

# Criminal Law Section Annual Report 2020



**Section Chairs: Mel Walker and Nicole Spicer**

**Deputy Chair: Kristina Kothrakis**

**Council Liaison: Tania Wolff and Majella Foster-Jones**

**Section Policy Lawyer: Maurice Stuckey**

**Section Paralegal: Andy Kuoch**



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## 1 Objectives of the Criminal Law Section

The Criminal Law Section was established by the Council of the Law Institute of Victoria in 1979.

The Section represents lawyers working in all areas of criminal law including defence, state and Commonwealth prosecutions, government, courts and academia.

The objectives of the Section are to:

- Further the objectives of the LIV;
- Stimulate the interests and participation of lawyers interested in areas of criminal law and to develop and conduct programmes of interest and value to lawyers and the community, including the provision of CPD events;
- Advise the Council and assist the Institute and its other Sections;
- Monitor policy, practice and legislative changes, conduct research and prepare written submissions and consider and recommend law reform initiatives;
- Maintain relationships between the legal profession and other stakeholders in the criminal justice system; and
- Promote the practice of criminal law.

## 2 Current membership

The current membership of the Section is 2,622.

## 3 Further information

The Criminal Law Section webpage is regularly updated with the latest news on events, legislation, articles and reports. The webpage provides information about the Section, including meeting dates, current projects and contact details for joining the Section or a sub-committee.

For further information see <https://www.liv.asn.au/Professional-Practice/Areas-of-Law/Get-Involved#29>

## 4 Executive Committee 2019-2020

<b>Chairs:</b>	Mel Walker and Nicole Spicer
<b>Deputy Chair:</b>	Kristina Kothrakis
<b>Council Liaison:</b>	Tania Wolff and Majella Foster-Jones
<b>Policy Lawyer:</b>	Maurice Stuckey
<b>Paralegal:</b>	Andy Kuoch

### 4.1 Executive Committee Members 2020

<b>COONEY, Alice</b> County Court Victoria	<b>VALOS, Ann</b> Ann Valos Criminal Law Pty Ltd	<b>JERONIMUS, Anoushka</b> West Justice
<b>O'SHEA, Carrie</b> Victoria Legal Aid	<b>AJAK, Daniel</b> Ajak & Tut Lawyers	<b>BARRESE, David</b> David Barrese & Associates Criminal Lawyers
<b>CARE, Domenic</b> James Dowsley & Associates	<b>ALLAN, Emily</b> Victoria Legal Aid	<b>TURNBULL, Emma</b> Emma Turnbull Lawyers
<b>BLACKIE, Georgia</b> Office of Public Prosecutions	<b>DOWSLEY, James</b> James Dowsley & Associates	<b>BEHAN, Jarrod</b> Stary Norton Halphen
<b>PISASALE, Jasmine</b> Slades and Parsons Solicitors	<b>TAAFFE, Joshua</b> Doogue & George Criminal Lawyers	<b>KOTHRAKIS, Kristina</b> Doogue & George Criminal Lawyers
<b>SPICER, Nicole</b> Victorian Government Solicitors Office	<b>GO, Olive</b> Commonwealth Director of Public Prosecutions	<b>RANKIN, Peter</b> Rankin Lawyers
<b>WALKER, Melinda</b> Melinda Walker	<b>WOLFF, Tania</b> First Step Legal	<b>PARKER, Ruth</b> Galbally Parker
<b>FOSTER- JONES, Majella</b> Victoria Legal Aid	<b>AZZOPARDI, Vincent</b> Tony Hargreaves & Partners	

