). In 2009/I0 Associate Justice Wood conducted 17 mediations and made 2 referrals to Legal Services Commissioner for gross overcharging (pursuant to s3.4.46(I) the Legal Profession Act 2004)

Establishment of the Costs Court means that reviews of Registrar decisions are now dealt with by an Associate Judge. In the reporting year 2009/I0 written reasons were published in two such reviews (in June). Rule 63.56.I provides for written reasons within 7 days. This work will produce greater demands on the Costs Judge in 2010/II.

At the commencement of the Costs Court the delay in obtaining a hearing date was greater for traditional Supreme Court work than for County, Magistrates and VCAT taxations. The establishment of the Court should mean in 2010/11 this anomaly will be addressed.

Over the last 12 months the initiation rate has exceeded the disposition rate in relation to matters dealt with by Associate Judges.

The Taxation of Costs statistics, contained herein, relate only to Supreme Court party-party Taxations and reviews arising under the Legal Profession Act. The initiations and dispositions of party-party taxations from other jurisdictions (VCAT, Magistrates' Court and the County Court), will be accounted for in future annual reports.

INITIATIONS	DISPOSITIONS
26	35
57	28
53	36
34	32
34	38
22	27
14	0
49	28
59	39
57	27
30	33
35	34
	26 57 53 34 34 22 14 49 59 59 57 30

### Alternative Dispute Resolution at the Court

The Supreme Court is committed to resolving disputes in the most efficient manner possible. One way of achieving this is through the use of mediation. Mediation has historically been a very effective technique, resulting in virtually no civil case going to trial without at least one round of mediation. The Court does not mediate with respect to criminal proceedings.

With regard to civil cases, the Court generally orders that mediations are conducted by private mediators. However, Associate Judges also conduct mediations where this is deemed appropriate (please refer to the Report of the Associate Judges).

#### ALTERNATIVE OR APPROPRIATE DISPUTE RESOLUTION AND MEDIATION

Alternative or appropriate dispute resolution (ADR) is not limited to mediation. There are a plethora of other types of ADR processes such as conciliation, arbitration and early neutral evaluation<sup>3</sup>. ADR processes may be used alone, or can be used in concert with one another and may be defined as follows:

ADR is an umbrella term for processes, other than judicial determination, in which an impartial person assists those in a dispute to resolve the issues between them<sup>4</sup>. Mediation, therefore, is simply one form of ADR process. However, the term mediation is one which has a variety of meanings. NADRAC<sup>5</sup> defines mediation as:

...a process in which the participants to a dispute, with the assistance of a dispute resolution practitioner (the mediator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted. Mediation may be undertaken voluntarily, under a court order, or subject to an existing contractual agreement.<sup>6</sup>

From this definition, it is important to note that mediation is a *facilitative* process. The parties are in control and the mediator does not make a determination on the dispute. Unlike judging, the mediator does not necessarily need to have experience in the subject matter of the dispute. Rather, the mediator simply needs to be experienced in the mediation *process*.

- 3 A glossary of ADR terms has been provided by NADRAC at: http://www.nadrac.gov.au/www/nadrac/nadrac.nsf/Page/WhatisADR\_ GlossaryofADRTerms\_GlossaryofADRTerms.
- 4 http://www.nadrac.gov.au/www/nadrac/nadrac.nsf/Page/What\_is\_ADRGlossary\_of\_ADR\_Terms#FF
- 5 The National Alternative Dispute Resolution Advisory Council (NADRAC) is an independent body which provides policy advice to the Australian Attorney-General on ADR. Consequently, the NADRAC definition of mediation has been used.
- 6 NADRAC, Glossary of ADR Terms (2009) http://www.nadrac.gov.au/www/nadrac/nadrac.nsf/Page/What\_is\_ADRGlossary\_of\_ADR\_Terms#MM accessed on 31 May 2010.

#### SUPREME COURT ADR COMMITTEE

In 2009, the ADR Committee within the Court was reconstituted, with the Justice Weinberg chairing the committee. The committee has met monthly to discuss various forms of ADR which are used throughout Australia and in other jurisdictions throughout the world. The ADR Committee not only considers matters relating to mediation, but also other ADR techniques such as Early Neutral Evaluation and Arbitration.

The committee also consists of Judges from the Trial Division, as well as Associate Judges. A cross-section of divisions of the Court are represented on the committee to ensure that any decisions made, reflect all aspects of the Court. The members of the ADR Committee are:

- Justice Weinberg (Chair)
- Justice Hansen
- Justice Osborn
- Justice Pagone
- Justice J Forrest
- Justice Judd
- Justice Davies
- Justice Croft
- Associate Justice Efthim
- · Associate Justice Wood
- · Associate Justice Daly, and
- the ADR Coordinator.

The committee continues to oversee the Higher Courts Based ADR Program, which was a pilot implemented by the Victorian Government to improve and expand the use of ADR throughout Victoria, including in the Supreme Court. A major aspect to this pilot involves the development of a draft ADR Policy applicable to the Supreme Court of Victoria. The ADR Committee is also coordinating closely with the County Court to ensure that, so far as possible, a consistent approach is followed in relation to this issue.

#### UNITED STATES AND CANADIAN VISITS

The major impetus for Judge-led mediation, which is presently a key initiative of the Victorian State Government, stemmed from the work of former Justice Louise Otis of the Court of Appeal of Québec, and the fact that much of the expertise in training Judges for this role had developed in Montreal.

The Department of Justice, which had provided funds to the Supreme and County Courts to support the ADR initiative, accepted that it would be useful to have Supreme and County Court Judges visit Montreal, in particular, to see firsthand how judicial mediation worked in the Province. In consultation with the Department of Justice, a study visit was planned which ultimately encompassed a two-day trip to Montreal, three days in Toronto and then separate two-day trips to various centres in the United States. After careful consultation, it was decided that three major centres of ADR activity in the United States should each be visited by one Judge. These were New York City, Boston and San Francisco.

In March 2010, therefore, Justice Weinberg and Justice Judd from the Supreme Court, with Judge Misso of the County Court, visited the United States and Canada on a study visit, with respect to judicial mediation, and ADR more generally.

### Senior Master's (Funds in Court) Office

#### HIGHLIGHTS

- Over 5,000 beneficiaries.
- More than 6,000 orders made.
- 21,185 documents prepared.
- In excess of 93,000 payments made.
- Increase of more than 27% in the number of payments into Court.
- More than 19% increase in the sum of moneys paid into Court.
- 84.2 % of payments processed within 5 days.
- Funds under administration have increased by approximately 15% in the last 3 years.
- Senior Master's Office (SMO) moved to new premises.
- Major reviews of the SMO commissioned.

#### **STATISTICS**

The SMO's work continues to grow in volume and significance. The number of payments into Court (i.e. files opened) increased by 27.87%. The total sum of moneys paid into Court increased by \$21,555,432 or 19.07%. Whilst there was a slight decrease in the number of files closed during the last financial year, the sum of moneys paid out increased by over \$15 million.

The increased workload placed additional pressures on the SMO's staff and resources. Despite such pressures, the SMO continues to provide a high quality service to its beneficiaries.

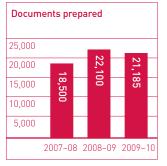
### **KEY PERFORMANCE INDICATORS (KPIs)**

Staff met or outperformed all KPIs relating to the delivery of services to beneficiaries.

Most importantly, at least 84.2% of payments to or on behalf of beneficiaries were processed within five days of receipt of request.

Office KPIs are continually reviewed with the assistance of the internal auditors (Moore Stephens).





 Payments are made by Court orders (usually made by the Associate Judge who is the Senior Master).

#### THE LEGAL SECTION

#### **NEW BENEFICIARIES**

There were 803 payments into Court, comprising:

- 103 non-award matters (dispute money; security for costs; moneys paid in under an Act).
- 700 award payments (personal injury, Family Provision claims, Part III of the Wrongs Act, VCAT\* funds ):

Supreme Court	253
County Court	65
Magistrates' Court	6
VOCAT*	479
Total	803

\* Victims of Crime Assistance Tribunal

#### **MONEYS RECEIVED**

\$134,583,663 paid into Court.

#### **MONEYS PAID OUT**

\$48,553,665 paid out of Court representing a total of 727 accounts.

#### **TRUST ADMINISTRATION**

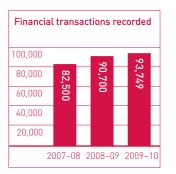
This area works closely with the beneficiaries, who are persons under a legal disability by reason of:

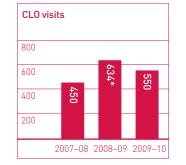
- acquired brain injury
- age (i.e. minors)
- psychiatric condition.

Many beneficiaries are presented with personal and financial challenges and involved in complex legal or financial matters which require skilled and experienced Trust Officers, Client Liaison Officers (CLOs) and Legal Officers to work through the difficulties encountered.

#### **CLIENT LIAISON**

Client Liaison Officers visit beneficiaries in their homes. Apart from providing input in respect of complex applications for payments, CLOs are instrumental in assisting beneficiaries with many lifestyle and other difficulties which they face in their everyday life.





\* The majority of clients who have not been visited for a long time were visited between 2008 and 2009.

#### INVESTMENT SECTION

The Investment Section:

- considers and, if appropriate, implements investment advice given by advisers engaged by the Senior Master
- provides administrative support to the Investment Review Panel (which consists of experts who meet quarterly).

Funds under administration (excluding direct investment in real estate and other assets) exceeded \$1.03 billion, an increase of approximately \$110 million (12%) since last financial year. This represents a net increase of funds paid into Court of approximately \$86 million (i.e. funds paid in minus funds paid out) plus interest earned and any realised capital gains on investments. The increase occurred despite the continuing effects of the global financial crisis on the Australian economy.

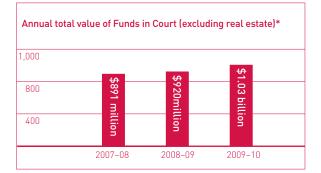
#### **COMMON FUND NO. 2**

There are over 5000 beneficiary accounts within Common Fund No. 2 (CF-2). The prime objective for CF-2 is to provide the maximum return achievable consistent with investments in approved securities.

Over the past three years the interest rates declared for CF-2 have been: 1 June 2008: 5.75%

I June 2009: 5.95%

I June 2010: 5.70%



 Figures are approximate. Exact figures are provided in the SMO's Annual Financial Reports available on the Court's website.

#### **COMMON FUND NO. 3**

Common Fund No. 3 (CF-3) was created in July 2004. The number of beneficiaries for whom equity investment has been undertaken is over 1,800, i.e. approximately 36% of beneficiaries.

On I July 2009, the unit price for CF-3 was \$1.2472. By 30 June 2009, the unit price had risen to \$1.4061.

The annualised return for the CF-3 portfolio (i.e. when dividend income is taken into account) was 16.7% for the financial year. This compares with 13.5% return of the benchmark S&P/ASX 50 Leaders Accumulation Index. In other words, CF-3 outperformed the benchmark by over 3.2%.

Furthermore, the Senior Master's equity portfolio, which preceded and now includes CF-3, has consistently outperformed the benchmark since its inception on 21 December 1992.

#### ACCOUNTING AND TAXATION

#### FINANCIAL REPORTING

The Financial Reports of the Senior Master are audited, on a financial year basis, by the Auditor-General. The General Purpose Financial Report and Audit Opinion of the Auditor-General, for the year ended 30 June 2009 and those for the preceding years, are available on the Funds in Court section of the Supreme Court website. Those for the year ended 30 June 2010 will be available similarly as soon as practicable.

