



DIRECTOR OF PUBLIC PROSECUTIONS, TASMANIA

ANNUAL REPORT 2004-2005

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.

The level of activity in criminal law as demonstrated by the number of persons tried remained at around the same level as it had for the previous five years which, as I pointed out in my report last year, was around double that of the five years before those. My staff work extremely hard and efficiently to make optimum use of the judicial time which is available for the disposal of criminal matters. Therefore, without significant change, the number of cases awaiting disposal will remain about the same (although, as one of the tables below shows, the distribution between the regions might vary).

It will require continual efficient management of the preparation and presentation of matters to maintain this level. It is quite fanciful to suggest that so-called "case management" will make any significant improvement in the situation as the main causes of losses of available sitting time are not that prosecution or defence are not ready when expected to be, and it remains the case in this State that trials are generally confined to the real matters in issue and are conducted expeditiously and efficiently. The problems of late pleas of guilty or other collapses of expected trials and trial lists, and of meandering, unfocussed trials in which the object seems to be to confuse the jury, are not evident here. Certain measures and practices designed to combat those problems which bedevil other jurisdictions are neither appropriate nor necessary here.

This is not to say the present situation is satisfactory, as it is not. The size of the list of matters awaiting disposition means it is certain that many people who may have pleaded guilty had they been faced with an early trial date will choose not to do so. Witnesses' memories will fade and witnesses may even not be available at a distant trial date. The quality of almost any prosecution case is inevitably weakened by the passage of time. Victims, witnesses, accused persons and their families all suffer stress while awaiting trial.

The list of cases awaiting disposition will not become significantly shorter unless there is more judicial (and jury) time allocated to deal with cases. The further allocation of judicial time does not necessarily require the appointment of an additional Judge as there may well be other ways of allocating further judicial and jury time to crime. Whether such an allocation can or should be made is a matter for the Honourable The Chief Justice, not me. If further judicial time is made available there would need to be a corresponding allocation of extra resources to my Office, as it does not have the ability to service such extra time on a regular basis. The final sittings this year in Launceston will be a "double" sittings in order to seek to reduce the disproportionate growth in the list in that regional centre. It will take an extraordinary effort to fill those sittings and all others at the same time. It is not possible to sustain that throughout a year on present resourcing.

MAGISTRATES' COURT MATTERS

Most of the prosecuting work in the Magistrates' Courts is done by Police prosecutors, and arises from arrests and complaints made by Police. My Office prosecutes other summary matters as investigated within the province of other State Agencies, for example DPIWE (Inland Fisheries matters), DIER (Workplace Safety matters) and Consumer Affairs & Fair Trading among several others. This year 149 summary prosecution and advising matters were opened, and 126 were finalised.

The Office's work also intersects with the Magistrates' Court in representing the Respondent in Lower Court appeals, i.e. appeals from Magistrates' decisions to the Supreme Court. This year 73 such appeals were finalised.

I have not previously reported on bail applications in the Supreme Court, which (except in murder cases) proceed in the Supreme Court as appeals from a refusal of bail by a Magistrate. There has been an increase in the number of these applications, which can be quite demanding on the resources of my Office. In the year under report there were 204 such applications finalised, my Office appearing in all of them. Twenty seven applications were withdrawn. Of the remainder, bail was (continued to be) refused in 81 cases, and granted in 96 cases. That is a disturbing figure. We have a hierarchical system. If Magistrates are, as the figures suggest, often refusing bail when the Supreme Court later grants it, it is the Magistrates' approach which must be reviewed in order to conform to the approach of the Supreme Court, not vice versa. Perhaps it is the case that, unlike other forms of Lower Court appeal, Magistrates receive no "feedback" in the form of written reasons for decision or formal orders indicating

their decisions have been overturned. I would trust that the publication of these figures would go some way to remedy that.

CRIMINAL CASES IN THE SUPREME COURT

During this year a total of 533 persons were presented for trial, plea or discharge in the Supreme Court (*see Table 1*).

TABLE 1

Year	Persons Presented	Persons Convicted	Persons Acquitted	Persons Discharged
1995-96	324	255	14	55
1996-97	309	240	20	39
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

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

This represents a decrease from the previous year (567) and the year before it (616). However, it is close to the average of the past seven years (this included) since 1998-99 when the number of persons presented first increased substantially over previous years.

Table 2 below shows that the number of persons whose cases were pending at the end of the period rose from 245 to 286 this year. The disproportionate increase in Launceston will be partially addressed, as earlier indicated, by a "double" final sittings. That increase should not be read as a "crime wave" in Launceston - indeed, the statistics in this Report should not be taken as relating to the incidence of crime. They relate to the incidence of committal to and

disposal in the Supreme Court of criminal matters. It is worth noting that the number of finalisations in Launceston actually increased, although not to the extent of keeping up with new lodgements. Maintenance of that output is of considerable credit to staff generally and to those of the Launceston office in particular as for much of the year it operated short staffed by one counsel.

