



# **Country Report on the Judicial Dispute Resolution Process in the County Court of Victoria, Australia**

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# 1. Introduction to the Country and its Legal Framework

## a. Overview of the Country's Legal System

### i. Legal System

1. Australia has a federal system of government, with powers divided between the federal (Commonwealth) government and the six state governments.
2. The Australian Government operates under a separation of powers which is reflected in the Constitution Act 1975, which establishes the three separate branches of government. The legislature (Parliament) making laws, the executive (Government) implementing them, and the judiciary (Courts) interpreting them.<sup>1</sup>
3. The doctrine of separation of powers ensures that the judiciary is independent from the other arms of government. In interpreting and applying the law, judicial officers act independently and without interference from the parliament or the executive.<sup>2</sup>
4. Australia follows a common law legal system that has been inherited from the United Kingdom and has two main sources of law; statute law (law passed by parliament) and common law (judge-made law). This means that judges decide cases based on legal principles and precedent (earlier court decisions on similar issues). This creates a body of "case law" or "common law" that evolves over time as judges interpret and apply the law.
5. The Australian Courts follow an adversarial system of dispute resolution meaning that the judge is impartial and is not involved in investigating the case and gathering evidence (inquisitorial system). The Judge is required to make a decision on the evidence and arguments presented.

### ii. Court Structure

6. Australia has a dual Court system consisting of Federal and State Courts.
7. The High Court of Australia is Australia's apex Court and oversees every other Court, including Federal and State Courts.
8. Australia has Federal Courts including the Federal Court of Australia and the Federal Circuit and Family Court of Australia.
9. Each state and territory also has its own court hierarchy, with a Court of Appeal Division of the Supreme Court at the top of this hierarchy.
10. The Court system in Victoria, Australia consists of:
  - a. Supreme Court of Victoria (**SCV**) (including the Court of Appeal and Trial Divisions. The Supreme Court deals with serious criminal offences and civil proceedings over \$100,000AUD and up to an unlimited monetary amount);

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<sup>1</sup> 'Parliament and the courts: Separation of powers - Summary notes', *Parliament Victoria* (Web Page, 2 March 2023) <<https://www.parliament.vic.gov.au/49a853/globalassets/sections-shared/teach-and-learn/resource-pages/separation-of-powers-parliament-and-the-courts/summary-notes---separation-of-powers.pdf>>.

<sup>2</sup> 'Courts and Tribunals', *Australian Government Attorney-General's Department* (Web Page, 9 April 2024) <<https://www.ag.gov.au/legal-system/courts>>.

- b. County Court of Victoria (**CCV**) (intermediate trial court handling all indictable criminal proceedings (other than murder and treason) and civil matters. Its monetary jurisdiction for civil proceedings are proceedings over \$100,000AUD up to an unlimited monetary amount);
  - c. Magistrates' Court of Victoria (**MCV**) (lower court handling minor criminal and civil matters. Its monetary jurisdiction for civil proceedings are proceedings under \$100,000AUD); and
  - d. Specialist Courts and tribunals, including the Family Court, Children's Court, and Victorian Civil and Administrative Tribunal (**VCAT**) (VCAT's jurisdiction is legislated under the VCAT Act).
- 11. The CCV is divided into three divisions, the commercial division, the common law division and the criminal division. This paper focuses on all three divisions of the Court.
  - 12. The Commercial Division provides fast, cost-effective and fair resolution of commercial disputes.
  - 13. The Common Law Division has a broad jurisdiction that includes workplace, transport accident and medical negligence claims, and claims by a beneficiary under a will.
  - 14. The Criminal Division hears indictable offences under Victorian and Commonwealth law, as well as appeals from the Magistrates' Court and Children's Court.

### iii. Implementation of JDR

- 15. The JDR process is actively integrated within CCV's case management system to encourage appropriate dispute resolution (ADR) and early case resolution.