## 5 Criminal Law Section General Committee 2020

ALTOON, Laura	FLETCHER, Karen	MURPHY, Peter
ANDERSON, Heather	FREIDIN, Lara	NIKAKIS, Charles
ANSELMA, Elise	FRESHWATER, Kate	NORTON, Sam
AUSTIN, Emily	FURSTENBERG, Avi	O'BRYAN, Catherine
BAIN, Franky	GALBALLY, Paul	PALAMARA, Joseph
BALMER, Anna	GENEVA, Yasmin	PARSONS, Sophie
BARRERA, Jonathan	GIANNOPOULOS, Dee	PASCOE, Shaun
BESIROGLU, Ali	GIORGIANNI, Nadia	PENNY, James
BILOTHO, John	GRACER, Kartya	PETERSON, Stephen
BLACK, Jen	GRANT, Maddy	PILAI, Esan
BOE, Greer	HADDEN, Dianne	PITTS, Damien
BOWLER, Menoz	HALPHEN, Andrew	RAMSAY, Amelia
BRAND, Anthony	HANNEBERY, Tony	READER, Alana
BRIGGS, Emma	HARRISON, Charles	SCHOCKER, Tim
BROWN, Nelson	HEFFES, Laura	SHAW, Evelyn
CAHILL, James	HUGHES, Jessie	SLABE, Darryl
CASHMORE, Rachel	JANE, Nick	SKABURSKIS, Isabelle
CAUST, Jacqui	JENKINS, Fiona	SKINNER, Rowan
COLES-BLACK, Jessica	KARDASLAR, Celil	STARY, Rob
COLLINS, Juanita	KELLY, Hester	TAIT, Brett
CONTINI, Erica	KELLY, Sean	TEHAN, Nick
CONWELL, Louise	KENNEDY, Jacqueline	THAUFEEQ, Lafwa
D'CRUZ, Meldon	KOWAL, Sara	THEOCHAROUS, Tessa
DA COSTA, Kate	KOZAROV, Zagi	THEXTON, Glenn
DEAN, Louis	KUSHNIR, Yvonne	THIRLWALL, Stephanie
DI PAOLO, Tessa	LEWIS, Jacqueline	THOMAS, Greg
DOBER, Erik	MACKAY, Jessica	TILEMANN, Hal
DOCHERTY, Luke	MAHONEY-KENDALL, Isaac	VAN LOON, Annamiek
DOOGUE, Bill	MAN, Marco	WARREN, Leanne
DOWDY, Jessica	MCDONALD, Mietta	WATSON, Ben
DUBROJA, Liliana	MCFARLANE, Kim	WATSON, Kali
EXNER, Saige	MELASECCA, Pete	WELLS-SIMON, Caetlyn
FABRIZIO, Alfred	MELASECCA, Robert	WOODS, Mark
FINNIGAN, Erin	MOODIE, Simon	

*\*Information included in this list is taken from the Law Institute's membership database and the Criminal Law Section member list. Please advise if information is not current or accurate.*

## 6 Co-Chairs' Report 2020

In early January 2020 the new law year commenced in stark contrast to all others.

The air was thick with the smoke from the bushfires and the call out by the profession to assist those who had been devastated by the summer fires was made and quickly responded to. While we watched and pined for the Australian bush, people's homes and lives, our indigenous animals the probability of a world pandemic directly impacting upon our country was beyond comprehension. We could not even imagine how different our year was about to become and many radical ideas to facilitate the ongoing operation of the administration of justice began to emerge.

With the first lock down looming and after being advised and assured by Government that the Criminal Justice Sector was deemed an "essential service" it became clear that a collaborative co-ordination of all service providers was needed to ensure the justice system continued to operate in a safe and manageable manner. The Section is privileged and grateful to be at the forefront of this whole of sector approach, maintaining the important channels of communication between the Department of Justice and Community Safety, the Courts, Corrections Victoria, Victoria Legal Aid, the Federation of Community Legal Centres, alongside the various partner organisations and stakeholders.

The Justice Sector came together in an unprecedented demonstration of unity to prepare for what we really didn't know what was to come or how incredibly the pandemic was to impact upon the need to facilitate the ongoing business of justice. The work was integral and innovative as it provided the foundation to sustain the criminal justice system to carry us through what was to be a 6 week hiatus.

As the pandemic moved across Australia causing the first lock down in Victoria and ultimately the second lockdown the Criminal Law Section have been in consultation with government and the justice sector as whole to assist initiatives such as 'on the papers' applications, emergency case management, fast tracking of homicide cases, online Court hearings and judge alone trials.

To assist members whose heads were still reeling from being told they could no longer attend their offices and that they would now be appearing from their respective dining rooms, lounge rooms, studies and often their cars, the creation and maintenance of the LIV COVID-19 Hub was created to ensure the most updated information including Practice Directions, Chief Medical Officer Directives and Court forms were made available for all members of the legal sector across all jurisdictions.