TABLE 2

Area	2000-01	2001-02	2002-03	2003-04	2004-05
Hobart	78	137	82	122	124
Launceston	42	75	66	77	119
Burnie	41	52	55	46	43
Total	161	264	203	245	286

Table 3 below shows the major groupings of crime by persons convicted (i.e. pleas of guilty and trial). As for the previous two years, the proportion of sex crimes dealt with continues to grow. I believe this growth is due in part to the confidence given to complainants by the greater protections afforded them (such as anonymity and protection from examination about irrelevant sexual experiences). I believe the growth is also due to the high degree of sensitivity and professionalism with which complainants are treated by investigating Police and this Office. In this respect it was a matter of considerable pride for the Office that Senior Crown Counsel Mr Michael Stoddart was awarded the Major Award as a community member in the 2004 Women & Safety in the Community Awards for his tireless and expert work as a prosecutor specialising in sexual crime prosecution.

TABLE 3

CRIME (TYPE) MAJOR GROUPINGS BY PERSONS CONVICTED

Crime (Type)	2002-03 %	2003-04 %	2004-05 %
Dishonesty (aggravated/armed robbery, stealing, burglary, receiving, fraud, etc.)	35.42	39.24	29.83
Personal violence (murder, manslaughter, assault, wounding, grievous bodily harm)	28.25	23.30	21.21
Arson & injury to property	8.30	8.86	7.69
Sex crimes (rape, unlawful sexual intercourse/relationship, indecency)	11.66	13.17	15.38

Crime (Type)	2002-03 %	2003-04 %	2004-05 %
Perjury & perverting the course of justice	3.13	6.07	6.19
Drugs	7.17	6.07	7.32
Other ungrouped (includes indictable fisheries crime, conspiracy, causing death by dangerous driving, escape, abduction & other)	6.07	3.29	12.38

Table 4 below shows the types of disposal of criminal matters and there appear to be no significant trends departing from previous years. The percentage of matters which are pleas of guilty has remained relatively steady over recent years, but remains a significantly lower percentage than it was when fewer persons were presented and numbers awaiting trial were correspondingly fewer (and trials therefore sooner to come on). This seems to prove the point I made earlier in this Report, namely that pleas of guilty will be encouraged by the ability to provide earlier trial dates. A measure to address that which ought to be considered, I believe, is to statutorily require a fixed discount to be given for an early plea of guilty. Several jurisdictions have adopted this as a pragmatic measure to address growing lists and the success (or otherwise) of these measures deserves further study, although I believe it is preferable to adopt measures which increase judicial and jury time, and to only reduce sentences when an early plea results from genuine remorse or from a desire to assist the administration of justice.

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
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

Year	No. of Persons Presented	Pleas of Guilty	Dealt with other than as Plea	No. of Persons Tried
2001-02	462	244	111	107
2002-03	616	357	132	127
2003-04	567	315	134	118
2004-05	533	294	118	121

Of those persons tried -

Year	Convictions	Acquittals	Found Insane	Retrials
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
2003-04	75	43	0	0
2004-05	81	37	3	0

CIVIL LITIGATION

Tables 5 and 6 show this work continues steadily, as evidenced by the new files opened. The higher than usual numbers of files closed represents an administrative clean-out rather than any change of policy.

I am grateful that allowance has been made in the present year's budget to effect a restructure of the Civil Division which I hope will substantially relieve me from personal carriage of civil files as a solicitor, a burden which has increasingly infringed on my role in criminal matters and what should be a directing and supervisory role in civil matters. At the time of writing, the rather lengthy processes required under State Service rules to effect restructure are still taking place and I would not expect the processes to be complete before the New Year.

TABLE 5
CATEGORIES OF CIVIL MATTERS OPENED (BY %)

Category	2001-02	2002-03	2003-04	2004-05
Employment (workers' compensation & common law)	57	54	54.8	54.07
Miscellaneous (incl. occupier liability, administrative & industrial)	24	24.2	31	32.24
Medical Malpractice	12	14.3	8.7	8.14
Debt Recovery	5	5.2	2.6	3.3
Housing	2	1.6	0.3	0.65
Anti-Discrimination		1.2	2.6	1.6

TABLE 6
NUMBER OF CIVIL MATTERS

Year	New files opened	Files closed	Active files *
2001-02	350	340	946
2002-03	315	429	848
2003-04	310	283	935
2004-05	307	501	734

* 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.

CONCLUSION

The year ending 30 June 2005 was a productive year for this Office, to which all staff contributed positively. I thank them for their continuing support, professionalism and collegiate spirit. It is a relief to be able to note that after nearly two years frustratingly short of progress, negotiations for a new salary structure for legal practitioners have now been satisfactorily resolved, and a nexus established with salaries of similarly-placed professionals in other States, finally addressing a most unjustified disparity.

T J Ellis SC
DIRECTOR OF PUBLIC PROSECUTIONS