#### Commercial Division and Common Law Division

- 16. Within the Commercial and Common law division, the term appropriate dispute resolution is used and defined in the *Civil Procedure Act 2010* (Vic) (CPA) as 'a process attended, or participated in, by a party for the purposes of negotiating a settlement of the civil proceeding or resolving or narrowing the issues in dispute.'<sup>3</sup>
- 17. The CPA has a strong focus on case management, which means that judges can make orders or give directions to the parties with the aim of resolving the issues in dispute as efficiently, quickly and cheaply as possible. However, the judge must balance this with the need for disputes to be resolved justly, and he or she must also ensure that proceedings are conducted fairly.
- 18. This is facilitated through active case management of cases and the efficient resolution of disputes by referring proceedings to dispute resolution methods such as early neutral evaluation, judicial resolution conferences, mediations conducted by a Commercial and Common Law Division lawyer, Court referral to special referees and private mediations as discussed below.

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<sup>3</sup> *Civil Procedure Act 2010* (Vic), s 3.

## Criminal Division

19. Case management has been a key factor in the Court's ability to deliver timely justice for victims of crime, accused persons and the wider community, with earlier resolutions and reduced time to trial.<sup>4</sup>
20. In mid-2018, the Court commenced exploring reform of the Criminal Division's judicial work system to address greater demand in the Criminal Division. There were two systems that arose from this scoping, being the Active Case Management model and the Long Trial Case Management List. The Criminal Division worked with key stakeholders in the criminal justice system including Victoria Legal Aid and the Office of Public Prosecutions to pilot the program in its early stages.
21. The Court was able to improve efficiency in the pre-trial process and enhance productivity through more delegation by judges of less complex functions. The intention was to enable judges to focus on the higher value work of hearing and determining matters. A pilot of the active case management system commenced in September 2018.
22. The Long Trial Case Management List Pilot was established in February 2018 to manage criminal trials with an estimated trial duration of 25 days or more. This implemented an alternative pre-trial case management process which focuses on:
  - a. proactive analysis of cases in advance of the trial date;
  - b. comprehensive discussion with parties about the trial and pre-trial issues as well as the prospects of resolution;
  - c. early completion of pre-trial applications and hearings where the outcome of such hearings may have a significant impact on the trial; and
  - d. the pre-allocation of trials, and providing preparatory material, to trial judges in advance of the trial date.
23. Unfortunately, the current government fiscal environment has meant that the active case management funding has ceased, with an alternative model being utilised to preserve the positive impacts of case management. Further, the *Justice Legislation Amendment (Committals) Act 2025* has placed a level of uncertainty on the type of pre-trial work that the CCV will undertake. This will be an evolving space as the Court considers the impacts of these legislative reforms.

## 2. Objectives of the JDR Process

### a. Impetus for JDR

#### Commercial Division and Common Law Division

24. The introduction of the JDR process in the Commercial and Common Law Division was motivated by:
  - a. a backlog of cases in the Commercial Division, including the near 100% increase in initiations in the Building Cases list as a result of the decision in *Thurin v Krongold Constructions (Aust) Pty*

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<sup>4</sup> County Court of Victoria, Annual Report 2023–24 (28 November 2024)  
<https://www.countycourt.vic.gov.au/files/documents/2024-11/ccv-annualreport-2023-24.pdf>, 18.

*Ltd*<sup>5</sup>, which the Court found that VCAT had no ability to hear proceedings involving “federal matters”;

- b. the need to put in place effective pre-trial processes and ensure the proportionate resolution of disputes;
- c. the promotion of cost-effective litigation by reducing the time and financial burden of trials on the strained resources of CCV; and
- d. a shift toward resolution through judicial intervention in the pre-trial phases including active case management.

