



DIRECTOR OF PUBLIC PROSECUTIONS, TASMANIA

ANNUAL REPORT 2006-2007

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, breaches of suspended sentences or conditional discharges and bail applications in the Supreme Court, the conduct of lower court appeals and appeals in the Court of Criminal Appeal, 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 and representation, where appropriate, for officers of Courts and Tribunals and other decision-makers whose decisions or actions become the subject of applications for review.

Some of the developments I mentioned in my report last year have progressed. The rationalisation of summary matters, with the Attorney-General's support and the Deputy Commissioner of Police's agreement, was finalised and has operated most satisfactorily. Police Prosecution Services took over the various prosecutions which had become attached to us in an ad hoc manner over time. We retained the workplace, environmental and electoral prosecutions as well as those prosecutions where Police may have, or be perceived to have, some conflict. This arrangement makes better use of the available resources and expertise, and I am grateful to the Police, in particular the Officers in Charge of the prosecuting sections, and the Agencies involved for facilitating it.

The role of the DPP Liaison Officer, which commenced late in the last reporting period, was taken by Inspector Robert Bonde and his experience and meticulous approach have been of great benefit to both organisations.

The changes to committal proceedings and the passage of indictable matters through the Supreme Court, to which I referred last year as the recommendations of a committee, have progressed to be a statute, although that statute will not commence until the Magistrates' and Supreme Courts prepare rules.

I can only hope that in framing rules, it is recognised that the increase in number and complexity of trials has been successfully managed so far without judicial micro-management.

Last year in his Annual Report, the Chief Justice took up a point I have made in this report several times, *"the work in the criminal jurisdiction of the Court has increased in all three regions of the State and generally criminal trials are taking longer and are more complex. More importantly the number of trials has increased markedly (47 persons tried in 1995/96 compared to 123 in 2005/2006"*. That increase in trial numbers was accommodated without significant change to the Court's processes or calendar (although as His Honour pointed out in recent years extra sittings were arranged for Launceston and Burnie). That is not to say the increases were not due at all to the Court – almost without exception the Judges have embraced the goal of trying to utilise available judicial time as efficiently as is possible, consistently with the interests of justice. It is to say, however, that it is important not to try to fix that which isn't broken.

The extent to which "case management" increases the cost of litigation and develops a culture where steps are no longer taken without some judicial imprimatur is usually completely unacknowledged by its proponents.

I believe it would be a retrograde step if we were to lose the robust, efficient and largely co-operative way in which prosecution, defence counsel and court registries interact in this State in order to impose in its place a Judge-managed regime, particularly as no member of the present Bench has any experience of the work required of a prosecuting office to get matters ready to proceed to orderly trial.

In the past year there has been a substantial increase in the raising of mental health issues. My perception of that increase, and its source, was confirmed by the following reply to my queries of the Director of the Legal Aid Commission of Tasmania. I asked how many psychiatric examinations and reports had been obtained by its "in-house" counsel and by the private profession acting for legally-aided clients over the last five years, and the table below is the reply.

	2003	2004	2005	2006	2007
Criminal matters	64	64	56	41	87
Private profession	0	0	0	0	1
Total cost in-house	\$29,987.00	\$35,098.36	\$34,080.50	\$23,622.25	\$45,418.12
Total cost private profession					\$745.45

The figures were not separated into summary and indictable as they were unable to be separated without difficulty, however it is reasonable to expect that the majority of the reports and expenses would be for indictable crime.

In addition, the Director informed me on my specific request, a psychologist from Melbourne has provided to the Commission's "in-house" counsel 18 services at a cost of \$10,900.00. I gather most, if not all, of these were provided in the last year. (The retention of this person was difficult to understand as his opinion on psychiatric issues was usually inadmissible.)

The increased reliance on mental state issues, particularly involving fitness to plead and insanity, has placed a significant strain on the services able to be provided to us and the Courts by the State's Forensic Mental Health Services. That strain will need to be quickly addressed and managed.

A very exciting development has been the allocation in this year's Budget of resources to enable the provision of a Witness Assistance Service to operate from my Office. Tasmania is the last State to do this, and we are presently collating the information available from other jurisdictions in order to "cherry pick" the best features of the services operated there. It is most encouraging that the Attorney-General, the Honourable Steven Kons MHA, has recognised in speaking on 12 June 2007 to Parliament about this initiative "... the resources of the Director of Public Prosecutions are also being stretched by criminal and specialised prosecution. These cases involve sex offences, drug offences, money-laundering - list goes on. The DPP must be funded adequately in order to maintain a high quality of justice in this State".

The work of my Office has been constant and performed at a high level by dedicated and talented people. Most pleasing has been the contribution of a number of younger practitioners whose enthusiasm and application have had a rejuvenating influence on the whole office.

Mr W C R Bale QC has retired as Solicitor-General. His advice to me and my staff and his guidance of the administrative management of Crown Law have been invaluable. Pursuant to Section 12(3) of the *Director of Public Prosecutions Act 1973*, the functions of the Director of Public Prosecutions are performed by the Solicitor-General during a vacancy in the Office or in the Director of Public Prosecutions' absence or illness. In the substantial period between my predecessor's retirement from the Office and my appointment when he was

obliged to perform those functions, Mr Bale QC instigated management and process reforms which were so successful that I retained them.

Sadly, on 6 March 2007, Ms Lani Salter, who had been an administrative officer in the Office for most of her working life, died at a tragically young age.

STATISTICAL REVIEW

CRIMINAL CASES IN THE SUPREME COURT

During this year a total of 562 persons were presented for trial, plea or discharge in the Supreme Court (see Table 1). Of those, 501 persons were committed for trial, compared with 506 the previous year.

