

# DIRECTOR OF PUBLIC PROSECUTIONS, TASMANIA

## ANNUAL REPORT 2002 - 2003

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 and representation, where appropriate, for officers of Courts or Tribunals who become the subject of applications for prerogative relief or review.

I am pleased to report of two appointments which were made in this year. One was that Mr Michael Stoddart was appointed a Crown Law Officer. Mr Stoddart has tirelessly and effectively co-ordinated and been the main counsel in the prosecution of sexual crimes for several years, and has achieved notable and consistent success in this difficult area.

The second appointment was that of Mr Daryl Coates as Senior Counsel. Mr Coates' entire professional life has proceeded in this Office and he has appeared with great distinction in many of its most difficult cases. His appointment was an

enormously well received one, a testament to his reputation for diligence, fairness and integrity.

The Manager of Crown Law, Ms Tracey Rodgers, is departing for another challenging appointment in the Department of Justice & Industrial Relations. She has been of great assistance to me and the Office and has devised and implemented various systems and methods which have resulted in significant efficiencies.

The abolition of the defence of provocation, suggested in this Report two years ago, proceeded this year. I would not be surprised to see other jurisdictions follow Tasmania's lead shortly.

As the more specific sections below demonstrate, this has been a busy and productive year for the Office and I sincerely thank all staff whose skill and effort continue to have the Office held in deservedly high regard.

#### **CRIMINAL CASES IN THE SUPREME COURT**

During the year a total of 616 persons were presented for trial, plea or discharge in the Supreme Court (see Table 1). This represents a further increase over the previous two years (462 last year, 445 in the year before).

Numbers presented do not tell the full story. Since video-interviewing was introduced, the nature and style of police investigation and trial has changed. Trials are no longer simple contests of who said what in the police station. Fuller investigations, more scientific evidence and more witnesses are now involved. A simple comparison of the size of file we archive now compared to several years ago shows the completed files to be on average significantly bulkier than they used to be.

With other, additional demands on this Office caused by disclosure obligations, victim-witness information obligations, proceeds of crime legislation and the ever-increasing complexity of criminal law it should be all the more apparent that the level of resourcing of this Office, which had remained basically static for a number of years, needed to be addressed. Unfortunately, as is now well-known, my raising this at a bureaucratic and ministerial level had no effect. I was thus obliged to raise it directly to Parliament. I did so by openly briefing Opposition and Independent Parliamentarians, namely the Honourable Messrs M Hodgman QC MHA, N McKim MHA and J Wilkinson MLC. I am grateful for their interest in the maintenance of an effective criminal justice system. As a direct result of that process (and not prior to it, as was misrepresented) an additional practitioner was able to be put on. That result will not alter the fact that by **any** measure this Office will be required to maintain its performance as the most efficient, but (relative to its obligations) under-resourced, in Australia. Table 3 shows vividly the rise in numbers of trials and other disposals over the last few years, during which time prosecutorial funding has risen barely at all.

The other aspect of funding I was forced to publicly raise, that of the commercial activities of my Office in civil litigation and the Crown Solicitor having to directly fund criminal prosecution, remains completely unaddressed. In no debate or correspondence I have heard or seen has there been advanced a justification to partially fund a core government obligation, the prosecution of serious crime, other than from Consolidated Revenue.

#### **DISCHARGE RATE**

As can be seen from Table 1, the number of cases discharged rose, although as a product of total disposals the rate decreased a little from the previous year. The variance is not statistically significant however and remains the highest in Australia. Although the main reason for discharge is that there was not considered a reasonable prospect of conviction, the high rate should not be seen as an adverse reflection on the quality of Police investigations and files submitted. Rather, I

believe it is a direct product of the lateness at which my Office is involved in the critical examination of charges with a view to proceeding to trial or not. In all other jurisdictions there is both earlier DPP direct involvement in the formulation of charge or significant DPP presence at the lower Court stage, prior to committal for trial. Also, in most other jurisdictions, there is critical involvement earlier by a decision by a Magistrate on committal for trial. Here, there is no judicial decision at committal at all. Further, except in the most serious cases, there is no involvement by DPP prosecutors until the matter is actually committed to the Supreme Court.

This year I proposed to Tasmania Police that a pilot project be instituted in one district whereby (where possible) advice be sought and given by this Office prior to arrest. Such a pilot has been undertaken in England, with results independently assessed to have delivered *“a sharp fall in the number of discontinued cases, more early guilty pleas and a significant increase in guilty pleas at first hearing”*.

In my view unfortunately, Tasmania Police were not willing to participate in the proposed pilot project.

#### **CRIMINAL CASES AWAITING DISPOSAL**

There were 203 criminal cases awaiting disposal as at 30 June 2003, a decrease of 61 from the previous year. This reflects the efforts made to reduce the backlog caused by some lengthy trials having occupied the available judicial time last year, as referred to in my Annual Report then. The level remains higher, though, than in the two years prior to that. The quality of justice is affected by undue delay in many ways but particularly in the fading of witnesses' memories and the strain put on victims and accused alike. Already in this year since 30 June 2003 there are factors at work which are likely to result in the number of cases awaiting disposal growing again. As I said last year, my Office can have little eventual control over that and can only use the judicial time available to hear cases as effectively as we

can, with due regard to the fact that the age of the charge alone does not determine its priority.