## **Criminal Division**

- 25. The CCV has case management built into a practice note for the Criminal Division, and contains a wealth of information on case management, which is still an important part of the Court’s work in ensuring matters are trial-ready. This was motivated by increasing backlog of cases and lengthy delays on when matters would be heard at trial, notwithstanding the *Criminal Procedure Act 2009* (Vic) (‘Criminal Procedure Act’) contains many mandates for when hearings are to be done.
- 26. This case management applies to accused persons who intend to plead not guilty to the charges before the Court. The purpose of case management in the Criminal Division is to:
  - a. facilitate the timely resolution of matters, where appropriate;
  - b. ensure where matters proceed to trial, they are fully prepared and ready to commence (trial ready); and
  - c. achieve these outcomes in a timely, tailored and efficient manner.<sup>6</sup>
- 27. As a broad overview, there are four stages in the case management system:<sup>7</sup>
  - a. initiation: this stage involves the process of gathering case information following the initiation of a matter;
  - b. triage: involves judicial determination of the appropriate case management approach for a matter;
  - c. case management: administrative and in-court hearings required to progress the matter towards resolution or trial readiness; and
  - d. trial listing: the trial listing process for Melbourne and circuit matters.

## **b. Objectives and Key Outcomes**

- 28. The primary objectives and key outcomes of the JDR process are to:
  - a. encourage the early resolution of disputes before trial;

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<sup>5</sup> [2022] VSCA 226, [44].

<sup>6</sup> County Court of Victoria, *Practice Note PNCR 2-2022: Criminal Division Practice Note*, December 2022, 1.3 (‘Criminal Division Practice Note’).

<sup>7</sup> *Ibid.*

- b. reduce litigation costs and delays;
- c. enhance access to justice through ADR mechanisms; and
- d. alleviate the strain on Court resources.

### 3. Legal Framework for the JDR Process

#### a. Source of Authority

##### Commercial and Common Law Division

29. The Court's source of authority to implement the JDR process in the CCV is grounded in:
- a. the CPA. The overarching purpose of the CPA is to facilitate the just, efficient, timely and cost effective resolution of the real issues in dispute in relation to civil proceedings<sup>8</sup>;
  - b. specifically section 66(1) where a Court may make an order referring a civil proceeding or part of a civil proceeding to appropriate dispute resolution (ADR)<sup>9</sup>;
  - c. the County Court Act 1958 (Vic) which provides that the Court can make rules of practice<sup>10</sup>;
  - d. County Court Civil Procedure Rules 2018;
  - e. Commercial Division Omnibus Practice Note (Commercial Division) PNCO 2-2022;
  - f. Common Law Division Practice Note PNCLD 1-2025; and
  - g. the Court's inherent case management powers.
30. The Court requires parties to attend ADR before a trial is commenced. This requirement will not be excluded or waived, even by consent, except where a JRC is ordered in lieu of private mediation.<sup>11</sup>
31. If, at the time of trial, the Court becomes aware that a proceeding has not yet been mediated, the trial date may be vacated or the parties ordered to attend mediation immediately (or both).<sup>12</sup>
32. The use of appropriate dispute resolution ("ADR") has been, and remains, critical to the administration of justice in Victoria. The Court will continue to encourage, and where appropriate, direct parties to engage in mediation in almost all common law proceedings coming before it.<sup>13</sup>

##### Criminal Division

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<sup>8</sup> *Civil Procedure Act 2010* (Vic), s 7.

<sup>9</sup> *Ibid*, s 66(1).

<sup>10</sup> *County Court Act 1958* (Vic), s 78.

<sup>11</sup> County Court of Victoria, *Practice Note PNCO 2-2022: Commercial Division Omnibus Practice Note*, 1 August 2022, H.1.

<sup>12</sup> *Ibid*.

<sup>13</sup> County Court of Victoria, *Common Law Division Practice Note PNCLD 1-2025* (5 March 2025), 12.A.

33. The *County Court Act 1958* provides that the CCV will have jurisdiction to hear and determine all indictable offences, subject to prescribed offences that are within the exclusive jurisdiction of the SCV.<sup>14</sup>
34. Examples of the Criminal Division's authority regarding the JDR process include:
  - a. The Criminal Division Practice Note; and
  - b. The *County Court Criminal Procedure Rules 2019*.