#### AUDIT COMMITTEE

The Audit Committee is the focal point for communication between the external auditors, internal auditors and management in relation to:

- financial and other reporting
- internal controls
- · external and internal audits
- · risk management
- ethical issues
- · other matters the Senior Master deems necessary.

The Audit Committee also incorporates the following key responsibilities of an Ethics Committee:

- oversee the SMO's compliance with the Code of Conduct
- provide strategic oversight of the SMO's ethics audits and ethics training program
- review any ethical complaints referred to the Audit Committee, as well as the SMO's responses to such complaints, and advise the Senior Master with respect to the responses where appropriate.

The Audit Committee met quarterly.

#### **RISK MANAGEMENT**

The Senior Master continues his commitment to risk management in accordance with Australian standards, and the prudential safeguards put in place are monitored by the SMO's Accounting Section. At the regular meetings of SMO Section Heads, the Accounting Manager provides a report to the Senior Master detailing developments concerning defined risk management matters. The Audit Committee also considers risk management at its quarterly meetings.

#### TAXATION

Annual trust tax returns were lodged for every beneficiary. Utmost care was taken to ensure the accuracy of each trust taxation return in compliance with legislation. No fees were charged for taxation services.

#### INFORMATION TECHNOLOGY

The IT section continued and continues to improve and enhance the SMO's database application, winTMS.

#### **BENEFICIARIES' ADVISORY GROUP**

The Beneficiaries' Advisory Group (BAG) continued to meet on a quarterly basis. The BAG consists of representatives of the SMO, beneficiaries' families and other interested stakeholders such as the Law Institute of Victoria, the Office of the Public Advocate and Victims Support Agency.

#### **BENEFICIARIES' FOCUS GROUP**

On 23 October 2009, the Beneficiaries' Focus Group (BFG) met to provide feedback to the SMO for the second time. For the SMO, BFG meetings are a valuable opportunity to seek feedback from beneficiaries about how best to administer their funds.

#### SMO NEWSLETTER

The first edition of the SMO newsletter was published in January 2008. The newsletter is intended as a source of information about the SMO for the beneficiaries and their families. The decision to create the newsletter arose from the Beneficiaries' Advisory Group.

In addition to information about the SMO, the newsletters include stories submitted by beneficiaries and their families. The stories focus on beneficiaries' achievements. It is an opportunity for the beneficiaries to share their stories with other beneficiaries and staff of the SMO.

Another popular feature of the newsletter is the "Your Questions" section. It answers questions the beneficiaries may have in relation to the services provided by the SMO or other organisations.

The newsletter continues to be a very useful communication tool. Within twelve months, it grew from a four-page to an eight-page publication.

#### NEW ACCOMMODATION

After 14 years at 436 Lonsdale Street, the SMO moved to new premises at Level 5, 469 La Trobe St, Melbourne, in December 2009.

The SMO's new premises allow it to continue to provide the highest quality, professional services to beneficiaries, in appropriate surroundings, for the benefit of beneficiaries, families and staff.

The SMO now has:

- a larger, better appointed reception area to provide improved access to the SMO
- several client contact rooms in which to hold meetings with beneficiaries
- a large meeting room for meetings of the Beneficiaries' Advisory Group, Investment Review Panel, Audit Committee and similar meetings
- staff training facilities
- a computer build and storage room to ensure our in-house information technology support remains second to none.

#### **REVIEW OF ORGANISATION STRUCTURE**

A review of the SMO was completed by Nous Consulting Group which has made a number of recommendations regarding the reorganisation of the SMO.

#### **REASONS FOR REVIEW**

The operations of the SMO have grown rapidly over the last six years as a result of: an increase in the number of beneficiaries due to enactment of the *Courts Legislation (Funds in Court) Act* 2004; the growth in some amounts awarded to recipients of compensation; and the increased scope and complexity of services provided by the SMO.

The SMO's growth has placed increased pressure on its organisational structure which has remained essentially unchanged for a number of years. The organisational structure of the SMO needs to be updated to ensure that the Court can continue to provide the best possible service to beneficiaries for the foreseeable future.

#### **OVERALL OBJECTIVES**

In implementing the review, the overall objective of the Chief Justice and the Senior Master was that changes to the SMO's structure may ensure that:

- the current high standards of service to beneficiaries are maintained and improved
- the SMO's management is effective, efficient, professional and flexible enough fully to accommodate changing demands
- the Court's reputation is upheld and the SMO maintains its high levels of corporate governance and risk management.

#### NOUS FINAL REPORT AND RECOMMENDATIONS

Nous submitted its final report in June 2010. The Senior Master and the Heads of Section of the SMO have considered the report and identified the recommendations which it is considered should be implemented. The SMO is now in the process of developing a Change Management Plan to implement those recommendations. The Plan will, of course, involve a consultation process with all SMO staff.

#### **VOCAT REVIEW**

Apart from the Nous Review, the SMO commissioned another review, by Successworks, to consider the impact of enactment of the *Courts Legislation (Funds in Court) Act* 2004. The Act provided, among other things, for the transfer of some 4,000 files held concerning persons under disability from the Victims of Crime Assistance Tribunal (VOCAT) to the SMO, and for funds for future VOCAT cases to be paid to the Senior Master. The SMO was not provided with any additional staff or financial resources to administer the files.

Successworks was asked to investigate the way in which the VOCAT files are administered and quantify the actual cost to the Court of administering these files from payment in to payment out, counting administrative, technological, Legal Officer, Trust Officer and Client Liaison Officer contribution.

An unforeseen effect of the transfer of the files has been the psychological effect on SMO staff. This has been due to the volume of the work and especially to the harrowing nature of the events giving rise to the compensation.

Successworks' final report was submitted in August 2009. A Steering Committee was formed to consider Successworks' report and the Committee is formulating recommendations to be submitted to the Senior Master for consideration.

#### INVESTMENT MANAGEMENT REVIEW

In the reporting year a committee chaired by the Chief Justice and consisting of Justice Ashley, Justice Robson and Associate Justice Mahony together with Mr. J Griffin of the Department of Justice and Mr. G Yip of the Department of Treasury and Finance was established to consider the investment arrangements of the SMO, the Committee also included Mr. Peter Griffin AM as an external and independent participant.

Following the completion of a report by the Committee, the Council of Judges supported changes to improve the investment arrangements for the SMO and, in particular, to reduce risk. The report was submitted to the Government for consideration.

The Court acknowledges the generous and helpful contribution made by Mr. Peter Griffin to the Committees' work.



# Judicial Training

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DURING 2009-10, THE JUDGES AND ASSOCIATE JUDGES OF THE COURT ATTENDED A VARIETY OF JUDICIAL TRAINING ACTIVITIES TO KEEP ABREAST OF DEVELOPING PROFESSIONAL STANDARDS.

#### EDUCATION COMMITTEE AND THE 2010 JUDGES' CONFERENCE

Justice Neave chairs the Education Committee, which has 10 members including a representative from the Judicial College of Victoria. The Committee organised the fourth Supreme Court of Victoria Judges' Conference. The two-day residential conference included sessions on new forms of communication, media coverage, refugee law, jury trials, the conduct of mega trials and non-adversarial justice. Justice Owen from the Supreme Court of Western Australia, Justice Lang and Associate Judge Faire from the High Court of New Zealand were some of the speakers at the conference.

#### THE JUDICIAL COLLEGE OF VICTORIA

The Judicial College of Victoria (JCV), established pursuant to the *Judicial College of Victoria Act* 2001, assists the Victorian judiciary by providing professional development and continuing education and training for judicial officers. The JCV keeps the Victorian judiciary abreast of developments in the law and pressing social issues, helping them build and maintain the skills they need to perform their roles.

The JCV Board is chaired by Chief Justice Warren AC. In addition, many Judges from this Court also supported judicial education by participating in a range of committees and teaching faculties at the JCV:

- Chief Justice Warren Court Craft, Judicial Dispute Resolution Skills
- Justice Maxwell Statutory Interpretation

- Justice Redlich Victorian Criminal Charge Book
- Justice Weinberg Judicial Dispute Resolution Skills, Evidence, Victorian Criminal Charge Book
- Justice Hansen Syllabus Advisory Committee
- · Justice Williams Self-Represented Litigants
- · Justice Kaye Indigenous Cultural Awareness
- Justice Bell Court Craft
- Justice Hargrave Judgment Writing
- Justice King Criminal Proceedings, Victorian Sentencing Manual
- Justice Curtain Victorian Criminal Charge Book
- Justice Coghlan Victorian Criminal Charge Book and Syllabus Advisory Committee
- Justice Lasry Oral Decisions, Victorian Criminal Charge Book
- Justice Judd Judicial Officers' Information Network (JOIN) Management Group
- Justice Ross Evidence, Statutory Interpretation
- · Associate Justice Efthim Judicial Dispute Resolution Skills
- Associate Justice Daly Syllabus Advisory Committee.

The JCV conducted many successful programs throughout the year, with a total of 797 hours of attendances from this Court.

#### EXTERNAL CONFERENCES AND SEMINARS

Judges and Associate Judges attended a number of other national and international conferences and seminars this year. Please refer to the Judicial Activity Appendix for more information.



**Court Administration** 



The Chief Executive Officer (CEO) manages the administrative arm of the Court, including some 270 staff. The CEO is responsible to the Chief Justice for the effective administration of the Court. The following departments operate under the leadership of the CEO:

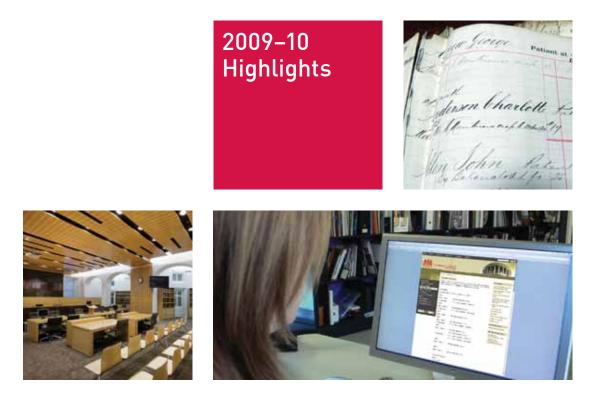
- Planning and Strategy
- Human Resources
- Finance
- Security
- Juries, and
- Principal Registry.

#### **WORKFORCE DATA**

Administrative staff are appointed under the Public Administration Act 2004 and the Extended and Varied Victorian Public Service Agreement 2006.

SALARY	FEMALE (FULL-TIME)	FEMALE (PART-TIME)	MALE (FULL-TIME)	MALE (PART-TIME)
\$38,235 - \$49,101	41	5	32	4
\$50,175 - \$60,922	69	9	37	1
\$62,116 - \$70,477	24	12	16	1
\$71,671 - \$86,716	12	- 69	13	1/ -01
\$87,910 -\$117,642	2	1	11	1 march
	148	27	109	6
	\$38,235 - \$49,101 \$50,175 - \$60,922 \$62,116 - \$70,477 \$71,671 - \$86,716	(FULL-TIME)        \$38,235 - \$49,101      41        \$50,175 - \$60,922      69        \$62,116 - \$70,477      24        \$71,671 - \$86,716      12        \$87,910 - \$117,642      2	(FULL-TIME)      (PART-TIME)        \$38,235 - \$49,101      41      5        \$50,175 - \$60,922      69      9        \$62,116 - \$70,477      24      12        \$71,671 - \$86,716      12      -        \$87,910 - \$117,642      2      1	(FULL-TIME)      (PART-TIME)      (FULL-TIME)        \$38,235 - \$49,101      41      5      32        \$50,175 - \$60,922      69      9      37        \$62,116 - \$70,477      24      12      16        \$71,671 - \$86,716      12      -      13        \$87,910 - \$117,642      2      1      11





### Integrated Courts Management System (ICMS)

- The Victorian Costs Court
- Commercial Court Website
- HR Review
- Pre-Induction and On-line Learning

### 2009–10 Highlights

#### Integrated Courts Management System (ICMS)

On 21 September 2009, the Supreme Court of Victoria was the first jurisdiction to receive the first component of ICMS, being the case management system CourtView. In June 2010, the second component of ICMS, the Courts Data Warehouse, came on-line.

