

# DIRECTOR OF PUBLIC PROSECUTIONS

## ANNUAL REPORT 2000 - 2001

This report is prepared for submission to the Attorney-General in accordance with the requirements of Section 15 of the Director of Public Prosecutions Act 1973, to report on the performance of my functions during the 12 months ending on 30 June in each year.

During the year staff in my Office have undertaken the prosecution of all criminal trials, pleas of guilty and breaches of suspended sentences or conditional discharges in the Supreme Court, the conduct of appeals in the Court of Criminal Appeal and Lower Court Appeals, and all civil litigation on behalf of the State of Tasmania. The Office has also provided representation and advice to Agencies and Departments involved in prosecutions and proceedings in Courts of Petty Sessions and Tribunals. Representation, where appropriate, for officers of Courts or Tribunals who become the subject of applications for prerogative relief has also been provided. Criminal Injuries Compensation work has also been a significant feature of the work of this Office. It is hoped that the formation of the Victims Assistance Unit will reduce the workload in this respect, although our funding and hence personnel was reduced to help fund the Unit. This Office is expected to remain involved in Criminal Injuries Compensation matters, particularly in giving direction in difficult cases and providing representation in complex cases. It remains to be seen if the loss of funding is adequately balanced by fewer demands on this Office in this area.

### **Criminal Cases in the Supreme Court**

The year under report saw the prosecution of several cases which were lengthier than the usual cases in this State. Two such cases straddled the reporting year. The prosecution of such cases brings additional pressure to bear on the resources

of this Office, and of course to the task of counsel who conduct them. Unfortunately too often such longer cases are examples of so-called "white collar" crime and, without a dedicated Police Fraud Squad, have required counsel to do enormous additional work to get the evidence ready for trial. I understand that the absence of dedicated expertise in such type of crime investigation is now being addressed by Tasmania Police.

During the year a total of 445 persons were presented for trial or plea in the Supreme Court (see Table 1). This is a significant decrease on last year's record figure, and is no doubt largely due to the amendment of the disposition of the crime of aggravated burglary, which crimes had previously all been committed to the Supreme Court regardless of the money amount involved.

It may be apposite to make the point that these are not "crime figures", and do not purport to show any real trends in rates of crime generally. For example, whether or not there have been more or less instances of aggravated burglary in the State this year is not demonstrated by these statistics; all that is shown is that fewer were dealt with in the Supreme Court than in the previous year. (It is expected that more will have been dealt with in the Courts of Petty Sessions.)

Also on the topic of statistics, as I reported to you by letter earlier this year, the findings of the Australian Bureau of Statistics in respect of the Higher Criminal Courts in Australia was released in June this year. Although covering the period 1999-2000 (i.e. the earlier reporting period than this report) the finalisation (duration) figures for Tasmania were the lowest among the Australian jurisdictions and indeed Tasmania was in the lead in all measures of speed of finalisation of matters. So far as trial outcome was concerned, nationally 47% of defendants were acquitted but the acquittal rate in this State was only 31%, the lowest of any jurisdiction.

Those figures suggest that our decision-making processes and case finalisation systems are good. The duration rates in particular also show that the "culture" of

defence counsel in this State is better disposed to resolution of the real issues than appears to be the case in other States.

There were 161 criminal cases awaiting disposal as at 30 June 2000, a reduction by number of 15 from the same period last year. The table below shows the trend and distribution by centres of those awaiting trial. The increase in Hobart reflects that it is there that the longer trials have been held in the year reported on. A significant reduction in Launceston is apparent.

### **Criminal Cases Awaiting Disposal**

	30/6/97	30/6/98	30/6/99	30/6/00	30/6/01
Hobart	34	99	82	63	78
Launceston	25	35	63	74	42
Burnie	25	58	51	39	41

Table 2 shows major crime grouping by type with reference to persons convicted. Table 3 shows disposals.

### **Summary Prosecutions and Lower Court Appeals**

This varied and important work continued under the direction of Mr F M Neasey, Principal Crown Counsel. One of the measures of independence of this Office is in its willingness and availability to prosecute all types of defendants in all types of cases. To that end, the practice of briefing outside counsel to prosecute Police Officers charged with crimes or offences has ceased. The Crown Prosecutor's relationship with Police is of necessity a close professional one involving often working closely together from a very early stage, including the seeking and giving of legal advice at an investigatory stage. However, the closeness of the work together should not obscure the fact that this is a professional relationship, not a partnership. Retaining rather than briefing those prosecutions will underline the professionalism of the relationship.

## Civil Litigation

The Civil Litigation section, under the supervision of Mr P Turner, provides legal representation to the State and its Agencies in the litigation in which it is involved. Last year I reported that there were 825 active civil litigation files as at 1 July 2000. A double check of the report base shows that to have been incorrect; the correct figure was 855. This year there are 862. 56% are employment related (i.e. workers compensation and common law), claims for alleged medical and health negligence account for 13%, debt recovery 5%, housing (tenancy) related 2% and the remaining 24% a miscellany including occupier's liability, anti-discrimination, school accident, and prerogative relief claims. In the year under report, 340 files were closed, and 347 opened. The figure of files opened does not reflect the total picture including numerous advices and guidances given to Agencies, often at extremely short notice.