## **b. Specific Legislation or Guidelines**

### **Commercial and Common Law Division**

35. Section 66(1) of the CPA empowers the Court to refer a proceeding to ADR without the consent of the parties unless the type of ADR results in a binding outcome (i.e.: arbitration, expert determination etc).
36. The Commercial Division requires parties to attend a type of ADR before the parties can proceed to trial.
37. The Common Law division requires all parties to attend private mediation in all Civil Claims Lists, other than the Serious Injury List. This requirement will not be excluded or waived.<sup>15</sup>

### **Criminal Division**

38. Within the County Court's jurisdiction, the Criminal Procedure Act does not contain the same requirements for ADR, however the entire process of a criminal proceeding requires that the merits of a case be examined.<sup>16</sup>
39. The Criminal Procedure Act contains a number of provisions that relate to the management of cases prior to going to trial, and relate to:
  - a. pre-trial procedure, including directions hearings;
  - b. pre-trial disclosure of the issues for trial, any disputed evidence and whether an accused relies on expert evidence or alibi evidence;
  - c. the joinder or separation of trials;
  - d. taking evidence prior to trial from a certain witness, orders concerning cross-examination of certain witnesses and allowing an accused to conduct some preparatory cross-examination in appropriate cases; and
  - e. mandating that pre-trial issues are disclosed and determined in advance to ensure the smooth running of a trial.<sup>17</sup>

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<sup>14</sup> *County Court Act 1958* (Vic), s 36A.

<sup>15</sup> *Common Law Division Practice Note*, 12.B.

<sup>16</sup> For example, see *Criminal Procedure Act 2009* (Vic), Part 4.6.

<sup>17</sup> *Ibid*, Part 5.5, Divs 1 – 4.

40. However, as mentioned above the landscape of the process of a criminal proceeding that will be determined by the CCV will undergo significant change from 2026 onwards with the introduction of a different committal test. It is yet to be seen what impact this will have on the Criminal Division in terms of the case management functions of the Court.

## **4. Details of the JDR Process**

### **a. Description of the JDR Process**

#### **i. Characteristics and Modalities**

##### **Commercial and Common Law Division**

41. The JDR process in the County Court in the Commercial and Common Law Divisions include:
- a. active case management;
  - b. ENE – where judges provide an initial assessment of the case;
  - c. JRCs – where judges act as mediators to help parties reach a settlement;
  - d. ordering parties to attend private mediation;
    - (i) referral of mediations conducted by the Commercial Division lawyer;
    - (ii) referral of CMCs conducted by the Commercial Division lawyer;
  - e. referral of a question to a special referee;
  - f. expert determination;
  - g. conciliation;
  - h. arbitration; and
  - i. settlement conferences, which are conducted in the Family Property List by a judicial officer or a deputy registrar.

##### **Private Mediation and Judicial Resolution Conferences (JRC)**

42. The most common ADR process is a referral to mediation. Mediation can be private or facilitated by Court. The standard orders of the Court include an order for private mediation.<sup>18</sup>
43. Court mediation is described within CCV as a ‘judicial resolution conference’ (JRC), which is a form of judicial mediation. A JRC is a form of appropriate dispute resolution process presided over by a judge or a judicial registrar.
44. Most JRCs are conducted in a manner similar to a private mediation.<sup>19</sup>

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<sup>18</sup> County Court of Victoria, *Practice Note PNCO 2-2022: Commercial Division Omnibus Practice Note*, 1 August 2022, H.1.

<sup>19</sup> *Ibid*, H.2.

### **Early Neutral Evaluation (ENE)/ Non-binding Neutral Evaluation (NNE)**

45. Judges and Judicial Registrars also conduct non-binding ENEs and NNEs within the Commercial Division.
46. ENE is particularly suited to cases involving more technical legal issues (such as questions of construction of a statute or contract) and that are not likely to turn on the credit of witnesses. It can be ordered for the whole or for part of a proceeding.<sup>20</sup>
47. At present, the County Court's Omnibus Practice Note (Commercial Division) PNCO 2-2022 (Practice Note) contemplates a written evaluation much like a judgment. The Commercial Division is currently reviewing the approach to the use of ENEs with a view to it being a more effective dispute resolution tool.
48. The MCV has used ENEs successfully for many years where an oral evaluation is given.