#### **The Victorian Costs Court**

While the Costs Court came into effect on I January 2010, it wasn't until May 2010 that the Costs Court became operational at 4/436 Lonsdale Street. Headed up by Associate Justice Wood and supported by two Costs Registrars, the Victorian Costs Court offers a one-stop, centralised court for the resolution of costs disputes arising from litigation or between clients and practitioners.

#### **Commercial Court Website**

The new Commercial Court website allows direct communication between the Supreme Court of Victoria Commercial Court and litigators, and acts as a valuable reference tool for all users of commercial law. Through the website the Court can notify practitioners directly and regularly of developments in commercial law in this State, as well as provide access to interstate or overseas commercial legislation, Court decisions and up-to-date news relating to regulatory bodies, Court rules and practice notes.



#### **HR Review**

A comprehensive review of the HR Office to assess the nature of HR needs and services with a view to improving services for Judges and staff was undertaken. In January 2010, a comprehensive action plan was developed and used to prompt discussion with A/HR Manager and by the HR Team to guide HR Services.

#### Pre-Induction and On-line Learning

Since late 2009, the Supreme Court became the first Victorian court to offer an on-line pre-induction program. New and existing staff have access to a suite of learning and development modules, as well as video recorded messages of welcome from the Chief Justice, the President of the Court of Appeal and the Principal Judges. We have recently introduced a series of On-line Learning Modules designed specifically to assist Associates using CourtView.

### **Principal Registry**

### PRINCIPAL REGISTRY (TRIAL DIVISION AND PROBATE)

#### STAFFING AND FUNCTION

The Principal Registry (with a team of 47 staff) provides administrative services to the judiciary, legal profession, Court users and public. Services include file management, custody of delivered subpoenaed materials, making orders for administration of deceased estates, and handling enquiries. The Principal Registry is also committed to providing self-represented litigants with a better understanding of rules and procedures (see the Self-Represented Litigant's section), and therein acts as a referral point to legal service providers.

Deputy Registrars lead staff activities and assist the Business Services Manager to monitor Registry performance and identify service improvements and enhancement opportunities. The Principal Registrars from courts and tribunals form a network to discuss common themes and issues across jurisdictions. This has been particularly relevant to the implementation of the Court's database, CourtView.

#### INITIATIVES AND INNOVATION

For 2009-I0, many initiatives related to service improvements achieved through changing workflows and role refinement. In terms of innovation, planning is under way to cross-tab Registry court user data from the Q-Matic automated queuing system (reported and implemented last year) against data from the TimeMinder flexible time recording system (used by staff). This will enable staff assignment patterns to better match court user requirements. Other improvements relate to internal operating procedures and simplifying interaction with the Principal Registry by creating single points of contact, and nominating specialist staff. In addition, some staff regrouping was undertaken to create specific hubs of expertise. Initiatives implemented during the year include:

#### **GROUP ACTIONS**

The Principal Registry established a function within an existing role to manage and coordinate both group and high profile actions in Registry, and to act as an enquiry point of reference.

#### **COSTS COURT**

Rule changes established a Costs Court jurisdiction serviced by the Principal Registry, creating increased local workflows. Costs Registrars were previously staff of the County Court of Victoria.

#### **CRIMINAL LISTINGS**

Formerly part of the combined courts Criminal Trials Listing Directorate operating out of the County Court of Victoria, the function is now part of the Principal Registry.

#### **REGIONAL PRESENCE**

The Court has a presence in major regional locations through Magistrates' Court registries. Through CourtView these registries now have far more comprehensive access to Supreme Court files, facilitating a more rounded regional presence. A Regional Court Liaison Officer assists Magistrates' Court offices by resolving administrative issues, and ensures sharing of up-to-date information regarding Court sittings. See Circuit Sittings for more information.

#### SUBPOENAED MATERIALS

Management of subpoenaed materials continues to provide logistical challenges. Planning is under way to cater for an increased volume of electronically submitted and discovered documents and materials, including initial work to prepare for increased personal computers for searching and inspections. In terms of hard copies, the number of document inspections at Registry increased significantly this year (up 68%), despite a significant increase in the number uplifted for remote inspection.

#### PRACTICE COURT/COMMERCIAL COURT COORDINATOR

The combination of these functions into the one role was trialled successfully and has now been implemented. Interplay between the roles has a positive impact on the operation of both jurisdictions.

#### IMPLEMENTATION OF COURTVIEW

The Supreme Court's aging case management system was replaced in September 2009 with ICHS/CourtView, an integrated courts management system. Considerable staff effort was invested in consulting, documenting requirements, testing and implementing the new system.

#### ELECTRONIC FILING

Electronic filing for civil documentation is offered to legal practitioners through CITEC-Confirm, which had an application uptime for 2009-10 of 99.997%. The e-filing system allows legal practitioners the ability to prepare and lodge documents any time of day, any day of the year.

Usage of electronic filing continues to exhibit exponential growth since its commencement in September 2007. Successful e-filing transactions (i.e. processed by Citec-Confirm and subsequently accepted for filing in the Registry) increased by 55.25% during the year.

Shown below is a snapshot of the top 10 forms of electronically filed documents in 2009-10. The most significant increase (I23%) was in the 'Subpoena to Produce' category

#### SPEAKING ENGAGEMENTS

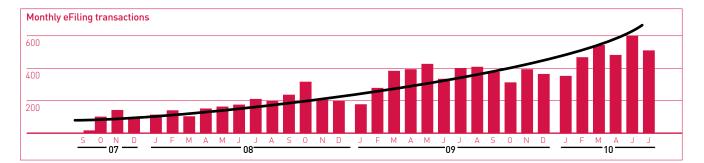
Staff regularly provide speakers to conferences, guest lecturer spots, user groups, and interest groups such as the Law Institute of Victoria, universities, Continuing Professional Development/ Continuing Legal Education seminars, and professional conferences.

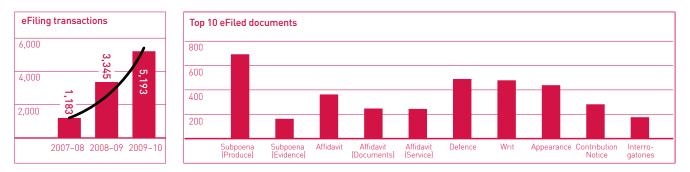
#### **ELECTRONIC LITIGATION**

The Court continues to encourage court users to consider conducting litigation electronically, however uptake continues to be relatively slow.

#### STAFF TRAINING

During 2009-IO, all staff were offered the opportunity to participate in Deputy Prothonotary training. The aim of the training is to establish a common base of understanding amongst all staff regarding the role and responsibilities of the Prothonotary function (many staff were ultimately appointed as a Deputy Prothonotary).





### Self-Represented Litigants Co-ordinator

The position of the Self-Represented Litigants Co-ordinator was created to form a single entry point for self-represented litigants (SRLs) in the Supreme Court of Victoria. The Self-Represented Litigants Co-ordinator Committee at the Court is chaired by Justice Emerton.

The view held in Australian Courts is that an individual person has a right to represent him or herself. When it comes to a Company however, Order 1.17 of the Supreme Court (General Civil Procedure) Rules provides that: "Except where otherwise provided by or under any Act or these Rules, a corporation, whether or not a party, shall not take any step in a proceeding save by a solicitor."

This rule makes the process of dealing with any enquiries from "Company representatives who seek to represent a company" a difficult one for the SRL Coordinator, as those seeking to represent the company are usually the director/s, who are individuals themselves.

SRLs are referred to the Co-ordinator by Judges of the Court and through staff from other Victorian courts or VCAT, or when they make contact with the Registry. The range of enquiries received can be best described as being extremely diverse. The most common queries include but are not limited to seeking a stay on a warrant, appealing a VCAT decision, commencing a proceeding, and filing an appearance or defence.

The Co-ordinator's role involves:

- the provision of procedural and practical advice never legal advice
- recommending that persons seek legal advice and the making of referrals for legal advice or representation
- general pre-commencement/defence discussions with SRLs and discussions regarding procedure inside the Courtroom
- making available court forms and guides to completing court forms
- · explaining time frames and court fees, and
- providing a service for people attending in relation to urgent applications (e.g. walking a person to a courtroom, explaining where to stand).

The legal referral options available to the Co-ordinator are:

- the Law Institute of Victoria, referral service for up to 30 minutes of free legal advice;
- · Victoria Legal Aid
- · Community Legal Centres (general and specialist)
- the Public Interest Law Clearing House (PILCH), and
- Duty Barristers' Scheme.

One of the main advantages of the Co-ordinator model is the provision of consistent procedural and practical advice for SRLs from a single point of contact in the Registry. The Co-ordinator is also able to make referrals to legal advice and representation, (i.e. having a detailed knowledge of the various (pro bono) options and the capacity to liaise and build relationships with people who work in the pro bono sector). In addition, by having a detailed knowledge of the pro bono referral options, the Court is able to refer people to suitable legal service providers. The belief is that the Court benefits from a reduction in SRLs bringing in unmeritorious cases.

During the recent fiscal year there was a marked increase in all aspects of the Co-ordinator's role. More specifically, 1,777 separate contacts with those requiring assistance were recorded, which was an increase of 338 contacts from the previous year. These contacts included those who personally attended at the registry, phone calls, emails and faxes. Of these contacts there were 27 instances in which the Co-ordinator assisted an individual by referring them to the Duty Barristers' Scheme.

The Court gratefully acknowledges the work of the Duty Barristers' Scheme, PILCH and the Community Legal Centres for the probono legal assistance they have provided to the members of the community during the year. This assistance is often provided in very difficult circumstances involving pressing time frames. REPORTS

### **Records Management**

Work on transferring historic Supreme Court records from the Court to the Public Record Office continued in 2009-10. In the reporting period, 59 Volumes of Divorce Cause Books, dating from 1924 through to 1976 when the Divorce Jurisdiction moved to the Family Court, were transferred to the State Archives.

Another set of volumes transferred in 2010 the Maintenance Ledgers from the Master in Lunacy's Office. A number of these volumes are being conserved. The Master in Lunacy was an office of the Supreme Court created under the *Lunacy Act* of 1867. The Master in Lunacy was responsible for the administration and management of lunatic patients. Many of the functions of the Master in Lunacy were transferred to the Public Trustee in 1939.

Also of great interest, especially to those researching their family history, are the Probate records. The Public Record Office holds some of the earliest probate records made in the State (or colony as it was then) from 1841. This year, the 2002 and 2003 Probate records were transferred to the Public Record Office.