TABLE 1

Year	Persons Presented	Persons Convicted	Persons Acquitted	Persons Discharged
1997-98	335	262	24	49
1998-99	505	401	23(1) ¹	80
1999-00	711	562	45 ²	103
2000-01	445	333	68 ³	79 ⁴
2001-02	462	319	32	111
2002-03	616	446	38	132
2003-04	567	390	43	134
2004-05	533	375	43 ⁵	115
2005-06	537	389 ⁶	47 ⁷	101 ⁸
2006-07	562	413 ⁹	45 ¹⁰	104 ¹¹

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

⁵ 3 persons found not guilty by reason of insanity

⁶ 1 life prisoner re-sentenced

⁷ 4 persons found not guilty by reason of insanity

⁸ 4 persons found unfit to plead after inquiry

⁹ 1 life prisoner re-sentenced

¹⁰ 2 persons found not guilty by reason of insanity

¹¹ 2 persons found unfit to plead after inquiry

Table 2 below shows that the number of persons whose cases were pending at the end of the period fell (again) from 264 last year to 232 this year.

TABLE 2

Area	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07
Hobart	137	82	122	124	113	113
Launceston	75	66	77	119	91	73
Burnie	52	55	46	43	60	46
Total	264	203	245	286	264	232

The total includes 41 persons in respect of whom warrants have been issued, some of quite long standing.

Table 3 below shows the major groupings of crime by convicted persons. Sex crimes remain a high percentage. There was speculation that after the introduction of s 125A of the *Criminal Code* (creating the crime of maintaining a sexual relationship with a young person, making prosecution of some 'historical' sex abuse cases more viable as they did not risk failure because of lack of precise particulars of date, time and place) there would be a 'spike' of historical cases after which they would abate back to previous levels. Instead, it is becoming clearer that there will continue to be a significant number of 'historical' cases coming forward for the first time. This is consistent with what we now appreciate to be the case, that not all victims of sex crimes react the same, and some may complain immediately but others not be able to for many years later. It would seem that juries are well able to understand this, too, as the conviction rate for these crimes is quite satisfactory.

The grouping of drug crimes has also increased as a percentage of the total over the last two years. Again, this is probably the result of legislative change which strengthened the presumption of trafficking or intent to sell arising from possession of a defined number of plants or amount of substance. Cases which would not have been indicted previously, as lacking a reasonable prospect of success, are now being indicted and juries are generally applying the legislated onus of proof consistently.

The crime of perverting the course of justice has been rather regularly indicted in recent years, usually in the situation where a driver is detected committing a traffic offence and gives a false name to Police to avoid being charged. Almost invariably, the matter is dealt with by a non-custodial sentence. This crime is more serious than simply giving false information to Police, and is no doubt correctly charged as perverting the course of justice.

However, it may be more desirable for that crime to be reserved for the cases such as those where a Court is actively misled, and there be created a summary offence with sufficient deterrent penalty to deal with the dishonest driver situation.

TABLE 3

CRIME (TYPE) MAJOR GROUPINGS BY PERSONS CONVICTED

Crime (Type)	2004-05 %	2005-06 %	2006-07 %
Dishonesty (aggravated/armed robbery, stealing, burglary, receiving, fraud, etc.)	29.83	18.96	17.35
Personal violence (murder, manslaughter, assault, wounding, grievous bodily harm)	21.21	35.58	28.20
Arson & injury to property	7.69	8.31	6.26
Sex crimes (rape, unlawful sexual intercourse/relationship, indecency)	15.38	12.22	17.12
Perjury & perverting the course of justice	6.19	5.97	8.19
Drugs	7.32	12.21	15.90
Other ungrouped (includes indictable fisheries crime, conspiracy, causing death by dangerous driving, escape, abduction & other)	12.38	6.75	6.98

Table 4 below shows the types of disposal of criminal matters.

TABLE 4

COMPARATIVE TABLE RELATING TO THE DISPOSAL OF CRIMINAL MATTERS

Year	No. of Persons Presented	Pleas of Guilty	Dealt with other than as Plea	No. of Persons Tried
1997-98	335	234	49	52
1998-99	505	368	80	56
1999-00	711	488	104	119
2000-01	445	260	79	106
2001-02	462	244	111	107
2002-03	616	357	132	127
2003-04	567	315	134	118
2004-05	533	294	118	121
2005-06	537	299	102	136
2006-07	562	330	102	130

Of those persons tried -

Year	Convictions	Acquittals	Found Insane	Retrials
1997-98	28	24	0	0
1998-99	33	23	0	1
1999-00	74	43	1	1
2000-01	73	29	1	3
2001-02	75	32	0	0
2002-03	89	38	0	0
2003-04	75	43	0	0
2004-05	81	37	3	0
2005-06	89	43	4	0
2006-07	83	43	2	2

OTHER CRIMINAL MATTERS

137 bail applications were lodged, of which 46 were granted, 81 refused, five withdrawn and five were not yet determined at the end of the reporting period.

148 summary prosecutions were lodged by the Office, and 157 were determined

247 miscellaneous criminal files were opened – these were usually for advice of a complex nature to Police, and 251 of such files were finalised in the reporting period.

CIVIL LITIGATION

290 new civil matters were opened last year, the types of matter following a now fairly well established pattern that employment matters were the largest group, while the remainder were scattered widely across the gamut of civil litigation. Administrative law, judicial review and planning matters continue to grow in civil litigation, to an extent replacing claims for damages for personal injuries, which category has contracted generally throughout Australia. The civil litigation department continues to give the State timely, efficient and effective representation in this area at astonishingly low cost to the State.

T J Ellis SC
DIRECTOR OF PUBLIC PROSECUTIONS

26 September 2007