### **Arbitration List**

49. In 2021, the Arbitration List within the Commercial Division was established with Judge Brimer as the Judge in Charge.
50. Applications for a stay of a proceeding and referral to arbitration under s8 of the Commercial Arbitration Act 2011 (Vic) are heard.<sup>21</sup>
51. The Court also hears applications by parties for referral of a proceeding or part of a proceeding to arbitration by agreement. The Court entered into referral protocols with three arbitration bodies whose arbitrators have agreed to arbitrate a referred proceeding for a fixed fee proportionate to the sum in dispute and to render the award within a limited time.<sup>22</sup>

### **Early Judicial Intervention of Building Cases Pilot**

52. In 2023 and 2024, there was a near 100% increase in initiations in the Building and Construction List within the Commercial Division.
53. During the second half of 2024, Judge Kirton, the Judge in Charge of the List, piloted an 'Early Judicial Intervention in Building Cases' program.
54. This involved 'twinning' with another Judge (who would not hear the trial should the matter not resolve) conducting CMCs and mediations with a view to resolving the proceeding.
55. Over a 5 week period, 24 CMCs were held, 4 matters settled, and effective pre-trial processes were put in place in 20 matters.
56. The Court has also entered into referral protocols with two retired members of VCAT's Building and Property List to conduct mediations and to facilitate expert conclaves with a view to bringing about an early resolution of those disputes.

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<sup>20</sup> County Court of Victoria, *Practice Note PNCO 2-2022: Commercial Division Omnibus Practice Note*, 1 August 2022, H.4.

<sup>21</sup> *Commercial Arbitration Act 2011* (Vic), s 8.

<sup>22</sup> County Court of Victoria, *Practice Note PNCO 2-2022: Commercial Division Omnibus Practice Note*, 1 August 2022, T.

### **Common Law Division – Court based mediation pilot program**

57. In January 2024, the Common Law Division commenced a Court based mediation pilot program. The pilot program involved the Common Law Division lawyers, who are also deputy registrars and accredited mediators, offering a mediation in suitable proceedings in the General List, generally close to the trial date. Subject to the consent of all parties, if all interlocutory steps had been completed, including having already attended a private mediation, the matter would be referred for mediation by a deputy registrar. Many of these matters were workplace injury matters, often with related recovery proceedings. Mediations were conducted in person in the Supreme Court mediation centre in the William Cooper Justice Centre, though on several occasions hybrid attendance was facilitated, and mediations were often co-mediated by two deputy registrars.<sup>23</sup>
58. In total, mediations were offered in 114 matters. Twenty-eight mediations were conducted, with 27 matters resolving at the mediation. The settlement rate of 96 per cent is a positive result for the pilot program and indicates that mediation at an advanced stage of the proceeding can be an effective means of encouraging the timely resolution of proceedings, thereby saving costs for the parties and reducing the burden on the Court's resources.<sup>24</sup>

### **Criminal Division – Case Conferences and Case Assessment Hearings**

59. The Court's case management system continued to produce significant outcomes for resolution and timely administration of justice for the Victorian community. The three judicial registrars, supported by a team of Division lawyers and administrative staff, provided end-to-end case management for all not guilty matters in the jurisdiction. The reduction in the pending trials to pre-COVID levels, as well as the early and high resolution rates for not guilty matters were noteworthy achievements in 2023–24. The Court remains committed to this innovative program, in some form, into the future, given its proven effectiveness in delivering justice outcomes for Victorians.
60. Case conferences and case assessment hearings continued to be heavily utilised as a part of the Court's case management system. Case conferences and case assessment hearings are primarily used to facilitate resolution discussions and/or narrow the issue(s) in dispute in not guilty matters. Case conferences are heard by judges and are typically associated with complex cases (multiple co-accused, complex evidentiary issues). Case assessment hearings are most commonly heard by judicial registrars and tend to focus on a discrete issue preventing resolution. Case assessment hearings are much shorter in duration and typically require less preparation from the parties compared to case conferences (for example, case assessment hearings do not require the filing of trial documents).
61. The Criminal Division Practice note contains two important modes of case management, these are the Case Assessment Hearing and a Case Conference Hearing.<sup>25</sup>

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<sup>23</sup> County Court of Victoria – Annual report 2023-24, 11.