#### Records transferred to the Public Record Office in 2009-10

Divorce Cause Books, 1924 - 1976 (59 volumes) Criminal Record Books, 1940 -1964 (3 volumes) Register of Petitions of Winding Up Orders, 1900-1957 (1 volume) Register of Winding Up Orders, 1900-1958 (1 volume) Index to Appeals from the Licensing Courts, 1885-1920s (1 volume) Australian Register of Judgments, Supreme Court, 1929-1953 (1 volume) Action /Cause Judgment Book, 1863 (1volume) Attorney's Book, County Court, Melbourne, 1847-1931 (1 volume) County Court Verdict Book, Civil Matters, 1918-1919 (1volume) Maintenance Ledger, Master in Lunacy, 1868-1916 (3 volumes) Index to Maintenance Ledger, Master in Lunacy, 1892-1906 ( 6 volumes) Probate Files, 2002-2003 (927 units)

### Occupational Health and Safety Report

The Court has continued an ongoing commitment to creating a safe and healthy working environment.

During the course of the year, occupational health and safety (OHS)-related activities included:

- ongoing ergonomic workstation assessments, conducted for both judicial and non-judicial staff, including assessments conducted by an external consultant for Principal Registry staff and the proposed implementation of an ergonomic break widget for staff working in sedentary roles
- providing ongoing support for various health and safety events such as the Corporate Games, Ride to Work Day and SCV Running Club, as well as facilitating a corporate gym membership discount to court staff
- participation in the influenza vaccination program
- the development of a suite of training and development courses including stress management and manual handling, via the online learning management system, and
- the development and implementation of a suite of practical and relevant OHS-related policies and procedures.

Overall improvement of resources and ongoing maintenance of the Court's physical infrastructure continued throughout the year. These improvements included the establishment of first aid services, acquisition of various manual handling mechanical aids, and the introduction of various ergonomic products.

The OH&S committee continued to meet on a bi-monthly basis, reinforcing the importance of maintaining the ongoing health and safety of the judiciary, court staff, court users and visitors.

Whilst throughout the year there has been an increase in the number of incidents reported by Supreme Court staff, this has been largely attributed to the new online Accident Incident Reporting System (also known as AIRS) introduced in August 2008. This improved method of reporting will greatly assist in the ongoing development and implementation of effective and practical strategies seeking to prevent workplace injuries within the Supreme Court during the course of the next 12 months.

### Juries Commissioner's Office

Jurors play an important role in the justice system in Victoria. The Juries Commissioner aims to provide a representative group of randomly selected citizens who, as jurors, actively participate in the administration of the criminal and civil justice system.

The Juries Commissioner's Office (JCO) is responsible for managing the effective administration of the Victorian Jury System. It oversees the processes which provide juries for Melbourne and regional Supreme and County Court trials.

The JCO is responsible for overseeing the efficient management and administration of the Victorian Jury System by:

- establishing a structure enabling improvements to jury management and administration
- providing a policy framework that ensures a consistent and standardised approach to jury management and administration
- improving services for jurors in Melbourne and 13 regional locations, and
- raising community awareness and providing information about Jury Service in Victoria.

#### MAJOR ACHIEVEMENTS

During 2009-10, the JCO implemented the following initiatives:

- As part of the JCO's commitment to community education and awareness, the JCO continued to work in partnership with the Victoria Law Foundation and the Victoria Law Institute Education Officer. A series of formal and informal information sessions were conducted throughout the course of the year. In view of its relative success, the JCO plans to formalise the program in the following year.
- At the invitation of the New Zealand Ministry of Justice, the Juries Commissioner delivered a series of lectures and workshops to inform the development of the Manukua Precinct Project on matters relating to jury management and administration.

	2008-09	2009-10	Differene	Variance
JURORS SUMMONED				
Melbourne	31,617	29,900	-1,717	-5%
Circuit	31,703	32,731	1,028	3%
Total	63,320	62,631	-689	-1%
JURORS EMPANELLED				
Melbourne	5,653	4,960	-693	-12%
Circuit	2,084	1,967	-117	-6%
Total	7,737	6,927	-810	-10%
SUPREME AND COUNTY COURT JUF	Y TRIALS			
Melbourne	488	442	-46	-9%

Melbourne	488	442	-46	-9%
Circuit	180	178	-2	-1%
Total	668	620	-48	-7%
SUPREME COURT JURY TRIAL DAYS	898	631	-267	-30%

Please note, prior to the 2008-09 Annual Report, this figure was calculated per juror.

### Library

### **Board of Examiners**

The Supreme Court Library provides information and reference services to the Judges and Associate Judges of the Supreme Court and the legal profession, as well as to court staff. Its broad and historically unique collection is essential for the research work of both the Court of Appeal and the Trial Division of the Court. It is also a resource for the County Court, the Magistrates Court and VCAT, and continues to provide most of the funding for the staff in the first two of these libraries, and also their cataloguing services. The library is also an essential research tool for the wider legal profession.

As has occurred every year for some time, the financial circumstances of the library continue to worsen, as the cost of books and online material rises, and the income decreases.

During the year, the second part of the review of Library services was completed, and those recommendations capable of being implemented are being carried out.

An emerging issue is the future financing of library services with the proposed move to an Australia-wide legal profession, and the presumed loss of the current income from admission fees. The Board of Examiners assesses the eligibility and suitability of applicants for admission as Australian lawyers and officers of the Court. The Board's primary role, prescribed by Section 2.3.10 of the Legal Profession Act 2004, is to recommend to the Court that an applicant for admission is eligible for admission and is a fit and proper person to be admitted.

The Board of Examiners currently comprises:

- The Honourable B. Teague (Chairman)
- Mr R. K. Meldrum, Q.C.
- Mr J G Santamaria, Q.C.
- Mr P. J. Jopling, Q.C.
- Ms J. Cameron
- Mr D. Grave
- Mr B. Pippett
- Mr R. Besley (Secretary)

#### **KEY STATISTICS**

Board meetings	12
Applications considered by the Board in hearing	139
Admissions	1,189
Approval of Supervised Workplace Training	188

Since I July 2008 the Board of Examiners has been operating as a discreet administrative entity, independent of the Supreme Court. The Legal Profession (Admission) Rules 2008 commenced on I July 2008 and abolished articles of clerkship, replacing them with Supervised Workplace Training. The rationale for this change was to achieve a level of consistency in pre-admission practical training by establishing a set of minimum training requirements, and to bring Victoria's training requirements into line with the National Practical Legal Training Competencies.

Following the grant of certification by the Board of Examiners, the Supreme Court hold formal sittings where candidates are admitted as an Australian Lawyer and as an officer of the Supreme Court of Victoria.

In the reporting year 1189 candidates were admitted and approximately 4000 persons attended the sittings.

### Adult Parole Board

### Forensic Leave Panel

The Adult Parole Board is an independent statutory body established under the Corrections Act 1986. For the past 50 years the Board has been chaired by a Supreme Court Judge.

Justice Whelan is the chairperson of the Board. Justice Curtain is a judicial member of the Board.

The Board comprises serving Supreme Court and County Court Judges and Magistrates, together with retired judicial officers and community members. The obligations of the Board are demanding. They include the responsibility to make independent and appropriate decisions regarding the release of prisoners on parole, as well as responsibilities in relation to home detention and detention and supervision orders.

Throughout the year the Board met 148 times. Of those meetings, 53 were conducted in prisons. In all, 8,840 matters were considered, and 1,659 prisoners were interviewed.

The extra-judicial workload imposed on Judges who are members of the Board is substantial and has increased in recent years. Judges of the Supreme Court are also involved in the work of the Forensic Leave Panel. It is an independent statutory body established under the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997. The Act governs the detention, management and release of those unfit to be tried or not guilty of crimes on grounds of mental impairment. Forensic patients and residents under custodial supervision orders can apply to the panel for different types of leave.

The Act provides that one or more Supreme Court Judge nominated by the Chief Justice must be a member of the panel. A Supreme Court Judge is also nominated as the panel's president. The current judicial members from the Supreme Court are Justice Williams, the President of the panel, and Justice Hollingworth, Justice Coghlan and Justice J Forrest. The panel also includes four County Court Judges.

At a hearing, the panel is constituted by a judge from the sentencing court and may include the Chief Psychiatrist (or nominee), a psychiatrist or psychologist and a community representative. Panel hearings are not required to be formal but the panel is bound by the rules of natural justice. Its proceedings are generally closed.

The volume of the panel's work can be seen when the statistics are compared. In 1998, the year of its establishment, 20 forensic patients and three forensic residents made 71 leave applications to the panel. In 2009, 179 applications were made by 73 applicants for 742 different leave purposes. Of those applicants, one resident and 53 patients were under Supreme Court orders and their applications involved the attendance of a Supreme Court Judge. The panel sits at scheduled times throughout the year and, in addition, when required to deal with any other necessary applications.

The panel reports annually to Parliament and, in 2009, it presented its eleventh annual report.

## **Finance Report**

	2008-09 Actual \$000	2009-10 Budget \$000	2009-10 Actual \$000	Under or (Over) Budget \$000
REVENUE (see Note 1)				
Government Funding and other Controlled Revenue	46,482	52,394	48,305	4,089
TOTAL REVENUE	46,482	52,394	48,305	4,089
EXPENDITURE				
Total of TRIAL and APPEAL etc - but NOT Juries Commissioner's Office		_		
Special Appropriation	18,431	22,383	19,019	3,364
Annual Appropriations				
Staff salaries and related expenses	12,390	14,519	13,580	939
All other operating costs	7,936	6,165	6,769	(604)
Non discretionary (mainly depreciation)	2,773	3,688	3,690	(2)
Total annual appropriations	23,099	24,372	24,039	333
Total Non Capital Expenditure - Trial & Appeal	41,530	46,755	43,058	3,697
JURIES Commissioner's Office				
Special appropriations	297	19	0	19
Staff salaries and related expenses	1,187	1,291	1,214	77
Operating costs	837	1,028	599	429
Juror payments	3,283	3,299	3,492	(193)
Non discretionary (mainly depreciation)	2	2	2	0
Total Non Capital Expenditure - Juries	5,606	5,639	5,307	332
Capital Expenditure (all divisions of Court)	1,141	968	934	34
TOTAL ALL EXPENDITURE	48,277	53,362	49,299	4,063

#### Notes

1 The above figures show controlled funds only. They omit Court Fees etc collected [\$13,780,611 - 2009/10 actual] and Transfers out [\$13,659,922 - 2009/10 actual]

### Glossary

#### Adjournment

A procedure to suspend or postpone a hearing to a future date.

#### ACA

Accident Compensation Act 1985.

#### ADR

Alternative dispute resolution.

#### Appeal

An application to a higher court to review the decision of a lower court.

#### Associate

Each Judge and Associate Judge has an Associate. The Associate's duties involve the administrative function of running Court hearings. They also act as general assistants to their Judge/Associate Judge. Judges' Associates wear robes in Court.

#### **Award Funds**

Paid into Funds in Court, Award Funds represent an award of damages, or compensation, for a person under a legal disability, who has had a proceeding in a Court brought for and on his or her behalf. A person for whom the Court holds funds is called a beneficiary.

#### BAG

Beneficiaries' Advisory Group (part of the SMO) consists of representatives of beneficiaries' families and interested stakeholders such as the Law Institute of Victoria and the Office of the Public Advocate.

#### **Callover** lists

Some matters are listed in a callover list for their first hearing. At the callover, parties appear and make submissions about the further conduct of the matter. The Judge then gives further directions for the conduct of the matter if necessary and lists the matter further.

#### CEO

The Chief Executive Officer is an officer of the Court and is employed pursuant to s. 106(a) of the *Supreme Court Act* 1986 and the *Public Administration Act* 2004. The Chief Executive Officer is responsible for the overall administration of the Court and oversees all the various works in the Court, with the exception of those areas that report directly to the judiciary.