Keen to be a part of and to stay abreast of the changes in the justice sector, we observed an unprecedented increase in attendance to the Section General Committee meetings, involving discussion of the important updates and changes in the Courts and continued feedback as to what was working and what would need to be improved. Particular emphasis was placed on turning practitioner's minds to the welfare of their incarcerated clients, particularly the impact of both social and physical isolation, mandatory quarantine and its effect on prisoners' mental health. The shift to online meetings saw a marked increase in engagement from regional and rural Section members, as well as those with caring responsibilities who would otherwise not have capacity to attend. At our early morning meetings, the profession remained engaged and vigilant of their capacity to assist in, and be a part of, the rapid changes in the justice sector. It is the hope of the Section that this increased access and engagement can continue into the future as Victoria approaches a new "normal".

As the year progressed and we all continued to adapt, it was otherwise business as usual. Conferences went ahead as planned, CPD's delivered on Zoom and we all became familiar with

appearing in court from home on Webex. Who will ever forget this year – learning what dressing “Top and Bottom” really meant, dealing with kids requests while making submissions for exceptional circumstances, dragging dogs from under your desk because everyone can clearly hear them snoring, brushing cats away from keyboards before they accidentally press send on an email that is still in draft and reminding partners not to appear behind you in their pyjamas when you’re in the 9am list in the County Court.

As work flowing through the Courts were dramatically reduced and practitioners were faced with and continue to be affected by, the significant strain on their practices – these stresses were more often than not subordinated to the need to maintain access to justice; the ability to communicate with clients; and the need for incarcerated clients to stay connected with their families. Not only did the Section meetings provide practitioners with a way to voice concerns and the injustices face by clients, it importantly provided an opportunity for collegiality, to express individual frustrations and approach the existential angst with humour and mutual support. In the darkest periods of lockdown, the section meetings provided respite, consolation and strength to our shared concerns. Notwithstanding the occasional outrage, it demonstrated the commitment of the sector to uphold the fundamental tenants of access to and the delivery of justice for our clients – a remit that underpins the work of the Section since its establishment.

### *Criminal Law Conference*

The Criminal Law Section traditionally has one of the largest attendances of any annual legal events in Victoria, making the COVID-19 response particularly challenging to facilitate. Largely thanks to the hard work of Executive Committee members James Dowsley, Kristina Kothrakis and Alice Cooney, the Criminal Law Conference 2020 was successfully hosted online. Presenters included prestigious members of the judiciary, Bar, practice and universities and had two streams, providing attendees with the options of either a practical essential advocacy stream or ‘Criminal Justice: A landscape view’.

### *Judicial Appointments*

For several consecutive years, LIV Criminal Law Executive Committee members have received judicial appointments and continued the trend of solicitors being selected for such roles. This year, LIV Council Liaison Tim Freeman was appointed to the Supreme Court as a Judicial Registrar and Guillaume Bailin was appointed as a Magistrate.

### *Member Cards*

The LIV have long advocated for our membership cards to entitle members to access the courts without having to go through the security screening process. This is particularly inconvenient for lawyers who enter the courts often several times every day, whilst other regular court users such as police are exempt. COVID-19 created an environment where member cards for the LIV, VLA and Victorian Bar were accepted for exemption from security screening. Whilst it has been advised this is only a temporary measure, it is something the LIV will continue to advocate for remaining in the future.

### *Spent Convictions*

The Section were enthralled by the news that the spent convictions scheme is being introduced in Victoria. This reform had been long anticipated by the Section, having first expressed its support for a spent conviction scheme in 2004. Co-Chair Melinda Walker, alongside LIV staff attended the Legislative Council’s Legal and Social Issues Committee’s Inquiry into a Legislated Spent Convictions Scheme: A Controlled Disclosure of Criminal Record Information Framework for Victoria in May 2019. In August 2019, the committee tabled its report, incorporating the LIV’s recommendations, including the types of criminal records that should be capable of becoming spent, the mechanism by which convictions become spent, the duration and commencement of

the “crime- free period” and the consequences of a conviction becoming spent. In response to the report, the Government introduced the *Spent Convictions Bill 2020*, incorporating a number of the LIV’s recommendations and policy positions. The Chair of the Inquiry, Ms Fiona Patten MP, extended her heartfelt thanks for the tireless work of the Section to bring these important reforms into fruition.

### Webinar – Mental Impairment, Personality Disorders & Sentencing – Brown v The Queen [2020] VSCA 212

Following the landmark Court decision in *Brown v The Queen* [2020] VSCA 212, the Criminal Law Section hosted a CPD session with Victoria Legal Aid and the Office of Public Prosecutions to provide unique insights into the case, particularly its ability to deliver individualised justice for people with mental health issues. Counsel for the Applicant, Tim Marsh and Senior Crown Prosecutor Diana Piekusis QC, discussed the consequences of the decision for solicitors seeking to commission expert evidence in support of their client’s mental impairment.