<sup>24</sup> *Ibid.*

<sup>25</sup> County Court of Victoria, *Practice Note PNCR 2-2022: Criminal Division Practice Note*, December 2022, 5.29-5.52.

### **Case Assessment Hearing**

62. A case assessment hearing may be used to:
  - a. facilitate resolution discussions where there is a discrete issue preventing resolution; and
  - b. determine whether the issue preventing resolution may benefit from further case management before a judge (for example, a case conference hearing or a sentence indication hearing).
63. Case Assessment Hearings are held on a without prejudice basis, and generally are listed for between 15 and 30 minutes.
64. At a Case Assessment Hearing, the following matters may be discussed with the parties:
  - a. the evidence;
  - b. clarification of the prosecution case (if required); and
  - c. potential for resolution.

### **Case Conference Hearing**

65. A Case Conference Hearing is a substantive hearing that is presided over by a judge.
66. A case conference hearing is primarily used to:
  - a. facilitate resolution discussions where appropriate, including for multi-accused matters;
  - b. narrow the issue(s) in dispute;
  - c. clarify the prosecution case (if required); and
  - d. discuss and/or determine any substantial pre-trial legal issues.
67. At a case conference hearing, a judge conducts an in-depth and without prejudice discussion with the parties about matters, including:
  - a. the state of the evidence;
  - b. factual issue(s) in dispute; and
  - c. legal issue(s).
68. A judge may test the strengths and weaknesses of the parties' positions in relation to matters discussed at the case conference hearing.
69. A case conference is a 'without prejudice' hearing. This means nothing said by or on behalf of a party, or any information, document or thing obtained as a direct or indirect consequence of anything said will be admissible at trial.

## **ii. Conduct of the JDR Process**

70. The process is usually conducted in person or, in limited circumstances, online. The CCV has access to the William Cooper Justice Centre mediation rooms, which are located in a different building to the Court. These mediation rooms also have smartboards in each mediation room, Wi-Fi and the technology to hold 'hybrid' or 'fully remote' hearings.

71. The Court has found that conducting JDR processes in person in a building separate to the court rooms maintains neutrality and encourages a ‘settlement mindset’.
72. In the limited circumstances where a JDR process must be conducted online, the County Court utilizes video conferencing for remote mediation sessions. The judicial officer or Division lawyer conducting the JDR process may also choose to conduct the process in a remote courtroom where the Court’s facilities are able to hold remote or virtual hearings.
73. The JDR Process is also conducted within court rooms.

### **iii. Conduct of early neutral evaluation and judicial resolution conference (judicial mediation)**

74. ENEs and judicial mediations are usually conducted by judges or judicial registrars.
75. However, although the ENE will usually be conducted by a judge or judicial registrar of the Court, the orders can provide for the ENE to be conducted by an experienced legal practitioner or other experienced professional (for example, a forensic accountant or building practitioner), or both.<sup>26</sup>
76. JRCs are not outsourced to third parties.

## **b. Eligibility Criteria for the JDR Process**

### **i. Mandatory vs. Optional**

#### **Commercial Division and Common Law Division**

77. Case management principles are ingrained in all aspects of litigation within the Commercial Division of the County Court. Judges implement case management principles at all stages of litigation and it is mandatory.
78. Section 9 of the CPA requires that the Court facilitates the just, efficient, timely, and cost-effective resolution of the real issues in dispute.<sup>27</sup>
79. The CCV requires parties to attend a sort of appropriate dispute resolution before they can proceed to trial. The JDR process is compulsory.
80. Usually, the standard orders include an order for private mediation.
81. However, if parties wish to participate in a type of ADR conducted by a judge or a judicial registrar (ie. JRCs), they must satisfy the criteria set out in paragraph 43 above. This is due to the limited resources of the Court.