#### CLO

Client Liaison Officer.

#### **Civil Management List**

Any civil proceeding that is not in the specialist list, which has been commenced by writ and has had a defence filed, is entered into the Civil Management List for case management. The majority of civil proceedings are not in specialist lists but within the Civil Management List.

#### Circuit sittings

Sittings of the Supreme Court, which are held in various regional districts within Victoria.

### Commercial and Equity Division

A division of the Court's Trial Division brought into effect on 1 February 2000, pursuant to Practice Note No. 4 of 1999.

#### **Common Law Division**

A division of the Court's Trial Division brought into effect on I February 2000, pursuant to Practice Note No. 4 of 1999.

#### Court of Appeal

The Court of Appeal hears appeals from Criminal and Civil trials heard by Judges of the Supreme Court and the County Court. It also hears appeals from some proceedings which have come before the Victorian Civil and Administrative Tribunal (VCAT) and other Tribunals.

#### Criminal Division

A division of the Court's Trial Division brought into effect on I February 2000, pursuant to Practice Note No. 4 of 1999.

#### **Directions hearing**

A form of preliminary hearing conducted when directions are given for the main hearing to be held at a later date.

#### Docketing

A method by which cases are scheduled for hearing.

#### **Duty Barristers' Scheme**

Administered by the Victorian Bar, this is a scheme whereby volunteer barristers provide legal assistance to self-represented litigants on an ad hoc basis.

#### **Funds in Court**

A discrete, self-funded division of the Court where the Senior Master holds, administers and invests all funds paid into the Court.

#### ICMS

Integrated Case Management System – a new case management system recently introduced at the Supreme Court of Victoria.

#### Injunction

A Court Order imposed to make a person do something or refrain from doing something.

#### Interlocutory Applications

Provisional or interim applications which are brought between the beginning and the end of a proceeding to decide a particular matter that is not the final issue of the entire proceeding.

#### JCV

Judicial College of Victoria.

#### JOIN

Judicial Officers' Information Network.

#### Judge in Charge

A Judge who is responsible for the work of a particular list. The Judge in Charge gives directions to the parties from the early stages of the proceedings and will usually conduct the trial.

#### Associate Judge

A Judicial Officer who carries out judicial functions in the civil jurisdictions of the Court pursuant to the Rules of the Supreme Court.

#### Mediation

A form of ADR, which aims to assist two (or more) disputants in reaching an agreement.

#### Non-award funds

Paid into Funds in Court, however unlike award funds these funds are not held for a particular individual who, but for disability, is presently entitled to the funds. For example interest and taxation payments are nonaward funds.

#### OHS

Occupational health and safety.

#### **Originating motion**

A form of process used to commence a proceeding where required by an Act or by the Rules, and where there is no defendant or when it is unlikely that there will be any substantial dispute of fact between the parties in a proceeding.

#### Party party costs

In civil litigation matters the unsuccessful party may be required to pay the successful party's costs. These costs are known as party party costs.

#### PILCH

Public Interest Law Clearing House.

#### Pleadings

A series of written statements exchanged between the parties in a proceeding. They set out and clarify the claims and defences of the parties and help define the issues that must be determined.

#### **Practice Court**

A court where short and or urgent applications can be made. A Judge presides over the Practice Court.

#### Presentment

Used in criminal proceedings, this is a document filed in Court, which describes the crimes alleged by the prosecution to have been committed by an accused.

#### Pre-trial conference

A pre-trial conference is a form of dispute resolution that usually takes place after a proceeding has been set down for trial.

#### POAS

Probate Online Advertisement Scheme – a new scheme implemented by the Probate Office to publish probate advertisements on a dedicated probate website provided by the Court. This replaces the traditional method of publishing in the newspaper.

#### Probate

Proving of a will as authentic or valid. The Court is authorised to declare that a will is valid, allowing the executor to collect the deceased's assets and so administer the estate according to the terms of the will.

#### SM0

Senior Masters's Office, also known as Funds in Court. A discrete, self-funded division of the Court where the Senior Master holds, administers and invests all funds paid into the Court.

#### Scalist

The former case management system used by the Supreme Court of Victoria.

#### Security for costs

The Court may, on application of a defendant, order that security for the costs of the defendant in the proceeding be paid by the plaintiff under certain circumstances.

#### Solicitor client costs

Costs that a solicitor charges their client for legal services provided directly to the client.

Specialist list

A Judge-controlled list that provides specialist management to cases concerning that list and associated disputes. The Judge in Charge gives directions to the parties from the early stages of the proceedings and will usually conduct the trial proceedings in the list. The Court has several specialist lists:

- Admiralty List
- Technology Engineering and Construction List
- Intellectual Property List
- · Major Torts List
- Victorian Compensation and Planning List
- Victorian Taxation Appeals List
- Personal Injuries List
- Judicial Review and Appeals List.
- Circuit List
- Corporations List
- Arbitration List

#### Subpoena

A writ or summons issued in a proceeding requiring the person to whom it is directed to be present at a particular place and time for a specified purpose under a penalty for nonattendance.

#### TAA

Transport Accident Act 1986.

#### TAC

Transport Accident Commission

#### Taxation

The procedure in which legal costs are assessed. There are two types of legal costs: party party costs and solicitor client costs.

#### Tipstaff

An Officer of the Court who sits next to the Associate and in front of the Judge during Court. The Tipstaff is responsible for keeping order in the Court and will usually swear in or affirm witnesses.

#### **Trial Division**

A division of the Court headed by the Chief Justice and generally about 20 other Judges. The Trial Division is further divided into three sub-divisions: the Commercial and Equity Division, the Common Law Division and the Criminal Division.

#### Self-represented litigants

Individuals who do not have legal representation and who are representing themselves in a proceeding.

#### VCAT

Victorian Civil and Administrative Tribunal.

#### VGRS

Victorian Government Reporting Services. VGRS provides a range of recording and transcript services to the Supreme Court of Victoria as well as other Victorian Courts.

#### VOCAT

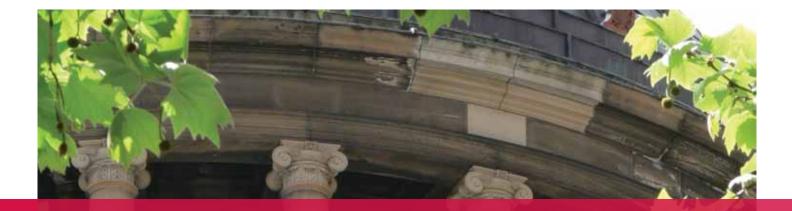
Victims of Crime Assistance Tribunal.

#### VWA

Victorian Work Cover Authority.

#### winTMS

A database application used by the Senior Master's Office.



# Appendix | JUDICIAL ACTIVITY

In addition to their judicial functions, the Judges and Associate Judges of the Court undertake many extra activities to contribute to the development of the law and also to stay abreast of the latest developments in the law. Attendances by Judges and Associate Judges on these occasions also enable Judges to explain to the community their work and why it is important to society to have an independent judiciary.

This appendix lists some of the activities undertaken by the Judges and the Associate Judges of the Supreme Court of Victoria during the reporting period.

# **Chief Justice Warren**

On 13 August 2009 the **Chief Justice** hosted a luncheon for Corporate General Counsel in the McCubbin Room. **Justice Kyrou** also attended the luncheon.

On 18 August 2009 the **Chief Justice** spoke at the launch of and attended the JD Harold Ford Scholarships at Mallesons Stephen Jacues.

On 19 August 2009 the Chief Justice, Justices Hansen, Osborn, Williams, Beach and Davies attended a round table discussion and presentation by the Clayton Utz Litigation Technology Support team on 'IT document handling facilities', which was held at the offices of Clayton Utz.

On 31 August 2009 the **Chief Justice**, **Justices** and **Associate Justices** attended a reception for the Supreme Court hosted by Professor Hathaway, Dean of the Law School, Melbourne University.

On 2 September 2009 the **Chief Justice** delivered a speech entitled 'Reshaping our focus towards sustainability' at the launch of the Law Institute of Victoria's Green Practice Project 'Greening the profession'.

On 4 September 2009 the Chief Justice hosted a lunch for the Chancellor, Vice-Chancellor and the Dean of Law, Melbourne University to discuss approaches to clinical legal education. The lunch was also attended by the President and Justices Weinberg and Hollingworth.

On 10 September 2009 the Chief Justice and Justices Weinberg, Harper, King and Coghlan attended the Criminal Bar Association dinner.

On I October 2009 the **Chief Justice** delivered an opening address entitled 'Education: A Risky Business? Is It Really?' at the ANZELA Conference at Victoria University.

On 9 October 2009 the **Chief Justice** gave the keynote address at the JCA Colloquium entitled 'The Duty owed to the Court – Sometimes Forgotten' held at the Windsor Hotel.

On 14 October 2009 the Chief Justice, the President, Justices Harper, Cavanough, Coghlan, J Forrest, Judd, Vickery, Kyrou and Beach and Associate Justices Evans, Efthim, Wood, Lansdowne, Daly, Gardiner and Mukhtar attended a Seminar on Judgment Writing.

On 14 October 2009 the **Chief Justice** attended the Women Barristers' Association Annual Cocktail Party.

On 15 October 2009 the **Chief Justice** hosted a lunchtime discussion for the Secretaries of Department of Justice, Department of Premier and Cabinet, Department of Treasury and Finance in the McCubbin Room. The **President** also attended.

On 15 October 2009 the **Chief Justice** opened the Australian Insurance Annual Conference. **Justice Byrne** also attended the conference and gave a presentation with Professor Greg Reinhardt, Executive Director, Australasian Institute of Judicial Administration, entitled 'Dispute Resolution - New Ways of Doing Old Things'.

On 15 October 2009 the **Chief Justice** delivered a paper entitled 'Good faith: where are we at?', at The Judicial College of Victoria Developments in Contract Seminar. **Associate Justices Efthim**, **Gardiner** and **Mukhtar** also attended the seminar.

On 16 October 2009 the **Chief Justice** hosted a lunchtime discussion on media reporting of court business for the editors and reporting staff of *The Age* in the McCubbin Room. The **President**, Justice Whelan and Justice J Forrest also attended.

On 20 and 21 October 2009 the **Chief Justice** attended the Council of **Chief Justice**s meeting in Adelaide and also toured the Commonwealth Law Centre Building.

On 18 November 2009 the **Chief Justice** attended the Courts Consultative Council at the Neighbourhood Justice Centre.

On 18 November 2009 the Chief Justice, the President, Justices Redlich, Whelan and Forrest attended a luncheon with editors of the *Herald Sun* to discuss media reporting of court business.

On 19 November 2009 the Chief Justice attended and introduced guest speaker Honourable Justice Susan Kiefel on the occasion of the 17th Lucinda Lecture at Monash University Law School. Justice Kiefel gave a presentation entitled 'Section 92: Markets, Protectionism and Proportionality – Australian and European Perspectives'. Justice Pagone also attended.

On 4 December 2009 the **Chief Justice** attended and gave a presentation entitled 'The Victorian Supreme Court's Perspective on Arbitration' at the International Commercial Arbitration Conference – 'Efficient, Effective, Economical?' – which was held at the RACV Club. **Justice Croft** also delivered a paper.