### Inquiry into Homelessness

A joint LIV working group was established in preparation for the 2020 Legislative Council’s Inquiry into Homelessness – co-ordinated and overseen by the Criminal Law Section – together with the Environmental Issues Committee, Property and Environment Law Committee, Environmental and Planning Committee and Local Government Committee, Human Rights Committee and Elder Law Committees. The working group on behalf of the LIV provided a formal submission and Co-Chair of the Criminal Law Section Mel Walker appeared before Legislative Council’s Legal and Social Issues Committee’s Inquiry on the 2 July 2020.

The LIV’s submission sought to highlight:

1. Systematic failure of services to effectively collaborate with each other across the corrections system, emergency accommodation providers and public housing.
2. The shortcomings of the criminal Justice response and the need for significant investment in drug and alcohol facilities and mental health supports to change the current use of prison instead of more appropriate locations such as detoxification facilities and sufficiently resourced mental health facilities.
3. Explore the existing international models of “Homeless Court” to deal with low level offending and the root causes of a person’s offending and homelessness.

### Corrections Victoria

Throughout the COVID-19 response we have continued advocate in favour of decarceration and the realisation of Emergency Management Days in direct response to the impact of COVID-19 on prisons and youth justice centres. Representatives of the Criminal Law Executive Committee met on a fortnightly basis with Corrections Victoria and a number of other government and external stakeholders for briefings on the state of Victoria’s prisons. This has enabled us to closely monitor the operations of Corrections to safeguard the wellbeing of person’s held in custody during a very difficult times - without family contact, substantial disruption to their rehabilitation and mental health during periods of significant isolation and quarantine. The direct feedback from practitioners as to how operations and initiatives are operating on the ground resulted in considerable improvements particularly regarding client/lawyer access and communications following the suspension of in-person visitation.

### COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Bill 2020

The LIV raised its concerns in a letter to the Hon. Jill Hennessey, Attorney- General, regarding the proposed amendments to temporary changes under the *Public Health and Wellbeing Act 2008*, including the extended powers which provided ‘authorised officers’ with a wide discretion to detain ‘high risk’ individuals. Following a number of proposals to amend and improve the

proposed Bill, the Criminal Law Section supported the Attorney-General's decision to repeal this amendment.

### Committals Project

The LIV, Victoria Legal Aid and the Office of Public Prosecutions reached out to practitioners with pending matters to aggregate data to assist the Court in progressing matters amidst COVID-19 restrictions. This project focused on progressing custody committal matters to reduce backlog within the Magistrates' Court. We look forward to further consultation with the court and the OPP to further encourage the early resolution of indictable matters to potentially reduce the flow on impact to the higher jurisdictions in the future.

### Recommended Psychological Report Writers

The Criminal Law Section published a list of recommended psychological report writers, whose expertise in their respective fields have been endorsed by the Criminal Law Section Executive Committee.

### Court Chaplaincy Program Advocacy

Following the announcement the Salvation Army will be discontinuing their Court Chaplaincy program in 2021, the LIV has consulted on behalf of criminal, children's and family lawyers with the Salvation Army and the Attorney-General's office to explore options to ensure these important services for vulnerable people in court continue to be provided.

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As the year comes to a close we remain a little uncertain as to the future of things. What does COVID Normal look like when the impact of the pandemic has caused major delays and backlog upon a system already under pressure?

As Victoria looks forward to coming out of suspension and "COVID Normal" the LIV have continued to work closely with each of the Heads of Jurisdiction and the Justice Sector working towards the reintroduction of Jury Trials in the higher courts and re-listing of committal hearings. In anticipation of a "COVID Normal" justice system the LIV remain a major contributor working together with Victoria Police, Office of Public Prosecutions, Corrections Victoria, Victoria Legal Aid and Court Services Victoria to develop a "Courts Beyond 2020" concept paper as an agreed statement of future operations.

But ordinary business remains as we continue to advocate for our section members and our clients. We continue to respond to numerous submission and consultation requests from the VLRC in Improving the Response of the Justice System to Sexual Offences, and the International Commission of Jurists (Victoria) bail reform initiative. We are continuing to digest the recent tabling of the VLRC Committal Report and what that means for the future of indictable hearings and how we can influence any of the implementations of the recommendations with government.