### **ii. Court Recommendation for JDR**

#### **Commercial and Common Law Division**

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<sup>26</sup> County Court of Victoria, *Practice Note PNCO 2-2022: Commercial Division Omnibus Practice Note*, 1 August 2022, H.4.

<sup>27</sup> *Civil Procedure Act 2010* (Vic), s 9.

82. The Court requires parties to participate in the JDR process usually after pleadings have closed, discovery finalised and any expert evidence filed.
83. The JDR process is not only mandatory but strongly encouraged in disputes where the legal issues are straightforward but factual disputes exist, where litigation costs would be disproportionately high compared to the claim's value, and where parties demonstrate a willingness to negotiate a settlement.
84. In May 2015, two Judicial Registrars (now Judges), Judge Burchell and Judge Tran, were appointed to the Court. Both Judges are trained mediators. They introduced a new approach to ADR and case management, using it as a targeted tool to ensure the proportionate resolution of disputes. This included making orders on the papers where possible and conducting JRCs as mediations.
85. At that time, Court-ordered mediations with a private mediator had been standard directions for some years, but the introduction of JRCs provided the parties with the benefit of a judicial officer presiding over the mediation and more flexible timing.

## **Criminal Division**

86. Similarly, the Criminal Division ensures that case management is an integral part of the criminal trial process. The case management system applies to matters:
  - a. committed to the Court from Melbourne and regional locations;
  - b. where the accused intends to plead not guilty to any charge, including changes of plea, direct indictments and re-trials (collectively known as 'initiations'); and
  - c. that do not involve charges of sexual offending where the complainant is a child and/or person with a cognitive impairment<sup>28</sup>.
87. Many of the case management functions are conducted at directions hearings that occur after an accused is committed for trial. The Court has delegated many functions to the judicial registrars of the Court to conduct these preliminary hearings through the County Court (Criminal Procedure) Rules 2019.
88. Further, the Court has developed 'List Courts' which carry out many of these functions. For example, the 9am sittings of the General Crime List and Sexual Offences Lists were presided over by Judicial Registrars Phillips, Wilson and Avis. The hearing types held during those sittings were primarily directions hearings, funding mentions, arraignments, conviction appeal first listings and announcements of discontinuance. This ensured that case were being appropriately managed from the various initiation processes and progressing in a timely manner.<sup>29</sup>

## **c. Training of Judges Conducting the JDR Process**

### **Commercial and Common Law Division**

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<sup>28</sup> County Court of Victoria, *Practice Note PNCR 2-2022: Criminal Division Practice Note*, December 2022, 5.2.

<sup>29</sup> County Court of Victoria – Annual report 2023-24, 24.

89. Judges and Judicial Registrars are trained mediators and may be nationally accredited through bodies such as Dispute Resolution and the Australian Mediation Association.
90. Judges and Judicial Registrars further their training either through attendance at:
- a. ad hoc domestic and international mediation conferences such as the Biennial National Mediation Conference;
  - b. the VCAT monthly lunchtime ADR seminars which offers sessions on topics such as self-reflective practices; and
  - c. an internal ADR Continuous Education Program for Judicial Officers and Division Lawyers and in collaboration with the Supreme Court of Victoria and VCAT members called the 'ADR Breakfast Series'.
91. Topics covered in the series included:
- a. Early Neutral Evaluations (at both the County and Magistrates' Courts);
  - b. Compulsory Conference Techniques;
  - c. Reflections on Judge Brimer's study tour to the Singapore State Courts;
  - d. Appropriate Dispute Resolution of Environmental Disputes;
  - e. Judge and Mediator: a new hybrid process (co-presenters were her Honour Judge Tran from the County Court and Ms Sala Sihombing, a Hong Kong Accredited Family and General Mediator);
  - f. Court Annexed Mediation: the Catalyst for Systemic Change;
  - g. Conciliation in Practice: Exploring its role and distinction in Dispute Resolution Frameworks; and
  - h. Court Annexed Mediations: Why it works and implications for case management.
92. Judge Brimer is working with the Judicial College of Victoria to develop a formal judicial education program on Dispute Resolution which is not currently offered by that body.