On 7 December 2009 the **Chief Justice** together with **Justices Harper** and **Williams**, met with **Chief Justice** Truong Hoa Binh and a judicial delegation of the Supreme People's Court of the Socialist Republic of Vietnam. On 9 December 2009 the **Chief Justice** together with the **President** and other **Judges** attended the Castan Centre breakfast with Dame Rosalyn Higgins, former **President** of the International Court of Justice. The **Chief Justice** then met with Dame Rosalyn and Lord Higgins at the Supreme Court and provided a tour of the Court. On 18 January 2010 the **Chief Justice** attended the Australia Day reception held by the Prime Minister and attended by the Premier and other **Chief Justices** at the National Gallery of Victoria.

On 27 January 2010 the **Chief Justice** attended and delivered a presentation, 'Should judges mediate?', at the Supreme & Federal Court Judges' Conference in Canberra. **Justices Harper, Byrne, Cavanough, Curtain** and **Ross** also attended the conference.

On 4 February 2010 the **Chief Justice**, together with **Justices Whelan** and **J Forrest** and Anne Stanford, Strategic Communication Advisor, hosted a media briefing with major press and media outlets to highlight upcoming significant cases of 2010

On 17 February 2010 the Chief Justice hosted, and the President and Justices Neave, Weinberg, Osborn and Hollingworth attended, a lunchtime discussion for the Chancellor, David Morgan, Vice-Chancellor, Professor Sally Walker, and Head of Law School, Professor Anne Rees, of Deakin University to discuss clinical legal education.

On 3 March 2010 the **Chief Justice** attended a reception hosted by the Premier for the Nobel Laureate Professor Elizabeth Blackburn AC at Queen's Hall.

On 10 March 2010 the **Chief Justice** presided over the Melbourne Law School Exhibition Moot.

On 10 March 2010 the Chief Justice, along with the President and Justices Ashley, Williams, Bell, Cavanough, Kyrou and Emerton, met with the Honourable Lord Justice Carnwath, Lord Justice of Appeal of England and Wales.

On 11 March 2010 the Chief Justice, Justice Neave, Justice Hollingworth and Justice Curtain attended the Dame Roma Mitchell memorial lecture.

On 12 March 2010 the **Chief Justice** and **Justice Cavanough** met with the Honourable Justice Shin Young-chul of the Supreme Court of Korea.

From 15 to 17 March 2010 the Chief Justice and Justices Ashley,

**Bongiorno** and **Harper** sat at Geelong and met with the local profession. On 17 March 2010 the **Chief Justice** attended a reception for Robert Heslett, President of the Law Society of England & Wales, in Toorak at the residence of the British Consul General. On 19 March 2010 the **Chief Justice** attended the Council of Chief Justices meeting at the Federal Court in Melbourne.

On 23 March 2010 the **Chief Justice** spoke at the Celebration of the Life and Work of Professor Enid Campbell AC, OBE at the Monash Law Chambers. **Justice Pagone** also attended.

On 16 April 2010 the **Chief Justice** addressed the Melbourne Press Club and delivered the speech 'Judges Don't Spin'. **Justices Whelan** and **J. Forrest** also attended.

On 28 April 2010 the **Chief Justice** attended and spoke at the book launch by VACRO and Corrections Victoria of the Women's Case Management Guide.

On 5 May 2010 the **Chief Justice** chaired a plenary session on therapeutic jurisprudence at the Non-Adversarial Justice: Implications for the Legal System and Society Conference at Hilton on the Park.

On 6 May 2010 the Chief Justice met with the Chief Justice of Bangladesh.

On 11 May 2010 the **Chief Justice** attended the Human Rights Law Resource Centre Board Luncheon with Commissioner Elizabeth Broderick.

On 13 May 2010 the **Chief Justice** delivered a speech entitled 'Victoria's Commitment to Arbitration including International Arbitration and Recent Developments' at the Australian Centre for International Commercial Arbitration reception at the Melbourne office of Mallesons Stephen Jacques.

On 13 May 2010 the **Chief Justice** attended the installation of George Pappas as the Chancellor of Victoria University at Flemington Racecourse.

On 14 May 2010 the Chief Justice hosted, and Justices Nettle, Weinberg, Osborn, Emerton, Williams and Ferguson attended, an afternoon tea for Madame Louise Arbour, President of the International Crisis Group.

On 17 May 2010 the **Chief Justice** attended the Court Network 30th Year celebration at Government House.

On 18 May 2010 the **Chief Justice** delivered a speech entitled 'Propping Up the System' at the Victorian Bar Tenth Anniversary Pro Bono Celebration and Awards Ceremony.

On 18 May 2010 the **Chief Justice** hosted, and the **President**, Justices Ashley and Coghlan and the Honourable Geoff Eames QC attended, a luncheon discussion in the McCubbin room for Master Venne. On 19 May 2010 the Chief Justice, Judges and Associate Judges attended a lunchtime seminar with Master Roger Venne QC, Registrar of Criminal Appeals, English Court of Appeal

On 20 May 2010 the **Chief Justice** delivered a speech entitled 'Legal Ethics in the Era of Big Business, Globalisation and Consumerism' at the Joint Law Societies Ethics Forum.

On 21 May 2010 the Chief Justice delivered a speech entitled 'Politics of Court Architecture' at the Third Justice Environments Conference in Sydney. Justices Osborn and Coghlan also attended the conference. Justice Osborn delivered a speech entitled 'Visual Technology in Courts'.

On 27 May 2010 the **Chief Justice** delivered the 2010 Law Week Oration 'Does Judicial Independence Matter?' at the University of Melbourne.

# The President

On 17 July 2009 the **President** attended the annual Castan Centre Human Rights Conference and gave a speech entitled 'The Victorian Chapter of Human Rights and Responsibilities so Far: A Judge's Perspective'.

On 29 July 2009 the **President** delivered an address on behalf of the **Chief Justice** at the launch of the Victorian Law Reform Commission's (VLRC) Jury Directions Report.

On 31 July 2009 the President attended the PILCH Gala Dinner.

On 13 August 2009 the **President** attended the Statutory Interpretation Symposium to give a speech entitled 'The Role of Advocacy in Statutory Interpretation'.

On 19 August 2009 the **President** delivered the Deakin Law Oration entitled 'Too Much Law: Risk, Reasonableness and the Judge as Regulator'.

On 4 September 2009 the **President**, **Justices Neave**, **Weinberg**, **Whelan** and **Hollingworth** attended the JCV seminar entitled 'Jury Charge Comprehension' which was held at the InterContinental, Melbourne.

On 7 October 2009 the **President** presented a CPD seminar on 'New Approach to Criminal Appeals' in the Neil McPhee Room, at the Victorian Bar.

On II November 2009 the **President** and other appeal judges attended a meeting with County Court Judges in relation to interlocutory appeals.

On 21 January 2010 the **President** on behalf of the **Chief Justice** and other **Judges** attended the Australia Day celebration held by the Governor in honour of Prince William at Government House.

On 6 and 7 February 2010 the **President** attended the National Judicial College Sentencing Conference in Canberra.

On 5 May 2010 the **President** delivered a speech at the AIJA Conference on Non-Adversarial Justice. **Justice Judd** also attended the conference.

On 17 May 2010 the **President** and **Justice Pagone** attended the PILCH Walk for Justice, a fundraising event for pro bono lawyers.

# **Justice Ashley**

On 2 September 2009 **Justice Ashley** and **Justice Osborn** attended the Common Law Bar Association Dinner.

On 2 October 2009 **Justice Ashley** represented the **Chief Justice** at a Government House lunch on for His Excellency Dr László Sólyom, **President** of the Republic of Hungary.

From 15 to 17 March 2010 **Justices Ashley** and **Bongiorno** attended a reception of the Geelong Law Association, attended a luncheon with Geelong Court Network and met with local school students.

# **Justice Neave**

On 15 September 2009 **Justice Neave** attended the Women's Career Pathways breakfast at Freehills Melbourne.

On 19 March 2010 **Justice Neave** attended the JCV Workshop 'Making sense of Legislation'.

On 24 March 2010 **Justice Neave** attended the launch of the Criminal Procedure Legislative Guide at the Department of Justice.

On 15 April 2010 **Justice Neave** delivered an address at the Victorian Women Lawyers Mentoring Program Launch held at Middletons.

On 23 April 2010 **Justice Neave** attended the Women on Law Breakfast at the RACV Club.

On 26 May 2010 **Justice Neave** attended the 4th Women Lawyers Achievement Awards (Victoria) Presentation Dinner.

# **Justice Redlich**

On 23 July 2009 **Justices Redlich, Weinberg** and **Neave** presided over the final of the Hanover Welfare Services Mooting Competition.

## **Justice Weinberg**

On 7 August 2009 Justice Weinberg participated in a criminal procedure workshop on interlocutory appeals.

On 7 August 2009 Justices Weinberg, Bongiorno, Kaye, Whelan, Hollingworth, King and Lasry attended the JCV seminar on the Criminal Procedure Act.

On 14 October 2009 **Justice Weinberg** attended a luncheon celebrating Sir Zelman Cowen's 90th birthday hosted by the partners of Arnold Bloch Leibler and the Jewish Museum of Australia.

On I February 2010 **Justice Weinberg** represented the **Chief Justice** at the Australian Bar Associations Silks' Dinner held at the High Court, Canberra.

On 9 February 2010 **Justice Weinberg** attended the American Bar Association Conference: 'Cross-Border Collaboration, Convergence and Conflict: the Internationalization of Domestic Law and its Consequence' in Sydney.

On 5 May 2010 Justice Weinberg, on behalf of the Chief Justice, attended a reception celebrating Israel's 62nd Independence Day.

On 14 May 2010 **Justice Weinberg**, on behalf of the **President**, attended the Human Rights Law Resource Centre and the Public Interest Law Clearing House 2010 Human Rights Dinner. **Justice Ferguson** also attended.

#### Justice Bongiorno

On 2 July 2009 **Justice Bongiorno** attended a reception hosted by the US Consul General to celebrate the 233rd anniversary of the Independence of the USA.

### **Justice Harper**

On 8 August 2009 **Justice Harper** attended the Clerk of Courts Annual Dinner.

On 17 August 2009 **Justice Harper** attended a meeting of the Judicial Complaints Working Group as the Supreme Court representative.

From 26 to 28 August 2009 **Justice Harper** instructed at the JCV Judgment Writing Court. **Justice Kyrou** attended the judgment writing course.

On 2 September 2009 **Justice Harper** attended a function hosted by the Australian Red Cross (Victorian Division).

On 7 September 2009 **Justice Harper** chaired a meeting of the Judicial Assistance Committee.

On 21 and 22 September 2009 **Justice Harper** attended a two day JCV 'Ethics & Obligations in Judicial Decision-Making' workshop.

On 13 October 2009 **Justice Harper** attended the Vice Regal Oration for Janet Clarke Hall given by the Governor-General.

On 22 and 23 October 2009 **Justice Harper** attended the JCV Advanced Leadership workshop.

On 28 October 2009 **Justice Harper** chaired a meeting of the Australian Red Cross (Victorian Division) International Humanitarian Law Committee.

On 8 November 2009 **Justice Harper** conducted a Victorian Bar Readers video exercise.

On 10 November 2009 Justices Harper, Hollingworth and Williams conducted a seminar on Ethics for the Victorian Bar Readers.

On 10 November 2009 **Justice Harper** participated in a national teleconference as a member of the Discount and Interest Rates Harmonisation Committee.

On 19 November 2009 **Justice Harper** chaired the Annual General Meeting of Victorian Association for the Care and Resettlement of Offenders.

On 30 November 2009 **Justice Harper** attended a meeting of the Monash University Post Graduate Advisory Panel on Human Rights.