Area	1998-99	1999-00	2000-01	2001-02	2002-03
Hobart	82	63	78	137	82
Launceston	63	74	42	75	66
Burnie	51	39	41	52	55

### SUMMARY PROSECUTIONS AND LOWER COURT APPEALS

This work is demanding and varied. The bulk comes from Workplace Standards Tasmania (mainly concerning serious or fatal injuries caused in a workplace, and failure to insure) and the Inland Fisheries Service (with a variety of matters). Other examples of the variety of these prosecutions are under the *Education Act* (for truancy), under the *Electoral Act*, prosecutions for tobacco selling to underage persons, those relating to consumer protection, and under the *Forest Practices Act* 1985.

We have also undertaken the prosecution of Police officers who have been charged with offences arising out of their duties (although these need not necessarily be summary prosecutions).

Lower Court appeals appear to be diminishing a little, perhaps due to restrictions on legal aid. The other effect of those restrictions is a rise in persons representing themselves, which brings particular focus on Crown Counsels' duties to give assistance to the Court, particularly in the provision of references and authorities.

## **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. Statistics are shown in Tables 4 and 5.

The State has an obligation to be a model litigant, which this Office accepts, but that does not mean that the State ought to be expected to settle all litigation prior to trial. Indeed, I believe it behoves the State to bring to trial or hearing points which assist the development of the law. This attitude is apparently often a disappointment to those who would see the State as a soft target with deep pockets. That view of the State is best refuted by a willingness, in appropriate cases, to go to trial rather than throw money at a problem until it goes away.

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

**TABLE 1**

**CRIMINAL PROSECUTIONS**

<b>Year</b>	<b>Persons Presented</b>	<b>Persons Convicted</b>	<b>Persons Acquitted</b>	<b>Persons Discharged</b>
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>
2001-02	462	319	32	111
2002-03	616	446	38	132

(Additionally, 101 bail applications from the lower Court were dealt with.)

<sup>1</sup> 1 person found unfit to plead

<sup>2</sup> 1 person found not guilty by reason of insanity & 1 person whose jury failed to reach a verdict

<sup>3</sup> 1 person found not guilty by reason of insanity & 3 persons to be retried

<sup>4</sup> 1 person deceased before trial

**TABLE 2****CRIME (TYPE) MAJOR GROUPINGS BY PERSONS CONVICTED**

<b>Crime (Type)</b>	<b>2000-01 %</b>	<b>2001-02 %</b>	<b>2002-03 %</b>
Dishonesty (aggravated/armed robbery, stealing, burglary, receiving, fraud, etc.)	39.32	44.20	35.42
Personal violence (murder, manslaughter, assault, wounding, grievous bodily harm)	26.83	30.09	28.25
Arson & injury to property	8.53	5.32	8.30
Sex crimes (rape, unlawful sexual intercourse/relationship, indecency)	7.92	5.64	11.66
Perjury & perverting the course of justice	5.48	4.70	3.13
Drugs	4.27	4.70	7.17
Other ungrouped (includes causing death by dangerous driving, conspiracy, escape)	7.65	5.35	6.07

**TABLE 3****COMPARATIVE TABLE RELATING TO THE DISPOSAL OF CRIMINAL MATTERS**

<b>Year</b>	<b>No. of Persons Presented</b>	<b>Pleas of Guilty</b>	<b>Dealt with other than as Plea</b>	<b>No. of Persons Tried</b>
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
2001-02	462	244	111	107
2002-03	616	357	132	127

Of those persons tried -

<b>Year</b>	<b>Convictions</b>	<b>Acquittals</b>	<b>Found Insane</b>	<b>Retrials</b>
1993-94	51	20	0	2
1994-95	31	9	0	3
1995-96	33	14	0	4
1996-97	36	20	0	1
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

**TABLE 4****CATEGORIES OF CIVIL MATTERS OPENED (BY %)**

<b>Category</b>	<b>2000-01</b>	<b>2001-02</b>	<b>2002-03</b>
Employment (Workers Compensation & Crown Law)	56	57	54
Miscellaneous *	24	24	24.2
Medical Malpractice	13	12	14.3
Debt Recovery	5	5	5.2
Housing	2	2	1.6
Anti-Discrimination			1.2

\* Including occupier liability and industrial (but no longer anti-discrimination which as from 2002-03 is a separate category)

**TABLE 5****NUMBER OF CIVIL MATTERS**

<b>Year</b>	<b>New files opened</b>	<b>Files closed</b>	<b>Active files *</b>
2000-01	340	347	855
2001-02	350	340	946
2002-03	315	429	848

\* This represents total files open as at end of financial year. By reason of the manner in which data is stored and retrieved it includes files which have previously been closed and re-opened.