### **Criminal Division**

93. Judges and Judicial Registrars in the Criminal division are able to attend various training sessions that are offered by the Judicial College of Victoria or as part of the Court's internal Judicial CPD Committee sessions.
94. The topics of these sessions vary, but often intersect with the case management functions of the Court.

## **d. Statistics on the JDR Process**

### **Commercial Division**

95. A significant percentage of civil disputes in the CCV are resolved through JDR.
96. The process has resulted in a reduction in Court hearing days, legal costs and strain on judicial resources.

97. The Commercial Division has continued to encourage parties to use these alternative resolution methods to resolve issues, particularly for low value claims and cases involving self-represented litigants.
98. In the 2023-24 reporting year, there were 54 ADR events conducted in this reporting period compared to 60 the previous period. Of the total held, 48 were JRCs with the remaining 6 ADRs referred under the LIV and Victorian Bar protocols.<sup>30</sup>
99. 103 complex VCAT cases have been referred to the Court under a protocol that exists between the County Court and VCAT to assist in reducing the backlog of cases in VCAT's Building and Property List to be heard by a County Court judge of the Division who is also a VCAT Vice President (VP). Of those matters, 28 were finalised by Judge Burchell in compulsory conferences and following pre-hearing directions by Judge Anderson and 52 matters have been fixed for hearing or compulsory conference (a form of conciliation by VCAT members). Additionally, in 3 matters, the VPs have made orders for the assistance of a special referee or expert appointed by VCAT.
100. In the 2024 calendar year, 15 referrals were made to the Victorian Bar or Law Institute of Victoria (LIV) under the Court's mediation protocol for a capped fee mediation. Of the 15 referred to the Victorian Bar, 7 resolved, 3 still pending and 4 not resolved. The 1 matter referred to the LIV resolved.

### **Common Law Division**

101. Sixty-seven judicial mediations were conducted in the 2023-2024 period, a significant increase from the 33 judicial mediations conducted in the previous reporting period. Of the 67 judicial mediations, 31 resulted in the resolution of the proceeding. Twenty-two judicial mediations were conducted in proceedings involving a self-represented litigant, with 13 resulting in the resolution of the proceeding.

### **Criminal Division**

102. In 2018–19, prior to the introduction of case management, approximately 42 per cent of resolutions of not guilty matters occurred on the first day of trial or during a trial.
103. In the 2023-2024 period, there has seen a dramatic shift to early resolution, with 46 per cent of matters now resolving after an initial directions hearing and largely without the need to list a matter for trial. This has reduced the delay in time to trial and allows for greater flexibility for trial listings.<sup>31</sup>
104. There were 402 case assessment hearings heard in 2023–24 (an increase of 33 per cent from the previous year). Case assessment hearing outcomes were reported in 353 cases, and of those cases, 184 (52 per cent) resolved. There were 230 case conferences heard during this reporting period. Case conference outcomes were reported in 187 cases, and of those cases, 109 (58 per cent) resolved.<sup>32</sup>

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<sup>30</sup> County Court of Victoria – Annual report 2023-24, 56.

<sup>31</sup> County Court of Victoria – Annual report 2023-24, 22.

<sup>32</sup> County Court of Victoria – Annual report 2023-24, 22.

## 5. Any Other Relevant Information

105. See information referred to in this response and other attachments for further information:

- a. Commercial Division Omnibus Practice Note PNCO 2-2022;
- b. Common Law Division Practice Note PNCLD 1-2025;
- c. Criminal Division Practice Note PNCR 2-2022;
- d. Commercial Division Case Management Conference information sheet;
- e. Commercial Division Mediation by Division Lawyer (Registrar) information sheet;
- f. Judicial Resolution Conference information sheet;
- g. Referral to Arbitration information sheet;
- h. Referral Protocol – CCV & VicBar Mediation;
- i. Referral Protocol – CCV & LIV;
- j. Pilot Project – Early Judicial Intervention In Building Cases; and
- k. Non-binding Neutral Evaluation Information Sheet (NNE).

**29 May 2025**