On 2 December 2009 **Justice Harper** attended an advocacy seminar for local practitioners in the Dandenong region conducted by the Dandenong Magistrates' Court.

On 10 February 2010 **Justice Harper** participated in a panel discussion for a session in the JCV Judicial Orientation Workshop.

On 19 March 2010 **Justice Harper** attended a JCV Statutory Interpretation seminar.

### **Justice Cummins**

On 24 and 25 August 2009 **Justice Cummins** instructed at the Melbourne Law School at its Masters Intensive Programme.

On 24 August 2009 **Justice Cummins** was guest speaker at the Melbourne Law School's Law Student Society. His speech was entitled 'Shakespeare, Law and Authorship'.

On I September 2009 **Justice Cummins** presented a CPD seminar to the Victorian Bar titled 'Reflections Upon Judicial Life' in the Neil McPhee Room, Owen Dixon Chambers. From 9 and 11 October 2009 **Justice Cummins** delivered a speech entitled 'Shakespeare and Psychiatry' at the JCA Colloquium held at the Windsor. Justices Harper, Hargrave and Cavanough and Associate Justice Lansdowne attended the JCA Colloquium.

On 26 October 2009 **Justice Cummins** attended and gave a speech at an International Conference on training of the Judiciary in Sydney.

## Justice Byrne

On 7 October 2009 **Justice Byrne** attended the E-Discovery Australia Conference held in Sydney. His Honour took part in a panel discussion with two judges from the Supreme Court of NSW, The Honourable Justice Gzell and Associate Justice Macready, entitled 'Preparing for e-Discover: The Judicial Perspective'.

On 8 and 9 October 2009 **Justice Byrne** delivered a speech at an E-Courts conference in Sydney.

On 13 October 2009 **Justice Byrne** attended a dinner at Government House in honour of The Right Honourable Mrs Sujatha Singh, High Commissioner for India.

On 10 November 2009 **Justice Byrne** delivered a paper entitled 'Assessing the Credibility of Witnesses' at the National Judicial Orientation Program, Glenelg, South Australia.

On IO November 2009 **Justice Byrne** was the guest speaker at a reception held at the University of Melbourne Law School to mark the IOth Anniversary of the Founding of the Construction Law Program at the Law School.

On 7 December 2009 **Justice Byrne** attended the Standing Committee of Attorneys-General Proportionate Liability Roundtable hosted by the Commonwealth Attorney-General's Department, Canberra.

On 9 December 2009 **Justice Byrne** attended the Books Sub-Committee Meeting held in the Supreme Court Library.

On 21 December 2009 **Justice Byrne** met with representatives of the Attorney-General's Department (Victoria) at the Supreme Court to discuss reforms to Proportionate Liability legislation.

From 11 to 24 January 2010 **Justice Byrne** attended the Second Judicial Seminar on Commercial Litigation in Hong Kong, hosted by the Chief Judge of the High Court, Mr Justice Ma.

From 18 to 23 April 2010 **Justice Byrne** attended and delivered a speech entitled 'Assessing the Credibility of Witnesses' at the National Judicial Orientation Program conference held in Queensland.

#### **Justice Hansen**

On 25 October 2009 **Justice Hansen** attended the National Meeting of Judicial Educators at the Hilton Hotel Sydney.

On 26 and 27 October 2009 **Justice Hansen** attended the 4th Conference of the International Organisation for Judicial Training held at the Hilton Hotel in Sydney.

On 16 November 2009 **Justice Hansen** attended a meeting of the Clinical Ethics Committee of Melbourne Health.

On 3 May 2010 **Justice Hansen** met with Justice John Fogarty from New Zealand in relation to Rules of Court and civil procedure.

On 13 May 2010 **Justices Hansen, Osborn** and **Coghlan** (as the Principal Judges of the Trial Division) met with the Victorian Attorney-General.

## Justice Habersberger

On 24 March 2010 Justice Habersberger delivered a speech at the Law Institute of Victoria entitled 'Orientation for New Lawyers – Life in the Legal Profession'.

## Justice Osborn

On 2 December 2009 **Justice Osborn** represented the **Chief Justice** at the launch of an empirical study of class actions by Professor Vince Morabito held at Freehills. **Justice Beach** also attended.

# **Justice Williams**

On 10 November 2009 **Justice Williams** delivered a speech to the Bar Readers Course on ethics at Owen Dixon Chambers.

On 22 and 23 November 2009 **Justice Williams** attended the Cranlana Symposium.

From 18 to 20 February 2010 **Justice Williams** attended the AIJA Mental Health Issues and Administration of Justice Conference in Auckland.

On 3 May 2010 Justices Williams and Whelan attended the opening of 'Corella Place' at HM Ararat Prison.

On 13 May 2010 **Justices Williams, Kaye, Hollingworth** and **J Forrest** judged the Victorian Bar Readers Moots.

On 20 May 2010 **Justices Williams** and **Hollingworth** attended a JCV Seminar entitled 'Elderly, inform and mentally impaired offenders – what are the options?'

### Justice Kaye

On 8 September 2009 Justice Kaye chaired, and the **Chief Justice** and **Justices Harper, Williams, Coghlan** and **Beach** attended, a JCV Koori Twilight workshop on Lateral and Family Violence.

### **Justice Whelan**

Justice Whelan attended and chaired meetings of the Adult Parole Board usually on a bi-weekly basis.

### Justice Hollingworth

On 24 August 2009 **Justice Hollingworth** attended a lecture given by Lord Neuberger and was the guest speaker at the Anglo-Australian Law Society annual dinner.

On 7 September 2009 **Justice Hollingworth** was a judge in the mooting competition run by the Victorian Council of Law Students' Society.

On 10 September 2009 **Justice Hollingworth** made a presentation at the Leo Cussen Institute on witness statements.

On 17 and 18 September 2009 **Justices Hollingworth** and **Bell** attended the Judicial College of Victoria workshop chaired by Justice Glazebrook of the New Zealand Court of Appeal, on the topic, 'Logic and Legal Reasoning in Judicial Decision-Making'.

On 10 November 2009 Justices Hollingworth, Harper and Williams spoke to the Bar Readers Course on 'Ethical Obligations to the Court'.

On 11 November 2009 **Justice Hollingworth** presented a paper entitled 'Writing Reasons for Decision' to the Building Practitioners Board.

On 18 November 2009 **Justice Hollingworth** was interviewed for the University of Oxford's 'Alumni on Film' project.

On 19 November 2009 **Justice Hollingworth** attended the Bar Readers Dinner.

On 29 April 2010 **Justice Hollingworth** attended a seminar hosted by the Intellectual Property Society of Australia and New Zealand.

On 21 May 2010 **Justice Hollingworth** spoke to the Sisters in Crime Group about 'The Burden of Proof'.

# Justice Bell

On 26 August 2009 **Justice Bell** spoke to a forum of psychiatrists on the topic of 'Kracke v Mental Health Review Board' at the invitation of the Office of the Chief Psychiatrist.

On I September 2009 Justice Bell delivered a speech to the Monash

University Comparative Bills of Rights Postgraduate Law Course entitled, 'Victorian Charter: a view from the bench'.

On II September 2009 **Justice Bell** attended the Law Institute of Victoria CPD conference held at the Melbourne Convention and Exhibition Centre and delivered the keynote speech entitled "The importance of human rights in decision-making in relation to people with mental illness, as analysed in Kracke v Mental Health Review Board and Ors (General) [2009] VCAT 646".

On 10 November 2009 **Justice Bell** attended the 2009 Chancellor's Human Rights Lecture at the University of Melbourne which was given by the Honourable Stephen Charles QC entitled 'Victorian Charter of Human Rights and the Criminal Law – Perspectives from the European Convention on Human Rights'. Following the lecture Justice Bell attended the dinner held in honour of the guest lecturer.

On 24 February 2010 **Justice Bell** delivered a speech to the Australian and New Zealand Association of Psychiatry, Psychology and Law meeting at Graduate House entitled 'Human rights under the Charter and the practices of psychiatry and psychology: reflections on Kracke'.

On 16 March 2010 **Justice Bell** attended the launch of the Climate Change & Environmental Law Panel.

### Justice Hargrave

On 17 November 2009 Judges of the Court attended a presentation by **Justice Hargrave** on the Uniform Evidence Act.

On 24 November 2009 **Justice Hargrave** presented and Judges attended an 'Expert Evidence' talk which was held in the Supreme Court Theatrette.

# Justice King

On 12 April 2010 **Justice King** moderated at the Law Institute of Victoria's (LIV) Legal Comedy Debate as part of the Melbourne Comedy Festival.

On 7 May 2010 **Justices King** and **Pagone** together with court staff attended the Field of Women LIVE 2010 at the MCG, a fundraising event for the Breast Cancer Network Australia.

On 14 May 2010 **Justice King** was guest speaker at a luncheon to support the Royal Children's Hospital and the Nursing Development Scholarship.

### **Justice Cavanough**

On 19 November 2009 **Justice Cavanough** spoke at the Annual Dinner of the Victorian Chapter of the Australian Institute of Administrative

Law on the topic 'After the Spring Carnival: the contribution of racing cases to the development of administrative law'.

On 22 May 2010 Justices Cavanough, T Forrest, Emerton, Ferguson and Associate Justice Zammit assisted with the Supreme Court's Open Day for Law Week.

# **Justice Curtain**

Justice Curtin sat at the Adult Parole Board on a monthly basis. Justice Pagone

On 8 August 2009 **Justice Pagone** attended the Italian Community Earthquake Disaster dinner.

On 14 August 2009 **Justice Pagone** attended a farewell for Consul General of Italy Francesco de Conno and Mrs de Conno.

On 20 August 2009 **Justice Pagone** attended the Annual Tax Lecture at Melbourne University.

On 30 August 2009 **Justice Pagone** spoke on 'Past, Present, Future: The Sicilian Language'at a conference for The Sicilian Family.

On 10 September 2009 **Justice Pagone** attended a luncheon in honour of His Excellency Mr Gian Ludovico de Martino di Montegiordano hosted by the Department of Premier and Cabinet.

From 3 and 18 October 2009 **Justice Pagone** attended the International Association of Judges Conference held in Marrakech, Morocco.

On 19 October 2009 **Justice Pagone** represented the **Chief Justice** at the David Maclean Memorial Lecture at Freehills.

On 21 October 2009 **Justice Pagone** appeared as a guest speaker at the Annual Tax Bar Association Dinner.

On 28 October 2009 **Justice Pagone** attended an evening to celebrate the National Day of the Czech Republic.

On 29 October 2009 **Justice Pagone** attended a celebratory lunch and lecture on 'Living outside the Walls: the Chinese in Prato' delivered by Professor Stephanie Fahey from Monash University.

On 2 November 2009 **Justice Pagone** attended a meeting for the Postgraduate Studies Advisory Panel on Commercial Law at Monash University.

On 20 November 2009 **Justice Pagone** presented a lecture on legal ethics to students at Monash University.

On 2 December 2009 **Justice Pagone** attended a dinner for the winners of the Franco Schiavoni Memorial Scholarship organised by the Franco Schiavoni Memorial Foundation.

On 10 December 2009 **Justice Pagone** attended a lecture by James Hathaway titled 'Myths & Realities: UN Convention on Refugees and Asylum Seekers' organised by and held at the Melbourne Law School.

From 17 December to 8 February 2010 **Justice Pagone** was the Herbert Smith visiting Professor at Cambridge University, London. During this visit **Justice Pagone** conducted the Cambridge Tax Group Workshop on Australian Anti-Avoidance Rule and conducted the seminar on the Anti-Avoidance Rule to Herbert Smith Scholars.

