



DIRECTOR OF PUBLIC PROSECUTIONS, TASMANIA

ANNUAL REPORT 2009 – 2010

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 year reported on was an extremely difficult one for the Office, as several counsel had maternity leave and years of under funding which had required positions not being immediately filled when they became vacant caught up, and we were considerably understaffed throughout the year. I believe this explains why the number of trials was fewer than in previous years, as it was not possible to deeply, or sometimes at all, “back stop” trials so the available judicial and jury time for trials would be used if listed cases fell over. It was by dint of extraordinary work and dedication by staff that 605 defendants were finalised for the year, with the work of the Office conducted to the highest professional and ethical standards.

It was therefore all the more disappointing that the lawyers were treated very shabbily by the Department of Justice in the matter of their remuneration. In May 2009, on virtually the eve of a pay rise coming payable under the Legal Practitioners’ Agreement, without any warning whatsoever the Department purportedly withdrew from the Agreement. That it intended to do so was advised to the lawyers of this Office only after the event. No negotiation for a fresh agreement had been commenced (and it was not suggested it would be

required) and disappointingly a fresh agreement has yet to be resolved at the time of writing this Report. * Litigation has ensued which is also presently unresolved at the time of writing, 14 September 2010.

On a note more to the credit of Government, at the time of last year's Budget the Treasurer, the Honourable M Aird MLC, and the Attorney-General the Honourable L Giddings authorised an independent review of the funding of the Office. That review was conducted by KPMG, which delivered its report in March 2010. It found the Office of the Director of Public Prosecutions ("ODPP") was, and had been for many years, under-funded. It found,

"In respect to the analysis of the ODPP compared to other comparable jurisdictions, we note that the Tasmanian ODPP is both efficient and effective, suggesting that there is little, if any, scope to drive further efficiency from the current resource base. This is supported by the following observations:

- The Tasmanian ODPP receives relatively less government funding per FTE
- The number of prosecutions per FTE processed by the Tasmanian ODPP is three times greater than the average of the comparable jurisdictions
- Cost per prosecution is just 20% of the average of the comparable jurisdictions, and
- The Tasmanian ODPP is more effective than comparable Offices in securing convictions at trial.

In summary, our additional analysis and consultations confirmed that ODPP Criminal is working at a level that is consistently in excess of capacity with barely adequate funding and there are signs emerging that the current workload is not sustainable with the current level of resources. We found the ODPP is under resourced in both salary and non-salary areas when workloads have increased and will continue to increase due to case complexity and the roles of the ODPP Criminal in the Tasmanian judicial system."

The Government reacted appropriately to the report by increasing consolidated funding within the parameters recommended by the report, and sought by me prior to its receipt. Additionally, capital funds were made available to undertake much needed renovations to the Hobart Office.

At the time of writing, a recruitment campaign for additional lawyers is proceeding.

* It may be queried why this matter is commented on in this Report, which is a report "on the performance by the Director of his functions under the Act", per s 15(1) *Director of Public Prosecutions Act 1973*. The reason is that, by s 14 of the same Act, it is the role of the Secretary of the Department of Justice to provide persons employed in the Department or procure the services of other persons for the purposes of assisting me in the performance of my functions. Poor industrial relations and ongoing, unresolved conflict are distractions and causes of loss of morale among those who assist me in the performance of the functions upon which I am obliged to report.

A welcome benefit of the additional funding for the Office is that I have become a 'Head of Agency' for the purposes of the *Financial Management and Audit Act 1990*, which brings increased flexibility and accountability to my management of the Office's funding. It is disappointing, and paradoxical, that at the same time I have no direct input into the negotiations over lawyers' remuneration. Instead, it seems I will be presented with an outcome over which I have no control, and be expected to manage it within current funding without supplementation, even though the KPMG report specifically recommended that "*Funding should ... be supplemented as required in line with renegotiated legal practitioner agreements*".

In December 2009, the appointment of Catherine Rheinberger as a Magistrate was announced. Ms Rheinberger had all her professional career in the Office of the Director of Public Prosecutions, after she had been Associate to the Chief Justice. Hers was an extremely distinguished career in prosecuting and included numerous difficult and complex cases of the highest gravity. Her very well-deserved appointment was a source of considerable pride for the Office.

Also during the year, two long-serving lawyers in Mr Nick Perks and Mr Lawrence Neasey, retired. Mr Perks in criminal law and Mr Neasey in civil litigation had appeared with great distinction in many difficult and complex cases.

The Honourable Henry Edward Cosgrove AM QC died on 22 February 2010. Mr Cosgrove was the first Crown Advocate, which Office was the first in Australia to enable prosecutorial decisions to be made by an officer who was independent of the Executive. The *Crown Advocate Act 1973* has had only minor amendments since its introduction, and is essentially the same Act under which I presently operate. One of the amendments, in 1986, changed the title of the Act and hence of the Office it creates, to the *Director of Public Prosecutions Act*. Last year on the 25th anniversary of the establishment of the Director of Public Prosecutions in Victoria, the Attorney-General, the Honourable Rob Hulls, wrongly claimed Victoria had pioneered the creation of an independent prosecution service, in 1982. It had not, as Tasmania had been the first nine years earlier. Victoria was merely the first in Australia to call its independent prosecutor the Director of Public Prosecutions, a title which had existed in England for over a century.