Looking forward into 2021 in conjunction with looking back to the work we have tirelessly undertaken in facing the challenges of 2020 we hope that we can all come out of this fairly unscathed. That technology can keep up and develop further to continue to facilitate justice in a very new and brave world for us all.

**7 External committees with Criminal Law Section representation:**

**LIV Council Representative**

**Summary Crime Users Group**

**LIV / VicBar Legal Aid Taskforce**

**Frankston Magistrates' Court**

**Broadmeadows Magistrates' Court Users Group**

**Police Lawyers Liaison Committee**

**Department of Justice – Criminal Law Procedure Implementation & Coordination Group**

**Sexual Assault Advisory Group**

**Supreme Court Forensic Evidence Working Group**

**Summary Procedure Steering Group**

**County Court Criminal Users Group**

**Sunshine Magistrates' Court Users Group**

**County Court (Sex List) Users Group**

**Victorian Custody Reference Group**

**Family Violence Taskforce**

**Law Council of Australia**

**Magistrates' Court Sex Offences List Users**

**Werribee Court Users Group**

**Melbourne Magistrates' Court Criminal Users Group**

**Corrections Victoria Stakeholder Group**

**Courts Beyond 2020**

## 8. Section submissions 2020

Since the last Annual Report, the Criminal Law Section has made the following written submissions.

Copies of substantial **non-confidential** submissions can be found on the Criminal Law Section webpage.

1. Royal Commission into the Management of Police Informants
2. DJCS – Non-fatal Strangulation Consultation Paper
3. Victorian Legislative Council – Inquiry into Homelessness in Victoria
4. DJCS – Review of Appeals from the Summary Jurisdiction (Intervention Order Appeals)
5. Council of Attorneys-General – Raising the Age of Criminal Responsibility Working Group
6. DJCS – Proposed Elements of the Non-Fatal Strangulation Offence
7. DJCS – Consultation – Making it easier for victim-survivors to tell their stories
8. DJCS – Sentencing Act Reform Project
9. Letter to the LCA: *Counter-Terrorism Legislation Amendment (High Risk Terrorist Offenders) Bill 2020*
10. DJCS – Spent Convictions Policy Positions
11. DJCS – *Confiscation Amendment Bill 2020*
12. DJCS – Review of Serious Driving Offences
13. Letter to the LCA: *ASIO Amendment Bill 2020*
14. Letter to Hon. Edward O’Donohue: *Review of Crimes Amendment (Mental Impairment and Unfitness to be Tried) Amendment Bill 2020; Justice Legislation Amendment (Drug Court and Other Matters) Bill 2020*
15. Letter to Hon. Jill Hennessy, Attorney-General: *COVID Omnibus (Emergency Measure) Bill 2020*
16. Letter to Hon. Jill Hennessy, Attorney-General: *COVID Omnibus (Emergency Measures) and Other Acts Amendment Bill 2020*
17. DJCS – Making it easier for victim-survivors of sexual offences to tell their stories - *Judicial Proceedings Reports Act 1958* consultation
18. DJCS – Review of Criminal Organisations Act 2015
19. Letter to Hon. Edward O’Donohue: *Crimes Amendment (Manslaughter and Related Offences) Bill 2019*
20. DJCS – Consultation on the abolition of the offence of public drunkenness
21. House Standing Committee on Social Policy and Legal Affairs – Inquiry into Family, Domestic and Sexual Violence

22. Letter to the LCA: *Counter-Terrorism Amendment (High Risk Terrorist Offenders) Bill 2020*
23. Letter to the Hon. Jill Hennessey, Attorney-General: COVID-19 and the Victorian Legal System
24. *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*
25. Letter to Hon. Edward O' Donohue: *Justice Legislation Amendment (Supporting Victims and Other Matters Bill)*
26. Letter to the LCA: National Framework for Information Sharing between the Family Law, Family Violence and Child Protection Systems

## 8 CPD & Events 2020

7 August – Criminal Law Conference

30 September – Mental Impairment, Personality Disorders & Sentencing

30 November – Online Magistrates' Court Town Hall Meeting

1 December – Criminal Law Annual General Meeting

1 December – Criminal Law Beyond the Pandemic: Pressing Issues for the Profession