On 23 February 2010 **Justice Pagone** attended the launch of Donald Farrands "The Law of Options and Other Pre-Emptive Rights".

On 25 February 2010 **Justice Pagone** organised and attended the continuing professional development (CPD) lecture at the Monash Law Chambers on issues in case management.

On 25 February 2010 **Justice Pagone** together with Justice Davies delivered a presentation entitled 'Current Issues in Tax Avoidance' to the Melbourne Law Masters program at the Melbourne Law School.

On 11 March 2010 **Justice Pagone** attended and spoke at a seminar on Advanced Guide to Commercial Litigation organised by LegalWise Seminars.

On 6 May 2010 **Justice Pagone** attended the Il Globo 50th Anniversary Dinner.

On 10 May 2010 Justice Pagone attended the SBS Board Dinner.

On 13 May 2010 **Justice Pagone** presented a lecture on 'Tax Avoidance' at the University of Melbourne Law School.

On 22 May 2010 **Justice Pagone** attended the opening of the Melbourne Italian Festival 2010 Gala Dinner.

On 25 May 2010 **Justice Pagone** attended the Awards and Prizes Ceremony at the University of Melbourne Law School.

### Justice Robson

On 30 July 2009 **Justice Robson** delivered a lecture on 'Schemes of Arrangement' to Master of Laws Students at the University of Melbourne Law School.

On 11 to 13 September 2009 **Justice Robson** attended the Law Council of Australia Corporations Workshop in the Yarra Valley as the Court and **Chief Justice**'s representative.

From 8 to 13 November 2009 **Justices Robson** and **Davies** attended the National Judicial Orientation Program at Glenelg, South Australia.

#### **Justice J Forrest**

On 20 October 2009 **Justice J Forrest** and his wife attended the 2009 Deakin Dinner representing the **Chief Justice**. The **President** and his wife also attended.

On 13 November 2009 **Justice J Forrest** presented a paper entitled 'Lessons to be learnt from appeals to the Court from VCAT decisions' at the VCAT Conference.

On 26 November 2009 **Justice J Forrest** delivered an address at a conference entitled 'The Asbestos Litigation: The Deadly Dust'.

On 25 March 2010 **Justice J Forrest** spoke on the topic of recent High Court decisions relevant to common law trials and the assessment of damages for future economic loss at the County Court Judges' Conference.

#### Justice Lasry

On 8 September 2009 **Justice Lasry** was the guest speaker at the launch of the APS foundation (an organisation of school students).

On 13 October 2009 **Justice Lasry** delivered a speech at the Court Network Conference entitled 'Experiences at Court'.

On 14 October 2009 **Justice Lasry** delivered an address to the Skyline Foundation.

On 18 November 2009 **Justice Lasry** delivered a speech to members of the public at a Juries Commission open day as part of Juror Awareness Week at the County Court.

On 28 January 2010 **Justice Lasry** sat on the Jessup Moot at the University of Melbourne Law School.

On I March 2010 **Justice Lasry** presented a seminar at Melbourne University for their Masters Course entitled 'Panel Discussion on Problems with the Process [at Guantanamo]'.

On 22 and 23 April 2010 **Justice Lasry** was a facilitator at the JCV Oral Decisions Workshop.

## **Justice Judd**

On 10 May 2010 **Justice Judd** attended the Civil Justice Research Group Public Lecture at Melbourne Law School, University of Melbourne.

On 25 May 2010 **Justices Judd** and Croft attended and delivered a presentation at the Commercial Court CPD and continuing legal education (CLE) Seminar at Monash University. Justice Pagone also attended.

#### **Justice Vickery**

On 22 July 2009 **Justice Vickery** presented a keynote address entitled 'The Supreme Court TEC List – The Present and Future Development' at the Building Dispute Practitioners Society at RACV Club.

On II August 2009 **Justice Vickery** attended the "conversation" on a Bill of Rights by former **Chief Justice** of South Africa, the Honourable Arthur Chaskalson and dinner at Latrobe University.

On 14 September 2009 **Justice Vickery** attended the funeral of Justice Peter Richard Dutney of the Supreme Court of Queensland at St Andrews Church, Brisbane representing the Supreme Court of Victoria. On 15 October 2009 **Justice Vickery** attended 'The New TEC List' – Victorian Society of Computers and the Law, AAR Offices.

On 10 November 2009 **Justice Vickery** attended a seminar and reception to celebrate the 10th Anniversary of the Foundation of the Construction Law Masters Program at Melbourne University. His Honour led a session of the program entitled 'Dispute avoidance and resolution'.

From 18 to 23 April 2010 **Justices Vickery** and **Emerton** and **Associate Justice Mukhtar** attended the Judicial Orientation Programme at Broadbeach Queensland.

### Justice Kyrou

On 13 November 2009 **Justice Kyrou** delivered a paper entitled 'Victorian Administrative Law Update' at the Australian National University Centre for International and Public Law, The Fourteenth Annual Public Law Week-end.

On 4 March 2010 **Justice Kyrou** chaired a session on ethics at the Victorian Corporate Counsel Day, Australian Corporate Lawyers Association.

On 22 April 2010 **Justice Kyrou** chaired a session on cultural barriers in the courtroom at the Judicial Orientation Programme in Broadbeach Queensland.

On 30 April 2010 **Justice Kyrou** delivered a paper on the adequacy of reasons at the Council of Australia

On 23 June 2001 **Justice Kyrou** delivered a paper on the Victorian Civil and Administrative Tribunals' natural justice obligation to members of the Tribunal.

# **Justice Davies**

On 23 July 2009 **Justice Davies** attended the Melbourne University discussion entitled 'Conversations with Ms Munya Andrews'.

On 30 July 2009 **Justice Davies** attended Melbourne FC/Devil's Advocates Dinner at the Members Dining Room in the MCG.

On 3 August 2009 **Justice Davies** attended Tax Bar Seminar with Professor David Rosenbloom presenting on "International Taxation in the US: Proposals of the Obama Administration".

On 18 August 2009 **Justice Davies** attended a talk by Associate **Justice Wood** on costs orders in the Old High Court CEO's Conference Room.

On 18 August 2009 **Justice Davies** was honoured at the Tax Institute 'Women in Tax Event' at Clayton Utz.

On 9 September 2009 **Justice Davies** participated in the 2009 LEADR ARD Conference panel, at the Sebel, Albert Park.

On 19 November 2009 **Justice Davies** addressed guests at the Bar Readers' Course Dinner.

In January 2010 **Justice Davies** delivered a paper on international taxtransfer pricing at New York University; met with Judges of the New York District Court and Bankruptcy Court, New York; and met with Judges of the Commercial Court and Chancery Court in London.

On 29 April 2010 **Justice Davies** represented the **Chief Justice** at the Monash Law School in presenting the Supreme Court Prize for best honours student and the Supreme Court Exhibition for the best honours thesis.

# Justice T Forrest

On 29 October 2009 **Justice T Forrest** was sworn in as a Judge of the Supreme Court at Government House. The **Chief Justice** and the President also attended.

# Justice Emerton

On 27 November 2009 **Justice Emerton** represented the **Chief Justice** at the 21st Anniversary Conference of the Centre for Comparative Constitutional Studies at the University of Melbourne.

On 19 February 2010 **Justice Emerton** attended the Constitutional Law Conference held at the Art Galley of New South Wales.

### **Justice Ross**

On 4 December 2009 **Justice Ross** represented the **Chief Justice** at the Law Institute of Victoria, President's Dinner.

#### **Justice Croft**

On 16 November 2009 **Justice Croft** attended the Arbitrators' and Mediators' Institute of New Zealand (AMINZ) "Arbitration Day" in Auckland and presented commentary on the topic 'How to Minimise Disruption and Delay in Arbitral Proceedings'.

On 27 and 28 November **Justice Croft** attended the Federal Court of Australia International Commercial Litigation and Dispute Resolution Conference in Sydney at which he presented a paper with Ms Bronwyn Lincoln entitled "The Role of the Courts: Enforcement of Arbitration Awards and Anti-Arbitration Injunctions".

On 4 December 2009 **Justice Croft** presented a paper with Mr David Fairlie entitled 'The New Framework for International Commercial Arbitration in Australia' at the Australian Centre for International Commercial Arbitration (ACICA) Conference – 'International Commercial Arbitration: Efficient, Effective, Economical?'.

From I to 5 February, in New York, **Justice Croft** lead the Asia Pacific Regional Arbitration Group delegation at the final session of the United Nations Commission on International Trade Law Working Group II (Arbitration) on the revision of the UNCITRAL International Arbitration Rules

From 8 to 12 February 2010 **Justice Croft** attended the Royal Courts of Justice: London Commercial Court and the Chancery Division. During his visit **Justice Croft** sat on the bench with Justice Kim Lewison in the Chancery Division and with Justice Stephen Tomlinson in the Commercial Court.

On 20 March 2010 **Justice Croft** attended the Victorian Bar, Combar CPD on Compulsory Conferences, Expert Conclaves and Hot Tubbing.

On 14 April 2010 **Justice Croft** attended the Deakin University School of Law 2009 Academic Awards on behalf of the **Chief Justice**. On 20 April 2010 **Justice Croft** attended the Victorian Bar, Combar CPD on Compulsory Conferences, Expert Conclaves and Hot Tubbing.

On 5 May 2010 **Justice Croft** presented a paper entitled 'Arbitration Law Reform and the Arbitration List G of the Supreme Court of Victoria' at a discussion night hosted by the Building Dispute Practitioners' Society Inc and the Business Law Section of the Law Council of Australia (Construction and Infrastructure Law Committee). On 12 May 2010 **Justice Croft** attended the Victorian Bar CPD Seminar on 'Confidentiality in Mediations: A Work in Progress'

On 24 May 2010 **Justice Croft** delivered a presentation to the Commercial Bar Association Seminar entitled 'Arbitration Reform in Australia'.

On 24 May 2010 **Justice Croft** delivered a presentation to the Commercial Bar Association Seminar entitled 'Arbitration Reform in Australia'.

On 25 May 2010 Justice Croft chaired the Commercial Court CPD and CLE Seminar – 'ADR Developments you need to know about'.

On 15 June 2010 **Justice Croft** with Mr Neil Kaplan QC presented at a Combar seminar entitled 'International Arbitration, the Good, the Bad and the Ugly'

## **Associate Justice Kings**

On 13 August 2009 Associate Justice Kings attended a dinner in honour of Michael Proud.

### **Associate Justice Wood**

On 10 September 2009 Associate Justice Wood spoke on "Assessment and Recovery of Counsels' Fees" to the Victorian Bar as part of their CPD Program.

On 13 September 2009 Associate Justice Wood conducted mentoring and assessing in the Monash Law Masters subject "Commercial ADR".

On 19 February 2010 Associate Justice Wood attended the LIV 2010 National Costs Lawyers Conference and gave a presentation entitled 'The new Costs Court and the role of mediation'.

### **Associate Justice Gardiner**

On 22 March 2010 Associate Justice Gardiner delivered a speech to VCAT members entitled 'Effect of Winding Up Administration and Bankruptcy'.

Speeches and papers delivered by the judges and associate judges are generally available on the Supreme Court of Victoria website at supremecourt.vic.gov.au

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The Court acknowledges that most of the photographs displayed in this report were generously provided by former CEO, Mr Michael McGarvie

SUPREME COURT OF VICTORIA 210 William Street Melbourne VIC 3000 Telephone 03 9603 6111 www.supremecourt.vic.gov.au