Mr Cosgrove QC was Crown Advocate from soon after the commencement of the Act in July 1973 until his appointment as a Judge of the Supreme Court of Tasmania in February 1977.

STATISTICAL REVIEW

Criminal cases in the Supreme Court

During this year a total of 605 persons were presented for trial, plea, discharge and, in one case, re-sentence, in the Supreme Court (Table 1). 649 persons were committed for trial or sentence.

As foreshadowed in last year's Annual Report, the Acting Deputy Commissioner of Police and I conducted an audit of that year's and the previous year's discharges and their reasons. Following that audit, we agreed the viability of cases had been assessed appropriately, dispassionately and assiduously. We identified that there had been some rare failures of process or communication but the outcome had not been affected, and we agreed on improved structures to communicate reasons for discharge to investigating officers.

The rate of defendants finalised by discharge (which includes complete discharge or discharge from the Supreme Court to summary charges) is higher than other Australian jurisdictions. This is unavoidable and entirely the product of the system of committal for trial in Tasmania where an accused person on indictable charges is committed to the Supreme Court from the Magistrates' Court before the Office of the Director of Public Prosecutions, or a judicial officer, has an opportunity to consider the charges and sufficiency of evidence. In other jurisdictions many such discharges take place without there having been an appearance in the higher court, hence those discharges are not shown as the discharge of persons committed.

Table 2 below shows the number of persons whose cases were pending at the end of the period, which has risen from last year. This is to be expected as the numbers finalised were fewer than previous years due, I believe, to short-staffing and its effect principally on the back-stopping of cases.

Table 3 below shows the major groupings of crime by convicted persons.

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

TABLE 1

Year	Persons Presented	Persons Convicted	Persons Acquitted	Persons Discharged
2000-01	445	333	68 ¹	79 ²
2001-02	462	319	32	111
2002-03	616	446	38	132
2003-04	567	390	43	134
2004-05	533	375	43 ³	115
2005-06	537	389 ⁴	47 ⁵	101 ⁶
2006-07	562	413 ⁷	45 ⁸	104 ⁹
2007-08	558	408	32 ¹⁰	118 ¹¹
2008-09	768	512	40 ¹²	216 ¹³
2009-10	605	430 ¹⁴	31 ¹⁵	144

- ¹ 1 person found not guilty by reason of insanity and 3 persons to be retried
- ² 1 person deceased before trial
- ³ 3 persons found not guilty by reason of insanity
- ⁴ 1 life prisoner re-sentenced
- ⁵ 4 persons found not guilty by reason of insanity
- ⁶ 4 persons found unfit to plead after inquiry
- ⁷ 1 life prisoner re-sentenced
- ⁸ 2 persons found not guilty by reason of insanity
- ⁹ 2 persons found unfit to plead after inquiry
- ¹⁰ 1 person found not guilty by reason of insanity
- ¹¹ 2 persons found unfit to plead after inquiry, and 2 persons discharged under other Mental Health Orders
- ¹² 7 persons found not guilty by reason of insanity
- ¹³ 2 persons found unfit to plead after inquiry
- ¹⁴ 1 life prisoner re-sentenced
- ¹⁵ 2 persons found not guilty by reason of insanity

TABLE 2

Area	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
Hobart	124	113	113	113	133	133
Launceston	119	91	73	127	117	99
Burnie	43	60	46	54	55	99
	286	264	232	294	305	331*

* includes 24 persons in respect of whom warrants have been issued

TABLE 3

CRIME (TYPE) MAJOR GROUPINGS BY PERSONS CONVICTED

Crime	2007-08 %	2008-09 %	2009-10 %
Dishonesty (aggravated/armed robbery, stealing, burglary, receiving, fraud, etc.)	25.14	17.30	21
Personal violence (murder, manslaughter, assault, wounding, grievous bodily harm)	24.60	25.40	27
Arson & injury to property	7.36	5.60	9
Sex crimes (rape, unlawful sexual intercourse/relationship, indecency)	16.52	9.40	11
Perjury & perverting the course of justice	6.82	11.80	10
Drugs	13.28	25.90	20
Other ungrouped (includes indictable fisheries crime, conspiracy, causing death by dangerous driving, escape, abduction & other)	6.28	4.60	2

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
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
2007-08	558	332	116	110
2008-09	768	399	214	155
2009-2010	605	351	147	107

Of those persons tried -

Year	Convictions	Acquittals	Found insane or unfit to plead	Retrials
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
2007-08	76	31	3	0
2008-09	113	33	9	0
2009-10	78	29	2	0

Other criminal matters

Counsel appeared in 90 bail applications this year (appeals from refusal of bail in the Magistrates' Court). 30 were granted, 51 refused, one was withdrawn and eight were still to be determined at the end of the reporting period.

88 summary prosecutions were lodged, 52 finalised. 33 Lower Court appeals were lodged, and 41 were finalised (these include Police and defendant appeals). 84 miscellaneous criminal files were opened, 104 were finalised.

144 criminal sexual assault referrals were opened, 145 closed.

Civil matters

Type	Opened	Closed	Active
Anti discrimination	5	2	11
Debt recovery	11	7	33
Employment	145	209	290
Housing	0	0	3
Medical negligence	1	14	47
Other	113	113	241
Risk Management Fund	38	16	78
Total	313	361	703

T J Ellis SC
DIRECTOR OF PUBLIC PROSECUTIONS

14 September 2010