There is one particular aspect of this report of the discharge of my functions to which I must make reference. One of my functions under the Director of Public Prosecutions Act, in accordance with your direction to me under s.12, is to conduct all civil litigation by or against the State of Tasmania and, where I deem it appropriate, all civil litigation commenced by or against servants, agents or instrumentalities of the State. To that end I have conducted the defence of complaints under the Anti-Discrimination Act made against the State and its officers. As this was new legislation, I gave it personal attention. The Anti-Discrimination Commissioner has refused to recognise my right (and obligation) to conduct these matters. Taking what I believe to be an unsustainable view of her powers and functions under that Act, she has purported to require me (and other legal practitioners) to gain her approval to act for the respondent to a complaint. I have refused to seek her approval. As you know, I complained to the Ombudsman about this and other actions of the Anti-Discrimination Commissioner. My complaint in this respect (and several others) was upheld. The Acting Ombudsman's report has been given to you.

Still the Commissioner has not altered her practices. In the result, several matters in which I would have represented the State are being investigated - albeit much slower than would otherwise be the case - without the State's involvement. When one considers the extraordinarily low numbers of complaints which have been heard and determined by the Anti-Discrimination Tribunal, and the extremely low proportion of complaints which have been investigated within the six-month limit in the Act (a limit which is too easily and too often ignored), then one can only wonder if the high level of resources which has been devoted to the administration of this Act may not have been better utilised - for example, in the provision of legal aid for those charged with crimes or wanting to bring civil action for damages. Such questions are obviously matters for Government, but I offer my thoughts after now quite considerable involvement with the administration of the Anti-Discrimination Act.

## **Staff**

Coming to this appointment two years ago from private practice, I was surprised, and continue to be so, at the immense effort and dedication shown by the counsel and staff of this Office. Trial work, in particular, places significant deadline pressure in the prosecution of criminal cases, as does the high level of appeal, hearing and civil trial and appearance work done by this Office. No legal firm I know of in private enterprise operates under such a high level of Court appearance time, which involves a correspondingly high level of preparation time. This is achieved in a team and goal-orientated and mainly harmonious way which is a credit to all counsel and staff with whom it has been my pleasure and privilege to work.

Mention should also be made of the community involvement of Crown counsel, particularly in legal education and talks to groups and organisations. Mr M Stoddart particularly has been often requested to talk to groups, especially those associated with victims, and has given his time and expertise freely. Other counsel

have been involved in professional organisations and continuing legal education. The Crown can only benefit from these involvements.

### **Law Reform**

Throughout the year I have given suggestions for improvement to existing laws, usually to seek to make them more “workable”. There is one broad issue in the criminal law which I feel could benefit from public debate. It is whether the defence of provocation should be retained. When available (and its application is for the trial judge in the first place), provocation reduces what would otherwise be murder to manslaughter. It has been described as a “concession to human frailty”. One of the hallmarks of its application is a sudden loss of self-control. This is not entirely consistent with the expectations of a civilised society. With the abolition of mandatory life imprisonment for murder, and the ability to impose a sentence reflective of the circumstances, it seems to me to be questionable that provocation as a defence needs to be retained. If some grave act or insult has caused murderous behaviour, then it can be said to be a better and fairer response to reflect that in the sentence for murder itself than to reduce the question to a blunt choice between manslaughter and murder.

**(Timothy J Ellis)**  
**DIRECTOR OF PUBLIC PROSECUTIONS**

**TABLE 1****Criminal Prosecutions**

	<b>Persons Presented</b>	<b>Persons Convicted</b>	<b>Persons Acquitted</b>	<b>Persons Discharged</b>
1991-92	437	325	30	82
1992-93	330	250	28	52
1993-94	316	237	20	59
1994-95	327	249	9	69
1995-96	324	255	14	55
1996-97	309	240	20	39
1997-98	335	262	24	49
1998-99	505	401	23(1) <sup>1</sup>	80
1999-00	711	562	45 <sup>2</sup>	103
2000-01	445	333	68 <sup>3</sup>	79 <sup>4</sup>

- 1 1 person found unfit to plead
- 2 1 person found not guilty by reason of insanity & 1 person whose jury failed to reach a verdict
- 3 1 person found not guilty by reason of insanity & 3 persons to be retried
- 4 1 person deceased before trial

TABLE 2

**Crime (Type) Major Groupings by Persons Convicted**

	<b>2000/2001 %</b>
Dishonesty (aggravated/armed robbery, stealing, burglary, receiving, fraud, etc.)	39.32
Personal violence (murder, manslaughter, assault, wounding, grievous bodily harm)	26.83
Arson & injury to property	8.53
Sex crimes (rape, unlawful sexual intercourse/relationship, indecency)	7.92
Other ungrouped (includes causing death by dangerous driving, conspiracy, escape)	7.65
Perjury & perverting the course of justice	5.48
Drugs	4.27

TABLE 3

## Comparative Table Relating to the Disposal of Criminal Matters

Year	Number of Persons Presented	Pleas of Guilty	Dealt with other than as Plea	Number of Persons Tried
1991-92	437	281	82	74
1992-93	330	199	52	79
1993-94	316	186	59	71
1994-95	327	218	69	40
1995-96	324	222	55	47
1996-97	309	214	39	56
1997-98	335	234	49	52
1998-99	505	368	80	56
1999-00	711	488	104	119
2000-01	445	260	79	106

Of those persons tried -

Year	Convictions	Acquittals	Found Insane	Retrials
1991-92	44	30	...	8
1992-93	51	28	...	3
1993-94	51	20	...	2
1994-95	31	9	...	3
1995-96	33	14	...	4
1996-97	36	20	...	1
1997-98	28	24	...	...
1998-99	33	23	...	1
1999-00	74	43	1	1
2000-01	73	29	1	3